Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 5 February 2024 – Monday, 12 February 2024

Virtual Hearing

Name of Registrant:	Lisa Kavanagh
NMC PIN	14A1443E
Part(s) of the register:	Registered Nurse – Mental Health Level 1, Effective – 19 March 2014
Relevant Location:	Bexhill-on-Sea
Type of case:	Misconduct
Panel members:	Debbie Hill (Chair, Lay member) Donna Hart (Registrant member) Alison Hayle (Lay member)
Legal Assessor:	Charles Apthorp
Hearings Coordinator:	Amanda Ansah
Nursing and Midwifery Council:	Represented by Holly Girven, Case Presenter
Mrs Kavanagh:	Not present and unrepresented
Facts proved:	All Charges except 9b
Facts not proved:	Charge 9b
Fitness to practise:	Impaired
Sanction:	**Suspension order (12 months)**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Kavanagh was not in attendance and that the Notice of Hearing letter had been sent to her registered email address by secure email on 3 January 2024.

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

The panel accepted the advice of the legal assessor.

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

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

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

At the outset of the hearing, Ms Girven made a request that this case be held partly in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

The panel accepted the application and determined to go into private session in connection with the matters outlined by Ms Girven.

Decision and reasons on proceeding in the absence of Mrs Kavanagh

The panel next considered whether it should proceed in the absence of Mrs Kavanagh. It had regard to Rule 21 and heard the submissions of Ms Girven who invited the panel to continue in the absence of Mrs Kavanagh. She submitted that all reasonable efforts have been made to serve Mrs Kavanagh with the notice of hearing and looking at the proceeding in absence documentation, it shows that repeated efforts to contact her were made as recently as last Friday.

Ms Girven submitted that there had been no engagement at all with the NMC in relation to this hearing and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. She informed the panel that the last contact from Mrs Kavanagh was on 21 December 2023 and there has been no further communication from her since.

Ms Girven further submitted that there is a public interest in the expeditious disposal of the case. The allegations relate to events that took place in April and May 2022, which is almost two years ago. Further, there are two witnesses who are both registrants, due to attend the hearing during the course of the listing. Rearranging their evidence would be inconvenient given that they have been requested to attend now. She submitted that any further delay is likely to impact their memory of events.

Ms Girven also submitted that Mrs Kavanagh has not substantially engaged with proceedings recently [PRIVATE]. However, there is no suggestion that an adjournment would lead to her engaging and attending any future hearing and in all the circumstances, it is very appropriate and proportionate to proceed in her absence as there are safeguards in place, there are witnesses attending, and essentially Mrs Kavanagh has voluntarily absented herself. Ms Girven submitted that for all these reasons, the panel should proceed with the hearing.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mrs Kavanagh. In reaching this decision, the panel has considered the submissions of Ms Girven, 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 Mrs Kavanagh;
- Mrs Kavanagh has not engaged with the NMC recently and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A number of witnesses are attending 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 2 years ago;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Kavanagh 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 to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-

examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Kavanagh's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charges

That you, a registered nurse whilst working at Southlands Place;

On 15 April 2022 after Resident A's Omnipod Dash Insulin Pump had stopped working;

1) Did not check Resident A's blood glucose levels.

2) Did not call the out of hours GP service to escalate that Resident A required an insulin emergency insulin pen/prescription.

3) Did not escalate that Resident A required emergency insulin to senior members of staff/the Home Manager

4) Incorrectly dispensed/drew up 700 units of insulin instead of 7 units in a non-insulin syringe for Resident A.

5) Inaccurately recorded the incident in Resident A's medical records under Colleague Z's name.

6) Inaccurately recorded that that Resident A drew 700 units of insulin in the syringe.

On 2 May 2022;

7) During you shift incorrectly threw away/misplaced 4 Longtec tablet.

8) Did not conduct a controlled drug medication check with Colleague Y before handing over to the night shift.

9) Did not follow the destroyed medication procedure in that you did not;

a) Ask a second nurse/clinical lead/manager to see the destroyed medication.

b) Did not place the destroyed medication into the ‘Doom Box’

c) Did not write that the medication had been destroyed on the back of Resident A’s MAR Chart.

d) Did not request a replacement prescription for destroyed medication from the GP.

e) Did not record an entry into the ‘Destroyed Medication Book’

10) Inaccurately informed Colleague Y that you had;

a) Crushed the tablets with a medication trolley.

b) Trod on the medication.

11) Inaccurately recorded in the Controlled Drug Book that you had;

a) Accidentally dropped 4 tablets.

b) Trod on them.

12) Asked Colleague X to inaccurately countersign your entry that the medication was dropped/trod on in the Controlled Drug Book.

13) Your actions in one or more of charge 10) a), 10) b), 11) a), 11) b) & 12) above were dishonest in that you;

a) Sought to conceal that you had failed to dispose of controlled drugs properly and/or;

b) Sought to conceal that you had lost/misplaced controlled drugs.

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Girven under Rule 31 to allow exhibit FY6 (a statement from Colleague X, a Carer at the home), FY15 (Resident A’s local statement), and a call log and email from Resident A with the NMC into evidence in line with the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin).*

Ms Girven submitted that the case of Thorneycroft outlines some of the following steps to be taken when considering fairness below:

- whether this was the sole and decisive evidence,
- the degree of challenge to the NMC's evidence.
- the veracity, credibility, or reliability of the witness statements,
- the seriousness of the allegations,
- the steps that have been taken to secure the attendance of the witness.

