Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 3 April 2023 – Thursday 6 April 2023
Tuesday 11 April 2023 – Wednesday 12 April 2023
Wednesday 9 August 2023 – Friday 11 August 2023

Virtual Hearing

Name of Registrant:	**Emma Boyd**
NMC PIN	15B0039E
Part(s) of the register:	Registered Nurse – Sub Part 1 RNMH Mental Health Nursing (L1) – March 2015
Relevant Location:	Liverpool
Type of case:	Misconduct
Panel members:	John Penhale (Chair, lay member) Helen Chrystal (Registrant member) Nicola Hartley (Lay member)
Legal Assessor:	Justin Gau
Hearings Coordinator:	Shela Begum
Nursing and Midwifery Council:	Represented by Anna Leathem, Case Presenter
Ms Boyd:	Not present and unrepresented (3 April 2023 – 6 April 2023 & 11 August 2023) Present and unrepresented (11 April 2023 – 12 April 2023 & 9 August 2023 – 10 August 2023)
Facts proved:	Charges 1, 2i, 2ii, 2iv, 2v, 3, 4i, 5, 6i and 6ii
Facts not proved:	2iii and 4ii
Fitness to practise:	Impaired
Sanction:	**Striking off order**

Interim order: **Interim suspension order (18 months)**

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

At the outset of the hearing, Ms Leathem made a request that parts of this case be held in private on the basis that proper exploration of Ms Boyd's case involves making reference to matters relating to her health.

On the second day of the hearing, Ms Leathem extended the application and made a request, which she described as 'overcautious', that the entirety of this hearing be held in private on the basis that it is in the interest of Ms Boyd. She submitted that some of the matters being explored throughout the hearing may have a negative impact on Ms Boyd if those matters were to be allowed into the public domain. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

The panel acceded to the initial application made by Ms Leathem to hear parts of this case which relate to Ms Boyd's health or her private matters in private. However, the panel rejected the application to hear the entirety of the hearing in private as it concluded that matters being explored in this hearing may be of public interest. Further, it determined that, given the seriousness of this case, the public interest in this case outweighs Ms Boyd's interest. It therefore concluded to go into private session in connection with Ms Boyd's health and private matters as and when such issues are raised in order to protect her privacy.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Boyd was not in attendance and that the Notice of Hearing letter had been sent to Ms Boyd's registered email address by secure email on 1 March 2023.

Ms Leathem, 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.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, and, amongst other things, information about Ms Boyd'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 satisfied that Ms Boyd 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 Ms Boyd

The panel next considered whether it should proceed in the absence of Ms Boyd. It had regard to Rule 21 and heard the submissions of Ms Leathem who invited the panel to continue in the absence of Ms Boyd.

Ms Leathem began by referring the panel to the case of GMC v Adeogba [2016] EWCA Civ 162. She also referred the panel to the cases of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5 which sets out that the following factors should be considered when decided whether or not to proceed in absence:

- *The nature and circumstances of the Registrant's behaviour in absenting themselves from the hearing;*
- *Whether an adjournment would resolve the Registrant's absence;*
- *The likely length of any such adjournment;*
- *Whether the Registrant has voluntarily absented themselves from the proceedings; and*
- *The disadvantage to the Registrant in not being able to present their case.*

Ms Leathem referred the panel to an email from Ms Boyd dated 4 April 2023 which states:

"[PRIVATE]".

Ms Leathem acknowledged that if the panel decides to proceed in Ms Boyd's absence, understandably there will be some disadvantage in not being able to ask witnesses questions. However, she informed the panel that this is the second time that Ms Boyd has requested an adjournment and that she had made an adjournment request to the previous panel on 28 September 2022. [PRIVATE]. The previous adjournment request was granted, and Ms Boyd subsequently agreed to the current hearing dates in April 2023.

Ms Leathem submitted that it is not clear how long Ms Boyd would require by way of postponing the hearing on the basis that it was hoped by this time she would be able to both prepare her defence … [PRIVATE]. In light of this, she submitted that the panel may consider that adjourning this hearing to a later date is not going to guarantee Ms Boyd will be in a different position to the one she is in today and the issues may persist further down the line.

[PRIVATE].

[PRIVATE].

[PRIVATE].

[PRIVATE].

[PRIVATE].

Ms Leathem referred the panel to the cases of *Teinaz v London Borough of Wandsworth [2002] ICR 1471,* GMC v Hayat [2018] EWCA Civ 2796 and *CA,* Chaudhari v General pharmaceutical council [2011] EWHC 3433 (Admin). She invited the panel to pay particular regard to these cases when considering Ms Boyd's adjournment request on medical grounds.

