

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

**Substantive Hearing
Monday 23 – Friday 27 & Monday 30 January 2023 – Friday 3 February 2023**

Virtual Hearing

Name of registrant: Susan Ann Farrell

NMC PIN: 81E0828E

Part(s) of the register: Registered Nurse – Adult
RN2: Level 2 (16 June 1983)
RN1: Level 1 (May 1997)

Relevant location: Plymouth

Type of case: Misconduct

Panel members: John Vellacott (Chair, Lay member)
Dorothy Keates (Registrant member)
Alice Robertson Rickard (Lay member)

Legal Assessor: Sean Hammond

Hearings Coordinator: Sherica Dosunmu

Nursing and Midwifery Council: Represented by Joe O'Leary, Case Presenter

Miss Farrell: Not present and unrepresented at the hearing

Facts proved: Charges 1, 2, 3(1), 4(1), 4(2), 5(1), 5(2), 5(3)(i), 5(3)(ii), 5(4), 6(a), 7(d)

Facts not proved: Charges 3(2), 4(3), 5(5)(i), 5(5)(ii), 6(b), 7(a), 7(b), 7(c), 7(e), 7(f), 8(a), 8(b)(i), 8(b)(ii), 8(c)

Fitness to practise: Impaired

Sanction: Striking-Off Order

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Farrell was not in attendance and that the Notice of Hearing letter had been sent to Miss Farrell's registered address by recorded delivery and by first class post on 8 December 2022. The panel had regard to the Royal Mail recorded delivery receipt which showed the Notice of Hearing was posted to Miss Farrell's registered address on 8 December 2022.

Mr O'Leary, on behalf of the Nursing and Midwifery Council (NMC), indicated that the final bundles of documents to be considered at this hearing were sent to Miss Farrell on 5 January 2023. He stated that there are technical defects with the notice served in this case, as not all evidence had been sent to Miss Farrell within the 28-day period. He stated that notwithstanding this, the late documents do not render the notice invalid as the NMC made reasonable efforts to ensure Miss Farrell was aware of the case against her and she was given the opportunity to provide a response.

Mr O'Leary submitted that 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.

The panel noted that there was a technical breach of Rule 11, in that not all evidence relied upon by the NMC had been sent to Miss Farrell within the 28-day period. The final evidence bundles were served on Miss Farrell on 5 January 2023. However, the panel was mindful of the decision in the case of *Kearsey v NMC [2016] EWHC 1603 (Admin)*, in which the court held that '*principles of public law have not required, for some time, the division of statutory obligations into mandatory and directory requirements, such that any failing in "mandatory" procedural requirements necessarily invalidates all subsequent steps or causes a tribunal to lose jurisdiction*'. In the panel's view, this technical failing did not invalidate the Notice of Hearing. In reaching this decision, the panel took into account

that the Notice of Hearing provided details of the allegations, the time, dates and means of joining the virtual hearing and, amongst other things, information about Miss Farrell's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Miss Farrell

The panel next considered whether it should proceed in the absence of Miss Farrell. It had regard to Rule 21 and heard the submissions of Mr O'Leary.

Mr O'Leary referred the panel to correspondence sent by the NMC to Miss Farrell via her registered email address regarding today's proceedings. He informed the panel that on 8 September 2022 the NMC attempted to correspond with Miss Farrell again via email and a delivery notification indicated that the email could not be delivered. He referred the panel to a telephone call between the NMC and Miss Farrell on 8 September 2022, in which the following was noted:

'Ms Farrell called me back following my voicemail this morning. I told her I had taken over conduct of this matter and had sent her a few emails about the case. I sent her one in July about the hearing dates. I said that I sent her a further email this morning to let her know the hearing will now take place virtually but I got an error message that it wasn't delivered because the address is incorrect that's why I called her because I was concerned she had not received any of my emails. I told her I had not had this error with my previous emails.

Ms Farrell said that she had not received any of my emails and as she is no longer using the email address. She said that she will not be attending any hearing and

has no interest in the case. She said that she has not practised nursing since February 2021 and doesn't intend to return to nursing.

I told her that I acknowledge she doesn't want to engage any more in this matter but we still have to get the case to a conclusion. I asked her if she can provide her new email address so I can send correspondence to that one. Ms Farrell said that she won't provide me her new email address. She said that she has moved on and wants to leave this case behind her. She said the matter has been going on for years now and she's never going back to nursing. [PRIVATE]

I told her I was sorry about her loss and do understand her frustration with the delay in concluding this matter. I told her that as she's not willing to provide her current email address we will have to send correspondence to the home address we hold on the register unless this has also changed. Ms Farrell said that her address has changed as they've moved but again she refused to provide her current home address. She told me she had previously told us that she doesn't intend to return to nursing and applied for voluntary removal but this was refused. She said that she admitted some of the things she did weren't right but the allegations of bullying are untrue. She never did any of those things she's alleged to have done but her VR was rejected.

She said that the NMC has already made their decision on her case. She is done with this case and doesn't want to have any involvement with it.

I thanked her for calling me back and said that I was hoping she will at least provide her current contact details but I accept her decision to not engage.

She thanked me for understanding.'

Mr O'Leary informed the panel that the NMC made efforts to trace Miss Farrell's address since she stated in the telephone call to the NMC, on 8 September 2022, that her address

had changed. He referred to a Trace Report, dated 26 September 2022, which confirmed that Miss Farrell was still located at the address registered with the NMC.

Mr O'Leary referred the panel to various further attempts made by the NMC to contact Miss Farrell by post and telephone, on a variety of dates following the Trace Report. He stated that despite repeated further efforts by the NMC to contact Miss Farrell, no further response has been received from her after 8 September 2022. He submitted that the nature and circumstance of Miss Farrell's disengagement with the NMC is one where she has deliberately removed herself from the proceedings.

Mr O'Leary invited the panel to continue in the absence of Miss Farrell, on the basis that she had voluntarily absented herself. He submitted that there is clear public interest in the expeditious disposal of this case and there are seven witnesses lined up to give live evidence this week.

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 Miss Farrell. In reaching this decision, the panel has considered the submissions of Mr O'Leary, 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 *General Medical Council v Adeogba* [2016] EWCA Civ 162 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 Miss Farrell;

- Miss Farrell has not engaged with the NMC since 8 September 2022 and has not responded to any further correspondence from the NMC in relation to these proceedings;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Witnesses are due to give evidence, and may be caused inconvenience if there was a delay to this hearing;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Farrell in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's 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 disadvantage is the consequence of Miss Farrell's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not give evidence or make oral 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 Miss Farrell. The panel will draw no adverse inference from Miss Farrell's absence in its findings of fact.

Decision and reasons on application to redact evidence

The panel heard an application made by Mr O'Leary to redact sections of the NMC's evidence. He submitted that the proposed redactions do not fundamentally change the nature of the case against Miss Farrell. He submitted that Miss Farrell has been made

aware of the nature of the allegations against her and was given the opportunity to respond.

Mr O'Leary stated that the NMC did not seek to rely on paragraph 9 of Colleague 7's witness statement:

[PRIVATE]. When I asked why this was cancelled, they indicated that the Registrant had instructed them to cancel it. The Registrant had no right to cancel [PRIVATE], she did not discuss it with me and just went ahead to cancel it. What makes it worse is the fact that she knew exactly how much pain I was in and that I was struggling to cope. I spoke to the Registrant and she told me that there were staff shortages which meant I could not [PRIVATE] in May 2018. [PRIVATE].'

Additionally, Mr O'Leary stated that the NMC did not seek to rely on the following extracts from the NMC's exhibit bundle:

Colleague 6's email update, dated 19 September 2019, from Colleague 11's exhibited Investigation Report:

'The [Dr A] has been to Sue Farrell to complain about [...] and her treatment and her Behaviour towards her and [Dr A] the doctor left Sue Farrell's office feeling worse based on how Sue Farrell treated her. I know because [Dr A] told me. I would not have dared to go to Sue Farrell to complain about the treatment from [...] because I knew the way Sue deals with complaints concerning anyone she liked at that time. She smashes it down and she does not behave like a neutral person. Sue Farrell is a bully. I have said it. If these types of behaviour don't fit to you as being a bully then there must be an explanation to this horrible behaviour'

Notes from a telephone call between Colleague 7 and Colleague 11, dated 8 August 2019, from Colleague 11's exhibited Investigation Report:

'...when asked they indicated [Miss Farrell] had instructed. [Colleague 7] spoke to [Colleague 6] who indicated there were staff shortages which meant she could not be released'

Colleague 7's exhibited email to HR, dated 21 May 2018:

'I was booked for [PRIVATE] on the 29th of May, but the head of Nursing cancelled [PRIVATE].'

Mr O'Leary invited the panel to disregard the above evidence.

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

The panel decided to allow the application to redact the above extracts from the NMC's evidence, on the basis that it would be fair to do so and cause no injustice to Miss Farrell because the evidence is no longer relied upon by the NMC to support its case and in the panel's view does not assist Miss Farrell's case.

The panel was satisfied that as a professional tribunal it could properly disregard this evidence when required to make decisions in relation to the facts in issue in this case.

Decision and reasons on application to amend the charge 5

The panel heard an application made by Mr O'Leary, to amend the wording of charge 5(1) and 5(3)(ii). The proposed amendments were to change the wording in charge 5(1) from *'As to 3 (1) and (2)'* to *'As to 3 (1) and/or (2)'*, and *'Cake'* to *'Care'*. The proposed amendments to charge 5(3)(ii) were to change the wording from *'would conceal the plan at 5 (1) and (2)'* to *'would conceal the plan at 5 (1) and/or (2)'*. Mr O'Leary submitted that the

proposed amendments to charge 5(1) and 5(3)(ii) would not cause any prejudice in this case as these are minor amendments which do not change the nature of the allegations.

