Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 15 January 2024 – Friday 19 January 2024
Monday 22 January 2024 – Friday 26 January 2024
Tuesday 30 January 2024 – Friday 2 February 2024
Monday 5 February 2024 – Friday 9 February 2024
Monday 12 February 2024
Monday 22 April 2024 – Tuesday 23 April 2024

Virtual Hearing

Name of Registrant:	**Alicia Lana Andrews**
NMC PIN	10G0169W
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – September 2010
Relevant Location:	Conwy
Type of case:	Misconduct
Panel members:	Pamela Johal (Chair, Lay member) Jonathan Coombes (Registrant member) Seamus Magee (Lay member)
Legal Assessor:	Robin Ince (15 – 26 January 2024) Oliver Wise (9 February 2024) John Donnelly (30 January 2024 – 12 February 2024) Charles Apthorp (22 – 23 April 2024)
Hearings Coordinator:	Charis Benefo Zahra Khan (22 – 23 April 2024 only)
Nursing and Midwifery Council:	Represented by Tom Hoskins, Case Presenter
Miss Andrews:	Not present and unrepresented
Facts proved:	Charges 1a, 1b, 2a, 2b, 3b, 4, 5, 6a, 6b, 7a, 7b, 8a, 8b, 9, 10, 11a, 11b, 12a, 12b, 12c, 12d, 12e,

	14a, 14b, 15a)i, 15a)ii, 15c, 16a, 16b, 16c, 18, 19, 20 and 21
Facts not proved:	Charges 3a, 13, 15b and 17
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

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

At the outset of the hearing, Mr Hoskins, on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be held partly in private on the basis that proper exploration of Miss Andrews' case involves reference to [PRIVATE]. Furthermore, reference would be made to [PRIVATE]. The application was made in accordance with Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

The panel determined to hold in private the parts of this hearing that involve reference to [PRIVATE] as and when such issues are raised, in order to protect the privacy of the relevant individuals. It was satisfied that this course was justified and that the need to protect their privacy outweighed any prejudice to the general principle of public hearings.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Andrews was not in attendance and that the Notice of Hearing letter had been sent to Miss Andrews' registered email address by secure email on 14 December 2023.

Mr Hoskins submitted that the NMC had complied with the requirements of Rules 11 and 34.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Andrews' 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 Andrews 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 Andrews and Registrant B

The panel next considered whether it should proceed in the absence of Miss Andrews and Registrant B. It considered Rule 21 and heard the submissions of Mr Hoskins who invited the panel to continue in the absence of Miss Andrews and Registrant B.

Mr Hoskins referred the panel to the case of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5 and addressed the panel on the factors to consider in its decision, as set out in that criminal case, namely:

> *"A. The nature and circumstances of the defendant's behaviour in absenting himself*
> *B. Whether an adjournment would resolve the matter*
> *C. The likely length of an adjournment*
> *D. Whether the defendant, though absent wish to be represented or has waived his right to representation*
> *E. Whether the defendant's representatives were able to receive instructions from him and the extent to which they could present his defence.*
> *F. The extent of the disadvantage to the defendant in not being able to represent his account of events*
> *G. The risk of a jury reaching improper conclusion about the absence of the defendant*

H. The general public interest that a trial should take place within a reasonable time
I. The effect of delay on the memories of witnesses
J. Where there is more than one defendant and not all have absconded, the desirability of having separate trials."

Mr Hoskins clarified that his reference to terms like '*absconding*' and '*defendants*' were only relevant because they had been taken directly from the criminal case law. He submitted that there was no suggestion of absconding in these proceedings, although he invited the panel to bear in mind a registrant's obligations under the NMC Code to engage with investigations into their fitness to practise.

Mr Hoskins then addressed the panel in respect of each registrant separately.

Before dealing specifically with Miss Andrews, in respect of Registrant B, Mr Hoskins invited the panel to consider the chronology of events in her case since the referral to the NMC in July 2021. He submitted that there had been some engagement from Registrant B in August 2021, followed by a "*drop off*" in the level of her engagement in December 2022. Registrant B subsequently sent an email to the NMC in August 2023 but did not respond to the NMC's request to complete the Case Management Form. However, in response to an email from the NMC Case Co-ordinator, Registrant B sent two emails on 2 January 2024 indicating that she would not be attending this hearing and that she was content for the hearing to proceed in her absence.

Mr Hoskins submitted that Registrant B absented herself in full knowledge of this hearing and in response to the direct question of whether she was '*happy*' for the hearing to proceed in her absence, to which she answered '*yes*'. Mr Hoskins highlighted that there had also been initial engagement from Registrant B. He submitted that the nature and circumstances of Registrant B absenting herself were indicative of somebody that was not willing to attend.

Mr Hoskins submitted that an adjournment would not resolve this matter as Registrant B had indicated that she did not wish to attend. He submitted that there had been no request for an adjournment from Registrant B. In relation to likely length of an adjournment, Mr Hoskins submitted that this would depend on whether the attendance of Registrant B or Miss Andrews could be secured. He submitted that the majority of the NMC's witnesses work within the NHS, but that the reality of listings and arranging the attendance of seven witnesses and two registrants would make the likely length of an adjournment disproportionate in the circumstances.

Mr Hoskins submitted that Registrant B has never been represented at any stage of these proceedings, despite correspondence being sent to Registrant B making clear her right to be represented at these hearings. Mr Hoskins submitted that there had been a waiving of the right to representation.

Mr Hoskins accepted that by proceeding with the hearing, the panel would only be presented with the NMC's case and would be deprived of Registrant B's account. He submitted, however that in mitigation, the burden at the facts stage would be on the NMC, and that Registrant B had provided a local level account.

Mr Hoskins submitted that this was already a significantly delayed case, relating to a referral dating back to July 2021. He submitted that this case rested significantly on individuals' recollections of events from late Autumn 2020 and Spring and Summer 2021. He submitted that there was a potential for deterioration of recollections were this hearing adjourned.

In relation to the undesirability of separate trials in a case with more than one registrant, Mr Hoskins submitted that if the panel was to adjourn the hearing for one registrant, notably Miss Andrews, that would be highly undesirable in the circumstance of Registrant B, who has consented to the hearing proceeding in her absence.

Mr Hoskins then invited the panel to consider the chronology of events in Miss Andrews' case since the referral to the NMC in July 2021. He submitted Miss Andrews actively participated in the local level investigation and denied the allegations at that stage. Mr Hoskins submitted that as a result of the knowledge of the NMC referral, Miss Andrews returned a context form, reflective piece and other documentation to the NMC in August 2021. He informed the panel that Miss Andrews also attended an interim order hearing August 2021 where she made submissions on her own behalf.

Mr Hoskins informed the panel that there was then no engagement from Miss Andrews until June 2022 where she apologised for the lack of correspondence in this case, referred to [PRIVATE], and then asked for more time to provide forms and documentation, although none of this was received by the NMC. He submitted that since June 2022, there had been no engagement from Miss Andrews and no response to any of the correspondence sent to her by the NMC as recently as 9 January 2024.

Mr Hoskins then addressed the panel on the factors to consider from the case of *R v Jones (Anthony William)* (No.2).

In relation to the nature and circumstances of Miss Andrews' behaviour in absenting herself, Mr Hoskins submitted there had been only two episodes of engagement from her, the most recent of which was a significant period of time ago in June 2022. He acknowledged that Miss Andrews' last contact with the NMC was in reference to [PRIVATE], however he reminded the panel that it had not been assisted by [PRIVATE], and the extent to which it would prevent any attendance or engagement in this hearing.

Mr Hoskins submitted that an adjournment would not resolve this matter. In relation to the likely length of an adjournment, Mr Hoskins submitted that this would depend on whether the attendance of Miss Andrews or Registrant B could be secured. He once again submitted that the majority of the NMC's witnesses work within the NHS, but that the reality of listings and arranging the attendance of seven witnesses and two registrants would make the likely length of an adjournment disproportionate in the circumstances. Mr

Hoskins submitted that if the panel were to adjourn simply because of concerns of [PRIVATE], the length of an adjournment could not be determined given the lack of information.

Mr Hoskins submitted that there was no suggestion that Miss Andrews had representation, noting in particular her attendance at the interim order hearing in August 2021, where she made submissions on her own behalf. He submitted that, given the lack of any suggestion of representation, the panel should proceed on the basis that such a right had been waived.

Mr Hoskins accepted that by proceeding with the hearing, the panel would only be presented with the NMC's case and would be deprived of Miss Andrews' account. He submitted that in mitigation, the burden at the facts stage would be on the NMC, and that Miss Andrews had provided some information in her response to the allegations, albeit with little recollection of the specifics. Mr Hoskins submitted that since Miss Andrews was not able to assist in greater detail at an earlier stage, the panel might find that were she in attendance today or indeed any future event, the quality of her recollection was unlikely to improve.

Mr Hoskins once again submitted that this was already a significantly delayed case, relating to a referral dating back to July 2021. He submitted that this case rested significantly on individuals' recollections of events from late Autumn 2020 and Spring and Summer 2021. He submitted that there was a potential for deterioration of recollections in circumstances where the hearing was adjourned.

In relation to the fairness of separate trials in a case with more than one registrant, Mr Hoskins submitted that if the panel was to adjourn the hearing for Miss Andrews, then it would be unfair and undesirable for Registrant B, who has consented to the hearing proceeding in her absence. He submitted that if the panel were to proceed today based on the invitation or lack of objection from Registrant B, it may be less desirable for Miss Andrews because there may be prejudice. He submitted, however, that given that

Registrant B has been overt and clear in her desire, whilst Miss Andrews has been silent, the last factor should weigh in favour of the registrant that is engaging more than the one that is engaging less.

Mr Hoskins submitted that if the panel decided to proceed with the hearing, then he would suggest that the decision be sent by e-mail to Miss Andrews and Registrant B in order that they are informed of the panel's decision to proceed, and reminded that if they do wish to attend, they can do so from day two when the hearing commences by way of opening. He submitted that this was essentially a "*last ditch*" effort, particularly in the case of Registrant B, who responded promptly to the NMC as early as January 2024.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of registrants 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). The panel also had regard to the NMC guidance on '*Proceeding with hearings when the nurse, midwife or nursing associate is absent*' (Reference: CMT-8).

The panel decided to proceed in the absence of Miss Andrews and Registrant B. In reaching this decision, the panel considered the submissions of Mr Hoskins and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R* v *Jones (Anthony William)* (No.2) and agreed with Mr Hoskins' submissions in relation to those factors. The panel also had regard to the factors set out in the decision of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. In respect of Miss Andrews, it noted that:

- No application for an adjournment has been made by Miss Andrews (or by Registrant B);
- There had been limited engagement from Miss Andrews at an early stage of the NMC's investigation, but since June 2022, Miss Andrews has not

engaged with the NMC and has not responded to any of the letters sent to her about this hearing;

- Registrant B has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence, so adjourning the hearing in an effort to secure the attendance of Miss Andrews most likely would prejudice Registrant B;
- There is no reason to suppose that adjourning would secure Miss Andrews' attendance at some future date;
- Eight witnesses are due to attend to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2020 and 2021;
- 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.
- It would be in the interests of justice to have one hearing to deal with these matters, taking into account the interests of the NMC's witnesses.

The panel accepts that there is some disadvantage to Miss Andrews and Registrant B in proceeding in their absence. However, although the evidence upon which the NMC relies will have been sent to them at their respective registered email addresses, they have made no response to the allegations, nor have they expressed any interest in attending the hearing to dispute those allegations.

Although Miss Andrews and Registrant B will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on their own behalf, 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, any such disadvantage is the consequence of Miss Andrews and Registrant B's decisions to absent

themselves from the hearing, waive their rights to attend and/or be represented, and to not provide evidence or make submissions on their own behalf.

In these circumstances, the panel decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Andrews and Registrant B. The panel will draw no adverse inferences from Miss Andrews' and Registrant B's absences in its findings of fact.

The panel decided to adjourn the hearing until day two, in order for the NMC to inform Miss Andrews and Registrant B of the panel's decision to proceed in their absence, and remind them of their right to attend the hearing, should they wish to do so.

The hearing resumed on 16 January 2024, and Miss Andrews and Registrant B did not attend.

