**Conduct and Competence Committee**

**Substantive Hearing**

**Monday 3 July 2017 – Wednesday 5 July 2017**

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

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|---|---|
| **Name of Registrant Nurse:** | Karl Ronald Dearman |
| **NMC PIN:** | 97I1119E |
| **Part(s) of the register:** | RN1, Registered Nurse (Sub part 1) Adult (19 November 1985) |
| **Area of Registered Address:** | England |
| **Type of Case:** | Misconduct |
| **Panel Members:** | David Newman (Chair Lay member)<br>Pauline Esson (Registrant member)<br>Janet Blundell (Lay member) |
| **Legal Assessor:** | Leighton Hughes |
| **Panel Secretary:** | Hassan Reese |
| **Representation:** | Present and represented by Ben Rich, Royal College of Nursing |
| **Nursing and Midwifery Council:** | Represented by Bo Kay Fung, counsel, instructed by NMC Regulatory Legal Team. |
| **Facts proved by admission:** | 1, 2, 4a, 4b |
| **Facts not proved:** | 3, 4c, 5 (All no case to answer) |
| **Fitness to practise:** | Impaired |
| **Sanction:** | Conditions of Practice Order – 9 months |
| **Interim Order:** | **Interim Conditions of Practice Order – 18 months** |

**Details of charge:**

*That you, a Registered Nurse,*

1. On 8 September 2015, administered Lactulose to Patient A that was not prescribed.

2. On 8 September 2015, administered Co-Careldopa 25/250 to Patient B instead of the correct prescription of Beneldopa 25/100.

3. On 9 September 2015, in respect of Patient C;
   a) Discharged Patient C to a residential home with another patient's discharge letter;

4. On 9 September 2015, in respect of Patient D;
   a) Administered blood to a patient whilst your mandatory training was out of date;
   b) Failed to complete an accurate record of the administration;
   c) Did not have a second Registered Nurse check the blood transfusion.

5. On the 2 October 2015, discharged Patient E without a discharge summary being completed and with discontinued medication.

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

**Decision and Reasons on application under Rule 19:**

In the course of your oral evidence, Mr Rich on your behalf made a request that parts of your evidence be held in private on the basis that exploration of your case involved matters pertaining to your health.

Ms Fung on behalf of the NMC did not oppose the application. The panel heard and accepted the advice of the legal assessor.

Having heard that there will be references to personal matters which included your health, the panel determined to hold such parts of the hearing in private as this would be justified in order to protect your privacy.

**Decision on the findings on facts and reasons**

At the outset of the hearing, Mr Rich on your behalf informed the panel that you admitted charges 1, 2, 4(a) and 4(b).

The panel therefore found the facts in the charges proved by way of your admissions.

**Decision and reasons on application to amend charge**

As a preliminary legal issue Ms Fung, on behalf of the NMC, applied to amend charge 4 as follows:

<u>Current wording</u>

4. On 9 September 2015, in respect of Patient D;
    a) Administered blood to a patient whilst **your mandatory training** was out of date;

<u>Proposed amendment</u>

4. On 9 September 2015, in respect of Patient D;

a) Administered blood to a patient whilst **your required Trust training** was out of date;

Ms Fung drew the panel's attention to Rule 28 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ("the Rules"), which provides for the amendment of charges brought by the NMC in fitness to practise proceedings.

The application was not opposed by Mr Rich, on your behalf.

Having heard and accepted the advice of the legal assessor, the panel considered the application made by Ms Fung.

The panel decided to grant the application. It was satisfied that the amendment would more accurately reflect the facts alleged in the charges. It also considered that there would be no injustice to either party if such an amendment were made.

**Your response to the charges**

At the outset of the hearing Mr Rich, on your behalf, admitted charges 1, 2, 4a and 4b.

**Background**

On 10 December 2015, the NMC received a referral from Southend University Hospital NHS Foundation Trust ("the Trust") regarding your fitness to practise.

In early September 2015, you were redeployed by the Trust to work on its Princess Anne Ward ("the Ward").

