Name of registrant: Lisa Jane McLean
NMC PIN: 88Y0654E
Part(s) of the register: Registered Nurse – Sub-part 1
                        Adult Nursing – 1 November 2000
Area of Registered Address: England
Type of Case: Misconduct
Panel Members: Deborah Jones (Chair, Lay member)
               Terry Shipperley (Registrant member)
               June Robertson (Lay member)
Legal Assessor: Adrienne Morgan
Panel Secretary: Philip Austin
Mrs McLean: Not present and not represented in absence
Nursing and Midwifery Council: Represented by Sophie Quinton-Carter, Case Presenter
Facts proved: Charges 1a, 1b, 2a, 2b, 3a, 3b, 4, 5, 6, 7, 8, 9, 11, 13a(ii), 13b, 13c, 15a, 15b, 15c, 15d, 15e, 15f, 16, 17a, 17b, 18
Facts not proved: Charges 10a, 10b, 12, 13a(i), 14
Fitness to practise: Currently impaired
Sanction: Striking-off order
Interim Order: Interim suspension order – 18 months
Details of charge: (Before amendments)

That you, a registered nurse,

1) Whilst responsible for the care of Patient A, at the Royal Wolverhampton Hospital, during the nightshift 7 – 8 February 2016;
   a) failed to undertake observations when directed to do so by Colleague A and/or
   b) failed to complete the ECG in that you did not ensure that the ECG was escalated/signed off by a Doctor.

2) Whilst employed at the ‘CGL’ organisation, during a training session with Colleague A you:
   a) did not listen to instructions given about maintaining records in the Controlled Drugs book and/or;
   b) expressed reluctance to follow the rectification procedure for correcting mistakes in the Controlled Drugs books;

3) Whilst employed at the ‘CGL’ organisation on an unknown date you left the clinic room unattended and/or unsecured in that you:
   a) left the inter-connecting door open between the clinic-consulting room and/or
   b) left the keys for the clinic room and/or the drugs cupboards lying on the desk.

4) Whilst employed at the ‘CGL’ organisation on an unknown date you left the drugs cupboard and/or the fridge unlocked.
5) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you left a service user unaccompanied in the treatment room with the keys to the medication cupboard.

6) Whilst employed at the ‘CGL’ organisation on an unknown date you attempted to take a blood sample from the neck of an unknown Patient;

7) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you commenced the process of taking blood from a service user without confirming their identity first.

8) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you did not ask for consent in respect of testing a Patient for Blood-Borne Viruses (“BBV”);

9) Whilst employed at the ‘CGL’ organisation on an unknown date took a blood sample from a service user who was under the influence of alcohol and therefore could not provide consent;

10) Whilst employed at the ‘CGL’ organisation;

   a) between 5 and 9 August 2016 you spoke inappropriately to a service user in that you said words to the effect of: ‘I will take you outside and beat the shit out of you’.

   b) referred to a service user as being: ‘snotty and obnoxious’.

11) Whilst employed at the ‘CGL’ organisation on an unknown date, on two occasions, signed the Controlled Drug book to indicate medication had been given to a service user before the medication had been given;

12) Your conduct at Charge 11 above was dishonest in that the record you created was false because it indicated that medication had been administered at the recorded time when it had not been;
13) Whilst employed at the ‘CGL’ organisation on an unknown date, when a Patient fainted in the lobby area, you:

a) when it was not clinically indicated, attempted to treat the Patient by:

   i) calling an ambulance;
   ii) commencing an intravenous drip;

b) were reluctant to accept and/or act on the clinical opinion of your senior colleague and/or the doctor about how to treat the Patient;

14) Whilst employed at the ‘CGL’ organisation on an unknown date failed to complete MARs Charts.

15) During a telephone conversation with Medacs Healthcare Agency on 9 December 2016 when asked by the Call Handler ‘Are you currently or have you ever been suspended from work, involved in an investigation or dismissed’ you did not disclose the following:

a) That you were dismissed from your employment at Alexandra House Care Home in 2011.

b) That you were dismissed from your employment at Russell Hall Hospital in 2011.

c) That you were subject to an investigation at New Cross Hospital in 2016.

d) That you were suspended from New Cross Hospital in February 2016.

e) That you were subject to an investigation at whilst employed at CGL in 2016.

f) That you were suspended from your employment at CGL in September 2016.
16) Your conduct at Charges 15 a) to 15 f) above was dishonest as you knew that the information above should have been given in answer to the question but you chose not to disclose the same.

17) During a telephone conversation with Medacs Healthcare Agency on 9 December 2016 when asked by the Call Handler ‘Are you currently or have you ever been suspended from work, involved in an investigation or dismissed’ you disclosed that you had been subject to a Conditions of Practise Order however you:

   a) indicated that the health condition you suffered from was [PRIVATE] when the conditions which impaired your fitness to practise were [PRIVATE] and [PRIVATE] and

   b) did not disclose all of the Conditions which were placed on your practise including not disclosing the condition that required you [PRIVATE]

18) Your conduct at Charge 17a) and/or 17b) above was dishonest as you omitted to provide information which caused an incomplete and/or misleading presentation of the nature of that matter.

   And, in light of the above, your fitness to practise is impaired by reason of your misconduct.
Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs McLean was not in attendance and was not represented. The panel was told that written notice of this hearing had been sent to her registered address by recorded delivery and by first class post on 17 December 2018. Notice of this hearing was delivered to Mrs McLean’s registered address on 18 December 2018, and was signed for with the printed name of ‘MCLEAN’.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs McLean’s right to attend, be represented and call evidence, as well as the panel’s power to proceed in her absence.

Ms Quinton-Carter submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (“the Rules”).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs McLean has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Mrs McLean.

The panel had regard to Rule 21 (2) which states:
(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

(a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;

(b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or

(c) may adjourn the hearing and issue directions.

Ms Quinton-Carter invited the panel to continue in the absence of Mrs McLean on the basis that she had voluntarily absented herself. Ms Quinton-Carter submitted that Mrs McLean had indicated that she would not be in attendance at this hearing and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

Ms Quinton-Carter informed the panel that the Royal College of Nursing (“RCN”) had been instructed to act on behalf of Mrs McLean in the build up to this substantive hearing, however, the NMC had received communication from the RCN dated 23 November 2018 informing it that it was no longer representing Mrs McLean.

Ms Quinton-Carter drew the panel’s attention to an email from Mrs McLean to the NMC Case Coordinator dated 27 December 2018. In this email, Mrs McLean stated “I cannot open the email you sent. I have no password. Please send in post and I want time to read them. I am no longer being represented by the rcn, so I request a delay in the hearing until I can sort things out.”[sic]. The NMC Case Coordinator responded to Mrs McLean’s request to postpone the hearing by asking for more information, which Mrs McLean does not appear to have responded to. On 2 January 2019, Mrs McLean then sent a further email to the NMC Case Coordinator stating “I am writing to inform you that
I will not be attending the hearing. I have attached a reflective piece that I wish to be read by those who are dealing with my case. Let me know if anything else is needed”. The NMC Case Coordinator responded to this email confirming receipt of the reflective piece and stated “The NMC notes that you do not now appear to be requesting that the Hearing is adjourned and so the NMC will not list a Pre-Meeting for you to make an application to postpone. Please let us know if this is incorrect”. Ms Quinton-Carter submitted that the NMC Case Coordinator provided further information within this email outlining possible ways for Mrs McLean to present her case if she did not wish to attend in person. Mrs McLean did not respond to the email from the NMC Case Coordinator dated 3 January 2019.

Ms Quinton-Carter submitted that there is a public interest in proceeding with this matter in order to facilitate the expeditious disposal of this case.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “with the utmost care and caution” as referred to in the case of R. v Jones (Anthony William), (No.2) [2002] UKHL 5. The panel further took into account the case of General Medical Council v Adeogba [2016] EWCA Civ 162.

The panel had regard to the correspondence between the NMC Case Coordinator and Mrs McLean in relation to this case. It took account of Mrs McLean’s email confirmation that she would not be in attendance at this hearing, and it noted that she did not respond to the follow-up email dated 3 January 2019, enquiring as to whether she wanted to engage with this hearing remotely. It noted that Mrs McLean had provided an undated written statement for it to consider during its deliberations on the facts of this case, and that she did not request an adjournment directly of this panel. The panel took this as an indication that Mrs McLean understood that there was a chance, after originally asking for a postponement, that this hearing would proceed in her absence.
The panel noted that Mrs McLean did not request an adjournment in her written statement to the panel, and that this was submitted to it after she had requested the NMC to delay proceedings. Mrs McLean said the following in her written statement “So with these thoughts in mind and lots of pondering over this time I have chosen not to attend the incredibly long hearing that has been set…”

The panel has decided to proceed in the absence of Mrs McLean. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of Jones. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mrs McLean has submitted a written statement for the panel to consider at the facts stage of this hearing.
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- witnesses have attended today to give live evidence, others are due to attend;
- not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- the charges relate to events that occurred as far back as 2016;
- further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs McLean in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs McLean at her registered address, she will not be able to challenge that evidence in this hearing and will not be able to give evidence on her own behalf. However, in the panel’s judgment, this can be mitigated. The panel can make allowance for the fact that the NMC’s evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the disadvantage is
the consequence of Mrs McLean’s decision to absent herself voluntarily from the hearing, waive her rights to attend and/or be represented and to not provide evidence or make oral submissions on her own behalf.

In these circumstances, the panel has decided that it is fair and proportionate to proceed in the absence of Mrs McLean. The panel will draw no adverse inference from Mrs McLean’s absence in making its findings of fact.
Decision and reasons on application to amend the charge

At the outset of the hearing, the panel heard an application made by Ms Quinton-Carter, on behalf of the NMC, to amend the wording of charges 2, 3 and 16.

In respect of charge 2, Ms Quinton-Carter invited the panel to amend the stem of the charge by replacing ‘Colleague A’ with the words ‘Colleague B’. Colleague A is referred to in charge 1. Charge 2 does not relate to the same colleague as is referred to in charge 1. She submitted that Colleague A and Colleague B are from different workplaces and that this minor typographical error does not change the scope of the charge that Mrs McLean faces. Ms Quinton-Carter submitted that Mrs McLean has been provided with the witness statements that the NMC intends to rely on, and that it is obvious from these that the two witnesses worked for different organisations.

In respect of charge 3, Ms Quinton-Carter invited the panel to amend the stem of the charge so that it reads “Whilst employed at the ‘CGL’ organisation on unknown dates you left the clinic room unattended and/or unsecured…”. Ms Quinton-Carter submitted that, in its current form, charge 3 alleges that the mischief only occurred once on ‘an unknown date’. She submitted that this is another typographical error, as it is the NMC’s case that the mischief alleged in this charge occurred on more than one occasion. This is clearly apparent from the evidence contained in the witness statements. She submitted that the content of the charge does not change in granting this amendment as the mischief identified remains the same. Furthermore, she also invited the panel to remove the superfluous word ‘the’ in charge 3a as it was a further typographical error.

