

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Hearing**  
**13 - 16 May 2019**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of registrant:</b>	Vicky McDade
<b>NMC PIN:</b>	92F0011E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1
<b>Area of registered address:</b>	England
<b>Type of case:</b>	Caution and Misconduct
<b>Panel members:</b>	Paula Burton (Chair, lay member) Sally Underwood (Registrant member) Louise Fox (Lay member)
<b>Legal Assessor:</b>	Ben Stephenson
<b>Panel Secretary:</b>	Charlie Russell
<b>Ms McDade:</b>	Neither present nor represented
<b>Nursing and Midwifery Council:</b>	Represented by Chris Scott, Case Presenter
<b>Facts proved:</b>	2 (a), 2 (b), 2 (c), 3
<b>Facts proved by admission:</b>	1
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off Order
<b>Interim order:</b>	Interim suspension order (18 months)

## Details of charge

That you, a registered nurse:

1. On 1 September 2017, received a police caution for ill treatment/wilful neglect of a person without capacity, contrary to S44 of the Mental Capacity Act 2005;
2. Between February and May 2017, informed the following colleagues that you had escalated alleged sexual conduct between Resident B and A to safeguarding, when you knew you had not;
  - a) Colleague A
  - b) Colleague B
  - c) Colleague C
3. Your actions as described in charge 2 above were dishonest, in that you knew you were providing false and misleading information;

And in light of the above, your fitness to practise is impaired, by reason of your police caution in respect of charge 1 and by reason of your misconduct in respect of charges 2 and 3.

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms McDade was not in attendance and that written notice of this hearing had been sent to her registered address by recorded delivery and by first class post on 12 April 2019. Notice of this hearing was delivered to Ms McDade's registered address and signed for on 13 April 2019. Mr Scott informed the panel that the NMC has received communication from both Ms McDade and the person named as her representative at the time to confirm receipt of this.

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 Ms McDade's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Scott, on behalf the Nursing and Midwifery Council (NMC), 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 Ms McDade had been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require proof of delivery.

## **Proceeding in the absence of Ms McDade**

The panel next considered whether it should proceed in the absence of Ms McDade.

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.

Mr Scott submitted that although Ms McDade has engaged with her regulator and was initially represented by a member of the Royal College of Nursing (RCN), she is not currently represented. Mr Scott informed the panel that until 10 May 2019, Ms McDade did indicate that she would be attending this substantive hearing and that she would be represented.

Mr Scott referred to an email from Ms McDade's representative, dated 10 May 2019.

This email stated:

“Please note we are no longer acting for Ms McDade. I would be most grateful if you could direct all correspondence to Ms McDade and take my name off record.”

Mr Scott then drew the panel's attention to the note of a telephone call made by Ms McDade to the NMC, dated 10 May 2019.

The telephone note stated:

"I asked if she would attend the hearing - she told me that her [sic] she would not be able to attend..."

It goes on to say:

"She told me she did not want to ask for an adjournment, that she would like the panel to proceed.

I asked if she objected to the hearing proceed [sic] without her, she told me she didn't...She told me she did not want to request remote attendance, she would not be able to engage in this way..."

Mr Scott invited the panel to proceed in the absence of Ms McDade on the basis that she has clearly indicated that she would like the hearing to proceed and therefore a postponement would serve no purpose. Mr Scott reminded the panel that the case concerns a number of charges and the public would expect the regulator to proceed in the absence of Ms McDade as it has responsibilities for public protection and the expeditious disposal of the case. He also advised that witnesses had been warned and were in attendance and that it would be in the public interest to proceed.

The panel heard and 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.

The panel decided to proceed in the absence of Ms McDade. In reaching this decision, the panel considered the submissions of the case presenter, and the advice of the legal assessor. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- Ms McDade was offered the option to postpone or attend via telephone or video link, all of which she declined ;
- there is no reason to suppose that postponing would secure her attendance at some future date;
- witnesses are expected to attend to give live evidence;
- not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who needed their professional services;
- further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- there is strong public interest in the expeditious disposal of the case;
- the panel has received written submissions from Ms McDade.

