Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
15 – 19 and 23 – 26 January 2024

Virtual Hearing

Name of registrant:	Aneta Stachon
NMC PIN:	10K0229C
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – 29 November 2010
Relevant Location:	Bournemouth, Christchurch and Poole
Type of case:	Conviction/Misconduct
Panel members:	Lucy Watson (Chair, Registrant member) Sandra Lamb (Registrant member) Alex Forsyth (Lay member)
Legal Assessor:	Charles Parsley
Hearings Coordinator:	Jumu Ahmed
Nursing and Midwifery Council:	Represented by Giedrius Kabasinskas, Case Presenter
Mrs Stachon:	Present and represented by Faye Rolfe, instructed by the Royal College of Nursing (RCN)
Facts proved by way of admission:	Charge 1
Facts proved:	N/A
Facts not proved:	Charge 2
Fitness to practise:	Impaired
Sanction:	**Suspension order (3 months) without review**
Interim order:	**No order**

Rule 29.2

At the outset of the hearing, the Legal Assessor noted that the schedule of charges contained an allegation of a conviction and an allegation of misconduct and referred to Rule 29.2 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules), which states:

> *Joinder*
>
> *29. (1) Unless of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal assessor, the [Fitness to Practise] Committee may consider an allegation against two or more registrants at the same hearing where –*
>
> *(a) the allegation against each registrant arises out of the same circumstances; or*
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> *(b) in the view of the Committee, a joint hearing is necessary.*
>
> *(2) The [Fitness to Practise] Committee may consider one or more categories of allegation against a registrant provided always that an allegation relating to a conviction or caution is heard after any allegation of misconduct has been heard and determined.*

Ms Rolfe, on behalf of you, submitted that it was not normal for the panel to hear misconduct and conviction allegations together, or to hear about convictions before making a decision about whether or not misconduct is proved. She said that this may be because it may cause some prejudice to a registrant if the panel had knowledge of the conviction when determining whether there was misconduct. However, she acknowledged that in this case, the factual nature of the allegations is such that it would be practically impossible for the panel to understand the misconduct charge, charge 2, without having the knowledge of the conviction charge, charge 1.

Ms Rolfe submitted that she does not object to the charges being heard together, However, she invited the panel to make a determination on the misconduct charge without being prejudicial towards you knowing that you were under the influence of alcohol which resulted in a criminal conviction as this was not in dispute and is accepted. She asked the panel to not hold this against you when deciding the facts on charge 2.

Mr Kabasinskas, on behalf of the Nursing and Midwifery Council (NMC), submitted that it would not be possible to separate the charges for the panel to hear the matters separately, which is the reason why the charges were drafted this way. He submitted that, as the fact and evidence relating to your conviction is so inextricably linked, it would risk an unfair or perverse outcome of the proceedings to deal with them separately. He referred the panel to the case of *R (on the application of Hill) v Institute of Chartered Accountants in England and Wales* [2013] EWCA Civ 555. He submitted that it was not possible for the NMC Rules to predict every eventuality and a departure from the Rules to hear these charges separately would not prohibited in this case.

Mr Kabasinskas also referred the panel to the NMC's Guidance on 'Hearing fitness to practise allegations together' (Reference: CMT-1) which stated:

> *'If allegations relate to a criminal caution or conviction, this must be heard after any allegation of misconduct has been decided, unless the matter requires the panel to hear evidence about the conviction/caution to understand the misconduct.*
>
> *For instance, a misconduct allegation that the nurse, midwife or nursing associate failed to disclose a conviction to their employer. The panel may also hear evidence about a conviction where it is relevant and fair to include it as evidence of fact or bad character.'*

Mr Kabasinskas, therefore, submitted that it would be fair for the panel to hear both charges together.

The panel heard and accepted the advice of the legal assessor which included a reference to the NMC's Guidance on Hearing fitness to practise allegations together' (Reference: CMT-1) and to the case of *Hill v Institute of Chartered Accountants* . He advised the panel that the wording of Rule 29.2 did not appear to allow any exceptions to the requirement that an allegation of a conviction must be heard after an allegation of misconduct has been heard and determined. Where, as in this case, the listing of the two allegations together was an irregularity, it was open to an informed registrant to waive that irregularity in the same way as they could waive an irregularity where insufficient notice of a hearing has been given. In this case, Ms Rolfe on your behalf, had indicated that she was content to waive the irregularity.

The panel took into account the submissions provided by Mr Kabasinskas and Ms Rolfe, the advice of the legal assessor as well as the NMC's Guidance on 'Hearing fitness to practise allegations together' (Reference: CMT-1) and the case of *Hill v Institute of Chartered Accountants.* The panel acknowledged that hearing both of these charges together was an irregularity.

The panel first considered as to whether the two charges are founded on the same facts. It determined that, although it would be possible to make a determination on misconduct if the conviction charge was not disclosed, these two charges are linked to the issue of driving whilst under the influence of alcohol. The panel took into account that Ms Rolfe had consented and waived the requirement that the allegations of misconduct and of the conviction must be heard separately and consecutively. Whilst it was an irregularity to hear the two charges together, the panel, as an experienced and professional panel, could put the conviction charge out of its mind when making a determination on misconduct so that you are not unfairly prejudiced.

Further, the panel was of the view that when considering misconduct, it would take into account your intentions and your state of mind and the evidence related specifically to this charge, rather than the conviction.

Details of charge

That you, a registered nurse:

1. On 13 March 2020 at Poole Magistrates Court were convicted of the following offence;

> On 25/02/2020 drove a motor vehicle after consuming so much alcohol that the proportion of it in your breath exceeded the prescribed limit contrary to section 5 (1) (a) of the Road Traffic Act and Schedule 2 to the Road Traffic Offenders Act 1988.

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

2. On 25 February 2020 intended to attend your employment at Zetland Court Care Home whilst under the influence of alcohol.

