Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
16 – 17 June 2022
20 – 24 June 2022
4 – 8 July 2022
30 September 2022
8 – 9 November 2022
16 November 2022
5 – 6 January 2023

Virtual Hearing

Name of registrant:	**Katrina Bridget Mclaughlin**
NMC PIN:	78I3187E
Part(s) of the register:	Registered Nurse – Sub Part 1 RN1 Adult Nurse – September 1983 Registered Midwife – April 1996
Relevant Location:	Croydon
Type of case:	Misconduct
Panel members:	Gregory Hammond (Chair, Lay member) Jonathan Coombes (Registrant member) Laura Wallbank (Registrant member)
Legal Assessor:	Ian Ashford-Thom
Hearings Coordinator:	Shela Begum Amira Ahmed (8-9 and 16 November 2022) Jumu Ahmed (5 – 6 January 2023)
Nursing and Midwifery Council:	Represented by Matthew Kewley, Case Presenter Debbie Churaman (16 November 2022, 5 – 6 January 2023)
Miss Mclaughlin:	Not present and unrepresented (16-17 and 20- 24 June, 4, 6 and 8 July 2022, 16 November 2022, 5 – 6 January 2023) Present and unrepresented (5 July 2022 & 7 July 2022) (8-9 November 2022)

Facts proved:	1a, 1b, 2a, 2b, 3, 4a, 4c, 4d, 5a, 5b, 6b, 9, 10, 11, 12, 13, 14a, 14b, 15, 16b, 16c, 16d and 17
Facts not proved:	4b, 6a, 7, 8 and 16a
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Mclaughlin was not in attendance and that the Notice of Hearing letter had been sent to Miss Mclaughlin's registered email address by encrypted email delivery and by international post on 5 May 2022.

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

Mr Kewley, 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 Mclaughlin 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 Mclaughlin

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

Mr Kewley submitted that the charges relate back to incidents that had taken place in 2019. He submitted that this is the third attempt at listing this substantive hearing. Mr Kewley informed the panel that this hearing was originally scheduled to take place in October 2021, but the hearing was adjourned in order to allow Miss Mclaughlin to secure legal representation. He further informed the panel that a preliminary meeting was held where an adjournment request from Miss Mclaughlin was considered.

However, this request was denied. The hearing was listed to take place in March 2022, when Miss Mclaughlin's former representative attended but made a request to adjourn to allow further time to prepare Miss Mclaughlin's case. This application was granted by the panel. Mr Kewley submitted that both previous adjournments were granted on the basis that Miss Mclaughlin would be in attendance at the next hearing.

Mr Kewley told the panel that the dates for this hearing were agreed by Miss Mclaughlin's representative and Miss Mclaughlin did not raise any issues or concerns in relation to the proposed dates. However, he further explained that the NMC was informed on 28 May 2022, that Miss Mclaughlin's representative was ceasing to act on behalf of Miss Mclaughlin.

Mr Kewley informed the panel that the NMC has made numerous attempts from the end of May 2022 to ascertain what her position was in relation to the upcoming hearing.

Mr Kewley referred to the email dated 14 June 2022 from Miss Mclaughlin in which she stated:

> *'I would like to meet the Panel and read out my submission to them preferably on the first day of the hearing, for an hour or two.'*

[PRIVATE].

Mr Kewley referred the panel to the email from Miss Mclaughlin dated 15 June 2022 where she states:

> *'I am writing to ask you if you could adjourn my Substantive hearing even for a short while [PRIVATE] …*
> *I do have some very good evidence to present to prove that the referral from Spoa office of the Croydon Trust was wrong and I was wronged and there was malicious intent that led to the subsequent Interim Suspension…*

I know the NMC prosecutors want to get it over and done with. However I want justice to be done and the truth known, even if I do not practice as a nurse again, even if I am retired, I want the Truth to be known and I am more than sure that you the Committee do also.'

In a subsequent email, Miss Mclaughlin indicated she will be available to join the hearing from 12:00pm on the first day. She further stated:

'If they do not accept my adjournment, I just want to make one submission and read it out in front of the Committee Panel on one of the days of the hearing. It does not have to be tomorrow.'

Mr Kewley submitted that a number of issues are raised by Miss Mclaughlin as to why she cannot be present at this hearing. He submitted that there is a lack of evidence before the panel supporting these reasons, or that an adjournment would allow enough time for these issues to be resolved.

Mr Kewley submitted that Miss Mclaughlin has indicated that she may be able to bring a witness to these proceedings, but he reasoned that Miss Mclaughlin has had a lengthy amount of time and opportunity to track down any witnesses and bring them to the hearing.

Mr Kewley also invited the panel to consider the inconvenience caused to the witnesses who have made arrangements to be present at these proceedings and the inconveniences caused on the two occasions previously when the hearings were adjourned. Mr Kewley submitted that this also poses an inconvenience to the patients who are in the care of these professionals.

In closing, Mr Kewley submitted that there is no good reason to adjourn this hearing today.

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 Mclaughlin. In reaching this decision, the panel has considered the submissions of Mr Kewley, the emails from Miss Mclaughlin, 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:

- Miss Mclaughlin has indicated the she is aware of the hearing taking place on this date;
- This hearing has been adjourned on two occasions prior to this date;
- There is no reason to suppose that a further adjournment would secure her attendance at some future date;
- Six witnesses have been arranged to be present at 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.

There is some disadvantage to Miss Mclaughlin in proceeding in her absence. The evidence upon which the NMC relies will have been sent to her at her registered email address. The panel noted that if she does not attend, 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. Some indication of the nature of Miss Mclaughlin's case is apparent from the contents of the registrant's response bundle. Further, Mr Kewley has informed the panel that he intends to question the NMC's witnesses about issues that have been raised by Miss Mclaughlin. Finally, 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 Mclaughlin'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.

The panel noted that Miss Mclaughlin suggested in her email correspondence that she wishes to address the panel on some matters. The panel considered that she would still have the opportunity to do this and could join at any stage while the hearing is in progress. The panel also noted that there was a suggestion that she would like to call a witness. The panel considered that it remains open for her to do so at appropriate points during the hearing.

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

Decision and reasons on proceeding in the absence of Miss Mclaughlin

The panel reached the facts stage and after hearing live evidence from all the NMC witnesses, Miss Mclaughlin indicated that she wished to address the panel. On day 9 of the hearing, Miss Mclaughlin attended via video link and gave evidence under affirmation. The hearing adjourned just before 5pm on 5 July 2022 midway through Miss Mclaughlin's cross-examination by Mr Kewley. The panel had regard to an email sent overnight by Miss Mclaughlin to the hearing coordinator, dated 5 July 2022 time 22:21. The email stated:

> *'… I am writing to tell you that I will not be continuing with the questions under Afirmation* [sic] *or Oath…*

… I cannot participate any further when I should not be crossexamined [sic] *on charges that are HR and I can barely remember or never existed being three and a half years ago…*

.. I will not be participating any further. I will send you the supplementary notes of the questions I answered in Cross examination.'

The panel considered whether it should proceed in the absence of Miss Mclaughlin. It had regard to Rule 8 and heard the submissions of Mr Kewley who invited the panel to continue in the absence of Miss Mclaughlin.

Mr Kewley acknowledged the difficulties that being unrepresented at these hearings may present and submitted that his approach to the cross-examination of her evidence was giving Miss Mclaughlin the chance to say more than if she had been cross-examined on a more traditional basis, of being asked closed leading questions. He submitted that the approach of the cross-examination was for her benefit and to elicit her accounts of the incidents.

Mr Kewley submitted that there is a professional obligation to address each charge during cross-examination and further that the cross-examination was carried out in a manner that was fair, proper, courteous, and polite. He submitted that there can be no legitimate complaints about the approach and that, if there were, it would have also been open to the panel and the legal assessor to raise these concerns or stop the cross-examination.

Mr Kewley referred to Miss Mclaughlin's procedural complaints within her email in which she states:

'The NMC Charges are about HR issues1-16 that are add ons[sic] nothing to do with the original ISO…
… my case has arrived at a substantive hearing and the Committee were not presented with all my exhibits before hand.

… Also I was not able to respond to the CE report.'

Mr Kewley submitted that as far as he is aware, there is no procedural impropriety or concerns that prevents this hearing taking place lawfully and that if there were any legal impediments these would have been raised at the outset. Mr Kewley submitted that in relation to the exhibits, the registrant's response bundle was put before the panel and cross-checked and the one document that was potentially not included was put before the panel before Miss Mclaughlin began giving her evidence. This bundle was included in the documents put before the panel, by the NMC, in fairness to Miss Mclaughlin.

Mr Kewley submitted that Miss Mclaughlin is entitled to withdraw from the hearing, but he submitted that there will be adverse inference from him within his closing submissions, in relation to Miss Mclaughlin's evidence being untested for charges 9 to 17.

Mr Kewley invited the panel to proceed in the absence of Miss Mclaughlin.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Mclaughlin. In reaching this decision, the panel has considered the submissions of Mr Kewley, the emailed representation from Miss Mclaughlin, and the advice of the legal assessor. It noted that:

- No application for an adjournment has been made by Miss Mclaughlin at this stage;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The charges relate to events that occurred in 2019; and
- There is a strong public interest in the expeditious disposal of the case.

The panel noted that Miss Mclaughlin attended the hearing after the panel concluded hearing live evidence from the NMC's witnesses. The panel noted that Miss Mclaughlin gave her evidence under affirmation and was cross-examined by Mr Kewley on behalf of the NMC in relation to charges 1 to 8.

The panel has borne in mind that Miss Mclaughlin has voluntarily withdrawn from the hearing at this stage and does not wish to engage any further with the hearing process.

The panel had regard to the email from Miss Mclaughlin and it noted her concerns about the approach to the cross-examination. The panel considered that at the outset of the cross-examination process, it was explained by Mr Kewley and the Chair of the panel to Miss Mclaughlin that if she did not recall any information, she should say and that it was understandable that it is difficult being unrepresented in these proceedings. The panel also noted that during the hearing Mr Kewley further explained to Miss Mclaughlin that because of this, to assist her, he would approach the cross-examination by covering ground that would have been covered if she were represented at the hearing by counsel.

The panel determined that Miss Mclaughlin can re-join the hearing at any stage, and it is also open to her to present further written submissions to the panel if she wishes.