In closing, Ms Leathem invited the panel to carefully consider and weigh in the balance between the fairness to Ms Boyd, the fairness to the NMC as a regulator and the public She reminded the panel that Ms Boyd's adjournment application has already been allowed once and a second adjournment creates potential inconvenience. In light of all of the above, Ms Leathem invited the panel to proceed in the absence of Ms Boyd.

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.*

The panel has decided to proceed in the absence of Ms Boyd. In reaching this decision, the panel has considered the submissions of Ms Leathem, the written representations from Ms Boyd contained within the emails from her, 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:

- Ms Boyd has indicated to the NMC that she has received the Notice of Hearing and is aware of the hearing taking place;

- Witnesses have been warned to attend this hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019;
- 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.

The panel first considered Ms Boyd's application to adjourn this hearing. [PRIVATE].

Further, it considered Ms Boyd's assertion that she requires time to prepare her defence. The panel noted that she had received all the documents in this case by email and in hard copy by the 11 August 2022 but in her email dated 4 April 2023 she stated she had not read any of the papers in her case.

The panel noted that the NMC has previously accommodated Ms Boyd's requests to have the hearing dates scheduled during the school holidays and that Ms Boyd had previously agreed to the current hearing dates and therefore it was not persuaded that, even if it did allow this application, an adjournment would secure Ms Boyd's attendance at a future date.

[PRIVATE].

The panel noted that there is some disadvantage to Ms Boyd in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her registered contact details, 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. The panel noted that it does have the benefit of the registrant response bundle which includes Ms Boyd's responses to some of the allegations which can assist the panel with the questioning of witnesses to test their evidence. Furthermore, the limited disadvantage is the consequence of Ms Boyd's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Decision and reasons on amendment to charge 1

The panel of its own volition decided to make an amendment to an error in the dates in charge 1. The proposed amendment was to amend the year from '2919' to '2019' as it would accurately reflect the evidence. The charge would read:

"That you being a registered nurse while working at HM Prison Liverpool ["the prison"]

1. On approximately the 25th September 2019, you inappropriately deleted a care plan created by Colleague 1 for Patient A and substituted it on the 26th September ~~2919~~ **~~2019~~** with an inappropriate care plan devised by yourself."

In reaching its decision to amend charge 1, the panel had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Ms Boyd and no injustice would be caused to either party by the proposed amendment. It was therefore appropriate to amend the charge to ensure clarity and accuracy.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Leathem, on behalf of the NMC, to amend the wording of charge 1. She reminded the panel that it has the powers to amend the wording of the charges before making any findings on fact but, in doing so, the panel must have regard to the merits of the case, the fairness and any potential injustice to the registrant.

The proposed amendment was to remove the second reference to 'inappropriate' in the charge. Ms Leathem submitted that Witness 2 had created the original care plan and during his evidence he informed the panel that the care plan allegedly devised by Ms Boyd was not 'inappropriate'. Ms Leathem told the panel that its key consideration in this matter is whether Ms Boyd inappropriately deleted the original care plan created by Witness 2 and not to consider whether the care plan devised by Ms Boyd was inappropriate. Ms Leathem proposed that the amendments would be as follows:

1. On approximately the 25th September 2019, you inappropriately deleted a care plan created by Colleague 1 for Patient A and substituted it on the 26th September 2019 with **a** ~~an inappropriate~~ care plan devised by yourself.

Ms Leathem submitted that this does not create any unfairness or potential injustice to Ms Boyd. She submitted it does not create any material change to the charge but instead provides clarity as to what the charge alleges.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Ms Boyd and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity.

Details of charge (as amended)

That you being a registered nurse while working at HM Prison Liverpool ["the prison"]

1. On approximately the 25th September 2019, you inappropriately deleted a care plan created by Colleague 1 for Patient A and substituted it on the 26th September 2019 with a care plan devised by yourself.

2. In so doing

    i. You inappropriately discontinued Colleague 1's care coordinator role in A's care plan.
    ii. Inappropriately as a Band 5 nurse, assumed the right to edit and audit the care plan.
    iii. You claimed the care plan had your name on it when it did not.
    iv. You had no right to manage the care plan as A was not your patient.
    v. You created a risk of confusion and/or misunderstanding as to the pre-existing care plan.

3. On the 21st September 2019, whilst at the prison, you offered to sell to Colleague 2 and/or invited Colleague 2 to buy drugs from you, namely cannabis.

