Fitness to Practise Committee Hearing
29 August – 1 September 2017
NMC, 2 Stratford Place, London E20 1EJ

Name of Registrant Nurse:	Beverley Doreen Richards
NMC PIN:	75I3995E
Part(s) of the register:	Registered Nurse – Sub Part 1 RN1 – Adult (Level 1) – June 2000
Area of Registered Address:	Kent/France
Type of Case:	Misconduct
Panel Members:	Anthony Kanutin (Chair – Lay member) Dr Mooi Standing (Registrant member) Johanthan Coombes (Registrant member)
Legal Assessor:	Graeme Sampson
Panel Secretary:	Anita Abell
Mrs Richards:	Not present and not represented
Nursing and Midwifery Council:	Represented by Bryony Dongray, Counsel, instructed by NMC Regulatory Legal Team
Facts found proved by admission:	None
Facts found proved:	Charges 1.1, 1.5 and 5
Facts found not proved:	Charges 1.2, 1.3, 1.4, 2,3 and 4
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order for 18 months

Decision on Service of Notice of hearing:

Ms Dongray informed the panel that service had been sent to Ms Richards' last known professional address and to another address in France by recorded delivery service and first class post on 28 July 2017. There was no current registered address on WISER system. Ms Dongray submitted that notice had been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (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 Ms Richards has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34 of the Rules.

Proceeding in absence

Ms Dongray informed the panel that Mrs Richards had not kept the NMC informed of her current address. The NMC were aware that she was not residing at her last registered address on the WISER system and had therefore sent notice to both that address and to an alternative address in France. However, it appeared that she no longer lived at the alternative address. A tracing agent had been used but could not locate her. Ms Dongray understood that the police/CPS were also trying to contact Mrs Richards but had been unable to locate her. The NMC sent an email to Mrs Richards' husband as it did not have an email address for Mrs Richards. There was no response to this email.

Ms Dongray submitted that the NMC had made all reasonable attempts to inform Mrs Richards of the hearing. She drew attention to the case of *General Medical Council v Adeogba and GMC v Visvardis [2016] EWCA Civ 162;* which places a duty on a registrant to ensure that their contact details are up to date. Ms Dongray submitted that in all the circumstances the panel should proceed in the absence of Mrs Richards as she had not kept her contact details up to date. There was no application for an adjournment and, given Mrs Richards' lack of engagement, an adjournment was unlikely to secure her attendance at a future hearing. The police service was having difficulty locating Mrs Richards and it appeared she had "gone to ground" and did not want to be found. The allegations were serious, there were a number of witnesses attending and in these circumstances it was in the public interest for the matter to proceed today.

The panel heard the advice of the legal assessor who advised as to the factors the panel should take into account when reaching a decision on whether it was fair, appropriate and proportionate to proceed in the absence of the registrant. He reminded the panel that it should exercise the utmost care and caution when reaching its decision.

When reaching its decision the panel took into account that Mrs Richards had not engaged with the NMC since 2014, and that she had failed to inform the NMC of her current address. The panel concluded that the NMC had made all reasonable attempts to contact her. The charges were serious and related to events occurring some three years ago. Further, there were a number of witnesses attending whose memory might be adversely affected by a further delay in these proceedings. The panel concluded that it was highly unlikely that Mrs Richards would attend at a later date if the hearing was adjourned today. The panel concluded that Mrs Richards had voluntarily absented herself.

In all the circumstances the panel determined that the hearing would proceed today.

Application to amend the charges under rule 28

Ms Dongray applied to the panel to amend charges 1.2 and 2 which currently read:

> 1.2 that suitable protocols were in place to dealing with basic nursing eventualities such as Head Injuries and/or Infection Control and/or
>
> 2. Your failure at Charge 1.3 and/or 1.4 above led to substandard treatment of Patient A.

Ms Dongray proposed that the word “dealing” should be changed to “deal” in charge 1.2 which merely corrected a grammatical error. The proposed amendment to charge 2 was to add the words “in September 2013” after the words “Patient A” which particularised the charge. She submitted that it clarified charge 2 but did not affect its gravity. Ms Dongray submitted that the amendments were not significant and caused no injustice to Mrs Richards.

The panel heard and accepted the advice of the legal assessor. The legal assessor advised that the panel had the discretion to amend the charges provided it did not cause unfairness to any of the parties.

The panel concluded that the proposed amendments simply clarified the charges and did not add to the gravity of the charges. As such the panel determined that the proposed amendments were not unjust and it agreed to allow the amendments.

