

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

Substantive Hearing

**27 – 29 August, 3 October and 21-22 November 2019
27 – 28 January 2020**

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

Name of registrant: Fiona Daraz

NMC PIN: 10H0248E

Part(s) of the register: Registered Nurse - Mental Health Nursing
Sub part 1 – RNMH: Mental health nurse
(2 September 2010)

Area of Registered Address: Orkney

Type of Case: Misconduct

Panel Members: Anne Booth (Chair, lay member)
Laura Scott (Registrant member)
Graham Park (Lay member)

Legal Assessor: Mike Bell

Panel Secretary: Tara Hoole

Mrs Daraz (now Ms McInnes): Not present and not represented in absence
(27-29 August & 3 October 2019, 27 – 28
January 2020)
Present, not represented (21-22 November
2019)

Nursing and Midwifery Council: Represented by NMC Case Presenter's
Alastair Kennedy, (27-29 August & 21-22
November 2019, 27 – 28 January 2020) and
Yusuf Segovia (3 October 2019)

Facts proved:	3, 4, 5(b), 5(c), 5(e) and 5(g)
Facts proved by admission:	1, 2 and 5(a)
Facts not proved:	5(d) (NMC offered no evidence), 5(f) and 6 in its entirety
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order (18 months)

Details of charge:

That you, a registered Nurse:

1. You failed to disclose to the NMC that you were charged with assault on or around 7 March 2018 and/or you were convicted of assault on 3 October 2018; **proved by admission**
2. You failed to notify your employer that on or around 7 March 2018 you were charged with assault; **proved by admission**
3. Your actions set out in charge 1 were dishonest in that you deliberately sought to mislead the NMC by withholding this information; **found proved**
4. Your actions set out in charge 2 were dishonest in that you deliberately sought to mislead your employer by withholding this information; **found proved**
5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:
 - a) Accepted money from Patient A; **proved by admission**
 - b) Accepted a car from Patient A; **found proved**
 - c) Accepted a dog from Patient A; **found proved**
 - d) On one occasion allowed Patient A to attend your home and you were naked when he was present at your home; **no case to answer**
 - e) You exchanged personal messages with Patient A which were unrelated to Patient A's care; **found proved**
 - f) Discussed colleagues involved in Patient A's care with him; **found not proved**
 - g) Discussed Patient A's care with him; **found proved**

6. During or around the period 3 June 2017 to 30 September 2017, you breached confidentiality by;
- a) discussing patient details with Patient B; **found not proved**
 - b) taking Patient B with you in a car when you visited patients; **found not proved**
 - c) failing to keep your work laptop secure by allowing Patient B to use it. **found not proved**

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 Daraz was not in attendance and that written notice of this hearing had been sent to Mrs Daraz's registered address by recorded delivery and by first class post on 26 July 2019. The Royal Mail Track and Trace service indicates that notice of this hearing was delivered to Mrs Daraz's registered address on 27 July 2019 and was signed for under the printed name DARAZ. Further, the panel noted that notice of this hearing was also sent to Mrs Daraz's representative on 26 July 2019.

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

Mr Kennedy 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 Mrs Daraz 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 Mrs Daraz.

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 Kennedy invited the panel to continue in the absence of Mrs Daraz on the basis that she had voluntarily absented herself.

Mr Kennedy took the panel through the correspondence from Mrs Daraz. He took the panel to the note of a telephone call between Mrs Daraz and her NMC Case Officer dated 16 August 2019 in which Mrs Daraz says, due to various personal circumstances, she would like the hearing to be postponed. This process was explained to her by the NMC Case Officer and she was asked to put this request in writing.

Mr Kennedy told the panel that the next contact from Mrs Daraz was in the form of an email on 19 August 2019 in which she states '*After careful consideration... I have decided I no longer wish to attend my tribunal hearing*'. She closes the email stating '*I*

wish this statement to be submitted to the panel at the hearing if you wish to go ahead. I will not be attending...’.

Mr Kennedy advised the panel that the NMC Case Officer replied to this email requesting clarification as to whether Mrs Daraz still wished to request a postponement. Mr Kennedy then directed the panel to Mrs Daraz’s reply to this email, also received 19 August 2019, in which she states *‘I no longer want a postponement. I will not be attending the hearing... for the reasons previously stated. I no longer wish to have a career in nursing... if it comes to it I would be looking for a voluntary removal from the register’.*

Mr Kennedy told the panel that there is also correspondence, emailed to the NMC on 24 August 2019, from Mrs Daraz’s named representative, Mr MacInnes, in which he makes comments on the evidence which is before the panel. Mr Kennedy drew the panel’s attention to the last paragraph of Mr MacInnes’ letter which states *‘These are, briefly, my reasons for not wasting my time attending your “Hearing”. You may, if you, wish proffer this statement to the “hearing”.’*

Mr Kennedy submitted that Mrs Daraz and her representative, Mr MacInnes, have made it clear that they will not be in attendance at this hearing and, as such, there was no reason to believe that an adjournment would secure either of their attendance on some future occasion.

Mr Kennedy submitted that it was in the interest of justice and in the interest of Mrs Daraz that these proceedings are resolved as soon as possible.

Mr Kennedy reminded the panel that there are several witnesses who have been organised to attend this hearing at considerable expense, and to their inconvenience.

Finally, Mr Kennedy submitted that Mrs Daraz's position is protected as far as it can be given her non-attendance in that she has provided several documents which put her position across and this can also be put to the NMC witnesses.

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 and *General Medical Council v Adeogba* [2016] EWCA Civ 162.

The panel noted the correspondence from Mrs Daraz and Mr MacInnes as highlighted by Mr Kennedy in his submissions above.

The panel noted in his correspondence of 24 August 2019 Mr MacInnes states: '*Questioning of [Patient A]. I was informed I would not be permitted to question [Patient A] on his evidence but that this would be conducted by a neutral lawyer, how would he know what questions to ask, how would he know what was truth and what was fantasy.*'

The panel was concerned that this may have impacted on Mrs Daraz's change of position from asking for a postponement of the hearing on 16 August 2019 to her stating she would not be attending on 19 August 2019. As such the panel requested Mr Kennedy to enquire as to when this information regarding the questioning of Patient A was divulged to Mrs Daraz and Mr MacInnes.

Mr Kennedy confirmed that Mr MacInnes was informed at a case management meeting on 9 August 2019 of the fact that the NMC would be applying to the panel for the use of "special counsel" to conduct cross-examination of Patient A, on behalf of Mrs Daraz, in the event Mrs Daraz attended and was represented at the hearing as Patient A would fall under the classification of a vulnerable witness in terms of Rule 23 of the Rules. Mr Kennedy confirmed that, at this case management meeting, Mrs Daraz and Mr

MacInnes were advised that they would be able to discuss the questions they wished to be explored with Patient A with special counsel and, although they would not be able to directly question Patient A, special counsel would do so on their behalf.

The panel considered that Mrs Daraz and Mr MacInnes had been informed of this intention to apply for the use of special counsel before the initial application for a postponement and certainly before their decision not to attend this hearing.

The panel therefore decided to proceed in the absence of Mrs Daraz. In reaching this decision, the panel has considered Mr Kennedy's submissions and accepted 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 Daraz. Rather she has been explicit in stating she does not wish to apply for a postponement;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- Mrs Daraz and her representative have provided written representations setting out her case which can be put to the witnesses;
- four witnesses have been arranged to give evidence in this case;
- 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 in 2017-2018;
- 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
- it is potentially in Mrs Daraz's interest that this case proceed.

There is some disadvantage to Mrs Daraz in proceeding in her absence. However, in the panel's judgment, this can be mitigated. The panel has received written representations on Mrs Daraz's behalf. 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. Mrs Daraz's position can also be put to the NMC witnesses for their comment. Furthermore, the limited disadvantage is the consequence of Mrs Daraz'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 Daraz. The panel will draw no adverse inference from Mrs Daraz's absence in its findings of fact.

Application to offer no evidence in respect of charge 5(d)

Mr Kennedy, on behalf of the NMC, made an application to offer no evidence in respect of charge 5(d) which reads:

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:
 - d) On one occasion allowed Patient A to attend your home and you were naked when he was present at your home;

Mr Kennedy submitted that evidence relating to charge 5(d) had changed since the NMC Case Examiner's had concluded there was a case to answer in respect of this charge. He advised the panel that the original statement taken from Patient A included the allegation at charge 5(d) however Patient A deleted the reference to this in his draft statement with the explanation that he no longer wished to proceed with the matter and was not willing to give evidence in relation to it. Mr Kennedy submitted that on the basis that Patient A has withdrawn his evidence the NMC was unable to offer any evidence on charge 5(d).

The panel accepted the advice of the legal assessor who advised the panel in terms of Rule 24 (7) of the Rules which states:

- 24 (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –
- (i) either upon the application of the registrant or,
 - (ii) of its own volition,

the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

The panel accepted the application. It had regard to the documentation before it and the content of charge 5(d). It took the view that evidence relating to these charges was not included in the bundle and accepted Mr Kennedy's application to offer no evidence.

The panel therefore determined that Mrs Daraz had no case to answer, under Rule 24 (7) of the Rules, in respect of charge 5(d).

