

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

**Substantive Hearing
Monday 11 April 2023 – Friday 21 April 2023**

Virtual Hearing

Name of registrant: Amanda Barbara Roberts

NMC PIN: 10I2133S

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 27 September 2014

Relevant location: Dundee

Type of case: Misconduct/Health

Panel members: Pamela Johal (Chair, Lay member)
Louise Poley (Registrant member)
Rachel Barber (Lay member)

Legal Assessor: John Bromley-Davenport

Hearing Coordinator: Teige Gardner

Nursing and Midwifery Council: Represented by Alastair Kennedy, Case
Presenter

Miss Roberts: Not present and unrepresented

Facts proved: 1(a), 1(b), 2(a), 3, 4(a), 4(b), 5, 6, 7, 8, 9 and
10

Fitness to practise: Impaired

Sanction: Suspension Order (12 months) with a review

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 Roberts was not in attendance and that the Notice of Hearing letter had been sent to Miss Roberts' registered email address and to her registered address by recorded delivery and by first class post on 9 February 2023.

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

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

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Roberts 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 Roberts

The panel next considered whether it should proceed in the absence of Miss Roberts. It had regard to Rule 21 and heard the submissions of Mr Kennedy who invited the panel to continue in the absence of Miss Roberts.

Mr Kennedy submitted that there had been no engagement by Miss Roberts with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. He submitted that Miss Roberts had voluntarily absented herself. He submitted that there are a number of witnesses due to attend these proceedings over the course of this

hearing, and they would be put at a disadvantage if these proceedings are to be adjourned today. He invited the panel to continue in the absence of Miss Roberts.

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 Roberts. In reaching this decision, the panel has considered the submissions of Mr Kennedy and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *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 Roberts;
- Miss Roberts has not engaged with the NMC and has not responded to any of the emails or letters sent to her in relation to this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses are due to attend today to give live evidence, others are due to attend;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Roberts in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations. However, the panel did note that during the internal investigation carried out by her employer, Miss Roberts did prepare a number of documents in response to the allegations. The panel have borne these in

mind when coming to its decisions. She will not be able to challenge the evidence relied upon by the NMC in person 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 limited disadvantage is the consequence of Miss Roberts' decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

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

At the outset of the hearing, Mr Kennedy made a request that this case be held partly in private on the basis that proper exploration of Miss Roberts' case involves references to [PRIVATE]. 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.

The panel determined to go into private session as and when anything relating to [PRIVATE] is raised.

Decision and reasons on application to admit the evidence of the Case Officer

The panel heard an application made by Mr Kennedy under Rule 31 to allow the hearsay evidence of the Case Officer into evidence. He submitted that the Case Officer speaks to Charge 9. He informed the panel that the Case Officer could attend on Monday to give live evidence if the panel reject this application. He submitted that this is

the sole and decisive evidence for Charge 9, however he submitted that Miss Roberts does not contest the evidence provided by the Case Officer as she has not engaged with the NMC for some time. He submitted therefore that it would not be unfair to Miss Roberts if this evidence is admitted.

The panel accepted the advice of the legal assessor.

The panel first considered whether Miss Roberts would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of the Case Officer to that of allowing hearsay into evidence. The panel was of the view that Miss Roberts did not contest the Case Officer's evidence as she has not engaged with the NMC for an extended period of time. The panel determined that the Case Officer produces documentary evidence such as this regularly and has no ill-will toward Miss Roberts. The panel noted that this is the sole and decisive evidence for Charge 9, however due to Miss Roberts' lack of engagement, it determined that it would not be unfair to her to admit this hearsay evidence.

In these circumstances, the panel came to the view that it would be fair and relevant to accept the evidence provided by the Case Officer but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Details of charge

That you, a registered nurse;

1) During a shift between 17 December 2019 and 23 December 2019, failed to take one or more observations at the following times, as required for Patient A;

a) 2pm and/or

b) 6pm.

2) During a shift between 17 December 2019 and 23 December 2019 failed to make sufficient entries in the medical records of Patient B as follows;

- a) What action, or lack of action, was taken to address Patient B's high temperature and/or why.
- 3) During a shift between 17 December 2019 and 23 December 2019 failed to escalate the Patient B's deteriorating condition.
- 4) During a shift between 17 December 2019 and 23 December 2019, following an unknown Patient recording a NEWS score of 6, did not do one or more of the following;
 - a) take any further NEWS scores;
 - b) escalate the condition of the patient.
- 5) During a shift between 17 December 2019 and 23 December 2019 at 3.45pm, failed to administer IV fluids to an unknown patient
- 6) During a shift between 17 December 2019 and 23 December 2019, failed to administer medication to one or more patients at the time required.
- 7) [PRIVATE]
- 8) [PRIVATE]
- 9) [PRIVATE]
- 10) [PRIVATE]

AND in light of the above, your fitness to practise is impaired by reason of your misconduct in respect of Charges 1-9 above, and/or in light of your health in respect of Charge 10 above.