Details of charge

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

1) In around November 2020 in relation to Patient J:
    a) Said "go on, you might as well do it" or words to that effect;
    b) Laughed;

2) In around March 2021 in relation to Patient G said:
    a) "Oh I'm so worried" or words to that effect in a sarcastic tone;
    b) "just leave her" or words to that effect;

3) On an unknown date spoke in an aggressive and / or confrontational manner to an unknown patient (Patient E) in that you said:
    a) "don't ever call me a liar again" or words to that effect;
    b) "if you have got anything to say, say it to my face" or words to that effect;

4) Between April and May 2021 requested Student Nurse B to undertake blood glucose observations using your login details;

5) Between April and May 2021 inappropriately delegated blood glucose observations to Student Nurse B;

6) On an unknown date:
   a) did not explain to Student Nurse A how to monitor an ECG;
   b) Left Student Nurse A to monitor an ECG without adequate supervision;

7) On or around 5 April 2021:
   a) On one or more occasion said to Patient I “your breath stinks” or words to that effect;
   b) Said to Colleague A “her breath is rank” or words to that effect;

8) Before 25 April 2021 said to Student Nurse B:
   a) On one or more occasion “I’m not bothered” or words to that effect;
   b) “but thank you for telling me” or words to that effect in a sarcastic tone;

9) On 25 April 2021, in relation to Patient H, said “I wouldn’t worry, he will be RIP’d soon” or words to that effect;

10) On 1 May 2021 referred to Patient A as “gobshite” or words to that effect;

11) On one or more occasion on dates unknown:
   a) Closed Patient A’s door when they were agitated;
   b) Told Patient A shut up;

12) On an unknown date in administering an injection of an unknown substance to Patient A:

a) Did not speak to the patient before administration;
b) Did not explain the procedure to the patient;
c) Did not obtain the patient's consent to administer the injection;
d) Did not clean the injection site;
e) Incorrectly told the patient you scratched them with your nail;

13) On an unknown date shouted at Patient X;

14) On 4 May 2021 in relation to Student Nurse C:
    a) pulled faces and / or laughed and / or put your hands on your hips in relation to them sitting in a chair;
    b) Said "keep her away from me" or words to that effect

15) On or around 11 May 2021:
    a) said to Student Nurse A:
        i) "you have only been here an hour, others have not even had a break yet" or words to that effect
        ii) "[Colleague A] says you should leave if you are in pain" or words to that effect in an aggressive tone.
    b) Slammed the staff room door;
    c) Said to Colleague B "I haven't seen [Student A] since I made her cry" or words to that effect

16) On a date or dates unknown:
    a) Did not greet Student Nurse A;
    b) Told Student Nurse A that they were not doing anything;
    c) Asked Student Nurse A whether they had ever done a medication round in a condescending tone;

17) On an unknown date said Colleague B "does fuck all anyway" or words to that effect

18) On an unknown date changed the staff rota using Colleague A's login details;

19) On one or more occasion openly discussed student nurses in negative terms with Colleague A;

20) On one or more occasions in relation to Colleague D:
    a) Ignored them;
    b) Didn't support them;
    c) Said negative things about them in their absence

21) Your actions at one or more of 1-20 above created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more student nurses and / or staff on Morfa Ward

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

Background

The NMC received a referral in respect of Miss Andrews on 28 July 2021. Miss Andrews first entered onto the NMC's register on 11 September 2010.

The allegations in this case arose whilst Miss Andrews was employed as Band 5 Registered Nurse by [PRIVATE] (the **Health** Board) at Llandudno General Hospital on a Care of the Elderly Ward known as the Morfa Ward (the Ward). Miss Andrews started working on the Ward on 2 February 2020.

At the time of the allegations, the Ward provided inpatient care to older people with varying needs including rehabilitation, care for patients with dementia and patients requiring palliative and end of life care. Staffing on the Ward would generally be two Band

5 nurses, each being responsible for up to 12 patients and four Band 2 healthcare support workers.

As the events took place during the COVID-19 pandemic, the Ward would take patients of other types depending upon the demands of the acute hospitals in the area.

It is alleged that between September 2020 and June 2021, Miss Andrews and Registrant B demonstrated bullying and intimidating behaviour towards colleagues, particularly student nurses. Miss Andrews also allegedly assigned tasks to student nurses that they were not able/trained to complete. In addition, there were multiple allegations of inappropriate treatment of patients by Miss Andrews and Registrant B, including verbal abuse and failure to show empathy or compassion for vulnerable patients in their care.

The Health Board became aware of the concerns on 2 June 2021, when they were notified by Bangor University (the University), following a number of reports made by the student nurses of poor patient care they witnessed on the Ward, as well as direct experience of examples of poor leadership and bullying and intimidating behaviour by Miss Andrews.

Miss Andrews attended a disciplinary hearing at the Health Board on 15 March 2022.

Decision and reasons on Witness 1 to give evidence with her daughter present

The panel heard an application made by Mr Hoskins to allow Witness 1 to give evidence in the presence of her daughter. This was to enable her daughter to assist with any IT issues that might arise during the course of her giving evidence. He submitted that this application was not being made under Rule 23, as there was nothing to satisfy the criteria of a vulnerable witness in these circumstances. Mr Hoskins submitted, however, that this was a public hearing and that Witness 1's daughter would be able to assist with the technology of Witness 1 joining and leaving the virtual hearing and dealing with any technical difficulties.

The panel accepted the advice of the legal assessor.

The panel gave due consideration to Mr Hoskins' application for Witness 1's daughter to be present during her live evidence. It noted that this application was not to find Witness 1 a vulnerable witness under Rule 23. Witness 1 was also receiving support from an NMC Public Support Officer, who was due to join the virtual hearing and to support her throughout her live evidence.

The panel considered that it was reasonable for Witness 1 to ask to rely on her daughter's support in relation to IT, as this would make the giving of her evidence less stressful and would avoid potential interruptions during the hearing.

The panel therefore decided to grant the application for Witness 1's daughter to be present in order to assist with her joining and leaving the hearing, and any technical difficulties that might arise during her live evidence.

Decision and reasons on application to admit hearsay evidence

At the conclusion of the evidence from the NMC's live witnesses, the panel heard an application made by Mr Hoskins under Rule 31 to admit hearsay evidence. He provided the panel with a written skeleton argument in respect of the following evidence:

1. Type 1: The transcript of a meeting between the Health Board and University on 10 June 2021 which was an occasion during which complainants (both those student nurses who appeared as live witnesses in the case and others who have not - including some whose accounts are subject to further application below) were gathered to discuss their experience of their time on the Ward.

2. Type 2: Documents which summarise or comprise the investigation carried out at local level by Witness 8, namely the redacted full investigation report and appendices; and the disciplinary hearing minutes of 15 March 2022.

3. Type 3: The formal investigation interview minutes of persons not called to give evidence on behalf of the NMC, namely:
    i) Mr 1's investigation interview minutes - 20 August 2021
    ii) Ms 2's investigation interview minutes - 27 August 2021
    iii) Ms 3's investigation interview minutes - 31 August 2021
    iv) Ms 4's investigation interview minutes - 27 August 2021
    v) Ms 5's investigation interview minutes - 31 August 2021
    vi) Ms 6's investigation interview minutes - 9 September 2021.

4. Type 4:
    i) Registrant B's investigation interview minutes - 8 September 2021
    ii) Miss Andrews' investigation interview minutes - 7 September 2021.

5. Type 5: an anonymous statement collected during the course of the investigation of a witness who was not called on behalf of the NMC and which addresses a matter not charged. Mr Hoskins submitted that it was not asserted that this statement was admissible, and invited the panel to put it out of its mind.

Mr Hoskins referred to the cases of *R (Bonhoeffer) v GMC* [2011] EWHC 1585 (Admin), *NMC v Ogbonna* [2010] EWCA Civ 1216, *Thorneycroft v NMC* and *El Karout v NMC* [2020] EWHC 3079 (Admin).

Mr Hoskins submitted that none of this evidence was the sole and decisive evidence in relation to any individual charge, the evidence of which predominantly came from the written and live evidence of the NMC's witnesses. He submitted that although that arguably limited their relevance, it did not extinguish it. Mr Hoskins submitted that as an overarching matter, but also relevant to the final charges faced by Miss Andrews and Registrant B, there were allegations of a '*clique*' having been formed on the Ward which allegedly comprised of Miss Andrews, Registrant B, Ms 6 and Ms 7. He submitted that this was an important background in the context of an '*us and them*' situation developing to

canvass the wider attendees on the Ward. Mr Hoskins also drew the panel's attention to the fact that some of the additional evidence was supportive of Miss Andrews and Registrant B in that references were made to the absence of any such clique and to staff being able to report concerns to Miss Andrews and Registrant B.

In relation to fairness, Mr Hoskins submitted that the extent of the challenge to the contents of the additional statement and documents was almost nil, save through the panel's processes in light of the non-attendance of Miss Andrews and Registrant B. He submitted that the possibility of unfairness on the admission of the hearsay evidence was particularly notable in Registrant B's case as she did not attend any disciplinary hearing at the Health Board and so did not respond directly to the totality of the report following its completion. Mr Hoskins submitted, however, that any such unfairness was entirely mitigated because she chose to resign rather than to attend any such hearing and likewise, she had indicated that she wished this NMC hearing to proceed in her absence. He submitted that albeit imperfectly, any such potential unfairness was mitigated by the fact of Registrant B having responded to material parts of the allegations in her investigation interview.

Mr Hoskins submitted that the documents generated as part of the disciplinary meeting, most notably those in Type 3, were subject to checking by the participants in most cases. He submitted that additionally, each of these documents was disclosed to Miss Andrews and Registrant B in preparation for their disciplinary hearing. Mr Hoskins stated that all of the additional documents had been provided by the NMC to Miss Andrews and Registrant B prior to the Case Examiners deciding there was a case to answer.

Mr Hoskins submitted that Miss Andrews and Registrant B had been given the opportunity to comment on the content at the CMF stage, but had chosen not to do so. Mr Hoskins submitted that the panel's decision to proceed in the absence of Miss Andrews and Registrant B was made in the knowledge that this would limit their ability to object to evidence. Further, he submitted that the disciplinary investigation was carried out in accordance with a formal Health Board disciplinary policy which, on its face, is road tested

and protects fairness of all. Mr Hoskins then referred to the specific areas in which it was fair to admit hearsay evidence Types 1 – 4.

In response to the legal assessor's advice, Mr Hoskins referred to the efforts made by the NMC to have witnesses attend this hearing. He submitted that in respect of hearsay evidence Type 4 (namely the evidence "*directly from the mouths*" of Miss Andrews and Registrant B) and the disciplinary hearing minutes in Type 2, that factor was irrelevant because of Miss Andrews' and Registrant B's position as respondents in these proceedings. He submitted that they were afforded the same choice as others to attend the hearing, and that even if that were not the case, they were not compelled to give evidence on their own behalf.

In relation to the hearsay evidence of the individuals who had not been called to give evidence on behalf of the NMC, Mr Hoskins submitted that the NMC had not sought to call these witnesses because their evidence was background and often indirect to all matters alleged. He submitted that although not irrelevant, their evidence was far from the sole and decisive evidence, and they need not, therefore, have been asked questions during the NMC investigation, nor been called to be witnesses.

Mr Hoskins told the panel that there was no information to suggest that any efforts had been made to contact these particular witnesses. He submitted that it seemed the view was taken by the NMC that either they would be admissible as hearsay or they would be excluded. Therefore, as they were not central to the case, the concept of proportionality, both in terms of the investigation and presentation of this case, meant that their oral evidence was unnecessary. Mr Hoskins invited the panel to exercise its discretion and submitted that the issue of the efforts made by the NMC to secure the attendance of these witnesses was not the most relevant, nor the weightiest, consideration in this case.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This once again 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 advised the panel to consider the following questions:

(1) '*Why are the witnesses not attending the hearing to give evidence? Normally, if a witness is apparently willing to give evidence voluntarily then this may argue against admitting the evidence; if they are not a willing witness, the opposite may apply.*

(2) *What efforts have the NMC taken to ensure the attendance of the witnesses. Have such efforts been reasonable? The lesser the efforts, the less likely is it that his evidence should be admitted; of course, the converse applies.*

(3) *How serious and grave are the charges in respect of which the evidence relates? The more serious the charges, the less likely it is that the statement should be admitted.*

(4) *What would be the consequences to the Registrant's career and reputation if the allegations were proved? Again, the more serious the consequences, the less likely it is that a statement be admitted.*

(5) *Is there a conflict of evidence between the witness and the registrant? If there is no conflict then it is more likely that the statement can be admitted.*

(6) *Is there any other source of evidence before you that might touch upon the charge? If so, you would entitled to conclude that there may be no prejudice to the registrants to the evidence being admitted; again, the converse applies.*

(7) *Is there a possibility that the evidence of the witness is tinged with malice against the registrants? If there is, then this points towards the evidence not being admitted but, in the present case, you would also be entitled to note the*

argument put forward by Mr Hoskins that the admission of the evidence may assist in establishing whether there was any specific evidence of such malice.

