

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

Substantive Hearing

Monday 16 January 2023 – Friday 20 January 2023

Virtual Hearing

Name of registrant:	Emily Jane Bestic
NMC PIN:	14E0717E
Part(s) of the register:	Registered Nurse – Adult Nursing
Relevant Location:	Kent
Type of case:	Misconduct
Panel members:	Museji Ahmed Takolia (Chair, Lay member) Louise Poley (Registrant member) Colin Sturgeon (Lay member)
Legal Assessor:	Andrew Granville-Stafford
Hearings Coordinator:	Megan Winter
Nursing and Midwifery Council:	Represented by Joe O’Leary, Case Presenter
Miss Bestic:	Not present and unrepresented
Facts proved:	All
Facts not proved:	None
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 Miss Bestic was not in attendance and that the Notice of Hearing letter had been sent to Miss Bestic's email address (as recorded on the NMC Register) by secure delivery on 13 December 2022.

Mr O'Leary, 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 venue of the hearing and, amongst other things, information about Miss Bestic'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 Bestic 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 Bestic

The panel next considered whether it should proceed in the absence of Miss Bestic. It had regard to Rule 21 and heard the submissions of Mr O'Leary who invited the panel to continue in the absence of Miss Bestic.

Mr O'Leary referred the panel to an email from Miss Bestic's representative at the Royal College of Nursing dated 20 July 2022, which stated:

"...I can confirm that the registrant will not [sic] longer be engaging with the proceedings.

Ms Bestic will not be attending any hearings or responding to any future correspondence. No disrespect is intended by this decision and she understands that the process will continue in her absence.”

Mr O’Leary referred the panel to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and submitted that Miss Bestic is aware of the hearing and has chosen not to attend. He further submitted that Miss Bestic had voluntarily absented herself and he subsequently invited the panel to proceed in her absence.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised ‘*with the utmost care and caution*’ as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Bestic. In reaching this decision, the panel has considered the submissions of Mr O’Leary, the documentation from Miss Bestic and her representative, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Bestic;
- Miss Bestic has informed the NMC through her representative at the RCN that she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A number of witnesses have made themselves available to give live evidence throughout the hearing;
- Not proceeding may inconvenience the witnesses, their employers who are serving police officers and take them away from their duties;
- 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 Bestic in proceeding in her absence. She 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, this limited disadvantage is the consequence of Miss Bestic's decisions 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, appropriate and proportionate to proceed in the absence of Miss Bestic. The panel will draw no adverse inference from Miss Bestic's absence in its findings of fact.

Details of the charge (as amended)

That you, a registered nurse:

1. Between 19 March and 25 April 2018 you actively participated in the procuring of an illegal abortion of Victim 2 in that you:
 - a) Provided medical advice about the process to Defendant 1 through the intermediary, Defendant 3;
 - b) Did not take any steps to stop the process despite knowing that the proposed abortion was illegal and posed a risk to the lives of both the mother and baby;
 - c) Did not take any steps to stop the process despite knowing of the risk of significant disability to the baby which you knew could be born alive.
2. On 30 August 2018 you provided inaccurate information to the Police about your involvement in the procuring of an illegal abortion of Victim 2 to avoid conviction, in that you:

- a. Failed to accept that you participated in telephone calls on 19 and 24 April 2018,
 - b. Failed to accept knowledge of and/or involvement in the procuring of an illegal abortion of Victim 2 on 24 April 2018,
 - c. Failed to accept giving advice regarding illegal abortion,
3. Your actions at charge 2 were dishonest in that you knew you had actively participated in the procuring of an illegal abortion of Victim 2 and were seeking to conceal this from the police to avoid prosecution and/or conviction.

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

Decision and reasons on application to admit evidence

The panel heard an application made by Mr O'Leary under Rule 31 to adduce the following evidence:

- The summaries of the police interviews; and
- A report prepared by Witness 1

Mr O'Leary drew the panel's attention to the NMC guidance and outlined the case of *Thorneycroft & NMC 2014 EWHC 1565 (Admin)* and the factors a panel is required to consider when admitting hearsay evidence.

Mr O'Leary informed the panel that the relevant documentation comes from Witness 1, who is attending the hearing. Witness 1 was the senior investigating officer of the police investigation of this matter. The police interviews were undertaken as part of the police investigation. Mr O'Leary submitted that Witness 1 will be able to talk about the documents and how they were created.

Mr O'Leary submitted that there is no evidence to suggest that Witness 1 had any reason to fabricate their allegations, he submitted that Witness 1 has been very clear in

her responses that there is no benefit to her to do so. Further, he submitted that dishonesty is the allegation and therefore is a very serious charge.

Mr O'Leary reminded the panel not to make a decision on the veracity of the documentation until it has heard from Witness 1 in relation to them. Mr O'Leary submitted that the panel will have an opportunity to cross-examine Witness 1 in relation to the documentation.

Mr O'Leary accepted the burden of proving any facts rests on the NMC throughout, and the facts have to be proved on the balance of probability.

The panel accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is '*fair and relevant*', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor directed the panel to the principles in relation to the admission of hearsay evidence, as set out in the case of *Thorneycroft* and other authorities.

The panel accepted the NMC's submission that, as the senior investigating officer, Witness 1 would have good knowledge of the investigation which ultimately led to the conviction of three defendants. Although she was not an eye witness to any of the events in question, her knowledge was gained in her professional role as a senior police investigator. The panel could test the reliability of her account by asking questions of her when she gave evidence.

The panel was mindful of the question of the weight which it should attribute to hearsay evidence would only arise if the panel decided that it was fair to admit such evidence.

The panel first considered whether it required hearing from Witness 1 in relation to the disputed documentation in order to make its decision on admissibility. The panel was content to proceed with making its decision about the admissibility of the disputed documents without having heard from Witness 1 as the contents of the documents had already been disclosed within the bundle.

The panel next considered whether to admit the evidence Mr O'Leary sought to rely on. It accepted the NMC's position that the documentation is relevant to the charges.

The panel accepted that the evidence of Witness 1 was not the sole and decisive evidence produced by the NMC in relation to the charges. It noted that another witness is scheduled to give evidence in relation to the charges.