Schedule 1

[PRIVATE]

Decision and reasons on facts

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

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

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:

- Witness 1: Clinical Adviser at the Your World Recruitment Group (the Agency), at the time of the incidents.

- Witness 2: Charge Nurse at Ninewells Hospital NHS Tayside (the Hospital), at the time of the incidents.

- Witness 3: Senior Charge Nurse at the Hospital, at the time of the incidents.

- Witness 4: Phlebotomist at the Hospital, at the time of the incidents.

- Witness 5: Agency Nurse working at the Hospital, at the time of the incidents.
- Witness 6: Staff Nurse at the Hospital, at the time of the incidents.
- Witness 7: Staff Nurse at the Hospital, at the time of the incidents.
- Witness 8: Staff Nurse at the Hospital, at the time of the incidents.

Background

The NMC received a self-referral on 29 June 2020 from Miss Roberts. She worked as an agency staff nurse at the Hospital.

[PRIVATE]. Miss Roberts' employer has provided the NMC with evidence that concerns were raised in relation to her actions and behaviour on three separate shifts.

[PRIVATE].

It is alleged that on 19 December 2019, concerns were raised in another shift regarding Miss Roberts failing to provide the necessary level of care to patients. It is alleged that she failed to carry out observations, escalating signs of deterioration in a patient, administer medication and keep clear records.

It is also alleged that on 19 February 2020 [PRIVATE].

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 the NMC.

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

Charge 1(a) and 1(b)

“That you, a registered nurse;

1) During a shift between 17 December 2019 and 23 December 2019, failed to take one or more observations at the following times, as required for Patient A;

a) 2pm and/or

b) 6pm.”

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, in particular the oral and written evidence of Witness 2, Patient A’s patient notes and the initial cause for concern raised by the Hospital on 23 December 2019.

The panel first considered whether Miss Roberts had a responsibility to carry out observations on Patient A at 2pm and 6pm. The panel noted Witness 2’s NMC witness statement, which stated:

“Patient A Ms Roberts was looking after was required to have frequent observations (2 hours and 4 hourly) because the patient’s blood pressure was very low (91 systolic).”

This was confirmed in Witness 2’s oral evidence. In regard to this charge, the panel was content that Witness 2 provided consistent, credible and reliable evidence. The panel found that there was no reason why Witness 2 would harbour any ill-will toward Miss Roberts. Therefore, it accepted Witness 2’s evidence and was satisfied that Miss Roberts had a duty to observe Patient A at least every four hours.

The panel noted that Miss Roberts said that she did not record her observations of Patient A, but she did carry them out over the course of the shift.

The panel considered the contemporaneous 'cause for concern' report submitted by email to the Agency, dated 23 December 2019. In this report it is alleged that Miss Roberts:

"Started shift at 12.00. No observations obtained on 2 patients since 9.20/9.45 until nightshift arrived."

The panel then considered Witness 2's NMC witness statement, in which she corroborates this cause for concern email:

"Patient A's observations should have been done at 2pm and 6pm by Ms Roberts. However, the nurse that came on night shift found that the Patient A's observations had not been taken so she did them at 8.30pm."

Furthermore, the panel noted that there are no entries in Patient A's records between 10:00 and 20:00 on this shift.

In light of the evidence above, the panel determined that, on the balance of probabilities, it is more likely than not that Miss Roberts did not carry out observations of Patient A at 14:00 and 18:00. The panel was satisfied that Miss Roberts did work on this shift and did have a responsibility to carry out four hourly observations on Patient A. Therefore, the panel finds charges 1(a) and 1(b) proved.

Charge 2(a)

"2) During a shift between 17 December 2019 and 23 December 2019 failed to make sufficient entries in the medical records of Patient B as follows;

a) *What action, or lack of action, was taken to address Patient B's high temperature and/or why."*

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, in particular the oral and written evidence of Witness 2 and Patient B's patient notes.

