Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
12-16 August 2019
Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

Name of Registrant Nurse:	Anthony Mcknight
NMC PIN:	07I0404E
Part of the register:	Adult Nursing – Sub part 1 (24 September 2007)
Area of Registered Address:	Scotland
Type of Case:	Misconduct
Panel Members:	Yvonne Brown (Chair, Lay member) Allwin Mercer (Registrant member) Amy Lovell (Registrant member)
Legal Assessor:	Bruce Erroch QC
Panel Secretary:	Lucy Eames
Registrant:	Not present or represented
Nursing and Midwifery Council:	Represented by Neil Jeffs, Case Presenter
Facts proved:	3, 6d and 7b
Facts proved by admission:	1, 2, 5a, 5b, 6a, 6b and 6c
Facts not proved:	4, 5c, 7a and 7c
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim Order:	Interim suspension order, 18 months

Details of charge as amended:

That you, a registered nurse:

1) On one or more occasions in April and/or May 2015 drove a car belonging to a relative of Patient A. **[proved by admission]**

2) Breached professional boundaries in that on one or more occasions between 11 May 2015 and 21 September 2015 sent inappropriate text messages to Relative B. **[proved by admission]**

3) On one or more of the dates in Schedule 1 reported inaccurate information relating to a visit to Patient A's home. **[proved]**

4) Your conduct in Charge 3, above, was dishonest in that you intended to create a misleading impression of Patient A and/or Relative B. **[not proved]**

5) On 9 January 2018;

   a) Recorded in Resident A's continuous wound assessment chart and/or daily statement continuation sheet that a wound dressing was no longer required when this was not correct. **[proved by admission]**
   b) Made the recording in Charge 5(a), above, without first examining Resident A's leg. **[proved by admission]**
   c) Your conduct in Charges 5(a) and/or 5(b), above, was dishonest in that you intended to create the impression that you had assessed Resident A's leg when you had not. **[not proved]**

6) On 9 January 2018;

a) Recorded in Resident B's daily statement continuation sheet that you had changed her dressing but did not record the information in the wound assessment chart. **[proved by admission]**
b) Did not administer oramorph to Resident B prior to changing her dressing. **[proved by admission]**
c) Recorded in Resident B's daily statement continuation sheet that you had administered oramorph prior to changing her dressing when you had not. **[proved by admission]**
d) Your conduct in Charge 6(c), above, was dishonest in that you intended to create the impression that you had administered oramorph to Resident A when you had not. **[proved]**

7) On 9 January 2018;

a) Dressed Resident C's wound incorrectly. **[not proved]**
b) Recorded in Resident C's wound care continuation sheet that you had changed Resident C's dressing "as per plan" when you had not. **[proved]**
c) Your conduct in Charge 7(b), above, was dishonest in that you intended to create the impression that you had dressed Resident C's wound with aquacel ribbon when you had not. **[not proved]**

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

<u>Schedule 1</u>

8 February 2014 in Patient A's "base notes" and/or a Datix Report
14 February 2014 in a Datix report
30 April 2015 reported to Colleague E
21 May 2015 in a Datix report
3 June 2015 in Patient A's "base notes"

4 June 2015 in a Datix Report
8 June 2015 in Patient A's "base notes" and/or a Datix Report

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Mcknight was not in attendance and that written notice of this hearing had been sent to his registered address by recorded delivery and by first class post on 12 July 2019. Notice of this hearing was delivered to Mr Mcknight's registered address on 13 July 2019 and signed for by the name of 'A.Mcknight'.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Mcknight's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Jeffs submitted the NMC 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.

In the light of all of the information available, the panel was satisfied that Mr Mcknight has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Mr Mcknight.

The panel had regard to Rule 21 (2) states:

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

(a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;

(b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or

(c) may adjourn the hearing and issue directions.

Mr Jeffs invited the panel to continue in the absence of Mr Mcknight on the basis that he had voluntarily absented himself. He referred the panel to Mr Mcknight's returned notice of hearing in which he ticked boxes stating he did not plan to come to the hearing, he wanted the hearing to go ahead without him and he did not want to ask for a postponement. Mr Jeffs also referred the panel to an email from Mr Mcknight, dated 23 July 2019, which stated:

'I will not be at the hearing. I am happy for the hearing to go ahead in my absence'

Mr Jeffs submitted that there was no reason to believe that an adjournment would secure his attendance on some future occasion. He referred the panel to the cases of *General Medical Council v Adeogba; General Medical Council v Visvardis* [2016] EWCA Civ 162 and *R. v Jones (No.2)* [2002] UKHL 5. Mr Jeffs invited the panel to consider fairness to the registrant in proceeding in his absence and also that there are witnesses due to attend this hearing and not proceeding may inconvenience them. Mr Jeffs submitted that, given Mr Mcknight's clear responses, there would be no useful purpose in adjourning this 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 *Jones.*

The panel noted the correspondence from Mr Mcknight.

The panel has decided to proceed in the absence of Mr Mcknight. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has 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 Mr Mcknight;
- there is no reason to suppose that adjourning would secure his attendance at some future date;
- witnesses are attending to give live evidence;
- not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- the charges relate to events that occurred a number of years ago;
- further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Mcknight in proceeding in his absence. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel's judgment, 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 Mr Mcknight's decision to absent himself from the hearing, waive his rights to attend

and/or be represented and to not provide evidence or make submissions on his own behalf.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Jeffs, on behalf of the NMC, to amend the wording of charges 5b, 5c, 6d and 7c.