On 8 September 2015, whilst working on the Ward, you gave Patient A Lactulose when this drug was not prescribed. On the same date, you also administered to Patient B Co-Careldopa 25/250 instead of the correct prescription of Beneldopa 25/100.

On 9 September 2015, it is alleged that you discharged Patient C to a residential home with another patient's discharge letter. This allegation arose following a complaint from the residential home.

On 9 September 2015, whilst working on the Ward, you administered blood to Patient D when you should not have done so, as you were not up to date with the training required by the Trust. You failed to complete an accurate record of the blood administered, as required by the relevant Trust policy. It is alleged that you failed to have a second Registered Nurse check the blood transfusion.

Finally, it is alleged on 2 October 2015 that you discharged Patient E without a discharge summary being completed and that you sent the patient home with a bag of discontinued medication.

**The evidence adduced by the NMC**

The panel heard oral evidence from one witness called on behalf of the NMC, Ms 1, a Matron for Medicine at the Trust. Her responsibilities include overseeing the running of the Ward and issues related to staffing, performance, capability and recruitment. She was in this role at the time of the allegations. Ms 1 was responsible for the Trust investigation into the allegations and she produced a number of documents that arose from the investigation.

**Submission of no case to answer**

At the close of the NMC's case Mr Rich made an application under Rule 24 (7) of the Rules, that there is no case to answer in respect of charges 3a, 4c and 5. The rule provides as follows:

*24 (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –*

*(i) either upon the application of the registrant …*

*the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.*

Regarding Charge 3a, Mr Rich submitted that nothing in either the Trust's internal "Datix" report or the Patient C's discharge summary established your responsibility for the discharge of Patient C or that you created the discharge summary. He reminded the panel of Ms 1's evidence, that none of the documents that she produced to the panel demonstrated clearly that you were the person responsible for discharging Patient C.

Mr Rich referred the panel to the two separate versions of the discharge summary, and submitted that it had not been provided with the erroneous discharge summary that was alleged to have been sent with Patient C. He drew to the panel's attention that Ms 1 had been unable to explain the discrepancy between the two versions, or the absence of the allegedly erroneous discharge summary. Accordingly, Mr Rich invited the panel to conclude that you have no case to answer in respect of charge 3a.

Regarding charge 5, Mr Rich made a broadly similar submission. He argued that nothing in either the Trust's internal "Datix" report or the Patient E's discharge summary established your responsibility for the discharge of Patient E or the creation of the discharge summary. He again reminded the panel of Ms 1's evidence, that none of the documents that she produced to the panel demonstrated clearly that you were the

person responsible for discharging Patient E. Furthermore, Mr Rich submitted that the evidence adduced by the NMC did not establish that patient E had been discharged without a discharge summary being completed or with discontinued medication. He drew the panel's attention to the discharge summary that had been exhibited by Ms 1, which she had conceded in oral evidence appeared to relate to Patient E and did not appear to be inadequate. Accordingly, Mr Rich submitted that you have no case to answer in respect of charge 5.

Regarding charge 4c), Mr Rich submitted that there is insufficient evidence to show that the blood transfusion that you initiated had not been checked by a second Registered Nurse. He asked the panel to consider that at an early stage of the Trust investigation you had maintained that a second registered nurse *did* check the blood transfusion, and that it "might have been one of my colleagues M…." Mr Rich acknowledged that a second-check signature was not present on the sticker for the Transfusion Record Form, but argued that one was clearly on Patient D's associated drug chart, and that it was by way of the initials "M.N." Mr Rich submitted that this was clear evidence that "M.N.", a Registered Nurse, had second-checked the blood transfusion and that the NMC had adduced no cogent evidence to the contrary. Accordingly, Mr Rich submitted that you have no case to answer in relation to charge 4c.

Ms Fung, in response, accepted that a careful examination of the evidence adduced in respect of charges 3a and 5 was capable of establishing some deficiencies in the NMC case. She submitted that whether you had a case to answer on these two charges was a matter for the professional judgment of the panel, but that the NMC adopted a neutral stance in the circumstances.