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

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

Ms Rolfe made an application that this case be held partly in private on the basis that proper exploration of your case involves [PRIVATE]. The application was made pursuant to Rule 19 of the Rules.

Mr Kabasinskas did not object to this application.

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.

Having heard that there will be reference to [PRIVATE], the panel determined to hold the hearing in private as and when such issues are raised.

Background

The charges arose whilst you were employed as a registered nurse by Zetland Court Care Home (the Home).

A referral was made by the Alliance Disclosure Team at Dorset Police. On 13 March 2020 at Dorset Magistrates Court, you were convicted of the following offence:

> 'On 25/02/2020 … drove a motor vehicle … after consuming so much alcohol that the proportion of it in your breath exceeded the prescribed limit contrary to section 5 (1)(a) of the Road Traffic Act and Schedule 2 to the Road Traffic Offenders Act 1988.'

The circumstances of the incident were that on 25 February 2020, a call was received by Dorset Police from a member of the public stating that they had followed a vehicle from Beechwood Avenue Bournemouth which had pulled out in front of them and was seen swerving across the road making contact with the kerb. The member of the public followed the vehicle until it pulled into the Home. The police arrived and saw the vehicle parked in a parking bay with you, a single occupant in the driver's seat. The police saw you exit the car with the keys in your hand. You gave a positive road-side breath test and were arrested on suspicion of driving over the permitted limit of alcohol and conveyed to Bournemouth Custody where an evidential intoxilyser machine confirmed this.

You were convicted of driving a motor vehicle after consuming alcohol such that the proportion of it in your breath exceeded the prescribed limit. You received a fine, were ordered to pay costs, and were disqualified from driving for 40 months with the option of

reducing the term of disqualification upon completion of a Drink Driving Rehabilitation Course.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Rolfe, who informed the panel that you admitted charge 1. The charge concerns your conviction and, having been provided with a copy of the memorandum of conviction, along with your admission to charge 1, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

The panel therefore finds charge 1 proved, by way of your conviction and admission.

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

- Witness 1: Deputy Home Manager at the Home at the time of the incident.

Decision and reasons on application to admit written statement and exhibits of Ms 4 as evidence

The panel heard an application made by Mr Kabasinskas under Rule 31 to allow the written statement and exhibits of Ms 4 into evidence. He informed the panel that these documents have been agreed between the NMC and the RCN.

Ms Rolfe agreed to this application to admit the written statement and exhibits of Ms 4 as evidence. She also informed the panel that these have been agreed between the parties.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept the written statement and exhibits of Ms 4 into evidence, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application to admit written statement, two exhibits and a supplementary statement of Mr 5 as evidence

The panel heard an application made by Mr Kabasinskas under Rule 31 to allow the written statement and exhibits of Mr 5 into evidence. He informed the panel that these documents also have been agreed between the NMC and the RCN. He submitted that these are non-controversial as they are evidence of a shift pattern and the attendance at work of Witness 2. He, therefore, invited the panel to admit these documents provided by Mr 5 into evidence.

Ms Rolfe agreed to this application to admit the written statement, the supplementary statement and exhibits of Mr 5 into evidence. She also informed the panel that these have been agreed between the parties and there would have been no questions for this witness.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application under Rule 31.

In these circumstances, the panel came to the view that it would be fair and relevant to accept the written statement, supplementary statement and two exhibits from Mr 5 into evidence. The panel noted that Mr 5's supplementary statement is not signed or dated. However, the panel would give what it deemed appropriate weight once it had heard and evaluated all the evidence before it.

Decision and reasons on application to admit your reflective piece, the 'Drink Drive Rehabilitation Course Completion Certificate' and [PRIVATE] into evidence

The panel heard an application made by Mr Kabasinskas under Rule 31 to allow your reflective piece, the ‘Drink Drive Rehabilitation Course Completion Certificate’ and [PRIVATE], submitted by you to the NMC, into evidence. He submitted that these are relevant and it is fair for the NMC to rely on these documents as evidence as they are provided by you.

Ms Rolfe submitted that, although these documents were technically evidence provided by you, she was content for those documents to be before the panel.

The panel heard and accepted the legal assessor’s advice.

The panel was satisfied that it would be fair and relevant to admit your reflective piece, the ‘Drink Drive Rehabilitation Course Completion Certificate’ and [PRIVATE] into evidence.

Decision and reasons on application to admit emails between the NMC and the RCN between 22 May and 2 July 2023 into evidence

Mr Kabasinskas submitted that the correspondence between the NMC and the RCN, asking you to clarify who you spoke to at the Home on the day in question, should be admitted as it could be relevant, particularly during cross examination with any of the witnesses.

Ms Rolfe did not object.

The panel heard and accepted the advice of the Legal Assessor.

The panel was satisfied that it would be fair and relevant to admit the email correspondence between the NMC and the RCN between 22 May and 2 July 2023 into evidence and to attach appropriate weight once it had heard and evaluated all the evidence before it.

Decision and reasons on application to admit the memorandum of conviction into evidence

Mr Kabasinskas submitted that the memorandum of conviction should be admitted as it is direct evidence as to the facts in charge 1 and it is signed by the court as conclusive proof of your conviction.

Ms Rolfe was content for the memorandum of conviction to be admitted into evidence.

The panel heard and accepted the advice of the Legal Assessor.

The panel noted that the copy of the certificate of conviction was certified by a competent officer of the court and as such is conclusive proof of your conviction under Rule 31(2)(a) and under Rule 31(2)(b) the findings of fact upon which the conviction was based were admissible as proof of those facts.