Ms Girven submitted that in considering each of these in turn, firstly, none of this evidence is solely decisive as to the charges either when taken individually or altogether, as there is other supportive evidence in relation to the charges. She reminded the panel that it will be hearing from 2 witnesses who have already provided statements that weigh in favour of admitting the evidence.

Ms Girven submitted that secondly, with regards to the nature and extent of the challenge to the contents of the statements, it is unclear whether Mrs Kavanagh challenges the contents of these particular documents. She acknowledged that in the registrant response bundle, it seems that Mrs Kavanagh states that some of the allegations are false, but it is unclear on what basis, she says so, and whether she accepts the content of those documents.

Ms Girven submitted that with regards to the veracity, credibility, or reliability of the witness statements, there is no suggestion that the witnesses or authors of the statements had any reasons to fabricate the contents of those statements. She highlighted that in relation to exhibit FY6 especially, when you consider exhibit FY7, this is a screenshot of a text message which supports the account given in FY6. Therefore, this is credible evidence that should be admitted.

Ms Girven further submitted that with regards to the seriousness of the charges, it is acknowledged that the charges in this case are serious, particularly the dishonesty charges. She informed the panel that she is not aware of any steps the NMC took to

secure the attendance of Resident A or Colleague X, however Resident A was vulnerable, and she invited the panel to consider the appropriateness of trying to secure his attendance at a hearing.

Ms Girven further submitted that Mrs Kavanagh has been provided with the documents the NMC were planning to rely on, was given the opportunity to object and did not do so. She submitted that when weighing things in the balance, the evidence is fair and relevant, therefore it should be admitted. She reminded the panel of the safeguard in that it can apply the appropriate amount of weight when it comes to the fact-finding decision, but particularly because this evidence is not sole and decisive, it is fair for it to be admitted and included within the panel's considerations.

The panel gave this application serious consideration. The panel considered whether Mrs Kavanagh would be disadvantaged by the NMC's proposal of allowing hearsay testimony into evidence.

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

The panel determined that the text message in particular, makes some form of admissions to some of the charges alleged therefore it is not unfair to Mrs Kavanagh. It is also not the sole and decisive evidence given that the witnesses will be giving live evidence, and there is no reason for them fabricate the nature and contents of their statements. The panel acknowledged that Resident A is vulnerable, and this may suggest why he was not asked to attend the hearing, although it is unclear what Colleague X's position is with regards to attendance. However, the panel determined that her short statement is relevant and is in line with the text message that was sent.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the proposed documentation but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

The charges arose whilst Mrs Kavanagh was employed as a Registered Mental Health Nurse by the Caring Home Group at Southlands Place Care Home (the Home).

The allegations relate to two incidents, one in April 2022 and one in May 2022. The first incident is in relation to Resident A, who had diabetes. This was controlled using an insulin pump and blood sugar reader, which he managed entirely himself. It is alleged that when Resident A rang his call bell and Mrs Kavanagh attended to him, his insulin pump was allegedly not working so he asked Mrs Kavanagh to help him administer his insulin. Resident A asked Mrs Kavanagh to get the insulin syringe, to which Mrs Kavanagh provided a number of syringes, but not an insulin syringe. It is alleged that Mrs Kavanagh then drew up 7 millilitres of insulin for Patient A which he then self-administered. However, because of the formulation of the insulin in this case, 7 millilitres equates not to 7 units, but to 700 units of insulin. Mrs Kavanagh subsequently called an ambulance for Resident A, and he was admitted to hospital.

In relation to this incident, it is alleged that Mrs Kavanagh did not seek advice or escalate the incident to Resident A's GP or the home manager as appropriate, and also made inaccurate records of the incident in that the incorrect name was recorded in the notes of who made that note, and there was an inaccuracy in the records in that it was recorded that it was Resident A that drew the medication up when it was in fact Mrs Kavanagh.

The second incident in May 2022 was in relation to LongTec, a controlled drug and pain reliever. It is alleged that four tablets were misplaced whilst Mrs Kavanagh was on duty, and she failed to follow the Home's policies to ensure that the medication was disposed of correctly and accurately recorded as such. There is an allegation of dishonesty in that

Mrs Kavanagh made inaccurate records in an attempt to cover up the errors that had occurred.

A local investigation meeting commenced on 17 May 2022 and Mrs Kavanagh was dismissed from the Home on 14 June 2022. She was referred to the NMC on 7 July 2022.

Decision and reasons on facts

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

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

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: Band 5 Staff Nurse at Southlands Place Care Home;
- Witness 2: Home Manager at Southlands Place Care Home.

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 1

"1) Did not check Resident A's blood glucose levels."

This charge is found proved.

In reaching this decision, the panel took into account the local investigation statement made by Mrs Kavanagh. Within this statement, Mrs Kavanagh did not make any mention of Resident A's blood glucose levels prior to administering the insulin. In addition to this, the entry she made in Resident A's records also did not mention taking his blood sugar levels. Although this entry was made using someone else's name, Mrs Kavanagh confirmed that this was her note of the incident. Further, Resident A does not mention that Mrs Kavanagh checked his blood sugar levels in the email he sent to the NMC when confirming the details of the incident. The panel also noted the local investigation interview in which she was asked by Witness 2 whether she thought to check Resident A's blood sugar levels, to which she responded, *"I didn't check BM as it checked at set times…".* The panel noted that Mrs Kavanagh had completed training in diabetes and should have understood the importance of checking blood glucose levels before administering insulin. The panel therefore finds this charge proved on the balance of probabilities.