The panel took into account the following factors when considering whether or not to admit the exhibits:

- These documents are not the sole and decisive evidence for charges 1, 2 and 3;
- The allegations are serious, particularly the allegation of dishonesty, to which the documents are relevant. If found proved, these allegations could have a significant impact on Miss Bestic;
- The charges to which these documents relate are not admitted by Miss Bestic.
- The panel noted that some of the content within the documentation could be considered prejudicial. However, as a professional panel, it felt it was able to put those matters out of its mind;
- Witness 1's evidence is important, as the senior investigating officer of the police investigation. The police interviews were undertaken in compliance with police procedure; and
- In fairness to Miss Bestic, the panel will have an opportunity to cross-examine Witness 1 on the evidence she has provided.

In terms of the quality of the evidence proposed to be adduced, the panel noted that this was contemporaneous as it was produced for the purposes of the police investigation at the time. The panel was of the view that the evidence was reliable.

Throughout its decision making, the panel was mindful of the overarching objectives of the NMC and in particular the protection of the public. It also considered the unfairness to Miss Bestic by adducing such evidence without allowing Miss Bestic the ability directly to challenge it. Balancing all relevant factors, the panel determined that it would be able to cross-examine Witness 1 on the veracity of her evidence provided. The panel

therefore has decided to allow the NMC application to admit the evidence under Rule 31.

Decision and reasons on application to amend charge 2

Mr O'Leary made an application to amend the wording of the stem of charge 2 and to add an additional three particulars. He submitted that the proposed amendments seek to add clarification and that they would not change the case.

Original charge

2. Between September 2018 and August 2019 you provided inaccurate information to the Police about your involvement in the attempted child destruction to avoid conviction.

Proposed amendments

2. ~~Between September 2018 and August 2019~~ **On 30 August 2018** you provided inaccurate information to the Police about your involvement in the attempted child destruction to avoid conviction, **in that you:**
 - a. **Failed to accept that you participated in telephone calls on 19 and 24 April 2018,**
 - b. **Failed to accept knowledge of and/or involvement in the attempted child destruction on 24 April 2018,**
 - c. **Failed to accept giving advice regarding illegal abortion.**

Mr O'Leary submitted that the proposed amendments are not prejudicial, given the amendments seek to add particulars to the allegation. He submitted that charge 2 speaks directly to the following charge alleging dishonesty, a serious matter which should be properly particularised and clear.

Mr O'Leary submitted that the first two interviews, dated August 2018, are the only accounts that the NMC wish to put forward in terms of evidence in relation to this

charge. He submitted that the amendments would not cause any injustice to Miss Bestic, would accurately reflect the case and allows for the proper encapsulation of the charge bearing in mind the panel's overarching objective to protect the public.

The panel accepted the advice of the legal assessor who referred it to Rule 28:

'28. (1) At any stage before making its findings of fact, in accordance with [rule 24(5) or (11)], the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) [or the Fitness to Practise] Committee, may amend-

*(a) the charge set out in the notice of hearing; or
(b) the facts set out in the charge, on which the allegation is based, unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.*

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

The panel was of the view that the amendments were in the interests of justice. It noted that the amendments added clarity to the charge by way of adding particulars. It also noted that the evidence in relation to this charge comes from the interviews conducted on 30 August 2018 specifically. The panel was satisfied that there would be no prejudice caused to either party and no injustice caused to Miss Bestic, as the case remains the same.

Therefore, the panel decided to amend charge 2.

Decision and reasons on further application to amend the charges

Having heard legal advice following closing submissions, Mr O'Leary made a further application to amend the charges. The proposed amendments related to charge 1c, the stem of charge 2, charge 2b and charge 3.

Original charge 1c

1. Between 19 March and 25 April 2018 you actively participated in the procuring of an illegal abortion of Victim 2 in that you:
 - c) Did not take any steps to stop the process despite knowing of the risk of significant disability to the baby which you knew at 26 weeks could be born alive.

Proposed amendments to charge 1c

1. Between 19 March and 25 April 2018 you actively participated in the procuring of an illegal abortion of Victim 2 in that you:
 - c) Did not take any steps to stop the process despite knowing of the risk of significant disability to the baby which you knew ~~at 26 weeks~~ could be born alive.

Original stem of charge 2 and 2b

2. On 30 August 2018 you provided inaccurate information to the Police about your involvement in the attempted child destruction to avoid conviction, in that you:
 - b) Failed to accept knowledge of and/or involvement in the attempted child destruction on 24 April 2018.

Proposed amendments to stem of charge 2 and 2b

2. On 30 August 2018 you provided inaccurate information to the Police about your involvement in the ~~attempted child destruction~~ **procuring of an illegal abortion of Victim 2** to avoid conviction, in that you:
 - b) Failed to accept knowledge of and/or involvement in the ~~attempted child destruction~~ **procuring of an illegal abortion of Victim 2** on 24 April 2018

Original charge 3

3. Your actions at charge 2 were dishonest in that you knew you had actively participated in the attempted child destruction and were seeking to conceal this from the police to avoid prosecution and/or conviction.

Proposed amendments to charge 3

3. Your actions at charge 2 were dishonest in that you knew you had actively participated in the ~~attempted child destruction~~ **procuring of an illegal abortion of Victim 2** and were seeking to conceal this from the police to avoid prosecution and/or conviction.

In terms of charge 1, Mr O'Leary submitted that the '26 weeks' part of the charge should be removed. He submitted that this would cause no injustice to Miss Bestic as, in any event, she was aware that the baby could have been born alive and the significant risk of disability to the baby as a result. Mr O'Leary submitted that the '26 weeks' is not essential and that removing this part of the charge would mean that the panel was under no unnecessary constraint when reviewing the evidence available.

In terms of charges 2 and 3, Mr O'Leary informed the panel that the phrase 'child destruction' had been used. He invited the panel to replace this phrase with 'procuring of an illegal abortion' as this phrase aligns with the wording used in charge 1. Mr O'Leary informed the panel that the term 'illegal abortion' was used in shorthand for what the other associates of this matter were convicted of. He submitted that the changing of the wording would not cause any injustice to Miss Bestic, as the terms are strikingly similar in this case. Mr O'Leary submitted that the proposed amendment does not require a change in evidence or any change in the case, it only seeks to add clarity to the charges so that the same terminology is used throughout.

The panel accepted the advice of the legal assessor who reminded it of Rule 28. He also referred the panel to the legal definition of child destruction:

'Any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, is guilty of child destruction.'