Original charge 5(1) and 5(3)(ii):

5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you

(1) As to 3 (1) and (2), knew that an oral report would circumvent Cake UK's recruitment policy

(3) As to 4 (1), knew that a version in which the Trust were the body initiating oral contact (i) was untrue and (ii) would conceal the plan at 5 (1) and (2)

Proposed charge 5(1) and 5(3)(ii):

5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you

(1) As to 3 (1) ~~and~~ **and/or** (2), knew that an oral report would circumvent ~~Cake~~ **Care** UK's recruitment policy

(3) As to 4 (1), knew that a version in which the Trust were the body initiating oral contact (i) was untrue and (ii) would conceal the plan at 5 (1) ~~and~~ **and/or** (2)

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such amendments do not change the nature of the charges. The panel was therefore satisfied that there would be no prejudice to Miss Farrell and no injustice would be caused to either party by the proposed amendments being allowed. The panel determined that it was therefore appropriate to allow the amendments to charge 5.

Decision and reasons on application to amend the charge 6

The panel of its own volition invited Mr O'Leary to amend the wording of charge 6. The panel was of the view that neither the underlying conduct alleged nor the categorisation of it was clear and required further particularisation for fairness and clarity.

Mr O'Leary submitted that, having regard to the merits of the case, the application invited by the panel would not result in any unfairness to Miss Farrell, as further particularisation of the charge 6 would not change the case against Miss Farrell.

Original charge 6:

6. In relation to

- (i) Colleague 5 in 2019 and/or*
- (ii) Colleague 6 between 2007 and 2018/2019 and/or*
- (iii) Colleague 7 between 2015 and 2019*

you bullied and/or harassed and/or intimidated them.

Mr O'Leary drafted further particulars to the charge and put the following before the panel:

Draft amendments:

- 6. In 2019 you bullied and/or harassed and/or intimidated Colleague 5 by reason of:
 - a. Your conduct at charge 4(1) and/or 4(2) and/or 4(3) and/or*
 - b. Your communication with Colleague 5**

- 7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:*

- a. *Brought pressure on Colleague 6 to attend at work when she was unwell and/or*
 - b. *Made inappropriate comments regarding other colleagues and/or*
 - c. *Placed undue pressure on colleague 6 through workload and/or*
 - d. *Shouted at Colleague 6 and/or*
 - e. *Failed to have regard to the professional opinion of Colleague 6 and/or*
 - f. *Misused your power to instruct colleague 6 to distract the deputy director's attention in an inspection of new dryers*
8. *You bullied and/or harassed and/or intimidated Colleague 7 between 2015 and 2019 in that you:*
- a. *You failed to make proper adjustments and/or take account of Colleague 7's health*
 - b. *You failed to act in relation to Colleague 7's concerns*
 - c. *You erroneously sought to implicate colleague 7 in an allegation of sleeping on duty*

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel considered the draft amendments and was of the view that further details should be provided in charge 8(b) to assist a full understanding of the case against Miss Farrell. The panel invited Mr O'Leary to further particularise the concerns alleged in charge 8(b).

Mr O'Leary drafted further particulars to charge 8 and put the following before the panel:

Draft amendments:

8. *You bullied and/or harassed and/or intimidated Colleague 7 between 2015 and 2019 in that you:*

- a. *You failed to make proper adjustments and/or take account of Colleague 7's health, and/or*
- b. *You failed to properly act in relation to Colleague 7's concerns, in that you:*
 - i. *Were disrespectful in your response*
 - ii. *Did not respond to concerns regarding staff conduct and/or patient safety, and/or*
- c. *You erroneously sought to implicate colleague 7 in an allegation of sleeping on duty*

The panel was of the view that such amendments were in the interests of justice, they do not change the nature or gravity of the charges against Miss Farrell, but they clarify the case against her. The panel was satisfied that there would be no prejudice to Miss Farrell and no injustice would be caused to either party by the proposed amendments being allowed. The panel determined that it was therefore appropriate to allow the amendments above, to ensure clarity and accuracy.

Details of charge (as amended)

That you being a registered nurse

1. In or about May 2019, in relation to Colleague 1 accessing her own medical data from sources at University Hospitals NHS Trust ["UHP"], you instructed the OPD Manager, Colleague 3 to issue a verbal warning against Colleague 1 contrary to your own and their employing company's [Care UK] disciplinary policy. **[PROVED]**
2. In or about May 2019, in relation to Colleague 2 accessing their own medical data from sources at University Hospitals NHS Trust ["UHP"], you instructed the Day surgery Manager, Colleague 4 to issue a verbal warning against Colleague 2 contrary to your own and their employing company's [Care UK] disciplinary policy. **[PROVED]**

3. In connection with the provision of a reference for Colleague 6, a former employee of Care UK in her application to a prospective employer ["Plymouth Hospital NHS Trust"] ["the Trust"] you
 - (1) Instructed Colleague 5 to provide an oral report over the phone about Colleague 6's professional performance contrary to Care UK recruitment and selection policy **[PROVED]**
 - (2) Told Colleague 5 to provide an unfavourable oral report to her prospective employer, the Trust **[NOT PROVED]**
4. Sought to influence the course of Care UK's investigation into the matter at (3) in that you
 - (1) Told Colleague 5 to say that she had first been contacted orally by the Trust rather than she, as was the case, being the person who orally contacted the Trust first. **[PROVED]**
 - (2) Told Colleague 5 to answer questions briefly and to only provide yes/no answers. **[PROVED]**
 - (3) Told Colleague 5 to not tell the investigators of any of your involvement. **[NOT PROVED]**
5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you
 - (1) As to 3 (1) and/or (2), knew that an oral report would circumvent Care UK's recruitment policy **[PROVED]**
 - (2) And that accordingly, an unfavourable report could be advanced to the Trust against those rules. **[PROVED]**

(3) As to 4 (1), knew that a version in which the Trust were the body initiating oral contact

(i) was untrue and **[PROVED]**

(ii) would conceal the plan at 5 (1) and/or (2) **[PROVED]**

(4) As to 4 (2) wanted to minimise disclosure **[PROVED]**

(5) As to 4 (3),

(i) knew it was untrue and **[NOT PROVED]**

(ii) wanted to minimise any description of your involvement **[NOT PROVED]**

6. In 2019 you bullied and/or harassed and/or intimidated Colleague 5 by reason of:

a. Your conduct at charge 4(1) and/or 4(2) and/or 4(3), and/or **[PROVED]**

b. Your communication with Colleague 5 **[NOT PROVED]**

7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:

a. Brought pressure on Colleague 6 to attend at work when she was unwell, and / or **[NOT PROVED]**

b. Made inappropriate comments regarding other colleagues, and/or **[NOT PROVED]**

c. Placed undue pressure on colleague 6 through workload and/or **[NOT PROVED]**

d. Shouted at Colleague, 6 and/or **[PROVED]**

e. Failed to have regard to the professional opinion of Colleague 6, and/or **[NOT PROVED]**

f. Misused your power to instruct colleague 6 to distract the deputy director's attention in an inspection of new dryers **[NOT PROVED]**

8. You bullied and/or harassed and/or intimidated Colleague 7 between 2015 and 2019 in that you:
 - a. You failed to make proper adjustments and/or take account of Colleague 7's health, and/or **[NOT PROVED]**
 - b. You failed to properly act in relation to Colleague 7's concerns, in that you:
 - i. Were disrespectful in your response **[NOT PROVED]**
 - ii. Did not respond to concerns regarding staff conduct and/or patient safety, and/or **[NOT PROVED]**
 - c. You erroneously sought to implicate colleague 7 in an allegation of sleeping on duty **[NOT PROVED]**

And in the light of the above, your fitness to practise is impaired by virtue of your misconduct.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr O'Leary to allow the following exhibits into evidence:

- Peninsula Treatment Centre investigation interview with Colleague 8, dated 13 June 2019.
- Peninsula Treatment Centre investigation interview with Colleague 9, dated 6 August 2019.
- Peninsula Treatment Centre investigation interview with Colleague 2, dated 6 August 2019.
- Peninsula Treatment Centre investigation interview with Colleague 1, dated 6 August 2019.

Mr O'Leary referred the panel to the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*. He submitted that the above exhibits all related to witnesses who will not be

called by the NMC to give live evidence in this case and should be admitted as hearsay evidence.

Mr O'Leary submitted that the allegations in this matter are serious, and the investigation interviews held by Peninsula Treatment Centre while Miss Farrell was working there provide relevant context to the allegations. He submitted that the evidence from these formal investigation interviews were admissible as the witnesses had no reason to fabricate their responses.

Mr O'Leary indicated that the interview with Colleague 8 was conducted by Colleague 10, and the interview with Colleague 9, Colleague 2 and Colleague 1 were all conducted by Colleague 11. He submitted that the nature and extent of the interviews can therefore be challenged through the live evidence of Colleague 10 and Colleague 11.

Mr O'Leary submitted that it would be fair for these interviews to be admitted as they were not the sole and decisive evidence in support of any of the charges, and the panel will hear live evidence from the interviewers in relation to this matter.

Mr O'Leary stated that the NMC provided the evidence from these interviews to Miss Farrell and given Miss Farrell's response to some of the charges, the evidence does not appear to be in dispute. He stated that the NMC did not consider these witnesses as sufficiently material to be called in this case.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application, which included Rule 31. The panel was also provided with a copy of the judgement in the case of *Thornycroft v NMC*.