Charge 2

"2) Did not call the out of hours GP service to escalate that Resident A required an insulin emergency insulin pen/prescription."

This charge is found proved.

In reaching this decision, the panel took into account the evidence as noted above in its findings for Charge 1. Within these documents, Mrs Kavanagh does not make any mention of calling the GP. The panel further considered the local investigation interview

undertaken by Witness 2 and the deputy manager. There is no mention within this document of contacting the GP. The panel therefore finds this charge proved on the balance of probabilities.

Charge 3

> "3) Did not escalate that Resident A required emergency insulin to senior members of staff/the Home Manager."

This charge is found proved.

In reaching this decision, the panel took into account the local statement from Mrs Kavanagh in which she outlined the events and the fact she was with Resident A during the incident. The panel also considered the local investigation meeting dated 17 May 2022, the entry into Resident A's records, and the email Resident A sent to the NMC. The panel noted that Mrs Kavanagh did not escalate the need for emergency insulin to the manager until after the overdose had occurred. Further, the panel considered the verbal evidence given by Witness 2 during the hearing in which she stated that the first time she knew about the incident, was when the ambulance had been called. The panel also had regard to Resident A's statement, which made no mention of Mrs Kavanagh escalating the incident to the manager before drawing the insulin. The panel therefore finds this charge proved.

Charge 4

> "4) Incorrectly dispensed/drew up 700 units of insulin instead of 7 units in a non-insulin syringe for Resident A."

This charge is found proved.

In reaching this decision, the panel took into account the statement provided by Mrs Kavanagh within the local investigation meeting, along with the entry she made into Resident A's records. The panel noted that in the local investigation meeting, Mrs Kavanagh stated: *'He then asked me for an insulin syringe. and I told him we only have*

ml syringes…...I then went and got the different syringes we have…. he chose the 10ml'. Mrs Kavanagh then explained that Resident A had asked her to draw up the insulin as his hands were stiff. She said *'I proceeded…. It got to 7ml and he said oh that's enough…'.* The panel noted that Mrs Kavanagh had completed both the Boots and Diabetes UK training and worked with other diabetic residents in the home. It determined she would therefore have known about the differences between an insulin and a ml syringe, have understood that the number of units of insulin does not equate to the number of millilitres, and been aware of the likely range of insulin doses required by diabetic patients. She should have used her knowledge to check that the dose she was drawing up was reasonable, and not two orders of magnitude too large.

The panel took note of Witness 2's evidence that Resident A did not have full use of his fingers, could not dispense his own tablets, and would not have been able to draw up the insulin. In light of all this, the panel therefore finds this charge proved.

Charge 5

> "5) Inaccurately recorded the incident in Resident A's medical records under Colleague Z's name."

This charge is found proved.

In reaching this decision, the panel had clear documentary evidence that the entry is under another nurse's name who was not on duty at the time, yet it is clearly written by the nurse who was attending Resident A during the incident. The panel noted the oral evidence from Witness 1 and Witness 2 that the electronic notes system in use in the Home is clear as to who is logged into it, and therefore to whom the notes made will be attributed. If a previous user has not logged out, the next user's notes will be recorded as written by the earlier user. Further, Mrs Kavanagh has never said in any of her statements that she did not make the entry. The panel determined that the entry was consistent with what Mrs Kavanagh stated in the local investigation meeting, and her local statement. The panel therefore finds this charge proved.

Charge 6

"6) Inaccurately recorded that that Resident A drew 700 units of insulin in the syringe."

This charge is found proved.

In reaching this decision, the panel took into account the fact that it had established that Mrs Kavanagh drew up the insulin. It considered Resident A's patient notes in which it is stated: *"Resident A drew up 7mls and then self-administered in the left side of his abdomen without issue".* The panel determined that this was an inaccurate entry given that Mrs Kavanagh herself drew up the insulin and not Resident A as she has recorded. The panel therefore finds this charge proved.

Charge 7

On 2 May 2022;

"7) During you shift incorrectly threw away/misplaced 4 Longtec tablet."

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence from Witness 1 and the text message Mrs Kavanagh sent to Colleague X, the timing of which corresponds with the incident. In the text message sent to Colleague X, Mrs Kavanagh states: *"I have accidentally thrown away 4 of those tablets that [Resident A] is on. Me and [Witness 1] just went through the shitty bin bags but can find them it's like a needle in a haystack"*. The panel noted that after the end of Mrs Kavanagh's shift, Witness 1 counted the LongTec tablets and found that 4 were missing. It determined that this confirms that Mrs Kavanagh lost 4 tablets on her shift. The text message goes on to state *"So I have written that I dropped them on the floor and accidently trod on them."* The panel determined that Mrs Kavanagh admits within this text that she wrote something else in the Controlled Book and not the fact that she incorrectly threw away the tablets. It had regard to the Controlled Drug book in which there is an entry from Mrs Kavanagh detailing her actions. The panel also had regard to the local investigation

meeting in which Mrs Kavanagh accepts that she had misplaced the tablets. Witness 1 also said in her oral evidence that Mrs Kavanagh told her that she had trod on the medication, and she was told by Witness 2 to do this despite the fact that she had accidentally thrown them away.