4. On the 27th September 2019, you brought a prohibited item and/or contraband into the prison, namely

    a. A glass bottle or
    b. Perfume (in a glass bottle)

5. In the period of or surrounding the search for the bottle, you hid it in Colleague 2's locker.
6. Your actions at 5 were dishonest in that you

a. Sought to evade the lawful search of contraband and/or a prohibited item in prison.
b. Exposed Colleague 2 to the risk of being falsely accused as the contrabandist and/or importer of a prohibited item.

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

Decisions and reasons to admit pre-recorded evidence

Ms Leatham referred the panel to an email from Ms Boyd dated 5 April 2023 which states:

> *"I'll present my case on Monday if that's ok regarding each charge I might have to prerecord it"*

A subsequent email from Ms Boyd dated 5 April 2023 stated:

> *"When I send my recording with my statement regarding the charges will it be considered*
> *[PRIVATE].I"*

Ms Leathem informed the panel that the NMC should do what it can to facilitate Ms Boyd giving evidence that is fair. She referred the panel to the NMC Guidance titled 'supporting people to give evidence in hearings' and 'evidence'.

Ms Leathem submitted that what can be discerned from that guidance is that the NMC are flexible as reasonably possible to help people give evidence so long as it is fair to do so. There are no defined ways for evidence to be given and the panel can be flexible.

Ms Leathem submitted that pre-recorded evidence doesn't necessarily rule out questions and may be admissible. However, until Ms Boyd's position is known, it is unclear whether she would be willing to answer questions.

Ms Leathem submitted that the hearing does have to progress in a way which is fair, if that means accommodating Ms Boyd by allowing her evidence in a pre-recorded format or not admitting the evidence on the basis that she has provided a number of statements to the panel already, she submitted that this is a matter for panel's judgment.

Ms Leathem submitted that if the NMC are not able to challenge Ms Boyd, this will mean that her evidence, if admitted, should not have much weight attached to it. She stated that admissibility and weight are separate matters for the panel to consider with admissibility being determined first as per the case of El Karout v Nursing and Midwifery Council [2019] EWHC 28 (Admin).

[PRIVATE].

In closing, Ms Leathem submitted that it is a matter for the panel weighing up the history of this case, the assertions by the registrant about her health, and the fairness and practicality of evidence being admitted in this format whether to admit her evidence in this way.

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

The panel took into account Ms Boyd's request to provide her evidence in a pre-recorded format, although it noted that Ms Boyd has not provided specific information as to what this would entail.

The panel noted that this hearing has been delayed significantly by two days as a result of Ms Boyd's decision not to attend the hearing on the morning of day one of the hearing. Further it noted that this request has come from Ms Boyd on the evening of day three of

the hearing and has been presented to the panel on day four of the hearing following the conclusion of the evidence from the NMC's witnesses.

The panel considered whether it would be appropriate to allow the admission of pre-recorded evidence from Ms Boyd. It took into account that anything pre-recorded would need to be reviewed by the NMC and the legal assessor to assess the admissibility, fairness and relevance of the recording. The panel considered the further delays which may be caused by this and the unfair impact it would have on the progress of this hearing given that there have been significant delays caused already.

The panel also considered how much weight it would be able to give to any pre-recorded evidence provided by Ms Boyd. The panel concluded that any evidence provided by Ms Boyd would need to be open to cross-examination by the NMC and by the panel and therefore it was not satisfied that evidence in pre-recorded would provide the opportunity to do this.

[PRIVATE]. The panel invites Ms Boyd to attend this hearing either by video link or the dial-in options available and if she needs the assistance of someone then she is encouraged by the panel to have someone with her for support or she is to avail herself of the assistance offered by the NMC. Further, the panel encourages Ms Boyd to submit written representations if she so wishes.

The panel therefore has decided not to allow the admission of any pre-recorded format for all the reasons as set out above.

Background

The charges arose whilst Ms Boyd was working as a band 5 registered mental health nurse at HMP Liverpool (the Prison) on behalf of Merseycare NHS Foundation Trust (the Trust).

The referral alleges that in August 2019 Ms Boyd deleted and discontinued a care plan for Patient A created by Colleague 1 who was the care coordinator for the patient. It is alleged that it was not appropriate for Ms Boyd to delete, discontinue, manage, edit, or audit that care plan.

Ms Boyd is also alleged to have offered to sell cannabis which was being grown by her boyfriend at the time to a colleague whilst at work.