The panel noted that Miss Roberts admits in her response to the Agency that she did not write sufficient notes in Patient B's medical record.

The panel considered Patient B's patient notes. The panel noted that Miss Roberts had made an entry into Patient B's medical record at 19:40, which did not make any reference to addressing the patient's high temperature.

The panel noted both the written and oral evidence of Witness 2 who confirmed that Miss Roberts failed to make sufficient entries in the patient record to show what, if any action, she had taken in respect of Patient B's high temperature. The panel accepted the evidence of Witness 2.

In light of this, and the lack of sufficient notes in Patient B's medical record, the panel determined that, on the balance of probabilities, this charge is found proved.

Charge 3)

"3) During a shift between 17 December 2019 and 23 December 2019 failed to escalate the Patient B's deteriorating condition."

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, in particular the oral and written evidence of Witnesses 2 and Witness 8, and Patient B's patient notes.

The panel first noted Patient B's patient notes. Whilst Miss Roberts had made an entry, the panel found that her entry did not mention whether she had escalated this situation. In addition, the panel took into consideration Witness 2's NMC statement, which states:

"Ms Roberts did take the observations on the patient at the times allocated. However, the patient was found to have had a temperature of 39.6 which is quite high. Ms Roberts did not document if the patient had been given paracetamol nor she had escalated this. There was no documentation to support what had been done to address the patient's high temperature."

Witness 2 confirmed this in her oral evidence, telling the panel that if a patient's temperature had gone up in the manner Patient B's temperature had, it was good practice to escalate this. She told the panel that Miss Roberts had not escalated this. The panel accepted the evidence of Witness 2.

The panel then considered the oral evidence of Witness 8, the nurse who Miss Roberts handed over to on this shift. She told the panel that she had noticed that Patient B's temperature had increased. She asked Patient B if he had been given his medication that day, and he confirmed that he had not. She informed the panel that Patient B's high temperature had not been escalated.

In light of the above, the panel determined that, on the balance of probabilities, this charge is found proved.

Charge 4(a) and (b)

"4) During a shift between 17 December 2019 and 23 December 2019, following an unknown Patient recording a NEWS score of 6, did not do one or more of the following;

- a) take any further NEWS scores;*
- b) escalate the condition of the patient."*

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, in particular the oral evidence of Witness 2, Miss Roberts' response to the Agency and the 'cause for concern' report.

The panel noted that Miss Roberts refers to this allegation in her response to the Agency. In her response she states:

"The patient with a NEWS of 6 was seen by the consultant and I made him aware of the high NEWS because of the patients terminal lung cancer diagnosis the consultant said it was to be expected from the patient so made an exclusion for RR, Oxygen levels to be over 80% and O2 therapy. He advised just complete routine observations unless there were concerns. I should have amended the chart to 4 hourly observations and documented this in the patients nursing notes."

However, when Witness 2 had spoken to Miss Roberts about her concerns, Miss Roberts did not make reference to a consultant having reviewed Patient B. It was Miss Roberts responsibility to ensure that another NEWS score was taken and that this was escalated. The panel accepted the evidence of Witness 2. Further, the panel noted that this incident is reported in the contemporaneous 'cause for concern' report. It states:

"Patient had a NEWS of 6 at 17.30. for one hourly observations. No further NEWS obtained and not escalated to the nurse in charge"

In light of the evidence above, the panel determined that Miss Roberts, on the balance of probabilities, did not take a further NEWS score, nor did she escalate this incident to the medical team. The panel therefore finds this charge proved.

Charge 5)

“5) During a shift between 17 December 2019 and 23 December 2019 at 3.45pm, failed to administer IV fluids to an unknown patient”

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, in particular the written and oral evidence of Witnesses 2 and 8 and the ‘cause for concern’ report.

The panel noted Witness 2’s NMC witness statement, where she states:

“There were two further incidents during the shift. IV fluids were prescribed for a patient (I do not remember the patient’s name) at 3.45 pm, but it was not administered to the patient until the night shift came in at 19.45 and found the patient’s drug chart. I have the patient’s fluid chart for the time the IV fluid was prescribed but not when it was put during the night shift. I was told about this incident by Staff Nurse [Witness 8]. There was no harm to the patient. The IV fluid was just a normal 4 hourly bag so it would not have caused much harm if it was not administered on time.”