The panel determined that there is a strong public interest in the expeditious disposal of this case and in these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Mclaughlin. The panel will draw no adverse inference from Miss Mclaughlin's absence in its findings.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Kewley, on behalf of the NMC, to amend the wording of charge 1. Charge 1 currently reads as follows:

"1) On 17 January 2019:

a) *Responded rudely to Colleague B's request to sit at a particular desk.*
b) *Having been spoken to by Colleague B about the inappropriateness of wearing headphones in the office:*
   i. *you stood up and stamped your foot*
   ii. *said you would not be spoken to like that by someone younger than you, or words to that effect."*

The proposed amendment for charge one reads as follows:

*"1) On **or around** 17 January 2019:*

a) *Responded rudely to Colleague B's request to sit at a particular desk.*
b) *Having been spoken to by Colleague B about the inappropriateness of wearing headphones in the office:*
   i. *you stood up and stamped your foot*
   ii. *said you would not be spoken to like that by someone younger than you, or words to that effect."*

Mr Kewley submitted that the proposed amendment does not alter the substance of the charge and relates to a technicality of the date rather than changing the parameters of the alleged misconduct and therefore will not prejudice to Miss Mclaughlin. Mr Kewley submitted that the proposed amendment would provide clarity and more accurately reflect the evidence.

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 Miss Mclaughlin 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 and accuracy.

Details of charge (as amended)

That you, a Registered Nurse:

1) On or around 17 January 2019:
    a) Responded rudely to Colleague B's request to sit at a particular desk.
    b) Having been spoken to by Colleague B about the inappropriateness of wearing headphones in the office:
        i. you stood up and stamped your foot
        ii. said you would not be spoken to like that by someone younger than you, or words to that effect.

2) On 21 January 2019:
    a) Did not return to work following your lunch break.
    b) Did not inform management that you would not be returning to work after your lunch break.

3) On 31 January 2019 did not arrive at work until approximately 10:45 when you should have been at work at 8am.

4) On 4 February 2019:
    a) Arrived at work at approximately 8am without your Smart Card.
    b) Did not contact the Information Technology department about your lack of Smart Card.
    c) Did not carry out any work between approximately 8am and 11am as you were unable to access EMIS.
    d) Went on an early lunch, as agreed, at 11am to look for your Smart Card but then at approximately 12:40 called to say you would not be returning to work.

5) On 1 March 2019:
    a) In the morning, left the office for approximately 20 minutes to put money on your car.

b) At approximately 11:20 left for lunch but did not return until approximately 12:40.

6) Did not complete triage referrals correctly in that:
    a) you often did not call the District Nurse on receipt of the referral before determining if the referral was urgent or non-urgent.
    b) you did not make sufficient entries on EMIS to allow colleagues to understand the patient's issues and/or their severity.

7) Input data on EMIS which said you had contacted the district nurse when you had not.

8) Your actions in charge 7 above were dishonest in that you knew you had not contacted the district nurse.

9) In March 2019 when taking a call from GP 1, put them on hold and then left the office.

10) On 18 January 2019 did not follow the referral process in that having left a voicemail for a District Nurse, you did not answer the phone when the District Nurse(s) called back.

11) On 14 February 2019 called the relative of a patient to ask about medication when you should have called the referrer.

12) On or around 28 February 2019 responded aggressively towards Colleague A when she asked you for paperwork to complete a spreadsheet.

13) On 28 February 2019, did not complete the triaging process as you did not transfer the patient referral from the inbox to the correct nurse's inbox.

14) On 1 March 2019:
    a) Left Colleague A to man 3 phones alone for approximately 20 minutes.

b) Responded aggressively to Colleague A when she raised with you the triage incident at Charge 13.

15) On 6 March 2019 did not follow instructions from Colleague C, given on one or more occasions, to take a ‘telephone discharge follow-up referral’.

16) Displayed racist behaviour in the workplace that you:
    a) Referred to other colleagues in the Rapid Response team by their name except Colleague A.
    b) On one or more occasions called Colleague A ‘the black one’.
    c) Would act dismissively and/or walk away from Colleague A if she tried to speak to you.
    d) On 13 March 2019, when taking a call from a district nurse, muttered that the nurse should learn to speak English or words to that effect.

17) On 24 February 2020, you procured registration to the Register of Nurses and Midwives maintained by the Nursing and Midwifery Board of Ireland, by dishonest misrepresentation in the application made by you on 7 February 2020.

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.

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 Kewley on behalf of the NMC and by Miss Mclaughlin.

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: Operational Lead for Community Service, Hospital Avoidance Services (HAS).
- Witness 2: Single Point of Assessment Clinician for Rapid Response, Croydon Health Services NHS
- Witness 3: Director of Regulation, Nursing and Midwifery Board of Ireland
- Witness 4: Rapid Response Matron, Croydon Health Services NHS
- Witness 5: Senior Rapid Response Matron, Croydon Health Services NHS
- Witness 6: Rapid Response Triage Nurse, Croydon Health Services NHS

Miss Mclaughlin decided to attend the hearing after the panel concluded hearing the evidence of the NMC's witnesses. The panel heard evidence from Miss Mclaughlin under affirmation but she disengaged partway through cross-examination by Mr Kewley, returning later to give a final submission on the facts.

Background

The charges arose whilst Miss Mclaughlin was employed as a registered nurse by Croydon Health Services NHS Trust (the Trust). Miss Mclaughlin was working as a band 6 single point of assessment clinician with the Rapid Response Service which

fell within the Trust's Hospital Avoidance Services and the duties involved triaging inbound referrals for district nurses. The referral raises concerns about Miss Mclaughlin's Fitness to Practise.

Miss Mclaughlin resigned from the Trust on 26 March 2019.

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

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

Charge 1a

1) On or around 17 January 2019:
    a) Responded rudely to Colleague B's request to sit at a particular desk.

This charge is found proved.

In reaching this decision, the panel considered the evidence of Witness 5 and the evidence provided by Miss Mclaughlin.

The panel heard from Witness 5 that the triage role required Miss Mclaughlin to sit at a particular desk and that the desk Miss Mclaughlin wanted to sit at was not considered appropriate. The panel also heard from Witness 5 during her evidence that Miss Mclaughlin had agreed to move to another desk but 'responded rudely'.

The panel noted that during her evidence, Witness 5 suggested that she could not recall the exact words used by Miss Mclaughlin in response to her request to sit at a particular desk but that it would have been words to the effect of 'why should I do what you're telling me'. Witness 5 described Miss Mclaughlin at the time of the incident as 'abrupt'.

The panel had regard to the written statement of Witness 5 which stated:

> *'Katrina responded rudely but finally agreed to move, she then moved to another desk.'*

The panel concluded that that the oral evidence given by Witness 5 was consistent with her written statements.

During Miss Mclaughlin's evidence, she stated that she made a suggestion to her colleagues in relation to which desk she should sit at and that she did what her colleagues 'demanded' to keep the peace. She stated that she felt her colleagues were trying to provoke a response from her to upset her.

The panel noted that 'rude' is defined in the Oxford dictionary as '*offensively impolite or bad-mannered' and 'having a startling abruptness'*. The panel considered that rudeness relates to the language used and the manner which is adopted when communicating with someone.

The panel considered the evidence before it and the context in which the incident had occurred. It determined that on the balance of probabilities, it is more likely than not that Miss Mclaughlin did respond rudely to Colleague B's request to sit at a particular desk. The panel therefore found this charge proved.

Charge 1b

1) On or around 17 January 2019:
    b) Having been spoken to by Colleague B about the inappropriateness of wearing headphones in the office:
        i. you stood up and stamped your foot
        ii. said you would not be spoken to like that by someone younger than you, or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witnesses 2, 5 and 6. The panel also heard evidence from Miss Mclaughlin in relation to this charge.

The panel noted that the written statement of Witness 2 stated:

> *"[Witness 5] was trying to explain this to [Miss Mclaughlin] as she is our matron, a senior member of staff. Katrina stood up from her desk and stamped her foot on the floor to reiterate her anger."*

Witness 2 informed the panel during her evidence that she was sat opposite and facing Miss Mclaughlin at the time and was therefore an eyewitness to the feet stamping incident. Witness 2 described seeing Miss Mclaughlin jump up from her desk and stomp her feet to reiterate her anger. During her evidence, Witness 2 further informed hearing Miss Mclaughlin shout "I will not be dictated to by someone 30 years my junior" or words to that effect.

The panel had regard to the written statement from Witness 5 dated 26 September 2019 which stated:

> *"I left the room for around 10 minutes, and on my return she had moved to another computer. She reported to my colleagues [Witness 6 and Witness 2] that she didn't like being told what to do by somebody 30 years her junior…"*

During her evidence, Witness 5 informed the panel that she was not an eyewitness to the feet stamping but did recall her being 'angry' and 'a little bit rude to me'. Witness 5 further informed the panel that she had concerns about Miss Mclaughlin's behaviour.

The panel had regard to the written statement of Witness 6 which stated:

> *"I remember this incident as I was in the office that day with [Witness 2 and Witness 5]. [Witness 5] had spoken to [Miss Mclaughlin] nicely to explain that she could not wear her headphones other than when taking referrals. [Miss Mclaughlin] got up from her chair and stamped her feet."*

During the evidence of Witness 6, she explained that she was also an eyewitness to this incident. She explained that she could hear what was going on and was sat two desks away from Miss Mclaughlin. She further remembered seeing Miss Mclaughlin stand up quickly and stomped her feet. Witness 6 stated that she heard Miss Mclaughlin saying she 'would not be spoken to like that by a whipper snapper' or words to that effect.

The panel had regard to the written representations from Miss Mclaughlin which stated:

> *"I did not mind being told what to do as I was the new girl. I of course respected their knowledge of community nursing. One day they were deciding where I should sit, it felt more like control, it seemed important to them..*
> *… I did not stomp my feet like a child. Thankfully I do not suffer from tantrums, but I walked out to the other room and took a breath from the atmosphere and walked back into the room saying I would sit where they wanted me to sit to keep the peace.*
> *I do not recall at all saying someone younger should not speak to me in such a way, I have worked well with many younger nurses and midwives than myself I have no issue with age, what I was thinking and experiencing was that they did not want to listen to what I had to say."*

The panel has heard live evidence from Witness 2 and Witness 6 who were direct eyewitnesses to the incident. The panel also heard evidence from Witness 5 and determined that the evidence of all three witnesses is clear and cogent. The panel also noted that the accounts given by the witnesses during their live evidence was consistent with their written statements. The panel concluded that it preferred the evidence of the NMC witnesses than that of the evidence given by Miss Mclaughlin in relation to this charge. The panel therefore found this charge proved.

