

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
17 – 23 December 2020 - 21– 28 April 2021
Monday 26 July – Thursday 29 July 2021**

Virtual Hearing

Name of registrant:	Mr Martin John Lewis
NMC PIN:	01I0250W
Part(s) of the register:	Nursing – Sub part 1 RNA: Registered Nurse – Adult (28 September 2004)
Area of registered address:	Carmarthen
Type of case:	Misconduct
Panel members:	Anthony Mole (Chair, lay member) Sue Rourke (Registrant member) Nicola Dale (Lay member)
Legal Assessor:	Simon Walsh (except 21-23 April 2021 Charles Apthorp)
Panel Secretary:	Vicky Green (17 – 18 December 2020) Anjeli Shah (21-23 December 2020) Parys Lanlehin-Dobson (21 – 28 April 2021) & (26 July- 29 July 2021)
Nursing and Midwifery Council:	Represented by Alastair Kennedy (except July 2021 Neil Jeffs)
Mr Lewis:	Not present or represented
Facts proved:	Charges 1, 2b, 3, 4, 5,6,7,8,9,10,11,12,13,14,15,16 &18
Facts not proved:	Charges 2a, 17 &19
Fitness to practise:	Currently Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing held on 17 December 2020

The panel was informed at the start of this hearing that Mr Lewis was not in attendance and that the Notice of Hearing letter was sent on 5 November 2020. The notice had been sent to an email address that Mr Lewis had notified to the NMC as an address for communications.

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

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

The panel accepted the advice of the legal assessor.

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

The panel next considered whether it should proceed in the absence of Mr Lewis. It had regard to Rule 21 and heard the submissions of Mr Kennedy who invited the panel to continue in the absence of Mr Lewis. He submitted that Mr Lewis had voluntarily absented himself.

Mr Kennedy referred the panel to the email correspondence from Mr Lewis's dated 10 November 2020. In response to questions set out by the NMC he stated that he did not wish to attend the hearing, he was happy for the hearing to proceed in his absence. Mr Kennedy told the panel that, in other emails sent by Mr Lewis, he makes it clear that he

does not wish to attend because he has no desire to return to nursing, and that he has established himself in another career.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Lewis. In reaching this decision, the panel has considered the submissions of Mr Kennedy and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Lewis;
- Mr Lewis has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suggest that adjourning would secure his attendance at some future date;
- Not proceeding may inconvenience witnesses scheduled to give live evidence, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events

There is some disadvantage to Mr Lewis in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to Mr Lewis, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-

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

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Kennedy, on behalf of the NMC, to amend the wording of charge 3, Schedule A, item e.

The proposed amendment was to replace the word 'behaviour' with 'partner'. It was submitted by Mr Kennedy that the proposed amendment would correct an obvious typographical error.

*Said to Colleague A, in relation to her partner, "yeah well, I reckon I could drop him anyway" or words to that effect, after Colleague A said she would tell her ~~behaviour~~ **partner** about your behaviour"*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 Mr Lewis and 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 make sense of the charge.

Details of charge

That you, a Registered Nurse formerly employed by Hywel Dda University Health Board ('the Health Board') and based on the Recovery Unit ('the Unit'):

1) On 15 December 2016:

a) attended the Unit whilst not on duty;

b) removed needles and /or syringes from the Unit:

i) for use by a friend;

ii) for matters not connected with your employment with the Board;

iii) when you were not authorised / permitted to do so;

2) Your conduct at any and / or all of charge 1 above, lacked integrity and / or was dishonest in that you:

a) knew that you were not authorised / permitted to attend the Unit when not on duty;

b) knew that you were not authorised / permitted to remove the needles / syringes;

3) Acted in the manner as set out in Schedule A:

4) Your conduct as set out in charge 3 / Schedule A:

a) was inappropriate;

b) breached professional boundaries;

- 5) Acted in the manner as set out in Schedule B;
- 6) Your conduct as set out in charge 5 / Schedule B:
 - a) was inappropriate;
 - b) breached professional boundaries;
 - c) was motivated by the pursuit of sexual gratification;

7) [PRIVATE]

[PRIVATE]

8) [PRIVATE]

9) [PRIVATE]

10) [PRIVATE]

11) [PRIVATE]

12) [PRIVATE]

13) [PRIVATE]

14) On 2 January 2017, failed to keep clear and accurate records / made inaccurate entries / amendments in / to records as set out in Schedule D:

15) [PRIVATE]

16) On 2 January 2017, signed for the administration of Oramorph to Patient A:

- a) in the Controlled Drugs Register;
- b) in the Medication Administration Record;
- c) without a witness;
- d) prior to any actual administration of the drug;

17) Your conduct at as set out in any, or all, of charge 16 above was lacked integrity and / or was dishonest in that you:

- a) knew that you had not administered the Oramorph to Patient A;
- b) intended to create the misleading impression that you had administered to Oramorph to Patient A;

18) On 2 January 2017, inaccurately signed for the administration of Fentanyl to Patient A:

- a) in the Controlled Drugs Register at 15:10;
- b) in the Medication Administration Record at 18:00;
- c) in the Medication Administration Record at 18:05;
- d) in the Medication Administration Record at 18:10;
- e) in the Medication Administration Record at 18:20;

19) Your conduct as set out in any, or all, of charge 18 above lacked integrity and / or was dishonest in that you:

- a) knew that you had not administered Fentanyl to Patient A at any, or all, of the times referred to in charge 18;
- b) intended to create the misleading impression that you had administered Fentanyl to Patient A at the times referred to in charge 18;

AND in light of any and / or all of the above, your fitness to practise is impaired by reason of your misconduct alternatively

[PRIVATE]

<u>SCHEDULE A</u>	
a	Said to Colleague A <i>“you fancy me don’t you”</i> or words to that effect
b	Said to Colleague A <i>“you want to snog me don’t you”</i> or words to that effect
c	Said to Colleague A <i>“do you think they will really believe me over you? I’m management now, I’m untouchable”</i> or words to that effect, after Colleague reacted to you touching her
d	Said to Colleague A <i>“you think you are really hard but you are not really”</i> or words to that effect, after Colleague A told you not to touch her again
e	Said to Colleague A, in relation to her partner, <i>“yeah well, I reckon I could drop him anyway”</i> or words to that effect, after Colleague A said she would tell her partner about your behaviour
f	Said to Colleague A <i>“you want me to chew on your clit”</i> or words to that effect.