The panel had regard to the legal definition of the terminologies used. It noted that charge 1 and the offence for which Defendants 1 and 3 were convicted was an offence of conspiring to procure an illegal abortion rather than an offence of child destruction. It noted that the amendments added clarity to the charges aligning them with the terminology used in the remaining charges. It also noted that removing '26 weeks' from charge 1 would allow it to consider the charge more pragmatically. It was of the view that the amendments were in the interests of justice. The panel was satisfied that there would be no prejudice caused to either party and no injustice caused to Miss Bestic, as the case remains the same.

Therefore, the panel accepted the NMC's application to amend charges 1c, the stem of 2, 2c and 3.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr O'Leary on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Miss Bestic.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely on the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Witness 1: Senior Investigator and Chief Inspector
- Witness 2: Detective Chief Inspector

The panel accepted as written evidence of Witness 3, an NMC Case Officer, who produced the certificate of conviction and sentencing remarks from the trial of Defendant 3 heard by Mr Justice Baker and a jury at St Alban's Crown Court.

Background

Miss Bestic was referred to the NMC on 3 September 2018 by Central London Community Healthcare NHS Trust (the Trust). Miss Bestic was employed by the Trust as a post registration Health Visitor student at the time of the concern and was on a one year fixed term contract.

On 19 March 2018, the Police received a report from a community midwife that efforts were being made to force Victim 2 to have an abortion by Defendant 1, the father of her child (Victim 1). The Police spoke to the relevant parties and the victim advised that she was continuing with the pregnancy. No further police action was taken at this time.

On 27 April 2018, the same community midwife contacted the Police to report that Victim 2 had given birth to Victim 1. This happened after she was forced to take medication to induce an abortion. It was reported that Victim 2 had medication administered into her vagina and was prevented from getting medical help.

It was established that Victim 2 gave birth to Victim 1 in an ambulance that had been called and she is reported to have been in agony at this time. Victim 2 remained in hospital for a number of weeks in critical condition. She had been approximately 26 weeks pregnant at this time.

A Police investigation into the allegations that attempts had been made to induce an abortion was thereafter investigated. This investigation led to three individuals being

arrested and charged. All three persons subsequently received significant custodial sentences. One of those arrested and sentenced was Defendant 3, associate of Defendant 1. Defendant 3 and Miss Bestic were in a relationship and, at the time of the concern, were living together.

Miss Bestic fell under suspicion during the Police investigation and this resulted in her being arrested and interviewed under caution on 30 August 2018. She denied knowledge of the offence or of conspiring, aiding or abetting in the offence. Miss Bestic was later charged with conspiracy to procure an abortion.

In December 2018, Victim 2 provided a retraction statement, the decision was taken by the CPS to drop the case against Miss Bestic. It was following this decision that audio recordings of relevant phone calls were discovered on a phone belonging to Defendant 3. As a result, Miss Bestic was re-interviewed by Police on 12 August 2019 in respect of an allegation of attempting to pervert the course of justice.

The CPS decision was to allow the trial to proceed and conclude with the existing defendants before revisiting the decision surrounding Miss Bestic. During this trial, Defendants 1 and 3 and a further associated Defendant were found guilty and received significant custodial sentences.

It was subsequently decided that, for legal reasons, the allegation of attempting to pervert the course of justice against Miss Bestic should not proceed. The panel had before it a certificate from the Crown Court dated December 2018 showing that Miss Bestic was acquitted of the allegations made against her.

During Miss Bestic's August 2018 interviews with the Police, she denied knowledge of the involvement in conspiracy to procure an abortion. She initially stated that she had no knowledge of what had been happening. However, Miss Bestic later accepted that she had been present when her partner, Defendant 3, was on a phone call with someone and was talking about a woman who was given medication and that she was bleeding and in pain. Miss Bestic said she would never encourage or tell someone to seek an abortion illegally but would advise them to go to a clinic or hospital.

The panel was provided with a Case Management Form (CMF) completed in February 2019 by Miss Bestic's representative which stated that she disputed the allegation that she had been involved in an illegal abortion. The panel was also provided with a testimonial submitted on Miss Bestic's behalf. The panel had no other evidence or submissions provided by or on behalf of Miss Bestic.

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

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

Charge 1a

1. Between 19 March and 25 April 2018 you actively participated in the procuring of an illegal abortion of Victim 2 in that you:
 - a) Provided medical advice about the process to Defendant 1 through the intermediary, Defendant 3;

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Witness 1 and Witness 2.

The panel had regard to the definition of the offence of procuring an illegal abortion, under section 58 of the Offences Against the Person Act 1861, which includes administering poison or other noxious thing to procure a miscarriage.

The panel considered that a key element in this case was whether the female voice recorded as making a number of comments on the transcripts of the phone calls found on Defendant 3's phone could be positively attributed to Miss Bestic.

In establishing whether Miss Bestic had provided medical advice about the process to Defendant 1 through intermediary, Defendant 3, the panel had regard to the phone call transcripts between Defendant 3 and 1. Witness 1, in her evidence, explained the nature of these phone calls and how the transcripts came from *“Bestic’s boyfriend’s phone... [the Officer in Charge] found a bunch of folders which appeared to contain audio calls, and on this phone he had an app that recorded all his in and out phone calls in terms of the audio”*. Witness 1 confirmed that each transcript before the panel is a transcript made in the course of the investigation and the procedure by which they were created.

The panel had regard to Witness 2’s statement which she attributes individuals to the various phone calls including Miss Bestic within this case. Witness 2 described to the panel how she would listen to the calls and, in addition to the details specific to each call e.g. use of the word ‘*Em*’ in certain calls. The panel found the following factors of her evidence show that her attributions are reliable.

- a. She states that she listened to the vast majority of the calls on Defendant 3’s phone (of which there were 3,244) and has become familiar with the voices of each party as confirmed by subscriber checks. The panel was of this view that this voice recognition, based on the ‘many hours’ listened to, would have provided Witness 2 with a familiarity with the voice of Miss Bestic and her voice on the telephone.
- b. She has met the individual defendants in person, in the case of Miss Bestic 4-5 times but accepts that they are fleeting, but still sufficient to give her the opportunity to recognise the voice of Miss Bestic.
- c. In relation to Miss Bestic, she stated that she has listened to ‘many hours’ of phone calls between Miss Bestic and Defendant 3, she is confident that these calls belong to Miss Bestic due to the nature of the calls (between parties). Miss Bestic confirms that she and Defendant 3 were long term partners in an interview on 30 August 2018.
- d. Witness 2 has also stated that Miss Bestic, compared to the other defendants, has a distinctive voice in that she is well spoken. Furthermore, Miss Bestic was the only female involved in this case.