Decision and reasons on application under Rule 19

At the outset of the hearing Mr Kennedy made a request that parts of the hearing of Mrs Daraz's case be held in private on the basis that proper exploration of Mrs Daraz's case involves reference to both her health and personal circumstances as well as Patient A's health conditions. 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 Mrs Daraz’s health and personal circumstances and Patient A’s health conditions, 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 these matters as and when such issues are raised.

Decision and reasons on application pursuant to Rule 31 in respect of Mr 4's written witness statement

The panel heard an application made by Mr Kennedy under Rule 31 of the Rules to allow the written statement of Mr 4 into evidence. Mr Kennedy explained that Mr 4 was an NMC employee and spoke purely to formal matters. Mr 4 checked the NMC system and confirms that Mrs Daraz did not notify the NMC of the police charge or of the conviction detailed at charges 1 and 2. Mr Kennedy reminded the panel that Mrs Daraz has admitted charges 1 and 2 and therefore the failure to notify the NMC of the charge and subsequent conviction.

In the preparation of this hearing, the NMC had indicated to Mrs Daraz in the Case Management Form (CMF) that it was intended that this witness would not provide live evidence to the panel. In the returned CMF dated 20 May 2019 Mrs Daraz indicated she agreed with Mr 4's statement and did not require him to attend in person to give evidence.

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 Mr 4 serious consideration. The panel noted that Mr 4's statement had been prepared in anticipation of 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 him.

The panel noted that Mrs Daraz had indicated she did not require Mr 4 to attend to give live evidence.

In these circumstances, given Mr 4 speaks purely to factual matters which are agreed by Mrs Daraz, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Mr 4 but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application pursuant to Rule 31 in respect of the evidence of Patient B

The panel heard an application made by Mr Kennedy under Rule 31 of the Rules to allow the written statement of Patient B into evidence. Patient B was not present at this hearing. Mr Kennedy provided the panel with a chronology of the attempts by the NMC to contact Patient B to secure a signed witness statement from him in respect of this case but, he submitted, this had been to no avail. Mr Kennedy told the panel that Patient B is the sole provider of evidence in respect of charge 6. He advised the panel that the statement of Patient B had been hand written by his Criminal Justice Social Worker (CJSW) and had been redacted prior to being sent to NHS Orkney for their investigation, as such it was impossible to determine who had signed the statement, because of this redaction, without hearing evidence from either Patient B or his CJSW.

Mr Kennedy took the panel through the case of *Thorneycroft v NMC [2014] EWHC 1565* (Admin) and the factors which a panel should consider when admitting hearsay evidence. Mr Kennedy told the panel that Patient B's evidence is the sole and decisive evidence in support of charge 6, the only supporting evidence comes from Ms 3 which is hearsay evidence she was told by Patient B's CJSW. Further Mrs Daraz has expressed her views in relation to Patient B and expresses her reasons for his evidence being unreliable [PRIVATE] she describes this as '*an attempt to get back at [her]*'. Mr Kennedy submitted that charge 6 was a serious charge relating to breaching confidentiality and could have serious consequences for Mrs Daraz if found proved.

Mr Kennedy submitted that Patient B's statement was clearly relevant to these proceedings but whether it would be fair to admit it was a matter for the panel.

In the preparation of this hearing, the NMC had indicated to Mrs Daraz and Mr MacInnes that there would be an application to admit Patient B's statement.

Mrs Daraz in her email of 19 August states *'The NMC insist on using a written statement from [Patient B] ... claiming that it can be submitted as hearsay: I'm not sure what grounds you can use hearsay as evidence!'* Further in her statement emailed to the NMC on 2 June 2019 she states *'I vehemently deny all allegations made by Patient B'* and *'Patient B has categorically lied on all accounts...'*

Mr MacInnes in his correspondence in relation to this application states *'... the worst aspect of this is that his [Patient B's] written missive is going to be proffered to the enquiry, how is this fair or just. It certainly doesn't comply with the rules of evidence.'* Further he states *'You are going to submit a missive as evidence that we would have no opportunity to challenge'*.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This again 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. He further referred the panel to the cases of *Thorneycroft* and *El Karout v NMC [2019] EWHC 28 (Admin)*.

The panel had regard to the principles to be considered when determining an application to admit hearsay evidence as laid out in the case of *Thorneycroft* at Paragraph 45 which states:

'45. For the purposes of this appeal, the relevant principles which emerge from the authorities are these:

1.1. The admission of the statement of an absent witness should not be regarded as a routine matter. The FTP rules require the Panel to consider the issue of fairness before admitting the evidence.

1.2. The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but it will not always be a sufficient answer to the objection to admissibility.

1.3. The existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence.

1.4. Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit it requires the Panel to make a careful assessment, weighing up the competing factors. To do so, the Panel must consider the issues in the case, the other evidence which is to be called and the potential consequences of admitting the evidence. The Panel must be satisfied either that the evidence is demonstrably reliable, or alternatively that there will be some means of testing its reliability.'

Paragraph 56 of Thorneycroft states:

'56. However, in my judgment the Panel were led into error in their approach to the evidence of the two missing witnesses, Ms 1 and Ms 2. The decision to admit the witness statements despite their absence required the Panel to perform careful balancing exercise. In my judgment, it was essential in the context of the present case for the Panel to take the following matters into account:

- (i) whether the statements were the sole or decisive evidence in support of the charges;*
- (ii) the nature and extent of the challenge to the contents of the statements;*
- (iii) whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
- (iv) the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;'*
- (v) whether there was a good reason for the non-attendance of the witnesses;*

(vi) whether the Respondent had taken reasonable steps to secure their attendance; and

(vi) the fact that the Appellant did not have prior notice that the witness statements were to be read.'

The panel was of the view that the statement attributed to Patient B was the sole and decisive evidence in support of charge 6. The panel noted the seriousness of the allegations contained within charge 6 which involve breaches of confidentiality. The panel noted that Mrs Daraz and Mr MacInnes have objected to Patient B's evidence being included and the basis of these objections. Further the panel is not able to confirm the nature of the statement, the source of the statement or who authored the statement. Without Patient B or Patient B's CJSW attending to give evidence this cannot be confirmed. In addition the panel has no information as to the reason for Patient B's non-engagement with the NMC.

The panel determined that the primary position to take is one of fairness and determined that it would be unfair to admit Patient B's written statement in these circumstances. The panel therefore refused the application.

Decision and reasons on application pursuant to Rule 23 and Rule 31 in respect of Patient A

The panel heard an application made by Mr Kennedy under Rule 23 of the Rules in respect of Patient A. Mr Kennedy told the panel that Patient A speaks to charges 5(a)-(g) and is the sole witness to these charges although they are supported in part by other witnesses evidence. Mr Kennedy submitted that Patient A is well known to the CMHT and has multiple health conditions [PRIVATE]. Mr Kennedy told the panel that Patient A finds engaging with others difficult and there was considerable difficulty in getting him to engage with the NMC process. He therefore invited the panel to find Patient A was a vulnerable witness in terms of Rule 23(1)(b) and (c).

Mr Kennedy made an application for special measures to be used for Patient A giving evidence. The special measure sought was for Patient A to be accompanied by his support worker, Mr 1 when giving his evidence. Further, that Patient A should be allowed to give his evidence via video link. To avoid prejudicing procedures Mr Kennedy proposed that Mr 1 give his evidence to the panel first and once his evidence had been concluded he would then be able to support Patient A.

The panel accepted the advice of the legal assessor. He referred the panel to Rule 23 of the Rules which states:

23. – (1) In proceedings before the Fitness to Practise Committee, the following may be treated as vulnerable witnesses

...

(b) any witness with a mental disorder;

(c) any witness who is significantly impaired in relation to intelligence or social functioning;

...

(2) After seeking the advice of the legal assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.

The panel gave careful consideration to the application for special measures in respect of Patient A. The panel considered it was apparent that Patient A falls within the definition of a vulnerable witness under Rule 23 (1) (b) and (c) in that he has diagnoses of conditions affecting his mental health and the panel has been told of the difficulties Patient A experiences in terms of his social functioning. The panel therefore determined to allow Patient A to give his evidence via video link and to have Mr 1 in attendance to support him. The panel considered that this would allow Patient A to give the best evidence he could. The panel considered that any potential prejudice could be avoided by hearing Mr 1's witness evidence before hearing from Patient A.

Decision and reason on applications to hear evidence from Mr 1 via video link pursuant to Rule 31

Mr Kennedy, in light of the panel's decision to allow the application to hear Patient A's evidence via video link, made an application to also hear Mr 1's evidence via video link. Mr Kennedy told the panel that Mr 1 would require to be in Orkney in order to support Patient A giving his evidence via video link, as such it would be appropriate for Mr 1 to also give evidence via this method, given the long distance and time it would take for Mr 1 to travel from Orkney to this hearing. Mr Kennedy submitted that this matter had been raised with Mr MacInnes at the case management meeting on 9 August 2019 and therefore Mrs Daraz would be aware of this application.