As to charge 4c, Ms Fung submitted that the key question for the panel was whether sufficient evidence had been adduced to raise a prima facie case that Patient D's blood transfusion had been second-checked by another Registered Nurse. She argued that the drug chart could possibly establish that a subsequent check was undertaken by "N.M.", but the absence of any signature on the relevant sticker was nevertheless

evidence which, taken at its highest, was capable of proving charge 4c. Accordingly, Ms Fung invited the panel to reject the submission of no case in relation to this charge.

**Decision and reasons on submission of no case to answer**

The panel took account of the careful submissions made by each Counsel. It accepted the advice of the legal assessor, which included its approach to Rule 24(7) of the Rules and referred to the test set out in the case of *R v Galbraith [1981] 1 WLR 1039*.

In reaching its decision the panel has reminded itself that it should take the NMC evidence at its highest for the purposes of this submission of no case to answer. Nevertheless, the panel was obliged to undertake a provisional assessment of the evidence. The panel found Ms 1 to be an honest, credible and helpful witness. It bore in mind that she was not a direct witness to any of the allegations, but rather that she had conducted an investigation on behalf of the Trust based on the information and evidence made available to her. The panel found that Ms 1 was frank in acknowledging any potential failings in the investigation, including missing evidence that may have been available from other sources, and found her credibility to be enhanced by her candour.

The panel considered charges 3a, 4c and 5 separately when considering whether you have a case to answer. It carefully considered all of the evidence, oral and documentary, that had been adduced by the NMC in relation to each charge.

**Charge 3a**

3. On 9 September 2015, in respect of Patient C;
    a) Discharged Patient C to a residential home with another patient's discharge letter;

The panel bore in mind that it has been presented with two different versions of discharge summaries (which the panel accepted, from the evidence of Ms 1, amounted

to “letters” for the purposes of the charges). Their unexplained irreconcilability did not assist the panel. The panel took into account that it had not been provided with any other discharge summary, and importantly not the summary with which Patient C was alleged to have been discharged. The panel accepted that there is nothing in either the Trust’s internal “Datix” report or the Patient C’s discharge summary that establishes your responsibility for the discharge of Patient C or that you created the discharge summary. Moreover, it reminded itself of Ms 1’s evidence, that none of the documents that she produced to the panel demonstrated clearly that you were the person responsible for discharging Patient C.

In all the circumstances the panel found that the NMC had not adduced sufficient evidence to establish a case for you to answer in relation to charge 3a.

**Charge 4**

4. On 9 September 2015, in respect of Patient D;

…

c) Did not have a second Registered Nurse check the blood transfusion.

The panel acknowledged that the relevant Transfusion Record Form sticker does not bear a signature or other endorsement that indicates a second Registered Nurse also checked the transfusion. It is upon this single, but clearly important, piece of evidence that the NMC relied in relation to charge 4c. However, the panel could not overlook the clear endorsement of the initials “M.N.” on the accompanying drug chart for Patient D. The panel was satisfied that this chart is inextricably linked to the transfusion itself and, whilst Ms 1 suggested that she may at some stage been told something to the contrary, there was no cogent evidence before the panel to undermine the inference that the endorsement on the drug chart was contemporaneous with “M.N.” second-checking the transfusion. The panel was told that by Ms 1 that “M.N” is a registered nurse. In the absence of any evidence to the contrary, the panel considered that if the entry had been retrospective it would have been clearly endorsed as such.

Furthermore, the panel found it significant that at an early stage of the Trust investigation you had maintained that a second registered nurse *did* check the blood transfusion, and that it may have been a colleague "M.N." This was at a stage when the drug chart had not been made available to you and so the panel felt it could place substantial reliance upon your early assertion that there had been a second check of the blood transfusion conducted by another Registered Nurse.

Accordingly, the panel was satisfied that you have no case to answer in relation to charge 4c.

**Charge 5**

5. On the 2 October 2015, discharged Patient E without a discharge summary being completed and with discontinued medication.

The panel accepted that there is nothing in either the Trust's internal "Datix" report or the Patient E's discharge summary that establishes your responsibility for the discharge of Patient E or that you created the discharge summary. Moreover, as with charge 3a, the panel reminded itself of Ms 1's evidence, that none of the documents that she produced to the panel demonstrated clearly that you were the person responsible for discharging Patient E. Furthermore, the panel had regard to the discharge summary for Patient E that had been exhibited by Ms 1 which, during her oral evidence, she conceded did not appear to be inadequate. On the available evidence the panel could not conclude that the evidence adduced by the NMC in relation to Charge 5, taken at its highest, provided a prima facie case for you to answer.