The panel considered the source of these calls, the manner in which they were retrieved and how they were provided as transcripts by Witness 1 and 2. The panel found both Witness 1 and 2's evidence to be cogent, clear and reliable. It also noted the measures which had been taken, particularly by Witness 2, to determine the identities of those participating in the phone calls.

As such, the panel was of the view that the attribution of voices in the calls was reliable and that the following evidence, as provided by the transcripts, demonstrates the knowledge held by Miss Bestic, her participation and the advice given.

On 19 April 2018, as per Witness 2's statement, text messages were received by Miss Bestic from Defendant 3. On 19 April 2018, Defendant 3 attempted to call Miss Bestic, however the call did not connect and a text message conversation occurs at 13:58 where Defendant 3 says that he needs to ask a '*gynae question*'.

The panel had regard to the transcript of Call 1, on 19 April 2018, which was made at 14:14. This call demonstrated Defendant 3 calling Miss Bestic asking her about "*that woman thing we was talking about*" and clarifies that he means "*abortion*".

The panel noted that Witness 2 stated in her evidence that a subscriber check was completed in relation to Defendant 3's phone which confirmed he was the subscriber. She also confirmed that a subscriber check which confirmed Miss Bestic's number and this number was saved to Defendant 3's phone under a nickname he used for Miss Bestic.

It was not in dispute that Miss Bestic had worked in a gynaecological setting and had gynaecological knowledge. The panel believes therefore that Miss Bestic drew upon this knowledge and experience of gynaecological matters and to give advice on how the medication works, for example "*then it might not be effective*" and also on what may be tested for; "*she could present and say I'm having a miscarriage and not say that she's had anything*". Towards the end of the call, she says "*give her more and then it should*

be complete.” From this call, the panel considered that Miss Bestic demonstrated an awareness that an abortion was taking place.

On 20 April 2018 at 21:46, a call was made between Defendant 3 and Defendant 1. In this Defendant 1 refers to the pregnancy in its 24th week. The female, Miss Bestic, contributes with:

- a. *“as long as she told them’ (inaudible) ... they could do her for like an illegal abortion”*
- b. As Defendant 3 gives advice on taking oral doses Miss Bestic provides the words *“4 of them”*, and gives further advice of *“4 up the vagina and if after an hour or two...”*
- c. Miss Bestic even corrects the other males to say *“Don’t take the oral at the same time as the vaginal”*
- d. Other comments such as *“can’t go for a wee otherwise they’ll fall out”* show a continued stream of advice.
- e. In this call, she also states how *“the baby could survive at the moment”*
- f. Ms Bestic goes on to describe how *“She could bleed out”*, as well as how it is too late to go to the hospital to have an abortion done *‘properly’*.
- g. During the discussion of going to hospital Miss Bestic states *“But if them tablets are still in her vagina”* to which Male 3 follows up with *“What Em’s saying is, its gotta make sure it’s after an hour otherwise they’ll be examining”*
- h. In a conversation between Defendants 1 and 3 about how to administer medication Defendant 1 says *“ask the girl if she thinks she’ll feel it”*, to which Defendant 3 says *“Yeah, I will”*, the female, a few entries later states *“If you use tampons, you’re not really gonna feel”*.

The panel was of the view that this call demonstrates the knowledge held by Miss Bestic as to the following:

- a. The fact the abortion was illegal, graphically demonstrated by Miss Bestic’s comment *“they could do her for an illegal abortion”*
- b. The fact that significant risk of death which was posed to the mother e.g. *“bleed out”*

- c. That there was a risk the baby could survive. The panel considered given her occupation as a nurse she would be aware that there may be a risk of disability, this is something noted by Defendant 3 where he states *“You don’t wanna have damaged the fucking baby as well man”*. Additionally, when Defendant 3 calls Miss Bestic and informs her that the baby is in the ICU, she states *‘I told you’* which demonstrates her understanding that there was the possibility of the baby surviving.

The panel concluded that this call demonstrates clear advice being given by Miss Bestic where she is taking an active role in the conversation in relation to medication, technique and procedure that may be followed at the hospital that may alert staff to the abortion. The panel considered this information demonstrates Miss Bestic’s active participation in the procurement of an abortion by way of medical advice, and that it is passed to Defendant 1 using Defendant 3 as an intermediary. Both Witness 1 and Witness 2 confirmed in their evidence the identities of those involved in the calls.

Call 16, 24 minutes later at 22:10 takes place between Defendant 1 and Defendant 3, with Miss Bestic participating. Defendant 3 notes how *‘this woman’s telling me bare info that you need to know to make the right decision’* and continues to say *‘she’s telling me ... her cervix will open quicker, the tablets will work quicker, but even if the tablets have done their job when she actually gives birth to the baby, the tablets could still fall out with the baby at that time’*. Defendant 3 goes on to say *“Another thing is that fucking she, there’s bare complications that could happen so when it’s that late on it’s usually done at the hospital innit”*.

The panel concluded that this call shows advice being given by Miss Bestic to Defendant 1 via Defendant 3, on the legalities of such an abortion, the procedures and potential for ‘complications’ which the panel considered to show an understanding of the risk of harm.

On 24 April 2018, Defendant 3 speaks with Defendant 1, the conversation indicates that he has, at that stage, administered the medication to begin the abortion process.

Assisted by Miss Bestic, Defendant 3 gives medical advice regarding how to deliver the baby, the placenta, the risk of blood loss, the need for clamps and how walking will help, but also to be prepared for the tragic sight they would see. The panel was of the view that, in this call, Miss Bestic is again giving active advice to assist in the procuring of the miscarriage in how to prepare for the procedure but also the aftermath.

The panel had regard to Witness 2's statement which refers to a call dated 24 April 2018 at 23:36. She sets out how she believes that Male 1 is Defendant 3, this is supported by the fact the recording is taken from his phone. Witness 2 further considers that as Defendant 3 states "*let me ask Em something*", the female is Miss Emily Bestic. Given the relationship between Miss Bestic and the previous attributions between Defendant 3 and Miss Bestic, and Witness 2's knowledge of her voice, the panel concluded that this attribution is accurate. Witness 2 also stated in her live evidence that Male 2 is Defendant 1, she confirmed this through the phone number being called belonging to Defendant 1. The panel was also provided with the certificate of conviction sentencing remarks of Mr Justice Baker at the Crown Court which shows that Defendant 1 was found guilty of conspiring with Defendants 2 and 3 to commit the offence of administering poison with the intention of procuring a miscarriage.