(8) *[In this particular case] The facts that (i) you have already found that the Registrants have voluntarily absented themselves from the hearing and (ii) the evidence being sought to be admitted has already been disclosed to the Registrants and they have made no objection to it being relied upon? If the evidence is admitted, then it follows that the registrants would not actually be denied an opportunity to cross-examine any witnesses because they have chosen not to attend the hearing. (This distinguishes their case from those cited above, since those registrants had attended their respective hearings and wished to challenge the evidence from absent witnesses). Although the absence of witnesses means that you as a Panel would not be able to ask them any questions, it must not be forgotten that you do not cross-examine or challenge, but seek to clarify as part of your inquisitorial role. You would still be entitled to decide what weight to attach to any piece of evidence and, in any event, follow the principle of attaching less weight to evidence from absent witnesses. You would therefore be entitled to take (i) and (ii) above into account.*'

The panel took the above questions into account when making its decisions. It also noted that some of the documents contained within the hearsay evidence had already been referred to by some of the NMC's live witnesses in questioning, whilst others related to individuals who had not been called by the NMC to give live evidence.

In relation to questions 1 and 2 above, the panel noted that no specific reason had been given for the non-attendance of the absent witnesses and the panel had no information before it to suggest that any efforts were made by the NMC to ensure their attendance. Having said that, the panel noted that the hearsay evidence Types 1 – 4 had been served on Miss Andrews and Registrant B and they had been given the opportunity to challenge or comment on the content, but had chosen not to do so. Although the panel was careful

not to speculate, it was aware of the fact that, as no request was made by Miss Andrews and Registrant B to have these witnesses attend, it was perhaps understandable that their attendance was not arranged. In addition, Miss Andrews and Registrant B had voluntarily absented themselves from these proceedings, so arguably had waived any right to cross-examine witnesses.

In relation to questions 3 and 4 above, the panel considered that the charges in both Miss Andrews' and Registrant B's cases are serious and grave, and potentially could result in their removal from the NMC register.

In relation to question 5 above, the panel noted that, as none of the charges have been admitted by either Miss Andrews or Registrant B, there was a potential conflict of evidence between them and the absent witnesses. However, the panel noted that, whilst some of the additional evidence was consistent with the evidence of the live witnesses (particularly in relation to the existence of a *'clique*' and the difficulties in raising concerns) some of the witnesses had indicated that the background on the Ward was not like that, in that Miss Andrews and Registrant B were approachable and that there was no *'clique*'. Accordingly, some of the additional evidence actually supported them.

In relation to question 6 above, the panel noted that the additional hearsay evidence was not the sole and decisive evidence on any of the charges, that almost all of the specific charges against Miss Andrews and Registrant B had already been addressed by the live witnesses, and that the additional evidence mainly went to the background issues concerning the culture on the Ward. The panel therefore considered that it could be of particular assistance in a case where context is a significant element.

In relation to question 7 above, the panel was aware of Registrant A's suggestion that the student nurses had effectively conspired together to make false allegations as they did not like her. However, the panel noted Mr Hoskins' submission that the admission of the hearsay evidence might assist it in establishing whether there was any specific evidence of malice against Miss Andrews and Registrant B.

In relation to question 8 above, the panel was aware that, if the additional evidence was admitted, neither Miss Andrews nor Registrant B would be able to challenge it as they were not present. However, it also noted that they had prior knowledge of the evidence and had not objected to its inclusion. Further, they had voluntarily absented themselves from the hearing. Consequently, their cases could be distinguished from the various authorities (*NMC v Ogbonna* etc) cited by Mr Hoskins and the legal assessor in that, as they were voluntarily absent, they had arguably waived their right to cross-examine witnesses. In addition, there were mitigations in place because the burden of proof still remained on the NMC to prove its case and it was for the panel to decide what weight to give the additional hearsay evidence.

In making its final decision on the application, the panel took account of all the above factors. It appreciated the gravity of the allegations and the potential impact upon Miss Andrews' and Registrant B's careers. It took into account that some of the additional hearsay evidence supported the allegations against them, but some was supportive of them. Further, the panel considered that it would be almost impossible to separate out the various strands of evidence, allowing some to be admitted and some not, as they were so intertwined.

Having said all that, the panel considered that the additional evidence was not the sole and decisive evidence against Miss Andrews and Registrant B but would be of assistance in assessing the culture on the Ward. Further, it agreed with Mr Hoskins that it would assist the panel in answering the question of whether the allegations were tinged with malice against Miss Andrews and Registrant B. The panel also considered that there was a public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. Finally, the panel placed significant weight upon the facts that Miss Andrews and Registrant B had prior knowledge of the additional evidence and had raised no objection to it being admitted, and had voluntarily absented themselves from the hearing – indeed, Registrant B had agreed to it proceeding in her absence.

In conclusion, the panel agreed with Mr Hoskins' submissions. In these circumstances, the panel came to the view that it would be fair and relevant to accede to Mr Hoskins' application and accept into evidence Types 1 – 4 of the additional hearsay evidence (but not, as indicated by him, Type 5), but would give that evidence what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

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 Mr Hoskins on behalf of the NMC.

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

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

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

- Witness 1: Healthcare Support Worker on the Ward during the relevant period;

- Witness 2/Student Nurse B: Second Year Student Nurse who was completing a nursing placement on the Ward during the relevant period;

- Witness 3/Colleague B: Healthcare Support Worker on the Ward during the relevant period;

- Witness 4/Student Nurse A: First Year Student Nurse who was completing a nursing placement on the Ward during the relevant period;

- Witness 5: Band 4 Nurse who subsequently commenced a Band 5 Nurse role on the Ward during the relevant period;

- Witness 6/Student Nurse D: First Year Student Nurse who was completing a nursing placement on the Ward during the relevant period;

- Witness 7/Student Nurse E: Second Year Student Nurse who was completing a nursing placement on the Ward during the relevant period; and

- Witness 8: Associate Director of Nursing Workforce during the relevant period who undertook the investigation into the allegations.

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

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

1) *In around November 2020 in relation to Patient J:*
    a) *Said "go on, you might as well do it" or words to that effect*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse E's written statement dated 11 October 2023 which stated:

> '*There was one incident, in or around late November 2020, where Miss Andrews shouted at a patient who had mental health difficulties and was in one of the side rooms. The patient, Patient J, expressed that they wanted to commit suicide, and Miss Andrews would essentially encourage it, in front of staff, students and other patients on the Ward by making comments to the patient to the effect of "go on you might as well do it"...*'

The panel noted the minutes from Student Nurse E's interview conducted by an investigator on behalf of the Health Board on 18 August 2021 which stated:

> '*There was another patient who had mental health problems and kept saying to the staff that he wanted to take his life and the staff member replied back saying "go and do it then" to which I was shocked by and found very insensitive.*'

Student Nurse E's oral evidence was consistent with this account. Student Nurse E explained that Patient J was a challenging patient, and she provided details of the context surrounding the incident, in particular that it was during the COVID-19 pandemic where no visitors were allowed on the Ward and there was a heavy reliance on staff to engage with patients. The panel found that Student Nurse E's evidence was reliable and consistent, and she had a clear recollection of this event.

There was no evidence from Miss Andrews in respect of this allegation.

The panel was satisfied that on the balance of probabilities, this allegation was more likely than not to have happened. It therefore found charge 1a proved.

Charge 1b

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

1) *In around November 2020 in relation to Patient J:*
    b) *Laughed*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse E's oral evidence that *"[Registrant B/Colleague A] would laugh at the situation – I witnessed this. When Alicia came out, they would laugh at the situation. [Registrant B/Colleague A] would laugh about it. Alicia would think it was funny but others around her didn't think it was funny.*"

The panel therefore found charge 1b proved.

Charge 2

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

2) *In around March 2021 in relation to Patient G said:*
    a) *"Oh I'm so worried" or words to that effect in a sarcastic tone*
    b) *"just leave her" or words to that effect*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse A's written statement dated 2 August 2022 which stated:

> '*...I went to Patient G and they told me that they were not feeling well. Patient G asked me if I could get a nurse, which I agreed to, so went to Miss Andrews who was at the nurse's station, as they were the nurse allocated to the bay with me for that shift. I told Miss Andrews that Patient G did not seem themselves and was reporting that they felt unwell, to which Miss Andrews responded "Oh I'm so worried", or words to that effect and laughed it off. I was not sure what to do, so asked Miss Andrews what I should say to Patient G, as it was clear that they were worried that they were not feeling well. Miss Andrews' response was that I should "just leave her", or words to that effect.*'

In an undated local statement produced by Student Nurse A following the Health Board and University discussion, she stated that:

> '*Within the first few weeks of placement, I informed Nurse Alicia Andrews that a patient was feeling worse than usual and did not look well. Her response to this was "oh I'm so worried" in a sarcastic tone whilst laughing...*'

Student Nurse A's account was tested in oral evidence and she confirmed that what was said was said in a sarcastic tone and that Miss Andrews laughed when it was said. Student Nurse A did not recall if there was any later interaction between Miss Andrews and the patient. As far as Student Nurse A was concerned, Miss Andrews did not act on being told that the patient was unwell. The panel found that Student Nurse A provided a reliable, fair and consistent account of the incident.

This allegation was put to Miss Andrews during her interview for the local investigation at the Health Board on 7 September 2021. She responded by stating that:

> '*I dont recall this incident at all, patients are my priority. I definitely would have gone to them to check their welfare, if there was anything I can get them, do obs or see if they want a doctor. I don't recall that incident sorry.*'

The panel accepted Student Nurse A's evidence and determined, on the balance of probabilities, that this incident occurred as described by Student Nurse A. The panel therefore found charge 2 proved in its entirety.

Charge 3a

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

3) *On an unknown date spoke in an aggressive and / or confrontational manner to an unknown patient (Patient E) in that you said:*
   a) *"don't ever call me a liar again" or words to that effect*

This charge is found NOT proved.

In reaching this decision, the panel took into account Colleague B's oral evidence. It noted that when asked in evidence about the words "*don't ever call me a liar again*", Colleague B stated "*I disagree that this was what was said. I don't remember her demeanour, but I say*

it was inappropriate and dealt with poorly because the patient was in a vulnerable position, the door was left open, the way she spoke to Patient E and jumping to conclusions."

The panel noted Witness 1's written statement dated 10 July 2022 which stated:

> '*I witnessed another incident of Miss Andrews speaking to a patient in an unprofessional manner on a date I do not recall. I do not know specific details about this incident as I witnessed it whilst walking past the Ward, and was not directly involved.*
>
> *I recall seeing Miss Andrews walking to the toilet, swinging the door open on a patient who was in there and saying "don't ever call me a liar again", or words to that effect.*'

The minutes of Witness 1's local investigation interview on 31 August 2021 stated:

> '*There was another incident but I didn't write it down because I didn't hear the whole thing. I was coming past the ward and saw [Miss Andrews] going to the toilet and slam it open, she said to a patient "don't ever call me a liar again." I don't know what happened but that's all I heard. I didn't write it down because I didn't know the whole thing.*'

In oral evidence Witness 1 stated "*I don't recall what I was doing. It was off bay 1 in public. It was the demeanour rather than exact words that I remember*". The panel considered that Witness 1 had heard Miss Andrews' words in passing, whilst Colleague B was there for the whole incident.

The panel accepted Colleague B's evidence that she did not hear the words *"don't ever call me a liar again"* or words to the effect. It therefore found charge 3a not proved.

Charge 3b

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

3) *On an unknown date spoke in an aggressive and / or confrontational manner to an unknown patient (Patient E) in that you said:*
   b) *"if you have got anything to say, say it to my face" or words to that effect*

This charge is found proved.