The third allegation is that Ms Boyd brought a prohibited item, namely a glass perfume bottle, into the prison. Further, it is alleged that during a search at the prison, Ms Boyd placed the prohibited item into another colleague's locker.

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 Ms Leathem on behalf of the NMC and by you.

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: Band 6 Clinical Lead, Integrated Mental Health. HMP Liverpool Prison
- Witness 2: Band 6 Clinical Lead. HMP Liverpool Prison
- Witness 3: Clinical Mental Health Manager, HMP Liverpool Prison. Formerly Band 6 Clinical Team Leader.
- Witness 4: Clinical Control Liaison Manager, Merseycare NHS Foundation Trust.

The panel also heard evidence from you under oath.

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 you.

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

Charge 1

1. On approximately the 25th September 2019, you inappropriately deleted a care plan created by Colleague 1 for Patient A and substituted it on the 26th September 2019 with a care plan devised by yourself.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1 and your evidence.

Witness 1 explained during his evidence that it was inappropriate for you to delete the care plan as you were not Patient A's care coordinator. He explained that only the care coordinator for the patient would be in a position to delete the care plan and that would only occur in specific instances were a patient was leaving the prison or being transferred. Witness 1 also explained to the panel the steps required to delete a care plan which included warning messages from the system and the requirement for reasons for the deletion.

The panel heard from you during your evidence that you accept that you had deleted a care plan. However, you told the panel that you were trying to delete the care plan which was created by you but had mistakenly deleted the care plan created by Colleague 1. You accepted during your evidence that, irrespective of who the care plan was created by, you shouldn't have deleted it.

The panel acknowledged that you explained you had mistakenly deleted Colleague 1's care plan and were intending on deleting your own. However, based on all the evidence it has heard, it concluded that you did inappropriately and deliberately delete the care plan created by Colleague 1 and substituted it with your own care plan. The panel therefore finds this charge proved.

Charge 2i

2. In so doing
    i. You inappropriately discontinued Colleague 1's care coordinator role in A's care plan.

This charge is found proved.

In considering charge 2i, the panel took into account the evidence of Witness 1. It heard that, by deleting the care plan created by Colleague 1 and replacing it with your own, you discontinued Colleague 1's care coordinator role as the system would subsequently

recognise you as the care coordinator. The panel heard from Witness 1 that another member of staff in the prison who reviewed the care plan would not have accurate information as to who the care coordinator is for the patient which would create a risk of confusion.

During your evidence, you stated that you do not accept having removed Colleague 1 as the care coordinator as you stated that it was a more complicated process.

The panel considered the evidence before it and finds that it prefers the evidence of the NMC's witness in relation to this charge. The panel therefore finds charge 2i proved.

Charge 2

2. In so doing
    ii. Inappropriately as a Band 5 nurse, assumed the right to edit and audit the care plan.

This charge is found proved.

During the evidence of Witness 1, the panel heard that band 7 nurses or clinical leads were authorised to audit or edit patient care plan with a clinical reason or to edit a mistake. He explained that as a band 5 nurse, you would not have been assigned to edit or audit the patients care plan. He informed the panel that there would be no clinical requirement for you to edit or audit the patient's care plans and that if there was an error spotted by a band 5 nurse, this should have been reported to the care coordinator.

Based on the evidence before it, the panel finds that you did inappropriately assume the right to edit and audit the care plan. The panel therefore finds this charge proved.

Charge 2

2. In so doing

    iii. You claimed the care plan had your name on it when it did not.

This charge is found NOT proved.

The panel heard evidence from Witness 1 who accepted that your name was stated on the care plan but that there could have been two care plans in place at the same time.

The panel noted that the care plan created by Colleague 1 in August 2019 was not adduced in evidence and therefore it could not determine whether your name appeared on the care plan or not.

The panel is of the view that there is not sufficient evidence before it to find this charge proved. It noted that it did had not seen the original care plan and took into account Witness 1's evidence. However, it has not been persuaded by the evidence before it that your name was not on the care plan. It therefore finds this charge not proved.

Charge 2

2. In so doing

    iv. You had no right to manage the care plan as A was not your patient.

This charge is found proved.

In reaching this evidence, the panel took into account the evidence of Witness 1 and Witness 3 as well as your evidence.

Witness 1 informed the panel that he was the care coordinator for Patient A at the time. This was also confirmed by Witness 3. Witness 1 also stated during his evidence that there had been no instructions provided to you to manage the care plan for Patient A.