The proposed amendment was to amend the charge numbers within charges 5b, 5c, 6d and 7c. It was submitted by Mr Jeffs that the proposed amendment would provide clarity and more accurately reflect the evidence.

The original wording of the relevant charges read as:

5) On 9 January 2018;

b) Made the recording in Charge 6(a), above, without first examining Resident A's leg.
c) Your conduct in Charges 6(a) and/or 6(b), above, was dishonest in that you intended to create the impression that you had assessed Resident A's leg when you had not.

6) On 9 January 2018;

d) Your conduct in Charge 7(a), above, was dishonest in that you intended to create the impression that you had administered oramorph to Resident A when you had not.

7) On 9 January 2018;

c) Your conduct in Charge 8(b), above, was dishonest in that you intended to create the impression that you had dressed Resident C's wound with aquacel ribbon when you had not.

The proposed new wording of the relevant charges would read as:

5) On 9 January 2018;

b) Made the recording in Charge 5(a), above, without first examining Resident A's leg.
c) Your conduct in Charges 5(a) and/or 5(b), above, was dishonest in that you intended to create the impression that you had assessed Resident A's leg when you had not.

6) On 9 January 2018;

d) Your conduct in Charge 6(c), above, was dishonest in that you intended to create the impression that you had administered oramorph to Resident A when you had not.

7) On 9 January 2018;

c) Your conduct in Charge 7(b), above, was dishonest in that you intended to create the impression that you had dressed Resident C's wound with aquacel ribbon when you had not.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

> *28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—*
>
> > *(a) the charge set out in the notice of hearing; or*

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

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

The panel was of the view that such amendments, as applied for, were in the interest of justice. It noted that the alleged dishonesty in charge 6d in its original form and as amended related solely to 6c. The panel was satisfied that there would be no prejudice to Mr Mcknight and no injustice would be caused to either party by the proposed amendment being allowed as they were typographical errors and Mr Mcknight is aware of the allegations against him. Further, the panel noted that Mr Mcknight had not admitted any of the charges that are the subject of the proposed amendments. Therefore the panel would need to fully explore these charges, and either find them proved or not proved on the balance of probabilities, based on the evidence before it. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Decision and reasons on application under Rule 19

Mr Jeffs made a request that this hearing be held partly in private on the basis that proper exploration of the case involves a witness' health. The application was made pursuant to Rule 19 of 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.

Rule 19 states:

19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.

(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.

(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

(a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

(4) In this rule, "in private" means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there will be reference to a witness's health, the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with health as and when such issues are raised.

Decision and reasons on application pursuant to Rule 31

The panel heard an application made by Mr Jeffs under Rule 31 of the Rules to allow the written statement of Ms 1 into evidence. Ms 1 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, she was unable to attend today due to ill health.

Mr Jeffs told the panel that Mr Mcknight was emailed on 26 July 2019 informing him that Ms 1 would not be attending to which he replied that he had no objection to her statement being read. On this basis Mr Jeffs advanced the argument that there was no lack of fairness to Mr Mcknight in allowing Ms 1's written statement into evidence. Mr Jeffs submitted that Ms 1's statement was the sole and decisive evidence to charges 5-7 and therefore relevant. Mr Jeffs told the panel that due to Ms 1's health she was not able to attend this hearing or give evidence remotely. He added that she had been communicating with the NMC through a colleague. Mr Jeffs submitted that he had a medical note evidencing Ms 1's health condition but did not wish to disclose it unless necessary.

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 of the Rules provides that, so far as it is '*fair and relevant,'* a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Ms 1's statement serious consideration. The panel noted that Ms 1's statement had been prepared in anticipation of it being used in these proceedings and contained the paragraph 'This statement … is true to the best of my information, knowledge and belief' and was signed by her.

The panel considered whether Mr Mcknight would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Ms 1 to that of a written statement. It noted that Mr Mcknight had been notified on 26 July 2019 that Ms 1 would not be attending and he had not objected to her statement being read. The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live evidence of this witness and the opportunity of questioning and probing that testimony. The panel was of the view that the NMC had taken steps to obtain Ms 1's attendance but, due to her health, this had not been possible. The panel was satisfied that there was good reason for Ms 1 not attending. It noted that her statement was decisive evidence in relation to charges 5-7. However, it was not the sole evidence as Mr Mcknight had also provided his response to these charges. The panel therefore determined that her evidence was relevant. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

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 1 but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Jeffs, on behalf of the NMC and a number of documents submitted by Mr Mcknight, including his response to the concerns raised in the charges.

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

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 the

facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

Background

The NMC received three referrals relating to Mr Mcknight's fitness to practise.

In July 2016, a referral was received from Edinburgh Health and Social Care Partnership (the Trust). At the material time, Mr Mcknight was employed as a registered nurse in the Community Nursing Service in NHS Lothian and provided regular care to Patient A, in his home, over an extended period of time. The concerns related to the relationship between Mr Mcknight and the family of Patient A, in particular his wife, Relative B. It is alleged that there was a breach of professional boundaries on the part of Mr Mcknight. The regulatory concerns arising from this referral are contained in charges 1 and 2.