Charge 2a and 2b

2) On 21 January 2019:

a) Did not return to work following your lunch break.
b) Did not inform management that you would not be returning to work after your lunch break.

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Witness 5 and the evidence from Miss Mclaughlin in relation to this charge.

The panel had regard to the written statement of Witness 5 which states:

> *"Katrina had been allocated an hour for lunch and she took this at 12:30hours. I left the office to see a patient and returned at 13:40hours, I noticed that Katrina had not returned from her lunch break…*
>
> *… she should have telephoned and informed us of this. This left us our service short staffed and it had an impact on the other triage nurses."*

The panel also had regard to the written statement of Witness 5 dated 26 September 2019 in which she states:

> *"At 12:30, Katerina decided to go on her lunch break for 30 minutes. We were leaving the building at the same time, and on our exit, she was feeling unwell…*
>
> *… I returned to the office at 1:40, and asked where Katerina was. I was informed that she hadn't returned from her lunch break. I telephoned Katerina at 1:40. She informed me that she was at home in bed as she hadn't been feeling well…"*

Miss Mclaughlin stated during her evidence that this incident did not happen as described. She further stated she would never not turn up for work or not return from her lunch break without phoning the office first.

The panel found the evidence of Witness 5 to be credible. It noted that Witness 5 was able to provide a contemporaneous note of the incident and provide live evidence that was consistent with this. The panel therefore preferred the evidence of the NMC than that of Miss Mclaughlin and therefore finds this charge proved.

Charge 3

3) On 31 January 2019 did not arrive at work until approximately 10:45 when you should have been at work at 8am.

This charge is found proved.

In reaching its decision, the panel took into account the evidence of Witness 1 and Miss Mclaughlin's evidence as well as the documentary evidence.

The panel had regard to an email from Witness 1 addressed to Miss Mclaughlin dated 31 January 2019. The email stated:

> *"Many thanks for meeting with me this morning to discuss why you were almost three hours late for work on the morning of Thursday 31/01/2019…*
> *…Your working hours are 8am – 6pm with a 1 hour break during the day. Today you arrived to work at 10:45…*
> *…It was during this call that you said you had misplaced your house keys and that was the reason you were running very late."*

The panel heard evidence from Miss Mclaughlin in relation to why she was running late, and she suggested that she may have been looking for her identification badge.

The panel found that there were inconsistencies in Miss Mclaughlin's version of events and found the documentary evidence of Witness 1 to be consistent with her live evidence. The panel therefore preferred the evidence of the NMC in relation to this incident and found this charge proved.

Charge 4a

4) On 4 February 2019:
    a) Arrived at work at approximately 8am without your Smart Card.

This charge is found proved

In reaching this decision, the panel took into account the evidence of Witnesses 2 and 6.

The panel heard from both witnesses that they began working on shift with Miss Mclaughlin at 08:00am. The panel had regard to Witness 6's written statement which stated:

> *"I recall this day because I was working with Katrina. Katrina arrived at work and said that she could not find her smart card."*

The panel also had regard to an email from Witness 6 addressed to Witness 1 and Witness 4 dated 4 February 2019. The email stated:

> *"Katarina arrived for her shift today at 08:00hrs she advised both myself and [Witness 2] that she did not have her Smart Card with her as she was unable to find it…"*

The panel heard evidence from Miss Mclaughlin during which she stated that on one occasion she did forget her smart card but that she does not remember the date that this occurred.

The panel determined that based on the evidence before it, it is more likely than not that Miss Mclaughlin did arrive at work without her smart card. The panel therefore found this charge proved.

Charge 4b

4) On 4 February 2019:

b) Did not contact the Information Technology department about your lack of Smart Card.

This charge is found NOT proved.

In reaching its decision, the panel took into account the evidence of Witness 2, Witness 6 and Miss Mclaughlin. as well as the documentary evidence before it.

Witness 6's written statement states:

> *"If you believe you have lost your smart card you have to report the issue to HR and ask them to block that card and ask for a new one."*

During her live evidence, Witness 6 informed the panel that the correct procedure is to contact the information technology department (IT) and that she mistakenly referred to Human Resources (HR) in her written statement.

The panel also had regard to an email from Witness 6 addressed to Witness 1 and Witness 4 dated 4 February 2019. The email stated:

> *"… Katarina then telephoned at 12:40 to say she had been trying to get through to HR to make arrangements to replace her card and [Witness 2] advised her to go to IT to get a new card…"*

The panel heard from Miss Mclaughlin during her evidence that she thought she remembered going to the IT department during her lunch break and that she was told to take her lunch break after this.

The panel is of the view that there is not sufficient evidence before it to prove that Miss Mclaughlin did not contact or go to the IT department about her lack of smart card. The panel therefore found this charge not proved.

Charge 4c

4) On 4 February 2019:

c) Did not carry out any work between approximately 8am and 11am as you were unable to access EMIS.

This charge is found proved

In reaching its decision, the panel took into account the evidence of Witnesses 2 and 6 and Miss Mclaughlin as well as the documentary evidence before it.

During her evidence, Witness 2 informed the panel that without a smart card it is not possible to access the required systems and therefore Miss Mclaughlin would not be able to carry out any work. Witness 2 further stated that she began working from 08:00am on this date. She stated that she raised the issue of Miss Mclaughlin not carrying out any work on that morning with her, but that she could not recall exactly what she had said.

Witness 6's written statement states:

> *"Without a smart card you could not log on to access the systems meaning you could not do any work. Katrina refused to go back and look for it."*

Witness 6 stated that she knew Miss Mclaughlin had not carried out any work as nothing can be done without the smart card. During her evidence, Witness 6 stated that she told Miss Mclaughlin to contact IT but that she ignored this.

The panel heard from Miss Mclaughlin that Witness 2 assigned her other work outside of the 'EMIS' system as she was not able to access this without her smart card. It also had regard to Miss Mclaughlin's written representations in which she states:

> *"On one occasion I did forget my smart card or could not find it. I went to the office and I did, contact the IT department as I phoned them from my desk in the office. I left a message with them about what I should do. They did not get back to me that morning so [Witness 2] gave me some other work to do while*

I could not access Emis system and I went over to the IT department during my lunch break I think I can remember, and was told to take my lunch break after that."

The panel found that the evidence of Witness 2 and Witness 6 was consistent with one another. Further it noted that Miss Mclaughlin stated that Witness 2 assigned her work outside of the EMIS system but this was not supported by Witness 2 during her evidence or within the documentary evidence. The panel preferred the evidence of the NMC's witnesses in respect of this charge and found that it is more likely than not that the events occurred as they are set out in this charge. The panel therefore found this charge proved.

Charge 4d

4) On 4 February 2019:

d) Went on an early lunch, as agreed, at 11am to look for your Smart Card but then at approximately 12:40 called to say you would not be returning to work.

This charge is found proved.

The panel had regard to an email from Witness 6 addressed to Witness 1 and Witness 4 dated 4 February 2019. The email stated:

'… [Witness 2] and myself advised her to go and look in her car, Katerina did not go and look, at 11.o.clock she took an early lunch so she could go and look for her card

At 12:05 Katarina phoned to say she could not find her card…

… [Witness 2] advised her to go to IT to get a new card, she then asked if she could call it a day as she felt unsettled…"

The panel had regard to the written statement of Witness 5 which stated:

"*I telephoned Katrina but it went to voicemail, she called back at 13:00hours. We had a long conversation and Katrina said she was surprised that there were 3 people on triage that day and that she wasn't needed because the 2 experts were there."*

The panel determined that the evidence of the NMC's witnesses is cogent and consistent. The panel also noted that Witness 6 made a contemporaneous record in the form of an email about the incident which was consistent with her evidence. The panel considered that Miss Mclaughlin's evidence contradicts the contemporaneous email from Witness 6 and that the panel found that Miss Mclaughlin's evidence was limited in that she repeatedly stated she could not remember. Further, the panel found that the evidence Miss Mclaughlin gave in relation to this charge was vague. The panel therefore prefers the evidence of the NMC witnesses and finds this charge proved.

Charge 5a

5) On 1 March 2019:
    a) In the morning, left the office for approximately 20 minutes to put money on your car.

This charge is found proved.

In reaching its decision, the panel took into account the evidence of Witness 1, Witness 6 and Miss Mclaughlin's evidence.

During her evidence, Witness 1 informed the panel that Miss Mclaughlin had disappeared from the office for 20 minutes to put money on her car.

The panel also had regard to Witness 1's written statement which read:

"Katrina kept disappearing out of the office, and on this day she had disappeared for about 20 minutes to put money on her car… Katrina said she

needed to leave the office again at 11:05hours to put more money on her car and she said she was going to bring her car back to her Trust accommodation. It was agreed for her to do this during her lunch break."

The panel also heard from Witness 6 and during her live evidence she informed the panel that Miss Mclaughlin had left the room at the busiest time of the day and did not inform colleagues where she had been. Witness 6 said that Miss Mclaughlin did not act as a 'team player'. The panel also had regard of Witness 6's written statement which stated:

"At 9.15 she walked away from her desk without saying anything to me. Katrina was gone for 20 minutes which is unacceptable because the office
was busy and I was left to monitor 3 phones."

The panel noted that both Witness 6's documentary evidence and live evidence was consistent with the email addressed to Witnesses 1 and 4 dated 4 March 2019 which stated:

"At approximately 9.10 [Miss Mclaughlin] and I were working together as SPOA triage nurses, at 9.15 she walked away from her desk. There was no explanation as to where she was going or what she was going to do. She was missing from her desk for 20 minutes which is unacceptable, the office is busy and leaving one person to man 3 phones is poor practice"

During Miss Mclaughlin's evidence, she informed the panel that she asked whether she could leave the office and was allowed to do so. She further said that she left for 15 – 20 minutes and that she did not know that she had been instructed to put money on her car during her lunch break.

Based on the evidence before it, including Witness 6's direct eyewitness account and Miss Mclaughlin's evidence, the panel determined that Miss Mclaughlin did leave the office for approximately 20 minutes to put money on her car. The panel therefore finds this charge proved.

Charge 5b

5) On 1 March 2019:
    b) At approximately 11:20 left for lunch but did not return until approximately 12:40.

This charged is found proved.