Decision and reasons on application to admit the 'Police MG5' into evidence

Mr Kabasinskas invited the panel to admit the 'Police MG5' into evidence. He submitted that there is nothing controversial in this document and would be relevant information as to the facts of the case. He said that under Rule 31(2)(b), it states:

> *(2) Where a registrant has been convicted of a criminal offence –*
>
> > *(b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*

Mr Kabasinskas submitted that the Police MG5 is relevant and fair and should be admitted into evidence. He said that under Rule 31(1), evidence of the underlying facts is admissible if it is not inconsistent with the underlying conviction. He referred the panel to the case of *Kirk (Petitioner) v The Royal College of Veterinary Surgeons* [2003] UKPC 47.

Ms Rolfe stated that in these circumstances, in particular where a guilty plea was entered on first appearance, and where the only evidence of this was entered on the Police MG5 document, rather than there needing to be a trial, it would be appropriate to admit this as you accepted the correctness of the Police MG5 by having entered the guilty plea to it.

The panel heard and accepted the advice of the Legal Assessor.

In these circumstances, the panel determined that it would be fair and relevant to accept the 'Police MG5' into evidence as this is evidence on which the guilty plea was first based.

(Decision and reasons on facts continued)

The panel heard evidence from you under oath.

The panel also heard live evidence from the following witness called on your behalf:

- Witness 2: Shift Leader at the Home at the time of the incident.

On day 3 of the hearing, you had planned to call Ms 3 as a witness on your behalf. However, Ms Rolfe had told the panel that efforts had been made to contact Ms 3 to no avail. Ms Rolfe had requested for a short break to allow further efforts to be made to secure Ms 3's attendance.

On day 4 of the hearing, just after 9am, Ms Rolfe informed the panel that the RCN had made further efforts to get in contact with Ms 3. However, the RCN had received no response. Ms Rolfe, therefore, made an application to admit Ms 3's witness statement into evidence. Whilst Ms Rolfe was making this application, Ms 3 had sent a message to her at 9:22am, which stated:

> *'My name is* [Ms 3]. *I cant speak at the moment as I'm working. I'm finishing my work at 5 pm. I'm going to ring you back after 5 pm.* [PRIVATE] […]'

Ms Rolfe acknowledged that the panel had given her time to secure Ms 3's attendance at the hearing. She told the panel that from the attendance note forwarded by the RCN, it shows that efforts were only made a week before the hearing to secure her attendance. She told the panel that the RCN cannot provide evidence of any other communication that was made in relation to this hearing. She submitted that from the communication bundle, it was her impression that Ms 3 had not been aware of this hearing and that you may have been let down by the RCN's failure to secure Ms 3's attendance.

Ms Rolfe formally asked the panel to take a break at this time of the hearing, to allow her to speak to Ms 3 after 5pm, as per her message. She acknowledged that there was no guarantee that a phone call at this time would take place. However, while it seemed to suggest that the RCN had not made sufficient efforts to secure Ms 3's attendance, she would be grateful for a further opportunity to communicate with Ms 3 with a view to securing her attendance.

Mr Kabasinskas opposed this application to take a break at this time in the hearing to allow Ms 3's attendance. He submitted that the evidence which had been put before the panel to secure Ms 3's attendance was insufficient and wholly unsatisfactory. He submitted that the NMC had complied with all their obligations and had given you and the RCN sufficient time to notify all of your witnesses. He further submitted that as you knew Ms 3 personally, you could have notified her of this hearing and that there is no evidence of this.

Mr Kabasinskas told the panel that he had no issue with taking a break for the afternoon but that there could be a possibility that this break would be a waste of time if the witness does not attend. He invited the panel to consider the timing of this hearing when making a decision on this application.

In response to Mr Kabasinskas, Ms Rolfe told the panel that she had asked the RCN to confirm once and for all the efforts made to secure Ms 3's attendance, but that there appears to be an omission on the RCN's behalf. She told the panel that you had not had

personal contact with Ms 3 since July 2023 and that it was not your job to notify your witnesses. She submitted that it was your right to rely on the RCN to secure Ms 3's attendance, and that this was not done sufficiently.

The panel heard and accepted the advice of the legal assessor.

The panel considered this application carefully. It accepted that there was a time restriction to hear this case. However, it considered that there were significant inconsistencies in the evidence and that it would benefit from hearing the evidence from Ms 3 as she was a key witness who may have been present at the time of the phone call, particularly as charge 2 was a serious charge and the sanction bid by the NMC was high.

The panel acknowledged that the RCN had not made sufficient efforts to notify and secure Ms 3's attendance in this hearing. The panel was of the view that it was not your responsibility to notify and secure the attendance of witnesses, but the RCN's. It also noted that Ms 3 had sent a message to Ms Rolfe saying that she would possibly be available for a discussion after 5pm on day 4.

The panel was of the view that, since it had reasonable time but not an ever expanding amount of time, it would be fair and reasonable to you to allow a short break in the hearing for Ms Rolfe to speak to Ms 3 to make efforts to secure her attendance. The panel was of the view that the latest time it would be willing to give Ms Rolfe was until 9:00am on 23 January 2024 to secure Ms 3's attendance.

On day 5 of the hearing (19 January 2024), Ms Rolfe told the panel that despite Ms 3 stating in her message that she would call her after 5pm, there was no follow-up call. She told the panel that she messaged Ms 3 again in the morning and heard no response. Therefore, she requested that the panel accept her application to admit Ms 3's witness statement into evidence.

Decision and reasons on application to admit Ms 3's written statement under Rule 31

The panel heard an application made by Ms Rolfe under Rule 31 to allow the digitally signed and dated written statement of Ms 3 into evidence. [PRIVATE]. She also informed the panel that Ms 3 made references in her evidence that she was listening to the telephone conversation and was aware of who was on the other end of that phone call.

Ms Rolfe said that in the normal course of events, the panel would hear from Ms 3 and that it would have the opportunity to test the veracity of the evidence given by Ms 3 and to hear any cross examination that the NMC may wish to put to her. She stated that the panel would also have had the opportunity to test the reliability of that evidence and assess as to whether Ms 3 was a reliable and credible witness. However, it was unfortunate as she was not present and the expectation had been that she would attend. She referred the panel to Rule 31 and stated that the test is whether or not it would be relevant and fair to admit Ms 3's written statement as hearsay evidence.