<u>SCHEDULE B</u>

a	Between 10 and 21 December 2016, touched / felt Colleague A's bottom through the curtain of the bay that Colleague A was working in
b	Between 10 and 21 December 2016, touched / grabbed Colleague A's bottom whilst Colleague A was standing behind the nurses station
c	Between 10 and 21 December 2016, touched / grabbed Colleague A's bottom and / or touched her panty liners whilst in the Units Reception Area
d	On an unknown date, having asked Colleague B to shut her eyes, kissed Colleague B on the lips
e	On an unknown date, having asked Colleague C to shut her eyes, kissed Colleague C on the lips

SCHEDULE D

a	Patient A's Prescription Chart - time Co-codamol given changed to 19:30
b	Patient A's Operations Register Book - time for anaesthetising Patient A changed from 14:08 to 15:08
c	Patient A's Hospital Records - time for entering theatre changed from 14:26 to 15:26
d	Patient A's Hospital records - time of leaving theatre changed from 14:46 to 18:46
e	Patient A's - time for entering recovery at 18:20
f	Patient A's - time accepted by Ward Nurse at 18:50
g	Patient A's - time discharged from Recovery at 19:20
h	Patient A's Recovery Book Admissions Register - time that the patient entered changed to 18:05
i	Patient A's Recovery Book Admissions Register - time that the patient departed changed to 19:30
j	Patient B's Recovery Book Admissions Register - time that the patient entered changed to 18:30
k	Patient A's Theatre Register and Information Return - time for 'Operation Finish'

	changed to 14:45
l	Patient A's Theatre Register and Information Return - time for 'Into Recovery' changed to 15:00
m	Patient A's Theatre Register and Information Return - time for leaving the Unit to an unclear entry / could be 16:30?
n	<p>Patient A's Recovery Period Observation Chart for the following entry times:</p> <p>(i) 18:20;</p> <p>(ii) 18:22</p> <p>(iii) 18:25;</p> <p>(iv) 18:30; and</p> <p>(v) 18:35</p>

Mr Kennedy submitted that no points of law arose in relation to the charges and no formal admissions had been made. He pointed out that Mr Lewis has responded to the 'Regulatory Concerns Response Form', and the panel could take these into account, but these did not amount to admissions under Rule 24 (5)

Background

The NMC received a referral dated 1 June 2018 from Hywel Dda University Health Board (UHB). Mr Lewis had been employed by UHB from 2004. Mr Lewis worked at Glangwili General Hospital Recover Unit since 2014 working as a band 5 Nurse, he was later promoted to a Band 6. The referral raises a number of concerns, including that Mr Lewis:

On 15 December 2016:

- removed needles and syringes from UHB to give them to a friend, and;

On 2 January 2017:

- admitted signing for drugs that had not been given to a patient
- falsified nursing documentation
- retrospectively entered the incorrect times on the patient documentation
- inappropriately borrowed IV Noradrenaline and Dobutamine and Co-codamol
- failed to ensure that all the drugs taken from ICU were returned

NMC opening submissions

Mr Kennedy said “In relation to Charges 1 and 2, at about 10.00 pm on 15 December 2016, Colleague H and Colleague A were sitting in the Recovery Unit at the hospital. The Registrant, who was not on duty, came in out of uniform. He explained to the nurses that a friend of his was suffering from a terminal illness and was about to start a new treatment regime. However, this friend had not been given any syringes or needles which were required. He went to a cupboard, removed a number of syringes and needles from it and thereafter left the unit. Neither nurse reported that incident at the time. It was only when an investigation into Charge 8 was being carried out that Colleague H told about what had happened on 15 December.

The Registrant was interviewed about a number of matters including this one and, during the course of that interview, he admitted taking syringes only. You will see in the regulatory concerns form which is at page 13 of the Registrant’s bundle that he admits the charge of taking needles and syringes and that this demonstrated a lack of honesty and integrity on his part. However, in his supporting statement at page 15, he refers to removing syringes only and he says that he should have gone to a pharmacy or supermarket as the syringes that he removed were the health board’s property.

In relation to Charges 3 and 5, on 21 December 2016, Colleague A was contacted by her line manager who told her that the Registrant had made a complaint against her saying that she had breached his confidentiality. This was because her partner had sent a text to the Registrant complaining that he had inappropriately touched Colleague A and made offensive comments to her. He returned to make further remarks which the Registrant felt breached his confidentiality. You will see the text itself during the course of the evidence. Colleague A was unaware that her partner had sent a text to the Registrant and provided an explanation for how her partner came into possession of the allegedly confidential information.

Following this, Colleague A wrote to the Health Board's HR Department and, in that, she made complaints about comments that the Registrant had made towards her which are detailed in Schedule A to Charge 3. She also made complaints about the matters which affect her in Schedule B.