The panel noted that the written statement of Witness 1 stated:

> *"Katrina left the office at 11:20hours to do this and was not seen again until 12:40 hours. She had not returned to the office but was seen shopping at Marks and Spencer in the hospital."*

The panel also had regard to the documentary evidence of Witness 1 which stated:

> *"[Miss Mclaughlin] stated she would be 20mins, I agreed and said that this would be part of her 1 hour lunch break and that she would be left with 40mins left to take. She agreed and left the office at 11:20. However Katerina did not return until 12:40. Katerina was in this time seen in the hospital Marks and Spencer by a fellow team member when she went in to drop some bloods off. Upon, return Katerina was asked where she had been and replied very quickly that she was owed the time as she had to have a dentist appointment on her day off which she thought she was allowed to take. Advised that all appointments should be made on your day off in your own time. Katerina was not happy with this and continued to state that she was owed time from when she has stayed 5-l0mins later after finishing at 6pm. Advised that we shall discuss this in further detail in the 1:1 that was this afternoon after having to delay it from this morning as she needed to move her car."*

The panel had regard to the documentation which evidences a 1:1 meeting between Miss Mclaughlin and Witness 4. The notes of the meeting stated:

“Over the past week there had been an improvement in time keeping however today it has been noted and discussed that you left the office for 20 mins this morning. You explained that you needed to put money on your car. You were advised that you need to inform staff where you are going as nobody knew where you had gone for this period of time. You then advised [Witness 4] that you needed to have an early lunch but did not return for 1 hr 20mins.

Please take note that lunch breaks are for only 1 hour and that you are to call the office if you for whatever reason are returning late.”

Based on the evidence before it, the panel found this charge proved.

Charge 6a

6) Did not complete triage referrals correctly in that:
    a) you often did not call the District Nurse on receipt of the referral before determining if the referral was urgent or non-urgent.

This charge is found NOT proved.

The panel heard evidence from Witnesses 1 and 2 in relation to this charge.

Witness 1 informed the panel during her evidence that the purpose of the call to the District Nurse was to handover and notify the nurses of the referral and not to determine the urgency of the referral.

Witness 2 explained that when triaging referrals, the nurse would be required to use their judgement and determine the urgency of the referral and then, if urgent, the triage nurse would need to make a call to the district nurse to handover the referral.

The panel did not have any evidence of circumstances when this had happened and therefore determined that there is no evidence before it to demonstrate that Miss Mclaughlin had a duty to call the district nurses on receipt of the referral before determining the urgency of the referral. The panel therefore finds this charge not proved.

Charge 6b

6) Did not complete triage referrals correctly in that:
    b) you did not make sufficient entries on EMIS to allow colleagues to understand the patient's issues and/or their severity.

This charge is found proved.

The panel heard from Witness 2 in relation to this charge. During her evidence she explained that she could not recall specific times when Miss Mclaughlin had not made sufficient entries on EMIS.

The panel had regard to Witness 2's written statement which stated:

> *"I cannot remember any specific examples of her record keeping on EMIS. However, I do remember that it was quite bad in general... The information she was given or gained was not captured in the documentation. She would open EMIS, close the referrals and then triage a nurse which meant that all of the information from the referrer was not being captured and documented well. Katrina was not recording the information about the patients in the referrals well. This is why I have reason to believe her record keeping was not good."*

The panel also had regard to the written statement of Witness 6 which stated:

> *"Katrina's record keeping was absolutely dreadful for a nurse it was not good at all… When a referral came through Katrina would make minimal notes, she was not doing her job effectively. I can only comment on my shifts with her though. I would check the system and see that she had not written enough information for the patients. When you go into the system you can see what your colleagues have written and Katrina's notes were always minimal. When you read the notes on a referral you should be able to see and understand*

what the issue is and how severe the incident is. With Katrina I was not able to understand what happened with patients as her notes were minimal."

The panel found that the live evidence of these witnesses was consistent with their documentary evidence.

The panel heard during Miss Mclaughlin's evidence that she did as she was instructed by her colleagues.

The panel considered that the evidence of Witnesses 2 and 6 is consistent. The panel took into account Miss Mclaughlin's evidence that she felt she was doing as she had been told, but it determined that the evidence of two experienced nurses in the same role, who were working with her quite frequently, have reported that her record keeping was insufficient.

The panel therefore determined that it is more likely than not that Miss Mclaughlin's record keeping on EMIS was inadequate. The panel therefore found this charge proved.

Charge 7 and 8

7) Input data on EMIS which said you had contacted the district nurse when you had not.
8) Your actions in charge 7 above were dishonest in that you knew you had not contacted the district nurse.

These charges are found NOT proved.

The panel heard from Witness 4 and during her evidence she outlined the typical order that the triaging process would follow.

The panel had regard to the written statement of Witness 4 which stated:

"Katrina wasn't documenting properly, she was inputting data on EMIS which said that she had contacted the district nurse when she in fact hadn't. You're supposed to call the district nurse or leave a message about a referral and then document that the call had been made before transferring it to the appropriate team."

The panel had sight of an email from Witness 2 dated 15 February 2019 which stated:

"I have also explained several times that when triaging we need to telephone the district nurses first before entering on emis to enable us to document if we spoke to them or left messages but she is still choosing to do things her way."

However, the panel did not have any specific evidence to demonstrate that Miss Mclaughlin had input data on EMIS which said she had contacted the district nurse when she had not. The panel noted that there was no cogent evidence in support of these charges and, further, it noted that the witnesses were unable to recall specific examples. The panel therefore finds charge 7 not proved and charge 8 automatically falls because it is dependent on charge 7.

Charge 9

9) In March 2019 when taking a call from GP 1, put them on hold and then left the office.

This charge is found proved.

The panel had regard to the evidence of Witness 4. Her witness statement reads:

"Katrina took a phone call from a GP and didn't have a pen. She put the phone down and walked out of the office, she was gone for about 3-5 minutes so I picked the phone up and took the referral."

The panel noted that Witness 4 was a direct eyewitness to this charge and that her live evidence was consistent with that of her written evidence.

During her evidence Miss Mclaughlin informed the panel that she did not recall this incident occurring. She provided information in writing to the panel which stated:

> *"I barely recall this as I dealt with a few calls from Gps[sic] but if he was put on hold it was because I was guided by [Witness 2] where to search for the information required for the call."*

The panel preferred the evidence of the NMC in relation to this charge. The panel considered that the NMC's evidence is consistent across documentary evidence and live evidence of the witnesses. The panel therefore determined that the evidence before it is sufficient to find this charge proved.

Charge 10

10) On 18 January 2019 did not follow the referral process in that having left a voicemail for a District Nurse, you did not answer the phone when the District Nurse(s) called back.

This charge is found proved.

The panel had regard to the written statement of Witness 5 which stated:

> *'Katrina was ringing the District Nurse to tell them about referrals. Usually you would leave a voicemail if you couldn't get through and the District nurse would call back. Katrina was not answering the phone when the District nurse called back.'*

The panel noted that Witness 5 was a direct eyewitness to this and further that her live evidence was consistent with her written statement. Witness 5 informed the panel that as a result of the calls not being answered by Miss Mclaughlin, Witness 2 was having to answer the calls and relay the required information to the district nurses. The panel also had regard to a note made by Witness 5 in relation to the incident which read:

‘I had noticed that she had been leaving voicemails for the DNs but when they were returning the call, Katerina wasn’t answering the phone so [Witness 2] was and then passing the message on which means doubling up on work.’

The panel had regard to Miss Mclaughlin’s written response in relation to this charge which stated:

‘I did call the Dn’s and if they were not available I would leave a voice message about the referral or for them to call me back. If I was at my desk and the DN’s called back then I would have answered the calls. Sometimes [Witness 2] would take over the calls if she thought I was unable to deal with them sometimes she would ask me to pass the calls to her.’

The panel preferred the evidence of the NMC’s witness in relation to this charge. The panel noted that Witness 5 was an eyewitness to this incident and further that her live evidence was consistent with the documentary evidence before the panel. The panel therefore finds this charge proved.

Charge 11

11) On 14 February 2019 called the relative of a patient to ask about medication when you should have called the referrer.

This charge is found proved.

In reaching its decision, the panel took into account the live evidence of Witness 2 and the documentary evidence.

The panel heard from Witness 2 during her live evidence that the correct process to obtain information on the patient is to contact the referrer. She told the panel that the referrer is best placed to answer any questions about the patient. She explained to the panel that Miss Mclaughlin did not do this and instead contacted the patient’s relatives.

Witness 2 explained that Miss Mclaughlin contacted the niece of a palliative patient which caused the niece to become distressed. She further explained that she had to take over the telephone conversation.

The panel also had regard to an email dated 15 February 2019 from Witness 2 addressed to Witnesses 1 and 4 which stated:

> *"[Miss Mclaughlin] also was triaging the referrals[sic] coming in by telephoning the patients relatives and distressing then[sic] when not able to explain why she was calling them. This resulted in me having to explain to a very distressed niece of a palliative patient…"*

The panel heard from Witness 1 that there are some occasions when it would be appropriate to contact the next of kin for a patient but specified that this would not be to discuss the patient's medical details.

The panel considered that the evidence of the NMC's witnesses provide a clear and cogent account of what occurred. Further it noted that there is a contemporaneous record of what occurred and that the live evidence of Witness 2 is consistent with this. The panel therefore determined that it prefers the evidence of the NMC's witnesses and that it is more likely than not that Miss Mclaughlin did call the patient's relative when the correct process would have been to contact the referrer. The panel therefore finds this charge proved.

Charge 12

12) On or around 28 February 2019 responded aggressively towards Colleague A when she asked you for paperwork to complete a spreadsheet.

The panel had regard to an email from Witness 6 dated 4 March 2019. The email stated:

> *"I was busy typing up notes for new patients. Cat asked if she could have the spread sheet as she had a catheter patient to put on. I replied if you leave it*

with me I can add that to the ones I am doing. After about 20 minutes I asked where her paperwork was. She stated she had given it to me. I confirmed that she had not and she became quite aggressive stating it was on my desk amongst all my other paperwork… She then stated "proof would be in the pudding" and went next door to check for the paperwork… She again went next door. On her return this time she dropped the paperwork on my desk. There was no explanation or apolgy[sic] for her actions or her attitude towards me…"

The panel heard from Witness 6 in relation to this charge during which she described Miss Mclaughlin to have appeared "really annoyed" and "very aggressive". During her evidence she explained that Miss Mclaughlin "slammed the notes" on her desk.

The panel determined that Witness 6's evidence was consistent with the documentary evidence. The panel found the evidence in relation to this charge to be cogent and therefore determined that this charge is found proved.

Charge 13

13) On 28 February 2019, did not complete the triaging process as you did not transfer the patient referral from the inbox to the correct nurse's inbox.