In respect of charge 16, Ms Quinton-Carter invited the panel to amend the charge so it would read “your conduct at any or all of Charges 15 a) to 15 f) above was dishonest…”. She submitted that, as the charge is currently phrased, the panel would have to find all of the sub-charges in charge 15 proved, in order for a finding of dishonesty to be made in respect of charge 16. She submitted that a single finding of dishonesty for one of the
sub-charges, or for several, but not all of them, would not result in the charge being found proved if the amendment was not made.

Ms Quinton-Carter submitted that these amendments were in the interests of justice. She submitted that the amendments as applied for would provide clarity and better reflect the evidence presented in this case. Furthermore, she submitted that no prejudice would be caused to Mrs McLean in allowing these amendments.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that such amendments, as applied for, were in the interest of justice.

The panel was satisfied that charge 2 did not refer to Colleague A and that this charge should be amended to refer to Colleague B. Mrs McLean would be aware of the identity of the colleague referred to in charge 2 from the information supplied to her by the
NMC. The panel was satisfied that Mrs McLean would not be prejudiced or disadvantaged in any way in allowing the amendment.

The panel was also satisfied that the proposed amendment to charge 3 would not prejudice Mrs McLean given that the witness statements and the other information which she had received from the NMC included all of the allegations in which she has to answer.

The panel was satisfied that the typographical errors in charges 2 and 3 were uncontentious and did not change the content of the allegations against Mrs McLean.

The panel noted that charge 16 currently reads “Your conduct at Charges 15 a) to 15 f) above was dishonest as you knew that the information above should have been given in answer to the question but you chose not to disclose the same” and that this implies that Mrs McLean has to be found to be dishonest on all accounts in order for charge 16 to be proved. The panel was of the view that granting the application to amend would change the complexion of the charge as it could widen the scope of charge 16 to capture alleged dishonesty if any or all of the sub-charges in charge 15 are found proved. However, the panel considered any charge of dishonesty potentially to be serious, and determined that it was in the public interest to allow the amendment to charge 16, as applied for.

The panel directed the NMC to inform Mrs McLean of these amendments and invited her to provide submissions on them. Mrs McLean responded with two separate emails dated 15 January 2019, in which she provided written representations for the panel to consider, albeit they did not relate to the application to amend the charges.
Details of charge: (After amendments)

That you, a registered nurse,

1) Whilst responsible for the care of Patient A, at the Royal Wolverhampton Hospital, during the nightshift 7 – 8 February 2016;

   a) failed to undertake observations when directed to do so by Colleague A and/or

   b) failed to complete the ECG in that you did not ensure that the ECG was escalated/signed off by a Doctor.

2) Whilst employed at the ‘CGL’ organisation, during a training session with Colleague B you:

   a) did not listen to instructions given about maintaining records in the Controlled Drugs book and/or;

   b) expressed reluctance to follow the rectification procedure for correcting mistakes in the Controlled Drugs books;

3) Whilst employed at the ‘CGL’ organisation on unknown dates you left the clinic room unattended and/or unsecured in that you:

   a) left the inter-connecting door open between the clinic-consulting room and/or

   b) left the keys for the clinic room and/or the drugs cupboards lying on the desk.

4) Whilst employed at the ‘CGL’ organisation on an unknown date you left the drugs cupboard and/or the fridge unlocked.
5) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you left a service user unaccompanied in the treatment room with the keys to the medication cupboard.

6) Whilst employed at the ‘CGL’ organisation on an unknown date you attempted to take a blood sample from the neck of an unknown Patient;

7) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you commenced the process of taking blood from a service user without confirming their identity first.

8) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you did not ask for consent in respect of testing a Patient for Blood-Borne Viruses (“BBV”);

9) Whilst employed at the ‘CGL’ organisation on an unknown date took a blood sample from a service user who was under the influence of alcohol and therefore could not provide consent;

10) Whilst employed at the ‘CGL’ organisation;

    a) between 5 and 9 August 2016 you spoke inappropriately to a service user in that you said words to the effect of: ‘I will take you outside and beat the shit out of you’.

    b) referred to a service user as being: ‘snotty and obnoxious’.

11) Whilst employed at the ‘CGL’ organisation on an unknown date, on two occasions, signed the Controlled Drug book to indicate medication had been given to a service user before the medication had been given;

12) Your conduct at Charge 11 above was dishonest in that the record you created was false because it indicated that medication had been administered at the recorded time when it had not been;
13) Whilst employed at the ‘CGL’ organisation on an unknown date, when a Patient fainted in the lobby area, you:

a) when it was not clinically indicated, attempted to treat the Patient by:
   i) calling an ambulance;
   ii) commencing an intravenous drip;

b) were reluctant to accept and/or act on the clinical opinion of your senior colleague and/or the doctor about how to treat the Patient;

14) Whilst employed at the ‘CGL’ organisation on an unknown date failed to complete MARs Charts.

15) During a telephone conversation with Medacs Healthcare Agency on 9 December 2016 when asked by the Call Handler ‘Are you currently or have you ever been suspended from work, involved in an investigation or dismissed’ you did not disclose the following:

a) That you were dismissed from your employment at Alexandra House Care Home in 2011.

b) That you were dismissed from your employment at Russell Hall Hospital in 2011.

c) That you were subject to an investigation at New Cross Hospital in 2016.

d) That you were suspended from New Cross Hospital in February 2016.

e) That you were subject to an investigation at whilst employed at CGL in 2016.

f) That you were suspended from your employment at CGL in September 2016.
16) Your conduct at any or all of Charges 15 a) to 15 f) above was dishonest as you knew that the information above should have been given in answer to the question but you chose not to disclose the same.

17) During a telephone conversation with Medacs Healthcare Agency on 9 December 2016 when asked by the Call Handler ‘Are you currently or have you ever been suspended from work, involved in an investigation or dismissed’ you disclosed that you had been subject to a Conditions of Practise Order however you:

   a) indicated that the health condition you suffered from was [PRIVATE] when the conditions which impaired your fitness to practise were [PRIVATE] and [PRIVATE] and

   b) did not disclose all of the Conditions which were placed on your practise including not disclosing the condition that required you [PRIVATE].

18) Your conduct at Charge 17a) and/or 17b) above was dishonest as you omitted to provide information which caused an incomplete and/or misleading presentation of the nature of that matter.

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:

Ms Quinton-Carter made a request that parts of the hearing be held in private on the basis that proper exploration of Mrs McLean’s case involves reference to her health. The application was made pursuant to Rule 19 of the Rules.

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

Rule 19 states:

19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.

(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant’s physical or mental health must be conducted in private.

(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

(a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—
(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

(4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there will be reference to Mrs McLean’s health, the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with these matters as and when such issues are raised.
Background

The NMC had received three separate referrals in relation to Mrs McLean.

On 3 March 2016, the NMC received a referral from Royal Wolverhampton NHS Trust ("the Trust"), in relation to Mrs McLean’s nursing practice whilst she was employed as a Band 5 Staff Nurse at New Cross Hospital between 22 June 2015 and 28 June 2016.

It is alleged that, on the night shift of 7-8 February 2016, Mrs McLean was moved to the Emergency Department ("ED"), where she was asked by Colleague A to take observations and perform an Electrocardiogram ("ECG") on a patient who had arrived at 01:47 hours with chest pains. Anyone coming into the department with chest pain is prioritised. Initially, there was no cubicle available for this patient. At some point, Colleague A was told that a cubicle had become available and she told Mrs McLean to move the patient into the cubicle. Colleague A observed a blood pressure cuff on the patient’s arm, and assumed that Mrs McLean had carried out the observations and the ECG. The patient was transferred to the care of Ms 5 when she returned to the cubicle. Ms 5 noticed that no observations had been done and she carried out observations at 03:00 hours. She saw that an ECG was attached to Patient A’s notes, but did not check it. At the end of the night shift, it was discovered that whilst an ECG had been completed, it had not been signed off by a doctor, and it had showed an abnormal reading which had not been escalated. As a result, the assessment and treatment for this patient was delayed for approximately five hours.

On 31 January 2017, the NMC received a referral from the ‘Change, Grow, Live’ ("CGL") organisation, whilst Mrs McLean was employed at Park House, a residential detoxification facility for substance misusers, between the dates of 31 May 2016 and 22 November 2016.

It is alleged that on 14 July 2016, Mrs McLean left the Clinic Room at Park House unlocked, with an unaccompanied service user in the room, with the medication
cupboard also unlocked. It is further alleged that Mrs McLean attempted to take a blood sample from the neck of an unknown patient, she commenced the process of taking blood from a service user without confirming their identity, and that she did not ask for consent in respect of testing a patient for Blood-Borne viruses (“BBV”). It is also alleged that Mrs McLean took a blood sample from a service user who was under the influence of alcohol and therefore could not provide consent.

It is alleged that Mrs McLean signed the Controlled Drugs book on two occasions to indicate that medication had been administered to a service user at the recorded time before it had actually been given to the service user. It is alleged that Mrs McLean was dishonest in these actions in attempting to give the false impression that medication had been administered at the recorded time when it had not been.

It is alleged that Mrs McLean attempted to treat a patient who had fainted in the lobby area by calling an ambulance and commencing an intravenous drip when it was not clinically indicated. Furthermore, it is alleged that Mrs McLean was reluctant to accept and/or act on the clinical opinion of her senior colleague and/or the doctor in relation to the care being provided to the patient.

On 8 February 2017, the NMC received a referral from Medacs Healthcare Agency (“the Agency”) in relation to a 33-minute telephone registrations interview they had had with Mrs McLean. In this interview, Mrs McLean was asked a number of questions, including whether she had ever been suspended from work, involved in an investigation or dismissed from a previous employment, or if she had any conditions or restrictions against her nursing registration. It is alleged that Mrs McLean did not disclose that she had been dismissed from two previous employments (Alexandra House Care Home and Russell Hall Hospital, both in 2011), that she had had two investigations into her nursing practice, or that she had been suspended from two separate employments (Wolverhampton, New Cross Hospital and CGL, both in 2016).
Furthermore, when discussing a conditions of practice order that Mrs McLean had been subject to between 2014 and 2016, she failed to disclose all of the relevant conditions, and indicated inaccurately that impairment had been found on the basis of [PRIVATE] as opposed to [PRIVATE] and [PRIVATE]. It is alleged that Mrs McLean was dishonest in relation to this, in that she attempted to create a false impression as to why she was subject to a conditions of practice order.
Application to hear Ms 2’s evidence via video link:

Ms Quinton-Carter made an application to hear Ms 2’s evidence via video link.

