

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

**Substantive Hearing**

**Monday, 28 October 2019 – Monday, 4 November 2019**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of registrant:</b>	Elizabeth Andersen
<b>NMC PIN:</b>	91G0473E
<b>Part(s) of the register:</b>	Registered Nurse – Sub-part 1 Adult Nursing – September 1994
<b>Area of registered address:</b>	Denmark
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Anne Booth (Chair, Lay member) Jan Fowler (Registrant member) Gill Mullen (Lay member)
<b>Legal Assessor:</b>	Peter Jennings
<b>Panel Secretary:</b>	Philip Austin
<b>Registrant:</b>	Not present and not represented in absence
<b>Nursing and Midwifery Council:</b>	Represented by Mr Claydon, Case Presenter
<b>Facts proved:</b>	Charges 1a–d, 2a, 3a–b, 4a, 5, 6a, 9a–b, 10a–c, 11 (proved in relation to charges 1, 3, and 5) and 12
<b>Facts not proved:</b>	Charges 7, 8a and 11 (not proved in relation to charges 7 and 9)
<b>Fitness to practise:</b>	Currently impaired
<b>Sanction:</b>	Striking-off order
<b>Interim Order:</b>	Interim suspension order – 18 months

## **Details of charge: (Before amendments)**

That you, a registered nurse, employed by Addenbrooks hospital:

- 1) Sent letters to Colleague 1 on the following dates:
  - a) May 2015
  - b) 2 September 2016
  - c) 12 September 2016
  - d) 4 July 2016
  
- 2) That your conduct in charge 1 above was dishonest in that:
  - a) The content of some or all of the letters was incorrect and / or untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying
  
- 3) Sent letters to yourself on:
  - a) 23 September 2015
  - b) 22 January 2016
  
- 4) That your conduct in charge 3 above was dishonest in that:
  - a) That the content of some or all the letters was incorrect and / or untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying
  
- 5) On 14 September 2015 sent a letter to Colleague 1 and Colleague 2
  
- 6) That your conduct in charge 5 above was dishonest in that:
  - a) That the content of some or all the letters was incorrect and / or untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying

- 7) Sent an anonymous email to yourself
  
- 8) That your conduct in charge 7 above was dishonest in that:
  - a) That the content of some or all the letters were untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying
  
- 9) On 9 July 2016 sent an email and / or emails from the account address of [PRIVATE] to the following persons:
  - a) Dr. Arthur Kaiser
  - b) Yourself
  
- 10) That your conduct in charge 7 above was dishonest in that you:
  - a) Were not Colleague 3
  - b) You purported to be Colleague 3
  - c) Intended to induce the recipient of the emails that you were Colleague 3
  
- 11) Made incorrect and / or untrue reports to the Police of the incidents detailed in charges 1,3,5,7 and 9
  
- 12) That your conduct in charge 11 above was dishonest in that you knew the reports were inaccurate and / or untrue.

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Mrs Andersen was not in attendance and that written notice of this hearing had been sent to Mrs Andersen's registered address by international track and signed delivery and by first class post on 26 September 2019. The panel had sight of the despatch receipt for the notice of hearing to confirm that this item had been sent to Mrs Andersen's registered address.

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 Mrs Andersen's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Claydon 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"). He informed the panel that the NMC had attempted to communicate with Mrs Andersen by email and by telephone in relation to today's hearing, but was unsuccessful in these attempts.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Andersen 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.

## **Decision on proceeding in the absence of the Registrant**

The panel next considered whether it should proceed in the absence of Mrs Andersen.

The panel had regard to Rule 21 (2) which 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 Claydon invited the panel to continue in the absence of Mrs Andersen on the basis that she had voluntarily absented herself.

Mr Claydon informed the panel that previous correspondence sent to Mrs Andersen's registered address had been returned to the NMC, prior to her being sent the notice of hearing, although the notice of hearing itself has not been returned to the NMC at this time. The email address from which Mrs Andersen has been communicating with the NMC case officer no longer appears to be receiving messages. He referred the panel to the email sent by the NMC case officer dated 9 August 2019, in response to Mrs Andersen's email dated 7 August 2019, to which the NMC case officer received an automated response stating "Your message couldn't be delivered". He also informed the panel that the NMC case officer had attempted to call Mrs Anderson on the telephone on 24 October 2019, and left a voicemail asking for her call to be returned.

In light of the above, Mr Claydon submitted that Mrs Andersen appears to be disengaging from these proceedings and, as a consequence, there is no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “*with the utmost care and caution*” as referred to in the case of *R v Jones (Anthony William), (No.2) [2002] UKHL 5*. The panel further noted the case of *R (on the application of Raheem) v Nursing and Midwifery Council [2010] EWHC 2549 (Admin)* and the ruling of Mr Justice Holman that:

*“...reference by committees or tribunals such as this, or indeed judges, to exercising the discretion to proceed in the person's absence "with the utmost caution" is much more than mere lip service to a phrase used by Lord Bingham of Cornhill. If it is the law that in this sort of situation a committee or tribunal should exercise its discretion "with the utmost care and caution", it is extremely important that the committee or tribunal in question demonstrates by its language (even though, of course, it need not use those precise words) that it appreciates that the discretion which it is exercising is one that requires to be exercised with that degree of care and caution.”*

The panel had sight of the email sent by Mrs Andersen to the NMC case officer dated 12 July 2019. It noted that Mrs Andersen acknowledges receipt of another email sent by the NMC case officer earlier that day containing the evidence the NMC intends to rely on at this hearing, and that this was the email address at which the NMC had attempted to contact Mrs Andersen subsequently on 9 August 2019, when the email on that occasion was unsuccessfully delivered as the automated response states “Recipient email address is possibly incorrect”.

The panel also took account of the telephone log dated 25 October 2019, which recorded that a voicemail had been left by the NMC case officer asking for Mrs Andersen to call her back to confirm whether or not she would be in attendance at this hearing. It noted that Mrs Andersen has not yet responded to this request.

The panel noted that Mrs Andersen has not engaged with the NMC since 7 August 2019 despite its recent attempts to engage her.

The panel has decided to proceed in the absence of Mrs Andersen. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of Jones. 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 Mrs Andersen;
- Mrs Andersen has not engaged with the NMC since 7 August 2019, and has not responded to any of the correspondence sent to her about this hearing;
- there is no reason to suppose that adjourning would secure Mrs Andersen's attendance at some future date;
- five witnesses have been warned to attend to give live evidence at this hearing;
- not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- the charges relate to events that occurred in 2015/2016.
- 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 Mrs Andersen in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her 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. The panel can take into account what Mrs Andersen has said about the facts

where it appears in the evidential material. Furthermore, the limited disadvantage is the consequence of Mrs Andersen's decisions to absent herself from the hearing, waive her rights to attend and/or be represented and to not provide evidence or make submissions on her own behalf.

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

## **Decision and reasons on application to amend the charges**

At the outset of the hearing, the panel heard an application made by Mr Claydon, on behalf of the NMC, to amend the wording of multiple charges.