The panel accepted the advice of the legal assessor, who referred the panel to Rule 31 (1). He reminded the panel that it was first required to consider whether the proposed evidence was relevant and, if so, whether in all the circumstances it would be fair to allow the evidence by video link. He further reminded the panel that whilst the witness would not be in attendance in person that they would still be able to view the witness via the video link.

The panel decided to allow the application. It was satisfied that Mr 1's evidence is relevant. It considered that no unfairness would be caused by allowing the application. The panel will be able to see and hear his evidence in a similar way as if he were physically present in the room, and his evidence can still be tested. The panel noted that Mr 1 had indicated his willingness to attend in person and the sole reason for his not attending in person was to facilitate Patient A giving evidence at this hearing.

In these circumstances, the panel was satisfied that it would be fair to allow Mr 1 to give evidence by video link. Further, the panel considered it was entirely appropriate that Mr 1 be present to support Patient A rather than asking a colleague to do this as Mr 1 is Patient A's named support worker. It therefore allowed the application.

Decision and reasons on application to amend charge 5

The panel heard an application made by Mr Kennedy, on behalf of the NMC, to amend the wording of charge 5.

The proposed amendment was to amend the first date in the header for charge 5 from 11 January 2016 to March 2017. Mr Kennedy submitted it was clear from the evidence before the panel that the first interaction between Mrs Daraz and Patient A took place in March 2017. It was submitted by Mr Kennedy that the proposed amendment would provide clarity and more accurately reflect the evidence and that it was clear the year 2016 was a typographical error. He submitted that the proposed amendment would not cause injustice or be unfair to Mrs Daraz rather it would shorten the time period being considered.

Original charge:

5. During or around the period 11 January 2016 to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:

Proposed charge:

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:

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 an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mrs Daraz, in fact Mrs Daraz's written representations confirm her first contact with Patient A took place in March 2017. The panel was of the view that no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Discussion and decision in relation to amending charge 5

Following the close of the NMC case, but prior to hearing closing submissions, the panel raised the question of whether it needed to consider making further amendments to charge 5 of its own volition. The panel indicated that it was concerned as to whether the issues arising from the alleged actions in charge 5 had been undercharged. The panel asked that its concerns be transmitted to Mr Kennedy and that he obtain the NMC's position on these issues.

Mr Kennedy took instruction and it was transmitted to the panel that the NMC was satisfied that all regulatory concerns had been captured in charge 5 as currently set down.

The legal assessor reminded the panel of its obligations to ensure a case is properly presented and all relevant evidence is before it as set out in the *Ruscillo* [2005] 1WLR 717 and the decisions in the cases of *PSA v NMC Jozi* [2015] EWHC 764 (Admin) and *PSA v HCPC Doree* [2015] EWHC 822 as to when it would be appropriate for a panel to amend a charge as a result of undercharging.

Having considered the NMC's position and reviewed the current allegations set out in charge 5 the panel was satisfied that this was not a situation of undercharging and that no amendment was therefore required.

Decision on Service of Notice of Resuming Hearing

The panel adjourned part-heard prior to handing down any determinations in this case. The panel identified three days in which it could continue this case, 3 October 2019 and 21-22 November 2019. The panel resumed on 3 October 2019.

The panel was informed at the start of this resuming hearing on 3 October 2019 that Mrs Daraz was not in attendance and that written notice of this hearing had been sent to Mrs Daraz's registered address by recorded delivery and by first class post on 6 September 2019 and Royal Mail Track and Trace information shows that it was signed for in the name DARAZ on 7 September 2019. Further, the panel noted that notice of this hearing was also sent to Mrs Daraz's representative on 6 September 2019.

The panel took into account that the notice letter provided details of the resuming hearing.

Mr Segovia submitted the NMC had complied with the requirements of Rules 34(1) and 34(5) and 32(3) of 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 Mrs Daraz has been served with notice of this hearing in accordance with the requirements of Rules 34(1) and 34(5) and 32(3) of the Rules. The panel was satisfied that Mrs Daraz had been notified as soon as practical after the adjournment of the first section of this hearing.

Decision on proceeding in the absence of the Registrant

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

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 Segovia invited the panel to continue in the absence of Mrs Daraz on the basis that she had voluntarily absented herself. He further submitted it was in Mrs Daraz's interest and also in the public interest that the panel proceed and hand down their determination on facts today.

The panel noted that there had been no correspondence from Mrs Daraz in respect of the resuming hearing.

The panel accepted the advice of the legal assessor.

The panel took into account that the hearing was resuming today for the distinct and sole purpose of handing down its determination on facts.

The panel had regard to its reasons for proceeding in the absence of Mrs Daraz at the initial hearing. The panel was satisfied that, in the absence of any further correspondence from Mrs Daraz or Mr MacInnes, it remained fair, appropriate and proportionate to proceed in the absence of Mrs Daraz for the sole purpose of handing down its determination on facts.

Background

The NMC received a referral from Orkney Islands Council on 31 May 2018.

Mrs Daraz came on to the NMC register as a mental health nurse on 2 September 2010. Between October – November 2016 Mrs Daraz worked as a bank nurse within Orkney NHS Health Board (NHS Orkney) before securing a substantive post in the Community Mental Health Team (CMHT) on 2 November 2016.

The charges arose whilst Mrs Daraz was employed as a registered nurse in the CMHT. In December 2017 Patient A, a patient being treated by the CMHT, made a number of disclosures to his support worker, Mr 1, regarding Mrs Daraz which caused Mr 1 to raise concerns with Ms 3. Patient A made further disclosures on 31 January 2018 and 12 February 2018 to Mr 1 and thereafter to Mr 2, on 16 March 2018. These resulted in further concerns being raised by Mr 1 and Mr 2 to Ms 3 who subsequently conducted an internal investigation into the allegations.

The allegations relate to Mrs Daraz accepting money and other items (including a car and a dog) from Patient A, exchanging personal messages with Patient A, discussing colleagues and Patient A's care with him and, in doing all of the above, failing to maintain professional boundaries.

Further Mrs Daraz was charged with assault on 7 March 2017 and was subsequently convicted on 3 October 2018. It is alleged that Mrs Daraz failed to notify her employer of the assault charge and failed to notify the NMC of the charge and the conviction.

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 Kennedy, on behalf of the NMC and the written submissions provided on Mrs Daraz's behalf.

The panel heard and accepted the advice of the legal assessor who referred the panel to the cases of *Suddock v NMC [2015] EWHC 3612 (Admin)* and *Ivey v Genting Casinos [2017] UKSC 67*. He further advised the panel on the Oxford English Dictionary definition of "accept" as to agree to take something.

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 Daraz.

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

Witness assessment

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

Witnesses called on behalf of the NMC were:

Mr 1 – Support Worker for Substance Misuse for NHS Orkney CMHT at time of the allegation. The panel considered Mr 1 to be a credible and reliable witness. He gave his

evidence in a measured way. The panel considered he showed no ill-will towards Mrs Daraz.

Mr 2 –Community Mental Health Nurse for NHS Orkney CMHT at time of the allegation. The panel considered Mr 2 to be a credible and reliable witness. In the panel's view Mr 2 initially presented as slightly guarded in his responses and nervous. However, the panel considered he did his best to answer questions and was fair to Mrs Daraz. The panel had no reason to doubt any of his evidence.

Ms 3 – Registered Nurse and Operational Manager for NHS Orkney and the CMHT at the time of the allegations as well as being Mrs Daraz's line manager. The panel considered Ms 3 to be a credible and reliable witness. In the panel's view she gave a straightforward account of things as she remembered them and was clear and explicit in her responses. The panel considered her to have a professional demeanour. She was clear on professional boundaries and her expectations of how staff should behave. The panel considered she was fair to Mrs Daraz and did not show any ill-will towards her.

Patient A - The panel considered Patient A to be a credible and reliable witness. He gave a good account of events, did not embellish his answers and was not prone to exaggeration. The panel did not perceive any impression of malice towards Mrs Daraz; in contrast the panel considered he was particularly fair to Mrs Daraz and was clear and candid in respect of his conversations with Mrs Daraz. Further he was specific when he did not want to discuss any personal details of their previous friendship.

The panel had regard to Mr MacInnes' and Mrs Daraz's various written responses and applied what weight it considered appropriate to the contents of them.

Panel's findings on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case.

At the outset of the hearing Mr Kennedy outlined the background of Mrs Daraz case and provided some context to the allegations.

In his closing submissions Mr Kennedy advised the panel that the evidence in respect of charges 3 and 4 could be taken together. He submitted it was clear that Mrs Daraz was aware she had been charged with assault on 7 March 2018 and that she had not notified either her employer or the NMC. He submitted that it was a deliberate act of omission on Mrs Daraz's part in not informing her employer of the assault charge or the NMC of the assault and subsequent conviction. He submitted that ordinary people would find this behaviour dishonest.