The panel then moved on to consider whether the facts found proved by way of admission amounted to misconduct and, if so, whether your fitness to practise is currently impaired. The NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

**Misconduct and Impairment**

The panel then moved on to consider whether the facts found proved by way of admission amounted to misconduct and, if so, whether your fitness to practise is currently impaired. The NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

**Applications, evidence and submissions on misconduct and impairment:**

Ms Fung, on behalf of the NMC sought to adduce two further pieces of evidence at this stage of the proceedings. Firstly, the details of a previous referral to the NMC which has led to an outstanding substantive order by way of sanction. Secondly, a letter from the Trust to you from October 2015 which she summarised as setting out concerns on the part of the Trust in relation to your clinical practice arising from its recent investigation. Ms Fung acknowledged that the letter not only covered the charges admitted by you, but also those in respect of which the panel has found no case to answer and some unrelated matters that have not been the subject of a referral to the NMC.

Mr Rich agreed to the details of the previous referral being placed before the panel, conceding that it is both fair and potentially relevant to the panel's considerations of your current fitness to practise. However, he argued that the Trust's letter should not be admitted into evidence by the panel; that the Trust's view of the matters admitted by you was not relevant; that further detail of the matters where you had no case to answer was similarly irrelevant; and that details of other minor concerns which the NMC had not thought it appropriate to take further should not be introduced into this case at this stage.

The panel refused to admit the Trust's letter into evidence and accepted the force of Mr Rich's submissions. It reminded itself of Rule 31 of the Rules and considered that the Trust letter failed the tests of relevance and fairness.

Ms Fung therefore placed before the panel an NMC decision letter dated 21 June 2017, which confirmed that on 16 June 2017 you were made the subject of an order suspending your registration for three months. The letter set out the determination of a panel of the NMC Conduct and Competence Committee that your fitness to practise as a nurse was impaired by reason of a conviction dated 11 November 2016 for an assault upon one of your neighbours under section 20 of the Offences Against the Person Act 1861.

You gave oral evidence at this stage of the proceedings. You gave the panel an overview of your nursing career since qualifying in 2000 and up until the incidents that gave rise to the charges that you have admitted.

You provided the panel with detailed reflective pieces in respect of the charges, upon which you provided some further clarification in your oral evidence, and you gave the panel an insight into how you had some difficulty adapting to working on the new Ward. You described a stressful environment in which you were introduced to using an electronic medication system with which you were not familiar. You did not seek to excuse the failings that you have admitted, but sought to provide some background and explanation for how you believed they might have occurred.

You also provided the panel with a testimonial from your current employer and records of training undertaken since the incidents. However since you were dismissed by the Trust in October 2015, you have not practised as a Registered Nurse but have worked as a Health Care Assistant in a residential home. In your oral evidence you gave the panel details of further training that you have since undertaken and you sought to assure the panel that you would continue to maintain your training programme in the future if you were permitted to resume work as a Registered Nurse.

In her submissions Ms Fung invited the panel to take the view that your actions amount to a number of breaches of *The Code: Professional standards of practice and behaviour*

*for nurses and midwives 2015* (“the Code”). She then directed the panel to specific paragraphs and identified where, in the NMC’s view, your actions amounted to misconduct. Ms Fung also identified breaches of the NMC Standards for Medicines Management.

Ms Fung then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and satisfying 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. Ms Fung referred the panel to the case of *Council for Healthcare Regulatory Excellence* v *(1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin).*

Mr Rich on your behalf submitted that you have accepted that your actions fell below the standard expected of a registered nurse, but invited the panel to conclude that the threshold for misconduct was not met by the charges, whether taken either individually or collectively. Mr Rich reminded the panel of your evidence, reflective pieces and training records and submitted, if the panel was against him on the issue of misconduct, that it could safely conclude that the risk of repetition of any such failings in the future was minimal and could be excluded. Mr Rich also argued that no finding of impairment was necessary to address the wider public interest, as a right-thinking member of the public in possession of all of the facts of your case would not consider your fitness to practise to be currently impaired.