Mr Claydon submitted that there were a plethora of grammatical errors in both the stems of the charges, and the charges themselves. He provided the panel with a copy of the proposed amendments, and submitted that this would provide clarity and more accurately reflect the evidence the NMC had received.

Mr Claydon submitted that there would be no prejudice to Mrs Andersen in agreeing to the proposed amendments as they do not change the scope of the regulatory concerns identified.

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.

The panel noted that the reason for Mr Claydon's application was to make the charges Mrs Andersen faces more straightforward, alongside amending any typographical errors that may have occurred in the drafting of these charges.

The panel noted that Mrs Andersen has been provided with the evidence that the NMC intends to rely on at this hearing, and that these amendments would not change the scope of the allegations she faces.

The panel considered the proposed amendments to the charges to be clearer than those that had originally been drafted and sent to Mrs Andersen. It accepted Mr Claydon's submission that, by allowing the proposed amendments, Mrs Andersen would not be prejudiced or disadvantaged in any way.

The panel determined that there would be no injustice caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

The panel later noted that there were clerical errors in charge 10. The introductory words refer to charge 7, where it is apparent that charge 9 is intended, and in subcharge 10c, the words 'to believe' have been omitted before the words 'that you were Colleague 3'. The panel, of its own volition, proposed to amend charge 10 accordingly, and Mr Claydon, on behalf of the NMC, had no objection to these proposed amendments. The panel therefore decided to make the amendments to charge 10; it was satisfied that this involved no injustice to the NMC or to Mrs Andersen.

### **Details of charge: (After amendments)**

That, **while** you **were** a registered nurse, being employed by **Addenbrooke's** hospital:

- 1) **You** sent letters to Colleague 1 on **or around** the following dates:
  - a) May 2015
  - b) 2 September 2016
  - c) 12 September 2016
  - d) 4 July 2016
  
- 2) **Your** conduct in charge 1 above was dishonest in that:
  - a) The content of some or all of the letters was incorrect and / or untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying
  
- 3) **You** sent letters to yourself on:
  - a) 23 September 2015
  - b) 22 January 2016
  
- 4) **Your** conduct in charge 3 above was dishonest in that:
  - a) The content of some or all the letters was incorrect and / or untrue and was intended to induce **others** to believe that you were the victim of harassment and / or bullying
  
- 5) On 14 September 2015 **you** sent a letter to Colleague 1 and Colleague 2
  
- 6) **Your** conduct in charge 5 above was dishonest in that:
  - a) The content of some or all the letters was incorrect and / or untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying

- 7) **You** sent an anonymous email to yourself
- 8) **Your** conduct in charge 7 above was dishonest in that:
- a) The content of the email was untrue and was intended to induce others to believe that you were the victim of harassment and / or bullying
- 9) On 9 July 2016 **you** sent an email and / or emails from the account address of [PRIVATE] to the following persons:
- a) Colleague 1
  - b) Yourself
- 10) **Your** conduct in **charge 9** above was dishonest in that you:
- a) Were not Colleague 3
  - b) **Purported** to be Colleague 3
  - c) Intended to induce the recipient of the emails **or others to believe** that you were Colleague 3
- 11) **You** made incorrect and / or untrue reports to the Police of the incidents detailed in charges 1, 3, 5, 7 and 9
- 12) **Your** conduct in charge 11 above was dishonest in that you knew the reports were inaccurate and / or untrue.

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

### **Application to hear the evidence of Colleague 1 and Colleague 2 by video link:**

Mr Claydon made an application to hear the evidence of Colleague 1 and Colleague 2 by video link.

Mr Claydon submitted that Colleague 1 and Colleague 2 are unable to attend the hearing in person due to ongoing working commitments. He submitted that both Colleague 1 and Colleague 2 have indicated that taking a full day to attend this hearing in person would put a strain on their professional responsibilities.

Mr Claydon submitted that there is no prejudice to Mrs Andersen for Colleague 1 and Colleague 2 to give their evidence by video link as she has voluntarily absented herself. He submitted that the panel will be able to see and hear both Colleague 1 and Colleague 2 when giving their evidence, and it will be able to assess these witnesses' demeanour and be in a position to cross-examine these witnesses in order to test their veracity.

Mr Claydon submitted that video link would be the most proportionate measure for Colleague 1 and Colleague 2 to give their evidence, taking account of their professional position and their expression of difficulties in attending this hearing. He informed the panel that a 'GoToMeetings' test of the technical equipment has been completed in advance of this application with both Colleague 1 and Colleague 2 in order to test the connection.

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

The panel considered the evidence of Colleague 1 and Colleague 2 to be relevant to the charges. It noted that their evidence was not the sole and decisive evidence that the NMC relied upon in support of the charges.

It noted that the NMC had originally requested both Colleague 1 and Colleague 2 to attend this hearing in person, however, due to their working commitments, both raised concerns as to the workability of this request.

Whilst it is preferable to have witnesses attend in person to give evidence, the panel noted that both Colleague 1 and Colleague 2 are willing to engage with the process and give oral evidence at this hearing by way of video link. There is no suggestion that Mrs Andersen has been informed of the NMC's intention to call Colleague 1 and Colleague 2 by this method, however, the panel was of the view that it would be fair to both parties for the evidence of Colleague 1 and Colleague 2 to be adduced at this hearing in this way. It considered there to be no prejudice caused to Mrs Andersen in having Colleague 1 and Colleague 2 give evidence by video link, noting that it would be able to assess both witnesses' demeanour on the television screen.

The panel determined that it would be fair to hear the evidence of Colleague 1 and Colleague 2 by video link in the circumstances of this case, and it accepted Mr Claydon's application.

## **Decision and reasons on application pursuant to Rule 31**

The panel heard an application made by Mr Claydon, on behalf of the NMC, under Rule 31 of the Rules to admit the written statement of Colleague 5 into evidence.

Mr Claydon submitted that the NMC had made extensive efforts to try and solicit Colleague 5's attendance at this hearing. However, he informed the panel that Colleague 5 has been resolute in her position of not wanting to attend to give live evidence.

Mr Claydon submitted that the NMC had made attempts to offer Colleague 5 suitable support, having offered her assistance with travelling to the venue and other reasonable adjustments, such as giving evidence behind a screen, by video link and by telephone, to no avail. He submitted that Colleague 5 has notified the NMC that she has left the nursing profession and now works in a completely different capacity.

Mr Claydon submitted that Colleague 5 has signed and dated her NMC witness statement and that she gives relevant evidence in respect of the charges Mrs Andersen faces.

Mr Claydon submitted that Colleague 5's evidence is not the sole and decisive evidence in relation to the charges, as it is corroborated by other documents before the panel and by the oral and written testimony given by Mr 1, a Police Officer. He referred the panel to Colleague 5's appraisal, which confirmed in writing that she had difficulties in her working relationship with Mrs Andersen.

Mr Claydon submitted that Colleague 5 simply wants to put these matters behind her, and that is the reason for her non-attendance at this hearing.

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 relation to Colleague 5 serious consideration.

The panel noted that Colleague 5's witness statement had been prepared in anticipation of being used in these proceedings and was signed and dated by her. It considered her evidence to be relevant to the charges it was being asked to decide upon.