The panel approached its decision by considering firstly the relevance of the hearsay evidence and then secondly whether it would be fair to admit it having regard to the principles identified in the case of *Thornycroft*. The panel took into account that it was

being asked to admit four hearsay documents and that it must therefore give separate consideration to each.

The panel considered whether it would be relevant to admit the four formal investigation interviews held by Peninsula Treatment Centre at the time of the concerns raised. The panel was of the view that the information supplied in these internal interviews provided background and context to some of the allegations in this matter and would be relevant in the circumstances of this case. The panel was satisfied that this applied to all four interviews.

The panel next considered whether it would be fair to admit this evidence. The panel determined that in respect of all four of the interviews the following applied:

- The hearsay records of the interviews were created during a formal investigation procedure;
- The interview records were created contemporaneously;
- The interviewee on each occasion was given the opportunity to check the accuracy of the records and some amendments were recorded;
- The individuals who conducted the interviews are due to give evidence during this hearing and can therefore be questioned by the panel;
- The interview records were not the sole and decisive evidence in relation to any of the charges.

In these circumstances, the panel was satisfied that it would be fair to admit all four of the interview records as hearsay evidence. The panel will of course give appropriate weight to this evidence and will bear in mind that it will not be fully tested.

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

Mr O'Leary made a request that parts of this case be held in private on the basis that proper exploration of Miss Farrell's case involves reference to the health of third parties. The application was made pursuant to Rule 19.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to the health of third parties, the panel determined to hold those parts of the hearing in private to maintain the privacy of the third parties involved.

Decision and reasons to admit additional evidence from Colleague 7

Mr O'Leary made an application under Rule 31 to admit additional evidence concerning Colleague 7's [PRIVATE]. He stated that Colleague 7 supplied the NMC with an Occupational Health Report on 4 January 2023, dated 2 August 2018, which was in relation to the period Colleague 7 was working at Peninsula Treatment Centre with Miss Farrell. He informed the panel that this additional document was sent to Miss Farrell's registered address by recorded delivery on 17 January 2023.

Mr O'Leary submitted that this Occupational Health Report is relevant, in that it provides context to Colleague 7's complaint.

Mr O'Leary submitted that Miss Farrell would not be prejudiced by the additional evidence and it would be fair to admit this evidence as the panel would then have the opportunity to see the document in full and ask Colleague 7 questions about it. He also stated that reasonable efforts were made by the NMC to send the additional evidence to Miss Farrell as soon as it was possible to do so.

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

The panel, in making its decision, bore in mind the principles of relevance and fairness. The panel considered whether it would be relevant to admit the additional evidence produced by Colleague 7. The panel was of the view that an Occupational Health Report, which included details of [PRIVATE] at the relevant time of the allegations, would provide background context and would be relevant in the circumstances of this case.

The panel next considered whether it would be fair to admit the additional evidence from Colleague 7 without causing prejudice. The panel noted that the additional evidence was disclosed to Miss Farrell shortly after it was supplied to the NMC.

In these circumstances, the panel determined that it would be fair and relevant to admit the additional evidence, but it would give this evidence the weight that it deemed appropriate once the panel was able to see and evaluate it.

Background

The NMC received a referral from Care UK regarding Miss Farrell's fitness to practise on 12 November 2019. At the time of the concerns raised in the referral, Miss Farrell was working as the Head of Nursing and Clinical Services at the Peninsula Treatment Centre (the Centre), part of Care UK. Miss Farrell commenced employment with Care UK in 2015, where she remained employed until her dismissal on 25 October 2019.

At the time of the concerns raised, Care UK conducted a grievance investigation into allegations made against Miss Farrell. It is alleged that during this grievance investigation Miss Farrell:

- Deliberately provided false information to an investigator;
- Instructed others to give false information to an investigator;

- Instructed others to act outside of Care UK policy; and
- Instructed others to provide an unfavourable reference that was not evidence based.

The referral alleges that Miss Farrell was subsequently dismissed from Care UK in relation to the following concerns:

- Bullying of staff;
- Harassment of staff; and
- Victimisation of staff.

On 3 April 2019, Colleague 5 received a reference request from the University Hospitals Plymouth NHS Trust (the Trust) about a former member of staff, Colleague 6. It is alleged that at the time Colleague 5 went to Miss Farrell for advice about the reference, as Miss Farrell was her senior manager and Colleague 5 was concerned about Colleague 6's ability to undertake the role she was offered by the Trust. It is alleged that Miss Farrell told Colleague 5 to contact the Trust and have a peer-to-peer conversation by telephone. This was not in accordance with Care UK's Recruitment and Selection Policy.

Care UK's policy in relation to the provision of employment references states that only factual written references should be supplied and that only the following information should be provided in the references:

- Dates of engagement/dates of leaving;
- Job title at the time of leaving the company;
- Base location.

Colleague 5 allegedly followed Miss Farrell's advice and spoke to a manager in the relevant department at the Trust about Colleague 6. Later, Colleague 5 completed a brief written reference and sent it by email, which was allegedly '*screened*' by Miss Farrell prior to it being sent. Colleague 6 was not successful in her application to the Trust. The offer of

employment was rescinded, allegedly on the basis of the telephone call made by Colleague 5 and the reference she provided. Colleague 6 took legal action against Care UK and a grievance investigation was initiated to investigate the matter.

It is alleged that it was at this time Miss Farrell told Colleague 5 to '*lie*' about her actions and told Colleague 5 to say that it was the Trust who phoned to discuss the reference, not the other way round. It is further alleged that Miss Farrell then tried to extract information via text messages and face to face meetings from Colleague 5 on numerous occasions about what Colleague 5 told Care UK during the grievance investigation, in an attempt to interfere with and influence the outcome.

Colleague 10, Head of Nursing and Clinical Services for Emersons Green and Devizes NHS Treatment Centres part of Care UK, interviewed Miss Farrell, Colleague 5 and others as part of the grievance investigation.

On 9 July 2019, Colleague 11, Chief Nurse and Lead for Patient Care Quality and Governance at Care UK, commenced an investigation into the allegations identified as a result of the grievance investigation. Colleague 11 extended the scope of the investigation and looked into other concerns which included allegations of bullying, harassment and victimisation. Colleague 11 investigated Miss Farrell's conduct/involvement in the following incidents:

- Colleague 5's verbal reference to the Trust in respect of Colleague 6, and Miss Farrell's subsequent conduct during the grievance investigation;
- Miss Farrell's involvement in the production of verbal warnings for two members of staff who accessed their personal medical records against security policy; and
- Allegations of bullying which arisen from an investigation held into whether a staff nurse was found sleeping on duty.

Colleague 11 produced an investigation report, dated 19 September 2019, which alleged that Miss Farrell's conduct breached Care UK's Dignity at Work Policy. Colleague 11's

investigation led to Miss Farrell's suspension on 15 July 2019, and then dismissal from Care UK on 25 October 2019.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr O'Leary on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Miss Farrell.

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 heard live evidence from the following witnesses called on behalf of the NMC:

- Colleague 3: Outpatients Manager at Care UK;
- Colleague 4: Day Surgery Unit and Endoscopy Manager at Peninsula Treatment Centre, at the relevant time;
- Colleague 5: Ward Manager at Care UK, at the relevant time;
- Colleague 6: Senior Staff Nurse and Infection Prevention and Control (IPC) Lead at Peninsula Treatment Centre, at the relevant time;

- Colleague 7: Senior Shift Leader at Peninsula Treatment Centre, at the relevant time;
- Colleague 10: Head of Nursing and Clinical Services for Emersons Green and Devizes NHS Treatment Centres part at Care UK;
- Colleague 11: Chief Nurse and Lead for Patient Care Quality and Governance at Care UK.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Miss Farrell.

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

Charge 1

1. In or about May 2019, in relation to Colleague 1 accessing her own medical data from sources at University Hospitals NHS Trust ["UHP"], you instructed the OPD Manager, Colleague 3 to issue a verbal warning against Colleague 1 contrary to your own and their employing company's [Care UK] disciplinary policy.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 1, Colleague 3 and Colleague 11. It also considered Miss Farrell's reflection, dated 8

November 2019. The panel had regard to the documentary evidence exhibited, which included interviews held at local investigation level, a verbal warning letter to Colleague 1 dated 7 June 2019 and Care UK's Human Resources Disciplinary Procedure Policy.

The panel noted that in a formal investigation interview at local level, on 6 August 2019, Colleague 1 accepted that she accessed her medical records and received a verbal warning from Colleague 3 in relation to the incident. The panel found that Colleague 1's account was corroborated by Colleague 3, who also asserted in her evidence that she issued a verbal warning to Colleague 1 for accessing her medical records.

The panel took into account a letter to Colleague 1, dated 7 June 2019, signed by Colleague 3. The letter indicated that Colleague 1 was being issued with a verbal warning for a breach of the data protection legislation. The panel was therefore satisfied that Colleague 1 had been issued with a verbal warning.

The panel had regard to Care UK's Human Resources Disciplinary Procedure Policy and noted that the issuing of 'verbal warning' was not within the policy. The panel therefore accepted that the verbal warning was issued contrary to Care UK's disciplinary policy.

The panel noted the following evidence from Colleague 3's written witness statement:

'On [7 June 2019], I was instructed by the Registrant to issue the staff member a verbal warning for breaching GDPR. I met with the staff member and issued her the verbal warning on her file for 12 months. This was the first verbal warning I had issued since my employment at Care UK. I had done it in my previous job some years ago.

[...]

I did challenge the Registrant and asked about the following disciplinary policy but she said I didn't need to. She told me to chat to the staff member and give her the

letter following the chat. The Registrant told me this process had been done previously so I obliged.'