Ms Quinton-Carter submitted that Ms 2 is unable to attend the hearing in person due to ongoing childcare commitments. She submitted that whilst it is preferable to have witnesses attend in person to give evidence, Ms 2 is willing to engage with the process and give live evidence at this hearing by way of video link. Ms Quinton-Carter submitted that there is no prejudice to Mrs McLean for Ms 2’s evidence to be given in this way as she has voluntarily absented herself.

Ms Quinton-Carter submitted that it would be relevant and fair to receive the evidence of Ms 2 in the circumstances of this case. She submitted that the evidence Ms 2 provides is in relation to charge 1, and that it is not the sole and decisive evidence for this charge. Ms Quinton-Carter submitted that Mrs McLean was asked whether she was content for Ms 2 to give evidence via video link prior to the hearing commencing, and that she did not raise any objection.

Ms Quinton-Carter submitted that the panel will be able to assess the credibility of Ms 2’s evidence as she can be seen and heard. She informed the panel that a GoToMeetings test has been completed in advance of this application in order to test the connection.

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

The panel considered Ms 2’s evidence to be relevant to the charges, as it noted that Ms 2 can provide evidence to it in respect of charge 1. It noted that Ms 2’s evidence was not the sole and decisive evidence that the NMC relied upon for this charge.

The panel noted that Mrs McLean had not provided a response to the NMC after being informed that it was intending to call Ms 2 by video link.
The panel was satisfied by the reason given for Ms 2’s non-attendance at the hearing venue. It was of the view that it would be fair to hear the evidence of Ms 2 by video link in the circumstances of this case.

The panel accepted Ms Quinton-Carter’s application for Ms 2 to give evidence by way of video link.
Decision and reasons on application pursuant to Rule 31

The panel heard an application made by Ms Quinton-Carter under Rule 31 to permit a letter which was sent to Mrs McLean dated 9 October 2012 into evidence. This letter contained a previous decision made by the Conduct and Competence Committee ("CCC") at a hearing between 3 – 5 October 2012, where a panel considered a previous NMC referral in relation to Mrs McLean’s nursing practice.

Ms Quinton-Carter invited the panel to consider whether the evidence is fair and relevant in the circumstances of this case.

Ms Quinton-Carter submitted that this evidence is relevant to this hearing as charge 15a requires the panel to make a finding on whether Mrs McLean did not disclose to the Agency that she was dismissed from Alexandra House Care Home. In order for the panel to make this decision, Ms Quinton-Carter submitted that the NMC needs to prove that the dismissal in question did take place.

Ms Quinton-Carter also provided a witness statement dated 9 December 2011 from the CCC substantive hearing in 2012, the relevant paragraph of which reads as follows “Lisa’s employment was terminated at the meeting held on 19 April 2011. She was given one weeks’ notice”.

Ms Quinton-Carter submitted that the CCC substantive hearing panel, in its decision on 5 October 2012, accepted that Mrs McLean was summarily dismissed by Alexandra House Care Home on 19 April 2011. Whilst Mrs McLean was not present at the CCC substantive hearing due to ill-health, she was represented in her absence throughout the proceedings. Ms Quinton-Carter said that the fact of Mrs McLean’s dismissal from Alexandra House Care Home was not challenged by her representative, or by Mrs McLean subsequently.
In respect of the dismissal from Russell Hall Hospital, Ms Quinton-Carter referred the panel to the decision of the Health Committee ("HC") on 17 June 2014. The decision read that during the period of October to November 2011, whilst Mrs McLean was employed as a registered nurse at Russell Hall Hospital, concerns were raised regarding her health and nursing practice. At a meeting with her employer, Mrs McLean was assessed as being unable to consistently provide safe patient care. Mrs McLean was dismissed from her position but was offered alternative employment as a Band 2, Clinical Support Worker.

Mrs McLean was present at the HC substantive hearing and was represented. Ms Quinton-Carter submitted that Mrs McLean was informed prior to the hearing commencing that the NMC intended to make an application in relation to this evidence. She submitted that no response was received from Mrs McLean. She asked the panel to accept the content of the two decisions, and the letter, as evidence of two dismissals from two places of previous employment.

The panel heard and accepted the legal assessor’s advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is ‘fair and relevant,’ a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor advised the panel that it should read the passages in the decisions referred to. The HC substantive hearing decision made in 2014 was contained in the documentation before the panel. The CCC substantive hearing decision made in 2011 was not before the panel. This was produced by the NMC. The panel read only the relevant passage referred to above. It has not read the full decision.

The panel had regard to Rule 31 of the Rules.

The panel gave the application in regards to admitting hearsay evidence serious consideration. The panel first considered the witness statement dated 9 December 2011. It considered this to be relevant. The panel also took into account the CCC
substantive hearing decision in 2012, in relation to the dismissal from Alexandra House Care Home. Taking the evidence in the round, and in considering that Mrs McLean had never contested her dismissal, the panel concluded that it was fair and relevant to accept the evidence in respect of the Alexandra House Care Home dismissal.

For the same reasons, it has decided that it is fair and relevant to admit the extract from the HC substantive hearing decision in 2014 as evidence of the Russell Hall Hospital dismissal.

The panel therefore decided to allow the application and admit the evidence.
Application to hear Ms 1’s evidence via video link:

Ms Quinton-Carter submitted that the panel has made good progress in hearing witness evidence in this case and that she is now in a position to call Ms 1 to give her evidence to the panel. However, Ms Quinton-Carter submitted that Ms 1 is currently in Manchester and will therefore not be in a position to attend the hearing venue today. In addition to this, Ms Quinton-Carter submitted that Ms 1 is unavailable all day on the next working day due to other court proceedings. She therefore made a further application to hear the evidence of Ms 1 by video link.

Ms Quinton-Carter submitted that Ms 1’s evidence is relevant to charges 15 – 18, although she does not give direct evidence in relation to these charges. Ms Quinton-Carter submitted that Ms 1 exhibits the transcript of the telephone conversation that a member of the Registrations Team at the Agency had had with Mrs McLean, along with subsequent correspondence with Mrs McLean on issues that transpired.

Ms Quinton-Carter submitted that there is no prejudice to Mrs McLean in hearing Ms 1’s evidence via video link. She submitted that Mrs McLean is not in attendance to cross-examine Ms 1 in any event.

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

The panel noted that it has made good progress in hearing the witnesses on behalf of the NMC in this case. It further noted that Ms 1 was unable to attend the hearing venue today, nor the following working day, due to other ongoing court proceedings.

The panel considered Ms 1’s evidence to be relevant as it relates to charges 15 – 18. It noted that she was not a direct witness to the alleged events.

The panel further noted that Mrs McLean had not been informed that the NMC was planning to call Ms 1 by video link, and as such, had not provided a response to this
application. However, the panel was of the view that, due to Mrs McLean voluntarily absenting herself, she had waived her rights in responding to this application at this time. The panel also noted that Mrs McLean had not responded to the NMC’s previous application, and it therefore determined that she would be unlikely to object to this current application in the circumstances.

The panel determined that it was fair and practical to hear the evidence of Ms 1 by video link in the circumstances of this case.
Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Ms Quinton-Carter on behalf of the NMC.

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

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel drew no adverse inference from the non-attendance of Mrs McLean in its findings of facts.

The panel heard oral evidence from eleven witnesses tendered on behalf of the NMC who, at the time of the events, were employed in the following roles:

Colleague A – Ward Sister in the ED at the Hospital.
Colleague B – Relief Pharmacy Manager at Lloyds Pharmacy.
Ms 1 – Head of Clinical Services at the Agency.
Ms 2 – Senior Sister and Ward Manager in the Accident & Emergency (“A&E”) at the Hospital.
Ms 3 – Ward Sister in the A&E at the Hospital.
Ms 4 – Senior Sister in the A&E at the Hospital.
Ms 5 – Bank Staff Nurse in the ED at the Hospital.
Mr 6 – Registered Mental Health Nurse at CGL, Park House, Birmingham.
Mr 7 – Clinical Services Manager at CGL.
Ms 8 – Senior and Lead Nurse at CGL, Park House, Birmingham.
Ms 9 – Band 6 Staff Nurse at Park House.
The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

In the round, the panel found all of the NMC witnesses to be credible and helpful, and that they bore no ill-will towards Mrs McLean.

The panel found Colleague A to be a clear, concise and honest witness. It noted that there did appear to be some slight confusion around her account of the sequence of events but considered this to be due to the period of time that has lapsed since the alleged incident. However, the panel found Colleague A to be very clear in her recollection of the instructions she gave to Mrs McLean in relation to observations and ECG.

The panel considered Colleague B to have a good recollection of the events and was of the view that she assisted the panel to the best of her knowledge and belief. Colleague B was able to explain to the panel that her interaction with Mrs McLean during the training session had left a lasting impression on her as she found it to be unusual.

The panel found Ms 1 to be a clear and helpful witness. It had regard to the documentary exhibits she submitted in respect of the referral she made to the NMC. The panel noted that Ms 1 was not directly involved in interviewing Mrs McLean over the telephone, but she heard the recording and read the transcript of the interview.

The panel found Ms 2 to be a credible and helpful witness who gave a clear account of her involvement with Mrs McLean in the internal investigation completed by the Hospital. Ms 2 was able to confirm that Colleague A was always very clear when giving instructions to staff on the ward at the Hospital. Ms 2 did not know Mrs McLean prior to the alleged incident.
The panel found Ms 3 to be a helpful and honest witness who had a good recollection of the alleged events. Ms 3 was able to give detailed answers when giving her evidence, and she was able to provide a background as to what issues Mrs McLean encountered whilst working at the Hospital. Ms 3 was balanced and fair to Mrs McLean, in that she accepted when she could not recollect certain events due to the passage of time that has lapsed.

The panel considered Ms 4 to be a fair, balanced and credible witness during her evidence. It noted that Ms 4 accepted when she was not able to recollect certain events, and that she did not attempt to embellish her evidence.

The panel considered Ms 5 to be a measured and balanced witness who assisted the panel to the best of her knowledge and belief.

The panel found Mr 6 to be a credible and helpful witness during his evidence. Mr 6 had a good recollection of the alleged events and he explained that he was quite shocked by what he had seen Mrs McLean do whilst performing her role as a registered nurse at Park House. Mr 6 provided the panel with background information and was balanced and fair to Mrs McLean with his answers during questioning.