**Decisions on misconduct & impairment**

The panel has accepted the advice of the legal assessor.

The panel adopted a two-stage process in its considerations. First, the panel was required to determine whether the facts found proved by way of admission in relation to charges 1, 2, 4a and 4b amount to misconduct. Secondly, the panel would move on to

consider whether your fitness to practise is currently impaired by reason of such misconduct (if so established by the panel).

In reaching its decisions, the panel bore in mind its duty to protect the public, to maintain public confidence in the profession and the regulatory process, and to declare and uphold proper standards of behaviour and conduct.

The panel acknowledged that there is no burden or standard of proof at this stage and exercised its own professional judgement.

The panel noted that Ms Fung, on behalf of the NMC, has adduced evidence of your previous recent finding of impairment to practise by reason of a conviction. The panel considered that this piece of evidence, involving an assault on a neighbour, was not relevant when making its determinations on whether the facts found proved in this case, which relate to your clinical practice, amount to misconduct, and whether your fitness to practise is currently impaired by reason of that misconduct.

**Decision on misconduct**

When determining whether the facts found proved amounted to misconduct the panel had regard to the terms of The Code and the NMC publication "Standards for medicines management."

The panel has reminded itself that registrants are personally accountable for their conduct and acts and omissions in their practice. The Code and the medicines management publication set out the underlying principles that guide the nursing profession and are in place to protect the public and to ensure that proper standards of the profession are upheld.

In considering the issue of misconduct, the panel concluded that the facts found proved demonstrated conduct that fell below the standards expected of a registered nurse, and that your actions breached the Code in the following respects:

*6 Always practise in line with the best available evidence*
*To achieve this you must:*
*6.2 maintain the knowledge and skills you need for safe and effective practice*

*10 Keep clear and accurate records relevant to your practice*
*To achieve this you must:*
*10.1 complete all records at the time or as soon as possible after an event...*

*13 Recognise and work within the limits of your competence*

*20 Uphold the reputation of your profession at all times*
*To achieve this, you must:*
*20.1 keep to and uphold the standards and values set out in the Code*

The panel also concluded that you breached the NMC Standards for Medicines Management.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that your actions had constituted a number of significant departures from the standards expected of a registered nurse.

The panel bore in mind the following:

- You were an experienced Registered Nurse
- You were only one week into redeployment onto a busy ward
- Your drug administration errors were on a single shift, but the second occurred after you had become aware of the first error and so you should have been all the more aware of the importance of safe drug administration

- Your record keeping error in respect of the blood transfusion was compounded by the fact that you had undertaken this task when your training was not up to date
- Each of your failings related to fundamentals of good nursing practise
- Whilst there was no actual patient harm, your failings carried a clear potential risk of patient harm

The panel acknowledged that the failings identified by the charges which you have admitted are out of character in an otherwise long nursing career, that you had just been re-deployed to the ward, that it was a stressful environment and that you had received no induction training on the ward. It also bore in mind that you drew the ward manager's attention to your medication errors immediately upon discovering them. You also rectified the deficiencies in recording the blood administration as soon as they were pointed out to you.

However, in the view of the panel, whilst this may amount to significant mitigation, it could not detract from the seriousness of the failings over two separate shifts. You were a Registered Nurse of whom the public had the right to expect high professional standards, both professional and personal.

Taken in combination, the panel was satisfied that your failings across two shifts in a 36 hour period represented behaviour that fell far short of what would be considered as proper for a registered nurse. Such conduct has the potential to undermine public confidence in the profession and the panel found that to characterise it as other than misconduct would fail to uphold proper professional standards and would undermine public confidence in the profession and in the regulatory function of the NMC.

**Decision on impairment**

The panel then went on to consider whether your fitness to practise is currently impaired by reason of your misconduct. The panel reminded itself that it should consider not only

the risk that a registrant poses to members of the public, but also the public interest in upholding proper professional standards and public confidence in the NMC as a regulator, and whether those aims would be undermined if a finding of impairment were not made in the circumstances.