During your evidence, you stated that you should not have deleted it and you accepted that you had no right to go anywhere near Colleague 1's care plan as it was not your patient.

The panel therefore finds this charge proved.

Charge 2

2. In so doing
    v. You created a risk of confusion and/or misunderstanding as to the pre-existing care plan.

This charge is found proved.

In reaching its decision, the panel considered the evidence of Witness 1 and your evidence.

It heard from Witness 1, that another member of staff in the prison who reviewed the care plan would not have accurate information as to who the care coordinator is for the patient which would create a risk of confusion.

You stated that the staff in the prison knew who the care coordinators were for each patient. You explained that daily meetings occurred during which each nurse would discuss their patient, so everyone had knowledge of which patients belonged to which nurse. You accepted in response to a question from Ms Leathem that there may have been a technical impractically in this but asserted that in real terms Colleague 1 remained the care coordinator for the patient.

Based on the evidence before it, the panel is satisfied that you did create a risk of confusion and/or misunderstanding as to the pre-existing care plan as a result of your actions as set out in charge 1. The panel therefore finds this charge proved.

Charge 3

3. On the 21st September 2019, whilst at the prison, you offered to sell to Colleague 2 and/or invited Colleague 2 to buy drugs from you, namely cannabis.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 2 and your evidence.

Witness 2's account of the incident alleges that you had informed him that your new boyfriend at the time was growing cannabis which was for sale and that you had offered to supply it to him. When asked whether there was a possibility he may have misunderstood, Witness 2 maintained that it was a clear offer by you to sell him cannabis.

The panel had regard to a contemporaneous document produced by Witness 2 which was used in a referral to the prison security believed to be sent the day after the conversation. He states:

> *"On Saturday 21/09/2019 I was on duty with Emma Boyd. We were alone together in the office when she asked me if I would like to buy any cannabis. I declined and joked if she was now a drug dealer, thinking that this was a strange question and perhaps a joke when she informed me that she had been seeing someone who was growing cannabis in a tent in the spare room of his house under hydroponic lights."*

During his evidence, Witness 2 maintained that the comments made by you 'did not feel like a joke' and felt like a 'genuine offer'. Witness 2 explained that in his referral to the prison security he used the wrong terminology by using the word 'joke'.

You informed the panel that you and Witness 2 had previously discussed both your previous cannabis usage. Within your written evidence you accepted that at the time you

were frequent user of cannabis. You suggested that during those conversations Witness 2 may have misunderstood. You stated that you do not know where any reference to growing cannabis in a tent had come from. You further explained that you believed this allegation arose as a result of Witness 2 being ‘annoyed’ at the fact that you had reported him for stealing diazepam.

In relation to the allegation of theft of diazepam, Witness 2 informed the panel that this claim is not supported by an investigation into what is a serious allegation. He also stated that this allegation would not have affected him reporting your comments about offering to sell him cannabis.

The panel also heard from Witness 3 who gave evidence that an allegation of theft of diazepam was brought to her by you but that this related to another member of staff and not Witness 2. Witness 3 informed the panel that you later retracted the allegation.

The panel considered the evidence of the NMC’s witnesses, and the evidence provided by you. The panel noted Witness 2’s evidence and found that it was consistent with the contemporaneous document produced by him closer to the time of the incident and that Witness 2 was able to provide detail about what had occurred. The panel considered your assertion that this allegation arises out of Witness 2’s ‘annoyed’ reaction to the reporting of an alleged theft of diazepam. However, it noted that there was a lack of sufficient evidence supporting your assertion including an investigation into the concern that concluded that you were repeating rumours and ‘hearsay’. The panel rejected this as a plausible explanation.

The panel concluded, that on the balance of probabilities, it is more likely than not, that you did offer to sell Colleague 2 and/or invited Colleague 2 to buy drugs from you, namely cannabis. The panel therefore finds this charge proved.

Charges 4i and 5

4. On the 27th September 2019, you brought a prohibited item and/or contraband into the prison, namely
    I. A glass bottle or

5. In the period of or surrounding the search for the bottle, you hid it in Colleague 2's locker.

These charges are found proved.

In reaching this decision, the panel took into account your evidence as well as the documentary evidence before it.

The evidence of Witness 3 informed the panel that glass bottles and perfume were prohibited items in September 2019. The panel had regard to an 'Unauthorised Articles List', although it was dated 2021, which also indicated that these items were prohibited.

During your evidence, you informed the panel that the training you received from the Ministry of Justice stated that perfume was prohibited but glass bottles were not prohibited.