The panel found Mr 7 to be a helpful, concise and credible witness who assisted the panel to the best of his knowledge and belief. Mr 7 provided positive information in respect of Mrs McLean’s performance at her recruitment interview. The panel also considered Mr 7 to have a good recollection of events, in that he was able to explain his concerns around Mrs McLean’s health issues.

The panel found Ms 8 to be a clear, concise and credible witness, who was open and honest when giving her evidence to the panel. Ms 8 provided the panel with information in respect of Mrs McLean’s background and her nursing responsibilities at CGL. The panel noted that Ms 8 was clearly worried by Mrs McLean’s alleged conduct and was concerned for her welfare.
The panel considered Ms 9 to be a clear, balanced and fair witness. Ms 9 had stated during her oral evidence that she found Mrs McLean could be ‘friendly, open and hardworking’.

The panel considered each charge and made the following findings:

**Charge 1a:**

That you, a registered nurse,

1) Whilst responsible for the care of Patient A, at the Royal Wolverhampton Hospital, during the nightshift 7 – 8 February 2016;

   a) failed to undertake observations when directed to do so by Colleague A and/or

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Colleague A, Ms 2, Ms 3, Ms 4 and Ms 5.

The panel noted from the shift records produced that Mrs McLean was working on the night shift on 7 – 8 February 2016 at the Hospital. She had been transferred from the Clinical Decision Unit (“CDU”) to the ED to assist Colleague A who was a Ward Sister and the Majors Triage Nurse. Mrs McLean was allocated to work on the corridor where patients were waiting for cubicles to become available. Patient A had been brought into ED by an ambulance with chest pains. He was placed in the corridor where Mrs McLean was working.
The panel had regard to Colleague A’s witness statement in which she stated that “Typically, as this gentleman arrived so did several other patients. Clearly I could not attend to them all so I asked Lisa to attend to the gentleman who had arrived with chest pains and to take his observations and do an ECG…” Colleague A confirmed in her oral evidence to the panel that she clearly remembers giving this instruction to Mrs McLean in respect of the care to Patient A.

Colleague A gave evidence that at some point a cubicle became available and she advised Mrs McLean that they could move Patient A to cubicle 16. Colleague A said that she noticed that the patient had a blood pressure cuff on his arm which made her think that Mrs McLean had done the observations. The care of patients in cubicle 16 had been allocated at the start of the shift to Ms 5, who, at the time of the transfer of Patient A to cubicle 16, was escorting another patient to a ward. On her return, she found Patient A in the cubicle. She checked the patient’s notes and noticed that no observations had been recorded but there was an ECG attached. Ms 5 therefore carried out the observations. The patient’s notes document that she carried out the observations at 03:00 hours, and she signed the entries.

The panel noted that Mrs McLean does not dispute that she was asked to provide care to Patient A by Colleague A in any of her written representations to the panel, although during the internal investigation by the Hospital, she denied that she had been asked to take this patient’s observations, or to do an ECG by Colleague A. The panel also noted that it had found Colleague A to have been a clear and credible witness and accepted her evidence that she had given Mrs McLean the above instructions.

The panel therefore found that Mrs McLean was responsible for the care delivered to Patient A.

The panel had sight of Patient A’s notes and noted that there does not appear to be any recording of observations having been completed from the time Patient A entered the
ED at 01:47 hours, until Ms 5 carried out observations at 03:00 hours. There are no entries by Mrs McLean.

The panel accepted the evidence of Colleague A that Mrs McLean had been directed to undertake observations, that it was her duty to do so, and that she had failed to do so.

Therefore, the panel found charge 1a proved.

**Charge 1b:**

b) failed to complete the ECG in that you did not ensure that the ECG was escalated/signed off by a Doctor.

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Colleague A, Ms 2, Ms 3, Ms 4 and Ms 5.

The panel accepted Colleague A’s evidence that she had instructed Mrs McLean to carry out the ECG for Patient A.

The panel had regard to Ms 5’s witness statement in which it is stated “I checked the Patient’s notes and noticed that no observations had been recorded but there was an ECG attached. The Registrant was the nurse allocated to this patient…so she would have been the person to do the ECG. Every ECG should be checked and signed off by a doctor and it is the responsibility of the nurse who carries out the ECG to ensure this is done”. Ms 5 had not checked the ECG.

The panel noted that it had no evidence before it to confirm who had completed the ECG for Patient A, however, it noted that Colleague A had asked Mrs McLean to
undertake this task. The ECG had not been signed off by a doctor. All of the NMC witnesses called to give evidence in relation to this charge confirmed that the nurse who undertook the ECG is responsible for escalating the ECG to be signed off by a doctor.

The panel attached limited weight to the description given by Patient A of the nurse who performed the ECG, and to the descriptions of the staff on duty given by the witnesses.

The panel had regard to the letter dated 16 March 2016 from the Occupational Health and Wellbeing Centre at the Trust. In this letter, it is recorded “I asked her about the incident which occurred in February and she told me that she had forgotten to sign off an ECG…According to her she became very tired after three night shifts and this could have been the reason why she missed dealing with the ECG appropriately”. The panel noted that at a later point Mrs McLean denies ever saying anything to that effect, however, the panel was of the view that there would have been no reason for the occupational health practitioner to have fabricated this.

The panel determined that it was more likely than not that Mrs McLean as the nurse responsible for Patient A would have completed the ECG and therefore had the responsibility to ensure the ECG was escalated/signed off by a doctor.

Therefore, the panel found charge 1b proved.

**Charge 2a:**

2) Whilst employed at the ‘CGL’ organisation, during a training session with Colleague B you:

   a) did not listen to instructions given about maintaining records in the Controlled Drugs book and/or;
This charge is found proved.

In reaching this decision, the panel took account of the evidence of Colleague B.

Colleague B worked with CGL to provide training to all newly appointed nurses in the use and storage of medication which included how to rectify mistakes made with entries in the Controlled Drugs book. Colleague B gave the following evidence about Mrs McLean “Whilst I was discussing with her what to do in the event that a patient brought their own medications into the facility, I got the impression that Lisa was not listening to what I was saying, she seemed disinterested. I can qualify this statement because when I asked her a question about what I had just covered she told me she hadn’t been listening…When I was explaining the correct procedures to follow when completing the Controlled Drugs book she didn’t listen either”.

Colleague B went on to say that on numerous occasions during her training session, she would ask Mrs McLean a question and she would simply respond by saying that she had not been listening.

The panel had found Colleague B to be a credible witness during its assessment of her oral evidence. Colleague B informed the panel that she had a clear recollection in respect of this event as this was a training episode that had ‘stuck in her mind’ because it was ‘so strange’.

The panel noted that Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 2a proved.
**Charge 2b:**

b) expressed reluctance to follow the rectification procedure for correcting mistakes in the Controlled Drugs books;

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Colleague B.

Colleague B said that Mrs McLean recorded two incorrect entries in the Controlled Drugs book. She showed her how to rectify the first error by placing an asterix next to the error and adding a footnote at the bottom of the page.

The panel had regard to Colleague B’s witness statement, which states “There is nothing complicated or onerous about the rectification process however when I asked Lisa to correct the other error she said something like ‘do you seriously want me to do it?’ It was clear to me that she was not happy to make the rectification, which frankly I found odd”. Colleague B’s evidence was that she was sufficiently concerned with Mrs McLean’s lack of interest to advise Ms 8 of the incident.

The panel accepted that making appropriate rectifications to a Controlled Drugs book is fundamental to safe and effective nursing practise, and part of everyday basic nursing requirements.

The panel accepted Colleague B’s evidence that Mrs McLean was reluctant to follow the rectification procedure for correcting mistakes in the Controlled Drugs book.

The panel noted that Mrs McLean offers no explanation to it in respect of this charge in her written representations.

Therefore, the panel found charge 2b proved.
**Charge 3a:**

3) Whilst employed at the ‘CGL’ organisation on unknown dates you left the clinic room unattended and/or unsecured in that you:

   a) left the inter-connecting door open between the clinic-consulting room and/or

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Colleague B and Ms 8.

The panel had sight of Colleague B’s witness statement, in which it is stated “I attended the clinic room and found the doors (door to the consultation room and the inter-connecting door between the clinical-consultation room) were unlocked…I advised [Ms 8] of the issue”. Ms 8 also confirmed in her evidence that Colleague B had raised these concerns with her at the time.

When Colleague B had raised this with Mrs McLean, Colleague B said that Mrs McLean had apologised for leaving the clinic room unlocked and unsecured.

The panel concluded that the clinic room was left both unattended and unsecured.

Mrs McLean did not directly address this charge in her written representations to the panel.

The panel found charge 3a proved.
Charge 3b:

b) left the keys for the clinic room and/or the drugs cupboards lying on the desk.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Colleague B and Ms 8.

The panel noted that Colleague B stated within her witness statement that “…The keys for the clinic room and drugs cupboard lying on the desk in the clinic room whilst Lisa was out of the room…”[sic].

The panel further noted that this incident is not disputed by Mrs McLean and, according to Colleague B’s evidence, she appears to accept that she should have been more careful.

The panel concluded that Mrs McLean left the keys for the clinic room and the drugs cupboard lying on the desk.

Therefore, the panel found charge 3b proved.

Charge 4:

4) Whilst employed at the ‘CGL’ organisation on an unknown date you left the drugs cupboard and/or the fridge unlocked.

This charge is found proved.
In reaching this decision, the panel took account of the evidence of Colleague B and Ms 8.

The panel had regard to Colleague B’s witness statement in which she stated “On another occasion I attended the clinic room and found that whilst the door was locked; the drugs cupboards and fridge had all been left unlocked by Lisa, again I informed [Ms 8]”. Colleague B told the panel that when she has raised this with Mrs McLean, she had stated that she had realised that she had left the drugs cupboards and fridge unlocked, and that she was returning to the clinic room to ensure that these were locked.

Ms 8 confirmed that the matter had been reported to her by Colleague B.

The panel concluded that Mrs McLean had left the drugs cupboard and the fridge unlocked.

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 4 proved.

**Charge 5:**

5) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you left a service user unaccompanied in the treatment room with the keys to the medication cupboard.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 6 and Ms 8.
The panel had regard to Mr 6’s witness statement in which he stated “The most worrying incident involving Lisa was when she was taking blood from a client. She left the client in the treatment room with the drug keys in a cupboard in the room and came to get me to ask me something”. Mr 6 confirmed during his oral evidence that Mrs McLean should have the keys on her person at all times, and that she should not have left a client alone in the treatment room. The panel noted that Mr 6 appeared very concerned by Mrs McLean’s actions in this respect.

Ms 8 also stated in her witness statement that “[Mr 6] also informed me that Lisa had left the medication keys hanging in the medication cupboard and left the service user unsupervised within the clinic room to ask him for help…”.