[PRIVATE]

Charge 14 arises out of an examination of the various records relating to Patient A. The alterations to these records are detailed in Schedule D and the records themselves are within the exhibit bundle and will be spoken to by Colleague F and Colleague G. It will be seen that the entries altered by the Registrant were inconsistent with others. At interview, the Registrant explained that a monitor in the Recovery Unit was showing an incorrect time and that he was attempting to correct incorrect times because of that. However, evidence will show that whilst the monitor was faulty, it had been in that situation for some time and a note had been placed on the monitor advising people to look at the clock rather than take times from the monitor itself.

Charge 16 relates to Oramorph. As I have already said, the Registrant was on the verge of administering Oramorph to a patient when he was told not to. However, it was clear that the Registrant had done things back to front. He had signed to say that the

medication had been administered before it actually was and he did not score out the entries in the medication administration record or the controlled drugs register.

Charge 17 really links in with Charge 14, the amendments to the records. The times that are recorded as times when fentanyl was administered have been altered and do not make sense. These are detailed within Charge 18. There is a number of dishonesty charges associated with the other charges and they will be a matter for you to decide.

During the course of this hearing, you are going to hear from nine live witnesses. I have no control over when these witnesses are warned to attend and I can advise that one witness, Colleague H, has been warned to attend today. The remaining witnesses will be taken in the order in which their names appear on the witness statement bundle and they are scheduled to give their evidence over the following two days after today, in other words Friday and Monday.

Further information was obtained from Colleague A and that led to Colleagues B and C being identified and they have provided statements in relation to the matters in Schedule B concerning them. Charges 4 and 6 follow Charges 3 and 5.”

The panel heard from the following witnesses:

Colleague H was a staff nurse on the recovery unit. She told the panel that she was duty on the recovery unit on 15 December 2016 when the Mr Lewis came in off duty and took needles and syringes from the store cupboard. Mr Lewis told her that they were for use by a friend.

Colleague A was a staff nurse in the recovery unit. She agreed with Colleague H, that she had seen Mr Lewis take items from the store cupboard on 15 December 2016 although she could not say what they were. Colleague A also told the panel that she heard the comments set out in Schedule A and she experienced the behaviour set out in Schedule B (a) (b) (c).

Colleague B was also a staff nurse on the recovery unit. She told the panel that Mr Lewis told her to close her eyes, commented on her eyelashes and kissed her on the lips in front of patients. She found this to be inappropriate. It made her feel uncomfortable and she told Mr Lewis so.

Colleague C was also a staff nurse on the recovery unit. She told the panel that Mr Lewis also commented on her eyelashes and kissed her, not in front of patients but in a drug cupboard. She told the panel that she was shocked as it was uninvited, but she was not offended. She took it as a joke.

Colleague F was a senior nurse on the recover unit. She gave evidence as to the various inconsistencies in timings and inaccurate records and alterations on entries.

[PRIVATE]

Colleague I was a staff nurse in the Adult Critical Care unit (also referred to as ITU). He told the panel that he was working in ITU on 2 January 2017, when Mr Lewis approached him and asked him for drugs for the recovery unit. He did not recall being shown a prescription for these drugs nor did he ask Mr Lewis to sign for them. He told the panel that Mr Lewis had asked for noradrenaline and Solpadol (dispersible Cocodamol).

Colleague D was a Sister on ITU. [PRIVATE]

Colleague E was a staff nurse on the recovery unit. She told the panel that she had been dealing with a child emergency in theatres and had taken some drugs from recovery for use on that patient. She told Mr Lewis that she had taken these drugs. She did not ask him to replace them. She was with Mr Lewis when the consultant asked them to administer Fentanyl rather than Oramorph to a patient on the recovery unit. Sometime later Mr Lewis asked her to countersign the medicines administration record for the Fentanyl.

Colleague G was the Clinical Lead Nurse on the emergency unit. As lead for the investigation she gave evidence in relation to the interviews and exhibits. She explained the relevant policies and procedures.

Adjournment (December 2020)

It became apparent that the case would go part-heard, due to its complexity and insufficient time listing.

The panel adjourned part-heard on 23 December 2020 after the close of the NMC's case.

The panel found the safest option was to resume and make deliberations on facts closely after hearing closing submissions from the case presenter and advice from the legal assessor. To do otherwise would create a long gap between hearing those matters and then reaching any decision.

The panel requested the case presenter to produce written closing submissions on fact as well as an evidence matrix to assist them when they resume.

Decision and reasons on service of Notice of resuming Hearing

The panel was informed at the start of the resuming hearing that Mr Lewis was not in attendance and that the Notice of Hearing letter was sent on 9 March 2021. The notice had been sent to Mr Lewis's email address.

The panel took into account that the Notice of Hearing provided details of the time, dates and venue of the hearing.

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

The panel accepted the advice of the legal assessor.

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

Proceeding in absence of Mr Lewis at the resuming hearing (April 2021)

The panel considered that it would be appropriate, for the same reasons that it gave earlier to proceed in Mr Lewis's absence.

The panel again will draw no adverse inference from Mr Lewis's absence.

Final NMC Submissions

On behalf of the NMC Mr Kennedy provided the panel with an evidence matrix, which set out the evidence and exhibits for each charge. He took the panel through each of the charges in turn, highlighting the evidence on which the NMC was relying and indicated the approach he submitted the panel should take on each charge.

Mr Kennedy invited the panel to find all of the charges proved.

The panel accepted the advice of the legal assessor.

Adjournment (April 2021)

After hearing the NMC's closing submissions and during the panel deliberations it became apparent that it would not be possible for the panel to make its findings, draft a determination and hand down due to the complexity of the case and insufficient time listing.