The charges

That you, whilst a registered nurse employed as the Lead Nurse by the Duke of York Royal Military School,

1. Placed patients at risk of harm by not ensuring the following:-

1.1 all emergency equipment was in date and/or in a useable condition and/or

FOUND PROVED

1.2 that suitable protocols were in place to deal with basic nursing eventualities such as Head Injuries and/or Infection Control and/or

FOUND NOT PROVED

1.3 that suitable protocols were in place for the recording and/or storing of patient information such as a record of what medication is prescribed and/or

FOUND NOT PROVED

1.4 that suitable protocols were in place ensuring that other healthcare practitioners involved in patient care could obtain patient information when necessary including on an ad hoc basis and/or

FOUND NOT PROVED

1.5 that staff for whom you were responsible received full and adequate induction to the Medical Centre

FOUND PROVED

2. Your failure at Charge 1.3 and/or 1.4 above led to substandard treatment of Patient A in September 2013.

FOUND NOT PROVED

3. Did not ensure that procedures/polices were in place to ensure confidential information about Patients was stored securely.

FOUND NOT PROVED

4. The failure at charge 3 above led to the loss of the Medical Admissions Book which contained private/personal information relating to patients/visitors treated in the Sanatorium at the Duke of York Royal Military School.

FOUND NOT PROVED

5. Provided or worked with others to provide information that was private/personal relating to patients and/or visitors who were treated in the Sanatorium at the Duke of York Royal Military School, to third parties.

FOUND PROVED

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

Direction under Article 25

Mr Dongray informed the panel that towards the end of the previous week the NMC had been informed by Ms 2, a witness in this case, that she was unwell and was unable to attend the hearing. To date, she had not produced any medical evidence to support the fact that she was unable to attend due to ill-health. Ms Dongray informed the panel that this witness was the only one who was able to give direct evidence in respect of the charges. She asked the panel to issue a direction under Article 25 to compel the witness to attend.

The legal assessor advised that the panel had the power under Article 25 to compel a witness to attend the hearing and give evidence.

When reaching its decision the panel took into account that the witness was the only person who could give direct evidence to some of the charges. The panel concluded that in the interests of justice and fairness to all the parties, it should hear her evidence.

The panel directed that Ms 2 attend the hearing on day 2 to give evidence. The panel further determined that if medical evidence was supplied to confirm that Ms 2 was medically unfit to attend in person it would explore other options for her to give evidence such as by WebEx or telephone.

Application under Rule 19 for part of the hearing to be held in private

Before opening the case, Ms Dongray stated that she would need to refer to health matters as part of the background to the case and applied for those parts of the hearing which relate to health matters to be held in private

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

The panel agreed to hear those parts of the hearing that refer to health matters in private, but that all other parts of the hearing will be held in public.

Application to hear evidence by Webex

During the course of day 1, and after the panel had directed that Ms 2 attend the hearing on day 2, Ms Dongray informed the hearing that Ms 2 had supplied medical evidence in the form of a letter from her GP stating that she was unfit to attend the hearing. In the circumstances Ms Dongray applied for Ms 2 to give evidence by WebEx. Ms 2 has said she is willing and able to do this.

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

The panel concluded that the evidence of Ms 2 was highly relevant in respect of some of the charges and it was important for the panel to hear this evidence. In the circumstances, the panel concluded that WebEx was an appropriate arrangement for hearing the evidence of Ms 2.

Application to admit further evidence

Before the panel began considering evidence, Ms Dongray informed the panel that Ms 4 had told her of two documents relating to a meeting Ms 3 had with Person C on 15 May 2015 which related to charge 5. The documents were a note of that meeting between the head teacher at the Duke of York Royal Military School (the School), Ms 4 and Person C; and a handwritten aide-memoire produced by Person C. Ms Dongray submitted that these documents were relevant to charge 5. She accepted that the evidence contained therein was hearsay but submitted that the panel could decide what weight, if any, to give to the documents.

The panel heard and accepted the advice of the legal assessor. He advised that the documents could be admitted only if the panel considered their admission to be relevant and to cause no injustice to Mrs Richards.

The panel concluded that the documents were relevant to this hearing. The panel considered that as the documents were hearsay evidence it would exercise care and caution when assessing the reliability of the information contained in the documents, particularly as Mrs Richards is not present at the hearing. In the light of this safeguard the panel agreed to allow the documents to be used in evidence.

Background

Mrs Richards was employed as the Lead School Nurse in the Medical Centre at the Duke of York Royal Military School, from 24 April 2012 until her dismissal on 27 February 2014. Her job description specified that she was "responsible for the health and welfare of the pupils and was expected to exercise initiative and sound judgment in her dealings with pupils' medical, personal and social well-being".