Ms Rolfe submitted that Ms 3's evidence would be 'very relevant' to the panel when considering the veracity of your evidence, particularly where it was someone who purported to be there at the time when you made your telephone call to the Home. Therefore, the relevance test is not questionable. She stated that the fairness test was the issue that the panel must consider. Ms Rolfe invited the panel to consider whether it would be unfair on you to not have the evidence of Ms 3. She stated that it was not your fault that Ms 3 was not present and it had become apparent on days 4 and 5 that she may have not been informed in a timely manner by the RCN. Ms Rolfe submitted that there is a particular disadvantage to you and you 'lacked a pillar of support'.

Ms Rolfe referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). She said that it should not be a routine matter for the panel to simply allow to admit a statement, but to consider fairness. She submitted that the panel can attach the appropriate weight to give to the evidence in the absence of a witness. She said that there should be a good and cogent reason for the non-attendance of the witness

but the absence of such a reason does not automatically result in the need to exclude the evidence. She submitted that in this case, she did not have a reason as to Ms 3's non-attendance.

Ms Rolfe then said that the next question the panel must consider was whether the evidence was the sole and decisive evidence in relation to the charge. [PRIVATE]. Further, the panel also has your evidence to compare the evidence when testing reliability of that statement. Further, Ms Rolfe submitted that another factor that the panel must consider is the seriousness of the charge and the impact of any adverse findings on a registrant's career. She said that this case was important and that it is important for a nurse to have their case fairly adjudicated and that all the evidence is put before the panel for its consideration, particularly as you want to return to the nursing profession.

In terms of the steps taken to secure Ms 3's attendance, she submitted that correspondence has been provided between the RCN and Ms 3, but that the RCN could have done more. She said that the NMC had no prior notice that Ms 3's statement would be read into record until now.

Ms Rolfe informed the panel that there had been a previous hearing and that this hearing was a 're-trial'. She said that all the evidence heard by this panel was heard by a separate panel in July 2023, which Ms 3 had attended and had given oral evidence. However, she said that the first hearing did not conclude through no fault of either the NMC or you. She submitted that this demonstrates that Ms 3 was not a figment of imagination and that she was a real person who had been prepared to come and give evidence and in fact did so in July 2023.

Ms Rolfe told the panel that it would be unfair to you not to admit Ms 3's statement. Ms 3 was willing to stand up and give evidence previously, it is a relevant statement and the panel as an experienced panel can determine the relevant weight to give to it.

Mr Kabasinskas accepted that the panel had to consider relevance and fairness when deciding admissibility. He said that it would be correct for the panel to first read Ms 3's

witness statement and then decide on its admissibility. He referred the panel to the case of *Thorneycroft* and *El Karout v The Nursing and Midwifery Council* [2019] EWHC 28 (Admin). He told the panel that it must first decide whether the evidence is admissible and then consider what weight it would deem appropriate later. Further, the panel must consider whether or not there was a good and cogent reason for the non-attendance of Ms 3 and also whether the evidence is the sole and decisive evidence in relation to charge 2.

Mr Kabasinskas informed the panel that in relation to charge 2, Ms 3's statement is relevant. It is not the sole and decisive evidence for your case, but it is 'crucial evidence' as to whether Ms 3 was present during the telephone call to the Home on the day in question.

[PRIVATE]. Mr Kabasinskas gave the panel examples of the inconsistencies in the evidence and submitted that it was important for the NMC to test that evidence in cross examination. Further, in terms of whether Ms 3 had any reason to fabricate her evidence, Mr Kabasinskas submitted that it could be possible that this is a story created by three friends: Witness 2, Ms 3 and you. He also submitted that the charge against you was serious.

Mr Kabasinskas further submitted that there was no good and cogent reason for Ms 3's non-attendance. He said that the NMC did not have prior notice that Ms 3's statement would be read into evidence. In terms of the previous hearing, he submitted that it was neither here nor there that Ms 3 was present at the last hearing because this panel has to consider the evidence it had before it now. He also submitted that it was never the NMC's case that Ms 3 was a fictitious character but that her evidence was not truthful. Therefore, he submitted that Ms 3's evidence was not reliable.

Mr Kabasinskas also referred the panel to the case of *Squire v Chief Constable of Thames Valley Police* [2016] EWCA Civ 1315.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far

as it is ‘fair and relevant’, a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. It also included reference to the principles in the case of *Thorneycroft V Nursing and Midwifery Council* [2014] EWHC 1565 admin and *El Karout v NMC* [2019] EWHC 28 (Admin).

The panel noted that the burden of proof was on the NMC to prove its case. It was Ms Rolfe who has made this application for Ms 3’s evidence to be admitted as hearsay evidence.

The panel gave consideration to the application to admit Ms 3’s statement. The panel noted that Ms 3’s statement had been prepared in anticipation of being used in these proceedings and contained a statement of truth: ‘*I BELIEVE THAT THE FACTS STATED IN THIS WITNESS STATEMENT ARE TRUE. I UNDERSTAND THAT PROCEEDINGS FOR CONTEMPT OF COURT MAY BE BROUGHT AGAINST ANYONE WHO MAKES, OR CAUSES TO BE MADE, A FALSE STATEMENT IN A DOCUMENT VERIFIED BY A STATEMENT OF TRUTH WITHOUT AN HONEST BELIEF IN ITS TRUTH*’ and that it was digitally signed and dated by her.

The panel considered whether you would be disadvantaged by the change in the RCN’s position of moving from reliance upon the live testimony of Ms 3 to that of allowing hearsay testimony into evidence.