The panel adjourned on 28 April in order to give the panel sufficient time to conclude its decision on the facts.

The panel would then resume the hearing at a later date and hand down its decision on the facts.

The panel considered whether or not to make an interim order but as one was already in place this was unnecessary.

Resuming Hearing (July 2021)

The panel heard from Mr Jeffs at the start of the resuming hearing on 26 July 2021, that Mr Lewis had been made aware of the adjournment, the resuming hearing and the time, date and venue in accordance with the Rule 32 (3).

Proceeding in absence of Mr Lewis at the resuming hearing (July 2021)

The panel considered that it would be appropriate, for the same reasons that it gave in December 2020 and April 2021 to proceed in Mr Lewis's absence.

The panel again will draw no adverse inference from Mr Lewis's absence.

Decision and reasons on facts

In reaching its decision on the facts the panel took into account all the oral and documentary evidence adduced in this case, together with the submissions made by Mr Kennedy on behalf of the NMC. The panel also had regard to Mr Lewis's response bundle.

The NMC witnesses were not challenged. The panel found their evidence to be mutually consistent and also in accord with such original documentary records as existed. The

evidence also accorded with many of Mr Lewis's explanations given at the time or during the course of investigations by the board. The panel therefore found the evidence of these witnesses to be generally reliable.

The panel heard and accepted the advice of the legal assessor who referred it to *GMC v Harris [2020] EWHC 2518 (Admin)* and *Solicitors Regulation Authority v John Michael Malins [2018] EWCA Civ 366*.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel then considered each of the charges and made the following findings.

Charge 1

1) On 15 December 2016:

a) attended the Unit whilst not on duty;

b) removed needles and /or syringes from the Unit:

i) for use by a friend;

ii) for matters not connected with your employment with the Board;

iii) when you were not authorised / permitted to do so;

This charge is found proved.

In the interview with Colleague F, on 9 February 2017, Mr Lewis admitted attending the recovery unit and removing needles and syringes whilst off duty on 15 December 2016. Colleague H and Colleague A who were on duty at the time, both saw Mr Lewis take items from the cupboard. Mr Lewis told them the items were for a friend. Colleague H identified the items as needles and syringes. In a later interview on 17 May 2017, Mr Lewis admitted to attending the unit and removing syringes.

The panel also had regard to the duty sheet that also confirms that Mr Lewis was not on duty on 15 December 2016.

On the Regulatory Concerns Response Form, when asked if on 15 December 2016 he removed needles and syringes from the Unit when he was not authorised to do so, Mr Lewis ticked the 'Yes' box.

Therefore the panel found this charge proved in its entirety.

Charge 2

2) Your conduct at any and / or all of charge 1 above, lacked integrity and / or was dishonest in that you:

- a. knew that you were not authorised / permitted to attend the Unit when not on duty;*
- b. knew that you were not authorised / permitted to remove the needles / syringes;*

This charge is found proved in respect of charge 2b.

The evidence shows that there was nothing wrong with Mr Lewis attending the unit whilst he was off duty. Doing so, demonstrated neither a lack of integrity nor any dishonesty.

The panel finds charge 2a not proved.

The evidence shows that Mr Lewis took needles and syringes from the unit, for somebody else. Mr Lewis himself, in an interview with Colleague G on 17 May 2017, said 'Yeah I know its stealing, I stole two syringes and there's nothing I can do now to reverse that, but at the time, I felt it was morally the right thing to do...'. He knew at the time, what he was doing was wrong and ordinary people would consider it to be dishonest.

The panel finds charge 2b proved.

Charge 3

3) Acted in the manner as set out in Schedule A:

This charge is found proved.

The panel took into account the witness statement and the oral evidence provided by Colleague A. She provided a consistent and coherent account with regards to the allegations relating to Mr Lewis's behaviour. She confirmed to the panel that each of the phrases set out in Schedule A (a) to (f) were said to her by Mr Lewis.

Colleague A told her husband about Mr Lewis's behaviour and, without her knowledge, he obtained Mr Lewis's number from her phone and sent him a message warning him. The text was sent on 20 December 2016 and contained the following:

"[Colleague A] just told me that you have been touching her up on a few occasions and offered to lick her clit?? What the hell are you playing at, think you can drop me do you??"

I'm back tomorrow so we will see. Do yourself a favour and go and steal some more drugs from the prescription cupboard. You make me sick!!!"

This in the panel's view supports Colleague A's evidence.

The panel accept that the burden of proof rests on the NMC provide evidence in relation to this charge but the panel noted that no alternative explanation has been provided by Mr Lewis in respect of Charge 3 and the behaviour set out in schedule A.

The panel found this charge proved in its entirety.

Charge 4

4) Your conduct as set out in charge 3 / Schedule A:

- a. was inappropriate;
- b. breached professional boundaries;

Having found charge 3 proved in its entirety the panel was of the view that the behaviour of Mr Lewis was highly inappropriate and offensive. Individuals have the right to be treated with respect and dignity while at work. Mr Lewis not only breached professional boundaries but he acted in ways that were deplorable and intimidating. The panel considered that any reasonable member of the public, made aware of the circumstances of this case would be disturbed by what Colleague A experienced.

The panel found this charge proved in its entirety.

Charge 5

5) Acted in the manner as set out in Schedule B;

This charge is found proved.

The panel took into account the oral and documentary evidence provided by Colleagues A, B and C. It considered the oral evidence to be consistent with the written statements and Colleague B and C provided very similar accounts of what had happened to them individually. Colleagues A, B and C confirmed to the panel that they had personally experienced the behaviours described in Schedule B (a) to (e). The evidence of each shows a propensity for Mr Lewis to act in the way described by the others.