On 8 November 2017, the NMC received a referral from Relative B. The referral concerned Mr Mcknight's probity when employed by NHS Lothian as a community nurse between 2014 and 2015 and alleged that he failed to act with honesty and integrity by providing inaccurate information about appointments at Patient A's home in patient records and on Datix forms. More particularly, it is alleged that Mr Mcknight inaccurately recorded information about Patient A and also inaccurately provided information to his manager about both Patient A and Relative B. The regulatory concerns arising from this referral are reflected in charges 3 and 4.

On 22 January 2018 a referral was received from Randolph Hill Nursing Homes Ltd, which owned Fidra House Nursing Home (the Home) and concerned events on 9 January 2018. At that time Mr Mcknight was employed as a Charge Nurse. It is alleged that he did not deliver wound care to Residents A, B and C as required and did not administer Oramorph to Resident A on the same date. The conduct and associated record- keeping is alleged to be dishonest, as set out in charges 5, 6 and 7.

The panel has drawn no adverse inference from the non-attendance of Mr Mcknight.

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case. The panel heard oral evidence from four witnesses called on behalf of the NMC. The written statement of Ms 1 was read.

Witnesses called on behalf of the NMC were:

Relative B- Patient A's wife;
Relative C- Relative B's sister;
Ms 2- Nursing Assistant;
Ms 3- Clinical Nurse Manager.

Job titles are correct at the time of the charges.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

The panel found Relative B to be generally credible when giving evidence. It noted that she was in an emotive situation which may at times have affected her reliability. However, the panel found that she was clear about her knowledge of the incidents.

The panel found Relative C to be credible and reliable, it noted she was more removed from the situation and only gave evidence on a narrow incident. She was thorough in her knowledge of that incident.

The panel found Ms 2 to be credible and reliable. It noted that she was sometimes hesitant with her answers, however was clear when she could not recall something.

The panel found Ms 3 to be clear and concise during her evidence. It found her to be a credible and reliable witness and was clear when she was not aware of something, such as the extent of the text messages between Mr Mcknight and Relative B.

The panel took into account the witness statement of Ms 1 and, although she only commented on narrow incidents, it noted that her statement was supported by other documentary evidence and was clear and concise.

In the returned notice of hearing form, Mr Mcknight admitted the following charges;

1) On one or more occasions in April and/or May 2015 drove a car belonging to a relative of Patient A.

2)Breached professional boundaries in that on one or more occasions between 11 May 2015 and 21 September 2015 sent inappropriate text messages to Relative B.

5) On 9 January 2018;

a) Recorded in Resident A's continuous wound assessment chart and/or daily statement continuation sheet that a wound dressing was no longer required when this was not correct.
b) Made the recording in Charge 5(a), above, without first examining Resident A's leg.

6) On 9 January 2018;

a) Recorded in Resident B's daily statement continuation sheet that you had changed her dressing but did not record the information in the wound assessment chart.
b) Did not administer oramorph to Resident B prior to changing her dressing.
c) Recorded in Resident B's daily statement continuation sheet that you had administered oramorph prior to changing her dressing when you had not.

These were therefore announced as proved.

The panel then went on to consider the remaining charges.

The panel considered each charge and made the following findings:

Charge 3:

3) *On one or more of the dates in Schedule 1 reported inaccurate information relating to a visit to Patient A's home.*

Schedule 1

(1) 8 February 2014 in Patient A's "base notes" and/or a Datix Report
(2) 14 February 2014 in a Datix report
(3) 30 April 2015 reported to Colleague E
(4) 21 May 2015 in a Datix report
(5) 3 June 2015 in Patient A's "base notes"
(6) 4 June 2015 in a Datix Report
(7) 8 June 2015 in Patient A's "base notes" and/or a Datix Report

This charge is found proved in relation to schedule 1 part 4.

In reaching this decision, the panel looked at each of the items in schedule 1. For (1) it took into account the base notes dated 8 February 2014 which noted that Patient A was 'slightly aggressive and agitated'. The panel noted that the Datix report was more detailed and commented on Relative B refusing to call the falls team and that she was disturbing the care staff. The panel further noted that the managers review of the incident on the Datix report mentioned Patient A biting someone and seeing a bruise with teeth marks, 'the skin was not broken however the nurse did experience pain the bruise was evident with teeth marks'. The panel was of the view that these three

documents varied in detail but all reported a similar type of situation. It determined that although the home notes and Datix report differed in detail, there was insufficient evidence to determine that they were inaccurate.

The panel took into account the Datix report dated 14 February 2014 (2). It noted that the Datix included specific comments regarding Patient A spitting at a staff member and Relative B interfering with their care. However, this was not mentioned in the home notes. The panel was of the view that the main issue in the Datix report was the spitting and not Relative B interfering. It noted that two members of staff were present at the visit that day, as referred to in the home notes and the Datix report. The panel further noted that, as a result of the spitting, training was arranged for staff around the care of patients with dementia. It was of the view that, on the balance of probabilities. There was insufficient evidence to determine that the Datix report was inaccurate.

In relation to (3) the panel noted that Mr Mcknight reported that Relative B had been rude and said 'don't just stand there' whilst he was caring for Patient A. The panel noted Relative B's evidence that this could have been said as a joke. Further, the panel took into account that Ms 3 in her live evidence stated that there were a number of Datix reports that report similar behaviour regarding Relative B. In addition, at a case discussion regarding Patient A on 8 May 2015 staff reported that Relative B's behaviour 'was very challenging at times, Relative B sometimes sometimes shouts at staff, is unpleasant and sarcastic'. Staff were required to 'complete Datix following any incident of aggression or can request report from identicom' Taking this into account the panel determined that there was insufficient evidence to determine that Mr Mcknight's reporting to Colleague E was inaccurate.