She was assisted in her role by another nurse, Ms 1, with whom she alternated shifts, and latterly by Ms 2, who was a registered mental health nurse. Ms 1 joined the staff in February 2013 and Ms 2 joined in September 2013. Mrs Richards was line managed by the manager of the Medical Centre and accountable to Ms 5, a member of the Senior Leadership Team during her time at the School.

The School was a mixed boarding school, with approximately 440 pupils, aged 11-18 years, many of whom were children of parents in the military or children who had expressed an interest in going into the military. It was organised into a number of boarding houses, about ten, each of which had a housemaster and a "matron" who was not clinically qualified.

The School was linked to a local GP surgery, and a GP visited the School at least three times a week to hold a surgery. The pupils at the School were encouraged to register with the GP surgery. Responsibility for pupils' health issues, including the storage and administration of any medication, was shared between the boarding houses and the Medical Centre.

In September 2013, Patient A, a female pupil at the School returned after the holidays without bringing her anti-depressant medication that had been prescribed to her by the Community Adolescent Mental Health Services (CAMHS). This matter, due to communication breakdown, resulted in the student not having her medication for three days.

It is alleged that Mrs Richards placed patients at the School at risk of harm by not ensuring the emergency equipment was up to date, that there were suitable medical protocols in place, and by not fully and adequately inducting Ms 1 and Ms 2 into the Medical Centre. It is further alleged that the failure to have suitable policies and procedures in place lead to the substandard treatment of Patient A.

Shortly after this incident with Patient A, Mrs Richards went on sick leave, and never returned to work prior to her dismissal. Mrs Richards was on sick leave from mid-September 2013, but was allowed to continue to live in accommodation at the School which was provided as part of her overall employment package. Mrs Richards left the School premises at the end of February 2014.

An investigation into the incident with Patient A was conducted by Ms 6, Principal of a local Primary College for the Arts. A disciplinary hearing took place on 24 February 2014, and Mrs Richards was dismissed for gross misconduct on 27 February 2014.

Around this time, it came to the attention of the School that the School's Medical Admissions and Discharge Book (the Book) was missing. The Book contained

information on students who had been treated at the Medical Centre, including the date and time of admission, their name, and reason for admission. Such information was privileged and confidential medical information. Although the Book contained sensitive, confidential information it was not kept in a secure environment. It was apparently left on a window sill in the Medical Centre, which could be accessed by all three nurses, as well as some administration and estates staff at various times.

The School was contacted by a journalist, Mr 7, who claimed that he had seen the Book. He was able to produce a one-line extract to prove this. He was investigating a story relating to the School's treatment of excluded pupils, who were accommodated in the Medical Centre whilst awaiting collection by their parents or guardians. As the School was a boarding school parents frequently lived at significant distance from the School and often were abroad. At least one, or possibly two, aggrieved parents of school children appeared to be co-operating with Mr 7's investigation, or may have contacted him to instigate an investigation.

Mr 7 had reportedly been seen at the School gates by Mr 3, who worked at the School. When questioned, by security staff at the School perimeter, Mr 7 stated that he had come to see Mrs Richards. However, he drove away without entering the School premises.

The School subsequently employed Ms 4, a journalist and managing director of a public relations company to liaise with Mr 7. It emerged that a weekly satirical publication also had details of the information contained in the Book.

It is alleged that Mrs Richards did not ensure that suitable procedures/polices were in place to ensure confidential information about patients was stored securely, and that this led to the loss of the Medical Admissions Book. It is also alleged that she provided or worked with others to provide information that was private/personal relating to patients and/or visitors who were treated in the Sanatorium (Medical Centre) at the Duke of York Royal Military School, to third parties.

The charges

The panel heard evidence from, and read the exhibits of the following witnesses:

- Ms 1, a nurse who worked with Mrs Richards in a junior role and who alternated shifts with her to provide a 24/7 service during term-time,
- Ms 2, a mental health nurse who worked 9-5 Monday to Friday at the School
- Mr 3, now Vice-Principal at the School, previously a housemaster, and at one stage the safeguarding officer
- Ms 4, a journalist and public relations consultant employed to liaise with Mr 7, and the media, on behalf of the School.

The NMC exhibits bundle contained: various email correspondence relating to the missing Book, a chronology of events, job description for Mrs Richards' role, an extract from the missing Book, a letter from Mr 7 (the journalist who contacted the School), and emails from another magazine whose journalist had also seen the Book. During the course of the hearing the panel asked to have exhibited two OFSTED reports referred to in the evidence. The reports related to inspections conducted in February and May 2013. Further evidence submitted during the course of the hearing was a note of a meeting between the then Head teacher, Ms 4 and an anonymised third party, and some handwritten notes from that third party.