The panel noted that although Mrs Andersen is not present at this hearing, it had previously been indicated to her that the NMC intended to call Colleague 5 to give oral evidence.

The panel considered the allegations Mrs Andersen faces to be extremely serious. It noted that Colleague 5 had not indicated that she was prevented from giving oral evidence at this hearing in any way, but her reason for her non-attendance is because she wants to put these matters behind her.

The panel had regard to the other evidence it had received which also suggested that there was a poor working relationship between Colleague 5 and Mrs Andersen. In taking account of this, it determined that Colleague 5's evidence was not the sole and decisive evidence in relation to the charges Mrs Andersen is facing.

In the circumstances of this case, the panel determined that it would be fair to admit Colleague 5's written witness statement because there was a public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. The panel acknowledged the efforts made by the NMC in attempting to get Colleague 5 to attend this hearing. It noted that Colleague 5 has refused all of these

efforts, including offers of reasonable adjustments to give evidence by alternative means.

The panel was satisfied that appropriate weight could be given to Colleague 5's evidence, mindful of the fact that all parties, as well as the panel, had been deprived of the opportunity to ask her questions.

The panel accepted Mr Claydon's application to admit Colleague 5's witness statement into evidence.

## **Background**

The NMC received a referral on 5 July 2018 from Cambridge University Hospital NHS Foundation Trust (“the Trust”) in relation to Mrs Andersen, whilst she was employed as a Band 7 Research Nurse on the E7 – IBD Research Unit at Addenbrooke’s Hospital (“the Hospital”).

Mrs Andersen had initially joined the Trust in June 2001 as a Band 5 Registered Nurse on Neurosciences Critical Care Unit, before moving to the Research and Development Department as a Band 5 Research Nurse on 3 September 2005. Mrs Andersen then moved to the Oncology department as a Band 6 Registered Nurse on 3 November 2008. Mrs Andersen re-joined the Research and Development Department on 27 June 2011 as a Band 6 Registered Nurse, before being promoted to a Band 7 Research Nurse on 30 September that same year.

In relation to the regulatory concerns, it is alleged that Mrs Andersen sent letters to Colleague 1 on or around May 2015, 4 July 2016, 2 September 2016 and 12 September 2016, intending to induce the recipient to believe that she was the victim of harassment and/or bullying.

It is also alleged that Mrs Andersen sent letters to herself on 23 September 2015 and 22 January 2016, intending to induce others to believe that she was the victim of harassment and/or bullying.

It is alleged that on 14 September 2015, Mrs Andersen sent a letter to Colleague 1 and Colleague 2, intending to induce the recipients to believe that she was the victim of harassment and/or bullying.

It is alleged that Mrs Andersen sent an anonymous email to herself, intending to induce others to believe that she was the victim of harassment and/or bullying.

All of these communications are alleged to have been dishonest.

It is alleged that on 9 July 2016, Mrs Andersen sent an email and/or emails from the account address of [PRIVATE] to herself and Colleague 1. It is alleged that her conduct was dishonest in that she was purporting to be Colleague 3, and that she had intended the recipient of the emails or others to believe that they had been sent by Colleague 3.

It is alleged that Mrs Andersen made incorrect and/or untrue reports to the Police in relation to these events. It is further alleged that Mrs Andersen's conduct was dishonest in that she knew that reports were inaccurate and/or untrue, and that she knowingly did this to create a false impression.

## **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 Claydon, on behalf of the NMC.

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.

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

The panel heard oral evidence from six witnesses tendered on behalf of the NMC.

Witnesses called on behalf of the NMC were, at the time of the events, employed in the following roles:

Colleague 1 – Honorary Consultant Gastroenterologist at the Hospital;

Colleague 2 – Consultant Gastroenterologist at the Hospital;

Colleague 3 – Band 6 Inflammatory Bowel Disease Research Nurse at the Hospital;

Colleague 4 – Band 6 Inflammatory Bowel Disease Research Nurse at the Hospital;

Mr 1 – Police Officer in the Specialist Crime Team, employed by Cambridgeshire Constabulary

Ms 2 – Solicitor Consultant for the Research and Development Department (“the Department”) at the Hospital, who conducted the investigation, in a non-legal capacity, on behalf of the HR Department.

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

In the round, the panel found all of the NMC witnesses who gave oral evidence to be clear, credible and helpful. It considered them to be largely consistent with their NMC witness statements. It noted that the NMC witnesses accepted when they could not recollect specific incidents due to the lapse in time, and considered them to have not sought to mislead or embellish their evidence at any point. None of the witnesses that gave oral evidence at this hearing appeared to bear any ill-will or animosity towards Mrs Andersen and, notably, Colleague 1 and Colleague 2 spoke positively of her previous clinical nursing skills as a Band 7 Inflammatory Bowel Disease Research Nurse, prior to a change in her alleged behaviour. Overall, the panel considered all of the NMC witnesses to have attempted to assist it to the best of their knowledge and beliefs.

The written statement of Colleague 5, Inflammatory Bowel Disease Research Nurse at the Hospital, was received in evidence.

Whilst Mrs Andersen did not give evidence at this hearing, either orally or in writing, the panel took account of Mrs Andersen's statements and responses given to the Police and others which are part of the evidence.

The panel then went on to consider each charge and it made the following findings:

**Charge 1:**

- 1) You sent letters to Colleague 1 on or around the following dates:
  - a) May 2015
  - b) 2 September 2016
  - c) 12 September 2016
  - d) 4 July 2016

**These charges are found proved.**

In reaching this decision, the panel took account of the evidence of Colleague 1 and Colleague 2, who were the two consultants in charge of the small research team in the Department.

Colleague 1 states in his NMC witness statement that “I received the first letter in May 2015...After I received the letter, I discussed its contents with [Colleague 2] and we made the decision that we did not need to escalate it within the Hospital because we had not received any previous concerns regarding the Registrant. The letter was an anonymous complaint about the Registrant. [Colleague 2] and I did not feel as though any of the concerns in the letter were substantiated”. Colleague 1 believes that he gave this letter to Ms 3, Operations Manager, in September 2015 as she was investigating a subsequent NMC complaint made about Mrs Andersen.

The panel noted that all four of these letters had been sent to Colleague 1 anonymously, and that they subsequently triggered Ms 2’s investigation into these incidents.

The panel noted that the anonymous letters spanned a time period of approximately one year and four months. It considered that whoever had written these letters was presenting a good level of understanding of what the job of a Research Nurse entails, as well as what was happening within the Department at the time of writing. The panel was of the view that whoever had written the letters had done so whilst having access to the workplace itself, given the places these anonymous letters were found.

The panel also noted that the Department was only made up of approximately six members of staff at any one time, with Colleague 1 largely only attending the Department to provide direct clinical care to patients.

During his oral evidence, Colleague 2 articulated that there was a noticeable change in the way Mrs Andersen conducted herself upon the appointment of Colleague 5. He confirmed that he became aware of this when Mrs Andersen confronted him in a

corridor at the Hospital and raised her displeasure at Colleague 5 having been offered a job as a Research Nurse.