With regard to (4) the panel took into account the home notes that were written by Ms 2 and the Datix report that was written by Mr Mcknight. The Datix reported that Relative C had been aggressive and followed them around when they were providing care. However, Ms 2 gave evidence that this was not the case and she would have noted it if it had happened. She said that Relative B had spoken about a complaint from another

staff member, however she did not remember feeling uncomfortable. Relative C also gave evidence and confirmed that she had watched them carry out a short manoeuvre then returned downstairs. The panel further noted that Ms 2 provided a witness statement to the Trust in 2015 that also did not mention that Relative B had been aggressive. The panel was of the view that the Datix report written by Mr Mcknight was an exaggerated and embellished account of the situation, given the amount of evidence that suggested otherwise, and therefore determined that it was inaccurate.

In relation to (5) the panel noted the home notes and the bases notes and was of the view that they contained similar information, albeit the base notes were more detailed. Further the panel took into account that there was corroborating evidence to determine that both sets of notes were sufficiently similar and therefore there was insufficient evidence to determine that they were inaccurate.

The panel noted the 4 June 2015 Datix report (6) which reported that Relative B had said ‘thank goodness you’re here, as this pair can’t do such manoeuvre’ in relation to care staff when the CAS team arrived. Relative B gave evidence that she may have said this but did not intend for it to be belittling. She also gave evidence that the CAS team were surprised that the care staff could not carry out the manoeuvre themselves as they had received the same manual handling training. Relative C also said in her evidence that she was surprised the care staff could not do the manoeuvre. Taking all of the above into account, the panel determined that there was insufficient evidence to determine that the Datix report was inaccurate.

In relation to (7), the panel noted the base notes which included a description of Patient A’s bed and also commented on a concern about ‘sliding’. It took into account that the Datix report also contained similar information. The panel noted that there was a discrepancy between the documents regarding the number of cot sides the bed had, however the information was generally consistent. There was insufficient evidence to determine that they were inaccurate.

Charge 4:

4) Your conduct in Charge 3, above, was dishonest in that you intended to create a misleading impression of Patient A and/or Relative B.

This charge is found NOT proved.

The panel noted that, given its findings in charge 3, this charge now only related to point (4) in schedule 1. In reaching this decision, the panel took into account that there is little comment on Patient A's behaviour in the Datix report and therefore there is insufficient evidence to infer that Mr Mcknight intended to create a misleading impression of Patient A. In relation to Relative B, the panel noted that the Datix reported that she was unhappy, complained that staff were late, followed them around when they were trying to provide care and spoke about a complaint another staff member had made against her. Further, Mr Mcknight reported that as a result of Relative B, he was unable to easily do his job. Ms 2 gave evidence that Relative B was unhappy about the complaint against her, however did not interfere with their care. She also gave evidence that Relative B did not speak abruptly. Ms 2 confirmed in her evidence that they were watched carrying out a manoeuvre at the top of the stairs and Relative C commented on the manoeuvre, however then went downstairs.

The panel took into account the legal definition of dishonesty in these proceedings and considered what Mr Mcknight may have thought of the incident and what an ordinary, reasonable member of the public may think, having all the information before him or her. The panel was of the view that, although Ms 2's recall of the incident differed from Mr Mcknight's, this may have been the result of different perceptions of the same incident. However, whilst the description of events were similar, Mr Mcknight may have had a different view of the event and Relative B's behaviour and therefore reported on it as required following the case discussion on 8 May 2015. The panel was satisfied that, on the balance of probabilities, Mr Mcknight was not dishonest in that he intended to create a misleading impression of Relative B in his Datix report comments.

Charge 5c:

5) On 9 January 2018;

c) Your conduct in Charges 5(a) and/or 5(b), above, was dishonest in that you intended to create the impression that you had assessed Resident A's leg when you had not.

This charge is found NOT proved.

In reaching this decision, the panel took into account Resident A's continuous wound assessment chart in which Mr Mcknight had recorded and signed that a wound dressing was no longer required when in fact he had not assessed the leg. The panel noted that Mr Mcknight admitted this. However, when considering whether this was dishonest or not, the panel took into account Mr Mcknight's response to this concern in which he stated that he had documented the wound dressing assessment before carrying it out but then forgot to do so. He confirmed that he documented it as he had intended to carry out the assessment. Further, he recorded that a wound dressing was no longer required on the advice of another staff member but did not record this. Mr Mcknight in his response confirmed that he should not have done this.

In all the circumstances, the panel determined that this appeared to be a genuine mistake due to a lapse of attention rather than Mr Mcknight intending to create the impression that he had assessed Resident A's leg when he had not. The panel therefore found this charge not proved.

Charge 6d:

6) On 9 January 2018;

d) Your conduct in Charge 6(c), above, was dishonest in that you intended to create the impression that you had administered oramorph to Resident A when you had not.

This charge is found proved.

In reaching this decision, the panel took into account that Mr Mcknight admitted that he had recorded in Resident B's daily statement continuation sheet that he had administered oramorph prior to changing her dressing when he had not. The panel noted that, other than the daily continuation sheet, there was the MAR chart and the CD book in which Mr Mcknight had not recorded that he administered oramorph. The panel noted that oramorph is a controlled drug. Mr Mcknight, in his response to this charge, stated that he had made the decision to not administer oramorph after assessing Resident A but had recorded it on the daily continuation sheet 'out of habit'. However, the panel was of the view that this reason was not credible and that Mr Mcknight knew he had not administered oramorph but made the decision to record that he had administered it. It determined that, more likely than not, this was not a genuine mistake and was dishonest by the standards of ordinary and reasonable people. The panel therefore found this charge proved.