In reaching this decision, the panel took into account Colleague B's written statement dated 7 June 2022 which stated:

> '*...I had got to the toilet with Patient E and they were taking their pants down, when Miss Andrews opened the toilet door and said to Patient E "If you have got anything to say, say it to my face", or words to that effect...*'

The panel noted that this evidence was consistent with the account given by Colleague B in her investigatory interview at the Health Board on 27 August 2021:

> '*...I and the patient go bathroom, I pull down her trousers and then [Miss Andrews] opened the door. She said "if you've got anything to say, say it to my face."...*'

This allegation was put to Miss Andrews during her interview for the local investigation at the Health Board on 7 September 2021. She responded by stating that:

> '*I don't recall, I wouldn't. I wouldn't confront a patient anyway, confront is such a hard word. I don't recall at all, doesn't ring a bell.*'

The panel found that Colleague B's evidence was a reliable and credible account of the incident. It accepted Colleague B's evidence and determined, on the balance of

probabilities, that this incident occurred as described by Colleague B. The panel therefore found charge 3b proved.

Charge 4

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

4) *Between April and May 2021 requested Student Nurse B to undertake blood glucose observations using your login details*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse B's written statement dated 2 August 2022, which stated:

> '*... From around April 2021 onwards, I do not recall exact dates, Miss Andrews would ask me to do observations on all patients in the bay we would be working on together, including checking blood sugar levels. As a student nurse I did not have access to the blood sugar machine so Miss Andrews would log into the machine and give me a list of patients to see.*'

The panel noted that Student Nurse B's written evidence was consistent with the account she gave in the local investigation interview on 18 August 2021:

> '...*[Miss Andrews] would log in and give me the authority to do the BM(bloods)*'.

In oral evidence, Student Nurse B stated that "*... she would log in with her ID and she would write me a list of patients who needed to check blood sugar levels and she would just say you do it. You've seen me doing it… Once she logged on she would then put patient hospital number or ID to identify them.*"

This allegation was put to Miss Andrews during her local investigation interview on 7 September 2021. Miss Andrews conceded that this took place, but indicated that she was not aware that it was not allowed at the time.

The panel found Student Nurse B's evidence to be reliable and credible. It therefore accepted her account and determined on the balance of probabilities that between April and May 2021 Miss Andrews requested Student Nurse B to undertake blood glucose observations using her login details.

Charge 5

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

5) *Between April and May 2021 inappropriately delegated blood glucose observations to Student Nurse B*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse B's evidence as set out in charge 4 above.

In addition, it noted the following from her local investigation interview on 18 August 2021:

> '*...[Miss Andrews] would log in and give me the authority to do the BM(bloods) and a couple of shifts when [Registrant B] and [Miss Andrews] were on the same shift they asked me to do all of the observations and all of the BM(bloods) and it wasn't until recently I found out that I wasn't supposed to be doing the BM(bloods) as I haven't received any training. [Miss Andrews] logged in under her details and gave me the things to take the blood and get on with it, but I didn't know otherwise.*'

Having found Student Nurse B's evidence to be credible and reliable and accepting her account, the panel considered that Student Nurse B should not have been asked to do observations without appropriate training. It therefore determined that between April and May 2021, Miss Andrews inappropriately delegated blood glucose observations to Student Nurse B.

Charge 6a

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

6) On an unknown date:

a) did not explain to Student Nurse A how to monitor an ECG

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse A's written statement dated 2 August 2022, which stated:

> '*...I reported this back to Miss Andrews who put the patient on an Electrocardiogram ("ECG") and asked my [sic] to watch it. I had never used an ECG before, so did not know what I was looking for. I therefore asked Miss Andrews what I needed to look out for, to which they responded that they could not explain. Miss Andrews then left me on my own, with the patient who was distressed, and I remember feeling very scared as I did not know what I was doing...*'

Student Nurse A confirmed this account in oral evidence. The panel found Student Nurse A's evidence in respect of this charge to be a reliable and consistent account of the incident, and therefore accepted her evidence. The panel determined charge 6a proved on the balance of probabilities.

Charge 6b

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

6) *On an unknown date:*
    b) *Left Student Nurse A to monitor an ECG without adequate supervision*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse A's written and oral evidence as set out in charge 6a above.

In particular, the panel noted Student Nurse A's written statement evidence that Miss Andrews put the patient on an ECG and asked Student Nurse A to '*watch it*' and then left her on her own. The panel took this to mean that Miss Andrews had asked Student Nurse A to monitor the ECG without adequate supervision. It therefore found charge 6b proved on the balance of probabilities.

Charge 7

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

7) *On or around 5 April 2021:*
    a) *On one or more occasion said to Patient I "your breath stinks" or words to that effect*
    b) *Said to Colleague A "her breath is rank" or words to that effect*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse B's written statement dated 2 August 2022, which stated:

'*A third incident involving a patient (Patient I) happened around 5 April 2021... I saw Miss Andrews go up to Patient I and ask them something, I could not hear what, and after Patient I responded (I do not know what they said), Miss Andrews stood upright and said in a loud voice "your breath stinks", or words to that effect. Patient I was deaf, and did not hear what Miss Andrews said, so asked them to repeat themself, which Miss Andrews did in an even lounder [sic] voice. Patient I then repeated that they could not hear what Miss Andrews was saying and Miss Andrews then went to the nurse's station. Once at the nurse's station, I heard Miss Andrews say to [Colleague A/Registrant B] who was already there "her breath is rank"...*'

In an undated local statement produced by Student Nurse B following the Health Board and University discussion, she stated that:

'*On the 5th of April, while I was doing obs in Bay 1 [Miss Andrews] went up to a patient that was in bed 1 and encouraged her to drink, the patient said "what" and [Miss Andrews] shouted to the patient "your breath stinks" the patient replied "I can't hear you as I'm deaf" [Miss Andrews] then said in a loud voice "your breath stinks" the patient replied "it's no use love, I can't hear you" [Miss Andrews] then walked away and went to the nurse's station where the deputy manager was and told her "her breath is rank" the deputy manager said "she's rotting from the inside".*'

Student Nurse B's oral evidence was consistent with her written accounts. She told the panel that there was no clinical reason for Miss Andrews' comments. She said that "*there was no one else present. [Miss Andrews] said it quite aggressively like she had been offended by the smelly breath*". The panel was satisfied that Student Nurse B had provided a clear and detailed account of the incident.

Witness 8, as part of her investigation, discussed the allegation with Miss Andrews that she had commented on a patient's smelly breath. Witness 8's written statement dated 19

August 2022 stated that in response, Miss Andrews did not seem to understand that what she said was inappropriate and there appeared to be no reflection or remorse on her part.

During Miss Andrews' local investigation interview on 7 September 2021, she stated:

> '*No, i complete [sic] refute that. I think I know the patient who's breath did smell. She said I can taste my breath, it does smell. We did our best to keep her dignity, that's awful. I wouldn't even say that to my mother.*'

The panel found Student Nurse B's evidence to be reliable and credible, and therefore accepted her evidence. The panel determined charge 7 proved, in its entirety.

Charge 8

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

8) *Before 25 April 2021 said to Student Nurse B:*
   a) *On one or more occasion "I'm not bothered" or words to that effect*
   b) *"but thank you for telling me" or words to that effect in a sarcastic tone*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse B's written statement dated 2 August 2022, which stated:

> '*The first incident involving Miss Andrews which I found concerning happened in early to mid-April 2021, I do not recall the exact date, but know it was before 25 April 2021... I said to Miss Andrews that I was just letting them know Patient F had a nosebleed and that I had helped clean them up. In response, Miss Andrews said "I'm not bothered". This took me by surprise, so I said "excuse me", to which Miss Andrews again responded "I'm not bothered"... I therefore decided to walk away,*

and as I walked away, Miss Andrews sarcastically said "but thank you for telling me".'

In an undated local statement produced by Student Nurse B following the Health Board and University discussion, they stated that:

'*On a shift in April (unsure of the date) I noticed that a patient had had a nose bleed, I assisted in changing him and went to inform the nurse (my mentor) I said to her that I had assisted the patient to change as he had a nose bleed to which she replied in front of the deputy Manager ([Colleague A/Registrant B]) "I'm not bothered" I said "sorry what?" to which she replied again "I am not bothered but thanks for telling me" I turned round and walked away as I was so angry.*'

Student Nurse B's oral evidence was consistent with her written accounts. She emphasised that Miss Andrews had delivered the words "*but thank you for telling me*" in a sarcastic tone. In oral evidence, Student Nurse B said that she was "*shocked and surprised*" by this incident. The panel was satisfied that Student Nurse B had provided a clear and detailed account of the incident.

The panel noted that this comment was allegedly made in the presence of Registrant B who was Miss Andrews' line manager.

Miss Andrews was not asked about this particular incident during the local investigation interview or disciplinary hearing.

The panel found Student Nurse B's evidence to be reliable and credible, and accepted her evidence. The panel determined charge 8 proved in its entirety.

Charge 9

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

9) *On 25 April 2021, in relation to Patient H, said "I wouldn't worry, he will be RIP'd soon" or words to that effect*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse B's written statement dated 2 August 2022, which stated:

> '*On 25 April 2021... I offered Patient H some food which they declined, so I offered soup which they said they would like. I therefore assisted Patient H by feeding them the soup, however after eating quite a bit they started coughing and vomited... Miss Andrews was at the nurses' station sitting down at this point.*
>
> *... I ... let Miss Andrews know about Patient H vomiting, explaining I felt bad as I finally got them to eat something and they had then vomited. In response, Miss Andrews said to me "I wouldn't worry, he will be RIP'd soon", or words to that effect... This was not witnessed by anyone else.*'

In an undated local statement produced by Student Nurse B following the Health Board and University discussion, the sequence of events as noted above was confirmed, as was the statement "*he will be RIP'd soon"*. This was again confirmed in the meeting held on 10 June 2021 between the Health Board and the University to discuss the issues on the Ward.

Student Nurse B's oral evidence was consistent with her written accounts. She told the panel that Miss Andrews said these words in a "*sarcastic*" and "*very cold*" way and she

was shocked by the comment. The panel was satisfied that Student Nurse B had provided a clear and detailed account of the incident.

The panel noted that Miss Andrews denied this allegation in the investigatory interview on 7 September 2021.

The panel found Student Nurse B's evidence to be reliable and credible, and accepted her evidence. The panel determined charge 9 proved on the balance of probabilities.

Charge 10

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

10) On 1 May 2021 referred to Patient A as "gobshite" or words to that effect

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's written statement dated 10 July 2022, which stated:

> '*On 1 May 2022 at around tea time the hot lock with food was delivered to the Ward for the patients. Miss Andrews was dishing up the food and passing it to the HCSWs on the Ward to take to the patients. I was with Miss Andrews and another member of staff, ... (Band 4) was walking towards the hot lock. Miss Andrews passed ... a meal and said "give this to gobshite sat there", or words to that effect, referring to Patient A who was sat at the end of the Nurse's desk.*'

Witness 1 maintained this account in her local investigation interview on 31 August 2021, as well as in her oral evidence before the panel.

The panel also took into account Witness 5's written statement dated 29 June 2022, which stated:

> '*...Miss Andrews passed me the patient's meal and said loudly in front of other staff and patients, including the patient themselves as their door was open, "pass that to gobshite", or words to that effect.*'

Witness 5 told the panel in oral evidence that she had personally witnessed Miss Andrews referring to Patient A as "*gobshite*" a few times before. The panel was satisfied that both Witness 1 and Witness 5 had provided clear and consistent evidence in respect of the wording in the body of this charge, if not the exact location of the patient at the time.

The panel noted that Miss Andrews denied this allegation in the investigatory interview on 7 September 2021.

The panel accepted Witness 1 and Witness 5's evidence and found that it was more likely than not that on 1 May 2021, Miss Andrews referred to Patient A as "*gobshite*" or words to that effect. It therefore determined charge 10 proved.

Charge 11

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

11) On one or more occasion on dates unknown:

a) Closed Patient A's door when they were agitated

b) Told Patient A shut up

This charge is found proved.

In reaching this decision, the panel took into account Witness 5's written statement dated 29 June 2022, which stated:

'*Another incident I recall involved a patient who was difficult, as they had dementia and were aggressive and noisy. I recall that the patient would be violent and used to scream, so was put in one of the side rooms on the Ward. In response to the noise they would make, Miss Andrews, on multiple occasions would close the door on this patient and leave them screaming. Miss Andrews would also tell them to "shut up". This was a regular occurrence whilst the patient was on the Ward, which was a long time as they were admitted soon after I started on the Ward in January 2021, and stayed for almost the duration of my time on the Ward.*'

In an undated local statement produced by Witness 5 following the Health Board and University discussion, she stated that:

'*Patient A in Side 3 was a very difficult patient but... This man is human and does not deserve that. She has also told him to shut up many times and proceeded to close the door on him.*'

Witness 5 maintained this account in her local investigation interview on 27 August 2021, as well as in her oral evidence before the panel.