There is some disadvantage to Ms McDade in proceeding in her absence. Although the evidence upon which the NMC relies has been sent to her at her registered address she will not be able to cross-examine the witnesses relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Further, the written accounts and responses given by Ms McDade to the charges can be put to the witnesses. The limited disadvantage is the consequence of Ms McDade's decision to absent herself from the hearing and/or be represented.

In these circumstances, the panel decided that it was fair, appropriate and proportionate to proceed in the absence of Ms McDade. The panel will draw no adverse inference from her absence in its findings.

## **Decision and reasons on application under Rule 19**

During his submissions, Mr Scott made a request that parts of the hearing of Ms McDade's case be held in private on the basis that proper exploration of her case involves the health conditions of Ms McDade, Colleague A and Colleague C. 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 the health conditions of Ms McDade, Colleague A and Colleague C, 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 those three individuals’ health conditions as and when such issues are raised.

## **Application to hear the evidence of Ms 1 via video link**

The panel heard an application made by Mr Scott under Rule 31 of the Rules to allow the oral evidence of Ms 1 to be heard via video link. Ms 1 was not present at this hearing and, whilst the NMC had made reasonable efforts to ensure that this witness was present, she was unable to attend today due to 'unexpected work commitments'.

The panel noted that Ms McDade had not indicated any objection to Ms 1's witness statement prior to these proceedings.

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 panel gave the application with regards to Ms 1's oral evidence serious consideration. It drew reference to Ms 1's email, dated 12 May 2019, in which she stated:

"It is with sincerest apologies that I cannot attend the hearing as planned this week. Please extend these apologies to the panel. The reason I cannot attend is due to unexpected work commitments."

Ms 1 is the Operations Manager of 9 care homes. The panel was satisfied that there was a good reason for Ms 1's absence, in that, she had clear caring and professional responsibilities. It noted that Ms 1's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph 'This statement, consisting of three pages, is true to the best of my information, knowledge and belief' and was signed by her.

The panel considered that Ms 1's evidence is relevant. Whilst she did not witness the alleged incidents, she did conduct the Home's internal investigation and spoke to staff who were on duty at the time.

The panel considered whether Ms McDade would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Ms 1 to that of a video link. It considered that there is little material difference, as supported by relevant case law, between the hearing of oral evidence in person and oral evidence over video link; the panel would still be able to assess the demeanour and credibility of Ms 1. The panel noted that Ms McDade had been provided with a copy of Ms 1's statement. It further noted that, as the panel had already determined that Ms McDade had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross examine this witness. However, the panel considered that it could mitigate any potential unfairness to Ms McDade by appropriate questioning and testing of Ms 1's evidence. The panel considered that, were it not to allow the evidence of Ms 1 to be heard via video link, the NMC would be deprived, as would the panel, from reliance upon the live evidence of this witness and the opportunity of questioning and probing that testimony. There is also a public interest in the issues being explored fully which supported the admission of this evidence into the proceedings, in this manner.

In these circumstances, the panel concluded that it would be fair and relevant to accept Ms 1's evidence via video link, but would give this evidence what it deemed to be appropriate weight once the panel had heard and evaluated all the evidence before it.

## **Application to admit hearsay evidence of Colleague A pursuant to Rule 31**

The panel heard an application made by Mr Scott under Rule 31 to allow the written witness statement of Colleague A into evidence as hearsay. Mr Scott submitted that Colleague A is unable to attend to give live evidence [PRIVATE].

Mr Scott referred the panel to Rule 31 and submitted that it would be both relevant and fair to admit the evidence as hearsay. He submitted that the witness statement of Colleague A provides corroborative evidence relating to two witnesses that have attended this hearing. Mr Scott submitted that Colleague A's witness statement is neither sole, nor decisive. He also submitted that it would be fair to admit this document into evidence because it would provide context to the charges that relate to alleged misconduct.

Mr Scott submitted that the panel can determine what weight to give to the evidence if the maker of the statement is unavailable to be cross-examined. He submitted that the issue of fairness could be addressed through the weight the panel attaches to the evidence.