Colleague C was not offended by Mr Lewis's behaviour but did consider it inappropriate.

Mr Lewis ticked the 'no' boxes on the Regulatory Concern Response Form where this issue was raised but he has not provided any explanation as to what he says occurred with Colleague A, B and C. This does not assist the panel at all.

This charge is found proved in its entirety.

Charge 6

6) Your conduct as set out in charge 5 / Schedule B:

c) was inappropriate;

d) breached professional boundaries;

e) was motivated by the pursuit of sexual gratification;

This charge is found proved.

Having found charge 5 proved in its entirety the panel was of the view that the behaviour of Mr Lewis was again highly inappropriate and offensive. The panel again formed the view that Mr Lewis breached professional boundaries and treated his colleagues in a far less than dignified manner. The panel considered that any reasonable member of the public, made aware of the circumstances of this case would be disturbed by what Colleagues A, B and C had experienced, especially when Colleague B told the panel in her statement *“I have been married since 2000 and since then I had only kissed one man (my husband); the registrant took that away from me”*.

When determining whether Mr Lewis’s conduct was motivated by the pursuit of sexual gratification, the panel had regard to the case of *GMC v Haris* [2020] EWHC 2518 (Admin). At paragraph 59 Foster J said:

“.....to look for “sexual gratification” may be misleading and overcomplicating. It is irrelevant to the actions which the GMC would wish to proscribe whether or not the perpetrator was sexually “gratified” at all - whether before, after or during the act in question”.

At paragraph 47 Foster J also said:

“it is in my judgement clear beyond argument that the intimate touching of Patients A and B was sexual and that answering a question as to the motivation of the toucher, the only available answer, is yes, the motivation must have been sexual. This is another way of saying the only reasonable inference from the facts is that the behaviour was sexual. This derives from;

- a. The fact that the touching was of the sexual organs*
- b. The absence of a clinical justification*
- c. The absence of any other plausible reason for the touching.”*

The panel approached charge 6c with these comments in mind.

The panel had regard to the areas of the body the Mr Lewis had touched on Colleagues A, B and C. These were the lips and the bottom, including the panty liner. The panel considered that these were sexual areas of the body. There was clearly no clinical justification for Mr Lewis's actions and the panel could find no other plausible reason for the touching.

This charge is found proved in its entirety.

Charge 7

[PRIVATE]

This charge is found proved.

[PRIVATE]

Charge 8

[PRIVATE]

This charge is found proved.

[PRIVATE]

Charge 14

14) On 2 January 2017, failed to keep clear and accurate records / made inaccurate entries / amendments in / to records as set out in Schedule D:

This charge is found proved.

In reaching this decision the panel had regard to the admissions made by Mr Lewis in relation to the facts alleged in this charge in the interview held on 17 May 2017 with GC. Mr Lewis was asked if he had retrospectively entered the incorrect times in the patient documentation to which he responded 'I did'.

The panel found that there had been changes and inaccuracies in the document as set out in Schedule D and whilst there is a lack of specific evidence to show that Mr Lewis had made all of the changes, taking into account the chronology of events, Mr Lewis's admissions and the live evidence heard by the panel, it was satisfied that it was more likely than not that Mr Lewis made a significant number of false entries and inaccurate amendments in and to the records as set out in Schedule D. The panel therefore found this charge proved.

[PRIVATE]

Charge 16

16) On 2 January 2017, signed for the administration of Oramorph to Patient A:

- a. in the Controlled Drugs Register;
- b. in the Medication Administration Record;
- c. without a witness;
- d. prior to any actual administration of the drug;

This charge is found proved.

In reaching this decision the panel took into account evidence from the controlled drugs register which only shows Mr Lewis's signature, the medication administration record

which shows Oramorph being administered against Mr Lewis's signature and evidence from Colleague E that at the last moment the doctor changed the instruction to give Fentanyl to the patient rather than Oramorph. In the interview on 17 May 2017 with GC, Mr Lewis accepted that the Oramorph was never given to the patient and it went back into the bottle.

In respect of the evidence before it the panel found this charge proved in its entirety.

Charge 17

17) Your conduct as set out in any, or all, of charge 16 above was lacked integrity and / or was dishonest in that you:

- a) knew that you had not administered the Oramorph to Patient A;
- b) intended to create the misleading impression that you had administered to Oramorph to Patient A;

This charge is found not proved.

In reaching this decision the panel had borne in the mind the NMC guidance regarding dishonesty. It formed the view that at the time of completing the records regarding Oramorph Mr Lewis believed that it was going to be administered to the patient. Immediately prior to administration and after the Oramorph had been drawn up the doctor gave contrary instruction to administer Fentanyl instead.

The panel determined that whilst the records should not have been completed prior to the administration of the medication, this was a genuine error rather than a deliberate attempt to create a false record.

The panel determined that in these particular circumstances, a member of the public fully aware of what had happened would not consider Mr Lewis's conduct either to lack integrity or to be dishonest.

Charge 18

18) On 2 January 2017, inaccurately signed for the administration of Fentanyl to Patient

A:

- a) in the Controlled Drugs Register at 15:10;
- b) in the Medication Administration Record at 18:00;
- c) in the Medication Administration Record at 18:05;
- d) in the Medication Administration Record at 18:10;
- e) in the Medication Administration Record at 18:20;

This charge is found proved.

The panel heard evidence from Colleague G and Colleague F that the entry in the controlled drugs register was incomplete because the amount given was recorded as "25 mcg x [blank]". Leaving part of the calculation blank means that the entry in the controlled drugs register is effectively meaningless. This entry was signed by Mr Lewis.