The panel also noted the hearsay evidence of Mr 1 from the transcript of the meeting held on 10 June 2021 to discuss the issues on the Ward. Mr 1, a second year student on the Ward at the relevant time, stated:

'*Something that definitely comes to mind, I remember an elderly patient, Patient A who could be ... quite unsettled at times and would want to get out of bed but was not able to mobilise properly and he would swear and shout, he was in a side room, but by the end of the shift the nurse [Miss Andrews] would shout at him, "shut up Patient A shut up" and this would carry on a bit...*'

The panel noted that Miss Andrews denied the allegation that she told Patient A to shut up in the investigatory interview on 7 September 2021. However, she stated that if she shut

the door, '*it would be to protect other patients and that was risk assessed to stop the screaming and shouting.*'

The panel accepted the evidence of Witness 5 and the hearsay evidence of Mr 1, and it determined, on the balance of probabilities, that this incident occurred as described. The panel therefore found charge 11 proved in its entirety.

Charge 12

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

12) On an unknown date in administering an injection of an unknown substance to Patient A:

a) Did not speak to the patient before administration

b) Did not explain the procedure to the patient

c) Did not obtain the patient's consent to administer the injection

d) Did not clean the injection site

e) Incorrectly told the patient you scratched them with your nail

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse A's written statement dated 2 August 2022, which stated:

> '*...On the day of the incident I witnessed, I was in Patient A's room assisting as they had opened their bowels and needed changing. I recall Patient A being restless and resistant to us assisting them. Miss Andrews then walked into the room and injected Patient A with something, without saying anything first. Patient A then started screaming and asking what it was, to which Miss Andrews responded that it was their nail scratching them. I remember Miss Andrews looked angry and left the room...*'

Student Nurse A's oral evidence was consistent with this account and the panel found that she had a good recollection of the incident. Student Nurse A informed the panel that two other nurses were present on the Ward when this incident occurred. Student Nurse A assumed that the details of what had occurred would be reported by one or other of the nurses. The panel was of the view that Student Nurse A had no reason to fabricate her account of the incident.

The panel noted that Miss Andrews was not asked about this particular incident during the local investigation interview or disciplinary hearing.

The panel found Student Nurse A's evidence to be reliable and credible, and accepted her evidence. It considered each of the sub-charges a to e individually, and found, on the balance of probabilities, that each incident took place as alleged. The panel therefore determined charge 12 proved in its entirety.

Charge 13

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

13) On an unknown date shouted at Patient X

This charge is found NOT proved.

In reaching this decision, the panel noted that the charge related to 'Patient X'. However, there was no evidence before the panel in respect of Patient X. It was not clear to the panel who Patient X was. The panel therefore found charge 13 not proved.

Charge 14

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

14) On 4 May 2021 in relation to Student Nurse C:

a) pulled faces and / or laughed and / or put your hands on your hips in relation to them sitting in a chair

b) Said "keep her away from me" or words to that effect

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse B's written statement dated 2 August 2022, which stated:

> '*After [Student Nurse C] sat on the chair, Miss Andrews stood behind them pulling a silly face and looking at [Student Nurse C] as if to say they were going to sit on the chair, Miss Andrews did not say anything to [Student Nurse C]. Whilst stood behind [Student Nurse C] pulling faces, [Registrant B] and [Ms 6] (Ward Manager) were giggling, and Miss Andrews proceeded to put their hands on their hips. [Student Nurse C] would not have been able to see Miss Andrews and proceeded with their handover professionally, ignoring the giggling.*
>
> *After this incident, I overheard [Ms 5] (HCA) say to Miss Andrews that the situation had been funny, to which Miss Andrews responded "keep her away from me", or words to that effect, in reference to [Student Nurse C].*'

In an undated local statement produced by Student Nurse B following the Health Board and University discussion, this incident was confirmed.

Student Nurse B's oral evidence was consistent with the accounts given in written evidence. The panel found Student Nurse B's evidence to be reliable and credible, and accepted her detailed account of this incident. The panel therefore determined charge 14 proved in its entirety.

Charge 15a

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

15) On or around 11 May 2021:

a) said to Student Nurse A

i) "you have only been here an hour, others have not even had a break yet" or words to that effect

ii) "[Colleague A] says you should leave if you are in pain" or words to that effect in an aggressive tone

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse A's written statement dated 2 August 2022, which stated:

'*...Soon after I arrived on the Ward my stomach was hurting so I went to take some painkillers to stop the pain, and so I could carry on with the shift, as I did not feel the pain was preventing me from working but I wanted it to be gone. I walked past Miss Andrews at the nurse's station and went into the staff room to take some painkillers.*

Less than a minute after I went into the staff room, Miss Andrews swung the door open and shouted at me "you have only been here an hour, others have not even had a break yet", or words to that effect. I explained to Miss Andrews that I was just taking some painkillers and would be out again in a minute. Miss Andrews left the staff room, slamming the door shut, and then around a minute later swang the door open and said "[Colleague A] [Acting Ward Manager...] says you should leave if you are in pain", or words to that effect, in an aggressive manner. I explained again that I did not need to leave and Miss Andrews slammed the door and left without saying anything else. This incident was witnessed by [Witness 1] (HCA), [Student Nurse B] (Student Nurse) and [Ms 5] (HCA).'

Following this incident, Student Nurse A emailed her tutor on 11 May 2021 explaining that she had to leave her shift that day, and was concerned that her treatment on the Ward '*might be turning into bullying.*'

The panel noted that Student Nurse A's written evidence was consistent with the account she gave in the local investigation interview on 20 August 2021, as well as her oral evidence before the panel. The panel also noted that Witness 1 and Student Nurse B were direct witnesses and gave evidence in relation to the incident.

This allegation was put to Miss Andrews during her interview for the local investigation at the Health Board on 7 September 2021. She responded by stating:

'*That makes me feel horrendous that I made her cry... all I can do is apologise.*'

The panel found that Student Nurse A, Witness 1 and Student Nurse B's evidence was credible and reliable, and it therefore accepted their detailed accounts of this incident. The panel therefore determined charge 15a proved in its entirety.

Charge 15b

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

15) On or around 11 May 2021:

b) Slammed the staff room door

This charge is found NOT proved.

In reaching this decision, the panel noted that Student Nurse A, Student Nurse B and Witness 1 made reference to the staff room door being opened. However, there was no evidence before the panel to support the allegation that the door had been '*slammed*' shut. The panel therefore found charge 15b not proved.

Charge 15c

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

15) On or around 11 May 2021:

c) Said to Colleague B "I haven't seen [Student A] since I made her cry" or words to that effect

This charge is found proved.

In reaching this decision, the panel took into account the minutes from Colleague B's interview during the local investigation at the Health Board on 27 August 2021 which stated:

> '*[Interviewer]: [Student Nurse A] has referred to an incident where she has been unwell in work and had gone to the quiet room to take some paracetamol. She states that she had become upset with the way in which a member of Morfa Ward staff had spoken to her. She states [Colleague B] said "just to let you know, [Miss Andrews] said 'where's [Student Nurse A] I haven't seen her since I made her cry" and [Miss Andrews] thought it was funny."*
>
> *[Colleague B]: Yes she came in, I was in the office and [Miss Andrews] came in and she was asking about [Student Nurse A] and did refer to last time she saw her was when she made her cry. It was boastful, not concerned.*'

In an undated local statement produced by Student Nurse A following the Health Board and University discussion, she stated that:

> '*I have had a handful of incidents with Nurse Alicia Andrews where she has spoken to me in a degrading and patronising tone in front of other members of staff. These incidents lead to myself feeling so uncomfortable and upset during the shift that I*

had to leave early and did not feel comfortable enough to work with this Nurse again. After one of these incidents, Alicia said to other members of staff "Has anyone seen [Student Nurse A], I haven't seen her since making her cry".'

The panel was satisfied that it was more likely than not that on or around 11 May 2021, Miss Andrews said to Colleague B "*I haven't seen Student Nurse A since I made her cry*" or words to that effect. It therefore found charge 15c proved.

Charge 16a

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

16) On a date or dates unknown:

a) Did not greet Student Nurse A

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse A's written statement dated 2 August 2022, which stated:

'*... I felt that Miss Andrews generally made little comments and did little things to make me uncomfortable and intimidated on the Ward. For example, if I walked past with a group they would say hello to everyone but me, which made me feel isolated and left out...*'

The panel noted the minutes of Student Nurse A's local investigation interview on 20 August 2021, which stated:

'*I would walk with another staff member and Alicia would say "hi [Student Nurse C]" and ignore me.*'

The panel was of the view that such an action by Miss Andrews, namely, intentionally not greeting Student Nurse A, was in line and consistent with other incidents of a similar nature around the same time.

The panel was satisfied that there was sufficient cogent evidence to draw the inference that it was more likely than not that Miss Andrews did not greet Student Nurse A in all the circumstances. It therefore found charges 16a proved.

Charge 16b

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

16) On a date or dates unknown:

b) Told Student Nurse A that they were not doing anything

This charge is found proved.

In reaching this decision, the panel took into account the minutes of Student Nurse A's local investigation interview on 20 August 2021, which stated:

'*...Alicia would say "You can do my obs, you're just sitting there".'*

The panel was of the view that the words '*you're just sitting there*' were similar enough to the words in the charge '*were not doing anything*'. The panel, adopting this interpretation, found charge 16b proved.

Charge 16c

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

16) On a date or dates unknown:

c) *Asked Student Nurse A whether they had ever done a medication round in a condescending tone*

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse A's written statement dated 2 August 2022, which stated:

> '*A further example of this kind of behaviour was when Miss Andrews asked me whether I had ever done a medication round in a condescending manner, suggesting I had not, which gave me the impression they thought I was doing nothing during my placement. This comment was also made in front of others, and I found these kind of comments embarrassing and belittling.*'

The panel noted the minutes of Student Nurse A's local investigation interview on 20 August 2021, which stated:

> '*...She would say "you're just sitting there you can do the meds round, have you even done a meds round. I haven't seen you do one" and I don't work with her. [Miss Andrews] would always say little comments like that.*'

Student Nurse A's oral evidence was consistent with the written accounts. She told the panel that "*it was towards the end of the placement. I'd done loads of medication rounds, I think I'd done one with her it was towards the start. She'd have known I'd done medication rounds, she'd had seen me. It was the way she portrayed it there was no genuine question there*".

The panel found Student Nurse A's evidence to be a credible and reliable, and accepted her evidence. The panel therefore determined charge 16c proved on the balance of probabilities.

Charge 17

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

17) On an unknown date said Colleague B "does fuck all anyway" or words to that effect

This charge is found NOT proved.

In reaching this decision, the panel took into account the Witness 5's undated local statement drafted following a meeting on 16 June 2021, which stated:

> '*I have witnessed [Registrant B] reading out text messages from Sister [Ms 6] to other Staff Nurses (Alicia) stating the reasons a staff member was off sick and saying "she does fuck all anyway" to which Alicia agreed. This made me feel incredibly nervous and uneasy about sharing my personal information with the sister incase it was voiced to other members of staff with no thought.*'

The panel also noted Witness 5's written statement dated 29 June 2022, which stated:

> '*On a date I do not recall, in around March or April 2021, I was with Miss Andrews and [Registrant B] on the Ward when [Registrant B] received a text message from [Ms 6]. The text message was informing [Registrant B] that one of the HCSW's, [Colleague B], was going to be off sick that day, and explaining why. [Registrant B] proceeded to read out this confidential information, in the middle of the Ward in front of other staff members and patients. In response, [Registrant B] stated, again in front of me, as well as other staff and patients on the Ward, that [Colleague B] "does fuck all anyway", or words to that effect.*'

In oral evidence, Witness 5 said that Miss Andrews was the one who said Colleague B "*did fuck all anyway*". She stated that this comment was made in Ms 6's office.

The panel noted Witness 5's evidence given closer to the time which indicated that it was Registrant B who said that Colleague B "*does fuck all anyway*" or words to that effect.

However, the panel found the evidence in respect of this charge contradictory, inconsistent and unreliable. It was therefore unable to reach a conclusion as to who actually said the words that Colleague B *"does fuck all anyway"*. The panel found charge 17 not proved.

Charge 18

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

18) On an unknown date changed the staff rota using Colleague A's login details

This charge is found proved.