The panel accepted the advice of the legal assessor 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 panel was satisfied that Colleague A's evidence was clearly relevant, as it relates to a direct conversation between the witness and Ms McDade, in relation to charge 2 (a).

The panel therefore moved on to consider the issue of fairness. The panel determined that by admitting Colleague A's witness statement into evidence it would not cause any unfairness to Ms McDade because she had been sent the witness statement, and did

not indicate any objection to it. The panel would give appropriate weight to this evidence given that they would not have the opportunity to test the evidence by questioning.

## **Application to hear the evidence of Colleague C via telephone**

The panel heard an application made by Mr Scott under Rule 31 to allow the oral evidence of Colleague C to be heard via telephone. Colleague C was not present at this hearing and, whilst the NMC had made efforts to ensure that this witness was present, she was unable to attend today. [PRIVATE]. Mr Scott submitted that it would be inappropriate and impractical, in the circumstances, for Colleague C to attend today to give her evidence. He submitted that the panel may also find it to be unreasonable to request that Colleague C gives her evidence via video-link, as there were technical difficulties.

Mr Scott accepted that the panel will not be able to fully gauge Colleague C's demeanour and credibility, or see her expressions. However, he submitted that Colleague C's evidence was directly relevant to the charges.

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 panel gave the application in regard of Colleague C serious consideration. The panel noted that Colleague C's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph 'This statement, consisting of three pages, is true to the best of my information, knowledge and belief' and was signed by her.

In considering relevance and fairness, the panel accepted that there was good reason to allow Colleague C to provide her evidence via telephone, due to her health condition.

The panel decided that Colleague C's evidence was relevant. It noted that Colleague C gave a first-hand account in relation to charge 2 (c). When considering whether her

credibility is required to be assessed visually, the panel noted that Colleague C is a Registered Nurse, and did sign a statement of truth.

The panel considered whether Ms McDade would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Colleague C over the telephone. The panel noted that Ms McDade had been provided with a copy of Colleague C's statement. It further noted that, as the panel had already determined that Ms McDade had now chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross examine this witness in any case. The panel noted however that Ms McDade had been sent the written statement and did not indicate any objection to it. Furthermore, the panel considered that it could mitigate any potential unfairness to Ms McDade by appropriate questioning and testing of Colleague C's evidence. The panel considered that, were it not to allow the evidence of Colleague C to be heard via telephone, the NMC would be deprived, as would the panel, from reliance upon the live evidence of this witness and the opportunity of questioning and probing that testimony. There is also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel concluded that it would be fair and relevant to accept Colleague C's evidence via telephone, but would give this evidence what it deemed to be appropriate weight once the panel had heard and evaluated all the evidence before it.

## **Background**

The charges arose whilst Ms McDade was employed by the Embrace Group (“the Group”) as a Registered Nurse at Cedar Court Care Home (“the Home”). Ms McDade was Home Manager at the Home from 23 January 2017 until 25 May 2017, when she tendered her resignation.

A referral was received from the Regional Manager of the Group that alleges that Ms McDade failed to safeguard a vulnerable resident, Resident A, and did not escalate concerns that she was being sexually abused by another resident, Resident B, on repeated occasions. The abuse included grabbing Resident A, lifting her skirt and taking her pants down, putting hands in her pants, attempting to kiss Resident A and placing Resident A’s hands on his penis. In Resident A’s care notes during this period there is information to suggest that she had become increasingly distressed over the relevant time period.

It is alleged that members of staff had reported 23 incidents and submitted details of the sexual assaults as per internal protocol to Ms McDade and that she failed to report the matter internally, escalate it to her line manager or to notify Safeguarding, the Care Quality Commission or the family of Resident A. The referral raised public protection concerns in that she failed to safeguard a resident from sexual abuse.

It is further alleged that Ms McDade falsely assured staff members that she had escalated the incidents appropriately, when in fact she had not done so.

Following information from an anonymous whistle blower, the Home was visited for an inspection by the practice improvement officer from the Safeguarding Office.