When Colleague 1 and Colleague 2 began receiving the anonymous letters, they were unclear as to who was sending them. However, during their oral evidence at this hearing, both confirmed that the syntax and grammatical errors contained within these letters were consistent with Mrs Andersen's writing style at work. The panel noted that all of the NMC witnesses who worked within the Department and were called to give evidence at this hearing had received work emails from Mrs Andersen at some point during their employment and took the same view that the writing style was similar to that of Mrs Andersen. The Police also noted the same distinctive style in emails which Mrs Andersen had sent to her member of parliament in 2014, which were found on the computer at her home.

The panel itself identified certain similarities in the style of writing contained within the anonymous letters and the email which were consistent with the writing style of Mrs Andersen in her work emails, as well as her responses to the allegations. The NMC witnesses particularly noted that Mrs Andersen often used a space both before and after a comma. The anonymous communications also showed this usage. In the panel's view, the NMC witnesses were correct in regarding this usage as unusual. There is no suggestion that any other member of the Department had a similar style of writing or punctuation.

The panel concluded that the similarities in style between the anonymous communications and to the undisputed work emails sent by Mrs Andersen were too great to be attributable to coincidence. Whilst there might hypothetically be other possibilities, in the panel's view, the only reasonable possibilities were that the communications were sent by some person connected with the Department deliberately copying Mrs Andersen's style of writing, or that they were sent by Mrs Andersen herself.

The four letters which were the subject of charge 1 each contained one or more examples of Mrs Andersen's unusual style of writing or punctuation.

The panel noted that it had found all of the NMC witnesses to be credible and reliable when giving their oral evidence at this hearing. It also had regard to its finding that none of the NMC witnesses bore any ill-will towards Mrs Andersen despite the difficulties identified in their working relationships.

In reaching its conclusion on this charge, the panel bore in mind the totality of the evidence and in particular the following features.

The communications in question began in May 2015, and continued until September 2016. In the panel's view, they must have been sent by someone with access to the Department and an awareness of its internal relationships.

Colleague 1 and Colleague 2, the consultants in charge of the Department, spoke highly of Mrs Andersen, both in her work and generally, though Colleague 2 became aware after Mrs Andersen had left of deficiencies in her working practices. There is no suggestion in the evidence that either of the consultants had concerns about Mrs Andersen personally until her animosity towards other members of staff became apparent. The malicious communications include accusations that Mrs Andersen was having a sexual relationship with Colleague 1 and Colleague 2, and the panel accepted their evidence that this was untrue. The panel also accepted that initially Colleague 1 and Colleague 2 did not consider Mrs Andersen might be the author of the letters. Colleague 2 said that even when he did consider that possibility later, because of the similarities in writing style, he thought it inconceivable that Mrs Andersen would refer herself anonymously to the NMC.

In the panel's judgment, the possibility that Colleague 1 or Colleague 2 could have been the author of the letters would be entirely far-fetched.

The email which is the subject of charge 9 was sent in the name of Colleague 3. It was sent from an email address which only existed for a matter of hours and through a router which was traced by the Police to the IP address of the router at Mrs Andersen's house. The person who sent the email would have to be someone in the near vicinity of the router who knew the password. The panel accepted the evidence of Mr 1 that the password was not visible from the window.

Colleague 4 was a friend of Mrs Andersen and stayed at her house on one occasion when they were due to attend a conference. There was no suggestion in the evidence that their relationship was otherwise than cordial, and Mrs Andersen has never suggested that Colleague 4 might be the culprit. The panel accepted Colleague 4's evidence that she did not use the Wi-Fi at Mrs Andersen's home. The panel again regards the possibility that Colleague 4 might be the author of the communications as far-fetched.

Colleague 5, with whom Mrs Andersen had a poor relationship, worked at the Hospital for only part of the period of the malicious communications, which continued after she had left in November 2015.

Colleague 3, with whom Mrs Andersen also had a poor relationship, only worked in the Department for some six weeks. The communications began a year before she took up her job there, and continued after she had left the Department on 20 May 2016.

The email the subject of charge 9, traced to Mrs Andersen's router, was sent in Colleague 3's name. The panel accepted Colleague 3's evidence that she had not been to Mrs Andersen's house, did not know her address, and did not send the email.

Whilst there was some evidence of animosity between Mrs Andersen and other members of staff such as Colleague 6, who was a Data Manager, and also another registered nurse, there was no evidence pointing to them as authors of the

communications. In her witness statement to the Police in January 2016, Mrs Andersen mentioned other members of staff with whom she thought she had a good relationship.

The panel bore in mind its duty is to decide the matter on the balance of probabilities. In the panel's judgment, it is quite satisfied on the balance of probabilities that the letters in charge 1 were not sent by some other person, but were sent by Mrs Andersen herself.

In light of the above, the panel found charge 1 proved.

### **Charge 2:**

- 2) Your conduct in charge 1 above was dishonest in that:
  - a) The content of some or all of the letters was incorrect and / or untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying

**This charge is found proved.**

In reaching this decision, the panel had regard to the case of Ivey v Genting Casinos in determining whether Mrs Andersen had been dishonest in her actions. In particular, it noted in paragraph 74:

*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective)*

*standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*

The panel took account of its finding in charge 1, that Mrs Andersen had sent anonymous letters to Colleague 1 in May 2015, and on 2 September 2016, 12 September 2016 and 4 July 2016.

The panel considered the content of the anonymous letters to be derogatory and defamatory. The charge alleges that the content of some of the letters was incorrect or untrue. The letters purport to be written by someone else about Mrs Andersen and make various criticisms of her. In the panel's view, the dishonesty in her sending these letters lies not in whether the criticisms themselves are correct or incorrect, but rather in the fact that the letters themselves are false, because Mrs Andersen wrote them herself pretending they were from another person.

However, the panel noted that one of the letters identified in charge 1 alleged a sexual relationship, and the panel was satisfied on the evidence of Colleague 1 and Colleague 2 that this accusation was untrue. It therefore found that the content of some of the letters was incorrect and untrue.

The panel also determined that there was no rational explanation for the behaviour demonstrated, other than that it was a dishonest attempt intended to induce Colleague 1 into believing that Mrs Andersen was the victim of harassment and / or bullying, when she knew that this was not the case as the panel found her to have written the anonymous letters.

In the panel's judgment, Mrs Andersen's conduct in sending the letters was plainly dishonest by the standards of ordinary, decent people.

Therefore, the panel found charge 2a proved.

### **Charge 3:**

- 3) You sent letters to yourself on:
  - a) 23 September 2015
  - b) 22 January 2016

### **This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Mr 1 and Ms 2.

Mr 1 confirmed in his oral evidence that Mrs Andersen had reported to the Police that she received anonymous letters in September 2015 and January 2016. It appears from the evidence that there were two letters received on or about 23 September 2015.

Mrs Andersen's statement to the Police dated January 2016 stated that there was a letter found on her desk in September 2015; a few days later another was found on her desk, in an envelope addressed to her, with a note from Colleague 5 saying that she had found it in her handbag. This is consistent with Colleague 5's witness statement that she found the letter in her handbag. The letter of January 2016 was found by a different colleague in the internal mail and delivered by him to Mrs Andersen. Each of these letters has derogatory content. Each of them has one or more examples of Mrs Andersen's style of writing.