The panel therefore finds this charge proved.

Charge 8

"8) Did not conduct a controlled drug medication check with Colleague Y before handing over to the night shift."

This charge is found proved.

In reaching this decision, the panel took into account the evidence from Witness 1 (Colleague Y), both oral and written, that this was not done. The panel also had regard to the Controlled Drug book in which it is signed by Colleague Y after the incident. Witness 1's written statement mentions *"It is usual practice for the day and night shift nurses to conduct a controlled drug check together at handover, however as [Mrs Kavanagh] was rushed she did not complete this check."* The panel further noted that Mrs Kavanagh has never contested this by never stating at any point that she conducted this check with Colleague Y. The panel therefore finds this charge proved.

Charge 9a

"9) Did not follow the destroyed medication procedure in that you did not;
a) Ask a second nurse/clinical lead/manager to see the destroyed medication."

This charge is found proved.

In reaching this decision, the panel took into account the local investigation meeting in which Mrs Kavanagh confirms that Colleague X was not present, but she did countersign the entry. It also noted the text message Mrs Kavanagh sent Colleague X asking her to countersign the entry. The panel also noted the hearsay evidence from

Colleague X in which she stated that when she came in the following morning, she was asked to countersign the entry. Although this is hearsay evidence, it is consistent with the evidence provided by Mrs Kavanagh within the local investigation meeting, and it is supported by the text message that was sent to her previously.

The panel therefore finds this charge proved.

Charge 9b

"9) Did not follow the destroyed medication procedure in that you did not;
b) Did not place the destroyed medication into the 'Doom Box'."

This charge is found NOT proved.

In reaching this decision, the panel took into account the fact that Mrs Kavanagh could not even find the medication, therefore it is highly unlikely anybody saw her destroy it or put it in the doom box. However, the panel acknowledged that Mrs Kavanagh was destroying a lot of other medication at the time therefore she could have accidentally placed the mediation into the Doom Box. It was of the view that there would be no way of knowing whether or not she destroyed the medication into the Doom Box because she could not find it, but because she was in the middle of destroying other medication at the same time there may have been a possibility that this is where the missing medication ended up. The panel noted that where there is a dispute such as this on the balance of probabilities it should rule in favour of the registrant.

The panel therefore finds this charge NOT proved on the balance of probabilities.

Charge 9c

"9) Did not follow the destroyed medication procedure in that you did not;
c) Did not write that the medication had been destroyed on the back of Resident A's MAR Chart."

This charge is found proved.

In reaching this decision, the panel noted that the MAR chart is not available. The panel noted that Witness 2 stated that Mrs Kavanagh did not write it anywhere, and this includes the MAR chart. It was of the view that had Mrs Kavanagh made any entries anywhere, she would have raised these at investigation stage. The panel therefore finds this charge proved.

Charge 9d

"9) Did not follow the destroyed medication procedure in that you did not;
d) Did not request a replacement prescription for destroyed medication from the GP."

This charge is found proved.

In reaching this decision, the panel noted that it had no evidence that Mrs Kavanagh requested a replacement prescription. It is not recorded in Resident A's records, and Witness 2 in her oral evidence and written statement, confirmed that Mrs Kavanagh did not contact the GP to request the replacement prescription. The panel therefore finds this charge proved.

Charge 9e

"9) Did not follow the destroyed medication procedure in that you did not;
e) Did not record an entry into the 'Destroyed Medication Book'."

This charge is found proved.

In reaching this decision, the panel took into account the evidence from Witness 2 was that it was not recorded anywhere. There is no sight of the destroyed medication book, but oral evidence from Witness 2 was that the incident details were not documented anywhere other than the Controlled Drug book. Mrs Kavanagh has never made any mention within her local statement or local investigation stage that she made this entry. The panel therefore finds this charge proved.

Charges 10a, 10b, 11a, and 11b

“10) Inaccurately informed Colleague Y that you had;
a) Crushed the tablets with a medication trolley.”
b) Trod on the medication.”

“11) Inaccurately recorded in the Controlled Drug Book that you had;
a) Accidentally dropped 4 tablets.”
b) Trod on them.”

These charges are found proved.

In reaching this decision, the panel took into account the documentary evidence of Witness 1 stating that Mrs Kavanagh had informed her that she had crushed/trod on the medication. The panel further noted that Witness 1 also said in her oral evidence that when she called Mrs Kavanagh to inform her about the missing medication, she came back in, and they both started looking through the bins for the medication. However, in her oral evidence Witness 1 said that Mrs Kavanagh had told her that in the past, the manager had told her that the way to account for drugs under such circumstances was to write *“accidentally crushed”* in the Controlled Drugs book. The panel also took into account the text message Mrs Kavanagh sent to Colleague X in which she clearly stated that she had *“accidentally thrown away 4 of those tablets that [Resident A] is on”*.

The panel determined that the medication had been thrown away rather than crushed, accidentally dropped, or trod on. The panel therefore finds these charges proved.

Charge 12

“12) Asked Colleague X to inaccurately countersign your entry that the medication was dropped/trod on in the Controlled Drug Book.”

This charge is found proved.