This was confirmed in Witness 2’s oral evidence. This was corroborated by Witness 8, who in her oral evidence told the panel that she was asked by Witness 2 to change the IV bag at 18:00. The panel accepted the evidence of both Witnesses 2 and 8. It determined that their evidence was consistent, credible and reliable. It found that neither Witness 2 nor Witness 8 were harbouring any ill-will toward Miss Roberts and were measured and fair when giving evidence to the panel.

The panel then considered the contemporaneous ‘cause for concern’ report from the Hospital. This document states:

“IVI prescribed at 15.45. Not administered until nightshift when chart was found by nightshift nurse.”

The panel also noted Miss Roberts' response to this allegation, in her response to the Agency. [PRIVATE].

In light of the evidence above, the panel determined that this charge is found proved on the balance of probabilities.

Charge 6)

"6) During a shift between 17 December 2019 and 23 December 2019, failed to administer medication to one or more patients at the time required."

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, in particular the oral and written evidence of Witness 8 and Miss Roberts' response to the Agency.

The panel first considered Witness 8's written NMC statement. She stated:

"The Registrant handed over all 7 patients to me, and I was taking the 7 patients alone for the nightshift due to staff shortages. On reviewing one of the patient's Prescription and Administration Records ('PAR'), I discovered that one of their medications had not been administered. I then looked through the patient's PARs and found that none of their 6pm medications had been administered".

Witness 8 confirmed this in her oral evidence. She told the panel that she had been handed seven patients by Miss Roberts, who did not mention that she had not given 18:00 medications. Witness 8 checked all of the patients and found that there was no indication that their medications had been administered. She was particularly concerned about Patient B so she asked if he had been given his medication that day, and he confirmed that he had not. Witness 8 reported this to the nurse in charge during that nightshift via email. The panel accepted Witness 8's evidence and determined that she gave fair, credible and reliable evidence.

The panel noted that Miss Roberts, in her response to the Agency, said she had not administered medication to patients as there was another nurse on duty and it was their responsibility to do this. The panel did not accept Miss Roberts explanation of events and accepted the evidence of Witness 8.

Therefore, the panel determined that, on the balance of probabilities, this charge is found proved.

Charge 7)

“[PRIVATE]”

This charge is found proved.

[PRIVATE]

Charge 8)

“[PRIVATE]”

This charge is found proved.

[PRIVATE]

Charge 9)

“[PRIVATE]”

This charge is found proved.

[PRIVATE]

Charge 10)

“[PRIVATE]”

This charge is found proved.

[PRIVATE].

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 Roberts' 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 Roberts' fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had 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 Kennedy 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.

Mr Kennedy identified the specific, relevant standards where Miss Roberts' actions amounted to misconduct. He submitted the charges are serious, [PRIVATE]. He submitted that, whilst no harm was caused, by not administering medication and by not accurately recording her care whilst on shift, she exposed patients to a real risk of harm. He submitted that Miss Roberts' conduct amounted to serious misconduct and invited the panel to find this.

Submissions on impairment

Mr Kennedy moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Cohen v GMC* [2008] EWHC 581 (Admin).

Mr Kennedy submitted that Miss Roberts has not shown much insight into her misconduct or [PRIVATE]. Further, she has not shown any insight or remorse for her misconduct. Although there is no evidence of patients being harmed as a result of Miss Roberts' actions, she exposed patients to a real risk of significant harm.

Mr Kennedy informed the panel that there is no information regarding Miss Roberts' current employment status. Therefore, there is no evidence of whether Miss Roberts' has strengthened her practice since the original charges arose. In light of this, he

submitted that there remains a real risk of harm in this case and a risk of repetition. He invited the panel to find impairment on the grounds of public protection.

Mr Kennedy submitted that a finding of impairment is also in the wider public interest. He submitted that a well-informed member of the public would be concerned to find that a finding of impairment has not been found in light of the seriousness of the charges found proved. He invited the panel to find that Miss Roberts fitness to practice is impaired in the wider public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

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 Roberts' actions did fall significantly short of the standards expected of a registered nurse, and that Miss Roberts' actions amounted to a breach of the Code. Specifically:

“1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

8.2 maintain effective communication with colleagues

8.6 share information to identify and reduce risk

10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

13.2 make a timely referral to another practitioner when any action, care or treatment is required

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

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

20.9 maintain the level of health you need to carry out your professional role

23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.”

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel found that the charges are serious, [PRIVATE]. The panel accepted Mr Kennedy’s submission that, although no harm was caused, patients were put at a real risk of harm as a result of Miss Roberts’ actions.