Mr Kennedy next took the panel through charge 5. He submitted that the panel would first need to determine whether the events specified in the charge took place and, if so, whether the event amounted to a failure to maintain professional boundaries in the circumstances. He submitted that the panel would be assisted by considering the witness evidence and submitted that there was evidence to support the events taking place. In respect of whether these amounted to a failure to maintain professional boundaries, Mr Kennedy submitted that there were a number of factors the panel should consider including that Mrs Daraz was not a nurse who was directly involved in Patient A's care. However Patient A is a vulnerable individual and it was well known within the community, not just the CMHT, that he had a propensity to give money and that others had taken advantage of this in the past. Mr Kennedy acknowledged the difficulties which arise in a small population such as Orkney and invited the panel to consider all of the evidence it has heard in respect of these. Mr Kennedy submitted that, ultimately, given the general knowledge in the team of Patient A's vulnerability, Mrs Daraz should not have approached him when she was experiencing financial difficulties.

In respect of charge 6 Mr Kennedy reminded the panel that it had heard no evidence in support of this charge.

Mrs Daraz as well as her representative, Mr MacInnes, provided written submissions to the panel in lieu of their attendance. These included Mrs Daraz's completed CMF dated 20 May 2019, Mrs Daraz's personal statement emailed to the NMC on 2 June 2019, Mrs Daraz's further statement in her email to the NMC dated 19 August 2019, Mrs Daraz's response to NHS Orkney in respect of the allegations at the local investigation dated 18 April 2018 and Mr MacInnes' correspondence sent to the NMC on 24 August 2019.

These documents broadly set out Mrs Daraz's position in respect to the charges. The panel took these into consideration and gave them what weight it deemed appropriate noting that the evidence had not been tested by cross-examination.

Mrs Daraz returned her CMF to the NMC which is signed by her and dated 20 May 2019. In this document under the section "Your response to the charges" Mrs Daraz has ticked the box yes to the question do you admit the facts alleged in the charge above in respect of charge 1, charge 2 and charge 5(a) detailed below. She has ticked the box no in relation to the remaining charges.

Charge 1:

1. You failed to disclose to the NMC that you were charged with assault on or around 7 March 2018 and/or you were convicted of assault on 3 October 2018;

Charge 2:

2. You failed to notify your employer that on or around 7 March 2018 you were charged with assault;

Charge 5(a):

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:
 - a) Accepted money from Patient A;

These charges were therefore announced as proved.

The panel then went on to consider the remaining charges.

The panel considered each remaining charge and made the following findings:

Charge 3:

3. Your actions set out in charge 1 were dishonest in that you deliberately sought to mislead the NMC by withholding this information;

This charge is found proved.

In reaching this decision, the panel took into account Mr 4's witness statement, the Criminal Justice Service notification and Mrs Daraz's written responses to the charges and the copy of the extract conviction.

Mrs Daraz has admitted charge 1 and so the facts relating to this charge have been found proved. The panel therefore required to determine whether Mrs Daraz had deliberately sought to mislead the NMC by withholding the information and whether by doing so she had acted dishonestly.

The notification, dated 15 March 2018, received by NHS Orkney from the CJS states:
'Formal notification was verbally given to NHS Orkney ...that employee FIONA DARAZ

had been charged... on 7th March, 2018 with assault of a 17 year old girl which allegedly took place on 25th November last year (2017)'. Given this, the panel concluded that Mrs Daraz would have been aware as of 7 March 2018 that she had been charged with assault.

The panel also had before it a copy extract conviction report from Kirkwall Sheriff Court which records that "Fiona Mayo" was convicted and sentenced on 3 October 2018 for "Assault to Injury". The panel was advised by Patient A that Mrs Daraz's name had changed upon her marriage. The panel was satisfied that the extract conviction report did relate to the registrant in that Fiona Mayo and Fiona Daraz were the same person. The panel reminded itself that Under Rule 31 (2) such an extract conviction report is conclusive proof of the conviction and the findings of fact upon which the conviction was based. The panel also noted that Mrs Daraz had pled guilty to the charge.

In her email to Ms 3, dated 30 March 2018, Mrs Daraz stated 'I feel I now need to explain this whole assault charge so that you know the background... I also put an assault compliant in against the girl... I was hoping it would be dealt with without formal charges being raised'.

In her email to Ms 3, dated 18 April 2018, Mrs Daraz stated 'I have not been charged, the Police Officer I spoke to confirmed this... No charges have yet been brought. Therefore I did not need to disclose anything to you.'

In her returned CMF dated 20 May 2019 Mrs Daraz states "I was never formally charged and the whole situation was terrible. At the time I felt it would never get to court and thought that I did not need to inform anyone. I now know this was not the case but my actions were not deliberate nor was there any intent to mislead".

In her statement of 2 June 2019 Mrs Daraz states "I agree that I did not inform the NMC and my employer regarding the assault charge but this was through ignorance and I did not actively do anything to hide the circumstances from either organisation... Having

never been in trouble with the law before I was unaware of how things proceed and while I can now see I should have informed my employer and the NMC, I was hoping that it would all 'go away'...' In the same statement in relation to the conviction Mrs Daraz states *'I was suspended by the NMC with an ongoing investigation and thought that naturally the NMC would be keeping track of what was happening'*

Mrs Daraz's has admitted charge 1, that she was charged with assault on or around 7 March 2018 and failed to disclose this to the NMC. The panel considered that she had also indicated in her email of 30 March 2018 that she was aware that she had been charged with assault. The panel considered that her admission and the terms of the email of 30 March 2018 were inconsistent with her later explanations on 18 April 2018, 20 May 2019 and 2 June 2019. The panel concluded that Mrs Daraz was therefore fully aware that she had been charged with assault on 7 March 2018 and found her later explanations of 18 April 2018, 20 May 2019 and 2 June 2019 not credible.

The panel next had regard to *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (The Code) which states at paragraph 23:

'23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)'

Finally the panel had regard to Mr 4's witness statement in which he confirms there is no record of Mrs Daraz informing the NMC when she was charged with the assault offence prior to the NMC receiving the referral on 31 May 2019, nor any notification from her when she was subsequently convicted.

When considering the question of dishonesty the legal assessor referred the panel to the case of *Ivey* which at Paragraph 74 states:

'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.'

In applying the first limb of the test as set out in *Ivey* the panel noted that there was no evidence to suggest that the notification from the CJS dated 15 March 2018 was in any way incorrect. The panel further took into account that by admitting charge 1 Mrs Daraz has accepted she was charged on 7 March 2018. The panel noted Mrs Daraz's explanations that her failure to inform the NMC arose through her '*ignorance*' and that she has suggested in her responses that on 7 March 2018 she was apparently not aware that she had actually been charged with assault. Mrs Daraz has not provided the panel with any detailed or cogent explanation as to how she could not be aware that she had been formally charged. Further the panel noted that in her statement of 2 June 2019 Mrs Daraz has stated '*I was hoping it would all 'go away'...*'

The panel determined as a "matter of evidence" that on 7 March 2018 Mrs Daraz was aware that she had been charged with assault, that she was, or should have been, fully aware that she required to inform the NMC that she had been charged and that she deliberately withheld this information from the NMC in the hope that it would '*all go away*'.

The panel also determined that as a "matter of evidence" that on 3 October 2018 Mrs Daraz was aware that she had been convicted of assault, that she was, or should have been, fully aware that she required to inform the NMC that she had been convicted and

that she deliberately withheld this information from the NMC in the hope that it would '*all go away*'.

The panel further determined that ordinary, decent people would regard the withholding of information in this manner to be dishonest.

The panel therefore determined that Mrs Daraz was dishonest in that she deliberately sought to mislead the NMC by withholding the information that she was charged with assault on or around 7 March 2018 and/or was convicted of assault on 3 October 2018.

Accordingly this charge is found proved.

Charge 4:

4. Your actions set out in charge 2 were dishonest in that you deliberately sought to mislead your employer by withholding this information;

This charge is found proved.

In reaching this decision, the panel took into account Ms 3's oral and written witness statement, the CJS notification and Mrs Daraz's written responses to the charges, two newspaper articles, Mrs Daraz's resignation email dated 29 March 2018 and an email between Mrs Daraz and Ms 3 dated 30 March 2018.

Mrs Daraz has admitted charge 2 and so the facts relating to this charge have been found proved. The panel therefore required to determine whether Mrs Daraz had deliberately sought to mislead her employer by withholding the information and whether by doing so she had acted dishonestly.

The panel reminded itself of the contents of the CJS notification.

The panel noted the evidence of Ms 3 who had told it that NHS Orkney had first become aware that Mrs Daraz had been charged through a report in the local newspaper called The Orcadian. Ms 3 in her oral evidence to the panel said that she was of the view Mrs Daraz's employers should have been told of the incident at the time and certainly when she was charged as it could have affected her employment. The panel also considered the various texts exchanged between NHS Orkney's HR department and Mrs Daraz dated 28 and 29 March 2018 where Mrs Daraz stated '*I have not actually been charged as far as I am aware*' and that she '*did not disclose anything because [she] didn't have to*'.