In reaching this decision, the panel took into account Witness 5's undated local statement which stated:

> '*I have witnessed Alicia Andrews receiving log in information from [Colleague A/Registrant B] and changing shifts to suit them. In particular one incident where housekeeper [Ms 7] was having a house warming so Alicia changed the shifts and said "[Ms 8] can do it" quite openly behind the nurses desk. I feel this is so unfair on other staff nurses.*'

The minutes of Witness 5's local investigation interview on 27 August 2021 stated:

> '*This incident, [Registrant B] had messaged [Miss Andrews] her log in details to change rota as [Ms 7] was having a house warming and wanted to make sure they was [sic] all off.*'

Witness 5 also made reference to this incident in her oral evidence and said "*why would you share login details? You just don't do that*".

This allegation was put to Miss Andrews during her interview for the local investigation at the Health Board on 7 September 2021. She responded by stating:

> '*I have never received [Colleague A/Registrant B]'s log in details. I have received [Ms 6]'s to do the roster. I did request to have the BBQ off but I didn't change it. I can't change the roster when it's locked down. I'm not sure where that's come from.*'

The panel was satisfied that Witness 5 had provided clear and credible evidence in respect of this allegation. It therefore found that, on the balance of probabilities, on an unknown date, Miss Andrews changed the staff rota using Registrant B/Colleague A's login details.

Charge 19

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

19) On one or more occasion openly discussed student nurses in negative terms with Colleague A

This charge is found proved.

In reaching this decision, the panel took into account Witness 5's written statement dated 29 June 2022, which stated:

> '*Miss Andrews' behaviour made me feel nervous and intimidated, as I felt they would speak about be behind my back, based on how they spoke to me about*

others. I felt stressed and worried for the individuals, and especially patients, who would be subject to their comments and behaviour. Generally, Miss Andrews' behaviour created a tense environment on the Ward.'

In oral evidence, Witness 5 reaffirmed the position and stated that "*it was a toxic environment, people were talking about each other in negative terms, criticism, lack of respect, lack of dignity, staff did not want to come into work, they felt scrutinised*". The panel was of the view that this pointed towards the suggestion that student nurses were being discussed in negative terms by Miss Andrews.

The panel also noted the minutes from Student Nurse D's local investigation interview on 20 August 2021, which stated:

'...Many times I'd hear them [Colleague A/Registrant B and Miss Andrews] talk about other student nurses on the ward, saying they weren't good or couldn't do certain thing. I just keep myself to myself and would get on with it.'

This allegation was put to Miss Andrews during her interview for the local investigation at the Health Board on 7 September 2021. She responded by stating:

'*That makes me feel awful. That's not the environment that we promoted. We try to promote a kind environment, we're a close team and try to look out for each other. No one said I bullied, I had been bullied. I know how it is.*'

However, based on the consistent evidence in relation to this charge, the panel was satisfied that it was more likely than not that on one or more occasion, Miss Andrews openly discussed student nurses in negative terms with Colleague A/Registrant B. It therefore found charge 19 proved.

Charge 20

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

20) On one or more occasions in relation to Colleague D:

a) Ignored them

b) Didn't support them

c) Said negative things about them in their absence

This charge is found proved.

In reaching this decision, the panel took into account Student Nurse E's written statement dated 11 October 2023, which stated:

> '*The way [Registrant B/Colleague A] and Miss Andrews treated some of their fellow nurses was also awful. I remember, one, [Colleague D], she was redeployed onto the Ward, from another ward where her role was less demanding, as supernumerary and my understanding was she was a band 7 but the way they treated her was disgraceful. She was often ignored and treated as incompetent. They didn't support her with the duties she sometimes needed help with and laughed at her behind her back.*'

Student Nurse E's oral evidence confirmed this account. She explained that Colleague D, a Band 7 nurse who had been redeployed from another ward, was often laughed at behind her back. She stated that this behaviour occurred on a regular basis and that Colleague D felt she was often ignored.

The panel also noted Student Nurse E's evidence from the transcript of the meeting held on 10 June 2021 to discuss the issues on the Ward. She stated that:

> '*...[Colleague D], I can't remember her second name, she was redeployed and was put on the ward as supernumary [sic] and she was treated disgustingly by all the nurses on there, I felt so sorry for her and she would come to me and say, they*

don't trust me to do the drug round, they trust the students over me... but the way she was treated on there as a grown woman, I believe she used to be a band 7, it was disgraceful, I have to put this out there as they made her life hell...

She was on there as sumpernumary [sic] she was nervous, out of her comfort zone, the way they treated her, no one spoke to her, they all treated her like she wasn't a qualified nurse, it was really, really horrible to witness...'

This allegation was put to Miss Andrews during her interview for the local investigation at the Health Board on 7 September 2021. She responded by stating:

'*That's not the environment that we promoted. We try to promote a kind environment, we're a close team and try to look out for each other...*'

However, the panel was satisfied that it was more likely than not that on one or more occasions Miss Andrews ignored Colleague D, did not support her, and said negative things about her in her absence. It therefore found charge 20 proved.

Charge 21

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

21) Your actions at one or more of 1-20 above created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more student nurses and / or staff on Morfa Ward

This charge is found proved.

In reaching this decision, the panel took careful account of the evidence before it and its findings in respect of the charges found proved individually and collectively.

The panel determined that Miss Andrews' actions as found proved created and contributed to an intimidating, hostile, degrading and humiliating environment for student nurses and staff on the Ward. The panel acknowledged that the environment created by Miss Andrews also extended to patients.

The panel therefore determined charge 21 proved on the balance of probabilities.

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 Andrews' 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 ability to practise kindly, safely and professionally.

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 Andrews' fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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 Hoskins referred the panel to the cases of *Roylance v General Medical Council* (No 2), *Meadow v General Medical Council* [2007] 1 All ER 1, *Remedy UK Ltd v General Medical Council* [2010] EWHC 1245 (Admin) and *Shaw v General Osteopathic Council* [2015] EWHC 2721 (Admin).

Mr Hoskins invited the panel to take the view that the facts found proved amount to misconduct. He submitted that Miss Andrews' and Registrant B's conduct was sufficiently serious to be regarded as deplorable.

Mr Hoskins asked the panel to consider the nature of Miss Andrews' and Registrant B's conduct, the context surrounding their conduct and 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code).

In relation to the conduct, Mr Hoskins referred the panel to the written statements of the NMC witnesses and submitted that for each charge found proved, Miss Andrews' and Registrant B's conduct was shocking and had an effect on student nurses, colleagues and patients on the Ward. Mr Hoskins submitted that by virtue of charge 21 (in Miss Andrews' case) and charge 19 (in Registrant B's case), their conduct essentially amounted to bullying by a so-called 'clique', which they had used to their advantage to "*get away with*" deplorable behaviour.

Mr Hoskins invited the panel to take into account the following contextual matters in view of the evidence from Miss Andrews, Registrant B and the NMC witnesses:

1. The effect of COVID-19 and whether that offered any justification or minimised the extent of the misconduct;
2. The profile of the patients that were being treated and whether there were any exceptional circumstances to explain what took place;

3. The level of staffing on the Ward;
4. The extent of leadership on the Ward;
5. [PRIVATE];
6. [PRIVATE]; and
7. Whether there was evidence of good practice amongst the "*bad*".

Mr Hoskins then referred the panel to the Code which, in his submission, Miss Andrews and Registrant B had breached.

Submissions on impairment

Mr Hoskins moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Cheatle v GMC* [2009] EWHC 645 (Admin), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Yeong v General Medical Council* [2009] EWHC 1923 (Admin).

Mr Hoskins referred to the "test" endorsed in the case of *CHRE v NMC and Grant* and submitted that the first three limbs were engaged in Miss Andrews' and Registrant B's case.

Mr Hoskins asked the panel to consider the factors set out in the case of *Cohen v General Medical Council* and whether the concerns identified in Miss Andrews' and Registrant B's nursing practice were easily remediable, whether they had been remedied and whether there was a risk of repetition of a similar kind at some point in the future.

Mr Hoskins highlighted the extent of Miss Andrews' and Registrant B's falling short in the particular circumstances, namely in respect of a 'clique' creating a toxic and bullying

environment. He submitted that this was not a momentary lapse of judgement by Miss Andrews and Registrant B; rather it was repeated, calculated and they used COVID-19 as a means by which they were able to get away with their conduct. Mr Hoskins submitted that there was a fundamental deficiency in Miss Andrews' and Registrant B's view of patients and more junior colleagues which was not easily remediable.

Mr Hoskins submitted that there was no evidence to suggest that Miss Andrews' and Registrant B's conduct had been remedied. He submitted that despite knowledge of these proceedings, they had not addressed what they have done since the time of the allegations, nor what they anticipate doing in the future were they permitted to practise, although both Miss Andrews and Registrant B had stated that they value the nursing profession.

Mr Hoskins invited the panel to take account of Miss Andrews' and Registrant B's registrant response bundles. He submitted, however, that even taking into account Miss Andrews' and Registrant B's supporting evidence, there was still misconduct that was difficult to remedy, had not been remedied, and was repeated in the past as it involved different people over a significant period of time. Mr Hoskins submitted that there was no reason to suggest that the conduct would not be repeated in the future. He therefore invited the panel to make a finding of current impairment in the case of Miss Andrews and Registrant B.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Schodlok v General Medical Council* [2015] EWCA Civ 769, *CHRE v NMC and Grant* and *Cohen v General Medical Council*.

Decision and reasons on misconduct

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

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

*'**1 Treat people as individuals and uphold their dignity***

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

1.5 respect and uphold people's human rights

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

2.4 respect the level to which people receiving care want to be involved in decisions about their own health, wellbeing and care

2.5 respect, support and document a person's right to accept or refuse care and treatment

2.6 recognise when people are anxious or in distress and respond compassionately and politely

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.2 recognise and respond compassionately to the needs of those who are in the last few days and hours of life

3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care

4 Act in the best interests of people at all times

To achieve this, you must:

4.2 make sure that you get properly informed consent and document it before carrying out any action

8 Work co-operatively

To achieve this, you must:

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

8.7 be supportive of colleagues who are encountering health or performance problems. However, this support must never compromise or be at the expense of patient or public safety

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues

To achieve this, you must:

9.4 support students' and colleagues' learning to help them develop their professional competence and confidence

11 Be accountable for your decisions to delegate tasks and duties to other people

To achieve this, you must:

11.1 only delegate tasks and duties that are within the other person's scope of competence, making sure that they fully understand your instructions

11.2 make sure that everyone you delegate tasks to is adequately supervised and supported so they can provide safe and compassionate care

11.3 confirm that the outcome of any task you have delegated to someone else meets the required standard

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered the charges which had been found proved individually.

In respect of charge 1a and 1b, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

1) *In around November 2020 in relation to Patient J:*
   a) *Said "go on, you might as well do it" or words to that effect;*
   b) *Laughed*

The panel noted that Miss Andrews was talking directly to a vulnerable patient who was distressed and had limited cognitive function at the time. It considered that her comment was entirely inappropriate, unnecessary and not what is expected of a registered nurse. Further, Miss Andrews laughed after making the comment, which aggravated matters. The panel was of the view that Miss Andrews' conduct at this charge would be regarded as deplorable by fellow practitioners and the public. The panel concluded that Miss Andrews' conduct at charge 1 fell seriously short of the conduct and standards expected of a registered nurse and therefore amounted to misconduct.

In relation to charge 2, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

2) *In around March 2021 in relation to Patient G said:*
    a) *"Oh I'm so worried" or words to that effect in a sarcastic tone;*
    b) *"just leave her" or words to that effect*

The panel noted that Miss Andrews' words had a negative impact on the student nurse who was there at the time. However, the panel was unable to determine what impact Miss Andrews' actions had in respect of the patient. Miss Andrews' sarcastic comments, albeit a one-off appeared to undermine the student nurse. However, the panel determined that this was not something that would be regarded as deplorable by fellow practitioners. The panel therefore found that Miss Andrews' actions at charge 2 were not so serious as to amount to misconduct.

On charge 3b, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

3) *On an unknown date spoke in an aggressive and / or confrontational manner to an unknown patient (Patient E) in that you said:*
    a) *...*
    b) *"if you have got anything to say, say it to my face" or words to that effect*

The panel noted that the patient was vulnerable, even more so because at the time of the incident they were in the toilet in a state of undress. It noted the evidence that when the bathroom door was open, anyone in the vicinity would be able to see into the toilet undermining the patient's privacy. The panel also took into account that Miss Andrews' conduct had an impact on the healthcare support worker who was assisting the patient in the toilet. The panel was of the view that by speaking to a vulnerable patient in the open

and in an aggressive manner, Miss Andrews' conduct fell seriously short of the standards expected of a registered nurse and therefore amounted to misconduct.