Charge 7a:

7) On 9 January 2018;

a) Dressed Resident C's wound incorrectly.

This charge is found NOT proved.

In reaching this decision, the panel took into account Resident C's body map document and the daily continuation sheet in which Mr Mcknight had recorded 'dressing changed as per plan'. The NMC's assertion of the correct way to dress a wound was in accordance with the care plan which shows that the primary dressing for Resident C was aquacel ribbon. The Trust's policy stated that registered nurses are responsible for

assessing residents' wounds and determining action. However, it was noted that it was documented that there was no aquacel ribbon available that day and therefore Mr Mcknight would not have been able to complete dressing the wound as per plan. He therefore carried out his responsibility to determine appropriate action. The panel was of the view that Mr Mcknight was not able dress the wound as per plan and therefore found this charge not proved.

Charge 7b:

7) On 9 January 2018;

b) Recorded in Resident C's wound care continuation sheet that you had changed Resident C's dressing "as per plan" when you had not.

This charge is found proved.

In reaching this decision, the panel took into account the daily continuation sheet in which Mr Mcknight had recorded 'dressing changed as per plan'. However, the panel noted that there was no aquacel ribbon available on this date and therefore he could not have changed Resident C's dressing "as per plan". The panel determined that this therefore should not have been recorded by Mr Mcknight and found this charge proved.

Charge 7c:

7) On 9 January 2018;

c) Your conduct in Charge 7(b), above, was dishonest in that you intended to create the impression that you had dressed Resident C's wound with aquacel ribbon when you had not.

This charge is found NOT proved.

In reaching this decision, the panel took into account Mr Mcknight's response to the incident in charge 7b. It noted that he removed a soiled dressing, applied a dressing for protection and had intended to return to complete dressing Resident C's wound but had already recorded that he had done so. Further, he said that he verbally explained this to another staff member. The panel was of the view that Mr Mcknight recording in Resident C's wound care continuation sheet that he had changed Resident C's dressing "as per plan" when he had not before he went home and forgot was, more likely than not, a genuine mistake and he did not intend to create the impression that he had dressed Resident C's wound with aquacel ribbon when he had not. The panel therefore found this charge not proved on the balance of probabilities.

Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Mcknight's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Mr Jeffs submitted that the panel would be aware that in deciding whether Mr Mcknight's fitness to practise is impaired by reason of misconduct it is appropriate to embark upon a two-stage process as set out in *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

First, the panel should consider whether the facts found proved amount to misconduct. That is a matter entirely for the panel's professional judgment. There is no burden or standard of proof as set out in *Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas* [2006] EWHC 464 (Admin)).

The comments of Lord Clyde in *Roylance v General Medical Council* [1999] UKPC 16 is likely to provide assistance when seeking to define misconduct:

> *'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a medical practitioner in the particular circumstances'* [331B-E]

Mr Jeffs submitted that the panel may further be assisted by the comments of Leggat J (endorsing the advice of the legal assessor in the substantive hearing) in *Johnson and Maggs v Nursing and Midwifery Council (No. 2)* [2013] EWHC 2140 (Admin).

> '[105] … t*o find misconduct however, the Committee had been advised and had accepted that the failure had to be such that it would be seen as "deplorable" by fellow practitioners and as involving a serious departure from acceptable standards*'

Where the acts or omissions of a registered nurse or midwife are in question, what would be proper in the circumstances and the standards of propriety (per *Roylance*) can be found in various publications by the Regulator including:

- *The Code: Professional Standards of Practice and Behaviour for Nurses and Midwives* (2015) (the 2015 Code)
- *NMC Standards for medicines management (2010)* and which was updated following the 2015 Code but withdrawn in January 2019.

It was submitted that Mr Mcknight's conduct fell significantly short of the standards and relevant provisions of the 2015 Code and the NMC Standards for medicines management.

Additionally, Mr Mcknight's conduct relating to the wound dressings/treatment (charges 5- 7) and the administration of Oramorph (charge 6) fell significantly short of the local policies. He was under a clear obligation to comply with the same.

Further, when considering whether the facts proved amount to misconduct, the panel was requested to consider that Mr Mcknight's conduct was serious in that:

(a) The regulatory concerns included (i) failing to maintain professional boundaries; (ii) failing to maintain accurate records and adhere to an adequate standard of record-keeping; (iii) failing to deliver appropriate clinical care in relation to wound care and administering a controlled drug; and (iv) associated dishonesty (limited to one occasion). The concerns are extremely serious and wide-ranging, involving more than one vulnerable patient. The conduct was not isolated and persisted over considerable period.

(b) The crossing of professional boundaries was particularly grave. It had real potential to adversely impact upon the care delivered to Patient A and further undermine the relationship with Relative B, the main carer, for Patient A. The panel received direct evidence in relation to this.

(c) Further, when considering the crossing of professional boundaries, the conduct relating to the use of the family car was inappropriate and could be said to be exploitative. It blurred the boundaries between the nurse and patient.