When considering the charges, the panel took into account the submissions of Ms Dongray, and, all of the evidence before it, both documentary and oral. As Mrs Richards disengaged from the NMC process in 2014 there is no information from her.

The panel considered Ms 1's evidence to be credible overall. Whilst there were inconsistencies between her oral and written evidence, she was willing to concede on some points and the panel concluded that the inconsistencies did not undermine her evidence.

The panel considered Ms 2's evidence to be reliable. There were some gaps in her memory due to the passage of time. However, it was obvious she took her professional responsibilities seriously and was concerned that she was "exposed as a clinician" in what she described as a "chaotic" environment, due to re-organisation, when she started at the School.

The panel found Mr 3 to be essentially a honest witness but whose reliability was weakened by his desire to protect the reputation of the School. The panel considered it surprising that as an ex-housemaster, and safeguarding officer, there were some questions about basic responsibilities, and lines of reporting within the School that he could not answer.

The panel found Ms 4 to be professional, direct and credible. Her oral and written evidence was consistent. Some of her evidence was hearsay, and multiple hearsay, and the panel exercised considerable caution when assessing that evidence.

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

The burden of proof rests upon the NMC and Mrs Richards does not have to prove or disprove anything. The standard of proof is the civil standard, namely the balance of probabilities. This means that, for a fact to be found proved, the NMC must satisfy the panel that what is alleged to have happened is more likely than not to have occurred. In determining the facts, the panel is entitled to draw common-sense inferences but not to speculate.

The panel then considered the charges against Mrs Richards which were:

That you, whilst a registered nurse employed as the Lead Nurse by the Duke of York Royal Military School,

1. Placed patients at risk of harm by not ensuring the following:-

    1.1 all emergency equipment was in date and/or in a useable condition and/or

The evidence of Ms 1 was that when she arrived to work at the School she observed that the Ambu bag which formed part of the emergency equipment was in poor condition. She described the rubber as being perished and that it would not have been fit for purpose, which was for resuscitation in an emergency. She also described a device which she had never seen before but thought it was an old-fashioned suction pump for mucus. She did not see any other emergency equipment in the Medical Centre having an expiry date.

Mrs Richards' job description includes: "Ensuring all equipment is in good working order and arranging for repair/replacement as necessary"

The panel concluded that as the lead nurse Mrs Richards' had responsibility to ensure that all emergency equipment was in a useable condition. The panel concluded that she had not done so.

The panel therefore find this charge proved.

    1.2 that suitable protocols were in place to deal with basic nursing eventualities such as Head Injuries and/or Infection Control and/or

    1.3 that suitable protocols were in place for the recording and/or storing of patient information such as a record of what medication is prescribed and/or

1.4 that suitable protocols were in place ensuring that other healthcare practitioners involved in patient care could obtain patient information when necessary including on an ad hoc basis and/or

When considering charges 1.2 to 1.4 inclusive, the panel concluded that the NMC must prove that there were no suitable protocols, as specified in the charges, in place. It is not sufficient to prove that there were protocols in place that, for whatever reason, were not being followed.

The evidence before the panel is that there were some protocols in place.

Ms 1 gave evidence that there were some protocols but she, at least initially, was unable to access them. She also told the panel of the accepted procedure at the Medical Centre for the recording of medication administration. She described a book that was used to record details of students and medications administered.

Ms 2 gave evidence that when she was being introduced to the Medical Centre by Ms 1, Ms 1 referred to some protocols but Ms 2 did not see them at that stage. Ms 2 later saw some protocols which she considered needed updating and she assisted in that process.

Mr 3 told the panel that there were a number of forms to be completed by parents, including medical forms with details of the students' medical treatment, and that parents were informed that they had a responsibility to update the school if there was any change in circumstances. He gave evidence that there was a protocol relating to the communication between the house matrons and the Medical Centre and a protocol by which a pupil transferred to be a patient at the local GP. He gave examples of how the School dealt with medication such as asthma inhalers, and epi-pens, when the student concerned was on or off School premises. The panel

concluded that Mr 3 was able to describe a number of protocols relating to medical and health matters at the School. He also stated upon questioning by the panel, that protocols were in place prior to Mrs Richards joining the School. He also gave evidence that it was the role of Ms 5 who was a member of the Senior Leadership Team to write the protocols, with advice from Mrs Richards.

Further, the OFSTED report of February 2013, states:

"The school has and implements appropriate policies for the care of boarders who are unwell. These include first aid, care of those with chronic conditions and disabilities, dealing with medical emergencies and the use of household remedies".