The panel considered that Colleague 3's account was consistent with her oral evidence, in which she maintained that she was instructed by Miss Farrell to issue the verbal warning to Colleague 1.

Further, the panel noted that in Miss Farrell's own response at the local level investigation interview, held on 6 August 2019, she did not dispute her involvement in respect of verbal warnings issued against Care UK's disciplinary policy. The panel considered that Miss Farrell's involvement in the incident was supported by her reflection, dated 8 November 2019, in which she stated:

'as this is a disciplinary offence at the local trust the GDPR lead and I did not know what to do, we were unsure what policy this related to and therefore devised a letter explaining to the staff what had happened and giving a verbal warning. This was outside care UK disciplinary policy. I should have sought advice from HR this was an error on my part I have accepted full responsibility for this and have and apologised'.

The panel therefore determined that there was clear and consistent evidence that Miss Farrell instructed Colleague 3 to issue a verbal warning to Colleague 1 contrary to Care UK's disciplinary policy.

Accordingly, the panel found charge 1 proved.

Charge 2

2. In or about May 2019, in relation to Colleague 2 accessing their own medical data from sources at University Hospitals NHS Trust ["UHP"], you instructed the

Day surgery Manager, Colleague 4 to issue a verbal warning against Colleague 2 contrary to your own and their employing company's [Care UK] disciplinary policy.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 2, Colleague 4 and Colleague 11. It also considered Miss Farrell's reflection, dated 8 November 2019. The panel had regard to the documentary evidence exhibited, which included interviews held at local investigation level, a verbal warning letter to Colleague 2 dated 23 May 2019 and Care UK's Human Resources Disciplinary Procedure Policy.

The panel noted that in a formal investigation interview at local level, on 6 August 2019, Colleague 2 stated that she received a verbal warning from Colleague 4 in relation accessing her medical records. The panel found that Colleague 2's account was corroborated by Colleague 4, who also asserted in her evidence that she issued a verbal warning to Colleague 2 for accessing her medical records.

The panel took into account a letter to Colleague 2, dated 23 May 2019, signed by Colleague 4. The letter indicated that Colleague 2 was being issued with a verbal warning for a breach of the data protection legislation. The panel was therefore satisfied that Colleague 2 had been issued with a verbal warning.

The panel had regard to Care UK's Human Resources Disciplinary Procedure Policy and noted that the issuing of 'verbal warning' was not within the policy. The panel therefore accepted that the verbal warning was issued contrary to Care UK's disciplinary policy.

The panel noted the following evidence from Colleague 4's written witness statement:

'On occasion though, I found her advice led me in the wrong direction. The registrant incorrectly advised me on how to discipline a member of my staff, Katie Hart with a verbal warning after she accessed her blood results. I was informed of

the error by a different manager who advised me of the correct procedure and where I could source this information myself.'

The panel considered that Colleague 4's account was consistent with her oral evidence, in which she stated that Miss Farrell asked her to issue the verbal warning to Colleague 2.

Further, the panel noted that in Miss Farrell's own response at the local level investigation interview, held on 6 August 2019, she did not dispute her involvement in respect of verbal warnings issued against Care UK's disciplinary policy. The panel considered that Miss Farrell's involvement in the incident was supported by her reflection, dated 8 November 2019, in which she stated:

'as this is a disciplinary offence at the local trust the GDPR lead and I did not know what to do, we were unsure what policy this related to and therefore devised a letter explaining to the staff what had happened and giving a verbal warning. This was outside care UK disciplinary policy. I should have sought advice from HR this was an error on my part I have accepted full responsibility for this and have and apologised'.

The panel therefore determined that there was clear and consistent evidence that Miss Farrell instructed Colleague 4 to issue a verbal warning to Colleague 2 contrary to Care UK's disciplinary policy.

Accordingly, the panel found charge 2 proved.

Charge 3(1)

3. In connection with the provision of a reference for Colleague 6, a former employee of Care UK in her application to a prospective employer ["Plymouth Hospital NHS Trust"] ["the Trust"] you

(1) Instructed Colleague 5 to provide an oral report over the phone about Colleague 6's professional performance contrary to Care UK recruitment and selection policy

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5. The panel had regard to the documentary evidence exhibited, which included interviews held at local investigation level, a reference request letter to Colleague 5 dated 3 April 2019 and Care UK's Recruitment and Selection Policy.

The panel took into account a reference request letter to Colleague 5, dated 3 April 2019. The letter indicated that Colleague 6 had applied for a position as a Specialist Practitioner at the Trust and a reference was required from Colleague 5 to assess Colleague 6's suitability for the role. The panel was therefore satisfied that Colleague 5 received a reference request from Colleague 6's prospective employer.

The panel had regard to Care UK's Recruitment and Selection Policy, which in the provision of reference section stated that only factual written references should be provided. It is specified in the policy that only the following information should be provided in factual references:

- *'Dates of engagement/dates of leaving;*
- *Job title at the time of leaving the company;*
- *Base location.'*

The panel noted the following evidence from Colleague 5's written witness statement:

'Whilst looking at the reference request, [Colleague 9], who was the Deputy Head of Nursing and Governance Manager at the time came past my office and I showed it to her.

She said to be very careful with giving a reference (as it's not Care UK's policy) so I went to my line manager Sue Farrell for advice. She told me to contact the manager of infection control and do a peer to peer conversation for this reference.'

The panel considered that Colleague 5's account was consistent with her account at a local level investigation interview with Colleague 10, on 12 June 2019, in which she stated that she gave a verbal reference for Colleague 6 and Miss Farrell instructed her to do so. Additionally, the panel considered that this was further supported by Colleague 5's oral evidence, where she maintained the same.

The panel accepted Colleague 5's evidence that she gave a verbal reference and determined that this was contrary to Care UK's Recruitment and Selection Policy.

The panel considered that Colleague 5 provided clear and consistent evidence that she sought advice from Miss Farrell about giving the verbal reference, which it regarded as compelling. The panel was of the view that by seeking advice Colleague 5 demonstrated that she was looking for instruction from Miss Farrell. The panel considered the wording of the charge in accordance with the evidence, and it interpreted the word '*instructed*' to mean the approval of a course of conduct in this context.

The panel was therefore satisfied that, on the balance of probabilities, it was more likely than not that Miss Farrell instructed Colleague 5 to give a verbal reference, when Colleague 5 sought advice on how to proceed.

Accordingly, the panel found charge 3(1) proved.

Charge 3(2)

3. In connection with the provision of a reference for Colleague 6, a former employee of Care UK in her application to a prospective employer [“Plymouth Hospital NHS Trust”] [“the Trust”] you

(2) Told Colleague 5 to provide an unfavourable oral report to her prospective employer, the Trust

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 5. The panel had regard to the documentary evidence exhibited, which included interviews held at local investigation level.

The panel noted the following evidence from Colleague 5’s local level investigation interview with Colleague 10, on 12 June 2019:

‘At the time of giving the verbal reference however [Colleague 5] stated that she believed the information shared was accurate and factual and given in the best interest of patient safety, [Colleague 6’s] [PRIVATE] and to protect the reputation of Care UK.’

The panel was of the view that this evidence indicated that Colleague 5’s rationale was that she gave the reference she felt she ought to give, based on her experience working with Colleague 6. The panel found that this was supported by Colleague 5’s oral evidence in which Colleague 5 stated that she gave a reference she felt was honest and factual.

The panel determined that it did not receive evidence indicating that Miss Farrell influenced the unfavourable content in the verbal reference Colleague 5 gave to the Trust in respect of Colleague 6. It noted that Colleague 5 had already written the content of the reference before consulting Miss Farrell.

In these circumstances the panel found charge 3(2) not proved.

Charge 4(1)

4. Sought to influence the course of Care UK's investigation into the matter at (3) in that you

(1) Told Colleague 5 to say that she had first been contacted orally by the Trust rather than she, as was the case, being the person who orally contacted the Trust first.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5. The panel had regard to the documentary evidence exhibited, which included interviews held at local investigation level.

The panel had regard to its reasoning for charge 3(1), in respect of accepting the account that Miss Farrell instructed Colleague 5 to contact the Trust to give a verbal reference.

The panel noted the following evidence from Colleague 5's written witness statement:

'And that's when Sue Farrell told me to lie.

She informed me that I should just give Yes and No answers and state that it was [the Trust] who were berating me for the reference (not that I rang them)'

The panel considered that Colleague 5's account was consistent with her account at a local level investigation interview with Colleague 10, on 12 June 2019, in which she stated that Miss Farrell told her not to say she had contacted the Trust first even though she knew this was incorrect. Additionally, the panel considered that this was further supported by Colleague 5's oral evidence, where she maintained the same.

The panel determined that Colleague 5 provided clear and consistent evidence that Miss Farrell told her not to say she was the person who contacted the Trust first, which it regarded as compelling.

Accordingly, the panel found charge 4(1) proved.

Charge 4(2)

4. Sought to influence the course of Care UK's investigation into the matter at (3) in that you

(2) Told Colleague 5 to answer questions briefly and to only provide yes/no answers.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5. The panel had regard to the documentary evidence exhibited, which included interviews held at local investigation level.

The panel had regard to its reasoning for charge 3(1), in respect of accepting the account that Miss Farrell instructed Colleague 5 to contact the Trust to give a verbal reference.

The panel noted the following evidence from Colleague 5's written witness statement:

'And that's when Sue Farrell told me to lie.

She informed me that I should just give Yes and No answers and state that it was [the Trust] who were berating me for the reference (not that I rang them)'

The panel considered that Colleague 5's account was consistent with her account at a local level investigation interview with Colleague 10, on 12 June 2019, in which she stated that Miss Farrell told her to only provide 'yes/no' answers to Colleague 10. Additionally, the panel considered that this was further supported by Colleague 5's oral evidence, where she maintained the same.