On 25 April 2018, a call occurs at 07:53. It is suggested that Defendant 1 was engaged in a phone call with Defendant 3 where details are given of the state of Victim 2. Whilst Miss Bestic is not party to this call, in her Police interview dated 30 August 2018, she stated she was aware of this call and that this was the "*first I heard*".

Later on 25 April 2018, a call occurs at 17:05 where Defendant 3 is recorded, whilst only one side of the call was recorded, it is apparent he is learning of the baby being taken to ICU. At 17:23, a phone call takes place where Defendant 3 calls Miss Bestic and informs her that the baby is in the ICU, where she states '*I told you.*'

For the reasons as set out above, the panel is satisfied that Miss Bestic did give medical advice regarding the abortion process to Defendant 1 via Defendant 3.

In addition to what Miss Bestic said on the phone calls, the panel noted that Miss Bestic demonstrated in her interview an understanding of both the medical and legal procedures during an abortion noting factors such as the quantity of medication required but also the requirement for two doctors in a medical setting.

The panel was of the view that the calls on 19 April show an understanding that an abortion process is taking place, and further calls on 20 and 24 April to which Miss Bestic is an active participant alongside Defendants 1 and 3 demonstrate her advice being given in relation to medication, practicalities and procedures should Victim 2 be taken to hospital. This advice continues during the call at 23:36 on 24 April when it is apparent that the procedure is taking place.

Therefore, the panel determined that on the balance of probabilities it concluded that Miss Bestic had actively participated in the procuring of an illegal abortion by providing medical advice about the process to Defendant 1 through the intermediary, Defendant 3. The panel therefore found this charge proved.

Charge 1b

1. Between 19 March and 25 April 2018 you actively participated in the procuring of an illegal abortion of Victim 2 in that you:
 - b) Did not take any steps to stop the process despite knowing that the proposed abortion was illegal and posed a risk to the lives of both the mother and baby;

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Witness 1 and Witness 2.

In establishing whether Miss Bestic did not take any steps to stop the process despite knowing that the proposed abortion was illegal and posed a risk to the lives of both the mother and baby, it had regard to the content of the calls as outlined in charge 1a. The

panel was of the view that the calls clearly show that Miss Bestic was aware of the risk to the lives of mother and baby, and that this risk was ongoing during the call on 24 April 2018 when the procedure had physically started.

The panel noted that, regarding the mother, a call dated 20 April 2018 demonstrates Miss Bestic noting that the mother *'could bleed out'*. The panel was of the view that Miss Bestic would have been aware of the risk arising from this, and the consequential risk to the mother's life.

The panel considered that it is inherent, in attempting to procure an abortion there is a risk to the baby. In these circumstances, the panel was also of the view that this would have been apparent to Miss Bestic, given her experience in gynaecology.

The panel had particular regard to paragraphs 16 and 17 of the NMC code (of which Miss Bestic ought to have been aware) that she should have taken active steps to prevent such a process from occurring. It considered it apparent that during a call on 20 April 2018, she was well aware of the procedure that was ongoing and yet did not take any steps to prevent it. Paragraphs 16 and 17 stated:

'16 Act without delay if you believe that there is a risk to patient safety or public protection

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection'

The panel considered that, during the call on 20 April 2018 at 22:10 with Defendant 3 Miss Bestic make representations to Defendant 1 regarding the process, it is clear that no action was taken by Miss Bestic to stop the process or call for medical assistance to protect Victims 1 and 2.

For the reasons as set out above and on the balance of probabilities, the panel found that Miss Bestic did not take any steps to stop the process despite knowing that the proposed abortion was illegal and posed a risk to the lives of both the mother and baby.

The panel was satisfied that this amounted to active participation in procuring an illegal abortion of Victim 2. The panel therefore found this charge proved.

Charge 1c

1. Between 19 March and 25 April 2018 you actively participated in the procuring of an illegal abortion of Victim 2 in that you:

- c) Did not take any steps to stop the process despite knowing of the risk of significant disability to the baby which you knew could be born alive.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Witness 1 and Witness 2.

The panel considered whether Miss Bestic did not take any steps to stop the process despite knowing the risk of significant disability to the baby, which she knew could have been born alive. It had regard to her admitted work on a gynaecology ward and was of the view that, through her interactions, she was aware that the baby could survive. It noted in a call dated 20 April at 21:46 Miss Bestic said to Defendant 3 *“the baby could survive”*.

The panel also considered that the risk of significant disability was known by Miss Bestic in a call on 20 April at 22:10 between Defendant 1 and 3, to which she was party to. In that call, Defendant 3 says *“this woman’s telling me bare info that you need to know to make the right decision”* he also refers to *“complications”*. Defendant 1 asked *“it’s not gonna damage the baby or nothing?”* and Defendant 3 responded *“that’s another worry”*. Again, the panel had regard to Witness 2’s attributions, who identified Miss Bestic’s voice in the background of this call. Miss Bestic makes some (although at times inaudible) contributions and gives advice. Therefore, the panel was of the view that she was very much aware of the situation and the risk to the baby. The panel considered that the risk of significant disability is not only inherent to the risks of an

early and improper abortion, but given Miss Bestic's gynaecological experience, it was something she would have been aware of.

In light of the reasons as set out above, the panel determined that Miss Bestic did not take any active steps to stop the procedure, despite being aware of the risk of significant disability to the baby. The panel was satisfied that this amounted to active participation in procuring an illegal abortion of Victim 2. The panel therefore found this charge proved.

Charge 2a

2. On 30 August 2018 you provided inaccurate information to the Police about your involvement in the procuring of an illegal abortion of Victim 2 to avoid conviction, in that you:

- a. Failed to accept that you participated in telephone calls on 19 and 24 April 2018,

The panel found this charge proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Witness 1 and Witness 2.

The panel had particular regard to the two interviews conducted on 30 August 2018, where Miss Bestic was interviewed under caution. The panel had regard to the interview summaries provided. The panel considered the interview summaries, as provided by Witness 1, to be reliable sources of information. Witness 1 explained in detail the procedure by which these summaries were created and the role of the 'summarisers' who would summarise the non-evidential areas of interview, but also provide more 'distinct notes' for the more 'pertinent' areas of the interview. In relation to the interview summaries, Witness 1 confirmed these to be '*absolutely accurate*'.