The panel noted that it had found all of the NMC witnesses to be credible and reliable when giving their oral evidence at this hearing. It also had regard to its finding that none of the NMC witnesses bore any ill-will towards Mrs Andersen despite the difficulties identified in their working relationships.

The panel had regard to the matters set out above under charge 1. It bore in mind that Colleague 5's written witness statement had not been tested by oral questioning. However, her account that she found the envelope in her handbag was, in the panel's

view, consistent with the result of the Police investigation, that her fingerprints were on the envelope but not on the letter itself. It also bore in mind that Colleague 5 left a note for Mrs Andersen saying that she had found the envelope in her bag, and that the communications continued after Colleague 5 had left in November 2015. The panel accepted Colleague 5's evidence.

The panel was satisfied, on the balance of probabilities, that the letter which Colleague 5 placed on Mrs Andersen's desk was not written by Colleague 5, and that each of the letters which were subject of this charge was written by Mrs Andersen herself.

In light of the above, the panel found charge 3a and 3b proved.

#### **Charge 4:**

- 4) Your conduct in charge 3 above was dishonest in that:
  - a) The content of some or all the letters was incorrect and / or untrue and was intended to induce others to believe that you were the victim of harassment and / or bullying

#### **This charge is found proved.**

In reaching this decision, the panel had regard to the case law in determining whether Mrs Andersen had been dishonest in her actions.

Having regard to its findings in charge 3, the panel determined that Mrs Andersen had shared the anonymous letters with the Police, as well as more senior colleagues, in the knowledge that these anonymous letters had been written by her.

The panel considered the content of the anonymous letters to be derogatory and defamatory. The content includes a reference to the sexual relationship which the panel

has found to be untrue and, accordingly, as with charge 2, the panel was satisfied that some of the content of the letters was incorrect or untrue.

Having found that Mrs Andersen had sent these anonymous letters to herself, the panel also determined that there was no rational explanation for her behaviour, other than that it was dishonestly intended to induce others into believing that she was the victim of harassment and / or bullying, when she knew that this was not the case.

In the panel's judgment, Mrs Andersen's conduct in sending the letters was dishonest by the standards of ordinary, decent people.

In light of the above, the panel found charge 4a proved.

#### **Charge 5:**

5) On 14 September 2015 you sent a letter to Colleague 1 and Colleague 2

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Colleague 1 and Colleague 2.

The panel noted from Colleague 1's witness statement that, upon receiving the anonymous letter dated 14 September 2015 which was addressed to both himself and Colleague 2, he "sent it to the HR Manager, [Ms 4]". Colleague 2 had stated in his witness statement that "The letter was left on my desk in a plain envelope...I did not see who left this letter on my desk...[Colleague 1] and I held meetings to hold the Department together and make it clear to whoever was sending the letters that they had to stop. Towards the end of September 2015 I called a meeting to say that these letters

were not tolerated...[Mrs Andersen] was not present at these meetings because the letters were addressed to her”.

The letter is expressed as written by ‘we’, and says that “having recently written to [Colleague 1] and the nursing council, we seem to have had no joy [concerning Mrs Andersen]”. It continues that “we would hereby like to inform you both that we are going to continue writing to the nursing council...”.

The letter contains examples of punctuation marks preceded as well as followed by a space which was identified in the evidence as a feature of Mrs Andersen’s writing.

The panel noted that it had found all of the NMC witnesses to be credible and reliable when giving their oral evidence at this hearing. It also had regard to its finding that none of the NMC witnesses bore any ill-will towards Mrs Andersen despite the difficulties identified in their working relationships.

The panel had regard to the evidence generally and to the factors outlined in its determination in relation to charge 1. The panel was satisfied on the balance of probabilities, that this letter was sent by Mrs Andersen, and not by anyone else.

In light of the above, the panel found charge 5 proved.

#### **Charge 6:**

- 6) Your conduct in charge 5 above was dishonest in that:
  - a) The content of some or all the letters was incorrect and / or untrue and was intended to induce the recipient to believe that you were the victim of harassment and / or bullying

**This charge is found proved.**

In reaching this decision, the panel again had regard to the case law in determining whether Mrs Andersen had been dishonest in her actions.

Having regard to its findings in charge 5, the panel determined that Mrs Andersen had sent an anonymous letter to Colleague 1 and Colleague 2, when it was in fact produced by her.

As set out above in relation to charge 5, the letter states that 'we' have written to Colleague 1 and to the NMC, have had no joy and are going to continue to write. In the panel's view, that content was untrue, as the use of the word 'we', and the reference to 'Liz' in the third person, were intended to convey that the letter was written by others, which was not the case.

Having found that Mrs Andersen had sent the anonymous letter dated 14 September 2015 to Colleague 1 and Colleague 2, the panel determined that there was no rational explanation for her behaviour, other than that it was dishonestly intended to induce others into believing that she was the victim of harassment and / or bullying, when she knew that this was not the case.

The panel is satisfied that this was dishonest by the standards of ordinary, decent people.

In light of the above, the panel found charge 6a proved.

**Charge 7:**

7) You sent an anonymous email to yourself

**This charge is found not proved.**

In reaching this decision, the panel took account of all the evidence before it.

The panel noted that it had only had sight of two relevant emails contained within the documentary evidence before it, both of which were sent from the email account [PRIVATE]. These two emails were sent to the email addresses of Colleague 1 and of Mrs Andersen herself. These are the subject of charge 9 and, in any event, cannot be regarded as anonymous in view of the name in the email address.

The panel had no evidence before it of any email having been sent to Mrs Andersen anonymously and it seems that there may have been an error in the drafting of the charge.

Accordingly, the panel found charge 7 not proved.

**Charge 8:**

8) Your conduct in charge 7 above was dishonest in that:

- a) The content of the email was untrue and was intended to induce others to believe that you were the victim of harassment and / or bullying

**This charge is found not proved.**

In reaching this decision, the panel took account of its finding in relation to charge 7.

As there was no evidence before it of any email having been sent to Mrs Andersen anonymously, this charge was incapable of being proved.

Accordingly, the panel found charge 8 not proved.

**Charge 9:**

- 9) On 9 July 2016 you sent an email and / or emails from the account address of [PRIVATE] to the following persons:
- a) Colleague 1
  - b) Yourself

**This charge is found proved.**

In reaching this decision, the panel took account of all the evidence adduced in this case.

The panel noted that Mrs Andersen does not appear to disagree that there was a poor working relationship with Colleague 3, and also with Colleague 5 and Colleague 6. It noted that Colleague 5 and Mrs Andersen had worked together previously, and that Mrs Andersen had actively voiced her displeasure to Colleague 1 concerning the appointment of Colleague 5.

The panel had regard to Colleague 3's witness statement in which she stated "My working relationship with [Mrs Andersen] became frosty very quickly. She was difficult to get along with and I found her unhelpful because she would ignore me and disappear from the Department when I would ask her for advice". Mrs Andersen was, in practice, Colleague 3's Line Manager, and worked directly with her three times per week for a few hours. The panel received evidence that Colleague 3 left her position at the Hospital after six weeks of employment as she felt that the environment was unsafe to work in.