The panel determined that Colleague 5 provided clear and consistent evidence that Miss Farrell told her to answer questions briefly and to only provide 'yes/no' answers, which it regarded as compelling.

Accordingly, the panel found charge 4(2) proved.

Charge 4(3)

4. Sought to influence the course of Care UK's investigation into the matter at (3) in that you

(3) Told Colleague 5 to not tell the investigators of any of your involvement.

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 5. The panel had regard to the documentary evidence exhibited, which included interviews held at local investigation level.

The panel noted the following evidence from Colleague 5's local level investigation interview with Colleague 10, on 12 June 2019:

'In preparation for this interview [Miss Farrell] told [Colleague 5] not to tell [Colleague 10] of [Miss Farrell's] involvement.'

However, the panel also noted that in her oral evidence Colleague 5 expressly stated that she felt coerced not to speak of Miss Farrell's involvement in the verbal reference matter, not because of anything Miss Farrell said, but from a feeling she got from Miss Farrell's mannerism and '*formidable*' character.

In light of Colleague 5's oral concession that Miss Farrell did not tell her not to tell the investigator of her involvement, the panel found charge 4(3) not proved.

Charge 5(1)

5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you

(1) As to 3 (1) and/or (2), knew that an oral report would circumvent Care UK's recruitment policy

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5, Colleague 10 and Colleague 11. The panel had regard to the documentary evidence exhibited, which included Care UK's Recruitment and Selection Policy.

The panel bore in mind that it has found charge 3(2) not proved, and therefore considered this charge in relation to charge 3(1) only.

The panel applied the legal test for dishonesty and referred to the case of *Ivey v Genting Casinos* [2017] UKSC 67. When considering charge 5(1) in relation to charge 3(1), the panel considered whether Miss Farrell knew when she instructed Colleague 5 to give a verbal reference that it would circumvent Care UK's policy; and whether she was dishonest in doing so.

Having regard to the evidence and circumstances in context, including its reasoning in charge 3(1), the panel found that as a senior leader, Miss Farrell would have known Care UK's policy in respect of references. The panel found that this was supported by Colleague 10 and Colleague 11's oral evidence, in which they both stated that Miss Farrell would have been aware of Care UK's Recruitment and Selection Policy as a Head of Nursing, and this policy was available for Miss Farrell to access.

The panel concluded that, by the standards of ordinary and decent people, Miss Farrell's actions were dishonest when she provided Colleague 5 with a means of circumventing Care UK's policy.

Accordingly, the panel finds charge 5(1) proved in respect of charge 3(1).

Charge 5(2)

5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you

(2) And that accordingly, an unfavourable report could be advanced to the Trust against those rules.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5, Colleague 10 and Colleague 11. The panel had regard to the documentary evidence exhibited, which included Care UK's Recruitment and Selection Policy.

The panel had regard to its reasoning for charge 5(1) and accepted that Miss Farrell would have known Care UK's policy in respect of references. The panel applied the legal test for dishonesty (*Ivey v Genting Casinos*) and concluded that, by the standards of ordinary and decent people, Miss Farrell's actions were dishonest in that she knew that giving a verbal

unfavourable reference would circumvent Care UK's policy but allowed Colleague 5 to do so.

Accordingly, the panel found charge 5(2) proved.

Charge 5(3)

5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you

(3) As to 4 (1), knew that a version in which the Trust were the body initiating oral contact

(i) was untrue and

(ii) would conceal the plan at 5 (1) and/or (2)

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5.

The panel was mindful of its duty to make a separate determination for particularised sub charges, but it noted that charge 5(3) sub charges (i) and (ii) do not add any factual particulars to charge 3(1), 3(2), 4(1) and 4(2) already found proved. Therefore, considering the way the charges are drafted in 5(3)(i) and 5(3)(ii), the panel determined that they should be considered together since they are intrinsically linked.

The panel had regard to its reasoning for charge 4(1) and accepted that Miss Farrell would have known Colleague 5 contacted the Trust first to provide a reference but told her to say it was the Trust who contacted her first.

The panel applied the legal test for dishonesty (*Ivey v Genting Casinos*). The panel determined that Miss Farrell knew it would be untrue for Colleague 5 to say that the Trust contacted her first, but was dishonest in doing so in an attempt to conceal the fact that the unfavourable verbal reference would have breached Care UK's policy.

Accordingly, the panel found charge 5(3)(i) and 5(3)(ii) proved.

Charge 5(4)

5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you

(4) As to 4 (2) wanted to minimise disclosure

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5.

The panel had regard to its reasoning for charge 4(2), in respect of accepting the account that Miss Farrell instructed Colleague 5 to answer questions briefly and to only provide 'yes/no' answers during Care UK's grievance investigation.

The panel applied the legal test for dishonesty and referred to the case of *Ivey v Genting*. The panel considered whether Miss Farrell knew when she instructed Colleague 5 to give brief 'yes/no' answers this would minimise disclosure in Care UK's investigation; and whether she was dishonest in doing so. The panel found it implausible that Miss Farrell would not be aware of the fact that brief 'yes/no' answers would minimise disclosure in an investigation.

The panel concluded that, by the standards of ordinary and decent people, Miss Farrell's actions were dishonest.

Accordingly, the panel found charge 5(4) proved.

Charge 5(5)

5. Your actions and/or instructions at 3 and/or 4 were dishonest in that you

(5) As to 4 (3),

(i) knew it was untrue and

(ii) wanted to minimise any description of your involvement

This charge is found NOT proved.

The panel reminded itself that charge 4(3) was found not proved.

Therefore, in these circumstances the panel found charge 5(5)(i) and 5(5)(ii) not proved.

The panel's approach to charges 6, 7 and 8

The panel noted that in charges 6,7 and 8 Miss Farrell is alleged to have bullied and/or harassed and/or intimidated her colleagues. In relation to each of these charges, the panel first considered whether the underlying conduct was proved. The panel then went on to consider whether that conduct amounted to bullying and/or harassment and/or intimidation either individually or as part of a course of conduct by Miss Farrell.

The panel had regard to the NMC's guidance in relation to bullying and harassment. The panel noted that the guidance provides the following:

Bullying – '*Bullying can be described as unwanted behaviour from a person or a group of people that is either offensive, intimidating, malicious or insulting. It can be an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone. It can be a regular pattern of behaviour or a one-off incident and can happen face-to-face, on social media or over emails or telephone calls. Usually bullying would be a pattern of behaviour, but an example of when it could be a one off incident could be if a member of the public felt that they had been bullied into agreeing to a do not resuscitate decision by a healthcare professional.*'

Harassment – ‘Harassment is defined by the Equality Act 2010 as someone engaging in unwanted conduct that’s related to a protected characteristic or is of a sexual nature. The behaviour has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It’s necessary to take the perception of the person who’s the subject of the conduct and any other circumstances into account. As well as harassment linked to a protected characteristic as defined by the Equality Act, harassment can also be unwanted conduct that is unrelated to a protected characteristic which someone finds offensive or which makes someone feel intimidated or humiliated.’

Intimidation

The panel noted that intimidating behaviour is included in the NMC definition of bullying and harassment. The panel was cognisant that, however, there may be some instances where conduct may be properly described as intimidating behaviour but that it may fall short of either bullying or harassment. The panel therefore gave the word intimidation its ordinary and natural meaning and considered whether the particulars as alleged would amount to intimidatory behaviour.

In reaching its decision in relation to charges 6, 7 and 8 the panel applied these definitions to the terms bullying, harassment and intimidation.

Charge 6(a)

6. In 2019 you bullied and/or harassed and/or intimidated Colleague 5 by reason of:

- a. Your conduct at charge 4(1) and/or 4(2) and/or 4(3), and/or

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 5.

The panel had regard to its reasoning for charges 4(1) and 4(2). It accepted that Miss Farrell told Colleague 5 to lie during the course of the grievance investigation and instructed her to provide brief yes/no answers.

The panel noted the following evidence from Colleague 5's written witness statement, in which she stated:

*'I do not believe that I would describe Ms. Farrell's words or actions either before the meeting or after as "bullying". For example, I would not say that I had been bullied prior to the meeting. That having been said, the incident with Ms. Farrell was distressing. My description of it would be that it was more harassment.
[...]*

The panel determined that, having regard to Colleague 5's written evidence and her oral evidence in which she confirmed that she did not feel bullied by Miss Farrell, it was not satisfied that this course of conduct amounted to bullying.

The panel next considered whether the course of conduct amounted to harassment and/or intimidation. The panel was satisfied that Miss Farrell's conduct, as perceived by Colleague 5, although not linked to a protected characteristic, was a course of conduct which Colleague 5 found intimidating and harassing.

Accordingly, the panel found charge 6(a) proved.

Charge 6(b)

6. In 2019 you bullied and/or harassed and/or intimidated Colleague 5 by reason of:

b. Your communication with Colleague 5

This charge is found NOT proved.

The panel considered that the NMC did not particularise the communication this charge is in relation to.

The panel was not satisfied that the NMC had proved that there was any other evidence of communication between Miss Farrell and Colleague 5 that amounted to bullying, harassment and/or intimidation; save for the conduct previously identified in charge 6(a).

Accordingly, the panel found charge 6(b) not proved.

Charge 7(a)

7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:
 - a. Brought pressure on Colleague 6 to attend at work when she was unwell, and / or

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 6.

The panel noted the following evidence from Colleague 6's written witness statement, in which she stated:

'In 2007 [PRIVATE], the registrant called me to ask me to come into work due to the hospital being understaffed.'