In the interview summary, an overview of the alleged facts in relation to 24 April is put to Miss Bestic. The panel noted that, in response to the question of what she was doing

that evening, she stated that *"I could have either been back at work or at home either, I'm not sure"*. She was later asked if she got a call that night, in the clear context of the abortion, pain and suffering, to which Miss Bestic replied *"no, I did not"*.

A call on 24 April was put to Miss Bestic again, where the officer suggests that at 23:36 Defendant 3 is with Miss Bestic. Miss Bestic was asked *"tell us what really happened, can you tell me about the 24th?"*, to which Miss Bestic again states that she does not recall any of the evening, the only thing she can recall was the next morning. The panel was of the view that, per the attributions above in relation to the call, Miss Bestic was involved in a call that evening with Defendants 1 and 3. It noted that although the call was not directly to her, she was involved and an active participant in such a call. Miss Bestic did not provide this information to the Police, instead she was evasive and provided inaccurate information. The panel noted that this is a call Miss Bestic is likely to remember, given the subject matter and the detail of what was discussed including the risk of blood loss and the need for clamps, amongst other things. The panel therefore concluded that, in responding in this manner, Miss Bestic failed to accept her participation and that the inaccurate information she did provide to the Police was intended to avoid prosecution and conviction.

The panel considered whether Miss Bestic failed to accept in her interview on 30 August 2018 that she had participated in a telephone call on 19 April 2018 relating to the illegal abortion. The panel noted that Miss Bestic was specifically asked about calls and text messages on 19 April 2018 and her evidence was that she could not recall this day and she *"honestly"* did not remember those phone conversations. The panel, however, was satisfied that Miss Bestic was well aware of the contents of those conversations when she was being interviewed by the Police. The reason she claimed not to remember them was because she was trying to deny her involvement in the unlawful abortion but with the intent to avoid conviction or prosecution.

Charge 2b

2. On 30 August 2018 you provided inaccurate information to the Police about your involvement in the procuring of an illegal abortion of Victim 2 to avoid conviction, in that you:
 - b. Failed to accept knowledge of and/or involvement in the procuring of an illegal abortion of Victim 2 on 24 April 2018,

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Witness 1 and Witness 2.

In establishing whether Miss Bestic failed to accept knowledge of and/or involvement in the procuring of an illegal abortion, the panel had particular regard to the interviews on 30 August 2018. During the interviews, the details of a panicked phone call between Defendants 1 and 3 on 25 April 2018 at 07:53 in the morning were put to her. Miss Bestic responded by denying ever being involved in such a *“horrible horrible crime”*, she also stated *“It’s not something that I would ever encourage like I find it disgusting”*. The panel also noted that Miss Bestic says *“first I heard of it was that morning’s phone call”*.

The panel noted how Miss Bestic’s denial is repeated throughout the interview on multiple occasions. She states *“I would never encourage this”*, *“I don’t remember being involved in any of it”* and *“It’s not fair that I’ve been dragged into this”*, amongst other things. The panel was of the view that Miss Bestic’s denial is inaccurate given that throughout the calls, as attributed to her, prior to the 24 April and on 24 April itself, Ms Bestic was clearly an active participant in calls regarding an illegal abortion. The panel considered that Miss Bestic was lying to the Police by omission, by failing to give information regarding her involvement in the procuring of an illegal abortion with the intent to avoid prosecution or conviction. The panel therefore found this charge proved.

Charge 2c

2. On 30 August 2018 you provided inaccurate information to the Police about your involvement in the procuring of an illegal abortion of Victim 2 to avoid conviction, in that you:
 - c. Failed to accept giving advice regarding illegal abortion,

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Witness 1 and Witness 2.

The panel's findings at charge 2b are supported by the facts under charge 2c. In the interview, it was put to Miss Bestic *"has anyone shown an extreme interest in finding out from you, particularly Defendant 3 or his friends, about what happens and how, what drugs you take"*, to which Miss Bestic replied *"not particularly"*.

It was further put to Miss Bestic that medical advice was given, and the allegation of aiding and abetting was put. Miss Bestic stated *"I don't remember being involved in any of it"*. In addition, Miss Bestic stated *"I haven't, I haven't given any advice. I haven't spoken to these people. It's just, the only advice I was to give to anyone it would be go to a clinic, this is what normally happens."* The panel also noted that Ms Bestic said *"I would never encourage or tell people to seek it illegally and I would give advice thinking that someone would be going to a clinic or do it or [sic] a hospital"*.

The panel was of the view that, given Miss Bestic's continued denial and failure to accept giving advice regarding an illegal abortion along with the evidence of the phone calls in which she contributed to, the information she chose to share with the Police was indeed evasive and inaccurate. It considered that this was done deliberately in order to avoid prosecution or conviction. The panel therefore found this charge proved.

Charge 3

3. Your actions at charge 2 were dishonest in that you knew you had actively participated in the procuring of an illegal abortion of Victim 2 and were

seeking to conceal this from the police to avoid prosecution and/or conviction.

This charge is found proved.

In establishing whether Miss Bestic's actions at charge 2 were dishonest, the panel first considered the two-stage test set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* and how it must:

- a. Ascertain Ms Bestic's actual knowledge and belief in relation to the facts
- b. Ask whether the actions taken, by objective standards were dishonest

In light of the panel's findings at charge 2, it was of the view that Miss Bestic was well aware of the calls she had participated in, her involvement in the conspiracy to procure an illegal abortion and the advice she gave.

The panel took into account that Miss Bestic was interviewed by the Police four months after the illegal abortion. It considered that, in the context of such serious allegations, this is not a lengthy period of time so much so that Miss Bestic would have forgotten such facts.

The panel also took into account the seriousness of the allegations and the harrowing nature of the calls. It did not consider that this would be a matter Miss Bestic would have easily forgotten about, especially when pressed by the Police in interview with questions that provide context.

The panel was of the view that Miss Bestic provided such continued denials and denied recollections in her interviews so as to avoid prosecution and any subsequent conviction.

In relation to the second limb of the *Ivey* test, the panel considered that by the standards of the decent and ordinary person, Miss Bestic has acted dishonestly. The panel considered that, in choosing to give an account to the Police, yet denying or failing to tell the Police pertinent information available to her, she acted dishonestly.

The panel was therefore satisfied that Miss Bestic's actions in relation to charge 2 amount to dishonesty.

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 Bestic'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, Miss Bestic's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

In coming to its decision, the panel had regard 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 O'Leary submitted that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Standards of conduct, performance and ethics for nurses and midwives 2008' (the Code) in making its decision.