The NMC witnesses all spoke of a hostile environment in the Department, even after Colleague 5 had ended her employment there. There was no evidence before the panel to suggest that Colleague 3 and Colleague 5 knew each other, as Colleague 5 had

ended her employment at the Department prior to Colleague 3 commencing her employment in April 2016.

Colleague 3 left her employment at the Department on 20 May 2016, and these emails were sent on 9 July 2016. The panel noted the Police evidence that the email account [PRIVATE] was only in existence for a period of nine hours, and that two emails had been sent from that email address, one to Colleague 1, and the other to Mrs Andersen. The email account was created during the day, and deleted during the night. The emails contain examples of Mrs Andersen's writing style.

The email came to the attention of the Police, who subsequently traced the IP address from where the email had come. The Police attended the location of the IP address which was confirmed as Mrs Andersen's home address. Mr 1 confirmed that upon attending Mrs Andersen's home address, he physically confiscated the computer he had found in Mrs Andersen's living room.

The panel noted that Mrs Andersen had stated that she did not own a computer. There was evidence that Mrs Andersen had an iPad, and that there were other devices on the premises, in addition to the computer in the living room. Without passwords, the Police were unable to examine some of these devices. Whilst the panel bore in mind that the statement that Mrs Andersen did not own a computer might be correct literally, it was of the view that the statement was at least misleading.

Whilst the panel considered it to be theoretically possible for someone to connect to Mrs Andersen's Wi-Fi from outside of her home address, it considered this to be unrealistic in the circumstances in this case. In any event, the panel noted that in order to connect to the router, the Wi-Fi password would have been needed by the person attempting to gain access to it.

There was nothing to suggest that Colleague 3 had ever been at the home address of Mrs Andersen and the panel accepted her evidence that she had not been there, did not

know Mrs Andersen's address, and did not send the email. It also accepted the Police evidence that the password could not be seen from the window.

Colleague 4, who was a friend of Mrs Andersen, had been to her house. The panel accepted Colleague 4's evidence that she did not use the Wi-Fi there. Mrs Andersen told the Police that another member of the Department, with whom she said she had a good relationship, had also been to the house. In the panel's view, there was no reason to suppose that either of these two people had sent the email, and the panel accepted Colleague 4's evidence that she did not.

In taking account of the above, and having regard to the factors which it has set out in relation to charge 1, the panel determined that, on the balance of probabilities, it was more likely than not that Mrs Andersen had sent the emails to Colleague 1 and herself from the email account of [PRIVATE], and that they were not sent by any other person.

Therefore, the panel found charge 9 proved.

**Charge 10:**

10) Your conduct in charge 9 above was dishonest in that you:

- a) Were not Colleague 3
- b) Purported to be Colleague 3
- c) Intended to induce the recipient of the emails or others to believe that you were Colleague 3

**This charge is found proved.**

In reaching this decision, the panel had regard to its above findings, and to the case law relating to dishonesty.

The panel noted that it had found that Mrs Andersen had sent the two emails to Colleague 1 and herself from the email account of [PRIVATE], as identified in charge 9. It determined that these emails were sent by Mrs Andersen purporting to be Colleague 3.

The panel found that Mrs Andersen's actions were dishonest by the standards of ordinary, decent people. It determined that Mrs Andersen knew that by creating an email account with Colleague 3's name in it, she was leading others to believe that Colleague 3 was the one who had that email address and was sending correspondence through the use of it.

The panel considered there to be no rational explanation for Mrs Andersen's behaviour, other than that it was intended to induce the recipients of the emails or others into believing that Colleague 3 had sent the two emails from that email account.

In light of the above, the panel found charges 10a, 10b and 10c proved.

**Charge 11:**

11) You made incorrect and / or untrue reports to the Police of the incidents detailed in charges 1, 3, 5, 7 and 9

**This charge is found proved in relation to charges 1, 3, and 5. This charge is not found proved in relation to charges 7 and 9.**

In reaching this decision, the panel took account of the evidence of Mr 1, as well as its above findings.

The panel accepted the evidence of Mr 1 that Mrs Andersen made reports to the Police in September 2015, on 25 January 2016 and 20 September 2016 concerning the letters

in charges 1, 3 and 5. The panel has found charge 7 not proved because the evidence does not suggest that there was an anonymous email as described in charge 7, and there is no evidence that one was reported to the Police. With regard to the emails in charge 9, allegedly from Colleague 3, the evidence of Mr 1 was that he discovered this email in the course of his investigation into a matter occurring in October 2016. He does not say that Mrs Andersen reported those emails to the Police.

The panel noted the earlier findings it had made in relation to charges 1, 3, and 5. It noted that in respect of charges 1, 3, and 5, it had found Mrs Andersen to have sent multiple letters to herself and her colleagues anonymously.

Therefore, the panel found that Mrs Andersen had reported the incidents identified in charges 1, 3, and 5 to the Police, and that those reports were incorrect and untrue because she herself was the author of those communications. The panel was not satisfied that Mrs Andersen reported the matters in charges 7 and 9 to the Police.

In light of the above, the panel found charge 11 proved in relation to charges 1, 3, and 5. This charge is not found proved in relation to charges 7 and 9.

**Charge 12:**

12) Your conduct in charge 11 above was dishonest in that you knew the reports were inaccurate and / or untrue.

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Mr 1, as well as its above findings, and the case law relating to dishonesty.

The panel determined that Mrs Andersen knew that what she was reporting to the Police was untrue as she had sent the letters herself. It considered her actions in reporting the anonymous letters she had received to the Police were intended to mislead the Police into believing that she was the victim of a criminal offence, when this was not the case.

The panel therefore considered that Mrs Andersen's conduct in reporting these matters to the Police was dishonest by the standards of ordinary, decent people.

In light of the above, the panel found charge 12 proved.

## **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 Mrs Andersen'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.

In his submissions, Mr Claydon invited the panel to take the view that Mrs Andersen's actions amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"). He then directed the panel to specific paragraphs and identified where, in the NMC's view, Mrs Andersen's actions amounted to serious misconduct.

Mr Claydon referred the panel to the case of *Roylance v GMC (No. 2) [2000] 1 AC 311* which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Mr Claydon invited the panel to find that Mrs Andersen's actions were at the higher end of the spectrum of misconduct. He submitted that, in acting in the way she did, Mrs Andersen's behaviour adversely impacted the working environment, and could have led to the disbanding of an important research department at the Hospital.

Mr Claydon concluded that members of the nursing profession would consider Mrs Andersen's actions to be deplorable in the circumstances of this case.

Mr Claydon 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. 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. Mr Claydon referred the panel to

the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

Mr Claydon submitted that Mrs Andersen's actions had the potential to put patients indirectly at an unwarranted risk of harm. He referred the panel to Colleague 2's stated evidence that he would consider closing down the Department if the anonymous and abusive letters did not stop.