[PRIVATE]. *The registrant was insistent that I come in and offer my assistance. Despite me continually explaining that I was not in the best condition, the registrant did not take no for an answer. I eventually gave up and went into the hospital.'*

The panel considered that Miss Farrell's behaviour, as described by Colleague 6, did appear persistent which may have made Colleague 6 feel some pressure to attend work. The panel accepted this evidence, but was satisfied that Colleague 6's description of Miss Farrell's behaviour demonstrated persistence in order to fulfil a business need. In these circumstances, applying the definitions set out above, the panel was not satisfied that Miss Farrell's conduct amounted to bullying, and/or harassment and/or intimidation.

In these circumstances the panel found charge 7(a) not proved.

Charge 7(b)

7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:

b. Made inappropriate comments regarding other colleagues, and/or

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 6.

The panel noted the following evidence from Colleague 6's written witness statement, in which she stated:

'She often at times said inappropriate things about my colleagues, for example, telling me that when I am handing over the next shift, I should ensure a particular nurse does not work on a certain ward as he is useless.'

The panel was satisfied that Miss Farrell did make inappropriate comments about other colleagues. However, although the panel considered the comments to be unprofessional, applying the definitions set out above, the panel was not satisfied that Miss Farrell's conduct amounted to bullying, and/or harassment, and/or intimidation.

In reaching this decision, although the panel noted that in her witness statement, Colleague 6 stated that she felt intimidated by the comments made by Miss Farrell, in her oral evidence, Colleague 6 explained that she was particularly sensitive due to her past life experiences '*of being ridiculed*'. In the panel's view, Miss Farrell's behaviour could not be said to amount to the ordinary meaning of intimidation, and it noted that there was no suggestion of threat or persuasion on the part of Miss Farrell as part of this behaviour.

In these circumstances the panel found charge 7(b) not proved.

Charge 7(c)

7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:

c. Placed undue pressure on colleague 6 through workload and/or

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 6.

The panel noted the following evidence from Colleague 6's written witness statement, in which she stated:

'I was not comfortable because of how she was adding more to the IPC role just like that even though when she was encouraging me to take the role, she had said that it was not much to do. This brought a lot of stress on me because I was already overwhelmed with countless responsibilities. The most stressful part is the fact that

did not feel the courage to say this to anyone, I was afraid that the registrant would not be happy if I said anything about my concerns.'

The panel accepted this evidence and was satisfied that Miss Farrell added PLACE duties to Colleague 6's role, which did appear to add pressure/stress to Colleague 6's responsibilities as IPC lead.

The panel noted that this was not raised by Colleague 6 at the time, it is not possible to judge Miss Farrell's response as she was not aware of Colleague 6's concerns.

In the particular circumstances of this case, the panel determined that the evidence did not indicate that the additional workload created for Colleague 6 by Miss Farrell went beyond a need to fulfil business demands. Although the panel accepted that the additional workload did add pressure and/or stress to Colleague 6, it was not satisfied that Miss Farrell's conduct amounted to bullying, and/or harassment and/or intimidation.

In these circumstances the panel found charge 7(c) not proved.

Charge 7(d)

7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:

d. Shouted at Colleague, 6 and/or

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 6.

The panel noted the following evidence from Colleague 6's written witness statement, in which she stated:

‘..the registrant proceeded to shout at me at the top of her voice, loud enough for others to hear...’

The panel considered that this was consistent with her oral evidence, when she reiterated that Miss Farrell had shouted at her.

The panel was of the view that there is no circumstance in the context of this charge where shouting at a colleague would be justifiable. The panel accepted that this would have created a hostile environment for Colleague 6 and amounted to intimidation.

The panel did not consider that this single incident of shouting amounted to bullying and/or harassment.

Accordingly, the panel found charge 7(d) proved.

Charge 7(e)

7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:

e. Failed to have regard to the professional opinion of Colleague 6, and/or

This charge is found NOT proved.

The panel noted that although this particular is broadly drafted, in his closing submissions, Mr O’Leary made it clear that this related to Colleague 6’s opinion in relation to issues arising from the installation of the new towel dispensers.

The panel accepted the following evidence from Colleague 6’s written witness statement, in which she stated:

‘I initially noticed that a new paper towel dispenser was installed on the main ward and in a few other areas. I understood the registrant wanted to test these new

dispensers before changing the remaining dispensers in the unit. I noticed that when take a towel, sometimes the next towel goes back inside the dispenser. There is a lever which is marked 'Press' and when pressed, allows you to access the towel.

This is an IPC risk as wet hands must not touch anything except a towel for them to be dried. I went to the registrant's office with these two concerns. The registrant's response was direct, stating she did not like the old towel dispensers as the towels are often dropped on the floor which she found untidy, and these new dispenser were going to be installed everywhere in the unit..."

The panel was satisfied that Miss Farrell ignored Colleague 6's opinion. In the panel's view, Miss Farrell's conduct as described above, may have caused Colleague 6 to feel undervalued. However, the panel was not satisfied that Miss Farrell's actions as described by Colleague 6, amounted to bullying, and/or harassment and/or intimidation.

In these circumstances the panel found charge 7(e) not proved.

Charge 7(f)

7. You bullied and/or harassed and/or intimidated Colleague 6 between 2007 and 2019 in that you:

- f. Misused your power to instruct colleague 6 to distract the deputy director's attention in an inspection of new dryers

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 6.

The panel noted the following evidence from Colleague 6's written witness statement, in which she stated:

'The registrant knew from past audits with the deputy director, there would be an order to go back to the old dispensers and future visits could have her checking to ensure that her instructions were followed. The registrant told me that I should distract the Deputy Director for her to not notice the lever being labelled with the word press.'

The panel was satisfied that Miss Farrell made a business decision to trial two new towel dispensers. This may not have been with the agreement of Colleague 6 who may not have supported the decision at the time. However, the purpose of a trial, in the panel's view, is to assess all views over a period of time before making an informed decision.

The panel accepted that Miss Farrell instructed Colleague 6 to distract the Deputy Director during an audit. However, it did not accept that this conduct amounted to a misuse of power with any suggestion of threat, but rather a flippant comment. The panel considered that Miss Farrell's conduct, whilst inappropriate, did not in the particular circumstances amount to an abuse of her position of power. The panel did not find that Miss Farrell's conduct did amount to bullying, and/or harassment and/or intimidation when applying the definitions set out above.

In these circumstances the panel found charge 7(f) not proved.

Charges 7(a) – (f) as a course of conduct

The panel was mindful of its obligation to consider whether the conduct when taken together amounted to bullying, and/or harassment, and/or intimidation. The panel noted the context within the hospital at the time. The hospital was understaffed, which undoubtedly put staff under pressure, including Miss Farrell who was trying to maintain a high level of service to patients to fulfil a business need. The panel took into account that the evidence suggests that Miss Farrell was a strong character, who was task driven. The panel also noted the following from Miss Farrell's written reflection:

'I have read through all the paperwork of the investigation and can see that two members of staff questioned have said that I am strict, scary and can be intimidating as a manager there is always resistance to change.

[...]

“Changing established behaviour of any kind is difficult. It is particularly challenging in health care because of complex relationships between a wide range of organisations, professionals, patients and carers” I have tried to have a balanced approach I have always had an open door policy and believe I have listened to concerns. Changes I have made have always been to improve patient care.’

Taking into account all of the above, the panel did not find that the underlying facts found proved in charges 7(a) – (f) when considered as a course of conduct, amounted to bullying, and/or, harassment. The panel finds that there was a single instance of intimidation as found at charge 7(d) above.

Charge 8(a)

8. You bullied and/or harassed and/or intimidated Colleague 7 between 2015 and 2019 in that you:

- a. You failed to make proper adjustments and/or take account of Colleague 7's health, and/or

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 7. The panel had regard to the documentary evidence exhibited, which included an Occupational Health Report, dated 2 August 2018.

The panel noted that in her evidence, Colleague 7 stated that she requested to be put on night shifts due to [PRIVATE] and this was ignored by Miss Farrell.

The panel noted that the Occupational Health Report provided by Colleague 7, in respect [PRIVATE] stated the following:

'I am writing this for management reflection. Ultimately it is management and business decision whether the above can be accommodated.'

Recommended Adjustments

As mentioned above, Colleague 7 believes working night shifts will have a significant beneficial effect on her well-being. It is for management to now consider this is a reasonable accommodation.'

The panel considered that the Occupational Health Report indicated that what could or could not be followed in respect of adjustments for Colleague 7 was ultimately a management business decision. The panel took into account that Colleague 5 was Colleague 7's direct line manager at the time and not Miss Farrell. It noted the following from Colleague 7's email to HR, dated 21 May 2018, which stated:

'During one of my day shifts I broke down, due to [PRIVATE], the head of nursing came to the ward and asked me what is going on and I have explained the whole issue to her. She then said that the ward manager must put me on nights, I told her that I have discussed it with the ward manager, but she is still putting me on days.'

The panel concluded that any delay in accommodating Colleague 7's request to work nights, had not been shown to be attributed to Miss Farrell as she was not Colleague 7's direct line manager at the time and/or any delay may reasonably have been down to business needs.

The panel found that the NMC had not proved that Miss Farrell's role in this issue amounted to bullying, and/or harassment, and/or intimidation.

In these circumstances the panel found charge 8(a) not proved.

Charge 8(b)

8. You bullied and/or harassed and/or intimidated Colleague 7 between 2015 and 2019 in that you:

- b. You failed to properly act in relation to Colleague 7's concerns, in that you:
 - i. Were disrespectful in your response
 - ii. Did not respond to concerns regarding staff conduct and/or patient safety, and/or

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 7.