(d) Similarly, the exchange of text messages was highly inappropriate. The panel was requested to revisit the text messages to consider the nature and content of

the communications. They were, by their very nature, manifestly inappropriate. In the main, they did not relate to the provision of care to Patient A and were littered with inappropriate content suggestive of a friendship with Relative B and criticism of colleagues, occasionally containing expletives.

(e) The concerns relating to record- keeping were also grave. The inaccuracies in respect of Patient A's records, and associated matters pertaining to Patient B, although limited to one occasion, were serious. As the panel determined the report was *"exaggerated and embellished"*. Accurate record- keeping is a basic and fundamental aspect of nursing practice, which should be executed appropriately at all times. It is not an optional extra to be fitted in when time permits.

(f) Similarly, the record- keeping concerns relating to Resident A, B and C were equally serious.

(g) The importance of accurate record- keeping could not be overstated. The panel would be aware it serves numerous functions including: (i) helping to improve accountability; (ii) showing how decisions related to patient care were made; (iii) supporting the delivery of services; (iv) supporting effective clinical judgements and decisions; (v) supporting patient care and communications; (vi) making continuity of care easier; (vii) providing documentary evidence of services delivered; (viii) promoting better communication and sharing of information between members of the multi-professional healthcare team; (ix) helping to identify risks, (x) enabling early detection of complications; and (xi) helping to address complaints or the legal process.

(h) By failing to deliver appropriate clinical care to Resident's A, B and C, such individuals were placed at risk of harm. Mr Mcknight failed to follow basic nursing requirements.

(i) Additionally, the fact that all of Patient A and Residents A, B and C were all particularly vulnerable added to the seriousness of the conduct.

(j) Dishonesty on any level was always treated seriously. The fact that the dishonesty directly related to Mr Mcknight's clinical practice and the

administration of a controlled drug to a vulnerable persons, made it particularly grave.

(k) The conduct was highly inappropriate and had the potential to undermine trust and confidence in, and have a damaging effect on, the nursing profession.

In the circumstances, it was submitted that Mr Mcknight's conduct fell far below the standards which would be considered acceptable to the profession and that all of the facts/charges found proved amounted to misconduct.

Mr Jeffs then 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. He submitted that if the panel was satisfied that the matters found proved in relation to any, or all, of the charges amounted to misconduct, the next matter the panel had to consider was whether Mr Mcknight's fitness to practise was currently impaired by reason of that misconduct. The question was whether his fitness to practise was impaired as of today's date per *Cohen* also *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin).

There was no definition of 'impairment' provided by the NMC's legislative framework. However, the NMC defined 'fitness to practise' as the suitability to remain on the register without restriction.

When considering current impairment, guidance on the appropriate approach for a panel to take had been provided in the well-known case of *CHRE v (1) NMC (2) Grant* [2011] EWHC 927 (Admin). The panel would be familiar with the case and the fact that Mrs Justice Cox in the case of *Grant* approved the general approach as to what might lead to a finding of impairment as given by Dame Janet Smith in her Fifth Shipman Report. A summary is set out in Grant at paragraph 76 in the following terms:

'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:

•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

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

•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

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

For the reasons referred to below, it was submitted that all of the limbs referred to above were engaged in this matter.

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:

The conduct referred to in the charges had the potential for serious, unwarranted patient harm. Dealing firstly with Mr Mcknight's conduct in relation to Patient A and his family (charges 1- 3) the actions and omissions of Mr Mcknight clearly put Patient A at risk of unwarranted harm:

a) The crossing of professional boundaries clearly undermined Relative B's trust and confidence in Mr Mcknight who had presented himself as a "friend" and supportive individual. Such conduct also undermined trust and confidence in the nursing profession more generally and, further, undermined the relationship with the District Nursing Service. As Patient A's main carer any, further, erosion in trust and confidence had the potential to impact upon the continuity of care to Patient A. Relative B explained in clear detail as to how the discovery of the breach of boundaries adversely impacted upon her.

b) Inaccurate record- keeping also had the potential to place Patient A (and others including staff and members of the public) at risk of unwarranted harm. The profession demands high standards of record- keeping for very good reason. Documents which do not correctly record, for example, care provided and risks arising, means that risks and care planning are undermined.

Similarly, the conduct relating to Resident's A, B and C also had the potential for unwarranted patient harm (charges 5- 7). The concerns in relation to these charges/individuals had similar features to those involving Patient A. They involved similar concerns relating to the provision of care and inaccurate record- keeping and also concerned vulnerable individuals. What was of particular concern was the failure to provide appropriate clinical care to Resident's A, B and C in terms of wound care and administering Oramorph. Accordingly, the submissions concerning the risk of unwarranted harm in respect of Patient A, applied with equal force in relation to these individuals/charges.

There were serious and wide-ranging failures relating to the provision of basic care. By failing to discharge such duties in an appropriate manner, patients (and others) were placed at risk of unwarranted harm.

All of the regulatory concerns arising from the charges found proved had the potential for serious, unwarranted patient harm.

Has in the past brought and/or is liable in the future to bring the medical profession into disrepute:

It was submitted that Mr Mcknight's conduct brought the nursing profession into disrepute. The public has a right to expect that nurses will provide appropriate and competent care and will act with honesty and integrity. His conduct clearly had the potential to undermine public confidence in the nursing profession and by failing to

maintain professional boundaries and discharge basic, but important, nursing functions, Mr Mcknight brought the profession into disrepute.

Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession:

It was submitted that Mr Mcknight breached fundamental tenets of the profession. The provisions of the Code constitute fundamental tenets of the profession and his actions had clearly breached the same.

Additionally, maintaining appropriate professional boundaries and behaving with honesty and integrity were fundamental tenets of the profession. The public would rightly consider that as a registered nurse, providing safe and effective care to members of the public, maintaining boundaries and acting with honesty and integrity are basic tenets of the profession.

Mr Jeffs also submitted that Mr Mcknight had in the past acted dishonestly and/or is liable to act dishonestly in the future.

The issue of current impairment was prospective, although it was appropriate to have regard to past actions when considering the question of future risk. Accordingly, the panel was likely to be assisted by in the questions posed by Silber J in Cohen, namely: (i) whether the misconduct is easily remediable; (ii) whether it has in fact been remedied; and (iii) whether it is highly unlikely to be repeated.

The difficulty was that apart from the written representations from Mr Mcknight, which included a reflective piece dealing with some of the matters, there had been no additional information from Mr Mcknight. This made it difficult to accurately assess those factors referred to in *Cohen*. Mr Jeffs asked the panel to consider the following:

(i) Is the misconduct easily remediable?

As to whether the misconduct was easily remediable, the panel might feel that it was necessary to consider whether Mr Mcknight's conduct was attitudinal in nature. Should the panel find that his conduct was attitudinal in nature, it might be driven to the conclusion that such conduct was not easily remediable.

The following factors suggested that the concerns in this matter were attitudinal in nature:

(a) The fact that the conduct was of a similar nature and not isolated. The obvious examples were that the concerns relating to the accuracy of record- keeping with the potential for patient harm was repeated. Indeed, the concerns arising in relation to charges 5- 7 inclusive arose after Mr Mcknight had reflected on concerns relating to Patient A.

(b) The fact that Mr Mcknight, on more than one occasion, breached professional boundaries as noted in the use of the Relative B's family car and the large number of texts (charges 1 and 2).

(c) The conduct in charge 1 was indicative of Mr Mcknight putting his own needs over the need to maintain professional boundaries and uphold the reputation of the profession.

(d) Dishonesty was said to be attitudinal in nature and not easy to remediate.

Having regard to the above matters, it was submitted that the conduct in this case was not easily remediable.
(ii) Has the misconduct in fact been remedied?

Mr Mcknight had provided some written documents and limited reflection. Those documents did not address all of the concerns in the case. Additionally, there was no

information as to his position in relation to the matters which he did not admit. It was submitted that he had not demonstrated a requisite amount of insight into the misconduct.

Even if the concerns were considered to be remediable, Mr Mcknight had not undertaken an appropriate period of practice with no concerns in order to demonstrate remediation. Further, the panel did not have the benefit of any up to date testimonials, reference or details of training e.g in relation to record- keeping or professional boundaries.

It was submitted that the wide-ranging misconduct had not been remedied.

(iii) Is the misconduct highly unlikely to the repeated?

In relation to the risk of repetition, a key consideration was that of Mr Mcknight's insight. He had not demonstrated any real insight into the misconduct. Indeed, the evidence that the panel received from Ms 3 during her investigation suggested that Mr Mcknight did not have appropriate insight at the relevant time.

Except for some admissions, there appeared to be little acknowledgement of the other concerns in this case and no reassurance could be gained from what little was known about Mr Mcknight, that he would not act the same way again.

The similar nature of the misconduct in this case and the fact that it was not isolated also gave rise to the risk of repetition, as did the attendant attitudinal concerns. Should the conduct be repeated, there was the risk of serious, unwarranted, patient harm.

The case of *Grant* also made it clear that the public interest must be considered paramount and states:

"71 It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations … namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession".

Further, in *Grant* the Court also referred to the fact that, unlike other healthcare regulators such as the GMC, the NMC does not have the power to warn registrants whose fitness to practise has been found not to be impaired and, therefore, a finding of non-impairment is akin to an acquittal:

"74 I agree with that analysis and would add this. 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.

75 I regard that as an important consideration in cases involving fitness to practise proceedings before the NMC where, unlike such proceedings before the General Medical Council, there is no power under the rules to issue a warning, if the committee finds that fitness to practise is not impaired. As Ms McDonald observes, such a finding amounts to a complete acquittal, because there is no mechanism to mark cases where findings of misconduct have been made, even where that misconduct is serious and has persisted over a substantial period of time. In such circumstances the relevant panel should scrutinise the case with particular care before determining the issue of impairment."

The panel was invited to keep the public interest very much at the forefront of its mind when considering whether Mr Mcknight's fitness to practise is currently impaired.

The panel has accepted the advice of the legal assessor.

The panel adopted a two-stage process in its consideration, as advised. 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, Mr Mcknight's fitness to practise is currently impaired as a result of that misconduct.

Decision on misconduct

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the 2015 Code.