Nurses occupy a position of privilege and trust in society and are expected at all times to be competent and professional. To justify that trust, must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In determining the matter of impairment of current fitness to practise, the panel considered the case of *CHRE v Nursing and Midwifery Council and Grant, [2011] EWHC 927 (Admin)* and in particular what Mrs Justice Cox had to say in Paragraph 76: "*I would also add the following observations in this case having heard submissions, principally from… as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes."*

> *"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 to act in the future 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 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 profession; and/or*

The panel was satisfied that your overall misconduct fell into the first, second and third categories of impairment identified above in that you:

- Placed patients at a risk of harm through medication errors, undertaking a blood transfusion when your training was not up to date, and failing properly to document an on-going blood transfusion.
- In doing so, brought the profession into disrepute.
- Breached fundamental tenets of the nursing profession, namely the duties to practise effectively, preserve safety and promote professionalism and trust.

The panel bore in mind that you identified your errors in charges 1 and 2 and brought them immediately to the attention of the ward manager. You immediately apologised to the two patients involved. Your failings were errors, rather that acts and omissions borne of recklessness or a disregard for patient safety. You immediately rectified the insufficient recording of the blood administration. Whilst you had a clear personal responsibility to ensure that your blood administration training was up-to-date, you had not received any induction into the new ward. Moreover, the panel was satisfied that your insight into and remorse for your misconduct demonstrates a clear appreciation of good nursing practice and the importance of maintaining high standards of nursing care and reputation of your chosen profession.

In assessing the risk of repetition of misconduct by you, the panel carefully considered your oral evidence together with the documents adduced in relation to your reflection on your misconduct and the testimonial and training records.

The panel found that you have significant insight into your misconduct. Furthermore, it is satisfied that you have demonstrated genuine remorse and reflected upon your errors in a considered and meaningful way. These factors greatly mitigate against the risk of repetition by you.

However, the panel could not overlook the fact that you have been unable to demonstrate full remediation of your misconduct through safe clinical practice and undertaking training courses which address the specific failings in your case in a nursing environment. The panel was in no doubt, however, that all of these matters are capable of full remediation by an experienced nurse who has demonstrated a commitment to the profession and an appreciation of the importance of providing a high standard of care at all times.

The panel therefore concluded that your fitness to practise is currently impaired on the grounds of public protection.

Your misconduct undermines the confidence the public needs to have in the nursing profession. For all the reasons thus far, the panel also determined that the need to uphold proper professional standards and public confidence in the profession and the NMC as its regulator would be undermined if a finding of impairment were not made in the circumstances.

For the reasons outlined above, the panel has determined that your current fitness to practise is impaired by reason of your misconduct.

**Determination on Sanction**

Having determined that your fitness to practise is currently impaired by reason of your misconduct, the panel considered what sanction, if any, it should impose in relation to your registration. In reaching its decision on sanction, the panel has considered all the evidence that has been placed before it and the careful submissions of counsel.

Ms Fung, on behalf of the NMC, made no specific submissions with regard to sanction. However, she directed the panel to the NMC Indicative Sanctions Guidance (ISG) and sought to identify the aggravating and mitigating features in your case. Miss Fung

reminded the panel that it should approach the available sanctions in ascending order of seriousness and have regard to the need for any sanction to be a proportionate response to the misconduct.

Mr Rich, on your behalf, first identified what he considered to be the mitigating features in your case. Whilst the issue of sanction is a matter for the judgement of the panel, he invited the panel to impose a Conditions of Practice Order and sought to identify conditions that the panel may consider appropriate. Mr Rich candidly submitted that no lesser sanction would address the risk to the public that the panel had found at the misconduct and impairment stage, but he argued that either a Suspension or Striking Off Order would be inappropriate and disproportionate.