The Fentanyl was recorded on the MAR chart as being administered in four separate doses between 18:00 and 18:20, this cannot be correct as the patient discharged from the recovery unit before 18:00.

The panel also took into account the admission made by Mr Lewis regarding the inaccurate times recorded against the administration of Fentanyl in the medication administration record. In the interview with Colleague G on 17 May 2017, Mr Lewis said “... I was under so much pressure, I wasn’t in the right frame of mind. I made that mistake and I’ve got to hold my hands up...”

Taking all the above into consideration the panel find this charge proved in its entirety.

Charge 19

19) Your conduct as set out in any, or all, of charge 18 above lacked integrity and / or was dishonest in that you:

a)knew that you had not administered Fentanyl to Patient A at any, or all, of the times referred to in charge 18;

b) Intended to create the misleading impression that you had administered Fentanyl to Patient A at the times referred to in charge 18;

This charge is not proved.

In reaching this decision the panel considered the excerpt from the controlled drugs register exhibited by Colleague G where it was clear that it is a common error not to complete the ‘*amount given*’ column. Mr Lewis accepted the inaccuracy of the times entered on the mar chart. The panel heard no evidence to suggest that this was anything other than a genuine mistake.

The panel determined that in these particular circumstances, a member of the public fully aware of what had happened would not consider Mr Lewis’s conduct either to lack integrity or to be dishonest.

Therefore the panel found this charge not proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel considered whether its findings on the charges amount to misconduct and, if so, whether Mr Lewis's fitness to practise as a registered nurse is currently impaired by reason of this misconduct.

[PRIVATE]

The panel noted that 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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

In considering misconduct, the panel adopted a two-stage process in its consideration. Firstly, 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 then decide whether, in all the circumstances, Mr Lewis's fitness to practise as a registered nurse is currently impaired as a result of that misconduct.

[PRIVATE]

Submissions on misconduct

In his submissions on misconduct, Mr Jeffs 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'. He told the panel that it may be further assisted by the comments of Leggat J (endorsing the advice of the legal assessor in the substantive hearing) in *Johnson and Maggs v Nursing and Midwifery Council (No. 2)* [2013] EWHC 2140 (Admin).

"[105] ... to find misconduct however, the Committee had been advised and had accepted that the failure had to be such that it would be seen as "deplorable" by fellow practitioners and as involving a serious departure from acceptable standards"

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

Mr Jeffs submitted that the breaches of the code are extremely wide ranging. Further, when considering whether the facts proved amount to misconduct, he invited the panel to consider that the Mr Lewis's conduct was serious in that:

The regulatory concerns investigated (and reflected in the charges) include the following: (i) Failing to act with honest and integrity by removing syringes from the Unit when not authorised to do so (charges 1 and 2); (ii) Failing to maintain professional boundaries with colleagues at the Hospital (charges 3- 4 & Schedule A); and (iii) Harassment, with or without sexual motive of colleagues at the Hospital (charges 5- 6 & Schedule B). Mr Jeffs submitted that all such matters are manifestly so serious as to amount to misconduct.

In respect of the charges found proved, relating to dishonesty, integrity and the removal of syringes, Mr Jeffs submitted that dishonesty (and lack of integrity) on any level is always treated seriously. He told the panel that the fact that the concerns reflected in charges 1 and 2 were directly related to Mr Lewis's clinical practice makes it particularly grave. It was Mr Jeffs' submission that such conduct not only undermines trust and confidence in the profession but also has the potential to impact upon patient safety. Further, Mr Lewis said that the conduct involved taking syringes which were meant for patients of the hospital.

Additionally, Mr Lewis's explanation that the items were taken for use by a friend is an additional risk factor. For example, it is simply not known how they were put to use and in what circumstances.

In respect of the charges found proved, relating to inappropriate behaviour and crossing professional boundaries, Mr Jeffs submitted that at all material times, Mr Lewis was under an obligation to maintain professional boundaries with his colleagues. Further to this, he submitted that as reflected in the charges found proved (more particularly charges 3-4 & Schedule A), Mr Lewis failed to maintain such boundaries in a serious and significant way. Professional boundaries are in place for good reason. He submitted that the conduct and words said by Mr Lewis were highly inappropriate and unacceptable. Mr Jeffs reminded the panel that in its written determination, the panel determined that in respect of charge 4 *"Individuals have the right to be treated with respect and dignity at work. Mr Lewis not only breached professional boundaries but he acted in ways that were deplorable and intimidating. The panel considered that any reasonable member of the public, made aware of the circumstances of this case would be disturbed by what Colleague A experienced"*.

In respect of the charges found proved relating to sexually motivated harassment, Mr Jeffs submitted that the conduct reflected in the charges, more particularly charges 5- 6 & Schedule B, was highly inappropriate and seriously breached professional boundaries. Moreover, the conduct was motivated by the pursuit of sexual gratification. The presence of sexual motivation/gratification increases the seriousness of the conduct and is manifestly sufficiently serious so as to amount to misconduct.

Mr Jeffs submitted that the conduct towards colleagues as referred to above, not only impacted upon those individuals directly affected, but also had the potential to impact upon the care provided to patients and members of the public. He told the panel that this is because such conduct had the potential to affect morale and distract colleagues from providing direct care services which, as a consequence, had the potential for unwarranted patient harm.