The panel first determined whether Ms 3’s statement was the sole and decisive evidence in support of the charge. It determined that the content of the hearsay evidence was not sole or decisive evidence as it also had yours and Witness 2’s evidence. The panel was of the view that Ms 3’s hearsay evidence provided context in relation to charge 2.

The panel considered whether Ms 3 would have any reason to fabricate her evidence. It was of the view that Ms 3 was a good friend of yours and had encouraged you to drink the alcohol and therefore may feel some responsibility.

The panel was of the view that charge 2 was serious for you, taking into account the NMC's sanction bid, and the impact which adverse findings might have on your career. The panel also noted your ambition to return to nursing practice.

The panel next considered whether there was a good reason for the non-attendance of Ms 3. It noted that the NMC did not have prior notice that Ms 3's witness statement was to be read into record and that the RCN did not appear to have taken sufficient steps to secure Ms 3's attendance at this hearing when she had attended the previous hearing in July 2023. [PRIVATE]. In light of all of this, Ms 3 may not have been able to attend the hearing to give her evidence. The panel was also of the view that it was the responsibility of the RCN to take steps to ensure that your witnesses are to attend, and this was not your responsibility.

The panel determined that it would be fair to accept this application as Ms 3's evidence could provide information about [PRIVATE]. In so doing, the panel noted that there were inconsistencies between this evidence and your evidence as to the time of your phone call to the Home.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Ms 3, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on facts continued

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.

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 both the NMC and Ms Rolfe.

The panel then considered the disputed charge and made the following finding.

Charge 2

That you, a registered nurse:

On 25 February 2020 intended to attend your employment at Zetland Court Care Home whilst under the influence of alcohol.

This charge is found NOT proved.

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

[PRIVATE]. The expectation was that a staff member would inform the Home manager or deputy, the nurse in charge or someone from the management team that they would be absent from work. [PRIVATE]. However, Witness 1 said that it is not only registered nurses that answered the telephone. Witness 1 gave evidence that she was telephoned at Home at some point on the evening on 25 February 2020 by the day shift nurse, possibly Mr 7, she was informed that the registered nurse assigned on the night shift had not arrived for duty. There was no agency cover booked. Therefore witness 1 returned to the Home and covered the night shift as the registered nurse.

However, Witness 2 had told the panel that any member of staff may answer a telephone call to the Home and that the Home phone was not manned by the management team. Witness 2 also stated that she had experience of staff not attending for their shift when the message detailing their absence had not been passed on.

[PRIVATE]. The reason for her call to you was that that she really needed the dog food, which you had bought for her, and asked if you could bring it to the Home that night.

[PRIVATE]. The panel also noted from Witness 2's evidence that she thought that you had only come to the Home in response to her request to drop off the dog food, and she confirmed that you did not go into the Home at all. Witness 2 told the panel that she needed the dog food because she did not want to go looking for it after her night shift and that she had paid for this in advance. [PRIVATE]. The panel was of the view that this evidence provided a persuasive explanation as to why you attended the Home that night.

[PRIVATE].

[PRIVATE].

The panel took into account the Police MG5 document. It noted that the 'Summary of the Key Evidence' in that document relates to the criminal charge of which you were convicted (charge 1) and does not include any details of what you were doing in the car park and why you were there which might have provided evidence in relation to charge 2. The panel noted that by the time the police arrived, you may have already given the dog food to Witness 2 and so therefore the police would not have witnessed this. Further, whilst Mr 7 was the only person who had said that the police had come to the door of the Home, this was hearsay evidence from Witness 1 for which there was no corroboration and which could not be tested.

The panel also noted that there is no evidence before it to suggest that you had intended to enter the Home and work your night shift whilst under the influence of alcohol. There is no direct evidence of anyone seeing you in the car park other than from Witness 2 when she collected the dog food from you.

[PRIVATE]. The panel took into account your evidence and noted that you had provided two different times when you said you had made the phone call to inform the Home that you would not be working on 25 February 2020. It considered that an explanation for this discrepancy might be that one version was included in a brief paragraph in your reflective piece the purpose of which was to reflect on your conviction for driving whilst under the influence of alcohol and its impact on your role as a nurse. [PRIVATE]

[PRIVATE].

The panel accepted Witness 2's evidence that she had asked you to come to the Home to drop off the dog food at the Home's car park, even though you told her that you were not intending to work.

The panel reminded itself that in order for it to find charge 2 proved, it has to be satisfied that you intended to attend work under the influence of alcohol. On the evidence which it has heard, the panel is unable to conclude that it is more likely than not that this was your intention when you drove to the Home's car park.

The panel was therefore of the view that the NMC had not proved its case on the balance of probabilities. In light of this, the panel finds this charge not proved.

Fitness to practise

Having found charge 2 not proved, the panel went on to consider your fitness to practise is currently impaired by reason of your conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Submissions on impairment

Mr Kabasinskas addressed the panel on the issue of impairment and reminded the panel 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) Grant* [2011] EWHC 927 (Admin) and *Hariharan v General Medical Council* [2018] WL 05985418 and to the Nursing and Midwifery Order 2001.

Mr Kabasinskas submitted that as the panel found charge 2 not proved, it was not concerned about misconduct but of impairment only, by reason of your conviction. He informed the panel that in considering public interest, it should consider the need to uphold proper professional standards and the public confidence in the profession. He submitted that if the panel was not to find current impairment by way of your conviction, this would go against the public interest ground.

[PRIVATE].

Mr Kabasinskas referred to the Dame Janet Smith "test" and submitted that limb (b) and limb (c) are engaged in that your conduct did bring the nursing profession into disrepute and had breached a number of the fundamental tenets of the nursing profession namely: paragraph's 20, 20.1, 20.3, 23 and 23.2 of the NMC Code.