Safeguarding contacted the regional manager and informed her that staff had reported to Ms McDade repeated incidents of sexual abuse of Resident A. Ms 1 was asked to complete an investigation into these concerns. The investigation concluded that a

number of incidents of sexual abuse were reported to Ms McDade which had not been escalated.

Ms McDade resigned from her role as Home Manager on 25 May 2017.

Ms McDade received a police caution for a contravention of Section 44 of the Mental Capacity Act, 2005, in relation to carer ill treatment/wilful neglect of a person without capacity, on 1 September 2017.

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

In reaching its decisions on the facts, the panel considered all the evidence presented in this case together with the submissions made by Mr Scott on behalf of the NMC. It heard oral evidence from three witnesses called on behalf of the NMC. The written statement of Colleague A was also read into the record by Mr Scott.

The panel heard and accepted the advice of the legal assessor, who made reference to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*, in relation to the issue of dishonesty.

Witnesses called on behalf of the NMC were:

Ms 1 – Internal Investigating Officer;

Colleague A – Registered Nurse;

Colleague B – Clinical Lead Nurse;

Colleague C – Enrolled Nurse.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

Colleague B attended to give evidence. The panel considered that the answers Colleague B gave were honest and credible, and considered him to be a balanced and fair witness who conceded if he could not recollect certain events due to the passage of time. The panel considered Colleague B to bear no ill-will towards Ms McDade. The panel was of the view that Colleague B was helpful and had assisted it to the best of his ability.

Ms 1 gave evidence via video-link. The video link in which Ms 1 gave her oral evidence was clear and visible to the panel. The panel found Ms 1 to be credible and straightforward. The panel was satisfied that her oral evidence remained consistent with her documentary evidence and provided a detailed background to the Home's internal investigation.

The panel went on to assess the credibility of Colleague A's written hearsay evidence. The panel was not afforded the opportunity to question Colleague A or to test the assertions in her NMC written statement. However, it deemed Colleague A's evidence to be of assistance as it was consistent with the investigation report and had not been challenged by the Registrant.

Colleague C gave her evidence via telephone. The panel found Colleague C to be credible and straightforward. Although the panel could not assess Colleague C's demeanour via telephone, it was satisfied that her answers were honest and that, if she could not recall something she would not attempt to guess. Colleague C's oral evidence remained consistent with her written evidence and provided more detail to her statement and further context.

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.

### **Charge 1:**

1. On 1 September 2017, received a police caution for ill treatment/wilful neglect of a person without capacity, contrary to S44 of the Mental Capacity Act 2005;

A signed police caution in relation to charge 1 was put before the panel. Further, in her Case Management Form (CMF) and reflective pieces, Ms McDade ticked 'yes' as to whether she admitted charge 1.

**The panel therefore found this as proved by way of admission.**

The panel then went on to consider the remaining charges.

The panel considered each charge and made the following findings:

**Charge 2 (a):**

2. Between February and May 2017, informed the following colleagues that you had escalated alleged sexual conduct between Resident B and A to safeguarding, when you knew you had not;

- a) Colleague A

**This charge is found proved.**

In reaching this decision, the panel had regard to Colleague A's hearsay evidence. Colleague A stated that Ms McDade had confirmed to her, on multiple occasions, that she had escalated the sexual conduct to Safeguarding. In her NMC written statement, she stated:

"I telephoned her [Ms McDade] at home and asked her if she had reported the incident to Safeguarding. She confirmed that she had done this and that I didn't need to do anything else.

I thought this was a bit odd as I knew from experience that when you call and log the Safeguarding normally call back for more details and I wondered if she had enough time to do this before she finished for the day.

I was off for a few days and when I returned I sought out [Ms McDade] and asked what the feedback had been from the Safeguarding referral, but she said she hadn't heard anything as Safeguarding were dragging their heels."

While the panel noted that Colleague A's statement was not contemporaneous (written one year after the incidents took place), it also took into account that it is consistent with the investigation report. It was not afforded the opportunity to cross examine or question Colleague A. Nonetheless, the panel has seen no evidence to contradict Colleague A's written statement, nor has it seen any objection from Ms McDade in regard to its contents.