In reaching this decision, the panel took into account the Controlled Drug book where Colleague X’s initials appear, although she was not on duty at the time of the incident. The panel also took into account the text message Mrs Kavanagh sent to Colleague X in which she asked her to countersign the entry that the medication was dropped/trod on. Within this text message, Mrs Kavanagh states *“Is there anyway whatsoever you*

would please countersign it for me? It couldn't of happened at a worse time. I completely understand if you don't feel comfortable doing it though xxx" implying that she knew she should not have done this.

The panel also noted Witness 1's oral evidence that she was aware that Colleague X was on duty the next day and was aware of the arrangement between Mrs Kavanagh and Colleague X but denied telling Colleague X to countersign the book. There is also hearsay evidence from Colleague X that she was asked in the morning to sign the book. The panel further noted that Witness 1 later in her oral evidence stated that she remembers vaguely seeing Colleague X when she came on duty in the morning, and telling her that she was needed in the office.

The panel also noted that Mrs Kavanagh made some form of admission to this within the local investigation meeting where she states that she recognises that Colleague X had signed the book, but she was not there, and she did not count the medication.

The panel therefore finds this charge proved.

Charges 13a and 13b

"13) Your actions in one or more of charge 10) a), 10) b), 11) a), 11) b) & 12) above were dishonest in that you;

a) Sought to conceal that you had failed to dispose of controlled drugs properly and/or;
b) Sought to conceal that you had lost/misplaced controlled drugs.

These charges are found proved.

In reaching this decision, the panel took into account the local investigation meeting notes, in which Mrs Kavanagh states that she felt that eyes were on her because of the incident with Resident A. The panel determined that Mrs Kavanagh's mindset at the time was that she was seeking to conceal the fact that she had made another error as she knew she had not done what she said she had. Mrs Kavanagh clearly knew what

she was doing at that point and the panel determined that any ordinary person would see that as dishonest.

The panel acknowledged that Mrs Kavanagh was under pressure from her previous errors. However, it was of the view that this was a simple error that did not need concealing. The panel noted that Mrs Kavanagh's explanation for this error was that she was told by Witness 2 that this was the best way for her to deal with losing the medication. When the panel asked Witness 2 in evidence if she had ever told Mrs Kavanagh to document the loss in the way she did, she answered no. The panel therefore did not accept Mrs Kavanagh's explanation that this was what she had been told to do. The panel determined that even if Witness 2 had asked her to do document the loss in this way, it was up to Mrs Kavanagh as a responsible registrant, to refuse to do so.

The panel considered Mrs Kavanagh's previous good character in that she has had no previous regulatory findings against her. However, it determined that she should have been more open and honest in this instance. The panel therefore finds this charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs Kavanagh's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's 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, Mrs Kavanagh's 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.'*

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

Ms Girven identified the specific, relevant standards where Mrs Kavanagh's actions amounted to misconduct. She submitted that the following aspects of the Code were breached:

> ***6 Always practise in line with the best available evidence.***
>
> *To achieve this, you must*
>
> *6.2 maintain the knowledge and skills you need for safe and effective practise.*
>
> ***7 Communicate clearly***
>
> *To achieve this, you must:*
>
> *7.4 check people's understanding from time to time to keep misunderstanding or mistakes to a minimum*
>
> ***8 Work co-operatively***
>
> *To achieve this, you must:*

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

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

10 Keep clear and accurate records relevant to your practice

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

To achieve this, you must:

10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.

10.4 attribute any entries you make in any paper or electronic records to yourself, making sure they are clearly written, dated and timed, and do not include unnecessary abbreviations, jargon or speculation.

13 Recognise and work within the limits of your competence.

To achieve this, you must, as appropriate:

13.2 Make a timely referral to another practitioner when any action care or treatment is required.

13.3 asked for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence.

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

To achieve this, you must:

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

18.4 take all steps to keep medicines stored securely.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.2 act with honesty and integrity at all times…

Ms Girven submitted that in respect of charges 1 to 6 which relate to the insulin incident, in charge 1, there was evidence from Witness 2 that the blood sugar should have been checked before giving insulin, and they also refer to the diabetes policy which states that registrants should be aware of the resident's blood sugar before giving any insulin. Further, Mrs Kavanagh had completed diabetes training and Ms Girven submitted that a basic aspect of nursing is to check blood sugar level before giving insulin. Therefore, her actions in charge 1 fell below the standards expected of a registered nurse.

Ms Girven submitted that in respect of charges 2 and 3, the evidence given by Witness 2 was that Mrs Kavanagh should have called the GP. She submitted that it is a breach of the Code to not seek advice from other professionals when needed and it is serious because the evidence further suggests that had advice from the GP been sought, the harm to Resident A could have been avoided.

Ms Girven submitted that charge 4 further amounts to serious misconduct as the evidence shows that as a result of the error made by Mrs Kavanagh, Resident A required an urgent ambulance to be called and was admitted into hospital. She further submitted that it was a serious error that fell below the standard expected of a registered nurse and when a nurse is drawing up medication, it is their responsibility to check that it is accurate, and it is irrelevant Resident A was telling her about how much she should draw up.

Ms Girven submitted that in respect of charges 5 and 6, accurate record keeping is a fundamental aspect of nursing, and it is important that records are made correctly especially when they relate to errors therefore this amounts to misconduct. Charges 1 to 6 individually and collectively amount to misconduct and Mrs Kavanagh's actions felt seriously below the standards expected of a nurse and put Resident A at significant risk of serious harm.