The panel considered Miss Andrews' actions at charge 4, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

4) *Between April and May 2021 requested Student Nurse B to undertake blood glucose observations using your login details*

The panel was of the view that Miss Andrews' login details were shared with the intention of assisting Student Nurse B's learning in respect of blood glucose observations. The panel accepted that Student Nurse B was not being directly supervised at the time. However, it was not satisfied that Miss Andrews' conduct in respect of this charge would be regarded as deplorable. It therefore found that no misconduct in relation to this charge.

In relation to charge 5, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

5) *Between April and May 2021 inappropriately delegated blood glucose observations to Student Nurse B*

The panel noted that Student Nurse B had not had training, but was asked to undertake blood glucose observations. The panel considered that this was concerning and may have had an impact if the observations were taken incorrectly. However, the panel considered that there was no evidence that Student Nurse B had informed Miss Andrews that she had not undertaken training in blood glucose observations. The panel determined that as a single incident, Miss Andrews' conduct at charge 5 did not amount to misconduct.

In respect of charge 6, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

6) *On an unknown date:*
    a) *did not explain to Student Nurse A how to monitor an ECG;*
    b) *Left Student Nurse A to monitor an ECG without adequate supervision*

The panel noted that Miss Andrews left a student nurse in a vulnerable position and feeling out of her depth in respect of ECG monitoring. It considered that although inadequate, Miss Andrews' supervision of Student Nurse A was ongoing during the shift. The panel also noted that there were other registered nurses on the Ward at the time if Student Nurse required assistance or in the event of an emergency, and there was an alarm bell that she could use. The panel therefore determined that Miss Andrews' conduct did not amount to misconduct.

On charge 7, namely that:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

7) *On or around 5 April 2021:*
    a) *On one or more occasion said to Patient I "your breath stinks" or words to that effect;*
    b) *Said to Colleague A "her breath is rank" or words to that effect*

The panel took into account that Patient I was hard of hearing, was unwell and refusing to eat food. The panel considered that Miss Andrews' comments towards the patient were highly inappropriate. This was aggravated by the fact that Miss Andrews repeated the comment more loudly in an open ward when the patient stated that they could not hear her. The panel determined that Miss Andrews' conduct was inappropriate as it was a belittling and degrading interaction towards a patient. The panel was of the view that the situation was further exacerbated by what Miss Andrews said to Colleague A/Registrant B following her interaction with the patient. The panel was satisfied that Miss Andrews'

conduct at charge 7 fell seriously short of the standards expected of a registered nurse and therefore amounted to misconduct.

At charge 8, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

8) *Before 25 April 2021 said to Student Nurse B:*
    a) *On one or more occasion "I'm not bothered" or words to that effect;*
    b) *"but thank you for telling me" or words to that effect in a sarcastic tone*

The panel noted that Miss Andrews' words had a negative impact on the student nurse who was there at the time. However, the panel was unable to determine what impact Miss Andrews' actions had in respect of the patient. It noted that this was an example of Miss Andrews being dismissive and created a humiliating environment for student nurses on the Ward. However, the panel determined that whilst Miss Andrews' comments at charge 8 were inappropriate, they did not amount to misconduct.

In considering charge 9,

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

9) *On 25 April 2021, in relation to Patient H, said "I wouldn't worry, he will be RIP'd soon" or words to that effect;*

The panel noted that Miss Andrews' comment in respect of Patient H was made in the clinical room, outside the earshot of the people on the Ward. The panel took into account that it was a highly inappropriate throwaway comment made to a student nurse about the patient, which impacted negatively on the student nurse. The panel noted that Miss Andrews had not made this comment in earshot of patients or other staff and might have

made this comment in an attempt to be funny or lift the mood. The panel was not satisfied that Miss Andrews' comment at charge 9 amounted to misconduct.

In relation to charge 10, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

10) On 1 May 2021 referred to Patient A as "gobshite" or words to that effect

The panel considered that for a registered professional to use this type of terminology towards a vulnerable patient, was grossly offensive. The panel noted that the comment was made when food was being served to patients and in the presence of other colleagues and patients on the open Ward and within the earshot of Patient A. The panel took into account that Miss Andrews had made this comment in both a demeaning and offensive manner and it considered that this would have had a negative impact on the patient. The panel considered that calling a patient "*gobshite*" undermined the values of the nursing profession and would be regarded as deplorable by fellow practitioners. It noted that Patient A was reported as being a difficult patient on the Ward, but it determined that this did not excuse such behaviour. The panel concluded that Miss Andrews' actions fell short of the standards expected of a registered nurse and amounted to misconduct.

In respect of charge 11, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

11) On one or more occasion on dates unknown:

a) Closed Patient A's door when they were agitated;

b) Told Patient A shut up

The panel took into account that Miss Andrews had closed the door on a particularly vulnerable patient, which was highly inappropriate, particularly in circumstances where the patient was in a distressed state. Miss Andrews had shouted "*shut up*" from the nurse's station and within earshot of other patients on the Ward. The panel took into account the impact of this conduct on the patient and the potential impact on other patients and staff and determined that Miss Andrews' actions fell seriously short of the standards expected of a registered nurse and amounted to misconduct.

On charge 12, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

12) On an unknown date in administering an injection of an unknown substance to Patient A:

a) Did not speak to the patient before administration;

b) Did not explain the procedure to the patient;

c) Did not obtain the patient's consent to administer the injection;

d) Did not clean the injection site;

e) Incorrectly told the patient you scratched them with your nail

The panel noted that two other nurses were in the room when Miss Andrews arrived to give an injection to Patient A. On arrival in the room, she did not speak to the other nurses, the student or the patient and proceeded to inject the patient. The panel was of the view that to act in this way towards a vulnerable patient was highly inappropriate. In addition, Miss Andrews' actions at charge 12 related directly to her nursing practice in that she did not carry out the basic nursing procedures around administering an injection to a patient. None of the required clinical steps and standards for administering an injection were adhered to. The panel was therefore satisfied that Miss Andrews' conduct at charge 12 amounted to misconduct.

The panel considered charge 14, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

14) On 4 May 2021 in relation to Student Nurse C:

a) pulled faces and / or laughed and / or put your hands on your hips in relation to them sitting in a chair;

b) Said "keep her away from me" or words to that effect

The panel was of the view that Miss Andrews' behaviour in relation to Student Nurse C was inappropriate and unprofessional. It considered that Miss Andrews may have been 'playing to the audience' or showing off in the presence of other members of the 'clique'. The panel decided that the behaviour was intended to undermine the student nurse who was coming off duty. However, the panel determined that it did not amount to misconduct.

In relation to charge 15a and 15c, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

15) On or around 11 May 2021:

a) said to Student Nurse A:

i) "you have only been here an hour, others have not even had a break yet" or words to that effect

ii) "[Colleague A] says you should leave if you are in pain" or words to that effect in an aggressive tone.

b) ...

c) Said to Colleague B "I haven't seen [Student A] since I made her cry" or words to that effect

The panel considered that there was a level of aggression towards Student Nurse A when Miss Andrews made her comments. The panel considered that Miss Andrews' approach was threatening and subsequently caused Student Nurse A to cry. Miss Andrews went on to brag that she had not seen Student Nurse A since making her cry, which in the panel's

view gave the impression that she had derived some form of satisfaction from it. The panel determined that this series of events pointed towards bullying behaviour and amounted to misconduct.

At charge 16, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

16) On a date or dates unknown:

a) Did not greet Student Nurse A;

b) Told Student Nurse A that they were not doing anything;

c) Asked Student Nurse A whether they had ever done a medication round in a condescending tone

The panel considered that in her interactions with Student Nurse A, Miss Andrews was being unprofessional and dismissive toward her. However, it was not satisfied these actions were serious enough to amount to misconduct.

In respect of charge 18, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

18) On an unknown date changed the staff rota using Colleague A's login details

The panel noted that Registrant B (a senior colleague) had voluntarily provided her login details to facilitate the changing of the rota by Miss Andrews. The panel considered that whilst this was inappropriate, there was no evidence to show that this impacted negatively on patient care because the shifts were being covered. The panel found no misconduct at charge 18.

In relation to charge 19, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

19) On one or more occasion openly discussed student nurses in negative terms with Colleague A

The panel considered that this related to two qualified nurses talking about colleagues behind their backs. The panel determined that whilst inappropriate, this was not so serious as to amount to misconduct.

The panel considered charge 20, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

20) On one or more occasions in relation to Colleague D:

a) Ignored them;

b) Didn't support them;

c) Said negative things about them in their absence

The panel noted that Miss Andrews' bullying of Colleague D occurred for a period of time, rather than as a one-off incident. It took into account that Colleague D was a more senior colleague. Miss Andrews and the other members of her 'clique' ignored, undermined, isolated and belittled Colleague D, often within the earshot of other colleagues. The panel determined that Miss Andrews' actions towards Colleague D fell seriously short of what would be proper in the circumstances and what would be expected of a registered nurse, and therefore amounted to misconduct.

The panel then considered charge 21, namely:

That you, a registered nurse between 1 September 2020 and 30 June 2021, while working on Morfa Ward:

21) *Your actions at one or more of 1-20 above created an intimidating and / or hostile and / or degrading and / or humiliating environment for one or more student nurses and / or staff on Morfa Ward*

The panel determined that creating an intimidating, hostile, degrading and humiliating environment for staff and student nurses was not in line with the standards of the nursing profession under any circumstances. The panel also noted that this environment also had an effect on patients and patient care. The panel considered that creating and contributing to such an environment fell seriously short of the standards expected of a registered nurse and therefore amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Andrews' fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*
>
> *a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *d) ...'*

The panel determined that limbs a), b) and c) are engaged in this case. The panel found that patients were put at risk of harm as a result of Miss Andrews' misconduct. Miss Andrews' misconduct had breached the fundamental tenets of the nursing profession, and therefore brought its reputation into disrepute.

The panel considered the factors set out in the case of *Cohen v General Medical Council*:

- whether the concerns identified in Miss Andrews' nursing practice were capable of remediation;
- whether they have been remedied; and
- whether there was a risk of repetition of a similar kind at some point in the future.

The panel took into account the working environment and culture on the Ward, which was described as toxic and where many of the student nurse's complained about Miss Andrews' conduct. The panel also noted that the misconduct took place during the COVID-19 pandemic when senior management were not on site. This created a vacuum which allowed Miss Andrews' behaviour to flourish as part of a 'clique' that had developed.

The panel considered that Miss Andrews demonstrated a deep-seated attitudinal issues through her misconduct. However, the panel was satisfied that Miss Andrews' misconduct is capable of being remediated. It was of the view that Miss Andrews was capable of learning from the past by strengthening her practice, if given the right support. The panel noted that Miss Andrews had worked as a registered nurse for over ten years with no known concerns about her practice, prior to these issues being raised.

The panel noted Miss Andrews' undated personal and reflective statement, which largely disputed the allegations and did not address the concerns about her practice and conduct. It also took into account the supportive references from:

- A doctor who worked on the Ward from August 2020 to February 2021 (undated);

- A registered nurse who had known Miss Andrews for 11 years (dated 24 August 2021);
- Miss Andrews' mentee who had worked with Miss Andrews during a 12-week nursing placement in 2018 (undated); and
- A registered nurse who had known Miss Andrews since 2017 (dated 23 August 2021).

However, Miss Andrews had not engaged with these proceedings and there was no information before the panel as to Miss Andrews' current circumstances or in relation to whether the concerns had been remedied.

Based on the lack of information as to Miss Andrews' current insight and reflection, the panel was not satisfied that her conduct would not be repeated, nor was it satisfied that she can currently practise safely, kindly and professionally. On this basis, the panel found that there is a risk of repetition and that a finding of current impairment of fitness to practise 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 to mark the unacceptability of Miss Andrews' misconduct and to uphold professional standards. The panel considered that a well-informed member of the public would be concerned about Miss Andrews' actions which created and contributed to an intimidating, hostile, degrading and humiliating environment for staff and student nurses on the Ward, and which also extended to patients.

In addition, the panel concluded that public confidence in the profession and the NMC as a regulator would be undermined if a finding of impairment were not made in this case and therefore also found Miss Andrews' fitness to practise impaired on the grounds of the wider public interest.