The panel also noted that a datix report was completed by Ms 8 in relation to this incident. The event is described on the report as “One of the staff nurses on duty left a service user in the clinic/medication room alone and left the medication and CD keys hanging in a medication cupboard”.

The panel found Mr 6 and Ms 8 to be credible during their evidence to this panel. The panel determined that the datix report was contemporaneous evidence to demonstrate that this incident did occur.

Mrs McLean does not address this charge in any of her written representations.

Therefore, the panel found charge 5 proved.

**Charge 6:**

6) Whilst employed at the ‘CGL' organisation on an unknown date you attempted to take a blood sample from the neck of an unknown Patient;
This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 6.

The panel had regard to Mr 6's witness statement, in which it is stated “On one occasion I saw Lisa trying to obtain blood from a client’s neck. I had never seen that before and had certainly never received training to take blood from there”. Mr 6 stated in his oral evidence that Mrs McLean was swabbing the client’s neck. Mr 6 was able to explain the risks of taking blood from a client’s neck during his oral evidence.

The panel noted that this was a memorable incident for Mr 6 as he described it as ‘a strange incident’.

The panel had no reason to doubt the evidence of Mr 6, having found him to have been credible when giving his evidence.

The panel had no reason to believe that Mrs McLean was swabbing a client’s neck for any reason other than to take blood.

Mrs McLean does not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 6 proved.

Charge 7:

7) Whilst employed at the ‘CGL’ organisation on 19 August 2016 you commenced the process of taking blood from a service user without confirming their identity first.
This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 6 and Ms 8.

The panel had regard to Mr 6's witness statement, in which it is stated “I joined her in the treatment room as I think she was concerned about the identity of the client. I noticed that she had the wrong patient details sheet in front of her and it was apparent she had not asked the client to identify themselves by their name and date of birth which was standard practice”.

The panel noted that there was some discrepancy between Mr 6 and Ms 8's oral evidence in respect of this charge. Ms 8 had told the panel that blood was taken from the service user and that this was disposed of after looking through the service user’s notes. However, Mr 6 was not clear on whether Mrs McLean had actually taken blood from the service user, noting that he had been more concerned that Mrs McLean had left a service user in the clinic room with the keys to the medication cupboards.

The panel also had sight of another datix report which was completed in relation to this incident by Ms 8.

The panel noted the description of the event in the datix report is recorded as “S/N L McLean took a blood sample from a service user without confirming name and address and began completing the form for another patient name and details...”.

The panel considered the datix report to be the most contemporaneous evidence that it had before it. It noted that the NMC witness statements in relation to this charge were signed by the witnesses at least a year after the event. The panel preferred the evidence of the contemporaneous datix report and accepted that a blood sample had been taken from a service user without confirmation of his name and address.
Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 7 proved.

**Charge 8:**

8) Whilst employed at the 'CGL' organisation on 19 August 2016 you did not ask for consent in respect of testing a Patient for Blood-Borne Viruses ("BBV");

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 6 and Ms 8.

The panel had regard to Mr 6’s witness statement, in which it is stated “I can’t remember the precise details about the whole incident but I seem to recall that Lisa didn’t ask the patient for consent to obtain blood to test for [Blood-Borne Viruses] ("BBV"), you must always ask for consent”. This was supported by Ms 8’s witness statement, as she stated “Lisa had not realised this as she had not asked the service user to confirm his details and had also not sought his consent before taking a sample for BBV”.

The panel had sight of the datix report which was completed in relation to this incident by Ms 8. It noted the description of the event in the datix report is recorded as “The nurse also took blood for BBV without consent when none was required”. An entry on the datix report states “Test for BBV blood discarded”.

The panel noted that the datix report supports Mr 6’s and Ms 8’s evidence that consent was not given for a blood sample for BBV. Indeed, Ms 8 gave evidence to the extent that a blood sample for BBV was unnecessary in these circumstances in any event.
The panel determined that the service user would not have been able to give informed consent given that the panel had evidence to suggest that Mrs McLean did not discuss the process around taking a blood sample for BBV with him.

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 8 proved.

**Charge 9:**

9) Whilst employed at the ‘CGL’ organisation on an unknown date took a blood sample from a service user who was under the influence of alcohol and therefore could not provide consent;

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Ms 9.

The panel had regard to Ms 9’s witness statement, in which she stated “I also discussed concerns I had with her about taking a blood sample from a new admission within 2 hours of them being admitted. The service user was heavily intoxicated and I felt they were unable to give informed consent to testing for blood borne virus testing at that time…I discussed with Lisa and her Nurse Manager [Ms 8] that I did not think the patient should have had blood taken at that time as they were too heavily under the influence of alcohol and illicit substances…It was my opinion that the patient could not comprehend any pre-test counselling…and give informed consent to have this testing carried out…I was also concerned that the patient was drowsy and unable to maintain a
safe position on the couch whilst the needle was in their arm as they were falling forwards as the sample was being taken”.

The panel also noted that Ms 9 had stated that Mrs McLean did not like to be challenged as she had replied that “this is what she was used to doing in her previous role as a Nurse in an Accident and Emergency Department”.

Ms 9 gave a clear description of the client group and outlined what complications might have arisen as a result of Mrs McLean taking a blood sample from an intoxicated service user. The panel noted that it had found Ms 9 to be credible during its assessment of her evidence and it considered her to have been fair to Mrs McLean throughout.

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 9 proved.

**Charge 10:**

10) Whilst employed at the ‘CGL’ organisation;

   a) between 5 and 9 August 2016 you spoke inappropriately to a service user in that you said words to the effect of: ‘I will take you outside and beat the shit out of you’.

   b) referred to a service user as being: ‘snotty and obnoxious’.

These charges are found NOT proved.

The panel noted that the NMC had invited it to find charge 10a and 10b not proved.
The panel had no evidence before it to suggest that these incidents occurred.

The panel therefore found charges 10a and 10b not proved.

**Charge 11:**

11) Whilst employed at the ‘CGL’ organisation on an unknown date, on two occasions, signed the Controlled Drug book to indicate medication had been given to a service user before the medication had been given;

**This charge is found proved.**

In reaching this decision, the panel took account of the evidence of Ms 8.

The panel had regard to Ms 8’s witness statement in which she stated “Other concerns raised during this supervision were errors she had made in the controlled drugs (CD) book despite being advised of the proper procedure. I had been present when Lisa had signed the CD book indicating that a service user had taken their medication before in fact they had. I had to remind her that she shouldn’t sign that the medication has been taken until it actual had…Worryingly right after I said that to her she did exactly the same with the next administration of controlled drugs and when I challenged her actions she told me that she ‘hadn’t been listening’.”

The panel noted that Ms 8 had a clear recollection of these events and that it had found her oral evidence to be credible. Mrs McLean did not address this charge in her written representations to the panel.

The panel was concerned by the fact that Mrs McLean was not a newly qualified nurse, and that she had worked in healthcare for a significant period of time. The panel
determined that she should have been fully aware of the correct procedure in accounting for controlled drug administration.

Mrs McLean did not directly address this charge in her written representations to the panel.

Accordingly, the panel found charge 11 proved.

**Charge 12:**

12) Your conduct at Charge 11 above was dishonest in that the record you created was false because it indicated that medication had been administered at the recorded time when it had not been;

This charge is found NOT proved.

In reaching this decision, the panel took account of the evidence of Ms 8.

It also took account of the case of *Ivey v Genting Casinos* [2017] UKSC 67 in considering whether Mrs McLean had been dishonest in her actions. In particular, it noted in paragraph 74:

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

The panel noted that whilst Mrs McLean was completing her medication round, she was being supervised by her direct line manager, Ms 8, Senior Nurse, due to the medication errors that she had allegedly made on previous occasions.

In light of this, the panel considered it unlikely that Mrs McLean would have attempted to have been dishonest as she was aware that she was performing her duties in the presence of a more senior staff member. The panel also took into account that it had received a significant amount of evidence to demonstrate that Mrs McLean did not follow instructions given by more experienced senior colleagues. The panel has concluded that this alternative explanation as to Mrs McLean’s attitude when given instructions was more likely than her having acted dishonestly in failing to follow the instructions given to her by Ms 8.

The panel had no evidence before it to suggest that Mrs McLean had been attempting to conceal the fact that she had signed the Controlled Drugs book prior to administering medication.

Whilst the panel considered signing the Controlled Drugs book prior to administration of medication to be extremely poor practice, it was not satisfied that Mrs McLean was attempting to mislead staff with the belief that this medication had been administered to a service user when it had not been.

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 12 not proved.
**Charge 13a(i):**

13) Whilst employed at the ‘CGL’ organisation on an unknown date, when a Patient fainted in the lobby area, you:

   a) when it was not clinically indicated, attempted to treat the Patient by:

      i) calling an ambulance;

**This charge is found NOT proved.**

In reaching this decision, the panel took account of the evidence of Ms 8.

The panel had regard to Ms 8's witness statement, in which she stated “On assessment both the Doctor and I conclude the person had merely fainted and that all that was required was some oxygen…Lisa argued with me that it was a seizure and that she was going to put a needle into the person to attach a drip to assist the paramedics…I had to be very firm with Lisa and told her not to do that and to cancel the ambulance as it was not required”.

The panel noted that Mrs McLean was first on scene at the incident and that she had asked a colleague to call an ambulance after the patient had collapsed. The panel was of the view that this was not necessarily the wrong approach to take in the circumstances. It determined that the clinical indications this patient was showing were such that an ambulance might have been necessary. Furthermore, it was of the view that Mrs McLean would more likely have been criticised for not calling an ambulance if one were later required. The panel noted that the ambulance could always have been cancelled when it became apparent that it was no longer necessary in the circumstances.

Therefore, the panel found charge 13a(i) not proved.
Charge 13a(ii):

   ii) commencing an intravenous drip;

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 8.

The panel noted that Ms 8 in her oral evidence stated that Mrs McLean had the patient’s hand in hers and was about to begin introducing a Venflon into a vein [to which an intravenous drip could later be attached]. Further, Ms 8 stated that Mrs McLean was of the view that she would be saving the paramedics time by setting this up. The panel noted that Mrs McLean did not complete the procedure as senior staff stepped in to prevent her from doing so.

The panel accepted Ms 8’s evidence that it was not clinically indicated for Mrs McLean to have commenced an intravenous drip given the way the patient was presenting.

Mrs McLean did not address this charge in any of her written representations to the panel.

Therefore, the panel found charge 13a(ii) proved.

Charge 13b:

   b) were reluctant to accept and/or act on the clinical opinion of your senior colleague and/or the doctor about how to treat the Patient;

This charge is found proved.
In reaching this decision, the panel took account of the evidence of Ms 8.