The panel also took into account an email between Mrs Daraz and Ms 3 dated 30 March 2018 in which Mrs Daraz stated '*I feel I now need to explain this whole assault charge...*' that she was '*...hoping it would be dealt with without formal charges being raised...*' and '*...I am assuming the CJS told you because of the VPD [Vulnerable Person Database] put in about the girl...*'

In her email to Ms 3, dated 18 April 2018, Mrs Daraz stated '*I have not been charged, the Police Officer I spoke to confirmed this... No charges have yet been brought. Therefore I did not need to disclose anything to you.*'

The panel also reminded itself that in her returned CMF dated 20 May 2019 Mrs Daraz states "*I was never formally charged and the whole situation was terrible. At the time I felt it would never get to court and thought that I did not need to inform anyone. I now know this was not the case but my actions were not deliberate nor was there any intent to mislead*" and in her statement of 2 June 2019 Mrs Daraz states "*I agree that I did not inform the NMC and my employer regarding the assault charge but this was through ignorance and I did not actively do anything to hide the circumstances from either organisation... Having never been in trouble with the law before I was unaware of how things proceed and while I can now see I should have informed my employer and the NMC, I was hoping that it would all 'go away'...*"

Mrs Daraz's has admitted charge 2, that she failed to notify her employer that on or around 7 March 2018 she was charged with assault. The panel considered that she had also indicated in her email of 30 March 2018 that she was aware that she had been charged with assault. The panel again considered that her admission and the terms of the email of 30 March 2018 were inconsistent with her later explanations on 18 April 2018, 20 May 2019 and 2 June 2019. The panel concluded that Mrs Daraz was therefore fully aware that she had been charged with assault on 7 March 2018 and found her later explanations of 18 April 2018, 20 May 2019 and 2 June 2019 not credible.

The panel reminded itself of the duty under paragraph 23.2 of The Code as detailed above. The panel also reminded itself of the test as set out in *Ivey* detailed above.

In applying the first limb of the test as set out in *Ivey* the panel noted as in charge 3 that there was no evidence to suggest that the notification from the CJS dated 15 March 2018 was in any way incorrect. The panel further took into account that by admitting charge 2 Mrs Daraz has accepted she was charged on 7 March 2018. The panel noted Mrs Daraz's explanations that her failure to inform the NMC arose through her '*ignorance*' and that she has suggested in her response that on 7 March 2018 she was apparently not aware that she had actually been charged with assault. Again Mrs Daraz has not provided the panel with any detailed or cogent explanation as to how she could not be aware that she had been formally charged. The panel determined this position was also inconsistent with her position in the email to Ms 3 of 30 March 2018. Further the panel noted that in her statement of 2 June 2019 Mrs Daraz has stated '*I was hoping it would all 'go away'...*'

The panel determined as a "matter of evidence" that on 7 March 2018 Mrs Daraz was aware that she had been charged with assault, that she was, or should have been, fully aware that she required to inform her employer that she had been charged and that she

deliberately withheld this information from her employer in the hope that it would '*all go away*'.

The panel further determined that ordinary, decent people would regard the withholding of information in this manner to be dishonest.

The panel therefore determined that Mrs Daraz was dishonest in that she deliberately sought to mislead her employer by withholding information that on or around 7 March 2018 she was charged with assault.

Accordingly this charge is found proved.

Charge 5(b):

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:

b) Accepted a car from Patient A;

This charge is found proved.

In reaching this decision, the panel took into account Patient A's oral and written evidence, a record of Facebook messages between Patient A and Mrs Daraz, the oral testimony of Mr 1, Mr 2 and Ms 3 and Mrs Daraz's written responses.

The panel first considered whether as a matter of fact Patient A had given a car to Mrs Daraz. It reminded itself of Patient A's evidence that Mrs Daraz had told him that the car she had was no longer road worthy. Patient A told the panel that he had gone with Mrs Daraz's then partner to purchase a car for her. He explained that the car was purchased with money he provided and that, so far as he was concerned, he had provided Mrs

Daraz with the car. Patient A said that initially Mrs Daraz was going to repay him the cost of the car and that if she did not the car would belong to him. He then went on to explain that Mrs Daraz had not repaid the cost of the car but that it remained with her.

The panel noted Mrs Daraz in her returned CMF dated 20 May 2019 states '*I never accepted a car from Patient A. This is just untrue*' whilst in her personal statement of 2 June 2019 she provides an explanation that the car had been purchased for her partner. Mr McInnes in his written representations also states '*She [Mrs Daraz] didn't accept a car, this was an arrangement between [Patient A] and [Mrs Daraz]'s partner*'. The panel noted that there was no detailed explanation from Mrs Daraz as to how and when it had been agreed that the car would be purchased for her partner and further reminded itself that Mrs Daraz had simply provided written responses and her evidence was therefore untested by way of cross-examination or questions from the panel. In these circumstances the panel preferred and accepted the evidence of Patient A.

The panel also noted the terms of a Facebook message from Mrs Daraz to Patient A in which she states "*we are keeping the car*".

The panel determined that when Mrs Daraz failed to pay Patient A for the cost of the car this constituted her accepting it on another basis.

The panel then went on to consider whether Mrs Daraz's acceptance of the car, in the knowledge of Patient A's history of providing people with money or gifts caused by his various medical conditions, amounted to a failure to maintain professional boundaries.

The panel accepted that Mrs Daraz may not have been directly providing care to Patient A. However she was a member of the CMHT and Patient A was under the care of this service. Mrs Daraz accepts that, whilst she did not know at first, after about a month of knowing Patient A she became aware that he was under the care of the CMHT. Further the panel noted the evidence provided by Mr 1, Mr 2 and Ms 3 that Patient A's behaviour regarding money and items for individuals was widely known within the

community. The panel was satisfied that Mrs Daraz would have been well aware of this behavioural pattern and the reasons for it.

The panel accepted the evidence of Mr 1, Mr 2 and Ms 3 that in these particular circumstances, even where a member of the CMHT was not directly involved in Patient A's care that it was inappropriate to accept either money or items from him.

In addition the panel noted the content of the Facebook messages between Patient A and Mrs Daraz which indicate she would have been aware that Patient A had lent money and items to others. In particular a message from Mrs Daraz stated *'I've never borrowed money off anyone apart from my parents so I feel really awkward asking and don't want you to think I'm like everyone else and taking advantage. Realistically I need 1k*. The panel was therefore satisfied that it was inappropriate for Mrs Daraz to have accepted the car from Patient A and that in doing so she failed to maintain professional boundaries.

The panel therefore determined that during or around the period March 2017 to 9 March 2018 Mrs Daraz failed to maintain professional boundaries with Patient A, in that she accepted a car from him.

Accordingly this charge is found proved.

Charge 5(c):

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:

c) Accepted a dog from Patient A;

This charge is found proved.

In reaching this decision, the panel took into account Patient A's oral and written evidence and Mrs Daraz's written representations.

Patient A told the panel that his dog had puppies and that Mrs Daraz paid a deposit for one of these puppies when she collected it but never paid the remaining balance.

Mrs Daraz, in her email of 18 April 2018 to Ms 3 states '*... I bought a puppy off him [Patient A] so that would suggest I am not taking advantage of a vulnerable patient*'.

The panel again reminded itself that Mrs Daraz had simply provided written responses and her evidence was therefore untested by way of cross-examination or questions from the panel. In these circumstances the panel preferred and accepted the evidence of Patient A.

The panel determined that when Mrs Daraz failed to pay Patient A the balance due for the purchase of a dog this constituted her accepting it on another basis.

The panel then went on to consider whether Mrs Daraz's acceptance of a dog, in the knowledge of Patient A's history as previously detailed amounted to a failure to maintain professional boundaries.

The panel was satisfied that Mrs Daraz took advantage of Patient A when she failed to pay him the balance due for the dog. The panel reminded itself of its findings at charge 5(b) above in relation to professional boundaries. On this basis, the panel concluded that it was inappropriate for Mrs Daraz to have accepted a dog from Patient A and that in doing so she failed to maintain professional boundaries.

The panel therefore determined that during or around the period March 2017 to 9 March 2018 Mrs Daraz failed to maintain professional boundaries with Patient A, in that she accepted a dog from him.

Accordingly this charge is found proved.

Charge 5(e):

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:

e) You exchanged personal messages with Patient A which were unrelated to Patient A's care;

This charge is found proved.

In reaching this decision, the panel took into account Patient A's oral and written evidence, Mrs Daraz's written representations and various Facebook messages between Patient A and Mrs Daraz.

The panel had regard to the various Facebook messages before it which seem to span a significant period of time. The panel noted Patient A's evidence in which he confirmed that these messages were between him and Mrs Daraz. The panel noted the clear dialogue between Patient A and Mrs Daraz evidenced in these messages and noted that they involve discussion of issues which are unrelated to Patient A's care. The panel noted Mrs Daraz accepts the messages between them and seeks to rely on these messages herself in her email of 18 April 2018 to Ms 3.

The panel determined as a matter of fact that Mrs Daraz exchanged personal messages with Patient A which were unrelated to his care.

The panel next moved on to determine whether this exchange of personal messages amounted to a failure to maintain professional boundaries. The panel has carefully considered the content of these messages and has concluded that there seems to be

encouragement and direct requests from Mrs Daraz to lend her money. The panel noted the terms of the personal matters discussed between Mrs Daraz and Patient A which included Mrs Daraz advising Patient A of her difficult financial situation. In particular the panel noted the contents of the Facebook messages from Mrs Daraz in which she says *'I don't want to ask but I'm totally struggling. Would you lend me some money?'* and *'Realistically I need 1k. And would work out a repayment plan...'* Patient A replied *'That's a lot of money...'* to which Mrs Daraz responded *'To be honest anything would be a help right now...'* and goes on to detail her outgoings. The panel considered that, in the knowledge of Patient A's health conditions as detailed in previous charges, it was inappropriate for Mrs Daraz to make these requests of Patient A. The panel considered this amounted to a failure to maintain professional boundaries.