This charge is found proved.

The panel heard from Witnesses 4 and 6 in relation to this charge.

Witness 4 explained that there is no formal policy outlining the process for triaging but that as part of on-going training the process of triaging is taught to staff members. Witness 4 explained that until the email with the patient's referral is transferred to the district nurses' inbox, they would not know about that referral and this could leave potential for patient care to be missed.

Witness 4's witness statement states:

"[Witness 6] noticed that there was a triage that had not been released from the previous day and so she asked Katrina about this. Katrina responded argumentatively and said that [Witness 6] was the one doing triage on that day. [Witness 6] explained that she wasn't because Katrina's name was down on EMIS as having taken the referral."

The panel had regard to the email from Witness 6 dated 4 March 2019 which stated:

"I noticed that in the triage box there was a patient that had not been released from the previous day to the district nurses. I asked [Miss Mclaughlin] about this, to which her reply was very argumentative and aggressive. Stating that I was doing the triage from the day before, I was not and explained that she was triaging the day before and her name was against it. She continued to argue that it was not her, becoming very confrontational. Which it clearly was her as the notes on emis clearly state that she had spoken to the nurse but not realised[sic] or moved the patient into the nurses inbox… I moved the patient into the nurses inbox as this was the correct thing to do."

The panel also had regard to the documentation which outlined a 1:1 which took place between Miss Mclaughlin and Witness 4. It stated:

"Training has been completed for EMIS however on a number of occasions the triaging has not been fully completed. … especially on the morning of the 1st March during handover with a fellow clinical; however you denied that this was your mistake as you were triaging that afternoon. On investigation you had documented that you had contacted the DN regarding the referral but had not transferred the service to the correct team."

The panel heard from Miss Mclaughlin and during her evidence she stated that she accepts having made some errors and that she found that EMIS was a difficult system to navigate at times. Miss Mclaughlin provided written submissions to the panel which stated:

"I am sure I made some mistakes in the learning process. The Emis database was in my view complicated. However on one occasion I worked with [Witness 6]… I told her I had not transferred two or three of the names to the nurses inbox and offered to do this first before going to lunch. However she said just go and I will do it."

The panel also heard supplementary submissions from Miss Mclaughlin in relation to this charge but she appeared to address a separate matter relating to a "lunch time" incident.

The panel noted that the NMC's witnesses explained that this charge relates to an incident whereby a patient's notes were not transferred to the correct inbox in the afternoon for the district nurses to deal with in the morning.

Having had regard to all of the evidence in relation to this charge, the panel determined that this charge is found proved. The panel found the evidence of the NMC's witnesses to be clear and consistent and noted that there was a contemporaneous record outlining the incident as well as notes from a 1:1 between Miss Mclaughlin and Witness 4 which addresses the incident. The panel preferred the evidence in relation to this charge and found this charge proved.

Charge 14a

14) On 1 March 2019:
    a. Left Colleague A to man 3 phones alone for approximately 20 minutes.

This charge is found proved.

The panel heard from Witness 6 in relation to this charge.

The panel had regard to the email dated 4 March 2019 from Witness 6 to Witnesses 1 and 4 which stated:

"1st March 2019 At approximately 9.10 [Miss Mclaughlin] and I where[sic] working together as SPOA triage nurses, at 9.15 she walked away from her desk. There was no explanation as to where she was going or what she was going to do. She was missing from her desk for 20 minutes which is unacceptable, the office is busy and leave one person to man 3 phones is poor practice and selfishness towards colleges[sic] and the team."

Witness 6's written statement read:

"I was working with Katrina this day as SPOA triage nurses. At 9.15 she walked away from her desk without saying anything to me. Katrina was gone for 20 minutes which is unacceptable because the office was busy and I was left to monitor 3 phones."

Witness 6's live evidence was consistent with the documentary evidence before the panel.

Miss Mclaughlin provided written representations and in relation to charge 14 she states:

"I do not think this happened. They were using me as a scapegoat."

During her evidence, Miss Mclaughlin stated that she does not think she left Colleague A to man 3 phones alone.

Based on the information before it, the panel determined that on the balance of probabilities, it is more likely than not that Miss Mclaughlin did leave Colleague A to man 3 phones alone for around 20 minutes. The panel therefore finds this charge proved.

Charge 14b

14) On 1 March 2019:

b. Responded aggressively to Colleague A when she raised with you the triage incident at Charge 13.

This charge is found proved.

The panel had regard to the email from Witness 6 to Witnesses 1 and 4 dated 4 March 2019 which stated:

> *"I noticed that in the triage box there was a patient that had not been released from the previous day to the district nurses. I asked cat about this, to which her reply was very argumentative and aggressive. Stating that I was doing the triage from the day before…. She continued to argue that it was not her, becoming very confrontational. Cat clearly had made a mistake but would not be told and would not listen to the explanation that I was trying to give her… Cat is not a team player, always on the defence and will never admit when she is wrong…"*

The panel noted that Miss Mclaughlin's written representations in relation to this charge state:

> *"I do not recall this at all*" and
> "*I do not think this happened. They were using me as a scapegoat".*

The panel considered that the documentary evidence before it was consistent with the oral evidence of Witness 6. The panel considered the evidence of Miss Mclaughlin, but in relation to this charge, the panel preferred the evidence of the NMC. The panel noted that Witness 6 made a contemporaneous record of this incident and that her oral evidence was consistent with this. The panel therefore determined that on the balance of probabilities Miss Mclaughlin did respond aggressively as alleged and this charge is therefore found proved.

Charge 15

15) On 6 March 2019 did not follow instructions from Colleague C, given on one or more occasions, to take a ‘telephone discharge follow-up referral’.

This charge is found proved.

In reaching its decision in relation to this charge, the panel took into account the evidence of Witness 4. During her live evidence, she informed the panel that on 6 March 2019, Miss Mclaughlin was refusing to take a telephone discharge follow-up referral. She explained that it took multiple attempts of instructing Miss Mclaughlin to accept the referral before she did so.

The panel had regard to Witness 4’s written statement which states:

> *“Katrina wouldn’t follow instructions and on this occasion we had a phone referral from the hospital that Katrina was refusing to take. I said that this referral should be taken by her because it was a discharge follow up. It took me 4 attempts to tell Katrina to take the referral before she did this. She was adamant that the referral wasn’t for us, but she did eventually take the referral.”*

The panel noted that this incident was corroborated by another staff member who reported the incident to Witness 1 by email dated 7 March 2019. The email stated:

> *“Katrina was attempting to refuse a referral from the hospital. [Witness 4] stated that the referral should be taken as it was for us. (Discharge follow up) Katerina stated to [Witness 4] that she thought the referral was not. It took [Witness 4] 4 attempts to tell Katerina to take the referral and the details.”*

The panel considered that this email is consistent with the documentary evidence before it as well as the live evidence of the witnesses.

In relation to this charge, Miss Mclaughlin’s written representations stated:

> *“I do not recall this at all*” and

"*I do not think this happened. They were using me as a scapegoat".*

The panel determined that the evidence of the NMC is reliable and cogent. The panel took into account that Witness 4 was able to provide a coherent account of what occurred which was consistent with the documentary evidence. The panel therefore preferred the evidence of the NMC's witnesses and found this charge proved.

Charge 16a

16) Displayed racist behaviour in the workplace that you:
    a) Referred to other colleagues in the Rapid Response team by their name except Colleague A.

This charge is found NOT proved.

In relation to charge 16a, the panel considered the live evidence of Witness 6. During her evidence Witness 6 stated:

> *"she never called me by my name: "You", "Hey, you", that was the way she addressed me. Everyone else in the team called me by her name; she never did: it was "Hey you" or "Oh, hey", or she looked at me; she wouldn't talk to me, but she looked and didn't say anything, and I'm thinking, "I'm not talking to you; you're not talking to me".*

However, this was not corroborated by any other NMC witnesses. In her evidence, Miss Mclaughlin stated:

> *"I try to call people by their name… I call them by their names as much as possible, and if I didn't know their name then I would say, you know, "That lady". I just wouldn't -- I would try to find out their name."*

Miss Mclaughlin also referred to Witness 6 by name in a natural way throughout her evidence. On the balance of probabilities, the panel found that the NMC had not provided sufficient evidence to find this charge proved.

In relation to charges 16b – d, the panel first considered whether the events as alleged occurred and then went on to consider whether they met the Oxford dictionary definition of being racist behaviour.

Charge 16b

16) Displayed racist behaviour in the workplace that you:
    b) On one or more occasions called Colleague A ‘the black one’.

In relation to charge 16b, the panel had regard to the written statement of Witness 6. Her statement reads:

> *“Katrina used to call me ‘the black one’, she never called me by my name, only ‘the black one’, but she called everyone else by their names.”*

During her live evidence, Witness 6 informed the panel that Miss Mclaughlin had referred to her as ‘the black one’ on one occasion but that she did not hear this directly and was told about this incident by Witness 2. She further explained during her evidence that she did not address this incident or being called ‘the black one’ and describes ‘not telling anyone and just burying it’.

The panel had regard to the witness statement of Witness 2 which stated:

> *“I remember a time when Katrina made a comment to me which left me in shock… The team asked Katrina general questions about her work and who she worked with. Katrina told me that she answered them by saying she “works with [Witness 2] and the black one”. Katrina was referring to [Witness 6/Colleague A]. I did not report this incident to anyone but i discussed it with a colleague..”*

Witness 2's live evidence was consistent with this. She told the panel that this conversation took place in the office and also stated during her evidence that she did not raise this incident with anyone at the time.

Miss Mclaughlin during her evidence denied ever having used the term 'the black one'. In her written representations to the panel, she states:

> *"This is an absolute lie. I find it so offensive and disgusting to read this because I know she is lying and can prove it…*
> *Firstly word "black" to describe someone of darker skin tone is not a phrase I would use. I would call a person of different ethnicity by their name. If I did not know their name but knew their ethnicity I would say the French lady or the Nigerian lady for example…*
> *However according to the Home Office and that is very close to the Spoa office incidentally, it is politically correct to describe someone as black or white. However some ethnicities still do not like such descriptive terms. I like to call people by their names and I knew [Witness 6's] name.*
> *If it were true that I had called Rose "the black one all the time" this would have sounded odd and someone in the office would have commented on it surely and told the manager…"*

The panel considered that there were some inconsistencies within the documentary evidence and the live evidence of Witness 6 regarding the frequency that the term 'the black one' was used. However, the panel further noted that the live evidence of both Witnesses 6 and 2 regarding one incident when the term 'the black one' was used by Miss Mclaughlin, were consistent with each other. The panel took into account that Miss Mclaughlin denies these charges entirely and has consistently denied this. However, the panel found that, in respect of this charge, it preferred the evidence of the NMC's witnesses. It therefore concluded that it is more likely than not that Miss Mclaughlin did call Colleague A 'the black one' on at least one occasion.