Ms Girven submitted that in relation to charge 7, it is a matter for the panel whether it amounts to misconduct on its own given that mistakes can happen, and drugs may get misplaced. However, she highlighted that the evidence provided by both Witness 1 and Witness 2 seems to suggest that it was unclear why 4 tablets had been disposed of. It seemed that Mrs Kavanagh was dispensing medication in an unusual manner in order to have lost 4 tablets when the patient was only prescribed two tablets on that shift.

Regarding charge 8, Ms Girven submitted that it is important that controlled drug checks are done so that errors can be picked up. She said that this is especially important and should have been done when it seems that Mrs Kavanagh would have been aware at the time of leaving her shift, that there may have been an issue with the controlled drug count. She submitted that the evidence of Witness 1 was that the controlled drug check was a required process.

Ms Girven submitted that looking at charge 9 as a whole, apart from charge 9b in light of the panel's findings, controlled drug procedures are incredibly important to follow, and the failure to follow them amounts to misconduct. She reminded the panel that there is a reason that controlled drugs have specific procedures and policies around them due to the serious nature of the medication, and so it is all the more important that the correct procedures are followed.

In respect of charges 10 and 11 in relation to inaccurate information, Ms Girven submitted that it is incredibly important that accurate information is recorded and if not, this can amount to misconduct. She submitted that in relation to charge 12, this falls seriously short of the standard expected that nurses should be role models for other staff, including junior staff. She further submitted that Mrs Kavanagh's actions in asking

a colleague who is a junior staff member to inappropriately record information fell seriously below the standards expected of a Registered Nurse.

Ms Girven submitted that charge 13 is in relation to dishonesty, which is always incredibly serious and falls seriously short of the standards expected, especially when it is in a clinical context such as this. She submitted that all the charges individually and collectively do amount to misconduct.

Submissions on impairment

Ms Girven moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Girven submitted that a finding of impairment is needed to protect the public and is in the public interest. She referred the panel to the NMC's guidance on impairment, which states that the question on impairment is, can the nurse practise kindly, safely, and professionally? She submitted that at the moment, the evidence suggests that that is not the case. She also referred the panel to the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and the questions of whether the conduct is easily remediable, whether it has been remedied, and whether it is unlikely to be repeated.

Ms Girven reminded the panel that the NMC's guidance on impairment sets out that dishonesty is harder to remediate. She submitted that whilst it is accepted that Mrs Kavanagh's actions were a one-off instance of dishonesty, it still remains difficult to remediate. However, the other concerns essentially related to clinical errors which have the potential to be remedied.

Ms Girven submitted that when considering insight, there has been a lack of any meaningful insight given that Mrs Kavanagh has not substantially engaged with the NMC. She acknowledged that there have been some emails, but they have been irregular and have not amounted to anything of substance. She submitted that in the local investigation meeting and the emails that are in the registrant's response bundle, Mrs Kavanagh does not seem to accept the significance and seriousness of her actions. For example, in the local investigation meeting in relation to charges 1 to 6, she seems to suggest that she acted the way she did, because Resident A had told her to do so, rather than acknowledging that, as a Registered Nurse, it is her responsibility to act in the best interests of a resident irrespective of what they tell her to do. Ms Girven acknowledged that Mrs Kavanagh stated that in relation to charges 7 to 13, she did make a mistake. Ms Girven submitted that despite this, Mrs Kavanagh does not seem to accept or acknowledge the seriousness of the errors alleged.

Ms Girven submitted that in terms of whether Mrs Kavanagh has strengthened her practise, there is nothing to suggest that she has done so since the incidents took place. She has not worked as a Registered Nurse since the incidents occurred and there are no training certificates provided or any information from her as to satisfy the panel that she has now strengthened her practise.

Ms Girven submitted that when looking at the 4 limbs of the Grant test, all 4 limbs of the test apply. Mrs Kavanagh has in the past acted to put patients (in this case Resident A) at unwarranted risk of harm in particular, in relation to charges 1 to 6, and also in charges 7 to 13, as there is obviously always a risk that if medication is not dealt with correctly, this could lead to a patient not having the appropriate medication available to them. She further submitted that there is still a risk that Mrs Kavanagh remains liable in the future to put patients at risk of harm due to the lack of insight and lack of strengthening practises already identified.

Ms Girven submitted that Mrs Kavanagh's actions did bring the profession into disrepute as they are serious concerns including dishonesty, and a member of the public fully appraised of the facts would be concerned by her actions. She further submitted that

honesty and integrity are fundamental tenets of the medical profession, in addition to record keeping, all of which Mrs Kavanagh's actions breached.

Ms Girven reminded the panel that it has already been outlined that Mrs Kavanagh has acted dishonesty in the past and there remains a risk that she would do so again in future. She submitted that in the investigation meeting, it seems that Mrs Kavanagh states that she acted dishonestly in relation to charges 7 to 13 because she was aware she was already "under the microscope" following the incidents in charges 1 to 6, therefore it seems likely that a risk of dishonesty reoccurring remains. Ms Girven submitted that for all of these reasons, a finding of impairment is needed to protect the public due to the risk of repetition, lack of insight and lack of strengthening practise.