The panel was mindful of its duty to make a separate determination for particularised sub charges, but determined that charges 8(b)(i) and 8(b)(ii) should be considered together since they are intrinsically linked.

The panel noted the following evidence from Colleague 7's written witness statement, in which she stated:

'... I always looked up to her but as time went on I lost respect for her because of what she did to me and others. I used to hear her talk about staff to others when they were not present. If we reported incidents to her she would brush it off and the manner in which she spoke to us was disrespectful. She didn't value our opinions when problems were reported to her during meetings with the ward managers.'

The panel noted that Colleague 7's account described that Miss Farrell was indifferent to the concerns she raised and was not responded to properly. An example Colleague 7 gave of her concerns was whether patients with low blood pressure should have been prescribe Oxycontin and she was not given the opportunity to discuss this. The panel was satisfied that in the circumstances of this case, the appropriateness or otherwise of the medication prescribed was a matter for the prescribing clinician. The panel noted that other examples given by Colleague 7 of concerns relating to patient safety related to the conduct of others, including Colleague 5 and the Deputy Ward Manager. Having regard to all of the above, the panel was not satisfied that Colleague 7's description of Miss Farrell's conduct, amounted to bullying, and/or harassment, and/or intimidation.

In these circumstances the panel found charge 8(b) not proved.

Charge 8(c)

8. You bullied and/or harassed and/or intimidated Colleague 7 between 2015 and 2019 in that you:

c. You erroneously sought to implicate colleague 7 in an allegation of sleeping on duty

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 7.

The panel noted that in her evidence, Colleague 7 stated she was a 'scape goat' in the sleeping on duty allegations raised against her. The panel further noted that Colleague 7 described Miss Farrell's role in this matter as sending another colleague to obtain information to discredit her. However, in Colleague 7's oral evidence she conceded that she had no evidence that it was Miss Farrell who had sent the colleague to check up on her as she had not spoken to the colleague to ask her.

The panel found no evidence to suggest that Miss Farrell was involved in this matter in any way. The panel was therefore not satisfied that the NMC has proved the underlying facts of this charge and the panel found charge 8(c) not proved.

Charges 8(a) – (c) as a course of conduct

The panel was mindful of its obligation to consider whether the conduct when taken together amounted to bullying, and/or harassment, and/or intimidation. Having regard to the panel's finding in relation to the underlying facts, it therefore considered Miss Farrell's actions in charges 8(a) and 8(b) as a course of conduct.

As previously outlined in charge 7, the panel noted the context within the hospital at the time. The hospital was understaffed, which undoubtably put staff under pressure, including Miss Farrell who was trying to maintain a high level of service to patients to fulfil a business need. The panel took into account that the evidence suggests that Miss Farrell was a strong character, who was task driven. The panel also noted the following from Miss Farrell's written reflection:

'I have read through all the paperwork of the investigation and can see that two members of staff questioned have said that I am strict, scary and can be intimidating as a manager there is always resistance to change.

[...]

"Changing established behaviour of any kind is difficult. It is particularly challenging in health care because of complex relationships between a wide range of organisations, professionals, patients and carers" I have tried to have a balanced approach I have always had an open door policy and believe I have listened to concerns. Changes I have made have always been to improve patient care.'

Taking into account all of the above, the panel did not find that the underlying facts found proved in charges 8(a) and (b) when considered as a course of conduct, amounted to bullying, and/or, harassment, and/or intimidation.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Farrell'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.

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.

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

Submissions on misconduct

Mr O'Leary invited the panel to have regard to the case of *Roylance v General Medical Council (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 O'Leary invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision. He identified the specific, relevant standards that he submitted has been breached and where Miss Farrell's actions amounted to misconduct.

Mr O'Leary submitted that charge 1 and charge 2 concern issues of similar nature, in which Miss Farrell instructed colleagues to issue a verbal warning contrary to her employer's policy. He submitted that in charge 1 and charge 2 Miss Farrell's actions found proved demonstrates a disregard for policy and breached paragraph 25.1 of the Code. He submitted that by acting in breach of policy as a senior nurse, Miss Farrell's actions fell below the standards expected of a nurse and amounted to serious misconduct.

Mr O'Leary submitted that in respect of charge 3, Miss Farrell has been found to have instructed another colleague to give an oral report contrary to her employer's policy. He submitted that this is a serious failing for a nurse in a senior position to instruct another member of staff to disregard policy, which was in breach of paragraphs 11.1, 20.2 and 20.3 of the Code.

Mr O'Leary submitted that Miss Farrell's actions found proved in charge 4 demonstrated complete disregard for an investigative process, in that she attempted to influence an investigation by instructing another colleague how to respond to questions. He submitted that the Code, at paragraph 23, sets out that a nurse must act with transparency during an investigation, and Miss Farrell's attempt to frustrate Care UK's investigative process was in breach of this section of the Code.

Mr O'Leary submitted that Miss Farrell's actions in charge 5 fell far below the standards expected of a nurse. He submitted that Miss Farrell acted dishonestly by circumventing Care UK's policy and dishonestly attempted to have a colleague conceal this by lying. He submitted that this conduct would be considered deplorable by fellow practitioners and was in breach of paragraphs 20.1 and 20.2 of the Code.

Mr O’Leary submitted that Miss Farrell’s actions in relation to charge 6 and charge 7, included intimidating and harassing behaviour. He submitted that such conduct was in breach of paragraphs 20.1, 20.2, 20.3, 20.4, 20.5 and 20.8 of the Code. He submitted that intimidating and harassing behaviour is never justifiable, especially as a nurse in a senior position where Miss Farrell was expected to act as a role model.

Mr O’Leary submitted that Miss Farrell’s actions in relation to the charges found proved constitute a significant departure from the standards expected of a nurse.

Submissions on impairment

Mr O’Leary 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 uphold proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr O’Leary submitted all four limbs set out by Dame Janet Smith in *Grant* were engaged in this case. He stated that Miss Farrell disregarded policy, acted dishonestly, harassed and intimidated junior colleagues, and attempted to frustrate an investigation process. He submitted that such conduct breached the fundamental tenets of the nursing profession.

Mr O’Leary further submitted that all nurses are expected to act with honesty and integrity and Miss Farrell’s actions were inconsistent with these standards. He submitted that Miss Farrell’s dishonesty presents a risk to patients as she cannot be trusted to act in accordance with policy.

Mr O’Leary invited the panel to find Miss Farrell’s fitness to practise impaired on both public protection and public interest grounds. He submitted that Miss Farrell has

completed some training in relation to the concerns identified in this case, however, there remains a risk of repetition as Miss Farrell has withdrawn from the process. He submitted that dishonesty is difficult to remediate and from Miss Farrell's Curriculum Vitae (CV), she appears to have been in senior nursing roles since 1998, and therefore ought to have been aware of the standards and expectations of nurses.

Mr O'Leary submitted that Miss Farrell demonstrated some insight in her reflective statement in response to the regulatory concerns, however, this is limited as she attempts to place blame and does not accept all of her actions found proved. He submitted that due to the lack of full insight and remediation, there is still a risk to the public. He further submitted that public confidence in the profession would be undermined if a finding of impairment was not made in this case where a nurse acted against policy in relation to a disciplinary matter and sought to influence an investigation through harassment and intimidation.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

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

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

'20 Uphold the reputation of your profession at all times

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...

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

23 Cooperate with all investigations and audits

25 Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system

25.2 support any staff you may be responsible for to follow the Code at all times.

They must have the knowledge, skills and competence for safe practice; and understand how to raise any concerns linked to any circumstances where the Code has, or could be, broken'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the conduct found proved amounted to misconduct, the panel considered the charges individually and the circumstances of the case as a whole. It took account of all the evidence before it.

The panel considered charge 1 and charge 2 separately. The panel found that in both charge 1 and charge 2, Miss Farrell failed to apply the correct disciplinary policy when she instructed her colleagues to issue a verbal warning. The panel had regard to Miss Farrell's reflection in relation to her actions in these charges, in which Miss Farrell accepted full responsibility for acting outside of policy and apologised for her confusion and error. The panel also took into account contemporaneous evidence from a local investigation into this matter, which indicated that Miss Farrell accepted responsibility at the outset for her failing. The panel was not presented with any evidence to suggest that Miss Farrell knew her actions in charge 1 and charge 2 would circumvent policy. Further, the panel considered that although Miss Farrell's instructions in these charges were outside of her

employer's policy at the time, it considered that verbal warnings are often used as a disciplinary measure by other clinical organisations. Taking into account all of the above, the panel was of the view that Miss Farrell's actions in charge 1 and charge 2 amounted to errors, which in the panel's view constitute negligence rather than serious misconduct.

The panel considered charge 3, charge 4 and charge 5 separately. It determined that Miss Farrell's actions in these charges were all intrinsically linked. In respect of these charges, the panel found that Miss Farrell instructed another colleague to give a verbal reference with the intention of circumventing policy; attempted to influence an investigation by instructing the colleague to lie in response to questions about the verbal reference; and acted dishonestly by attempting to conceal this policy breach when an internal investigation was undertaken. The panel was of the view that honesty and integrity are fundamental to the nursing profession and as an experienced senior nurse Miss Farrell would have been aware of the gravity of not only her actions when she intentionally instructed her colleague to breach policy, but also the implications of her further instructions to have her colleague aid her to conceal these actions. The panel considered that all healthcare professionals have a duty of candour, which is a professional responsibility to be honest when things go wrong, and Miss Farrell demonstrated an unacceptably low standard of professional practice in this area. The panel determined that Miss Farrell's actions in each charge would be considered deplorable by fellow practitioners, thereby damaging the trust that the public places in the profession. It therefore found that charge 3, charge 4 and charge 5 amounted to serious misconduct.