Mr Claydon submitted that Mrs Andersen breached a fundamental tenet of the nursing profession in acting dishonestly. He submitted that Mrs Andersen's dishonest conduct was repeated and sustained for a prolonged period of time, and that it also increased over time in order to achieve her aims.

Mr Claydon submitted that Mrs Andersen's dishonesty occurred in a clinical environment, and had an adverse effect upon colleagues working in the Department. He reminded the panel that at the time of the events, there had been a high turnover of staff in the Department, and that specifically, Colleague 3 had stated during her oral evidence that she felt it was an unsafe environment for her to be working in. Furthermore, Mrs Andersen made false accusations which resulted in Colleague 5 being arrested, interviewed by the Police and made subject to bail conditions prior to her being exonerated. Mr Claydon informed the panel that Colleague 5 was suspended from the Trust because of these incidents and has since left the nursing profession, embarking on an alternative means of employment. Mrs Andersen also wasted over 50 hours of police time according to the evidence of Mr 1.

Mr Claydon referred the panel to the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, and invited it to consider whether the concerns identified are capable of remediation, whether they have been remediated, and whether there is a risk of repetition of similar concerns occurring at some point in the future.

Mr Claydon submitted that acts of dishonesty are often more difficult to remediate than clinical concerns, although not impossible. However, in this case, he submitted that Mrs Andersen has demonstrated no insight, and provided no evidence of remediation to suggest that there is no longer a real risk of repetition of similar concerns occurring at some point in the future. He submitted that there is no evidence to suggest that Mrs Andersen's conduct would not be repeated, as there is nothing to demonstrate that she appreciates the seriousness of her actions, and how they have impacted upon colleagues, the nursing profession and the wider public.

In light of the above, Mr Claydon invited the panel to find that Mrs Andersen's fitness to practise as a registered nurse is currently impaired on public protection and public interest grounds.

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. That misconduct must be serious misconduct. Secondly, only if the facts found proved amount to serious misconduct, the panel must decide whether, in all the circumstances, Mrs Andersen'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 Code.

The panel, in reaching its decision, had regard to the public interest. There is no burden or standard of proof at this stage and the panel exercised its own judgement.

In its decision on the facts, the panel found that over a period of some 16 months, Mrs Andersen dishonestly sent to Colleague 1 and Colleague 2, the consultants in charge of the Department, and to herself, communications which purported to be from some anonymous person or, in the case of the emails in charge 9, from a named colleague who was entirely innocent. Those communications varied from the merely critical to baseless allegations of a sexual relationship and to racial abuse, and were intended by Mrs Andersen to portray herself as a victim of harassment and abuse when this was wholly fictitious. Mrs Andersen also reported these matters to the Police.

As a consequence of her actions, suspicion fell on the entire Department. One of the consultants found it necessary to threaten to close the Department if the communications did not stop. There was a high turnover of staff because of what was described in evidence as the “poisonous” atmosphere. Members of staff were interviewed by the Police, one of them being arrested.

The panel was of the view that Mrs Andersen’s actions fell significantly short of the standards expected of a registered nurse, and it considered her actions to have amounted to multiple breaches of the Code. Specifically:

### **“1 Treat people as individuals and uphold their dignity**

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

## **20 Uphold the reputation of your profession at all times**

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, in these circumstances, the panel decided that Mrs Andersen’s actions in each of the charges found proved fell seriously short of the standards expected so as to justify a finding of misconduct.

The panel noted that the charges found proved did not relate to a single instance of misconduct. Instead, it had found that Mrs Andersen had embarked on a course of dishonest conduct which lasted for a prolonged period of time. Mrs Andersen had sent malicious communication to herself and other members of staff in the Department intending to induce others into thinking that she was a victim of harassment and / or bullying. It considered Mrs Andersen to have attempted to convince people that she was being discriminated against in a racial manner.

The panel considered Mrs Andersen’s actions to have been pre-meditated. Mrs Andersen had misled people by creating an illusion of mistreatment, and by purporting to be other members of staff within the Department. In particular, she set up an email account in the name of Colleague 3 which the panel found Mrs Andersen to have created and accessed from her home address. She used this account to send malicious emails to herself and Colleague 1. This implicated Colleague 3, who had left the Department and was totally unaware of the existence of this email account.

The panel had found that Mrs Andersen had made incorrect and untrue reports to colleagues in the Department and to the Police. Mrs Andersen had purposely escalated the situation by making these reports to both organisations knowing that the allegations were unfounded. This led to two investigations being commenced. Mrs Andersen had made very serious allegations of discrimination based on the malicious communications she had herself sent, which gave both the Trust and the Police no alternative other than to investigate these matters.

The panel determined that Mrs Andersen's actions had a significant impact upon colleagues working in the Department as staff had to work in a toxic environment created by Mrs Andersen's behaviour and actions. Furthermore, Colleague 5 was arrested as part of the Police investigation.

The panel was of the view that to characterise Mrs Andersen's actions as anything other than misconduct would fail to declare and uphold proper standards of conduct and behaviour on the part of a registered nurse. It determined that other members of the nursing profession would consider Mrs Andersen's behaviour to be deplorable.

## Decision on impairment

The panel next went on to decide if, as a result of this misconduct, Mrs Andersen'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 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.

Mrs Justice Cox went on in Paragraph 76 to adopt the categories of impairment formulated by Dame Janet Smith in her Fifth Report from *Shipman*. The panel should ask:

Do our findings of fact in respect of the [doctor's] misconduct...  
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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The panel finds that limbs b, c and d are engaged in this case.

The panel noted that the concerns identified in this case solely relate to Mrs Andersen's professional conduct. There are no allegations relating to Mrs Andersen's clinical nursing practice.

Whilst the panel considered Mrs Andersen's actions to have adversely impacted on her colleagues in the Department, it had no evidence of any patient suffering actual harm as a result of Mrs Andersen's actions. Both Colleague 1 and Colleague 2 attested positively to Mrs Andersen's clinical nursing skills during their oral evidence, although Colleague 2 informed the panel that there was a noticeable dip in Mrs Andersen's performance and demeanour when Colleague 5 was recruited to work in the Department. The panel did not accept Mr Claydon's submission that patients were exposed to an unwarranted risk of harm as a result of Mrs Andersen's actions. The panel found that the evidence did not support a finding of current public protection concerns in Mrs Andersen's nursing practice.

The panel considered honesty, trust and integrity to form parts of the bedrock of the nursing profession. The panel was of the view that in being dishonest, Mrs Andersen

had breached a fundamental tenet of the nursing profession, and that her actions had serious ramifications for those involved.

In assessing Mrs Andersen's level of insight, the panel had regard to her responses to the Trust investigation, to the Police, and to the NMC. She did not attend this hearing to provide oral or documentary evidence to the panel. The panel considered Mrs Andersen to have offered no remorse for her misconduct. The panel noted that Mrs Andersen denies having been the author of the malicious communications and it found that she has failed to appreciate the seriousness of her actions. Mrs Andersen maintains her innocence and continues to attribute blame to some of the colleagues that she worked alongside in the Department. There is nothing to suggest that Mrs Andersen has reflected on her conduct: she has not accepted it at all.