The panel determined that the charges cumulatively highlight several areas of concern within Miss Roberts’ nursing practise over a sustained period of time. The areas of practice concerned included Miss Roberts’ being [PRIVATE], poor standards of care which could have resulted in significant harm to vulnerable patients, insufficient and inadequate documentation and failure to cooperate with her regulator.

The panel found that charges 1(a), 1(b), 4(a), 4(b) and 5 would not, on their own, be considered serious misconduct but taken together do contribute to an overarching significant pattern of poor practice.

Accordingly, the panel found that Miss Roberts' actions in respect of these charges did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

The panel determined that charges 2(a), 3, 6, 7, 8 and 9 individually amounted to serious misconduct. The panel therefore determined that charges 1 to 9 amount collectively to serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Roberts' fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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) ...”*

The panel found that limbs a, b and c of *Grant* were engaged.

The panel finds that patients were put at risk of significant harm as a result of Miss Roberts’ misconduct. Miss Roberts’ misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Roberts has shown some insight into her [PRIVATE], in that she made a self-referral to the NMC. However, the panel has no information regarding Miss Roberts’ current level of insight and notes that, due to her lack of engagement with the regulator, no remorse has been demonstrated. [PRIVATE]. Therefore, the panel was of the view that there remains a considerable risk of repetition.

The panel was satisfied that the misconduct in this case is capable of remediation. However, there is no information before the panel today that would suggest Miss

Roberts' is currently working as a registered nurse and has had the opportunity to strengthen her practice in the areas of concerns identified in the charges found proved. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel determined that a finding of impairment on public interest grounds is also required. A well-informed member of the public would be concerned to find that impairment has not been found in light of the seriousness of the charges found proved. In addition, 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 find Miss Roberts' fitness to practise impaired on the grounds of public interest.

Furthermore, the panel determined that a finding of impairment is also in Miss Roberts' own interests.

The panel bore in mind that 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.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months, with a review. The effect of this order is that the NMC register will show that Miss Roberts' registration has been suspended.

Submissions on sanction

Mr Kennedy informed the panel that in the Notice of Hearing, dated 9 February 2023, the NMC had advised Miss Roberts that it would seek the imposition of a suspension

order for a period of 12 months with a review if it found Miss Roberts' fitness to practise currently impaired. He submitted that this would ensure the public are protected and the public interest is upheld. He submitted that a striking-off order would be wholly disproportionate at this stage.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Miss Roberts' 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:

- Lack of full insight
- No remorse
- Failing to engage with the regulator
- [PRIVATE]

The panel also took into account the following mitigating features:

- No actual harm to patients caused as a result of Miss Roberts' actions
- Demonstrated some insight in that Miss Roberts made a self-referral
- Personal mitigation [PRIVATE]

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the charges found proved [PRIVATE]. 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 seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Roberts' 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 Roberts' misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 Roberts' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*
and
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given Miss Roberts' lack of engagement. The panel was of the view that if Miss Roberts' had engaged with the NMC in advance of these proceedings, a

conditions of practice order might have been appropriate. The panel determined that, in light of Miss Roberts' lack of engagement, there is no guarantee that Miss Roberts' would abide by a conditions of practice order. The panel concluded that, without Miss Roberts' engagement [PRIVATE], the placing of conditions on Miss Roberts' registration would not protect the public at this stage.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel determined that a period of suspension would allow Miss Roberts time to engage with the NMC [PRIVATE] and it would be in her own best interests to allow her to do so.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate at this stage in the proceedings. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Roberts' case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Miss Roberts'. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of up to one year was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Engagement with the NMC.
- [PRIVATE].
- Miss Roberts' attendance at the next review of this case.
- Testimonials that attest to Miss Roberts' good character and personal qualities.

This will be confirmed to Miss Roberts' in writing.

Interim order

As the suspension 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 Roberts' own interest until the suspension sanction takes effect.

The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Kennedy. He submitted that if Miss Roberts decides to appeal the outcome of this hearing, the order decided today cannot come into effect until the appeal process is over. He informed the panel that an appeal process can take up to 18 months. He submitted that, if Miss Roberts does decide to appeal this order, the public would not be protected in the interim period. Therefore, Mr Kennedy submitted that an interim suspension order of 18 months is required to protect the public and uphold the public interest.

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, [PRIVATE], the public protection and public interest issues it identified, and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. The panel also found that an interim order was in Miss Roberts' own interests.

The panel therefore imposed an interim suspension order for a period of 18 months to allow for an appeal process to be completed.

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

That concludes this determination.