The panel concluded that the evidence from three witnesses working at the School, and the independent OFSTED report, indicates that there were a number of protocols relating to health matters in place at the School. The panel has not had a list of the protocols available, nor a list of those that were considered unsuitable. The panel has in fact not been given sight of any documents at all relating to any protocols or policies other than the School Data and Protection policy.

The panel has therefore concluded on the balance of probabilities that the NMC has not proved that Mrs Richards had put patients at risk of harm by not ensuring that suitable protocols, as specified in charges 1.2 to 1.4 were in place.

The panel therefore find these charges not proved.

1.5 that staff for whom you were responsible received full and adequate induction to the Medical Centre

As lead nurse Mrs Richards was the line manager for Ms 1 and Ms 3.

Ms 1 told the panel that she had a two-week induction period when she shadowed Mrs Richards but received nothing in the way of written documentation.

Ms 2 told the panel that she had a walk around the Medical Centre conducted by Ms 1 but received no written documentation. The panel noted that there was a very short overlap between Ms 2 commencing her role at the Medical Centre and Mrs Richards going on sick leave.

In their evidence both nurses told the panel that they expected more information as part of their induction, such as, a handbook. Ms 2, in particular, said she felt professionally "clinically exposed" and she requested further induction from Ms 5, in Mrs Richards' absence, which she subsequently received. The panel concluded that the evidence of Ms 1 and Ms 2 was consistent and corroborated each other. Both nurses considered that they had an inadequate induction and were able to explain why this was. The panel noted that Mrs Richards' job description specified her responsibility for "training" of staff and the panel considers that induction forms part of training.

The panel concluded that as lead nurse in the Medical Centre it was Mrs Richards' responsibility to ensure her staff received a full and adequate induction to the Medical Centre. She did not do so.

The panel therefore find this charge proved.

2. Your failure at Charge 1.3 and/or 1.4 above led to substandard treatment of Patient A in September 2013.

As charges 1.3 and 1.4 were found not proved, it follows that this charge is not proved.

3. Did not ensure that procedures/polices were in place to ensure confidential information about Patients was stored securely.

As was the case in relation to charges 1.2 to 1.4 inclusive, the panel concluded that in relation to this charge the NMC must prove that there were no suitable procedures/policies in place in relation to the secure storage of confidential information about patients. It is not sufficient to prove that there were protocols in place that, for whatever reason, were not being followed.

In this case there is evidence from Ms 1 that the Book, containing confidential patient information was routinely left out on a window sill in a room which could be accessed by some non-clinical staff at the school.

The Book, would not be the only document containing confidential patient information. The evidence before the panel is that there were some protocols/policies/procedures in place. The panel has not had a list of these, or a list of those that were considered necessary but were not in existence. The panel would expect that any school would or certainly should have an information security policy covering all confidential information.

The panel has therefore concluded on the balance of probabilities that the NMC has not proved that Mrs Richards did not ensure that procedures/polices were in place to ensure confidential information about Patients was stored securely.

The panel therefore find this charge not proved.

4. The failure at charge 3 above led to the loss of the Medical Admissions Book which contained private/personal information relating to patients/visitors treated in the Sanatorium at the Duke of York Royal Military School.

As charge 3 was found not proved, it follows that this charge is not proved.

5. Provided or worked with others to provide information that was private/personal relating to patients and/or visitors who were treated in the Sanatorium at the Duke of York Royal Military School, to third parties.

When reaching its decision the panel took into account that the evidence was circumstantial and that some of the evidence was hearsay. It therefore scrutinised the evidence very carefully.

Ms 4 exhibited an extract from the Book which was sent to her by Mr 7 to prove he had seen the book and/or had it in his possession at some stage. Both Ms 4 and Mr 3 believed the extract to be genuine. The panel accepted that the extract sent to Ms 4 was an extract from the Book and that Mr 7 had seen or had the book in his possession at some time. The panel reached a similar conclusion in relation to a journalist working for a weekly magazine.

Mr 3 confirmed to the panel that, although on sick leave from mid-September 2013, Ms Richards continued to live at the School and retained her keys to the Medical Centre until her dismissal in February 2014.

In the evidence from Ms 4, there is a letter on BBC News headed notepaper from Mr 7, dated 3 March 2014, in which he refers to a detailed conversation that he had with

Mrs Richards. The letter refers to a number of matters that Mrs Richards raised with him, including the OFSTED inspection of February 2013, the disciplinary action being taken against Mrs Richards, and names Mrs Richards' line manager Ms 5, Ms 4 and the School head teacher by name. The panel concluded that Mr 7 had met with Mrs Richards and discussed a number of matters relating to pupils which would be considered personal or private.