Mr Kabasinskas also referred the panel to your reflective piece in which you had stated that you had self-referred yourself to the NMC. He said that he did not find your self-referral form on the NMC system, in relation to the 2020 conviction. However, following your conviction on 13 March 2020 the referral was made by the police to the NMC on 14 April 2020.

In relation to impairment, Mr Kabasinskas referred the panel to the case of *Cohen v GMC* [2008] EWHC 581 (Admin) and to 'Can the concern be addressed?' (Reference: FTP-13A) in the NMC's Fitness to Practice Library Guidance. He submitted that your conduct may not be possible or would be difficult to address as this is a repeated offence and taking steps such as training courses, supervision at work, are unlikely to address this concern. He also referred to 'Has the concern been addressed?' (Reference: FTP-13b). He submitted that you have shown limited insight. He submitted that in your reflective statement, you stated that you were persuaded or influenced by a friend to drink alcohol for the 2015 conviction and for the 2020 conviction in similar circumstances. He submitted that this was a significant failing on your part, particularly as you were convicted twice of the same offence, which means that you did not learn from the first conviction. He further submitted that, from your reflective statement, you were more concerned about what

would appear on your DBS certificate and the length of time it would take you to go to work, rather than what you have learnt and the steps you have taken or can take to address the concerns.

Mr Kabasinskas referred the panel to your Drink Driving Rehabilitation Course Certificate and submitted that it does not provide much information, but rather certifies what you had completed. He said that it would be expected of you to include in your reflective statement what you have learnt from this course and how you can apply it to address the concerns. He said that this was more like a ‘tick box exercise’ rather than focusing on addressing the issues. Therefore, and particularly as there had been two convictions of a similar nature, the risk of repetition is not low.

In relation to your support network, Mr Kabasinskas submitted that your reflective piece stated that you have the support of [PRIVATE] but does not explain what support you have put in place,. Further, he submitted that this contradicted what you had said in your oral evidence which is that you do not tell anyone of this and that you were not a person that seeks attention. He submitted that there is no evidence before the panel that you would seek support and not make irrational decisions if you were put in the same situation again. He submitted that, in relation to the 2020 conviction, it appeared that it was more important to deliver the dog food rather than assess the risk you pose to the public.

Mr Kabasinskas submitted that when the police had attended to you in 2020, it was not a matter of routine stop and search, but that a member of the public had called the police as they were concerned by your erratic driving and the fact that you mounted the pavement, veered into the opposite lane and narrowly avoided a collision. He said that you do not acknowledge that you had embarrassed the Home by being arrested there or how much damage or distress you may have caused to the Home if members of staff and residents had seen you be arrested.

[PRIVATE].

Mr Kabasinskas informed the panel that you did not know that you had to self-refer yourself to the NMC by way of your conviction and that you sought to push the blame on others for your drinking. He submitted that it was your responsibility to notify the NMC of your convictions and that you had failed to do so. He informed the panel that the Investigating Committee had directed the Registrar to remove your PIN from the NMC register in June 2021 and that you were re-instated again in October 2021. He said that you have not worked as a registered nurse since nor have you completed any training or courses to be up to date with your nursing skills, other than reading the Nursing Times.

Mr Kabasinskas submitted that the public interest ground is engaged and raised the concern about your professionalism and staying on the NMC register. He therefore invited the panel to find that your fitness to practice is impaired by reasons of your conviction.

Ms Rolfe told the panel that you had accepted that you had not self-referred yourself to the NMC for either the 2015 conviction or the 2020 conviction because you did not know this was required. She said that when you had received the paperwork from the NMC, you immediately spoke to a legal officer in the RCN, who informed you of your obligation to refer yourself to the NMC and instead of hiding yourself away, you set in motion a response through your representative at the RCN.

[PRIVATE].

Ms Rolfe submitted that your reflective piece does deal with your insight as well as your oral evidence in this hearing. She submitted that you had not ‘glossed over’ and focussed purely on the impact it had on you, but that you acknowledged the impact on your colleagues and the nursing profession. [PRIVATE].

Further, Ms Rolfe submitted that you had addressed the risk you posed to the public when driving under the influence of alcohol. She said that you acknowledged that you could have hurt a member of the public when you were driving and that you would not do this again. She referred to your reflective statement where you stated that your conduct would not be repeated again as you [PRIVATE] and were a member of the RCN. She said if you

found yourself in the same situation again you would talk to someone and you would not drink alcohol the day before and the day of driving. [PRIVATE].

In relation to the Drink Driving Rehabilitation Course, Ms Rolfe submitted that this course was relevant for someone whose sole regulatory concern was drink driving. She said that this course was approved by courts as being one that reduces the length of a person's driving ban if it were to be completed. She submitted that the very practical reflection to not drink the day before you intend to drive and seeking support demonstrated that you had taken steps to protect the public and to maintain public confidence.

Ms Rolfe submitted that this was an isolated drink driving case, albeit compounded by the fact there is also an 2015 conviction, which had no connection to your clinical practise and [PRIVATE]. [PRIVATE] and an error of judgement on one occasion which resulted in you being stopped by the police and therefore, to find that your fitness to practice is impaired by a single incident would be excessive. She submitted that since 2020, there had been no repetition of drink driving or any regulatory concerns and that you had been practising as a nurse without any other criticism, bar the fraudulent entry case, for 32 years. [PRIVATE]. She submitted that you've maintained contact with the NMC, have given evidence and been challenged as well as having your witnesses challenged. She submitted that this demonstrated that you were a responsible, dedicated, committed nurse to the profession, who wanted to return to nursing and can be trusted to 'not go off grid and start behaving in concerning ways'. She submitted that the panel had a reflective piece in front of it, in which you had considered the impact this had on your career, which is eloquently written despite English being your second language, and showed a commitment to improvement.