The panel therefore determined that during or around the period March 2017 to 9 March 2018 Mrs Daraz failed to maintain professional boundaries with Patient A, in that she exchanged personal messages with Patient A which were unrelated to his care.

Accordingly this charge is found proved.

Charge 5(f):

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:

f) Discussed colleagues involved in Patient A's care with him;

This charge is found NOT proved.

In reaching this decision, the panel took into account Patient A's oral and written evidence and the Facebook messages, along with Mrs Daraz's various written representations.

Patient A gave evidence that he would mention, to Mrs Daraz, that he had seen Mr 1. He told the panel that whenever he discussed the CMHT with Mrs Daraz that it was '*basic conversation*' explaining that they would not discuss anything in depth and that the conversations in which Mr 1 and Mr 2 were mentioned were superficial.

The panel had no reason to doubt Patient A's evidence.

The panel noted that, in her email dated 18 April 2018 to Ms 3, Mrs Daraz stated '*You can see from the messages that I never offered mental health support and always guided him to his workers*'.

The panel had regard to the content of the Facebook messages in the documentation provided. It noted there are several mentions of Mr 1, in his capacity as Patient A's support worker, and of the CMHT.

The panel considered it is accepted by both Patient A and by Mrs Daraz that they discussed colleagues involved in Patient A's care as well as being evident in the Facebook messages.

The panel next moved on to determine whether this discussion of colleagues involved in Patient A's care amounted to a failure to maintain professional boundaries.

The panel took into account Patient A's evidence that these were superficial conversations and the context he provided. The panel considered it was clear from the Facebook messages that Mrs Daraz had signposted Patient A and advised him to speak to the colleagues involved in his care.

The panel considered it had no evidence to support that these discussions were anything other than superficial mentioning of colleagues involved in Patient A's care.

In all the circumstances the panel considered there was insufficient evidence before it to conclude that during or around the period March 2017 to 9 March 2018 Mrs Daraz failed to maintain professional boundaries with Patient A by discussing colleagues involved in Patient A's care with him.

Accordingly, the panel found this charge not proved.

Charge 5(g):

5. During or around the period ~~11 January 2016~~ **March 2017** to 9 March 2018 you failed to maintain professional boundaries with Patient A, in that you:

g) Discussed Patient A's care with him;

This charge is found proved.

In reaching this decision, the panel took into account Mr 1, Mr 2, Ms 3 and Patient A's oral and written evidence and Mrs Daraz's various written representations.

The panel noted that Patient A clearly stated in his oral evidence that he had discussed his care with Mrs Daraz. He told the panel that they had talked about the tablets he was taking and the potential side effects these may have. He told the panel that these conversations took place later on in the relationship when they had established a "*bond*". Further, he told the panel that, as he and Mrs Daraz were "quite close friends" they would discuss things very personal to Patient A including his childhood. He told the panel that he had felt like he was putting a lot of pressure on the CMHT and that he had told Mrs Daraz he "*didn't like being a burden on people*". He explained to the panel that a lot of their conversation was Mrs Daraz telling him that that was what the CMHT was there for. Patient A was clear that he was never Mrs Daraz's patient.

The panel had regard to Mr 1's witness evidence in which he stated that in December 2017 "*Patient A had been struggling mentally and said he was being supported by [Mrs Daraz] via text. Patient A told me he had been talking about his clinical situation with [Mrs Daraz]...*". Mr 1 went on to tell the panel that, at a routine visit on 12 February 2018, '*Patient A said that he had not had a good weekend and he had been supported by [Mrs Daraz] over text*'.

Mrs Daraz, in her written representations received by the NMC on 2 June 2019 stated, in regards to Patient A, '*He would often try and speak to me about his mental health and I would signpost him to his key worker*'. Again the panel noted that, in her email dated 18 April 2018 to Ms 3, Mrs Daraz stated '*You can see from the messages that I never offered mental health support and always guided him to his workers*'. Mr MacInnes, in his written representations, stated "*[Mrs Daraz] never discussed [Patient A's] treatment, he states that she only ever told him to see his member of the CMHT*".

The panel once again reminded itself that Mrs Daraz had simply provided written responses and her evidence was therefore untested by way of cross-examination or questions from the panel. In these circumstances the panel again preferred and accepted the evidence of Patient A. The panel considered that in light of the relationship which appears to have evolved between Patient A and Mrs Daraz, the panel considered that it was a reasonable inference, that they did discuss Patient A's care in the manner he described in both his oral and written evidence.

In determining whether Mrs Daraz had failed to maintain professional boundaries in respect of this charge the panel had regard to the evidence of Mr 2 and Ms 3. Mr 2 told the panel how he would deal with a situation in which a friend brought up their mental health with him. He told the panel that he would "*be the friend and support them*" but he would let them know he could not be their nurse and signpost them to the appropriate services. Ms 3, in her evidence, told the panel that clear professional boundaries had to be "*exemplary*" because of the nature of how the CMHT work especially in a small community setting.

The panel considered Patient A's evidence that he had discussed the background to his mental health issues with Mrs Daraz. The panel considered that, given Patient A's mental health issues, discussing his background could be considered part of his care. The panel considered that Mrs Daraz was well aware that Patient A was a patient of the CMHT, was or should have been aware of the appropriate professional boundaries, and that she should not have discussed his care with him.

The panel determined that it was more likely than not that during or around the period March 2017 to 9 March 2018 Mrs Daraz had discussed Patient A's care with him and in doing so failed to maintain professional boundaries with Patient A.

Accordingly this charge is found proved.

Charge 6(a):

6. During or around the period 3 June 2017 to 30 September 2017, you breached confidentiality by;
 - a) discussing patient details with Patient B;

This charge is found NOT proved.

In reaching this decision, the panel took into account Mr Kennedy's submission that, given the panel's earlier decision to refuse the application to admit Patient B's evidence as hearsay, there was no evidence in support of this charge.

The panel therefore found this charge not proved.

Charge 6(b):

6. During or around the period 3 June 2017 to 30 September 2017, you breached confidentiality by;

b) taking Patient B with you in a car when you visited patients;

This charge is found NOT proved.

In reaching this decision, the panel again took into account Mr Kennedy's submission that there was no evidence in support of this charge as in charge 6(a) above.

The panel therefore found this charge not proved.

Charge 6(c):

6. During or around the period 3 June 2017 to 30 September 2017, you breached confidentiality by;

c) failing to keep your work laptop secure by allowing Patient B to use it.

This charge is found NOT proved.

In reaching this decision, the panel again took into account Mr Kennedy's submission that there was no evidence in support of this charge as in charges 6(a) and 6(b) above.

The panel therefore found this charge not proved.

The panel heard that there is a current interim order in place which will cover the intervening period prior to the hearing resuming in November 2019, as such it did not

require to consider the imposition of an interim order. The hearing therefore adjourned until 21 November 2019 after handing down its determination on facts.

The hearing resumed on 21 November 2019, Day 6. You attended the hearing but were not represented.

Application to adjourn (Day 6)

On Day 6, you advised the panel that you had only become aware that you could provide further evidence at this stage when you arrived at the hearing venue and had the process of the stage of impairment explained to you. You told the panel that you had made enquiries with previous colleagues, [PRIVATE] this morning in order to provide evidence to the panel in support of your case.

You advised the panel that your position in relation to nursing has changed since your letter of 19 August 2019 in which you advised that you no longer wished to pursue a career in nursing. You told the panel that you have had significant health, social and financial problems which had affected your position at the time. You told the panel that you have been working through these issues and that you now have the strength to fight for your nursing registration.

You asked the panel to grant you until the morning of Day 7 of the hearing to allow you time to obtain this information.

Mr Kennedy had no objection to your request for an adjournment.

The panel was satisfied that it was fair to you to allow you time to obtain the documentary evidence you required and allowed the adjournment.

Application to adjourn (Day 7)

The hearing resumed on Day 7. You advised the panel of the steps you had taken yesterday in order to secure the information you required to present to the panel.

You told the panel that you had managed to obtain some testimonials [PRIVATE].

You applied to the panel for an adjournment of this hearing in order to allow you to obtain this highly relevant documentation.

You apologised to the panel that you did not have this documentary evidence available but explained that, being unrepresented, you did not know until yesterday that you could present any further evidence.

Mr Kennedy did not oppose the application to adjourn. He submitted it was a matter for the panel, requiring it to balance the public interest and the need for the expeditious disposal of these matters with fairness to you to present your case.

Mr Kennedy reminded the panel that the charges found proved in this case are very serious and the potential consequences for your career are grave. He reminded the panel that you have only recently engaged with this process on a personal basis and you now appear to understand that there is a lot more that you can do at this stage of the process than you had previously realised.

Mr Kennedy noted that you propose to obtain information [PRIVATE]; he suggested that this may not answer the panel's questions [PRIVATE]. He indicated that there may be time for this between now and any resuming hearing.