However, the panel had regard to a handwritten statement produced by you dated 30 October 2019 which states:

> *"Did you bring a prohibited item into the prison*
> *Yes perfume"*

The panel also had regard to your response to the allegations in which you state:

> *"As I went to make a cup of tea and get my tea bags out of my rucksack I panicked when I saw my old empty perfume bottle was in there. I describe it as large, but that*

is because the perfume bottle came in 2 sizes, 100ml and 35ml, and I had the bigger one…

…The perfume bottle was empty but […], I panicked, I read every morning on the way through the air locker the posters stating prohibited items such as perfume, knives, USB drives and so on, and although my bottle was empty I thought I would get arrested or similar […] I had my own locker in the staff office area, but it was on floor level and my key was on my lanyard around my neck. I was crouching down to open my locker but there was an open one above so I put the empty bottle in there. I informed the person who's locker it was and other staff present, including band 6 staff at the first opportunity that day of what I had done."

The panel considered the information before it and it found that Witness 3 provided clear evidence as to what was considered a prohibited item at the time. It considered that you stated you were unaware of glass bottles being prohibited but it noted that you accepted having brought a prohibited item into the prison in your handwritten statement and in your response to the allegations. The panel considered the nature of your actions following your realisation that you had possession of a perfume bottle at the time of a search being carried out. It determined that your actions at the time indicate and support that you have an understanding that the item was prohibited. Further, the panel noted that you stated within your response to the allegations that you put the perfume bottle in an open locker above yours. The panel therefore finds charges 4 and 5 proved.

Charge 4ii

4. On the 27th September 2019, you brought a prohibited item and/or contraband into the prison, namely
    II. Perfume (in a glass bottle)

This charge is found NOT proved.

The panel concluded that it could not find charge 4ii proved as it did not have sufficient evidence before it to prove that there was perfume contained within the glass bottle. The panel therefore concluded that this charge is not proved.

Charge 6

6. Your actions at 5 were dishonest in that you
    I. Sought to evade the lawful search of contraband and/or a prohibited item in prison.
    II. Exposed Colleague 2 to the risk of being falsely accused as the contrabandist and/or importer of a prohibited item.

This charge is found proved.

In reaching this decision, the evidence provided by the NMC's evidence and the evidence provided by you.

The panel considered this in respect of the ordinary standards of everyday people and whether your actions would be considered dishonest by reasonable and honest people.

The panel considered the state of your knowledge at the time, and it noted that you had the knowledge of having brought a prohibited item into the prison. It further noted that you made reference to feeling 'panicked' as a result and it concluded that by placing the perfume bottle in another locker which was not yours, you sought to evade the lawful search of contraband and/or a prohibited item in prison.

The panel considered the potential impact on Colleague 2 and your knowledge of this. It noted your response to the allegations in which you state:

“I panicked, I read every morning on the way through the air locker the posters stating prohibited items such as perfume, knives, USB drives and so on, and although my bottle was empty I thought I would get arrested or similar”

It concluded that you were aware of the potential consequences of this prohibited item being found and that your actions as set out in charge 5 were dishonest in that you exposed Colleague 2 to the risk of being falsely accused as the contrabandist and/or importer of a prohibited item.

The panel therefore finds this charge proved.

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 your 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, your fitness to practise is currently impaired as a result of that misconduct.

The panel heard evidence from you under affirmation in relation to misconduct and impairment.

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.'*

Ms Leathem submitted that both misconduct and impairment are matters of judgment rather than proof. She referred the panel to the case of Council for the Regulation of Health Care Professionals v General Medical Council and Biswas [2006] EWHC 464 (Admin).

Ms Leathem also referred the panel to the case of Calhaem v GMC [2007] EWHC 2606 (Admin) and Mr Justice Collins in Nandi v General Medical Council [2004] EWHC 2317 (Admin), wherein Mr Justice Jackson J sets out:

> *'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*
> *'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by a fellow practitioner'.*

Ms Leathem made further reference to the cases of Mallon v General Medical Council [2007] ScotCS CSIH17 and R (on the application of Remedy UK Ltd) v General Medical Council [2010] DWHC 1245 (Admin).

Ms Leathem 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. She identified the specific, relevant standards where your actions amounted to misconduct.

Submissions on impairment

Ms Leathem 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).

Ms Leathem submitted that impairment should be found on the grounds of public protection and public interest. She reminded the panel that the matter of impairment needs to be considered as at today's date. She submitted that the NMC defines impairment as a registered professional's suitability to remain on the register without restriction.