Further, Ms Rolfe said that you had not nursed for some time, since Covid-19 and that you had focussed on this in your second reflective statement. She said that you did nurse, and had nursed well, which can be seen from the references you had received. She told the panel that you worked in another nursing home for a year and a half until you were removed from the NMC register in June 2021 in the Fraudulent Entry Hearing. [PRIVATE]. However, this was a relatively short gap in your 32 year nursing career and that this does

not mean that you cannot be a nurse again. She said that you had been well regarded as a nurse for many years. She further submitted that, albeit you have not done anything other than keeping up with the Nursing Times, your skills are long standing and it is not beyond you by any means to get back up to date and be an excellent nurse again.

[PRIVATE].

For all those reasons, Ms Rolfe invited the panel to find that your fitness to practice was not impaired by reason of your conviction.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments including *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Decision and reasons on impairment

The panel went on to decide whether by reason of your conviction, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and 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.'

Whilst the panel noted that in this passage the Judge referred to determining impairment by reason of misconduct, the panel recognised that it should consider whether you are impaired on public interest grounds.

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) …

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 (b) and (c) were engaged in this case. The panel was of the view that you had brought the reputation of the nursing profession into disrepute and your actions would be considered disreputable by members of the profession and by the public in that they resulted in a criminal conviction on two separate occasions and on the second occasion, you were seen to be driving erratically and could have harmed a member of the public. The panel found that your conviction had breached the fundamental

principles of the nursing profession outlined in the Code, in particular paragraphs 20, 20.1, 20.3, 20.4, 23 and 23.2. The panel considered your actions to be below the standards expected of a professional and a registered nurse.

Recognising the need for a forward-looking approach, the panel considered whether you had shown insight into your conviction and the circumstances surrounding this. It noted that you had taken a Drink Driving Rehabilitation Course after your first conviction in 2015 and that you repeated the offence again in 2020.

The panel went on to consider whether you are liable to act in a way that would bring the profession into disrepute and breach fundamental tenets of the profession in the future.

The panel reviewed the oral and documentary evidence, including your reflective piece, the impairment bundles and the addendum reflection January 2024. The panel considered that your previous conviction in 2015 for drink driving is relevant. The panel did not find the testimonials that you had provided were helpful as they referred principally to your clinical practice. Furthermore, the panel was not satisfied that you had spoken with colleagues about your convictions and/or any strategies you may have taken to prevent a repeated offence and the impact this has had on confidence in the nursing profession.

Regarding insight, the panel considered that you have demonstrated a partial understanding and insight into your failings and how your actions put the public at a risk of harm. [PRIVATE]. However, the panel noted that you were convicted of drink driving on two occasions. It noted from your reflective piece and from your oral evidence that both of your convictions arose from similar circumstances in that you were influenced or persuaded by a friend to drink on each occasion and subsequently made the poor decision to drive after drinking alcohol. It was concerned about your poor decision making skills which resulted in the repeated criminal offence.

The panel determined that you have not sufficiently demonstrated how you would address a similar situation in the future. It noted that you have a support network and [PRIVATE], but these strategies are not well developed at this time. Further, in its consideration of

whether you had remedied the concerns to reduce a risk of repetition, the panel noted that you had taken the Drink Driving Rehabilitation Course twice and appeared that you had not learnt from it the first time as you had re-offended.

The panel considered that whilst your convictions for drink driving did not relate to your clinical practice or duties as a professional nurse, it did bring into question errors of judgement in deciding to accept a drink and then to drive which could have harmed a member of the public. Further, [PRIVATE], it was concerned that in 2020 when you were charged, you were not aware of the requirements of the code of practice as a professional nurse that you should have self-referred yourself whilst under convictions to the NMC, not just your employer.

The panel determined that a finding of impairment on the ground of public protection was not appropriate as your conviction was not related to your clinical practice or to patient harm.

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

The panel also had regard to the 'Drink Driving Offences' (Reference: FTP-2c-2) in the NMC's Fitness to Practice Guidance. This guidance states that:

> *'drink driving offence will only call into question a nurse. midwife or nursing associate's fitness to practise if* […]
>
> […] *It is a repeat offence*
>
> […] *If a nurse midwife or nursing associate has been convicted of a drink driving offence decision makers should consider whether we need to explore any*

underlying alcohol issues that indicate the nurse. midwife or nursing associate's fitness to practise is impaired by way of their health.'

[PRIVATE].

The panel determined that a finding of impairment on public interest grounds is required as the charges are serious, particularly for a nurse who has been convicted twice of drink driving. The panel concluded that public confidence in the nursing profession and the NMC as its regulator would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that your 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 3 months without a review. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case, the submissions from Mr Kabasinskas and Ms Rolfe, 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 Kabasinskas informed the panel that in the Notice of Hearing, dated 14 December 2023, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

During the course of the hearing, the NMC revised its proposal in light of the panel's findings and submits that a caution order would be more appropriate if the panel considered that there was no risk of repetition. However, if the panel determined that there is a risk of repetition, then a suspension order would be more appropriate and proportionate.

Mr Kabasinskas referred to the NMC's Sanctions Guidance (Reference: SAN-1). He told the panel that the first principle it must consider was proportionality. However, that the overall objective is public protection, upholding the public interest as well as your interest. He stated that in regulatory proceedings which arise from criminal convictions, the tribunal's task is not to punish a second time for a criminal conviction. Instead, its function is to decide what, if any, action is needed for the protection of the public and to uphold confidence in the nursing profession and in this exercise matters of mitigation are likely to be less significant.

Mr Kabasinskas told the panel that it should also consider the aggravating and mitigating features. He submitted that the aggravating features include:

- Second conviction of a similar nature
- Same pattern of behaviour in both the 2015 and 2020 convictions
- Serious criminal conduct
- Partial insight demonstrated by you
- No self-referral made to the NMC
- [PRIVATE]

In relation to mitigating features, Mr Kabasinskas submitted that, even though from the outset you had not contested the conviction charge, this is cancelled out by the fact that you had not self-referred to the NMC following the convictions in 2015 and 2020, there are no mitigating features in this case.