Having regard to all of the above, the panel was satisfied that Miss Andrews fitness to practise is currently impaired on public protection and public interest grounds.

The panel adjourned on Monday 12 February 2024 and resumed on Monday 22 April 2024.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Andrews was not in attendance and that the Notice of Hearing letter had been sent to Miss Andrews' registered email address by secure email on 11 March 2024.

Mr Hoskins submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Andrews' right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of all of the information available, the panel was satisfied that Miss Andrews 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 Andrews prior to commencing the stage of sanction

The panel next considered whether it should proceed in the absence of Miss Andrews. It had regard to Rule 21 and heard the submissions of Mr Hoskins who invited the panel to continue in the absence of Miss Andrews).

Mr Hoskins submitted that there had been no engagement at all by Miss Andrews 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.

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 decided to proceed in the absence of Miss Andrews. In reaching this decision, the panel considered the submissions of Mr Hoskins 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 all parties. It noted that:

- No application for an adjournment has been made by Miss Andrews;
- Miss Andrews 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 Miss Andrews' attendance at some future date;
- 8 witnesses have previously attended to give live evidence; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Andrews in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response. Miss Andrews 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 it will be able to explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Andrews' decision to not attend 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 decided that it is fair to proceed in the absence of Miss Andrews. The panel will draw no adverse inference from Miss Andrews' absence in its findings of fact.

Sanction

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

In reaching this decision, the panel had regard to all the evidence that has been provided in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Hoskins informed the panel that in the Notice of Hearing, dated 14 December 2023, the NMC had advised Miss Andrews that it would seek the imposition of a striking-off order if the panel found Miss Andrews' fitness to practise currently impaired.

In respect of Mr Hoskins' written submissions, the panel sought clarification in respect of paragraph 6. As drafted, it stated that the *"The panel acknowledged that the environment created by Miss Andrews also extended to patients".* The panel noted that no reference had been made to Registrant B in respect of this. Mr Hoskins confirmed that he had intended to include both nurses. Mr Hoskins, in his oral submissions, amended paragraph 6 to include both nurses.

Mr Hoskins provided the panel with his written submissions regarding sanction. These stated:

> *'…*
>
> *1. Having made a finding that both Registrants in this case are currently impaired, the Committee must next (pursuant to r.24(13)) invite representations from the parties as to any relevant factors which may affect the Committee's decision on sanction, if any, to be imposed. Pursuant to r.13(a) this can extend to written submissions (r.24(13)(a)). In the interests of expedition, the NMC have chosen to make its submissions in writing.*
>
> *2. Should the registrants not seek to attend this hearing, the NMC will invite the Committee to proceed in their absence for the same reasons as previously and for the same reasons the Committee have already found in its earlier determination. There has been no engagement since the last hearing and service has been affected in accordance with the rules.*
>
> *3. In this case, in respect of both registrants, the NMC will invite the Committee to impose a striking off order in respect of both Registrants.*

LEGAL AUTHORITIES

4. The power to impose sanctions is contained in Article 29(5) of the Order. Since each Registrants' case is an allegation of misconduct pursuant to Article 22(1)(a)(i) of the Order, the full range of sanctions available in Article 29 are available to the Committee in this case.

5. Committee will be familiar with the guidance published by the NMC to assist it in making its decision.

a. There is guidance for "Considering sanctions for serious cases" [SAN-2], the contents of which do not specifically relate to the facts found proved, nor the misconduct in the present case. However, "conduct or poor practice which indicates a dangerous attitude to the safety of people receiving "care and "harassment" are described as "particularly serious" within the "How we determine seriousness" Guidance [FTP-3];

b. "Factors to consider before deciding on sanctions" [SAN-1] invites the committee to consider a number of factors:

i. Proportionality; the decision has to be justified and go no further than required to discharge the statutory functions of the Committee to protect the public and address the reasons for impairment. Simply saying a sanction is disproportionate is not enough, it should be justified.

ii. Aggravating features; including abuse of position of trust; lack of insight; pattern of misconduct over time; putting patients at risk of harm (the fact of occasioning harm is less significant than the risk of this).

iii. Mitigating features; evidence of insight; followed the principles of good practice; and personal mitigation such as periods of stress and illness, personal and financial hardship

together with a lack of support in the workplace. The purpose of a sanction is not to punish the practitioner but given the statutory functions of this committee personal mitigation may carry less weight than they would do, for example, in criminal proceedings.

iv. Previous interim orders; which may have impacted on the ability to remediate the misconduct; following the terms of an order can constitute evidence of insight; the length of an interim order may be relevant background in considering the length of a sanction, but it would usually be wrong to simply deduct that length of time from a final sanction

v. Previous fitness to practise history;

c. Each of the individual sanctions are the subject of specific factors within the guidance which may be relevant to the Committee in determining the type of sentence to imposed. Given the NMC's submissions are for a striking off order, the difference between a suspension and striking off order may be the most relevant for the Committee's decision:

i. *Does the seriousness of the case require the temporary removal from the register or the permanent removal from the register? The Committee should look at how far the Registrants fell short of the required standards and whether the concerns raise fundamental concerns about their professionalism.*

ii. *A non-exhaustive "checklist" is provided as part of the suspension guidance which focuses on:*

1. *Whether there is a single incidence of misconduct*
2. *Whether there is evidence of deep-seated personality to attitudinal problems;*
3. *Whether there is repetition of the behaviour?*
4. *The level of insight and risk which the registrants still represent;*

SUBMISSIONS:

6. *The allegations, given the finding in the final charges, clearly amounts to harassment as the Panel has concluded its facts determination by finding, each registrants' actions "created and contributed to an intimidating, hostile, degrading and humiliating environment for student nurses and staff on the Ward." Furthermore, "The panel acknowledged that the environment created by Miss Andrews also extended to patients.". The fact of harassment is identified as a particularly serious case (see above), which this case and feeds into the fact that each registrant has fallen short to a particularly significant extent.*

7. *The Committee, in their finding on impairment, have already addressed the question of whether fundamental aspects or tenets of the profession are raised in this case, and have found they are in respect of both Registrant.*

8. *This are, in reality, extremely limited significant mitigating features:*
    a. *The contents of the Registrants' response bundle for each Registrant together with their accounts at local level investigation are known to the Committee and, if accepted, are capable of identifying some mitigating factors.*
    b. *Neither Registrant has had previous regulatory or disciplinary findings made against them. And the there are supportive references in respect of the Registrants;*
    c. *In respect of [Registrant B], there is a potential argument that notwithstanding her more senior grading she was somewhat led by Ms Andrews;*
    d. *The allegations occurred when senior management were not on site and in this sense there is an argument concerning the lack of supervision. However, instead of offering an explanation for the*

misconduct, the evidence leaves the impression that it instead offered a condition precedent to the misconduct, it is not in reality a mitigating factor but rather the vacuum created "allowed the registrant[s'] behaviour to flourish". As such the taking of an opportunity to exploit an identifiable vacuum is actually an aggravating factor as it appears more calculating.

e. *The fact that these things happened during the COVID-19 pandemic when in some other circumstances the fear and pressure that registrants operated under would be intense. However the extent of this mitigating factor is of vanishing significance in this case, although raised by the Registrants during the course of the investigation, those on the ground describe a sort of quiet calm on the ward in the absence of the usual bustle of visitors to the ward. Instead the fact of COVID could be better viewed as an aggravating feature for the reasons set out below.*
f. *Each Registrant has been the subject of an Interim Suspension Order since 25 August 2021.*
g. [PRIVATE].

9. *By contrast there were significant aggravating factors:*
    a. *The environment was described by the Committee as toxic and where many of the student nurses complained about Miss Andrews' conduct. Again, this is not a case where the Registrants actions were as a result of a contrary environment, it created that environment so this properly regarded as an aggravating factor. The Panel's finding that the working environment and culture on the Ward was of the Registrants own making. The expansive effect of the misconduct to have a cultural effect is an illustration of the extent of the misconduct and is an aggravating factor.*
    b. *There is a vulnerability element to both the patients often elderly, invariable isolated given COVID and in some cases seemingly lacking*

capacity. Vulnerability too in respect of the seniority of those who were targeted (within or outwith their own knowledge). Most notably this includes the student nurses who the Committee may feel had a disincentive to speak up, not least because of the culture on the Ward and reputation of the Registrants or worse, the Registrants actively sought to disincentivise them from speaking up by the power to decline to sign off the competencies. Even those full time employees were often not of the same level as the Registrants or were, to a lesser extent, vulnerable by virtue of being less well established on the Ward.

c. *The Registrants occupied a position of authority by virtue of experience on the ward (Andrews) and banding [Registrant B] which was more profound given the vacuum in leadership left by COVID and the Band 7's absence in the relevant period.*
d. *The Registrants have not meaningfully engaged with the NMCs processes, notwithstanding most recently the Committee's decision afforded one last opportunity to engage.*

10. *Turning to the specific sanctions available to the Committee:*
    a. *No further action and caution orders are clearly inadequate and unduly lenient given the extent of the misconduct found proved;*
    b. *A conditions of practise would be unsuitable as:*
        i. *There is no indication that they would be abided by registrants who have not engaged in the regulatory process to any meaningful extent;*
        ii. *The nature of the misconduct is too wide ranging and entrenched to be addressed by conditions;*
        iii. *The sorts of failings were not due to a gap or inadvertent deficiency, they are basic traits of human kindness and compassion which the Registrants knew were important.*
    c. *A suspension order should not be favoured notwithstanding a finding that there were remediable aspects found in this case:*

i. *Neither Registrant's actions can be reduced to a single incident of misconduct, but rather was a repeated and sustained campaign against colleagues and contrary to the interests and safety of patients. For the same reasons, there is clear evidence of repetition of the behaviour.*
ii. *There is evidence of there existing a deep-seated attitudinal issue here, as already identified by the Committee:*
iii. *On the part of Ms Andrews there is a marked lack of insight (see evidence of [Witness 8]) albeit by the time of the disciplinary hearing there was some evidence of developing reflection. There is no evidence of insight for [Registrant B]. This too is a significantly aggravating factor.*
iv. *The Committee have already found a risk of repetition and throughout a not insubstantial period there was repetition.*

11. *Returning to the issue of proportionality, bearing in mind all of the above it cannot be said that a striking off order would be disproportionate in all the circumstances. In fact, it would be the just and proportionate sanction".*

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of position of trust.

- Lack of insight into poor treatment of patients and harassment of students.
- No remorse or apology for Miss Andrews' actions.
- Pattern of misconduct over a period of time.
- Putting patients at risk of harm.
- Deterring student nurses from wanting to work in the nursing profession.
- The panel noted that during the COVID-19 lockdown, service users were isolated and vulnerable, being separated from their families and outside support. They were reliant upon Miss Andrews and Registrant B to deliver effective and appropriate care. In addition, junior staff were isolated lacking outside support and vulnerable to the abusive environment created by both registrants.
- Both Miss Andrews and Registrant B's actions created and contributed to an intimidating, hostile, degrading and humiliating environment for student nurses and staff on the Ward. The environment created by Miss Andrews and Registrant B also extended to patients.

The panel also took into account the following mitigating features:

- Previous good character.

The panel noted and heard evidence that [PRIVATE]. The panel also noted that there were no previous regulatory findings against Miss Andrews.

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

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 Andrews' 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 Andrews' 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 Andrews' registration would be a sufficient and appropriate response. The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the deep-seated attitudinal issues as identified. The misconduct identified in this case was not something that can be addressed through retraining. Further, the panel concluded that the placing of conditions on Miss Andrews' registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Miss Andrews' actions negatively impacted patients, other qualified staff, and student nurses. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Andrews' actions is fundamentally incompatible with Miss Andrews remaining on the register.

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

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

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

The panel found that Miss Andrews' actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. It was of the view that the findings in this case demonstrate that Miss Andrews' actions were serious and to allow her to continue practising would put patients at continued risk of harm and would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel 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 Andrews' 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 Mr Hoskins. He submitted that an interim suspension order for a period of 18 months is necessary given the panel's findings in order to protect the public and meet the wider public interest.

Mr Hoskins submitted that this was required to cover the 28-day appeal period and, if Miss Andrews does appeal the decision, the period for which it may take for that appeal to be heard.

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 to cover the 28-day appeal period and any period which an appeal may be heard.

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

That concludes this determination.

This will be confirmed to Miss Andrews in writing.