Whilst the panel noted that concerns relating to a registrant's professional conduct are often more difficult to remediate than clinical nursing concerns, it considered Mrs Andersen's misconduct to be possibly capable of remediation, albeit the misconduct was extremely serious. However, the panel determined that no evidence had been provided to demonstrate that she had remediated any of the concerns identified or that she was willing to do so, as she has disengaged from the NMC.

The panel had not been provided with any recent testimonials by Mrs Andersen. She now resides in Denmark, and the panel is aware that she is registered as a nurse there.

In light of the above, the panel had no evidence before it to allay its concerns in relation to Mrs Andersen. In the absence of any evidence to the contrary, the panel considered there to be a real risk of repetition of Mrs Andersen's misconduct.

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 was of the view that a fully informed member of the public would be seriously concerned by Mrs Andersen's actions in sending malicious communications whilst purporting to be others, intending to induce people into thinking that she was the victim of harassment and / or bullying. In the panel's judgment, public confidence in the nursing profession and in the NMC as regulator would be undermined if a finding of impairment were not made. Therefore, the panel determined that a finding of impairment on public interest grounds was required.

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

### **Determination on sanction:**

The panel has considered this case carefully and has decided to make a striking-off order. It directs the NMC registrar to strike Mrs Andersen's name off the register.

In reaching its decision on sanction, the panel considered all of the evidence before it, along with the submissions of Mr Claydon, on behalf of the NMC.

Mr Claydon invited the panel to impose a striking-off order. He submitted that Mrs Andersen's actions are serious enough to warrant permanent removal from the NMC register, and that public confidence in the nursing profession would be undermined if this were not done.

Mr Claydon took the panel through the aggravating and mitigating factors the NMC considered to be engaged in this case.

Mr Claydon submitted that there are serious concerns regarding Mrs Andersen's conduct with the panel having found her dishonesty to be pre-meditated and sustained for a significant period of time. He submitted that Mrs Andersen had demonstrated a high level of dishonesty; having unnecessarily involved the Police and attempted to jeopardise her colleagues' professional reputation. He reminded the panel that Mrs Andersen had attempted to portray herself as a victim of harassment and / or bullying in the workplace, when her colleagues were entirely innocent.

Mr Claydon referred the panel to its findings on impairment, specifically, that Mrs Andersen had offered no insight or remorse for her misconduct, and that she lacked appreciation of the seriousness of the situation. Furthermore, Mrs Andersen has not attempted to remediate the concerns identified.

Mr Claydon submitted that there is evidence before the panel which could be suggestive of Mrs Andersen having a deep-seated attitudinal issue.

The panel heard and 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 Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own judgement.

As regards aggravating factors, the panel has considered the following as relevant:

- Mrs Andersen was a Band 7 Registered Nurse, who held a position of trust and seniority in the Department and in creating false suspicions about junior members of staff, she abused this position.
- Mrs Andersen had breached her professional duty of candour by being dishonest, and the panel had found her dishonesty to be pre-meditated and to have lasted for a prolonged period of time.
- Mrs Andersen had several opportunities to cease her misconduct but rather she escalated the situation further.
- Mrs Andersen has not demonstrated any insight, remorse or remediation.

The panel did not consider there to be any mitigating factors identified in this case.

The panel noted that there have been no previous regulatory findings made against Mrs Andersen.

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

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* The panel was of the view that Mrs Andersen’s misconduct was not at the lower end of the spectrum of fitness to practise and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing a conditions of practice order on Mrs Andersen’s nursing 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. It considered there to be no identifiable areas of retraining for Mrs Andersen to embark on as there are no allegations relating to her clinical nursing practice. The concerns identified solely relate to her conduct and behaviour, inside and outside of the nursing environment. Mrs Andersen has made no attempt to reflect on her actions or remediate the misconduct identified. She is currently living overseas in Denmark, and has obtained a nursing registration there.

In taking account of the above, the panel determined that placing a conditions of practice order on Mrs Andersen’s nursing registration would not adequately address the seriousness of this case, nor would it satisfy the public interest considerations.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel considered the misconduct identified to be serious. It noted that Mrs Andersen engaged in multiple instances of dishonest conduct which was pre-meditated, prolonged, and escalated by Mrs Andersen over time. She had sought to mislead others, including the Police, into believing that she was the victim of harassment and / or bullying by sending malicious communications to herself and others. She then went to the effort of creating an email account whilst purporting to be Colleague 3, in an attempt to influence others into believing that Colleague 3 had been the author of the emails sent to Colleague 1 and Mrs Andersen. Colleague 3 and Colleague 5 were relatively new to the Department, and in implicating them in this manner, Mrs Andersen abused her position as a senior registered nurse. In the panel's view, Mrs Andersen's behaviour was indicative of a deep-seated attitudinal issue.

Mrs Andersen has offered no insight, remorse or remediation for her misconduct, despite having a substantial amount of time to reflect on her behaviour. Although Mrs Andersen is not currently living in the UK, the panel considered that should she return to the UK and seek employment as a registered nurse, then, particularly in view of the lengths to which she went in carrying out this course of dishonest conduct, there is a real risk of further dishonest behaviour, whether of the same or of some other kind.

The panel noted that a registered nurse who has been found to have acted dishonestly always runs a risk of being removed from the NMC register. However, this risk is reduced should a registrant demonstrate a high level of insight, remorse, or remediation into their misconduct. None of these have been demonstrated by Mrs Andersen despite ample opportunity to do so. The panel noted that there were serious breaches of multiple standards of the Code, a breach of a fundamental tenet of the nursing profession, and a breach of Mrs Andersen's professional duty of candour in this case.

Taking account of the above, the panel determined that Mrs Andersen's dishonest actions were not merely serious departures from the standards expected of a registered nurse and serious breaches of the fundamental professional tenets of probity and trustworthiness, they were fundamentally incompatible with Mrs Andersen remaining on

the NMC register. In the panel's judgment, to allow someone who had behaved in this seriously dishonest way to maintain her NMC registration would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on Mrs Andersen both professionally and personally, although it noted that she is not currently seeking to practice as a registered nurse in this country. The panel was satisfied that the need to protect the public interest outweighs the impact on Mrs Andersen.

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

## **Determination on Interim Order**

The panel has considered the submissions made by Mr Claydon that an interim order should be made as it is necessary on the sole ground of it being in the public interest. He invited the panel to impose an interim suspension order for 18 months.

The panel accepted the advice of the legal assessor.

The panel had regard to the seriousness of the facts found proved, and the reasons set out in its decision for the substantive order. Owing to the seriousness of the misconduct in this case and the risk of repetition, it determined that Mrs Andersen's actions were sufficiently serious to satisfy the high-bar threshold for imposing an interim order solely on the ground of it being in the public interest. In the panel's judgment, public confidence in the regulatory process would be damaged if Mrs Andersen would be permitted to practise as a registered nurse prior to the substantive order coming into effect.

The panel decided to impose an interim suspension order in the circumstances of this case. To conclude 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 suspension order 28 days after Mrs Andersen is sent the decision of this hearing in writing.

That concludes this determination.