Mr Jeffs told the panel that the highly unacceptable nature of the conduct is self- evident, he then referred the panel to the following paragraphs of the High Courts approach to such matters which can be found in *Arunachalam v GMC* [2018] EWHC 758 (Admin):

58 *This was undoubtedly a sexual misconduct case. Such cases are inherently serious, such that they may well lead to erasure, even for a first time offender with a good clinical record. Often, maintaining public confidence in the profession and upholding high standards of behaviour by stamping out unacceptable behaviour of this kind will require erasure in a sexual misconduct case.*

59 *Where the victim is a colleague rather than a patient, severe sanctions in such cases are generally necessary, in addition, to protect and uphold the dignity of workers in the profession and to protect their freedom to work without being molested. The victims are usually women.*

60 *This was therefore always a case in which the potential for erasure loomed large, even though the appellant had a good record and had not previously offended in this or any other way. Both parties realistically recognised that in their submissions to the tribunal.*

61 *In other parts of the world where the culture is different, and in some isolated sectors in this country, there is still a culture which regards such behaviour as acceptable. That is completely wrong and now regularly proclaimed to be so. The days are gone when mainstream discourse was in any way split on the issue of sexual misconduct, particularly in the workplace. The mainstream in our society, reflected in our law, is now that there is virtual zero tolerance of such behaviour.”*

[PRIVATE]

Submissions on impairment

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

A summary is set out in Grant at paragraph 76 in the following terms:

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

- *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- *has in the past acted dishonestly and/or is liable to act dishonestly in the future.”*

Mr Jeffs submitted that all of the limbs referred to above are engaged in this matter.

He further submitted that for the reasons identified in relation to misconduct, Mr Lewis’s conduct had the potential for serious, unwarranted, harm [PRIVATE].

Mr Jeffs submitted that Mr Lewis’s conduct brought the nursing profession into disrepute. He further submitted that the public have the right to expect that nurses will provide

appropriate and competent care and will act to uphold the standards of the profession. It was Mr Jeffs submission that Mr Lewis's conduct clearly had the potential to undermine public confidence in the nursing profession and by failing to discharge basic, but important, nursing functions, he brought the profession into disrepute.

Mr Jeffs submitted that members of the public would be rightly concerned about the nature of the conduct in this matter. He submitted that Mr Lewis's behaviour towards former colleagues is extremely serious. Further, that patients and the public would be shocked to learn of the conduct in this matter.

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

Mr Jeffs submitted that Mr Lewis has not been able to demonstrate actual remediation in a nursing environment and that the panel cannot be reassured that that the conduct has been remedied in practice.

Mr Jeffs submitted that until such time as Mr Lewis is able to demonstrate remediation in respect of all of the areas of regulatory concern in practice it is impossible to see how it can be said that insight and remediation is sufficiently complete. He further submitted that this is a particularly important consideration in that it was Mr Lewis's privileged position as a nurse which permitted him to be able to engage in much of the conduct complained about.

Mr Jeffs submitted to the panel that the nature and seriousness of the regulatory concerns and the significant falling short of the standards to be expected of a registered nurse are such that the conduct should be marked by a finding of impairment.

[PRIVATE]

In relation to the risk of repetition, Mr Jeffs submitted that the panel has limited information before it by which to gauge Mr Lewis's level of insight. He further submitted that the panel does however have evidence of the similar nature of the misconduct and the fact that it was not isolated, which, the panel may feel has the potential to give rise to the risk of repetition. Similarly, any attitudinal concerns that are found to exist add to the risk of repetition.

Decision and reasons on misconduct

The panel heard and accepted the advice of the legal assessor on misconduct. He referred the panel to a number of relevant judgments, including:

- Nandi v GMC [2004] EWHC 2317 (Admin)
- Mallon v GMC [2007] CSIH 17
- Holton v GMC [2006] EWHC 2960 (Admin)
- Meadow v GMC [2007] QB 462
- Cohen v GMC [2008] EWHC 581 (Admin)
- CHRE v (1) NMC (2) Grant [2011] EWHC 927 (Admin)
- SRA v Sharma [2010] EWHC 2022 (Admin)
- Parkinson v NMC [2010] EWHC 1898 (Admin)

In respect of the proven charges relating to sexually motivated harassment and the breach of professional boundaries (charges 3, 4, 5 and 6), the panel determined that Mr Lewis's conduct in this regard, does not in any way align with the standards and behaviour expected of a registered nurse. It considered that the charges found proved in respect of the sexually motivated harassment, were not isolated incidents and they involved more than one other person.

The panel determined that the nature and scale of Mr Lewis's conduct would be considered seriously inappropriate and deplorable. Mr Lewis brought the profession into disrepute by harassing and undermining his colleagues, at times for his own sexual gratification. The panel determined that Mr Lewis's actions amounted to several breaches of the Code. Specifically:

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.

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*

20.8 *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

The panel recognised that breaches of the Code do not automatically result in a finding of misconduct. However the panel determined that the proven charges relating to; sexually

motivated harassment and the breach of professional boundaries, were sufficiently serious that the panel were compelled to find that Mr Lewis's actions amount to misconduct.

The panel then went on to consider the proven charges relating to dishonesty; these encompassed the removal of needles and syringes, falsification of records and taking of drugs for Mr Lewis's own use. The panel determined Mr Lewis's conduct in this regard fell significantly below what is expected of a registered nurse. It determined that Mr Lewis acted to put patients at risk of harm by putting his own needs above the needs of those in his care. The panel determined that Mr Lewis's conduct in this regard breached the following tenets of the code:

10 Keep clear and accurate records relevant to your practice

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

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your profession at all times

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

The panel determined that Mr Lewis's conduct in this regard was sufficiently serious to amount to misconduct.