Ms 8 told the panel that Mrs McLean’s actions were inappropriate and that she had to be extremely forceful in preventing Mrs McLean inserting a Venflon. She was of the belief that Mrs McLean was not taking her clinical opinion seriously.

The panel noted that the doctor and Ms 8 were in agreement that it was not clinically indicated to call an ambulance and/or to commence an intravenous drip for the patient. It heard evidence that Mrs McLean initially refused to accept their advice, in that she was of the clinical opinion that these actions were required in the circumstances.

The panel accepted that both of these members of staff were more senior than Mrs McLean. The panel determined that Mrs McLean should have followed the instructions of her more senior colleagues in relation to the patient’s treatment.

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 13b proved.

**Charge 14:**

14) Whilst employed at the ‘CGL’ organisation on an unknown date failed to complete MARs Charts.

**This charge is found NOT proved.**

The panel noted that the NMC had invited it to find charge 14 not proved.

The panel had no evidence before it to suggest that these incidents occurred.
The panel therefore found charge 14 not proved.

**Charge 15:**

15) During a telephone conversation with Medacs Healthcare Agency on 9 December 2016 when asked by the Call Handler ‘Are you currently or have you ever been suspended from work, involved in an investigation or dismissed’ you did not disclose the following:

a) That you were dismissed from your employment at Alexandra House Care Home in 2011.

b) That you were dismissed from your employment at Russell Hall Hospital in 2011.

c) That you were subject to an investigation at New Cross Hospital in 2016.

d) That you were suspended from New Cross Hospital in February 2016.

e) That you were subject to an investigation at whilst employed at CGL in 2016.

f) That you were suspended from your employment at CGL in September 2016.

**These charges are found proved.**

In reaching this decision, the panel took account of the evidence of Ms 1, Ms 2 and Mr 7.

In respect of charge 15a, the panel had regard to the evidence it admitted as part of the Rule 31 application made by the NMC. It noted from the CCC substantive hearing
decision letter dated 5 October 2012, that it was accepted that Mrs McLean was summarily dismissed from Alexandra House Care Home on 19 April 2011. Mrs McLean was not present at the CCC substantive hearing due to ill-health, but she was represented in her absence throughout the proceedings. The panel noted that Mrs McLean’s dismissal from Alexandra House Care Home was not challenged by her representative, or by Mrs McLean subsequently.

In respect of charge 15b, the panel took account of the decision of the HC substantive hearing panel on 17 June 2014. The decision read that during the period of October to November 2011, whilst Mrs McLean was employed as a registered nurse at Russell Hall Hospital, concerns were raised regarding her health and nursing practice. At a meeting with her employer, Mrs McLean was assessed as being unable to consistently provide safe patient care. Mrs McLean was dismissed from her position but was offered alternative employment as a Band 2, Clinical Support Worker. The panel noted that Mrs McLean was present and represented at the HC substantive hearing and that this information was not challenged.

In respect of charge 15c, the panel took account of the evidence contained within Ms 2’s witness statement. Ms 2 stated “I was approached by my manager and advised that an internal investigation was required following the discovery of an unsigned patient ECG…Furthermore I was advised that no observations had been recorded for the patient either…I was advised that the nurse under investigation was Lisa McLean…I invited Lisa to an investigation interview on 21 June 2016…I can’t recall when it was but I was on shift and Lisa phoned me. I asked if she had received my letter at which point she said she wasn’t going to attend the meeting. I advised her that I would be required to send her a second invite…”. The panel had found Ms 2 to be credible during her oral evidence to it. She told the panel that she had attempted to make a number of telephone calls to Mrs McLean before she eventually called Ms 2 back. The panel was satisfied that Mrs McLean was aware of the investigation into her nursing practice being conducted by Ms 2 at New Cross Hospital.
In respect of charge 15d, the panel had sight of a letter dated 12 February 2016 which was addressed to Mrs McLean from the Clinical Unit Manager of the ED at New Cross Hospital. The panel noted that the letter was titled ‘Re: Suspension from work’ and that this was confirmed within the decision letter as it states “In the circumstances and in view of the serious nature of the allegations it was considered appropriate that you should be suspended”.

Furthermore, the panel had regard to the letter from the RCN to the NMC Case Officer dated 25 February 2016. This letter reads “I am writing to inform you that Mrs McLean was suspended from her employment with Royal Wolverhampton NHS Trust at New Cross Hospital as of 12 February 2016, pending an internal investigation”.

In light of the above, the panel was satisfied that Mrs McLean was aware that she had been suspended by the Hospital.

In respect of charge 15e, the panel took account of the evidence of Mr 7, who confirmed in oral evidence that Mrs McLean had been subject to an investigation by him at CGL.

In respect of charge 15f, the panel noted from Mr 7’s witness statement that he had stated “I advised Lisa that I had concerns about her performance and that I did not think that she was fit to work. I then suspended her pending investigation”. The panel had found Mr 7 to have been credible when giving his evidence to it. The panel noted that Mrs McLean was present at this meeting and it therefore considered her to have been aware that she was suspended from her employment at CGL.

The panel had sight of the transcript of the telephone call between the Registrations Team at the Agency and Mrs McLean.

The panel noted that in response to the question from the interviewer “Are you currently or have you ever been suspended from work, involved in any investigation, or dismissed?”, Mrs McLean states “No, but I did have to go through the health and safety
committee with the NMC because I had [PRIVATE] in 2012”[sic]. The panel was satisfied Mrs McLean knew about all of the aforementioned dismissals, suspensions and investigations.

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found all of these charges proved.

**Charge 16:**

16) Your conduct at any or all of Charges 15 a) to 15 f) above was dishonest as you knew that the information above should have been given in answer to the question but you chose not to disclose the same.

**This charge is found proved in its entirety.**

In reaching this decision, the panel took account of the evidence of Ms 1, Ms 2 and Mr 7.

The panel considered Mrs McLean to have been asked a straightforward question in the telephone interview that she had had with the Registrations Team at the Agency. It noted that Mrs McLean had been asked for information in respect of her employment history, and noted that her answer had been “No, but I did have to go through the health and safety committee with the NMC because I had [PRIVATE] in 2012”[sic].

In taking account of its findings of facts in respect of charge 15, the panel was of the view that Mrs McLean must have been aware of the previous investigations into her nursing practice, as well as the fact that she had been suspended from two employers. She must also have been aware that she had been dismissed from two workplaces.
The panel determined that, in not disclosing this information to the Agency, a prospective employer, Mrs McLean had been intending to mislead it as to the true nature of her having to leave her previous employment positions. The panel considered Mrs McLean to have attempted to benefit from this deceit as she was looking to secure employment with the Agency in order to apply for nursing roles. Mrs McLean wanted to create a good impression to the Agency, and therefore did not disclose the information as she knew it could prevent her from obtaining work as a registered nurse. The panel determined that there could be no other explanation for her behaviour.

Therefore, the panel determined that Mrs McLean had been dishonest in not disclosing the information identified in charges 15a – f to the Agency.

Mrs McLean did not directly address the panel on the specifics of this charge.

The panel found charge 16 proved in its entirety.

**Charge 17a:**

17) During a telephone conversation with Medacs Healthcare Agency on 9 December 2016 when asked by the Call Handler ‘Are you currently or have you ever been suspended from work, involved in an investigation or dismissed’ you disclosed that you had been subject to a Conditions of Practise Order however you:

   a) indicated that the health condition you suffered from was [PRIVATE] when the conditions which impaired your fitness to practise were [PRIVATE] and [PRIVATE] and

**This charge is found proved.**
In reaching this decision, the panel took account of the evidence of Ms 1.

The panel noted from the transcript of the telephone call between the Registrations Team at the Agency and Mrs McLean that she did inform the Agency that she had been subject to an NMC conditions of practice order.

The panel also had sight of the conditions of practice order that was imposed on Mrs McLean’s nursing registration between 18 June 2014 and 17 June 2016. The panel noted that the content of the conditions of practice order makes no mention of [PRIVATE], which is the reason provided by Mrs McLean when informing the Agency that she has a conditions of practice order imposed against her. The panel considered Mrs McLean to have volunteered information to the Agency which was inaccurate, as it noted that the conditions of practice order focuses on Mrs McLean’s fitness to practise having been found impaired due to [PRIVATE] and [PRIVATE].

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 17a proved.

**Charge 17b:**

b) did not disclose all of the Conditions which were placed on your practise including not disclosing the condition that required you [PRIVATE].

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 1.
The panel noted from the transcript of the telephone call between the Registrations Team at the Agency and Mrs McLean that she makes no mention of any other health condition except for [PRIVATE] which she states she suffered from in 2012.

Upon being asked what the conditions imposed on her nursing registration comprised of, Mrs McLean stated that “it was I had to keep in touch [PRIVATE]”. The panel noted that the interviewer confirmed with Mrs McLean whether there was only one condition in her conditions of practice order, to which Mrs McLean is recorded as having stated “Yes, [PRIVATE] then at the time I had to tell anybody that I was going to work for that I’d got those conditions obviously because of [PRIVATE].”

The panel noted that Mrs McLean was not currently subject to a conditions of practice order at the time of the telephone interview with the Agency with the conditions having lapsed in June 2016. In having sight of the conditions of practice order that was imposed on Mrs McLean’s registration, the panel noted that there were 12 conditions imposed on Mrs McLean’s nursing registration, none of which mentioned that Mrs McLean should remain in contact with her [PRIVATE]. Specifically, condition 4 read [PRIVATE]. The panel determined Mrs McLean was under an obligation to disclose the actual conditions in her response to the direct question asked by the interviewer.

In light of the above, the panel was satisfied that Mrs McLean did not disclose all of her conditions imposed on her nursing registration, and more specifically did not disclose the condition that [PRIVATE].

Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 17b proved.

**Charge 18:**
18) Your conduct at Charge 17a) and/or 17b) above was dishonest as you omitted to provide information which caused an incomplete and/or misleading presentation of the nature of that matter.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 1.

The panel noted from the transcript of the telephone call between the Registrations Team at the Agency and Mrs McLean that she had acknowledged that the conditions of practice order imposed on her nursing registration had been removed in June 2016.

The panel noted that it had found Mrs McLean to have not disclosed all of her conditions to the Agency during this telephone interview. It considered her to have misrepresented the health conditions she was suffering from at the time the conditions of practice order was imposed. The panel noted that the NMC called an expert witness during the HC substantive hearing to give live evidence to the panel in respect of Mrs McLean.

The panel was of the view that Mrs McLean had been dishonest in omitting to provide the true nature of the health conditions she was suffering from to the Agency. The panel was satisfied that Mrs McLean provided inaccurate and false information in an attempt for her job application to be viewed more favourably. The panel determined that there could be no other explanation for her behaviour.