Charge 16c

16) Displayed racist behaviour in the workplace that you:
    c) Would act dismissively and/or walk away from Colleague A if she tried to speak to you.

In relation to charge 16c, the panel had regard to the written statement of Witness 6 which states:

> *"Ever since Katerina started at the trust I could feel that she didn't like me, and I knew it was because of my colour. With everyone else she was ok. Whenever anyone else tried to talk to her she would be fine, but when I did she wouldn't have it. She wouldn't listen, would get angry, dismiss me or simply walk away. When me and her were working together she would just walk out, I wouldn't see her for hours."*

During her evidence, Witness 6 described it as 'common' for Miss Mclaughlin to act dismissively towards her or walk away from her. She stated that Miss Mclaughlin often appeared not to have time to talk to her.

Witness 6's written statement also read:

> *"I reminded Katrina how to get a new smart card that morning. When I told Katrina how to get a new card she did not respond but instead gave me a look of [contempt].*
> *…*
> *When I asked her where she went she gave me a*
> *look of [contempt] as she did not want to be questioned. She did not answer me or give an explanation for where she had gone."*

This was supported by Witness 6's during her live evidence.

The panel decided that there is sufficient evidence before it to determine that this charge is found proved. The panel considered that the documentary evidence provided by the NMC and the oral evidence of the NMC's witnesses are consistent

and provide clear accounts of instances whereby Miss Mclaughlin would act dismissively or walk away from Colleague A.

Charge 16d

16) Displayed racist behaviour in the workplace that you:
    d) On 13 March 2019, when taking a call from a district nurse, muttered that the nurse should learn to speak English or words to that effect.

The panel took into account the live evidence of Witness 1. The panel considered that Witness 1 describes hearing Miss Mclaughlin saying 'something like learning to speak English'. The panel noted that Witness 1 was a direct eyewitness to this incident and describes hearing words to the effect of those set out in the charge. The panel had regard to Witness 1's written statement which stated:

> *"There was another incident on 13 March 2019 whereby I believe I heard Katerina mutter under her breath that the nurse should learn to speak English. I did raise this in an email dated 13 March 2019 afterwards.. Katerina responded by email on 15 March and denied that this has occurred…"*

The email from Witness 1 addressed to Miss Mclaughlin dated 13 March 2019 states:

> *"I was also a little surprised when you took the call from a D/N… I am hoping that you did have her on hold when you muttered that she should learn to speak English… I found that comment wholly unacceptable."*

Miss Mclaughlin denied this incident and her response email to Witness 1 dated 15 March 2019 stated:

> *"I have to say some of the points you mentioned in this email are incorrect, unfortunately you have misheard and misinterpreted certain things… When you saw me struggling to understand what she was saying you took the phone call off me, thinking you could help… I would not and did not mutter*

anything derogatory under my breath about this woman but said I could not understand what she is saying… I find your remiss misperception whether innocent or deliberate, offensive."

The panel considered that the live evidence of Witness 1 was consistent with that of her documentary evidence. Further, the panel took into account that Witness 1 made a contemporaneous record of this incident when she addressed it to Miss Mclaughlin in the email dated 13 March 2019. The panel therefore prefers the evidence of the NMC's witness in relation to this charge and finds it more likely than not that words were used by Miss Mclaughlin as alleged.

Charge 16b, 16c and 16d

16) Displayed racist behaviour in the workplace that you:
    b) On one or more occasions called Colleague A 'the black one'.
    c) Would act dismissively and/or walk away from Colleague A if she tried to speak to you.
    d) On 13 March 2019, when taking a call from a district nurse, muttered that the nurse should learn to speak English or words to that effect.

These charges are found proved.

Having considered the limbs b, c and d of charge 16 and having found that they were more likely than not to have occurred, the panel considered the stem of charge 16 and whether limbs b, c and d amount to 'displaying racist behaviour in the work place'.

In relation to limb b, the panel considered that the racist connotation arises from the context that the phrase 'the black one' was used in and that it was perceived in a derogatory manner. The panel noted that Witness 2 recalled being shocked at the way the phrase was used by Miss Mclaughlin.

In relation to limb c, the panel considered that, on its own, the behaviour would not be considered as racist. However, it considered the context of the behaviour set out

in this charge and that the actions were displayed towards Colleague A which, together with limb b of this charge, the panel considered to be demonstrative of racist behaviours.

In relation to limb d, the panel considered that it has found Miss Mclaughlin's actions as set out in the charge are more likely than not to have occurred and that the comment as set out in this charge was perceived by Witness 1, who was a direct eyewitness to the incident, as racist.

The panel considered that collectively the behaviour set out in the charges are demonstrative of racist behaviour, given the context in which they occurred.

The panel took into consideration that Miss Mclaughlin's actions may not necessarily have been intended as racist. However, they were perceived by those witnessing the actions as racist. Further, the panel noted that the term 'racist behaviours' can be extremely broad and does not necessarily mean that the person is a racist person.

The panel took into account that the Oxford dictionary defines racism as *"the belief that different races possess distinct characteristics, abilities, or qualities, especially so as to distinguish them as inferior or superior to one another."* The panel found that there was a theme of 'superiority' in the manner in which Miss Mclaughlin delivered her evidence and set out her written representations. The panel considered that the actions set out in limbs b, c and d of charge 16 demonstrate an attitude of superiority from Miss Mclaughlin which manifested as racist types of behaviour.

In light of all the above, the panel finds that limbs b, c and d are demonstrative of racist behaviours and finds these limbs of the charge proved.

Charge 17

17) On 24 February 2020, you procured registration to the Register of Nurses and Midwives maintained by the Nursing and Midwifery Board of Ireland, by dishonest misrepresentation in the application made by you on 7 February 2020.

This charge is found proved.

The panel heard from Witness 3 in relation to this charge and found it to be reliable, credible and consistent.

Witness 3 explained during her evidence that a restoration application form (the form) can be completed and sent to the Nursing and Midwifery Board of Ireland (NMBI) to apply to re-join the register, if a registrant has been removed due to non-payment of the annual fee.

The panel had regard to the form completed by Miss Mclaughlin dated 7 February 2020. The form asked '*Have you worked as a nurse/midwife outside the Republic of Ireland since you were removed from the Register'* and Miss Mclaughlin answered '*no'*.

The panel heard from Miss Mclaughlin that she was confused by the question on the form and that is why she answered 'no'. She explained that she was under the impression that the purpose of the form was to update her details with the NMBI.

Miss Mclaughlin provided written representations which stated:

> *"I did not misrepresent the form filling for this application. The form was confusing and one did not know what jurisdiction they were appertaining to and it was mistake and misunderstanding."*

and

> *"I did not mention about the ISO in place because as the UK had, when I completed and sent the form to the NMBI left Europe with Brexit. I thought it was a different jurisdiction and not relevant to any nursing work I had or was to do in Ireland…*
> *… I was so sure that the ISO was going to be lifted."*

The panel had regard to the case of Ivey v Genting Casinos and the judgement of Lord Hughes which states:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

The panel considered the evidence before it and found that the form is clear and unambiguous in what it is asking. The panel heard from Witness 3 regarding the process and the reasons for the requirement of the form being completed. The panel did not find the explanation provided by Miss Mclaughlin to be plausible. The panel found that she knowingly made a false representation on the form with the intention of obtaining the benefit of being eligible for paid employment as a registered nurse in the Republic of Ireland, whilst she was subject to an interim suspension order imposed by the NMC in the United Kingdom. The panel considered that an ordinary decent person would find her actions to be dishonest. The panel therefore decided that this charge is found proved.

Fitness to practise

You attended this part of the hearing in full and were not represented.

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.

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 Kewley invited the panel to take the view that some of the facts found proved amount to misconduct. He referred the panel to specific parts of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code).

Mr Kewley identified the specific, relevant standards where your actions amounted to misconduct. He grouped the charges found proved together in themes/categories which included employment issues, issues specific to the triage nurse role, attitude and behaviour towards professional colleagues, and racism and dishonesty. He submitted that the panel would need to be satisfied that the individual facts of each category were so serious as to cross the threshold of misconduct.

Mr Kewley submitted that dishonesty in the form of seeking to mislead a healthcare regulator into granting registration is very serious and plainly amounts to a serious falling short of the required standard of conduct.

You gave oral evidence under oath and provided further written submissions. You said that safety is of the upmost importance to you and that patients need to be protected at all costs. You explained that you would not put any patients at risk and if you didn't know how to do something then you would tell someone or ask for assistance.

You submitted that no complaints of misconduct were ever made about you before working at the SPOA office or after working at the SPOA office at various Trusts up until present day. You explained that this includes while working in other parts of the same Croydon Trust at the same period of time as working in the SPOA office as a registered nurse.

You submitted that you have not committed misconduct and 'absolutely not' serious misconduct.

Submissions on impairment

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

Mr Kewley submitted that you have failed to show any insight into your misconduct. He explained that you have persistently failed to accept responsibility for your actions and have sought to criticise your former team and colleagues.

Mr Kewley submitted that you have not taken any advantage of the time period between the facts decision and the impairment stage to engage reflectively with the panel's findings of fact. He submitted that as a consequence of your lack of insight and remediation, the risk of repetition remains high. He concluded that if the misconduct was to be repeated, there would be a risk of harm and therefore a finding of impairment is required on public protection grounds.

Mr Kewley submitted that the facts found proved demonstrate that you have failed to act with professionalism and honesty. He submitted that you acted aggressively and have been rude towards your colleagues, and you intentionally sought to deceive the Irish nursing regulator and have displayed racist behaviour in the workplace. He submitted that such conduct is likely to damage the reputation of the nursing profession and a finding of current impairment is required on public interest grounds in order to declare and uphold proper standards of conduct and to maintain public confidence in the nursing profession.

It was apparent from your written and oral evidence that you did not accept that your fitness to practice is impaired. You suggested in your written evidence that your actions were highly unlikely to be repeated because they happened in the particular context of your employment. You repeated your defence from the facts stage in respect of your application to the NMBI.