Mr O'Leary identified the specific, relevant standards where Miss Bestic's actions amounted to misconduct. He submitted that in order to find misconduct Miss Bestic's actions or omissions have to be found serious. Mr O'Leary submitted that there are two aspects that should be considered in determining the seriousness. Firstly, the extent of the falling short of what would be considered proper in the circumstances and the other consideration being the risk of harm if the conduct was repeated.

Mr O'Leary directed the panel to the case of *Calhaem v GMC* [2007] EWHC 2606 (Admin) where it was said that *"misconduct can also include incompetence or negligence of a high degree (para.36) ... mere negligence does not constitute misconduct. A single act or omission is less likely to cross the threshold of misconduct than acts or omissions. Nevertheless and depending on the circumstances, negligent acts or omissions which are particularly serious may amount to misconduct"*.

Mr O'Leary invited the panel to consider breaches against the following parts of the Code; 1.5, 16.1, 17.1, 17.2, 17.3, 20.4 and 20.3 in relation to charge 1. He also invited the panel to consider further breaches against the following parts of the Code in relation to charges 2 and 3; 23, 20.1, 20.2, 20.4 and 20.5.

In relation to charge 1, Mr O'Leary submitted that the panel's findings demonstrate a clear example of Miss Bestic's actions falling below the standards expected of a registered nurse. Although Miss Bestic's misconduct did not occur in a clinical setting, it is clear she used both her nursing skills and knowledge to influence the outcome. Mr O'Leary submitted that Miss Bestic's actions were dishonourable, disgraceful and damaging to the reputation of the nursing profession. Mr O'Leary submitted that Miss Bestic's involvement in the procuring of an illegal abortion goes fundamentally against the tenets of the nursing profession. He submitted that Miss Bestic would have been aware of the risks to the mother and baby, yet still did not intervene and chose to actively participate. Mr O'Leary submitted that Miss Bestic's misconduct in this case is very serious and falls far below the standards expected of a nurse.

In relation to charges 2 and 3, Mr O’Leary submitted that by choosing to provide inaccurate information to the police, Miss Bestic presents clear dishonesty. He submitted that this is a fundamental example of misconduct. Mr O’Leary submitted that the account given by Miss Bestic was demonstrably wrong and that she would have been aware of the gravity of the situation and seriousness of the questions asked of her whilst under caution. However, despite this, she chose to give inaccurate information and was dishonest in doing so. Mr O’Leary submitted that dishonesty is a key factor that surrounds nursing and falling short of this would amount to misconduct.

Mr O’Leary 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. Reference was made to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr O’Leary submitted that all four limbs of Dame Janet Smith’s test are engaged. He submitted that this is a serious case with no information in relation to remediation. Mr O’Leary submitted that Miss Bestic’s actions were callous and that there is no evidence before this panel to satisfy it that Miss Bestic will not, in the future, engage in conduct that puts further patients and/or members of the public at risk of harm, bring the nursing profession into disrepute or breach the Code. He therefore invited the panel to find Miss Bestic’s fitness to practise currently impaired.

In light of the above, Mr O’Leary also invited the panel to find that Miss Bestic’s fitness to practise is impaired on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

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 found that Miss Bestic's actions did fall significantly short of the standards expected of a registered nurse or midwife, and amounted to breaches of the following paragraphs of the Code:

In respect of charge 1

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.5 respect and uphold people's human rights

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

17.2 share information if you believe someone may be at risk of harm, in line with the laws relating to the disclosure of information

17.3 have knowledge of and keep to the relevant laws

and policies about protecting and caring for vulnerable people

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, treating people fairly and without discrimination, bullying or harassment

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.4 keep to the laws of the country in which you are practising'

In respect of charges 2 and 3

'23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

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, treating people fairly and without discrimination, bullying or harassment

20.4 keep to the laws of the country in which you are practising

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress'

The panel acknowledged that breaches of the Code do not automatically result in a finding of misconduct. However, the panel accepted the submissions of Mr O'Leary and was of the view that Miss Bestic's actions in charges 1, 2 and 3 were significant departures from the standards of conduct and performance expected of a registered nurse and amounted to serious misconduct.

The panel bore in mind that the overarching objectives of the NMC are not only to protect, promote and maintain the health, safety and well-being of the public and patients, but also to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a fully informed member of the public would be appalled by Miss Bestic's actions, and extremely concerned should a finding of current impairment not be made in the circumstances of this case. Miss Bestic breached the fundamental tenets of nursing and went against the core of what the public would expect of a registered nurse. The panel further concluded that fellow registered practitioners would find Miss Bestic's conduct deplorable. It found that Miss Bestic's actions were liable to have a corrosive effect on public confidence in the nursing profession and its reputation, and amounted to serious misconduct.

Given the serious issues in this case, which placed the victims involved at serious risk of harm over a period of days the panel reached the view that Miss Bestic'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 Bestic's fitness to practise is currently impaired.

The nursing profession is held in high regard. It occupies a position of privilege and trust in society and therefore registrants of the NMC are expected at all times to be both honest and professional. It is also regarded as a 'caring' profession and commands the trust and respect of the public for being so. Patients and their families trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be, and be seen to be honest and open, acting with utmost professionalism and integrity. It is for these reasons that they must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

The panel found that all four limbs are engaged.

With respect to charge 1, the panel found that Miss Bestic's actions fell well very far short of the standards expected of a registered nurse. It considered the conduct in this case serious, which caused serious harm to a mother and her child. The panel concluded that Miss Bestic abused her knowledge and experience as a nurse to cause unwarranted risk of harm to the victims, whilst being aware of the risk of harm involved.

In relation to charges 2 and 3, the panel noted Miss Bestic's lack of candour as well as her attempts to deceive the Police in order to avoid conviction for her actions. The panel found Miss Bestic demonstrated significant attitudinal concerns in her behaviour and considered that this brought the profession into disrepute and breached fundamental tenets of the profession. In the absence of any evidence to the contrary, the panel was concerned that Miss Bestic may be liable to act in such a way in the future.

The panel found that Miss Bestic has provided no evidence of insight into her behaviour, or acknowledged that her conduct was dishonest. It considered that dishonesty is difficult to remediate, and requires engagement from a registrant to show that she has or would act differently in the future should a similar situation arise.

The panel found that Miss Bestic's misconduct caused serious risk of harm to Victims 1 and 2, and in the absence of any evidence that this misconduct will not be repeated, the panel determined that Miss Bestic's fitness to practise is impaired on the grounds of public protection.