The panel was also provided with an email chain including an email, dated 5 September 2013 from Mr Richards, husband of Mrs Richards, to one of the parents who had been in touch with Mr 7 which states:

"Beverley is aware that the [school] email system is monitored and she is therefore loathe to communicate via that account and… she has no telephone at home. This should be rectified shortly and she will be in touch then".

There is a reply to that email, dated 5 September 2013, from the parent which states:

"I am looking forward to meeting with Beverley and hope that she is able to procure the information we discussed".

These emails were recovered by Mr 3 as part of an investigation into the missing Book. Mr 3 stated that emails were not monitored at the School. Mr 3 also states that he saw Mr 7 at the School gates, and the security guard reported to Mr 3 that Mr 7 had asked to see Mrs Richards. Mr 3 also told the panel that Mrs Richards stated that Mr 7 was a family friend. Upon questioning, Mr 3 was unable to clarify who asked Mrs Richards who Mr 7 was.

In considering all the evidence before it, the panel decided that:

- the extract from the book is genuine and that it contained names and personal information relating to students
- Mrs Richards was in touch with at least one of the parents involved and was "loathe to communicate" via what she considered to be a monitored email account
- the aggrieved parent was expecting Beverley to procure "information"
- Mrs Richards had communicated to Mr 7 considerable confidential information relating to the School.
- Mrs Richards had communicated to Mr 7 details in relation to individual students who had attended the Medical Centre, although the evidence does not reveal whether she communicated the students' names.
- Mrs Richards did not deny knowing Mr 7

The panel concluded on the balance of probabilities, it is more likely than not that Mrs Richards provided or worked with others to provide information that was private/personal relating to patients and/or visitors who were treated in the Sanatorium at the Duke of York Royal Military School, to third parties.

The panel therefore find this charge proved.

Determination on misconduct and impairment

The panel went on to consider, on the basis of the facts found proved, whether Mrs Richards' fitness to practise is impaired under Rule 24 (12) of the Nursing and Midwifery Council Fitness to Practise Rules 2004.

The panel approached its deliberations as a two stage process. It considered firstly whether as a matter of judgment, there has been misconduct, and secondly, if so, whether, in the light of all the material before it, Mrs Richards fitness to practise is currently impaired. The panel heard submissions from Ms Dongray in this regard and advice from the Legal Assessor which it accepted.

Determination on misconduct

The panel first considered whether the facts proved amount to misconduct. It bore in mind the case of *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311*, where misconduct was defined by Lord Clyde as;

> *…a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] practitioner in the particular circumstances.*

The panel also had regard to the Nursing and Midwifery Council publication The Code: standards of conduct, performance and ethics for nurses and midwives, 2008 (the Code). The panel considered each charge separately. It concluded that Mrs Richards had breached the following provisions of the Code:

From the preamble:

The people in your care must be able to trust you with their health and wellbeing.

To justify that trust, you must:

- *make the care of people your first concern, treating them as individuals and respecting their dignity*

- *work with others to protect and promote the health and wellbeing of those in your care, their families and carers, and the wider community*
- *…act with integrity and uphold the reputation of the profession.*

From the provisions:

5 You must respect people's right to confidentiality

57 You must not abuse your privileged position for your own ends

60 You must cooperate with the media only when you can confidently protect the confidential information and dignity of those in your care

61 You must uphold the reputation of your profession at all times.

In relation to charge 1.1 the panel concluded that Mrs Richards potentially put the students under her care at risk of harm by not ensuring that all the emergency equipment in the Medical Centre was in a useable condition. In particular, part of the resuscitation equipment was perished and thereby not fit for purpose. In relation to charge 1.5 the panel concluded that Mrs Richards did not ensure that the nursing staff for whom she had line management responsibilities received a full and adequate induction to the Medical Centre. This again had the potential to put the students under her care at risk of harm, in addition to her nursing colleagues. The panel concluded that both of these charges are sufficiently serious as to amount to misconduct.

In relation to charge 5 the panel concluded that Mrs Richards had deliberately breached patient confidentiality by supplying details from the Book or the Book itself to a journalist. The panel has not reached a conclusion as to why Mrs Richards behaved in this manner, but concluded that, whatever her motivation, her actions did not benefit her patients, and were, in fact, detrimental to their health and well-being. The panel concluded that Mrs Richards' actions in supplying confidential patient

information to a third party fell significantly below the standard expected of a registered nurse and are sufficiently serious as to amount to misconduct.

The panel found that all three charges, separately and collectively, and the consequent breaches of The Code, are sufficiently serious as to amount to misconduct.

Determination on impairment

Having found that Mrs Richards' behaviour amounted to misconduct, the panel went on to consider whether her fitness to practise is currently impaired by reason of that misconduct.