The panel accepted the advice of the legal assessor who referred it to the cases of *A.D. v NMC [2014]* CHIS 90, and *Council for Regulation of Healthcare Professionals v GMC*

Ruscillo [2005] 1WLR 717. He reminded the panel of its duty to ensure unrepresented registrants have the appropriate assistance made available and of its obligation to ensure all relevant evidence is before it.

The panel considered that it is pertinent to this case that you are able to explain your position and have the documentation you require to support this. The panel noted that there are serious findings in this case. Further, this is the first time you have attended the hearing [PRIVATE].

The panel noted the change in your position regarding your nursing career and that you now wish to continue your career as a registered nurse.

In light of all of the above, the panel considered it to be fair to you to give you time to obtain any documentation you require to present your case. The panel was of the view that any unfairness to the NMC in the delay in concluding this case was outweighed by the requirement for fairness to you in this regard. The panel therefore decided to allow your application for an adjournment.

Mr Kennedy confirmed to the panel that the public was adequately protected and the public interest addressed in the intervening time between this hearing and the future hearing dates agreed. The hearing therefore adjourned until 27 January 2020.

The hearing resumed on 27 January 2020, Day 8. Mrs Daraz was not in attendance and was not represented in her absence.

Decision on Service of Notice of Hearing

The panel was informed at the start of this resumed hearing that Mrs Daraz was not in attendance. Mr Kennedy took the panel through the NMC's attempts to contact Mrs Daraz since the hearing adjourned on 22 November 2019, namely a letter dated 26 November 2019, emails dated 22 December 2019, 7 January 2020 and 23 January 2020, and an attempt to contact her by telephone on 16 January 2020, all of which contained details of the resuming hearing.

Further, written notice of this hearing had been sent to Mrs Daraz's registered address by recorded delivery and by first class post on 21 January 2020. The Royal Mail Track and Trace service indicates that delivery of notice of this hearing to Mrs Daraz's registered address was attempted on 22 January 2020. The note on the Track and Trace system states '*Sorry, we were unable to deliver this item at 22-01-2020 as the recipient refused to accept it. It will now be returned to the sender.*' The panel noted that notice of this hearing was also sent to Mrs Daraz's representative on 21 January 2020. The panel took into account that the notice letter provided details of the time, dates and venue of the hearing and, amongst other things, information about Mrs Daraz's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In addition, Mr Kennedy reminded the panel that Mrs Daraz was present when the hearing was adjourned on 22 November 2019 and the resuming date of 27 January 2020 was set.

The panel accepted the advice of the legal assessor who referred the panel to Rules 34(1), 34(2) and 32(3) which were of relevance to service of notice of this resumed hearing.

In the light of all of the information available, the panel was satisfied that Mrs Daraz had received reasonable notice of this resumed hearing.

Decision on proceeding in the absence of the Registrant

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

Mr Kennedy invited the panel to continue in the absence of Mrs Daraz on the basis that she had voluntarily absented herself. He told the panel that there has been no engagement from Mrs Daraz since the hearing adjourned on 22 November 2019. He reminded the panel that the reason for the adjournment was to allow Mrs Daraz to obtain information she wished to put before it.

Mr Kennedy submitted that there was nothing to suggest a further adjournment would secure Mrs Daraz's attendance, especially in light of her refusal of the service of notice of this hearing.

Mr Kennedy submitted that it was in the interest of justice and in the interest of Mrs Daraz that these proceedings are resolved as soon as possible and invited the panel to proceed in Mrs Daraz's absence.

The panel accepted the advice of the legal assessor.

The panel noted that it's discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 and was cognisant of the cases of *Jones* and *Adeogba*.

The panel decided to proceed in the absence of Mrs Daraz.

In reaching this decision, the panel has considered Mr Kennedy's submissions and accepted the advice of the legal assessor. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- the hearing adjourned on 22 November 2019 to allow Mrs Daraz to obtain relevant documentation – it was made clear to Mrs Daraz at the hearing that she would need to provide this documentation to the panel;
- Mrs Daraz has not provided any documentation to the NMC and would appear to have disengaged from these proceedings;
- Mrs Daraz is aware of today's hearing having been told the resuming dates in person at the hearing on 22 November 2019 and would appear to have voluntarily absented herself from today's proceedings;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- the charges relate to events that occurred in 2017-2018;
- there is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Daraz.

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 Daraz'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 Kennedy invited the panel to take the view that Mrs Daraz's actions amount to a breach of *The Code: Professional standards of practice and behaviour for nurses, midwives* (2015) (the Code). He then directed the panel to specific paragraphs and identified where, in the NMC's view, Mrs Daraz's actions amounted to misconduct.

Mr Kennedy 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 Kennedy submitted that Mrs Daraz's behaviour did amount to misconduct. She did not tell her employers or the NMC, that she had been charged by the police with a serious criminal offence and the panel had found her to have been dishonest in this regard.

Further, Mr Kennedy submitted that Mrs Daraz had targeted and taken advantage of Patient A, a vulnerable adult with whom she was acquainted, with no regard for how her behaviour would impact upon Patient A, and with the resulting deterioration of his mental health.

Mr Kennedy submitted that Mrs Daraz's behaviour was a serious departure from the standards expected of a registered nurse and amounted to misconduct and she had breached the trust placed in her.

He 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 Kennedy referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* and *Cohen v GMC [2008] EWHC 581 (Admin)*.

Mr Kennedy reminded the panel that Mrs Daraz expressed remorse in relation to her failure to disclose the criminal matter to either her employers or the NMC but her expression of remorse goes no further than that. He submitted that rather than showing remorse for the impact her behaviour had on Patient A, she has attacked his character saying that he is manipulative and a blackmailer.

Mr Kennedy reminded the panel that there is a clear public interest in having competent, safe nurses to care for service users. He submitted that Mrs Daraz's behaviour raises a question about the extent to which she can be trusted to look after those in her care. Patients, colleagues and employers need to have confidence in nurses and Mrs Daraz's behaviour has had an adverse impact on that trust.

Mr Kennedy submitted that there is a clear risk to public protection, Mrs Daraz's behaviour led to Patient A self-harming and she has shown herself to be a manipulative, self-centred person. He submitted that, in the absence of any evidence of remediation, there is a risk of her repeating this type of behaviour. Mr Kennedy submitted that, on the subject of remediation, one of the questions the panel must consider is whether the conduct is remediable. He submitted that, in this case, it may not be, the dishonesty and self-centred behaviour may indicate an attitudinal problem which is of course difficult to remediate.

Finally, Mr Kennedy addressed the panel in regards to the adjournment afforded Mrs Daraz on 22 November 2019. He reminded the panel that this had been at Mrs Daraz's request to afford her an opportunity to produce documentation to support her claim that she was suffering from a health condition at the time of the events detailed in the charges. Mr Kennedy invited the panel to give this information no weight. He submitted that there is no evidence before the panel of Mrs Daraz having a health condition. He drew the panel's attention to the case of *GMC v Hayat [2018] EWCA Civ 2796* which makes it clear that there must be independent evidence of health conditions if they are raised – the panel cannot just take a registrant's word for it.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included *Grant* and *Cohen*.

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, Mrs Daraz'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 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 Mrs Daraz's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

Prioritise people

You put the interests of people using or needing nursing or midwifery services first...

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

- 1.1 treat people with kindness, respect and compassion

4 Act in the best interests of people at all times

- 17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.1 keep to and uphold the standards and values set out in the Code
- 20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment
- 20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
- 20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
- 20.6 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.

21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this, you must:

- 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
- 21.2 never ask for or accept loans from anyone in your care or anyone close to them
- 21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care
- 23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that Mrs Daraz had breached professional boundaries in her relationship with Patient A; she abused his vulnerability and took advantage of him in asking for and accepting money and other items from him. The panel considered that Mrs Daraz had embarked on a pre-meditated course of conduct over a period of time towards a particularly vulnerable individual in the care of the CMHT. She abused her position of trust in her actions to her direct financial gain and her behaviour led to Patient A suffering actual harm.

Further, the panel has found her to have been dishonest both to her employer and to the NMC regarding her assault charge.

The panel found that Mrs Daraz's actions 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 whether Mrs Daraz'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 *Grant* in reaching its decision, in paragraph 74 she said:

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

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 he/she:

- 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 four limbs of the 'Grant test' are engaged in this case. The panel considered that this case has two major themes – Mrs Daraz's failure to disclose her assault charge and conviction, and the subsequent dishonesty, and Mrs Daraz's breach of professional boundaries in respect of Patient A.

The panel has found that Mrs Daraz's actions put Patient A at risk of harm. She embarked on a pre-meditated course of conduct over a significant period of time and used her knowledge of Patient A's pre-disposition to give gifts and lend money to her advantage. She abused her position of trust to manipulate Patient A. This resulted in financial loss to Patient A as well as to a deterioration in his mental health and resultant incident of self-harm.

The panel has found that Mrs Daraz acted dishonestly and tried to cover up that she had been charged for assaulting a minor. In her correspondence she continually minimised her responsibility both in relation to her disclosure of the assault charges and the breaches of professional boundaries.