In reading Ms McDade's most recent reflective account, dated 20 January 2018, but was submitted by Ms McDade on 10 May 2019, she stated:

"I failed to escalate concerns to the correct authorities."

The panel also referred to the internal investigation report carried out by Ms 1. Ms McDade had said to Ms 1, in relation to whether she had escalated the Safeguarding concerns:

"...that she had not reported to anyone and to tell [PRIVATE] she had cocked up."

Ms 1, in her oral evidence, confirmed this to the panel.

Taking all of the above considerations into account, the panel determined that it had been presented with compelling evidence demonstrating that Ms McDade had informed

Colleague A that she had escalated the alleged sexual conduct to Safeguarding, when she knew she had not. The panel therefore found charge 2 (a) proved on the balance of probabilities.

**Charge 2 (b):**

b) Colleague B

**This charge is found proved.**

In determining whether Ms McDade did inform Colleague B that she had escalated the alleged sexual conduct to Safeguarding, the panel considered his written statement, in which he stated:

“I spoke to [Ms McDade] when I next saw her and she confirmed that she was fully aware of the incident and that she had informed all relevant parties, including Safeguarding.”

He goes on to say:

“I took that at face value and trusted that she did the right thing.”

The panel was satisfied that Colleague B’s oral evidence remained consistent with his documentary evidence. Colleague B confirmed for the panel in his oral evidence that he did speak with Ms McDade about this matter. Furthermore, there was no evidence to suggest that Safeguarding had been notified as Ms McDade alleged. The panel had already determined that Ms McDade was aware that she had not made the referral to Safeguarding. The panel has seen no evidence to contradict Colleague B’s statement, nor has it seen any objection from Ms McDade in regard to its content.

Taking all of the above considerations into account, the panel determined that it had been presented with compelling evidence demonstrating that Ms McDade had informed Colleague B that she had escalated the alleged sexual conduct to Safeguarding, when she knew she had not. The panel therefore found charge 2 (b) proved on the balance of probabilities.

**Charge 2 (c):**

c) Colleague C

**This charge is found proved.**

In determining whether Ms McDade did inform Colleague C that she had escalated the alleged sexual conduct to Safeguarding, the panel considered Colleague C's written statement, in which she stated:

“She said that she had dealt with it and that she had told Safeguarding and that they were dealing with it...I spoke to [Ms McDade] a couple of times...she gave me the same response that Safeguarding were dealing with it.”

In her oral evidence, submitted via telephone, Colleague C confirmed that she spoke to Ms McDade via telephone 'four or five times' from home to express her concerns about the time it was taking for the Safeguarding team to respond. Colleague C was aware of the sexual conduct by Resident B towards Resident A, through handovers and behavioural charts in both residents notes, although she didn't witness an incident herself. She was concerned about the level of protection the night staff could provide without additional procedures being put in place. Colleague C was a night nurse; she did not often see Ms McDade, who worked day shifts. Colleague C told the panel that she did contact Ms McDade in her spare time. The panel has seen no evidence to contradict Colleague C's statement, nor has it seen any objection from Ms McDade in regard to its content.

Taking all of the above considerations into account, the panel determined that it had been presented with compelling evidence demonstrating that Ms McDade had informed Colleague C that she had escalated the alleged sexual conduct to Safeguarding, when she knew she had not. The panel therefore found charge 2 (c) proved on the balance of probabilities.

### **Charge 3:**

3. Your actions as described in charge 2 above were dishonest, in that you knew you were providing false and misleading information;

### **This charge is found proved.**

In reaching this decision, the panel considered that it had found the factual aspects of charge 2 in its entirety proved as outlined above. The panel took into account all the evidence put before it, including any documentary and oral evidence. It also had regard to two personal reflective pieces submitted by Ms McDade, the Home's internal investigation report and behavioural charts submitted by staff following incidents of sexual conduct. The panel noted that there needed to be "cogent evidence" of dishonesty in order for this charge to be found proved.