Ms Girven reminded the panel that with regards to a finding of impairment on public interest grounds, the case of Grant states that a panel should also consider whether there is a need for a finding of impairment to uphold proper professional standards and to check whether public confidence would be undermined if a finding of impairment were not made. She submitted that this is the case here and the public would be concerned if a finding of impairment were not made for a nurse who has been found to have acted in the way Mrs Kavanagh did, especially in light of her lack of substantive engagement with the NMC and lack of any evidence of insight or strengthened practise. Ms Girven further submitted that no finding of impairment would lead to confidence in the NMC and in the nursing profession being undermined, and for all those reasons, a finding of impairment is needed both to protect the public and in the public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that Mrs Kavanagh's actions did fall significantly short of the standards expected of a registered nurse. It determined that her actions amounted to a breach of the Code as outlined by Ms Girven, except for '*6.2 maintain the knowledge and skills you need for safe and effective practise'* and *'13.3 asked for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence',* which it determined did not apply in this case.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mrs Kavanagh's actions in failing to check Resident A's blood sugar levels and drawing up the incorrect amount of insulin were serious concerns. The panel determined that Mrs Kavanagh had the relevant training on diabetes and should have used that knowledge when dealing with Resident A.

The panel determined that with regards to the LongTec medication, Mrs Kavanagh could have been open and honest about losing the tablets and the matter could have been resolved locally. The panel determined that Mrs Kavanagh's actions in cutting the tablets and dropping them, as well as making records whilst logged in as another member of staff were more accidental errors than misconduct.

However, Mrs Kavanagh decided to be dishonest, and the panel determined that her actions in asking a junior member of staff who was not on shift at the time to countersign the dishonest entry she made in the Controlled Book were serious. The panel also determined that Mrs Kavanagh attempted to implicate another member of staff in her misconduct by stating that they told her to record the missing medication in the way that she did in the Controlled Drug book.

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

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Kavanagh's 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 be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

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

Regarding insight, the panel noted that Mrs Kavanagh has not demonstrated an understanding of how her actions put Resident A at a risk of harm. Mrs Kavanagh has not demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted that within the registrant response bundle, Mrs Kavanagh briefly reflected on the incident and described Resident A as being bossy and seeming competent in administering his own insulin. Regarding the dishonesty found, there was no evidence before the panel

that Mrs Kavanagh had addressed her dishonesty and how she implicated other colleagues in her actions.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Kavanagh has taken steps to strengthen her practice. The panel noted since these concerns arose, Mrs Kavanagh has not had the opportunity to strengthen her practice or check her knowledge and it did not have any evidence of further training she may have since undergone. It further noted that in the emails sent to the NMC, Mrs Kavanagh has maintained that the first allegation is completely false.

The panel did not have anything before it to demonstrate that Mrs Kavanagh has improved or reflected upon her dishonesty. It noted that there were contextual issues and dishonesty is genuinely more difficult to remediate, however the other failings are capable of being remedied but there is no evidence of this before the panel. The panel is therefore of the view that there is a risk of repetition given that the concerns have not been addressed.

The panel decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because an informed member of the public would be shocked if given the circumstances, a finding of impairment was not made.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Mrs Kavanagh's registration has been suspended.

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

Submissions on sanction

Ms Girven informed the panel that the NMC seek the imposition of a striking-off order. She submitted that in respect of aggravating factors, Mrs Kavanagh's actions put Resident A at a real risk of significant harm. Secondly, there was an abuse of a position of trust in that she asked a junior member of staff to cover up her actions. Thirdly, there was dishonesty, which was calculated and, in an attempt, to cover up a clinical error. Ms Girven submitted that there was a lack of insight demonstrated by Mrs Kavanagh, and that there are deep seated attitudinal concerns as Mrs Kavanagh does not seem to have accepted the seriousness of her misconduct.

Ms Girven submitted that there are mitigating factors in that [PRIVATE] Mrs Kavanagh did make some local admissions of the concerns. Ms Girven submitted that the dishonesty and the misconduct in this case is serious. She referred the panel to the NMC's sanction guidance on dishonesty, SAN-2a, and submitted that serious dishonesty applies in this case as Mrs Kavanagh's actions were a deliberate breach of the duty of candour by covering something up when it went wrong.

Ms Girven acknowledged that panels should consider each of the sanctions in ascending order. She submitted that in terms of no further action, this is not appropriate in light of the panel's findings of impairment as it would not protect the public or uphold

the public interest. Further, there is a need to mark the misconduct and the finding of impairment in some way and taking no further action would not do this.

Ms Girven moved on to a caution order and reminded the panel of the NMC guidance SAN-3b, in which it states that caution orders are only appropriate if the panel has decided there is no risk to the public or to the patients. She submitted that this is not the case here and that the misconduct in this case is not at the lower end of the spectrum therefore imposing a caution order would not be appropriate.

Ms Girven submitted that dealing next with a conditions of practice order and going through the factors in which this order might be appropriate, it is not sufficient in this case. Firstly, whether there is no evidence of harmful deep-seated personality or attitudinal problems, she submitted that there is an indication of attitudinal problems due to the nature of the dishonesty and the lack of insight into that dishonesty. Secondly, whether there are identifiable areas of the nurse's practise in need of assessment and or retraining, Ms Girven accepted that some of the concerns in relation to charges one to six and the medication error itself are potentially capable of being addressed by retraining, but due to the dishonesty, she submitted that it is impossible to be addressed by retraining.