Under Article 29 of the Nursing and Midwifery Council Order 2001, the panel may take no 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 heard and accepted the advice of the legal assessor. He advised the panel to have regard to the ISG, whilst reminding it that this document acts as guidance rather than a source of legal obligation and that it should not fetter the panel's approach to its decision-making. He also referred the panel to dicta of Lord Bingham in the case of *Bolton v Law Society [1994] 2 All ER 486*, to the effect that the reputation of a profession is more important than the fortunes of any individual member. Membership of a profession may bring many benefits, but membership comes at the price of liability to sanctions to maintain the reputation of the profession.

The panel recognised that the purpose of sanctions is not to be punitive, although a sanction may have a punitive effect.

The panel took account of the ISG and had regard to the need to protect the public as well as the wider public interest. The panel applied the principle of proportionality,

weighing the interests of the public against your own interests, and acknowledging that any interference with your ability to practise must be no more than necessary to satisfy the public interest.

In considering the most appropriate sanction to impose, the panel considered the aggravating and mitigating factors.

The panel identified the following as the aggravating factors:

- you are an experienced Registered Nurse and each of your failings related to fundamentals of good nursing practise
- your drug administration errors were on a single shift, but the second occurred after you had become aware of the first error and so you should have been all the more aware of the importance of safe drug administration
- your record keeping error in respect of the blood transfusion was compounded by the fact that you had undertaken this task when your training was not up to date
- whilst there was no actual patient harm, your failings carried a clear potential risk of harm to three patients
- this is your second referral to the NMC, albeit the other referral did not relate to clinical matters

The panel identified the following as the mitigating factors:

- the failings are out of character in an otherwise long nursing career
- you were only one week into re-deployment onto a busy ward, and you had received no induction training on the ward
- you drew the ward manager's attention to your medication errors immediately upon discovering them, completed a Datix incident form for each, and apologised to the patients involved

- you rectified the deficiencies in recording the blood transfusion as soon as they were pointed out to you
- there was no actual patient harm
- your early admissions to the Trust and before this panel
- your significant insight and genuine remorse
- the positive character reference from your current employer regarding your current role as a Health Care Assistant, albeit that she was not aware of the details of the allegations that you have faced.

The panel first considered whether to take no action. It concluded that this would be inappropriate because the misconduct in this case was too serious to take no further action. It concluded that the public interest, in terms of confidence in the nursing profession and the NMC as regulator, would not be addressed by such an outcome.

The panel next considered whether to make a caution order. The panel reminded itself that there has been no evidence of direct patient harm as a result of your actions. However, the panel found that a caution order would not address the concerns identified in your practice and the identified ongoing potential risk to the public, nor would it reflect the need to maintain public confidence in the profession and the NMC as its regulator. Your misconduct involved a combination of failings in basic nursing practice and the panel was not satisfied they were at the lower end of the spectrum of misconduct. Furthermore, such a sanction would allow you to practise without restriction and the identified potential risk to the public would not be addressed.

In next considering the imposition of a Conditions of Practice Order, the panel had regard to the mitigating and aggravating factors. It also had regard to the ISG and, in particular, paragraphs 63 to 65. The panel considered whether workable and practicable conditions could be formulated to address your impaired fitness to practise.

The panel accepted that you are committed to nursing and that you have already taken a number of steps to remediate your misconduct although you have not been able to put

them into practice as a registered nurse. Furthermore, you have demonstrated a significant level of insight that reassured the panel that you are likely to engage with and comply with Conditions of Practice and accordingly that such an order will be workable.

The panel made the following findings:

- there is no evidence of harmful or deep-seated personality or attitudinal problems on your part
- there are identifiable areas of your practice in need of assessment and/or re-training
- there is no evidence of general incompetence
- you have the potential and willingness to respond positively to retraining
- patients will not be put in danger either directly or indirectly as a result of conditional registration
- the conditions will protect patients during the period they are in force
- it is possible to formulate conditions specific to the drug administration and record keeping deficiencies identified in this case.

The panel accepted as genuine your remorse and commitment to the nursing profession and your reassurance that the care of your patients is your overarching responsibility and concern. The panel considered that you have demonstrated insight and a mature approach to the need for appropriate professional remediation on your part.