The judgement in Ivey, states that: "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...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 had particular regard to the final paragraph of Ms McDade's reflection piece, in which she stated:

"I accept that by my acts and omissions that I put clients at risk and have accepted this as a fact from the start of the process...I should of [sic] contacted safeguarding as well as social services."

Ms McDade alleged that she made several attempts to contact Resident B's social worker, to no avail. However, the panel saw no evidence to support this. In the absence of this information, the panel could not attach much weight to Ms McDade's account. Ms McDade did admit that she should have escalated the alleged sexual conduct to Safeguarding.

The panel further noted the Home's internal investigation report, which was conducted by Ms 1, who the panel found as a credible and reliable witness. In the report, Ms 1 concluded:

"There is no evidence to suggest the home manager reported any of the incidents on the internal RADAR system, safe guarding or notifications to CQC. In addition there was no evidence that the Home Manager had escalated this matter to her line manager and she did confirm to the investigating Officer, on Saturday 6<sup>th</sup> May, "that she had not reported to anyone and to tell [PRIVATE] she had cocked up."

The panel questioned Ms 1 in her oral evidence about her conversation with Ms McDade. Ms 1 confirmed that Ms McDade did admit to her that she had not reported to anyone and that she 'had cocked up'. The panel was satisfied that it could rely on Ms 1's oral evidence, which remained consistent with the investigation report. Therefore, the panel concluded that Ms McDade was aware that she had not made a referral to Safeguarding.

The panel heard evidence from three witnesses that Ms McDade did confirm to them that she had notified Safeguarding of the alleged sexual conduct, when in fact she had not. The panel is satisfied that Ms McDade knew that what she was saying to the three witnesses was untrue.

The panel went on to consider the standards of ordinary decent people. It determined that an ordinary decent person, with a full understanding of the circumstances and Ms McDade's state of knowledge, would view her conduct as outlined in charge 2 to be dishonest. Therefore, having considered all the evidence, and having applied the test set out in *Ivey*, the panel was satisfied that the NMC has shown, on the balance of probabilities, that Ms McDade acted dishonestly. It therefore found charge 3 proved.

## Determination on fitness to practise

Having announced its finding on all the facts, the panel then moved on to consider whether the facts found proved in charges 2 and 3 amount to misconduct and, if so, whether Ms McDade's fitness to practise is currently impaired. The NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted. The panel also had to consider separately whether Ms McDade's fitness to practise is currently impaired by reason of her police caution. The panel had careful regard to all the documentary evidence provided in this case together with the submissions from Mr Scott, on behalf of the NMC.

Mr Scott outlined the two stage approach the panel should take when considering misconduct and impairment and submitted that there is no burden or standard of proof at this stage. He submitted that whilst there is no definition of misconduct, it has been described as conduct unworthy of a nurse or conduct falling short of what would be proper in the circumstances. Mr Scott submitted that to amount to misconduct, the matters found proved should be serious, and it is clear that the allegations found proved in respect of charges 2 and 3 were serious. Mr Scott submitted that dishonesty is always a serious matter and in Ms McDade's case, it was particularly serious as it was not isolated, involved an abuse of trust and may have prolonged the time that harm continued towards Resident A.

In his submissions, Mr Scott 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".

Mr Scott highlighted the aspects of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code"), which in the NMC's view were breached in relation to the matters found proved in charges 2 and 3. Mr Scott submitted that there were numerous breaches in this case. Mr Scott submitted that whilst not all

breaches of the Code amount to misconduct, the breaches in this case represent serious misconduct.

With regard to the question of impairment, Mr Scott submitted that the panel should take into account the level of insight and remorse demonstrated by Ms McDade, the risk of repetition and whether the misconduct was remediable and whether it had been remedied. Mr Scott submitted that dishonesty is inherently difficult, but not impossible to remediate. However in this case, the panel has not been presented with significant evidence of insight, remorse or remediation from Ms McDade. Mr Scott noted that the dishonesty in this case, which was not isolated, was characterised by a pattern of providing colleagues with misleading information, which may have continued if an anonymous whistle-blower had not voiced concerns. Mr Scott therefore submitted that there is a high risk of repetition.