In respect of whether there is any evidence of general incompetence, Ms Girven accepted that there is no indication that there are issues as to general incompetence in this case. She submitted that in relation to whether there is potential and willingness to respond positively to retraining, Mrs Kavanagh has failed to substantively engage with the NMC, and there is no indication that she would respond positively to retraining. She submitted that regarding whether patients will not be put in danger, either directly or indirectly as a result of the conditions and whether they will protect patients, there are none that can be formulated that would adequately protect the public due to the serious nature of the concerns and the dishonesty. Finally, in respect of whether conditions can be created that can be monitored and assessed, Ms Girven submitted that there are no suitable conditions that would monitor the misconduct in this case due to the nature of the misconduct involving dishonesty and any conditions would be tantamount to suspension in order to manage the concerns in this case, especially due to the lack of

engagement from Mrs Kavanagh, there is nothing to suggest that the conditions would be workable or appropriate.

Ms Girven referred the panel to the NMC guidance SAN-3d in respect of suspension orders. She submitted that a suspension order would not be sufficient in this case. She submitted that in looking at the factors firstly, whether it is a single instance of misconduct, but where a lesser sanction is not sufficient, she submitted that this is not a single instance of misconduct as there are two separate instances. She acknowledged that they are close together in time and relate to the same employer but submitted that suspension is not suitable due to the lack of any insight demonstrated.

Ms Girven submitted that there is evidence of attitudinal problems as outlined in her submissions in respect of conditions of practice, especially in Mrs Kavanagh asking a junior colleague to cover up her actions and the lack of acknowledgement of the seriousness of her actions. She accepted that there has been no evidence of repetition of behaviour since the incident but highlighted that it does not seem that Mrs Kavanagh has worked as a registered nurse since, which would explain why there is no evidence of repetition.

Finally, regarding whether the panel can be satisfied that the nurse has insight and does not pose a significant risk, Ms Girven submitted that given the panel have found that Mrs Kavanagh does not have any personal insight and there is a risk of repetition, there is no developing insight in this case. She submitted that in light of all of this, a suspension order is not sufficient, and the only appropriate order is one of a striking off order.

Ms Girven submitted that when looking at the NMC's sanction guidance, it states that a striking-off order is likely to be appropriate when what the nurse has done is fundamentally incompatible with being a registered professional, and there are some key factors that should be considered before imposing such an order. Firstly, whether the regulatory concerns raised fundamental questions about the registrant's professionalism which Ms Girven submitted they do in this case, due to the dishonesty

involving covering up an error involving other colleagues and the fundamental nature of the mistakes made.

Secondly, whether public confidence in nurses can be maintained if the nurse is not removed. Ms Girven submitted that this is not the case here due to the seriousness of the concerns and that the public would expect that a registrant who actively tried to cover up an error, who has not engaged with the NMC and who has failed to show any insight or strengthening practise, would not be permitted to practise as a nurse. Ms Girven submitted that public confidence could not be upheld by any other order than a striking off order. Further, a striking off order would sufficiently protect the public and maintain professional standards.

Ms Girven acknowledged that a suspension whilst in place has in effect the same impact as a striking off order and that Mrs Kavanagh would not be permitted to practise. However, she submitted that the only appropriate order in this case is a striking off order due to Mrs Kavanagh's failure to engage or show any insight. For all those reasons, the NMC's position is that the only appropriate sanction is one of a striking off order. Ms Girven acknowledged that this would have a detrimental impact Mrs Kavanagh, and there is a need for any order imposed by the panel to be proportionate. However, she submitted that a striking-off order is the only order that can sufficiently protect the public and uphold public confidence in the profession, and so it is the proportionate and most appropriate order that should be made.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Dishonesty
- A lack of insight
- Conduct which put Resident A at risk of suffering harm in charges 1 to 6.

The panel also took into account the following mitigating features:

- [PRIVATE]
- Some local admissions
- Positive account from Resident A regarding how Mrs Kavanagh attended to him.

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.

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

The panel next considered whether placing conditions of practice on Mrs Kavanagh's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Although the misconduct identified in this case could be addressed through retraining, Mrs Kavanagh has not been engaging with the proceedings and there is no evidence before the panel that she is practising anywhere at the moment.

Furthermore, the panel concluded that the placing of conditions on Mrs Kavanagh's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, although the misconduct was serious, it was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a

suspension may have a punitive effect, it would be unduly punitive in Mrs Kavanagh's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Kavanagh. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

In making this decision, the panel carefully considered the submissions of Ms Girven in relation to the sanction that the NMC was seeking in this case. However, the panel considered that there is no evidence of deep-seated attitudinal problems. There was no personal gain, and it was a single incident of dishonesty. The panel considered that a striking-off order would be disproportionate at this stage. The panel determined that if Mrs Kavanagh engaged with the proceedings, the conduct could potentially be remediated.

The panel determined that a suspension order for a period of one year was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A detailed reflective statement
- Up to date medical information
- Further training such as duty of candour

- Testimonials from any current employer or unpaid voluntary work
- Attendance at future hearings

This will be confirmed to Mrs Kavanagh in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Girven. She submitted that an 18-month interim suspension order should be imposed to cover the 28-day appeal period before the substantive order comes into effect. She acknowledged that the main suspension order would lapse if no appeal were made. She submitted that an interim suspension order should be imposed on the same grounds as set out in the panel's reasons of finding impairment.

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 any potential appeal period.

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

That concludes this determination.