The panel considered charge 6 and charge 7 separately. The panel was in no doubt that Miss Farrell's actions found proved in charge 6 and charge 7 amounted to serious misconduct given its nature, which constituted harassment and intimidation of two separate colleagues. The panel was of the view that Miss Farrell's actions in the workplace, which involved harassing Colleague 5 and intimidating Colleague 6, should not be regarded as inconsequential or excusable in any circumstance.

The panel therefore concluded that Miss Farrell's actions found proved in charges 3 – 7 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Farrell'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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

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

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's 'test' which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or

determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) 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.'*

Taking into account all of the evidence adduced in this matter, the panel did not consider that Miss Farrell placed patients at unwarranted risk of harm in the past, nor is she liable to do so in the future. Whilst Miss Farrell's conduct presented a risk to her colleagues and other members of staff in terms of emotional distress, it found that patients were not put at risk of harm as a result of Miss Farrell's misconduct. The panel therefore determined that limb 'a' of the 'test' was not engaged.

The panel was, however, satisfied that Miss Farrell's conduct did engage limbs 'b', 'c' and 'd' of the 'test'. Having found Miss Farrell to have intimidated and harassed her colleagues and behaved dishonestly, the panel found that Miss Farrell's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel next went on to consider the matter of insight. It took into account Miss Farrell's reflective statements in response to the regulatory concerns. The panel found that Miss

Farrell demonstrated some remorse and developing insight in her reflective statements. However, the panel also found that Miss Farrell did not fully address all the concerns raised and there were notable attempts to deflect blame and responsibility. Whilst the panel noted that other managers conduct was also called into question by the witnesses, this case relates to the actions of Miss Farrell. The panel took into account that Miss Farrell disengaged with the process and as a result it was not presented with any recent evidence concerning Miss Farrell's current level of insight and reflection.

The panel was of the view that Miss Farrell has not demonstrated a full understanding of how her actions put her colleagues and other members of staff at risk, or how this impacted negatively on the reputation of the nursing profession. The panel determined that Miss Farrell is in the early stages of developing insight.

The panel was satisfied that the misconduct in this case is capable of remediation, although it noted that dishonesty was inherently more difficult to remediate. It had regard to the steps taken by Miss Farrell to strengthen her practice, which included the completion of a Conflict Resolution course on 8 November 2019, a Performance Management course on 12 November 2019, and Change Management course on 12 November 2019. The panel also took into account four positive testimonials in respect of Miss Farrell's practice, as of 2019. However, the panel determined that the courses and testimonials presented in this case were not recent enough to demonstrate that Miss Farrell has strengthened her current practice and addressed all the specific concerns raised in relation to her practice.

The panel was of the view that due to the limited insight, remorse and evidence of strengthened practice, there remains a real risk of repetition of the misconduct. The panel noted that Miss Farrell's actions set out in the charges found proved demonstrated a failure to adhere to professional policies and a failure to act with honesty and integrity. The panel considered that Miss Farrell's actions negatively impacted some of her colleagues who felt harassed and intimidated by her. The panel bore in mind the NMC's guidance, which stated that fitness to practise relates to managing risks not only to patients but other

members of the public. Therefore, although the panel found that Miss Farrell's actions did not present a risk to patient safety in the circumstances of this case, it determined that Miss Farrell did present a risk to her colleagues who are regarded as members of the public. On the basis of all the information before it, the panel determined that a finding of current impairment on public protection grounds is necessary.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Farrell's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Farrell's off the register. The effect of this order is that the NMC register will show that Miss Farrell has been struck-off the NMC 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. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr O'Leary informed the panel that the NMC was seeking the imposition of a striking-off order.

Mr O'Leary outlined aggravating factors in this case, which he identified as:

- Miss Farrell was in a position of seniority and abused her position of trust;
- Miss Farrell deliberately sought to mislead an investigation and in doing so harassed a junior colleague; and
- Miss Farrell's actions amounted to a course of conduct.

Mr O'Leary also outlined mitigating factors in this case, which he identified as:

- Early admissions at local level investigation;
- Additional training; and
- Personal mitigation.

Mr O'Leary referred to the NMC guidance on '*seriousness*' and '*cases involving dishonesty*'. He highlighted that cases which involve serious dishonesty will call into question a nurses ability to remain on the NMC Register. He submitted that the dishonesty Miss Farrell has demonstrated in this case is serious, in that she deliberately breached the duty of candour, sought to intimidate Colleague 5, and did so whilst employed in a senior role.

Mr O'Leary submitted that making no order or imposing a caution order would not be appropriate in this case given the seriousness of the misconduct.

Mr O'Leary submitted that a conditions of practice order would not be appropriate given the fact that Miss Farrell's conduct indicated underlying deep-seated attitudinal problems. He stated that in this respect there are no conditions that could be formulated to address the issues of concern identified in this case.

Mr O'Leary further submitted that a suspension order would not be appropriate as there is evidence of deep-seated attitudinal problems. He submitted that this was a case where Miss Farrell deliberately sought to mislead an investigation and acted in an intimidating manner, which are actions fundamentally incompatible with remaining on the NMC Register.

Mr O'Leary submitted that Miss Farrell's actions were inappropriate, call in to question her professionalism, and public confidence would not be maintained if she was not removed from the register. He submitted that a striking-off order is the only appropriate sanction the circumstances of this case.

Decision and reasons on sanction

Having found Miss Farrell'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 took into account the following aggravating features:

- Abuse of position of trust, which included encouraging a colleague not to tell the truth whilst in a position of seniority;
- Deliberate attempt to mislead an investigation; and
- A course of conduct.

The panel also took into account the following mitigating features:

- Early admissions to some of the allegations at a local investigation,
- Additional training undertaken;

- Positive testimonials;
- [PRIVATE].

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

It then considered the imposition of a caution order but again determined that, due to the public protection issues identified, an order that does not restrict Miss Farrell'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 Miss Farrell'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 Miss Farrell's registration would be a sufficient and appropriate response. The panel noted that the concerns in this matter related to Miss Farrell demonstrating a failure to follow policies, dishonesty, harassment and intimidation, which, in the panel's view was indicative of attitudinal problems. The panel also noted that there was a lack of current evidence of insight and remorse as Miss Farrell failed to address all the concerns in this matter and disengaged with NMC proceedings. The panel was 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 Miss Farrell's registration would not adequately protect the public and meet the public interest, nor would it mark the gravity of the multiple failings.

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;*
- *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 the concerns in this case do not relate to an isolated incident. The panel found that the misconduct related to Miss Farrell acting dishonestly by intentionally circumventing policy, attempting to conceal a breach by instructing a colleague to lie to frustrate an investigation and acting in a harassing and intimidating manner towards colleagues. The panel was of the view that the misconduct in this case reflected attitudinal issues. It also found a lack of full insight or remorse, as Miss Farrell only made early admissions to some aspects of the concerns raised in this matter and failed to fully address the dishonesty elements. The panel has previously found at the impairment stage of this hearing that there is a risk of repetition.

The panel also had regard to the NMC's guidance on '*seriousness*' and '*cases involving dishonesty*'. The panel noted that not all dishonesty is equally serious and the more serious type of dishonesty will call into question whether a nurse should be allowed to remain on the NMC Register. In respect of the guidance, the panel was of the view that the following were applicable to this case in respect of dishonesty:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong;*
- *misuse of power;*
- *premeditated [...] deception.*

Having regard to the above, the panel found that Miss Farrell's dishonesty was serious. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Farrell's actions is fundamentally incompatible with Miss Farrell remaining on the NMC 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 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 noted the positive testimonials provided by Miss Farrell together with her reflective accounts and evidence that she underwent further relevant training, albeit in 2019. The panel also noted that the misconduct in this case occurred in the context of an otherwise unblemished longstanding career. However, although the panel took into account Miss Farrell's previous good character, the panel determined that honesty and integrity is at the heart of the nursing profession, and harassment and intimidation are acts which are fundamentally incompatible with nursing. It was in the panel's view very regrettable that Miss Farrell decided to disengage with NMC proceedings and did not provide further up to date evidence. Therefore, on the basis of the evidence before the panel, the panel was of the view that to allow Miss Farrell to continue practising, would put the public at risk of harm and undermine public confidence in the profession and in the NMC as a regulatory body.

The panel found that Miss Farrell has demonstrated a lack of insight and remorse into the misconduct. Further, the panel noted that it had limited evidence that Miss Farrell has strengthened her current practice in respect of all the specific concerns in this matter. The panel considered that Miss Farrell has not demonstrated that she can be trusted as a registered nurse, to act with care and keep colleagues and other members of staff safe from unwarranted risk of harm. The panel was of the view that members of the public would be concerned if a registered nurse who intentionally breached policy, was dishonest, and harassed and intimidated colleagues, as in the circumstances of this case, was allowed to remain on the NMC Register. Taking account of the SG, the panel could not be satisfied that anything less than a striking-off order would maintain professional standards, keep the public protected and address the public interest in Miss Farrell's case.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Farrell'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.

This will be confirmed to Miss Farrell in writing.

Submissions on interim order

The panel took account of the submissions made by Mr O'Leary. He submitted that an interim order should be made on the grounds that it is necessary for the protection of the

public and it is otherwise in the public interest. He invited the panel to impose an interim suspension order for a period of 18 months for the reasons stated in the panel's findings.

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 Miss Farrell's own interest until the suspension sanction takes effect.

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

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 allow for any possible appeal.

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

That concludes this determination.