Ms Leathem referred the panel to the case of *Grant.* She submitted that the panel would need to consider whether patients were put at an unwarranted risk of harm and whether there is a risk of harm to patients in the future. She submitted that whilst there has been no evidence of actual patient harm, there was a risk of harm to Patient A by virtue of inappropriately deleting his care plan and replacing it with her own. She acknowledged that this was a 'one-off' incident.

Ms Leathem submitted that the panel would need to consider, when deciding on impairment, whether any part of the Code has been breached or is liable to be breached in the future. She submitted that you acted dishonestly in the past and that dishonesty is a concern which is more difficult to address as it is indicative of an attitudinal concern which is not easily remediated and therefore remains a risk in the future.

[PRIVATE].

Ms Leathem submitted that you have demonstrated limited insight into the severity of your actions as set out in the charges found proved, and specifically in relation to the charge

relating to dishonesty and the offer to sell cannabis. She submitted that behavioural and attitudinal errors are much harder to remediate.
Ms Leathem submitted, in relation to the clinical errors, these are remediable with training, education or supervision. However, she submitted that you have failed to address the impact of your actions on the trust and confidence in the profession. She submitted that you predominantly focus the impact on yourself.

Ms Leathem submitted that the panel cannot be reassured by the evidence before it today that there is no risk of repetition. She submitted there remains room for further insight.

In closing, Ms Leathem submitted that, if the panel do not find impairment under public protection grounds, it should consider that the seriousness of these allegations are enough to find current impairment purely on grounds of public interest and the need to uphold proper professional standards and conduct as well as maintaining public confidence in the profession.

You told the panel that you do not want to give the impression that you are not taking responsibility for your actions.

You told the panel that you accept having deleted the care plan and that you should not have deleted the care plan regardless of who it belonged too.

You further told the panel that at the time, you did not consider glass bottle items to be prohibited or contraband, but you accepted having had the item in your bag and taking it into the prison. You said that other colleagues would bring similar items, such as a glass jar of jam, into the prison and therefore you did not consider yourself to have brought in a prohibited item but that you panicked. You accepted your behaviour in placing it in the locker of your colleague was dishonest and explained that this had happened because you panicked.

You told the panel that in relation to the offer to sell drugs, it is difficult to show you would have remediated this. You stated that other than denying having made the offer to sell drugs, there is not much else you can say to prove otherwise. You indicated that this charge is your word against another person's.

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), *General Medical Council v Meadow* [2007] QB 462 (Admin) and Sawati v GMC 2022 EHWC 283.

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

> ***10 Keep clear and accurate records relevant to your practice***
> *This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.*
> *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*
> *10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*
>
> ***13 Recognise and work within the limits of your competence***
> *13.4 take account of your own personal safety as well as the safety of people in your care*

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

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

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, treating people fairly and without discrimination, bullying or harassment

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

20.4 keep to the laws of the country in which you are practising

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered the charges individually and whether your actions do amount to misconduct.

The panel considered your actions as set out in charges 1 and 2. The panel found that your conduct fell short of what would be expected of a registered nurse and that your actions had potential to interfere with patient care and as a result created a risk of harm to the patient. The panel found that there was no rational explanation for your actions and the panel found that your actions were serious and amounted to misconduct.

In respect of charge 3, the panel determined that your actions were wholly inappropriate and considered them to be deplorable. The panel concluded that your actions as set out in charge 3 demonstrated a serious departure from professional standards and the Code. Further, it determined that your actions brought the profession into disrepute.

The panel considered charges 4 and 5. The panel noted your actions in these charges were dishonest in that you brought a prohibited item into the prison and then went on to

hide it in a colleague's locker. The panel determined that this was conduct that is deplorable and amounts to misconduct.

In relation to charge 6 which relates to the dishonesty, the panel considered that nurses are at all times expected to act with honesty and integrity. The panel found that your actions demonstrated a serious departure from the Code, fell seriously short of the conduct and professional standards expected of a nurse, were sufficiently serious and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the 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.’*

The panel concluded that all four limbs of the “test” are engaged in this case.

The panel finds that a patient was put at a risk of unwarranted harm as a result of your misconduct. Further, the panel found that your 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.

Regarding insight, the panel considered that you have made some admissions to your failures. However, the panel was not satisfied that you have demonstrated an understanding of the negative impact of your actions on patients, colleagues and the

nursing profession. The panel noted that you accept your actions being wrong and have demonstrated acceptance of your dishonesty. However, the panel found that your insight revolves predominantly around the impact on yourself and your circumstances at the time of the incidents.