The panel was mindful that a registrant's impairment should be judged by reference to her suitability to remain on the register without restriction.

In deciding this matter the panel has exercised its independent professional judgement.

The panel considered the case of *CHRE v NMC and Grant [2011] EWHC 97* and took into account the guidance provided by Dame Janet Smith and approved by Mrs Justice Cox. When deciding whether fitness to practise is impaired, it should be aware of the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.

The panel reminded itself of the guidance formulated by Dame Janet Smith in her Fifth Shipman Report, as cited in *Grant*, regarding the proper approach to be taken when considering impairment:

a) *Whether the registrant 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;*
b) *Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;*
c) *Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.*
d) *…not relevant…*"

The panel concluded that in the past Mrs Richards' failings had engaged all the limbs specified in (a) (b) and (c) above.

By having unusable equipment in the Medical Centre, and by not providing a full and adequate induction to her staff, and by seriously breaching patient confidentiality, Mrs Richards put her patients and colleagues at unwarranted risk of harm. Further, her failings would damage public confidence in the profession and thereby bring the profession into disrepute.

Finally Mrs Richards breached patient confidentiality by providing confidential medical information to a third party, namely a journalist. Honesty and integrity is at the heart of the nursing profession and by breaking this confidentiality Mrs Richards has breached a fundamental tenet of the profession in that she did not act with integrity.

The panel therefore concluded that, at the time of these incidents Mrs Richards' fitness to practise was impaired.

The panel next considered Mrs Richards' likely future behaviour. In doing so, it took into account the guidance in the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin*), quoted at paragraph 70 of *Grant*:

> "… It must be highly relevant in determining if a doctor's fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

The panel considered the extent to which Mrs Richards' misconduct was remediable, whether it has been remedied, whether it is likely to be repeated and whether there was evidence of any remorse or insight shown by her.

The panel considered that Mrs Richards' failings in relation to the unusable emergency equipment in the in the Medical Centre and the inadequate induction of nursing staff, is potentially remediable.

However, the panel considered that Mrs Richards' behaviour in relation to the provision of confidential patient information to a third party, could be indicative of an attitudinal issue in which she put her interests above those of her patients. The panel therefore concluded that it would be difficult for Mrs Richards to remediate this aspect of her failings.

The panel next considered whether Mrs Richards had tried to remediate her failings. Mrs Richards has disengaged from the NMC process and has not contacted the NMC since 2014. The extent of her disengagement includes her failure to maintain an up to date address in the WISER registration information system.

As such, the panel has no current information on Mrs Richards' situation. There is no evidence that Mrs Richards has demonstrated any insight, remorse or

remediation. As such, the panel decided that there remains a risk of repetition of similar incidents in the future. The panel therefore found that Mrs Richards' fitness to practise is currently impaired on the grounds of public protection.

The panel also considered the public interest in upholding standards in the profession and in maintaining confidence in the profession and in the NMC as its regulator. The panel concluded that members of the public would expect nurses to ensure their patients are not put at risk of harm, and that patient confidentiality is maintained at all times. The panel has already determined that Mrs Richards did not act with integrity and did not uphold the reputation of the profession. The panel has concluded that her fitness to practise is also currently impaired on public interest grounds to ensure that proper standards of conduct and behaviour are maintained and to preserve public confidence in the nursing profession and in the NMC as regulator. The public would expect members of the nursing profession to act with integrity, and would have a negative view of nursing professionals sharing patient's confidential information with the press or the media.

Determination on sanction

Having determined that Mrs Richards' fitness to practise is currently impaired, the panel went on to consider what sanction, if any, it should impose on her registration.

The panel took into account the submissions made by Ms Dongray and all of the evidence before it. She drew the panel's attention to the in the NMC publication, *Sanctions Guidance (the SG)*.

The panel accepted the advice of the legal assessor.

Under Article 29 of the Nursing and Midwifery Council Order 2001, the panel can take the following actions in ascending order: no further action; make a caution order for one to five years; make a conditions of practice order for no more than three years; make a suspension order for a maximum of one year; or make a striking off order. The panel has borne in mind that the purpose of a sanction is not to be punitive, though it may have a punitive effect.

The panel considered the sanctions in ascending order of seriousness.

The panel has applied the principles of fairness, reasonableness and proportionality, weighing the interests of patients and the public with Mrs Richards' own interests and taking into account the mitigating and aggravating factors in the case. The public interest includes the protection of patients, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour. The panel has also taken account of the current *SG.*

The panel concluded that the aggravating features in this case include that:

- Mrs Richards has put her interests before those of her patients
- the passing of confidential information to third parties was a deliberate act
- the passing of confidential information to third parties was an abuse of trust
- there has been a complete lack of engagement from Mrs Richards since 2014.