In relation to the sanctions, Mr Kabasinskas submitted that taking no further action would not be appropriate nor proportionate. Regarding a caution order, he referred the panel to

the NMC's guidance on 'Caution Order' (Reference: SAN-3b) and submitted that a panel may deem a caution order for 5 years appropriate and proportionate if the panel determined that your conduct was not liable to be repeated. In relation to conditions of practice order, Mr Kabasinskas submitted that as the panel determined that your fitness to practice was impaired by way of your conviction on public interest grounds only, this order would not be workable nor enforceable.

Furthermore, Mr Kabasinskas submitted that if the panel was to determine that your conduct was liable to be repeated and considered that the seriousness of this case requires a temporary removal from the register, then a suspension order would be deemed the most appropriate and proportionate order. He referred the panel to the 'Suspension Order' (Reference: SAN-3d) and the checklist that the panel should take into consideration. He said that the panel should consider whether a period of suspension would protect the public's confidence in the nursing profession and uphold the professional standards. He submitted that this was not a single instance of misconduct as you have a repeated offence, and that there is no evidence of harmful or deep-seated personality or attitudinal concerns. He submitted that there was no evidence before the panel to demonstrate that the conduct was repeated since 2020, however that the panel must consider whether your partial insight does not pose a significant risk of a repetition of behaviour.

Mr Kabasinskas said that if the panel considered there was a risk of repeat behaviour, he invited the panel to impose a suspension order for a period of 3 months.

Ms Rolfe told the panel that you were adamant that there will not be a repetition of behaviour. She submitted you had the most impactful and salutary lesson from going through these proceedings in the last four years, which were the result of an error of judgement on one day. [PRIVATE]. She submitted that you take on board the panel's determination in that there is a risk of repetition, however that it would be difficult to evidence that you would not repeat this conduct again.

[PRIVATE]. She told the panel that you ‘urgently submit’ through her that this would not happen again.

Ms Rolfe submitted that you have been a registered nurse for 32 years with no clinical concerns. She told the panel that you had worked for most of your career in nursing homes, but that you started off in Accident & Emergency. She submitted that you are a highly skilled nurse who is extremely valuable when met with clinically challenging situations and someone who is, as seen from your references, looked to by other colleagues for providing that kind of expertise. She submitted that you are a valuable member of the nursing profession, are respected and loved by your colleagues and someone who wants to return back to nursing practice and to put this all behind you.

Ms Rolfe submitted that her submissions are difficult in relation to which sanction the panel may deem appropriate and proportionate. [PRIVATE]. Therefore, she submitted that a caution order for a lengthy period, which may prove challenging for a potential employer, could mean that you may find it difficult to find employment as a result. [PRIVATE].

Ms Rolfe submitted that although a suspension order would be more appropriate only if the panel was of the view that this case was at the most serious end of the spectrum and there was a risk of repetition, this was not the case here. She said that in terms of practicality, you would rather not work for the period of suspension and this should be as short as possible and then you would have a clean state when you start again. She said that the panel must take into account the interest of the public when imposing a sanction and submitted that a suspension order imposed on a nurse’s registration would be publicly available.

[PRIVATE]. She said that this would be consistent with your being a good nurse who wants to get back to the nursing profession.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider which 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:

- Incomplete insight into failing
- Two convictions for the same serious offence in similar circumstances

The panel determined that there were no mitigating features. [PRIVATE]. However, it was of the view that this should not affect your judgement to drink and drive.

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 considered the imposition of a caution order. It referred to the NMC's guidance on caution order. 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.'* It was of the view that this order may have been appropriate to mark that your conviction was unacceptable and to allow you to return to practise. However, it determined that, due to the seriousness of your conviction, rather than the risk of repetition, this order would not be appropriate in the circumstances. Further, the panel noted that a long period of a caution order could also have a punitive effect and considered that your conviction was not at the lower end of the spectrum. It, therefore, determined that a caution order would be inappropriate in view of the issues identified and the seriousness of your conviction. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.

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. A conviction of this nature is not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not address the public interest ground.

The panel then went on to consider whether an imposition of 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; and*
- *No evidence of repetition of behaviour since the incident.*

The panel was of the view that this was a single incident resulting from your conviction in 2020. It noted that you had previously made an error of judgement before in 2015 which led to your first drink driving conviction. [PRIVATE]. The panel was of the view that it was reasonable for you to want to move on from this and return back to the nursing profession without a restriction on your PIN. The panel was satisfied that in this case, the conviction was not fundamentally incompatible with remaining on the register. The panel determined that, due to the seriousness of your conviction, a suspension order for a period of three months would be the appropriate and proportionate order as it would mark the seriousness of your conviction as well as uphold public interest.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, 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 your 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 you. 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.

The panel determined that a suspension order for a period of three months was appropriate in this case to mark the seriousness of the conviction.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the substantive order having found your fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, this substantive order will expire, without review, take effect 28 days after your receipt of this decision and run for three months from that date.

This will be confirmed to you 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 your own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

Mr Kabasinskas did not make an application for an imposition of an interim order.

Decision and reasons on interim order

The panel decided that it was not necessary to impose an interim order. It had regard to the seriousness of the matters found proven. However, it also bore in mind that it has found that there was no risk of harm to patients associated with this case, and that the threshold for imposing an interim order on purely public interest grounds is high.

The panel considered that public confidence in the nursing profession would not be seriously undermined if no interim order is imposed in this case pending any potential appeal. It noted that there has been no restriction on your practice since these events which occurred in March 2020. It would be disproportionate to impose an interim suspension order for a period of up to 18 months to allow for any appeal to be determined in view of the period of this substantive order. The panel considered that any public interest considerations in this case will be suitably and adequately addressed by the imposition of the substantive order.

That concludes this determination.