The panel was satisfied that some of the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account that you have not worked since 2019 in any healthcare setting, but you have undertaken some training in 2021. However, the panel was not satisfied that the training that you undertook specifically addressed the areas of concern in this case. The panel was not satisfied that you have demonstrated evidence of any practical remediation in relation to the concerns in this case.

As a result, the panel is of the view that there is a risk of repetition of the conduct.

The panel considered whether a finding of impairment is necessary on the grounds of public protection. The panel considered that the public protection issues identified in this case relate to the deletion of the care plan. The panel noted your acceptance of your failures in relation to this. However, having found that your insight is central to your own personal impact and that there was not any sufficient practical remediation in relation to this, the panel could not be satisfied that you have demonstrated there is no future risk to patients if you were to return to unrestricted practice. The panel therefore determined that a finding of impairment is necessary on public protection grounds.

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.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your 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 your name off the register. The effect of this order is that the NMC register will show that your name has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Leathem informed the panel that in the Notice of Hearing, dated 1 March 2021, the NMC had advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired. She submitted that a sanction should be proportionate and is not designed to have a punitive effect. She submitted that it should protect the public, maintain public confidence in the profession and declare and uphold proper standards of conduct and performance.

Ms Leathem identified what she considered to be mitigating and aggravating features in this case.

Ms Leathem submitted that Ms Boyd has been subject to an interim suspension order since 4 September 2020 meaning that she has had a more limited chance to address the risks in her practice. She stated that this is a relevant background factor but the guidance states that it would usually be wrong to deduct or discount the length of time for which the nurse was previously restricted or suspended from the sanction the panel imposes.

Ms Leathem submitted that the fact that a nurse does not have a past fitness to practise history is usually relevant where there are clinical failings shown to be one-off incidents during a long career. This, when shown alongside evidence of insight, reflection and strengthened practice. However, where allegations relate to deep-seated attitudinal concerns and behaviours that the professional hasn't fully addressed, the absence of a fitness to practise history is unlikely to be relevant. She referred to the SG which states:

> "*sometimes, the nurse, midwife or nursing associate's conduct may be so serious that it is fundamentally incompatible with continuing to be a registered professional. If this is the case, the fact that the nurse, midwife or nursing associate does not have any fitness to practise history cannot change the fact that what they have done cannot sit with them remaining on our register"*

Ms Leathem submitted that the offer to sell cannabis to a colleague is so serious that it negates the effect that a previously unblemished career would have had.

Ms Leathem took the panel through the sanctions available to it. She submitted that given the circumstances of this case, and taking into account the SG, it should lead to a finding that a striking off order is the only appropriate sanction.

Ms Leathem submitted that the courts have supported decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills or any risk of harm to the public. Striking-off orders have been upheld on the

basis that they have been justified for reasons of maintaining trust and confidence in the professions.

In closing, she submitted that a striking off order will ensure that confidence and trust in the profession is maintained and would mark the profound seriousness of the behaviour in this case.

You told the panel that you have thought about the potential impact on others as a result of your actions. You stated that no patients were brought to harm. However, you submitted that the consequences have already been ‘catastrophic’ for you. You told the panel that you lost your job, your reputation and are soon going to declare yourself bankrupt.

You submitted that you deny having made the offer to sell drugs and therefore it is difficult to gain insight on something you did not do.

You told the panel that your whole life has been changed as a result of these matters. You explained that you have focused on the impact that these matters have had on you and that this is because there has been an actual impact on yourself, whereas any impact on anyone else was only potential.

Decision and reasons on sanction

Having found your 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:

- Conduct which occurred in prison, a high-risk environment
- Irrational behaviour which gave rise to a potential risk to patients and colleagues

[PRIVATE], the panel was not satisfied that there were any mitigating factors in this case.

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 seriousness of the case, and the public protection issues identified, an order that does not restrict your 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 your 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 your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining alone. The panel also concluded that there were attitudinal issues which cannot be managed by a conditions of practice order. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public or meet the wider public interest.

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;*
- *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 found that none of the factors apply to this case.

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 your actions is fundamentally incompatible with you remaining on the register.

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

Finally, in looking at a striking-off order, the panel took note of the following 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?*

Your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct yourself, 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 you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Leathem. She submitted that an interim suspension order was necessary for public protection and is in the wider public interest to cover the 28-day appeal period and the duration for which any appeal may be heard.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period and the period during which any appeal may be heard.

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

That concludes this determination.