The panel therefore considered Mrs McLean to have given an incomplete and/or misleading presentation of the nature in which she was subject to an NMC conditions of practice order.
Mrs McLean did not directly address this charge in her written representations to the panel.

Therefore, the panel found charge 18 proved.
Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs McLean’s fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

In her submissions, Ms Quinton-Carter invited the panel to take the view that Mrs McLean’s actions amounted to 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, Mrs McLean’s actions amounted to misconduct.

Ms Quinton-Carter referred the panel to the case of Roylance v GMC (No. 2) [2000] 1 AC 311 which defines misconduct as a ‘word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.’

Ms Quinton-Carter submitted that Mrs McLean’s nursing practice fell far below the standards expected of a registered nurse in the circumstances of this case. She submitted that the charges which have been found proved by the panel are serious, none more so than the two charges of dishonesty. Ms Quinton-Carter submitted that Mrs McLean had breached a fundamental tenet of the nursing profession in this respect, and she reminded the panel that it had found that there was no reason for Mrs McLean’s non-disclosures to the Agency other than an attempt to benefit from deceit. Ms Quinton-Carter submitted that integrity and trustworthiness are considered to be the bedrock of the nursing profession, and that members of the public expect registered nurses to adhere to these values.

Furthermore, Ms Quinton-Carter submitted that Mrs McLean’s clinical failings were contrary to safe and effective nursing practice.
In taking account of the panel’s decision at the facts stage of this hearing, Ms Quinton-Carter invited the panel to find that Mrs McLean’s actions amounted to misconduct.

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

Ms Quinton-Carter submitted that Mrs McLean had put patients and service users at a clear risk of harm as a result of her actions. She also submitted that Mrs McLean had brought the nursing profession into disrepute, and that public confidence in the profession and in the NMC as regulator would be undermined should a finding of impairment not be made.

Ms Quinton-Carter advised the panel that Mrs McLean had been subject to two previous referrals.

In relation to the referral from Alexandra House Care Home, Ms Quinton-Carter submitted that the concerns which were admitted by Mrs McLean at the CCC substantive hearing between 3 – 5 October 2011, related to medication administration and record keeping errors. These are similar concerns to those that have been found proved in this case. Despite Mrs McLean’s assurances to that panel that she would act differently should a similar set of circumstances arise, Ms Quinton-Carter submitted that the facts found proved at this Fitness to Practise (“FtP”) hearing are clear examples of repeated poor nursing practice. Ms Quinton-Carter submitted that Mrs McLean’s understanding does not appear to have improved.
In relation to the referral from Russell Hall Hospital, Ms Quinton-Carter submitted that the NMC received a referral in relation to Mrs McLean’s nursing practice which was said to have deteriorated, and which was then subsequently investigated as a health matter. Ms Quinton-Carter reminded the panel that Mrs McLean was made subject to a conditions of practice order between 18 June 2014 and 17 June 2016 by a HC panel.

Ms Quinton-Carter submitted that Mrs McLean’s clinical errors in this case may be capable of remediation, however, there is no evidence before the panel that she has attempted to remediate her shortcomings. Ms Quinton-Carter submitted that dishonesty is also capable of remediation, although it is more difficult to address, as it could be suggestive of more deep-seated attitudinal concerns.

Ms Quinton-Carter invited the panel to take account of the written representations that have been provided by Mrs McLean. These consisted of an undated written statement that was sent to the NMC in anticipation of this hearing, and two subsequent emails from Mrs McLean in response to the NMC Case Coordinator informing her of the amended charges on the first day of the hearing. Ms Quinton-Carter submitted that the panel had found that Mrs McLean did not directly address the charges in the evidence she provided to it. Ms Quinton-Carter submitted that Mrs McLean has not reflected on her nursing practice, nor demonstrated any insight into the charges which have been found proved by the panel. Furthermore, she submitted that Mrs McLean has not provided the panel with any testimonials or references from colleagues or current employers.

In light of the above, Ms Quinton-Carter submitted that Mrs McLean is not fit to practise as a registered nurse in a safe and effective manner. She submitted that there is a clear risk of repetition of the events in this case.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant. These included: Roylance v General Medical Council (No 2) [2000] 1 A.C. 311, Council for Healthcare Regulatory Excellence v (1)

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. That misconduct must be serious misconduct. Secondly, only if the facts found proved amount to serious misconduct, the panel must decide whether, in all the circumstances, Mrs McLean’s fitness to practise is currently impaired as a result of that misconduct.
Decision on misconduct

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

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Mrs McLean’s actions did fall significantly short of the standards expected of a registered nurse, and considered her actions to have amounted to multiple breaches of the Code. Specifically:

“1 Treat people as individuals and uphold their dignity
To achieve this, you must:
1.1 treat people with kindness, respect and compassion
1.2 make sure you deliver the fundamentals of care effectively
1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

4 Act in the best interests of people at all times
To achieve this, you must:
4.2 make sure that you get properly informed consent and document it before carrying out any action

8 Work co-operatively
To achieve this, you must:
8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate
8.2 maintain effective communication with colleagues
8.4 work with colleagues to evaluate the quality of your work…

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

To achieve this, you must:
9.2 gather and reflect on feedback from a variety of sources, using it to improve your practice and performance
9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:
13.2 make a timely referral to another practitioner when any action, care or treatment is required
13.5 complete the necessary training before carrying out a new role

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:
18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs
18.4 take all steps to keep medicines stored securely

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

To achieve this, you must:
19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

20 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
20.2 act with honesty and integrity at all times…

23 Cooperate with all investigations and audits

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body.
23.4 tell us and your employers at the first reasonable opportunity if you are or have been disciplined by any regulatory or licensing organisation, including those who operate outside of the professional health and care environment."

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the charges individually in determining whether Mrs McLean’s actions were so serious so as to amount to misconduct in the circumstances of this case.

In respect of charge 1a, the panel noted that whilst no actual harm was apparently suffered by Patient A as a result of Mrs McLean failing to undertake observations when instructed to do so, Patient A was exposed to a significant risk of unwarranted harm. Patient A was admitted to the Hospital at 01:47 hours with chest pains, and there was
evidence that he should have been prioritised because of this. However, no observations were recorded for Patient A until 03:00 hours, when Ms 5 had realised that these had not yet been done. The panel had found that it was Mrs McLean’s responsibility to undertake observations in respect of Patient A. The panel had found that Mrs McLean had failed to undertake observations for Patient A, which is essential to safe and effective nursing practice in order to assess the patient’s condition. The panel considered charge 1a to be sufficiently serious so as to amount to misconduct.

In respect of charge 1b, the panel had found it was Mrs McLean’s responsibility to undertake the ECG for Patient A, and to ensure that the reading was signed off by a doctor. The panel noted that Patient A’s treatment was delayed by five hours as a result of Mrs McLean’s failing, which could have had serious, possibly life-threatening implications for Patient A. The panel determined that charge 1b amounted to misconduct.

In respect of charge 2a, in considering the training session delivered by Colleague B in isolation, notwithstanding Mrs McLean’s errors and her failure to listen during the session, the panel was not satisfied that her conduct was sufficiently serious so as to amount to misconduct. Whilst the panel accepted Mrs McLean was an experienced nurse who would have received previous training in this area, it considered her actions to be unprofessional. However, the panel determined that this charge on its own would not be so serious as to amount to misconduct.

In respect of charge 2b, whilst the panel considered Mrs McLean to have expressed a reluctance to follow the rectification procedure for correcting mistakes in the Controlled Drugs book, it was unclear from Colleague B’s evidence whether this was in relation to two medication errors that had actually occurred or, whether incorrect entries were deliberately made as part of a training session in order to show Mrs McLean how to accurately record information in the Controlled Drugs book. Whilst the panel considered Mrs McLean’s actions to be unprofessional in expressing reluctance to follow the rectification procedure for correcting mistakes in the Controlled Drugs book, the panel
determined that this charge on its own would not be so serious as to amount to misconduct.

In respect of charges 3, 4 and 5, the panel considered the charges to have a similar context in that they related to the same areas of nursing practice, and that they had occurred in the same working environment. The panel was very concerned by Mrs McLean’s actions in respect of these charges. It noted that whilst Mrs McLean was working at Park House, she was providing nursing care to an extremely vulnerable client group who had been admitted to the facility for the purpose of reducing their dependence on alcohol and drugs. Responsibility for safekeeping of keys and medicines is a basic requirement of a registered nurse in any circumstances. However, in a facility caring for service users with a drug-dependency, Mrs McLean’s actions made drugs easily available to them, and exposed them to an unwarranted risk of harm. The panel determined that Mrs McLean’s actions in respect of each of the charges in 3, 4 and 5 amounted to misconduct.

In respect of charge 6, the panel had no evidence before it to suggest that the neck was an appropriate body part to take a blood sample from in the circumstances of this case. The panel considered the patient to have been at a high risk of unwarranted harm through potential loss of blood from a major artery that lies in the neck. The panel therefore determined that Mrs McLean’s actions were unsafe. The panel determined that charge 6 amounted to misconduct.

In respect of charge 7, the panel was of the view that in commencing the process of taking blood from a service user without confirming their identity first, Mrs McLean had exposed the service user to a significant risk of unwarranted harm as it could have had serious implications for his and/or another service user’s future care. The panel noted that Mrs McLean’s actions could have resulted in the wrong treatment being delivered to service users. The panel considered confirming the identity of a service user before commencing the process of taking a blood sample to be a basic requirement of a
registered nurse with the aim of delivering safe and effective nursing care. The panel determined that charge 7 amounted to misconduct.

In respect of charge 8, the panel was of the view that not asking for a patient’s consent when testing for BBV could have had serious ramifications for the patient in question, as a positive result could have life-changing implications. The panel determined that it was important for a patient to be fully aware of what they were consenting to. It considered patients to have the right to expect a full explanation and give informed consent prior to this type of intervention. The panel determined that charge 8 amounted to misconduct.

In respect of charge 9, the panel was of the view that Mrs McLean's actions were serious in taking blood from a service user who was unable to give consent due to him being under the influence of alcohol. The panel considered Mrs McLean to have exposed the service user to a significant risk of unwarranted harm as it heard evidence that the service user had a needle in his arm and was falling over due to his level of intoxication. The panel therefore determined that the service user would have been unable to give full consent in the circumstances. It also considered this to be contrary to safe and effective nursing practice and noted that, due to the service user’s level of intoxication, there was potential for inaccurate results to be recorded. The panel determined that charge 9 amounted to misconduct.