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

Decision and reasons on misconduct

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

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

> ***8 Work cooperatively***
>
> ***8.1*** *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate;*
> ***8.2*** *maintain effective communication with colleagues;*

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues:

9.3 *deal with difference of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals 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*
20.5 *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

23 Cooperate with all investigations and audits
23.3 *tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel determined that charges 2 a) and b), 3), 4 a), c) and d) and 5 a) and b), which all relate to employment issues including lateness and timeliness, do not amount to misconduct individually or collectively. It noted that these charges are indicative of attitudinal issues but relate more to HR matters that could have been addressed at a local level by the Trust, had you not resigned from employment with them.

In relation to charges 6 b), 9, 10, 11, 13 and 14 a) which deal with issues specific to the triage nurse role including not following the correct processes and record keeping, the panel found that both individually and collectively these charges do not meet the bar for serious misconduct. It noted that you were still new in your role and were learning the processes. The panel found that you did make mistakes, but it would be unfair to view them as serious misconduct.

The panel was of the view that charges 1 a) and b), 12, 14 b) and 15, which all relate to your attitude and behaviour towards professional colleagues, collectively demonstrate an attitudinal problem. It noted that there were a number of incidents in which you did not behave appropriately, that this behaviour was repeated and was aimed towards senior staff members who had more experience than you in this particular area of nursing. The panel further noted that you were verbally aggressive towards colleagues and that a member of the public would think your actions were deplorable. While the panel did not find that any of these charges individually were sufficiently serious to amount to misconduct, viewed collectively the panel was satisfied that they did so.

In relation to charges 16 b), c), d) the panel noted that they deal with racism and dishonesty. It found that your attitude of superiority exhibited in charges 16 b), c), and d) manifested as racist behaviour. The panel was satisfied that this behaviour was deplorable, was a serious departure from the standards expected of a registered nurse and does amount to misconduct.

The panel found that in charge 17 you made a calculated dishonest misrepresentation. The panel determined that your actions fell seriously short of the conduct and standards expected of a nurse. The panel was satisfied that any fully

informed member of the nursing profession or the public would find your actions at charge 17 deplorable. The panel had no doubt that this was sufficiently serious to amount 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. Patients and their families must be able to trust nurse 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 found that limbs b, c and d of the above test are engaged in this case with regards to both the past and the future. With regard to limb a, although the panel found that there was no actual patient harm relating to these charges, it considered that the attitudinal issues including racist behaviour and dishonesty could potentially put patients at risk of harm in the future. The panel also considered that colleagues experienced emotional harm as a result of your misconduct. The panel determined that your misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that you have not demonstrated any insight into your actions. It noted your long history of nursing for 36 years and the references you provided but the panel attached limited weight to them because they were for the most part not directed towards the areas of regulatory concern that the panel have found amounted to misconduct.

The panel found that the misconduct in your case was largely attitudinal in nature and therefore difficult to address. It noted that you have not shown any evidence of insight or strengthening your practice. Although you spoke of undertaking some

training courses you did not provide any certificates and the panel noted that, in any event, they do not relate to the charges that amount to misconduct. The panel is therefore of the view that there is a significant risk of repetition and decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required in this case. It decided that public confidence in the profession would be undermined if a finding of impairment were not made. The panel determined that a member of the public or the nursing profession would find it deplorable that a nurse has shown racist behaviours and acted dishonestly. The panel 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.

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

On 16 November, Ms Churaman on behalf of the NMC drew the panel's attention to emails sent by Ms Mclaughlin [PRIVATE]. The panel suggested that references [PRIVATE] should be heard in private and Ms Churaman did not object to the application of 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 of any third party or by the public interest.

[PRIVATE]

Application for an adjournment/ proceeding in absence of Ms Mclaughlin

Ms Churaman presented the panel with a bundle containing emails sent in by Ms Mclaughlin regarding her non-attendance at the hearing and a request by her for a postponement of this hearing to allow her to attend the sanction stage.

Ms Churaman submitted that the NMC's position is that the panel should proceed in Ms Mclaughlin's absence today as there is a risk to the public and it is in the public interest to dispose of this case expeditiously. She submitted that it should be considered that Ms Mclaughlin has not made a formal request for an adjournment to the panel.

[PRIVATE]

[PRIVATE]

The panel also noted an email dated 15 November 2022 to her NMC case officer stated:

> *"I wish to clarify. I intend to attend the last two hearings but cannot attend on those dates for reasons previously stated. Those hearings will need to be postponed to a suitable date for both parties."*

The panel accepted the advice of the legal assessor. He advised the panel to look at Ms Mclaughlin's application for a postponement or adjournment through the lens of an application to proceed in Ms Mclaughlin's absence, as the circumstances of the case have changed since the original decision to proceed in her absence was made. He reminded the panel of the principles laid down in the cases of *R v Jones* and *General Medical Council v Adeogba (see above)*. Accordingly, the panel should consider the application with the utmost care and caution. The legal assessor also referred the panel to Rule 32 (4) of the Rules which state as follows:

"In considering whether or not to grant a request for postponement or adjournment, the Chair or Practice Committee shall, amongst other matters, have regard to -

(a) the public interest in the expeditious disposal of the case;
(b) the potential inconvenience caused to a party or any witnesses to be called by that party; and
(c) fairness to the registrant"

The panel has decided not to proceed in the absence of Ms Mclaughlin today. In reaching this decision, the panel has considered the submissions of Ms Churaman, the emails sent in by Ms Mclaughlin, and the advice of the legal assessor. It has had particular regard to the factors set out in the decisions of *R v Jones* and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Ms Mclaughlin in her emails to the NMC has applied for a postponement on the basis that she is unable to attend the hearing this week [PRIVATE].
- Ms Mclaughlin has made it clear she wishes to engage with the process and attend the hearing to give submissions on the sanction stage.
- No witnesses would be inconvenienced by the adjournment of this hearing today as the hearing is currently at the sanction stage.
- The public can be protected by an interim order if the panel determines that it is necessary and appropriate.
- Whilst there is a public interest in the expeditious disposal of the case, another short adjournment in the context of the overall time spent on the case will not be significant.

The panel determined that on balancing all factors and taking fairness into consideration it would allow Ms Mclaughlin's application for an adjournment to allow

her to attend the hearing at a future date and present her submissions on the sanction stage.

The panel proposed the dates of 5 and 6 January 2023 as the resuming dates for this hearing and have had these confirmed by the NMC listing team. The panel considered that these dates are sufficiently far in the future for both parties to plan around and that any further requests for postponement or adjournment would need to be supported by compelling, independent written evidence.

Day 18 of the hearing – 5 January 2022

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Mclaughlin was not in attendance and that the Notice of Hearing letter had been sent to her registered address by recorded delivery and by first class post, and to her registered email address on 15 December 2022.

Ms Churaman submitted that the NMC had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and the GoToMeeting link of the virtual hearing and, amongst other things, information about Miss Mclaughlin'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 Miss Mclaughlin has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Application to adjourn the hearing

On 19 December 2022 at 22:18 Miss Mclaughlin sent an email to the NMC Case Officer (CO) stating:

> *'I understand that my current IO is in place till 15 February 2023, and then you are applying for an extension of it for a further six months.*
>
> *I wish to attend the resuming hearing, but 5th and 6th January will now not be possible for me to attend.* [PRIVATE]*. Can I have a postponement till beginning of February or very late January 2023 please.*
>
> [PRIVATE].*'*

The NMC CO responded on 20 December 2022:

> *'You will need to make your application to postpone the dates to the panel or make a written application for the postponement. For the avoidance of any doubt the NMC will, at this stage, be opposing any application.*
>
> *You can also make written representations to the panel for the hearing on 5 and 6 January.'*

On 21 December 2022, 17:57, Miss Mclaughlin sent an email to the NMC stating:

> *'I request that the submission of NMC counsel, is sent to me immediately, before Christmas, for the two day sanction hearing in January. This is because of all the Christmas and New year holidays and when your office will be closed. NMC counsel have a habit of presenting their submissions last minute, even an hour or two before the hearing as happened at the last impairment hearing. This is totally unacceptable.'*

The Case Officer responded on 22 December 2022 at 10:03:

'I will send you a separate email with a copy of the submissions on sanction. Please note we are under no obligation to provide you with this; however, we have decided to assist you by providing these in advance.

Please also note that the case presenter is on leave and so while we are providing you with a copy of the submissions, we reserve the right to amend and expand on the written submissions, if required, at the hearing.

You are also invited to provide any written response to the sanction submissions in advance of the hearing.

[PRIVATE].

You are reminded of the panel's decision to adjourn on the last occasion and their indication that: any further requests for postponement or adjournment would need to be supported by compelling, independent written evidence.'

Miss Mclaughlin sent another email to the CO on 28 December 2022 at 11:49 attaching a written later to be put before the panel:

'I am writing to ask if you could kindly postpone my Sanctions hearing due to take place on 5th and 6th January 2023 at least until the end of January or first week of February 2023. I will still be subject to the ISO at that time. I will have a submission to send to you to read before the hearing.

[PRIVATE].

[PRIVATE].

This is an exceptional and unforeseen circumstance I have found myself involved in at present.'

Miss Mclaughlin sent another email to the CO on 3 January 2022:

‘I will not be attending the hearing on 5th or 6th January 2023 for reasons previously mentioned in my letter to the panel that I hope they have read. I will be sending a submission beforehand and I would like complete assurances that it will be read beforehand.’

Ms Churaman submitted that Miss Mclaughlin was told before the hearing was adjourned on 16 November 2022 that if further requests for postponement or adjournment were made, they would need to be supported by compelling, independent written evidence. Ms Churaman submitted that no such evidence was provided by Miss Mclaughlin.

Ms Churaman submitted that it would be in the public interest to deal with the hearing expeditiously as the only outstanding part is the sanction stage. She informed the panel that Miss Mclaughlin has been provided with everything, including the NMC’s submissions, but that she has not responded to them at all. She submitted that Miss Mclaughlin has been given countless opportunities and was given clear and direct instructions by the panel to provide evidence, which was not forthcoming. Ms Churaman informed the panel that it would be in the public interest and in fairness to Miss Mclaughlin to conclude the hearing swiftly. She therefore invited the panel to reject the application.

Application to proceed in the absence of Miss Mclaughlin

Ms Churaman referred the panel to the email trails from Mclaughlin requesting an adjournment of today’s proceedings. She also referred the panel to the cases of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162. She also referred the panel to the NMC’s guidance on ‘When we postpone or adjourn hearings’ (CMT-11).