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Mr Mcknight's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the 2015 Code. Specifically:

1.1 treat people with kindness, respect and compassion
1.2 make sure you deliver the fundamentals of care effectively
1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay
10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some timeafter the event
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
18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

20.1 keep to and uphold the standards and values set out in the Code
20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers
20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way
21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

Further, the panel was of the view that Mr Mcknight breached the following from the NMC Standards for medicines management:

2.10 you must make a clear, accurate and immediate record of all medicine administered, intentionally withheld or refused by the patient, ensuring the signature is clear and legible; it is also your responsibility to ensure that a record is made when delegating the task of administering medicine.
3. Where medication is not given, the reason for not doing so must be recorded.
5. These should be administered in line with relevant legislation and local standard operating procedures
26. Registrants should ensure that patients prescribed controlled drugs (CDs) are administered in a timely fashion in line with the standards for administering medication to patients. Registrants should comply with an follow the legal requirements and approved local standard operating procedures for controlled drugs that are appropriate for their area of work

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the charges found proved. It determined that charge 1 amounted to serious misconduct as Mr Mcknight arranged to be placed on Relative B's daughter's car insurance policy and drove Relative B's daughter's car for two weeks. The panel considered this an abuse of his position. The panel also considered that Mr Mcknight's actions in charge 2 amounted to serious misconduct in that the text messages to Relative B covered four months and involved swearing and inappropriate comments about his colleagues.

The panel determined that charge 3 did not amount to serious misconduct, although the Datix report was embellished by Mr Mcknight, the information it contained was similar to the home notes. The panel also found that charges 5a and 5b did not amount to misconduct, it considered Mr McKnight's actions in these charges to be an error of judgement. The panel determined that charge 6a did not amount to misconduct as Mr Mcknight had recorded the change of dressing in the daily statement continuation sheet.

The panel determined that charge 6b amounted to misconduct. Mr Mcknight chose not to administer a prescribed medication to a vulnerable patient and this fell far below what is expected of a nurse. The panel also found that charge 6c amounted to misconduct as Mr Mcknight recorded he had administered a prescribed medication when he had not. Further 6d amounted to serious misconduct as Mr Mcknight acted dishonestly.

The panel considered that charge 7b did not amount to serious misconduct as it appeared that Mr Mcknight's actions were a mistake and not deplorable.

The panel therefore found that Mr Mcknight's actions in charges 1, 2, 6b, 6c and 6d did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision on impairment

The panel next went on to decide if as a result of this misconduct Mr Mcknight's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence* v *(1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). 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.

Mrs Justice Cox went on to say in Paragraph 76:

> I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

> 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 all limbs are engaged in this case.

The panel noted that there is no evidence before it to suggest that Mr Mcknight has remediated his failings. It noted that the most recent reflective piece submitted by him was from 2017 and therefore the panel had no recent information from Mr Mcknight. There was no evidence that he has undertaken any relevant training courses. Further, the panel had no information before it in order to determine whether Mr Mcknight had gained insight into his failings, how they could have impacted on patients, their families, his colleagues and the wider nursing profession. The panel considered that his conduct in sending inappropriate text messages to Relative B inflamed an already difficult situation.

The panel is of the view that there is a risk of repetition based on Mr Mcknight's lack of demonstrated remediation and insight. The panel therefore 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 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 determined that, in this case, a finding of impairment on public interest grounds was required. A well informed member of the public would be shocked if a nurse facing Mr Mcknight's charges was not found currently impaired.

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

Determination on sanction:

Mr Jeffs told the panel that Mr Mcknight had been informed that the NMC's sanction bid in his case was a striking off order.

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

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

NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel took into account the following factors:

Aggravating

- Repetitive nature of conduct
- Patient A was a vulnerable patient
- Not an isolated incident
- Abuse of boundaries
- Wide ranging breach of fundamental tenets

Mitigating

- Early admissions to some charges
- A reflective piece showing some insight, albeit from 2017
- Some form of apology to Patient A and his family
- Health concerns around the time of charges 5-7

The panel first considered whether to take no action or to impose a caution order but concluded that these 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 or impose a caution order, nor would either of these sanctions provide public protection.

The panel next considered whether placing conditions of practice on Mr Mcknight'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 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 which include dishonesty. The panel also has noted that there is no evidence that Mr Mcknight would engage with conditions. Furthermore the panel concluded that the placing of conditions on Mr Mcknight'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 indicates that a suspension order would be appropriate where (but not limited to):

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel was of the view that Mr Mcknight's misconduct was not a single instance and it was repeated over time. Further, Mr Mcknight has demonstrated a possible attitudinal problem and has not shown sufficient insight into how his actions could have impacted on patients, their families, his colleagues and the wider nursing profession. The panel noted some of the texts he sent to Relative B which contained swearing and undermining comments about his nursing colleagues. Some examples included:

- 'Am I close enough yet to call you Mama? X'
- 'I know. It's a piss take'
- 'I can't f**ing stand her' in relation to a colleague
- 'I really dislike her' in relation to a colleague
- 'They're f**ing hopeless' in relation to colleagues
- 'She's like a damp cloth' in relation to a colleague

In all the circumstances, the panel determined that the texts Mr Mcknight sent were highly inappropriate and would have inflamed the relationship between Patient A and Relative B's family and the nursing staff. Further, the panel considered that the failures in relation to record keeping and the dishonesty associated with it would have

potentially detrimental effects on patients. The dishonesty displayed a serious departure from the standards expected of a nurse.

The panel determined that although a suspension order would sufficiently protect the public for the time it is in force, it would not address the public interest concerns. Therefore the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

The panel was of the view that the findings in this particular case demonstrate that Mr Mcknight's actions were serious and to allow him to continue practising would not protect the public and further would undermine public confidence in the profession and in the NMC as a regulatory body.

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

The panel considered that this order was necessary for public protection and 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.

Determination on Interim Order

The panel has considered the submissions made by Mr Jeffs that an interim suspension order should be made to cover any appeal period on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.