The panel considered that Mrs Daraz's actions constituted a breach of the fundamental tenets of the profession. The panel was of the view that for a nurse to behave in the way that Mrs Daraz has, has brought the profession into disrepute.

The panel reminded itself of the reason for the hearing adjourning in November 2019, namely to allow Mrs Daraz an opportunity to provide evidence of her health conditions and personal circumstances at the time and the impact of this. However, the panel has no independent or verifiable evidence before it as to the exact nature of any health

condition nor its effect on her behaviour. As such the panel is unable to attach any weight to this assertion.

Regarding insight, the panel considered that Mrs Daraz has shown no meaningful insight. Mrs Daraz has not accepted that she breached professional boundaries with Patient A and has said throughout the documentation before the panel that she would not act differently in the future. In the panel's view Mrs Daraz has failed to accept responsibility for her actions, rather she has blamed other people, her alleged health condition and her personal circumstances at the time. Mrs Daraz has failed to provide independent information to support her claims. She has attacked Patient A's character saying '*[Patient A] is not as vulnerable as the service is making out as he has maliciously sought to end my career*'.

The panel considered that Mrs Daraz has, throughout, been acting solely in her own interest with no regard for others. The panel considered that the Facebook messages between her and Patient A were demonstrative of manipulative and disingenuous behaviour. When considering the documentation from Mrs Daraz as a whole the panel considered there was an indication of a deep-seated attitudinal issue.

The panel noted that Mrs Daraz has neither demonstrated remorse nor apologised for her actions, she has portrayed herself as a victim and regrets the situation she is now in. Further, Mrs Daraz has not demonstrated an understanding of the impact of her actions on Patient A, his family, her colleagues, NHS Orkney or the nursing profession, particularly as Mrs Daraz was advised at the commencement of her employment of the necessity to maintain professional boundaries in a small community.

The panel noted that Mrs Daraz admitted several charges prior to the commencement of this hearing where there was overwhelming evidence against her, namely that she had not informed the NMC or her employer of the assault charge, and she conceded that she '*can now see I should have informed my employer and the NMC*'. However, the panel concluded that Mrs Daraz has failed to recognise the impact of her failure to

disclose an assault charge and conviction and her dishonesty in this regard on the reputation of the nursing profession and her employer.

Further, Mrs Daraz admitted that she accepted money from Patient A. However, in relation to this Mrs Daraz has not accepted that she breached professional boundaries, maintaining she had no professional relationship with Patient A because she was not directly responsible for his care.

The panel considered that, given Mrs Daraz's lack of meaningful insight into her actions, she has not been able to remediate any of the concerns identified.

The panel is of the view that there is a risk of repetition based on Mrs Daraz's lack of insight or remediation. Mrs Daraz has continually blamed others and her circumstances for her actions and has not taken any responsibility or recognised the seriousness of the charges found proved. 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 also required.

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

Determination on sanction:

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

In his submissions Mr Kennedy took the panel through the aggravating factors and mitigating factors he had identified in this case. He reminded the panel that Mrs Daraz had deliberately targeted a person she knew to be vulnerable for her own ends. Further, her behaviour was an abuse of a position of power and led directly to patient harm. There has been a lack of meaningful engagement from Mrs Daraz and she has not demonstrated insight, remorse or remediation. In fairness to Mrs Daraz, Mr Kennedy reminded the panel that she did admit some matters at the outset and there were possible health issues albeit there is no information on how any health issue has impacted on her behaviour.

In reaching this decision, the panel has had regard to all the evidence that has been presented in this case, as well as the submissions by Mr Kennedy. The panel accepted the advice of the legal assessor.

The panel noted the NMC sanction bid of a striking-off order, but was not bound by such a bid, and has exercised its independent judgement. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and is intended to protect the patients and public by restricting the practice of a registered nurse. Although not intended to be punitive in its effect, any sanction may have such unintended 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 independent judgement.

The panel has also taken account of the aggravating and mitigating factors in this case.

The aggravating factors which the panel took into account, in particular, were: Mrs Daraz abused her position of power for her own personal gain; she deliberately targeted

a vulnerable person and caused direct harm; she has demonstrated a lack of remorse and a lack of appreciation of the necessity to maintain professional boundaries; and she deliberately tried to conceal that she had been charged and convicted.

The mitigating factors which the panel took into account were the possible health and personal issues Mrs Daraz was under at the time, although the panel has no independent evidence to support Mrs Daraz's claims in this regard.

The panel is aware that it can impose any of the following sanctions; take no further action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

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 has already found that Mrs Daraz's fitness to practise is impaired on the grounds of public interest as well as on public protection grounds. As such, the panel concluded that it would be neither proportionate nor in the public interest to take no further 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 considered that Mrs Daraz's actions were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. In addition, having found Mrs Daraz's fitness to practise is impaired on public protection grounds a caution order would provide no restriction on her practice. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Daraz'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 noted that the charges in this case do not relate to Mrs Daraz's clinical practice. Further Mrs Daraz has disengaged from these proceedings.

The panel is therefore of the view that there are no practical or workable conditions that could be formulated, given the nature of this case. Furthermore, the panel concluded that the placing of conditions on Mrs Daraz'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 considered that, in relation to the failure to disclose a charge/conviction, this was not a single instance of misconduct as Mrs Daraz failed to disclose this to both her employer and the NMC. She deliberately sought to mislead both NHS Orkney and the NMC and maintained this position over a significant period of time. Mrs Daraz, as a registered nurse, had a responsibility to be open and honest and she was not.

In relation to the charges involving Patient A the panel considered that Mrs Daraz had embarked on a prolonged and deliberate course of action for her own personal gain.

The panel considered that there is an indication of a harmful, deep-seated attitudinal problem. Mrs Daraz breached professional boundaries with Patient A for her own gain and to his detriment. There is no evidence that Mrs Daraz had any consideration for the risk of harm or danger she put Patient A at in continuing the friendship once she ascertained that he was a patient of the CMHT. Further, Patient A confirmed in his oral evidence that Mrs Daraz had not repaid the loans or returned the car to him.

Mrs Daraz has, throughout the documentation before the panel, continually blamed others and her circumstances for her actions and has not taken any responsibility or recognised the seriousness of the charges found proved. In addition, she has attacked Patient A's character describing him as malicious and as seeking to end her career. In contrast, the panel considered Patient A to have been particularly fair to Mrs Daraz and it did not perceive any impression of malice towards her throughout his giving evidence.

The panel has no information of repetition of this behaviour since the incidents but noted that Mrs Daraz has not been working as a nurse since March 2018.

The panel was not satisfied that Mrs Daraz had any meaningful insight into her behaviour and the seriousness of her actions. As such the panel considered Mrs Daraz to be at a high risk of repeating this behaviour.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Mrs Daraz abused her position of trust and exploited Patient A for her own personal and financial gain. She prioritised her own needs before those of Patient A and those of the CMHT and NHS Orkney.

The panel considered that the serious breach of the fundamental tenets of the profession evidenced by Mrs Daraz's actions is fundamentally incompatible with her remaining on the register.

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

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

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

The panel was clear that Mrs Daraz has not understood or appreciated that her actions breached professional boundaries. She has not demonstrated remorse or recognition of the harm she directly caused to Patient A. The panel considered that her conduct raised fundamental questions about her professionalism.

Mrs Daraz was in a position of trust, dealing with vulnerable people requiring the services of the CMHT. Although Mrs Daraz was not directly responsible for Patient A's care, she was aware of his vulnerability and propensity to give gifts and lend money. Mrs Daraz took advantage of this knowledge, requesting and accepting loans and other items from Patient A for her own gain. Mrs Daraz did so with the knowledge that Patient A had previously been subject to being taken advantage of by others and the impact this had on his health. Further, the panel has found Mrs Daraz to have acted dishonestly.

Mrs Daraz's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Daraz's actions were serious and to allow her to continue practising 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 only appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, as well as the effect of Mrs Daraz's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

Accordingly the panel is satisfied that a striking off order is necessary on the grounds of both public protection and public interest.

The panel was mindful of the potential impact that such an order may have on Mrs Daraz but taking full account of the important principle of proportionality, the panel was of the view that the interests of the public outweighed Mrs Daraz's interests.

The panel, therefore, directs the Registrar to strike Mrs Daraz's name from the Register. She may not apply for restoration until five years after the date that this decision takes effect.

Determination on Interim Order

The striking off order will not take effect until the end of the appeal period (28 days after the date on which the decision letter is served) or, if an appeal has been lodged, before the appeal has concluded.

The panel has considered the submissions made by Mr Kennedy that an interim suspension order for 18 months should be made to cover the 28 day appeal period and 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 and took account of the guidance issued to panels by the NMC when considering interim orders and the appropriate test as set out at Article 31 of The Nursing and Midwifery Order 2001. It may only make an interim order if it is satisfied that it is necessary for the protection of members of the public, is otherwise in the public interest or is in Mrs Daraz's own interests.

The panel was satisfied that an interim suspension order for a period of 18 months 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 Mrs Daraz is sent the decision of this hearing in writing. If an appeal is lodged then the interim suspension order will continue until the appeal is determined.

The panel's decisions will be sent to Mrs Daraz in writing.

That concludes this determination.