The panel concluded that there was only one mitigating feature in this case which was that in the latter part of 2013 there was significant re-organisation within the Medical Centre which Ms 2 described as “chaotic”, and this may have impacted on Mrs Richards’ failings in relation to the emergency equipment and the nursing staff induction.

The panel first considered taking no further action but determined that this would be inappropriate. It would not address the seriousness of the misconduct and it would not restrict Mrs Richards’ ability to practise. Taking no further action would not provide sufficient public protection nor would it uphold the standards of behaviour expected of a registered nurse. Further, it would not be in the public interest to take no further action as it would be wholly insufficient to maintain public confidence in the profession.

The panel then went on to consider whether a caution order would be appropriate. The panel concluded that a caution order was not appropriate as the matters of concern were too serious and could not be described as being at the lower end of the spectrum of impaired fitness to practise. Further, a caution order would not be in the public interest as it would not maintain confidence in the profession, it would allow Mrs Richards to continue to practise unrestricted and thereby not provide sufficient public protection and it would not uphold the standards of behaviour expected of a registered nurse.

The panel next considered a conditions of practice order. The panel concluded that it might be possible to formulate conditions to deal with the misconduct in charge 1, which relates to clinical matters. However, the panel has already expressed its concerns that Mrs Richards’ misconduct in charge 5 indicates an attitudinal issue as she put her own interests above those of her patients. The panel decided that it would be difficult to formulate conditions to address an attitudinal issue. Furthermore, as Mrs Richards has disengaged from the NMC, the panel concluded

that she did not have the potential and willingness to engage with any conditions of practice order. In these circumstances, the panel concluded that it would not be able to formulate workable, practical conditions to deal with all the failings in this case.

The panel considered whether a suspension order would be appropriate in this case. The panel concluded that a suspension order would protect the public and the public interest whilst it was in force.

The panel noted that this was not a single instance of misconduct, that there was no insight, remediation or remorse and that there was evidence of attitudinal issues. The panel has already concluded that there is a risk of repetition of similar misconduct in the future. For these reasons the panel therefore determined that Mrs Richards' misconduct was fundamentally incompatible with her remaining on the register, and therefore a suspension order was not appropriate in this case.

The panel then considered a striking-off order. The panel concluded that this sanction was sufficient to protect the public and the public interest. Mrs Richards' misconduct was a serious departure from the standards expected of a nurse and could result in potential risk of harm to her patients. Her provision of private and confidential medical information to a third party was an abuse of the trust placed in her by her employer, her colleagues and, most importantly, her patients all of whom were young people. She has not provided any evidence that she has any insight into her misconduct.

Having carefully weighed all the evidence in this case and taking into account the aggravating and mitigating factors the panel concluded that a striking off order was the only sanction which will be sufficient to protect the public. The panel was in no doubt that the misconduct in this case is fundamentally incompatible with ongoing registration. The panel concluded that public confidence in the professions and the

NMC as its regulator could not be sustained if Mrs Richards was to remain on the register.

The panel directs that Mrs Richards be removed from the register.

Determination on Interim Order

Pursuant to Article 29 (11) of the Nursing and Midwifery Order 2001, this panel's decision will not come into effect until after the 28 day appeal period, which begins on the date that notice of the striking off order has been served. Article 31 of the Nursing and Midwifery Order 2001 outlines the criteria for the imposition of an interim order. The panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, or is otherwise in the public interest or in Mrs Richards' own interest. The panel may make an interim conditions of practice order or an interim suspension order for a maximum of 18 months.

The panel has accepted the advice of the legal assessor. It has also had regard to the NMC's guidance to panels in considering whether to make an interim order. The panel has taken into account the principle of proportionality, bearing in mind the interests of the public and Mrs Richards' own interests.

The panel has borne in mind its reasons for making a striking off order. For those same reasons, the panel is satisfied that it is necessary for the protection of the public and is otherwise in the public interest for Mrs Richards' registration to be subject to an interim order. Not to do so would be a direct contradiction of the panel's earlier decisions. The panel first considered whether an interim conditions of practice order would be appropriate and proportionate and determined that it would not be for the same reasons given in the substantive order.

The panel therefore determined that an interim suspension order was necessary and would be appropriate and proportionate.

The period of this order is for 18 months to cover any potential appeal, but if at the end of a period of 28 days, Mrs Richards has not lodged an appeal the interim order will lapse and be replaced by the substantive order. On the other hand, if Mrs Richards does lodge an appeal, the interim order will continue until the appeal is concluded.

That concludes this hearing. The decision will be confirmed in writing.