Ms Churaman referred the panel to the following passage from *Adeogba*:

‘19. … It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that

practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.'

Ms Churaman submitted that Miss Mclaughlin had clear and direct instructions from the panel to provide cogent evidence if she were to make another application, which was not forthcoming. In the absence of such evidence, Ms Churaman submitted that it would be fair to proceed in the absence of Miss Mclaughlin today.

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

Decision and reasons on adjournment application and to proceed in the absence of Miss Mclaughlin

The panel was clear within its determination on 16 November 2022:

'… any further requests for postponement or adjournment would need to be supported by compelling, independent written evidence.'

Miss Mclaughlin has not provided any evidence to support her application for adjournment. It therefore was of the view that it had no compelling grounds for adjourning the hearing yet again.

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

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).

The panel has decided to proceed in the absence of Miss Mclaughlin. In reaching this decision, the panel has considered the submissions of Ms Churaman, the representations from Miss Mclaughlin, and the advice of the legal assessor. It has had particular regard to the factors set out in the decisions of *R v Jones* and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No evidence was provided by Miss Mclaughlin in support of her application for an adjournment;
- In the absence of independent evidence in support of the application, it would be in the interests of justice to proceed today;
- Miss Mclaughlin has referred to similar circumstances more than once in the course of this hearing but has not provided any independent evidence on any occasion;
- Miss Mclaughlin was aware from November 2022 that the hearing was to resume on 5 and 6 January 2023;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

The panel noted that there is some disadvantage to Miss Mclaughlin in proceeding in her absence, as she will not be able to address the NMC's submissions in person or give evidence on her own behalf. However, in the panel's judgement, this can be mitigated if Miss Mclaughlin chooses to provide the written submissions she has referred to in her above email dated 3 January 2023. Furthermore, any disadvantage is the consequence of Miss Mclaughlin's decision to absent herself from the hearing at this stage.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Mclaughlin off the register. The effect of this order is that the NMC register will show that Miss Mclaughlin 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 Churaman informed the panel that in the Notice of Hearing, dated 5 May 2022, the NMC had advised Miss Mclaughlin that it would seek the imposition of a striking-off order if it found Miss Mclaughlin's fitness to practise currently impaired.

Ms Churaman told the panel that imposing sanction is not intended to punish a practitioner and, whilst it may have a punitive effect, the primary reason for imposing a sanction is to protect the public and to declare and uphold proper standards expected of a registered nurse and to maintain confidence in the nursing profession. Ms Churaman submitted that the only appropriate sanction as a result of Miss Mclaughlin's misconduct would be a striking-off order.

Ms Churaman referred the panel to the NMC's guidance 'How we determine seriousness' (FTP-3):

> *'The Code says that nurses, midwives and nursing associates must treat people fairly without discrimination, bullying or harassment. It also states that individuals should be aware of how their behaviour can affect and influence the behaviour of others, be sure not to express personal beliefs inappropriately and use all forms of communication responsibly.*

The NMC takes concerns about bullying, harassment, discrimination and victimisation very seriously …

Not every finding of misconduct about these concerns will result in a finding of impaired fitness to practise, even though it will be likely with concerns relating to discrimination, such as racism. Conduct of these types can be more difficult to address as they suggest an attitudinal problem.

To be satisfied that conduct of this nature has been addressed, we'd expect to see comprehensive insight, remorse and strengthened practice from an early stage, which addresses the specific concerns that have been raised. In addition, we must be satisfied that discriminatory views and behaviours have been addressed and are not still present so that we and members of the public can be confident that there is no risk of repetition.'

Ms Churaman also referred the panel to the NMC's guidance 'Serious concerns which are more difficult to put right' (FTP-3a):

'A small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening.'

Ms Churaman submitted that Miss Mclaughlin's deliberately giving a false picture regarding her interim suspension order imposed by the NMC, on her application to the NMBI increased the seriousness of the dishonesty.

Ms Churaman submitted that the aggravating features in this case include:

- Misconduct which showed a deep seated attitudinal problem;
- Misconduct which caused emotional harm towards colleagues;
- Dishonesty in order to achieve financial gain by securing paid employment in Ireland; and
- Miss Mclaughlin demonstrates a complete lack of insight into her misconduct.

Ms Churaman referred the panel to the NMC's Guidance 'Considering sanctions for serious cases' (SAN-2). She submitted that Miss Mclaughlin had a potential personal financial gain from her making the false representation on the application form to the NMBI. This was with the intention of obtaining the benefit of being eligible for paid employment as a registered nurse in the Republic of Ireland, whilst she was subject to an interim suspension order imposed by the NMC.

Ms Churaman submitted that taking no further action or the imposition of a caution order would not be sufficient as the misconduct was at the higher end of the seriousness scale. She submitted that these options would not impose any restriction on Miss Mclaughlin's ability to practice. Therefore, they would not adequately protect the public or address the overall seriousness of the misconduct.

Ms Churaman submitted that a conditions of practice order would be insufficient to protect the public and to maintain public confidence as Mclaughlin's misconduct does not concern identifiable clinical deficiencies amenable to training. She submitted that this order would only be appropriate if there was no evidence of harmful deep seated personality or attitudinal problems, which are present in this case.

In relation to a suspension order, Ms Churaman submitted that this order would also be insufficient to protect the public and to maintain public confidence. She submitted that that there were multiple incidents of misconduct as opposed to a single instance, and as Miss Mclaughlin does not have any insight there remains a risk of repetition of the events which led to the findings of this case. She further submitted that Miss Mclaughlin has demonstrated deep seated attitudinal problems and that there is evidence of dishonest and racist behaviour. Ms Churaman submitted that such behaviour is fundamentally incompatible with Miss Mclaughlin practising as a registered nurse, so the only appropriate and proportionate order is a striking-off order.

Ms Churaman referred the panel to Miss Mclaughlin's written submissions on sanction and the accompanying testimonial letter received by the NMC. She

informed the panel that the letter was historic as it dates back to 2010 and it only provides a reference for that time. Further, Ms Churaman informed the panel that in Miss Mclaughlin's written submissions, she has alleged that the NMC has contrived this process in order to strike her off, and that the NMC was acting in bad faith. Ms Churaman disputed and rejected this allegation entirely and submitted that the NMC was acting in accordance with the evidence and the findings made at earlier stages of this hearing.

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

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- A pattern of misconduct over a period of time
- Deep seated attitudinal problems
- Complete lack of insight into any failings
- Conduct which caused colleagues emotional distress
- Personal financial gain from her dishonesty as Ms Mclaughlin did not tell the NMBI of the interim suspension order imposed by the NMC in order to secure work in Ireland
- Evidence of behaviour which manifested as racist in character
- No remorse

In mitigation, the panel took into account a number of historic references and testaments provided by Miss Mclaughlin which support her case that she has

practised effectively in the past. The panel also noted that Miss Mclaughlin was working in a new environment for her at the Trust. However, the panel was of the view that Miss Mclaughlin still had a professional responsibility to maintain the correct standards of behaviour and practice as directed by the Code.

The panel had regard to the NMC guidance on *'Considering sanctions for serious cases'* (SAN-2) and considered that Miss Mclaughlin's dishonesty was in the upper half of the spectrum of seriousness. In reaching this decision, the panel considered that Miss Mclaughlin's dishonesty was serious as it had the intention of a personal financial gain by knowingly making a false representation on the application form to the NMBI with the premeditated intention of obtaining paid employment as a registered nurse in the Republic of Ireland, whilst being subject to an interim suspension order imposed by the NMC.

The panel also had regard to the NMC guidance '*How we determine seriousness*' (FTP-3). It noted:

> *'Discriminatory behaviours of any kind can negatively impact public protection and the trust and confidence the public places in nurses, midwives, and nursing associates. We therefore take concerns of this nature seriously regardless of whether they occur in or out of the workplace. These concerns may suggest a deep-seated problem with the nurse, midwife or nursing associate's attitude, even when there's only one reported complaint. When a professional on the register engages in these types of behaviours, the possible consequences are far reaching. Members of the public may experience less favourable treatment, or they may feel reluctant to access health and care services in the first place. We know that experiences of discrimination can have a profound effect on those who experience it and that fair treatment of staff is linked to better patient care.'*

The panel considered that behaviour of a racist character is at the upper end of the spectrum of seriousness. It was of the view that, whilst the emotional harm caused was to a colleague rather than a patient, there is a potential risk of harm to patients

as the types of attitudes exhibited may cause a reluctance for patients to access health and care services.

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.

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

The panel next considered whether placing conditions of practice on Miss Mclaughlin's registration would be a sufficient and appropriate response. The panel determined that there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct and dishonesty identified in this case was not something that can be addressed through retraining as there were no clinical concerns, particularly where Miss Mclaughlin had not demonstrated any insight or remorse into her failings. The panel, therefore, concluded that the placing of conditions on Miss Mclaughlin's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the SG which outlines the circumstances where a suspension order may be appropriate. This case concerns a pattern of misconduct with a number of incidents over an extended period of time. Miss Mclaughlin has not demonstrated any insight or remorse, regarding her racist

type behaviour and dishonesty and there is evidence of harmful deep-seated personality or attitudinal problems.

The panel decided that Miss Mclaughlin's misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. It determined that the serious breaches of fundamental tenets of the profession, namely honesty and treating people equally, evidenced by Miss Mclaughlin's actions, are fundamentally incompatible with her remaining on the register. The panel also noted that Miss Mclaughlin had not given the panel any confidence that this type of behaviour would not be repeated. The panel therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction in that it would not protect patients or maintain confidence in the nursing profession or the NMC as its regulator.

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

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

The panel determined that Miss Mclaughlin's racist type behaviour and her dishonesty were a significant departure from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel decided that the findings in this case demonstrate that Miss Mclaughlin's misconduct was serious, caused colleagues emotional harm and had the potential to put patients at risk of harm. To allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel recognised the adverse effect that a striking off order may have on Miss Mclaughlin

but was mindful of case law and of the NMC's own guidance that the reputation of the nursing profession is more important than the fortunes of an individual nurse.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Mclaughlin's misconduct in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of a striking-off order would be sufficient in this case.

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

This will be confirmed to Miss Mclaughlin 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 Miss Mclaughlin's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Churaman. She submitted that an interim suspension order is necessary to protect the public and is otherwise in 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 and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow sufficient time for any appeal to be heard. The panel is satisfied that this order and for this period is proportionate in the circumstances of this case.

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

That concludes this determination.