Miss Bestic's conduct has breached fundamental tenets of the nursing profession, namely honesty and integrity, and therefore has brought its reputation into disrepute. The panel has borne in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and wellbeing of the public and patients, and to uphold the wider public interest. This includes promoting and maintaining public confidence in the nursing profession, and upholding standards of proper conduct and performance for members of those professions.

The panel found that public confidence in the nursing profession would be seriously undermined if a finding of impairment were not made in this case. It determined that a finding of impairment is also in the wider public interest.

Sanction

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

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

Submissions on sanction

Mr O'Leary referred the panel to the NMC SG and submitted that it is the NMC's position that the misconduct in this matter warrants nothing less than a striking-off order. He submitted that having found Miss Bestic's fitness to practise impaired, the next

question for the panel is to decide on sanction, considering the public interest, which encompasses three separate strands, namely the protection of patients and others, the maintenance of public confidence in the professions and the regulatory body and the declaring and upholding of standards of conduct and behaviour.

Mr O'Leary submitted that the aggravating features in this case were: Miss Bestic's lack of insight, further training and remediation; her failure to take action over a period of days in which this incident occurred, despite being aware of the risks it involved; dishonesty in that she provided inaccurate information to the police; and the significant harm caused to the mother and baby involved. In terms of mitigating features, Mr O'Leary also submitted that Miss Bestic played a lesser role in the incident, in comparison to the other three defendants involved.

Mr O'Leary submitted that these features should be taken into account by the panel when considering sanction in this matter. Mr O'Leary invited the panel to conclude that taking no action or imposing a caution order is inappropriate in this case, given the panel's findings. He submitted that to take no action or to impose a caution order would not be sufficient to uphold the public interest in this matter as the case is simply too serious.

In considering a conditions of practice order, Mr O'Leary submitted that it is neither appropriate nor proportionate, as these are not clinical issues but attitudinal issues which flow from a serious incident. He submitted that because of the lack of insight, remorse or remediation and the lack of engagement there is nothing from Miss Bestic to indicate that she would cooperate with conditions.

Mr O'Leary submitted that the panel may therefore conclude that the only appropriate sanction is either a suspension order or a striking-off order. He submitted that the case warranted not temporary removal but permanent removal, given the nature and gravity of Miss Bestic's active participating in the procurement of an illegal abortion and the subsequent failure to disclose information to the Police.

Mr O'Leary submitted that Miss Bestic's failure to disclose information the Police and the fact she subsequently provided incorrect information is serious. He submitted that Miss Bestic's dishonesty in this regard presents deep-seated attitudinal issues and fundamentally breaches the public's trust in the nursing profession.

Decisions and reasons on sanction

Having found Miss Bestic'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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Bestic has not provided any insight, remorse or remediation into her misconduct;
- Miss Bestic failed to take action over an extended period of time (several days), despite being aware of the risks involved;
- Miss Bestic has acted dishonestly, in that she provided inaccurate information to the Police;
- The significant risk of harm to the mother and baby involved in the incident;
- Miss Bestic failed in her safeguarding duties as a nurse;
- The vulnerability of the victims who were involved in the incident;
- Miss Bestic abused her position of trust by providing advice in respect of unlawful abortion, despite her knowledge and experience.

The panel took into account the following mitigating feature:

- Miss Bestic's role in the incident was lesser than the three associated defendants, in that she was lesser involved in the administering and obtaining of medication. However, her role was prominent in giving advice in respect of unlawful abortion.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no 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 Miss Bestic'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 Bestic'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 Bestic's registration would be a sufficient and appropriate response. The panel was of the view that Miss Bestic has not provided any insight into her failings and has not demonstrated any remorse or remediation into the regulatory concerns against her. The panel is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case. The panel was of the view that the misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Bestic's registration would not adequately address the seriousness of this case and would not protect the public or meet the 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 reminded itself of the severity of this incident and the vital role which Miss Bestic played. It had considered her actions to be a significant departure from the standards expected of a registered nurse. The panel considered Miss Bestic's behaviour to be demonstrative of a deep-seated attitudinal problem. She acted in a way that was completely contrary to all that nursing stands for.

The panel found that Miss Bestic had offered no insight, remorse or remediation in respect of her conduct, despite having a substantial amount of time to reflect on these incidents. The panel could not be certain of the future risk of repetition and significant risk of unwarranted harm to patients in Miss Bestic's care, should she be permitted to practise as a registered nurse at some point in the future.

The panel therefore 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?*

The panel was of the view that the findings in this particular case demonstrate that Miss Bestic's actions were so serious, and to allow her to remain on the NMC register as a registered nurse would undermine public confidence in the nursing profession and in the NMC as a regulatory body. With this in mind, the panel concluded that the only course of action available to it was to impose a striking-off order. It considered that any other sanction in this case would be wholly inappropriate given this panel's findings.

The panel noted that the SG states that the courts have supported decisions to strike off healthcare professionals where there has been a lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills.

Taking account of the above, the panel determined that Miss Bestic's actions were not merely serious departures from the standards expected of a registered nurse but serious breaches of the fundamental professional tenets, of maintaining proper professional values, and of complying with the law. They were fundamentally incompatible with her remaining on the NMC register. In the panel's judgment, to allow someone who had behaved in this way to maintain registration with the NMC would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on Miss Bestic both professionally and personally. The panel was satisfied that the need to protect the public interest outweighs the impact on Miss Bestic in this regard.

Considering all of these factors, the panel determined that the appropriate and proportionate sanction is a striking-off order. Having regard to the matters it identified, including the effect of Miss Bestic's actions in damaging public confidence in the nursing profession, the panel has concluded that nothing short of this would be sufficient in this case.

This will be confirmed to Miss Bestic in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period or the conclusion of any appeal, 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 is in Miss Bestic's own interest.

The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr O'Leary. He submitted that an interim suspension order for a period of 18 months should be imposed by the panel. He submitted that given the panel's decision of strike off, it is necessary to ensure that Miss Bestic is not permitted to practise without any restriction during the 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. In reaching the decision to impose an interim order, the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive 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 on the substantive order. The panel took into account that in the event of an appeal the case may not be heard by the courts for some considerable time. The panel therefore imposed an interim suspension order for a period of 18 months.

In reaching its decision the panel took into account the impact that an interim order will have on Miss Bestic. The panel is satisfied that the order is proportionate and properly

balances the need to protect the public and the public interest with the effects on Miss Bestic.

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

That concludes this determination.