The panel bore in mind the public interest in the retention of an otherwise competent nurse who may be able to demonstrate the ability to practise safely. In all the circumstances it was satisfied that a Conditions of Practice Order would:

- protect the public
- declare and uphold proper standards of conduct and behaviour

- meet the public interest of maintaining confidence in the profession and the regulatory process
- be a proportionate sanction, and
- offer you the opportunity to undertake training and assessment in a clinical environment to address the concerns raised by this case.

The panel was satisfied that no lesser sanction was sufficient to protect the public, declare and uphold proper standards of conduct and behaviour and maintain public confidence in the midwifery profession and the NMC as its regulator. To conclude otherwise would significantly undermine the trust that the public is entitled to have in the profession and the NMC.

The panel determined that the following conditions are appropriate and proportionate in this case:

1. You must not administer medication unless directly supervised until you have successfully undertaken medicines management training and successfully completed a medicines management competency assessment, signed off by a registered nurse who is competent to make such an assessment. Proof of your successful completion of the training and the document signing you off as competent must be sent to the NMC at least 14 days before the review of this order.

2. You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.

3. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.

4.(a) You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.

(b) You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

5. You must immediately inform the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at 1 to 4 above, to them:

(a) Any organisation or person employing, contracting with, or using you to undertake nursing work.
(b) Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.
(c) Any prospective employer (at the time of application) where you are applying for any nursing appointment.
(d) Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).

The period of the Conditions of Practice Order will be 9 months. In concluding that this is the appropriate period the panel bore in mind that your current suspension order arising from your conviction will expire on 20 October 2017, and therefore that Condition 1 of the Conditions of Practice Order cannot take effect before then. The panel was satisfied that no lesser period was appropriate in your case, for all of the reasons already identified. Such a period marks the misconduct whilst also being proportionate.

The panel went on to consider whether a Suspension Order was the appropriate sanction, and was satisfied that for the reasons set out above such an order was disproportionate.

The panel recognised your engagement with these proceedings and hopes that you will continue to engage with the NMC. Shortly before the expiry of the Conditions of Practice Order a panel of the Conduct and Competence Committee will hold a review hearing to evaluate your progress. At this hearing the panel may allow the order to lapse, or replace it with another order, which could be a Caution Order, a further Conditions of Practice Order, Suspension Order or Striking-off Order.

Any future panel reviewing this case would most likely be assisted by:

- information about all work, paid or unpaid, that you have undertaken since the date of this hearing
- information regarding training or development courses undertaken, how you have kept your nursing knowledge up to date, and how you have reinforced your understanding of the importance of accurate record keeping and the safe administration of medicines
- up to date references and testimonials from your colleagues, supervisors or relevant others relating to your work, character or other activities

You will be notified of the panel's decision in writing. The Conditions of Practice order will come into effect 28 days after the service of the notification of the panel's decision upon you. If you appeal the panel's decision, the order will not take effect until the appeal has been withdrawn or otherwise concluded.

**Decision on interim order:**

Ms Fung made an application for an interim Conditions of Practice Order to cover the period for any appeal. She reminded the panel of its determination thus far and submitted that an interim Conditions of Practice Order was necessary to protect the public and was otherwise in the public interest given the panel's determination on sanction.

Mr Rich, on your behalf, did not resist the making of an interim order.

The panel accepted the advice of the legal assessor.

The panel has borne in mind its reasons for making an order imposing conditions upon your registration. For those same reasons the panel determined that an interim order was necessary to protect the public and otherwise in the public interest to uphold and maintain public confidence in the profession and the NMC as regulator. The panel was satisfied that it would be inconsistent with its reasoning as to why a Conditions of Practice Order was the only appropriate and proportionate sanction in your case not to make an interim Conditions of Practice Order to cover the appeal period.

The panel accordingly concluded that an interim Conditions of Practice Order should be made, with the same conditions as in the substantive order.

The panel decided that the period of the interim Conditions of Practice Order is 18 months. This is to cover the time it may take to dispose of any appeal. If at the end of a period of 28 days you have not lodged an appeal, the interim order will lapse and be replaced by the 9 month Conditions of Practice Order. However, if you do lodge an appeal, the interim order will continue to run until the appeal is either withdrawn or determined.

The NMC will confirm this determination in writing. That concludes this hearing.