In respect of charge 11, the panel determined that signing the Controlled Drugs book to indicate that medication had been given to a service user before it had been was contrary to safe and effective nursing practice. The panel noted that this had the potential to mislead other colleagues that treatment had been provided to a service user at a certain time when it had in fact not been. The panel considered it to be of the utmost importance to keep clear and accurate records. The panel determined that charge 11 amounted to misconduct.

In respect of charge 13aii, the panel considered the risk of unwarranted harm in attempting to treat a patient by commencing an intravenous drip when he had fainted to
be minimal. It considered this to be an invasive procedure, and noted that Mrs McLean had had to be prevented by senior colleagues from completing this process, but was of the view that in considering this charge on its own, it was not so serious so as to amount to misconduct.

In respect of charge 13b, the panel did not consider Mrs McLean’s actions to amount to misconduct in being reluctant to accept and/or act on the clinical opinion of a more senior colleague and/or doctor in the circumstances of this case. The panel considered that there may be some circumstances in which a junior staff member would be right to question senior colleagues. However, in these particular circumstances, the senior nurse and doctor had considerably more experience of the particular client group. The panel considered her actions to be unprofessional but, taking this charge on its own, it determined that Mrs McLean’s actions were not serious enough to amount to misconduct.

In respect of charge 15a–f, the panel determined that in failing to disclose information in respect of her previous employment history when asked, Mrs McLean’s actions were serious enough to amount to misconduct. The panel was of the view that the Agency had a right to know Mrs McLean’s professional background, and considered her to have withheld this information so that her job application would be looked at more favourably by the Agency. The panel determined that charges 15a–f, both individually and when taken together, amounted to misconduct.

In respect of charge 16, the panel was of the view that in being dishonest, Mrs McLean had deliberately attempted to mislead the Agency with the intention of finding employment with them as a registered nurse. The panel considered a finding of dishonesty to be serious in any circumstance, noting that Mrs McLean had breached a fundamental tenet of the nursing profession. The panel determined that charge 16 amounted to misconduct.
In respect of charges 17a and 17b, the panel determined that after informing the Agency that she had been subject to a conditions of practice order, Mrs McLean then indicated incorrect reasons for it having been imposed on her registration. The panel was of the view that the Agency had a right to know the true reasons behind why the conditions of practice order was imposed. It considered Mrs McLean to have withheld information so that her job application would be looked at more favourably by the Agency, as she did not inform it that she had suffered from [PRIVATE] and [PRIVATE]; nor did she inform the Agency of the specific condition that [PRIVATE]. The panel determined that charges 17a and 17b amounted to misconduct.

In respect of charge 18, the panel had regard to its finding of misconduct in respect of charge 16. The panel determined that charge 18 amounted to misconduct for the same reasons as identified in charge 16. The panel considered dishonesty to be serious, and found that Mrs McLean had intended to conceal the true nature of the conditions of practice order with the intention of having her job application looked at more favourably by the Agency. The panel determined that charge 18 amounted to misconduct.

The panel found that Mrs McLean’s actions in charges 1a, 1b, 3a, 3b, 4, 5, 6, 7, 8, 9, 11, 15a–f, 16, 17a, 17b and 18 did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.
Decision on impairment

The panel next went on to decide if, as a result of this misconduct, Mrs McLean’s fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). In paragraph 74, she said:

In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, 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 in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

The panel found that all of the limbs above were engaged in the circumstances of this case.

The panel noted that the concerns identified in this case related to both Mrs McLean's clinical nursing practice, and her attitudinal conduct.

The panel had regard to the written representations of Mrs McLean.

The panel did not consider Mrs McLean's undated written statement to be relevant to the charges as it did not specifically address them. Instead, Mrs McLean appeared to deflect blame on to her employers at the Hospital and at Park House for the concerns
raised. Mrs McLean states that she did not feel supported during her periods of employment at the Hospital or at Park House. The panel had regard to two email responses both dated 15 January 2019 from Mrs McLean in relation to the charges being amended. The panel noted that she states in her first email “It is all made up to protect the people in charge in work places was continually disorganised and had no proper management skills. I was unlucky being at the bottom of the pile…”[sic]. Furthermore, Mrs McLean states in her second email “I was, and still am an excellent nurse who actually cared for people”.

There was no evidence submitted by Mrs McLean that demonstrated she had considered the impact her actions had on patient/service user safety, or the reputational harm caused to the profession as a result of her actions. The panel therefore determined that Mrs McLean had demonstrated no insight into the charges found proved as she did not accept responsibility for her own actions. The panel also considered Mrs McLean to have not expressed any remorse for her conduct.

The panel had regard to the case of Cohen v General Medical Council [2008] EWHC 581 (Admin), and considered whether the concerns identified in Mrs McLean’s nursing practice are capable of remediation, whether they have been remediated, and whether there is a risk of repetition of the incidents occurring at some point in the future.

The panel considered the concerns identified in respect of Mrs McLean’s clinical nursing practice to be capable of remediation, however, it determined that no evidence had been provided by Mrs McLean to demonstrate that she had remediated any of the concerns identified or was willing to do so. Furthermore, the panel considered a finding of dishonesty, although not impossible, to be difficult to remediate.

The panel had not been provided with any testimonials by Mrs McLean to suggest that she is a safe and effective nurse.
The panel had no evidence before it to demonstrate that Mrs McLean is safe to practise as a registered nurse without restriction.

In light of the above, the panel had no evidence before it to allay its concerns that Mrs McLean does not currently pose a risk to patient safety. It considered there to be a real risk of repetition of the incidents found proved and a risk of unwarranted harm to patients in her care. Therefore, the panel decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel considered there to be a high public interest in the consideration of this case. It was of the view that a fully informed member of the public would be seriously concerned by Mrs McLean’s clinical nursing failings, as well as the findings of dishonesty. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mrs McLean’s fitness to practise is currently impaired.
**Determination on sanction:**

The panel has considered this case carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs McLean’s name off the register. The effect of this order is that the NMC register will show that Mrs McLean’s name has been struck off the register.

In reaching its decision on sanction, the panel considered all of the evidence before it, along with the submissions of Ms Quinton-Carter, on behalf of the NMC.

Ms Quinton-Carter invited the panel to impose a striking-off order. She submitted that Mrs McLean’s actions are serious enough to warrant permanent removal from the NMC register, and that public confidence in the nursing profession would be undermined if this were not done.

Ms Quinton-Carter took the panel through the aggravating and mitigating factors she considered to be engaged in this case.

Ms Quinton-Carter submitted that there are serious concerns around Mrs McLean’s clinical nursing practise as well as concerns regarding her honesty and integrity. She further submitted that Mrs McLean had offered no insight, remorse, or remediation. Ms Quinton-Carter drew the panel’s attention to Mrs McLean’s undated written statement which, she submitted, demonstrated a disregard for the NMC’s role as a regulator. Furthermore, her attitude towards the concerns identified undermines that which is expected of a registered nurse.

Ms Quinton-Carter submitted that a registered nurse who has been found to have acted dishonestly runs a risk of being removed from the NMC register. She submitted that a registered nurse who had demonstrated insight, remorse, or remediation reduces this risk, however, none of these have been demonstrated by Mrs McLean despite ample opportunity to do so. Ms Quinton-Carter submitted that there were serious breaches of
multiple standards of the Code, a breach of a fundamental tenet of the nursing profession, and a breach of Mrs McLean’s professional duty of candour in this case.

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

The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences.

The panel had careful regard to the Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

As regards aggravating factors, the panel has considered the following as relevant:

- The misconduct identified related to both attitudinal and clinical concerns.
- Mrs McLean made multiple clinical errors across a wide-range of areas in nursing, some of which related to basic and fundamental aspects of nursing practice.
- There was evidence to suggest that this case shared similarities with Mrs McLean’s previous NMC referrals, in respect of clinical errors.
- Mrs McLean was working with extremely vulnerable patients/service users at the Hospital and at Park House.
- Several patients/service users were exposed to a significant risk of unwarranted harm as a result of Mrs McLean’s actions, a number of which could have had potential life-threatening implications.
- The panel had identified a number of instances of Mrs McLean having demonstrated unprofessional and unsafe nursing practice.
- The dishonesty found proved suggested a more deep-seated attitudinal issue which was motivated by personal and financial gain.
The panel did not consider there to be any mitigating factors in this case.

The panel noted that there were some references contained within the evidence that Mrs McLean had suffered [PRIVATE] in 2012, however, it had no evidence before it to confirm that this was the case. The panel also noted that Mrs McLean has always maintained that she had no concerns about her health.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where ‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that Mrs McLean’s misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing a conditions of practice order on Mrs McLean’s nursing registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. It noted that the misconduct identified does not solely relate to Mrs McLean’s clinical practice, and that there had been serious concerns regarding her attitude and conduct. The panel therefore determined that placing a conditions of practice order on Mrs McLean’s registration
would not adequately address the seriousness of this case, nor would it sufficiently protect the public, or satisfy the public interest considerations.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel noted that this was not a single instance of misconduct and that it had evidence before it of Mrs McLean demonstrating behaviour of a deep-seated attitudinal nature. Further, the panel determined Mrs McLean’s clinical failings to represent a pattern of poor nursing practice, which had the potential to cause vulnerable patients/service users a significant risk of unwarranted harm. It noted that Mrs McLean had already been made subject to a previous suspension order and a previous conditions of practice order. In previous referrals to the NMC, similar concerns had been raised in respect of her clinical nursing practice. It further noted that the NMC had received five referrals in relation to Mrs McLean’s nursing practice in total, and that these had been provided by five separate employers.

The panel found that Mrs McLean had offered no insight, remorse or remediation for her clinical or her attitudinal concerns, despite having a substantial amount of time to reflect on these incidents. In light of this, the panel had found that there was a real risk of repetition.

Taking account of the above, the panel determined that Mrs McLean’s conduct was a significant departure from the standards expected of a registered nurse, and that the clinical failings, along with the serious breach of a fundamental tenet of the profession, was fundamentally incompatible with Mrs McLean remaining on the NMC register. The panel was of the view that the findings in this particular case demonstrate that Mrs McLean’s actions were serious in exposing patients/service users to a significant risk of unwarranted harm, and it considered that in allowing her to maintain NMC registration would put the public at a continued risk of harm, and undermine public confidence in the profession and in the NMC as a regulatory body.
Considering all of these factors, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular, the effect of Mrs McLean’s actions in bringing the profession into disrepute by adversely affecting the public’s view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

The panel has considered the submissions made by Ms Quinton-Carter that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. She invited the panel to impose an interim suspension order for 18 months.

The panel accepted the advice of the legal assessor.

The panel had regard to the seriousness of the facts found proved, and the reasons set out in its decision for the substantive order. The panel decided that an interim suspension order is necessary for the protection of the public and it is otherwise in the public interest. To conclude otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.