In respect of charges 16 and 18, the panel determined that Mr Lewis's conduct in this regard was not sufficiently serious as to amount to misconduct. In reaching this decision the panel considered that although careless, it appeared to be common practice for the nurses on the ward to leave elements of the controlled drug register incomplete.

Decision and reasons on impairment

In deciding the issue of current impairment, the panel considered Dame Janet Smith's "test" set out in the case of Grant at paragraph 76:

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

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

The panel considered limbs (a), (b), (c) and (d) to be engaged, both as to the past and to the future.

The panel determined that Mr Lewis put patients at a risk of harm. It also considered that his actions may have also caused psychological harm and distress to the colleagues that he harassed. The panel found on several instances that Mr Lewis breached fundamental tenets of the nursing profession and brought its reputation into disrepute by virtue of his actions.

In considering the case of Cohen, the panel was of the view that Mr Lewis's misconduct would be difficult to remediate as sexual harassment and dishonesty are considered attitudinal issues. In any event the panel could not determine whether Mr Lewis has any insight into his actions as he has disengaged from the NMC and these proceedings and has pursued a different career path. Therefore there is no information to indicate that Mr Lewis wishes to remediate.

In light of all the above, the panel had insufficient evidence before it to allay its concerns that Mr Lewis currently poses a risk to patient safety. It considered there to be a risk of repetition of the incidents found proved and a risk of unwarranted harm to patients in his care, should he ever decide to return to nursing practice without some form of restriction. Therefore, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public

confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel was of the view that a fully informed member of the public would be very concerned by the panel's findings on the facts found proved and Mr Lewis's misconduct. It concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mr Lewis's fitness to practise as a registered nurse is currently impaired, on the basis of misconduct.

[PRIVATE]

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the Registrar to remove Mr Lewis's name from the register. The effect of this order is that the NMC register will show that Mr Lewis has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC and the "Considering guidance for serious cases" document marked SAN-2 updated in June 2020.

Submissions on sanction

Mr Jeffs set out the NMC's position with regard to the aggravating and mitigating features in this case. He informed the panel that the NMC were seeking the imposition of a strike-off order. He submitted that the charges are serious in that, sexual misconduct and dishonesty feature prominently in this case and are at the higher end of the spectrum.

Mr Jeffs submitted that Mr Lewis's conduct, was an abuse of the position of trust placed in him as registered nurse and was incompatible with continued registration. He submitted to the panel that the only appropriate sanction to impose is a striking – off order.

Decision and reasons on sanction

The panel accepted the advice of the legal assessor, who referred it to the following:

- CHRE v NMC and Leeper, [2004] EWHC 1850 (Admin)
- Parkinson v NMC [2010] EWHC 1898 (Admin)
- Moijueh v NMC [2015] EWHC 1999 (Admin)

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

The panel first considered seriousness of the multiple incidents of sexual harassment and the breaching of professional boundaries. The panel considered that as a senior nurse, Mr Lewis was in a position of responsibility and was trusted to uphold the standards and values expected of a nurse. The panel determined that Mr Lewis abused the trust placed in him by patients and his colleagues. The panel considered Mr Lewis's conduct to be a series of repeated sexual harassment for his own sexual gratification

In this regard the panel took into account the following aggravating features:

- these were repeated incidents of sexual harassment to more than one person;

- the incidents took place in a clinical environment where patients could have been witness to the sexual misconduct
- Mr Lewis was in a position of trust and seniority and he repeatedly abused this position
- distress was caused to some of the colleagues involved

The panel found no mitigating factors in this matter. There is no evidence of insight or understanding regarding the concerns raised in this regard or evidence of good practice since then. Neither has Mr Lewis provided evidence of any personal mitigation for the panel's consideration.

The panel then considered the dishonesty in this case. It took into account that this misconduct included the removal of syringes and the deceitful obtaining of medication for personal gain. The panel determined that Mr Lewis, a senior nurse, at the time was in a position of responsibility and was trusted to act with honesty and integrity. He abused the trust placed in him both by his employer and his colleagues.

The panel took into account the following aggravating features:

- Mr Lewis held a position of trust as a senior nurse, which he abused for personal gain;
- This was a pattern of dishonest behaviour which was premeditated and occurred more than once
- Whilst no patients were actually harmed, there was a risk of harm and Mr Lewis's willingness to act dishonestly, to abuse the trust placed in him and to fabricate records to conceal his dishonesty, give rise to a risk of repetition with potential risk of very serious harm to patients.

Again the panel found no mitigating factors in this matter. There is no evidence of insight or understanding regarding these concerns or evidence of good practice since then.

Neither has Mr Lewis provided evidence of any personal mitigation for the panel's consideration.

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

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

The panel next considered whether placing conditions of practice on Mr Lewis's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the findings, being sexual misconduct and dishonesty, in this case. The misconduct identified in this case was not solely related to clinical practice and as such is not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Lewis's registration would not adequately address the seriousness of this case and would not otherwise be in the public interest.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour...*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The sustained sexual misconduct, dishonesty and deception are indicative of a deep seated attitudinal problem into which Mr Lewis has not evidenced any insight. The panel considered that, given the nature and scale of the misconduct, 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 paragraphs of 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 considered that the misconduct met all the above criteria and that the appropriate and proportionate sanction is a striking-off order. Having regard to the effect of Mr Lewis's actions in bringing the profession into disrepute, the panel has concluded that nothing short of a striking-off order 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.

[PRIVATE]

This will be confirmed to Mr Lewis in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Jeffs. He submitted that, due to the panel making a strike-off order, an interim order was required to protect the public and the public interest. Mr Jeffs invited the panel to make an interim suspension order for a period of 18 months.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.