The panel accepted the advice of the legal assessor. He advised that to amount to misconduct, the misconduct must be serious. In relation to impairment, he advised the panel of the appropriate test for panels considering impairment, which was set out in the case of *Grant: Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

## **Decision on misconduct**

The panel adopted a two-stage process with respect to charges 2 and 3 in its consideration, as advised by the legal assessor. First, the panel must determine whether the facts found proved in charges 2 and 3 amount to misconduct. Secondly, the panel must decide whether, in all the circumstances, Ms McDade's fitness to practise is currently impaired as a result of any misconduct found, and/or as a result of her caution.

The panel, in reaching its decision, had regard to the public interest, accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement. When determining whether the facts found proved in charges 2 and 3 amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Ms McDade's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to breaches of the Code. Specifically, the following breaches of the Code: 1 (1.2, 1.4), 3.4, 4.3, 8.5, 8.6, 14.1, 16 (16.4), 17 (17.1, 17.2, 17.3), 20 (20.1, 20.2, 20.4).

The panel focused particularly on the following breaches:

### **4 Act in the best interests of people at all times**

To achieve this, you must:

4.3 keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process

### **16 Act without delay if you believe that there is a risk to patient safety or public protection**

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices

16.4 acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so

## **17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection**

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

17.2 share information if you believe someone may be at risk of harm, in line with the laws relating to the disclosure of information

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

## **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...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel concluded that Ms McDade's repeated dishonesty which significantly delayed Resident A from being protected from sexual abuse was very serious and amounts to misconduct. The panel was in no doubt that Ms McDade's actions would be regarded as deplorable by fellow nurses. The panel considered that other nurses would expect Ms McDade to act with honesty and integrity, especially when she was in a position of trust as Home Manager.

For these reasons, the panel finds that Ms McDade's actions in charges 2 and 3 fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## Decision on impairment

The panel next went on to decide if, as a result of her misconduct and her police caution, Ms McDade'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 *Grant* in reaching its decision, in paragraph 74 she said:

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

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 [nurse'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 finds that all limbs are engaged in this case.

In relation to the first limb, the panel took into account that Resident A was vulnerable, and could not articulate her distress. Staff noted Resident A's behaviour and mood had changed during this period, from a 'lively person' who liked to 'sing and dance' to someone who was 'visibly distressed' and 'quiet'. Once action had been taken, Resident A resumed her normal behaviour. By not escalating this to Safeguarding, despite having knowledge of the abuse, Ms McDade placed Resident A at an unwarranted risk of harm, over a period of three and a half months.

In relation to the second and third limb of the *Grant* test, the panel considered that Ms McDade had breached fundamental tenets of the profession and had brought the profession into disrepute. She did not fulfil her responsibilities as a Registered Nurse and Home Manager as was expected by her colleagues, patients, patient families, the wider public and her regulator. She also received a police caution as a result of her failure to safeguard Resident A.

In relation to the fourth limb, the panel referred to its findings, in that, charge 2 and 3 have been found proved. It has heard from three witnesses who have told the panel that Ms McDade did act dishonestly by telling them that she had informed Safeguarding, when she knew she had not.

The panel considered Ms McDade's insight into her actions. Ms McDade made early admissions to the police in accepting her police caution and also admissions to Ms 1, in relation to failing to safeguard Resident A. Ms McDade demonstrated some level of remorse and insight in her reflective pieces. However, the panel considered her insight to be vague, and took the view that Ms McDade, at times, deflected her failings onto others. The panel paid careful attention to her reflective piece, where she stated:

"I had very little support from superiors...

Most of my induction was carried out on my own and in the job...

The situation between clients A and B had apparently been going on before I commenced my employment but was not made aware of this...

It was not until safeguarding became involved that I became aware of the full extent of the behaviours and frequency. It was at this point that I checked clients notes and I was not sure why these forms had not been passed to me...

I believe there were a number of failings by both myself and the staff...

The day to day pressures and deadlines imposed on me as a manager I felt were unrealistic...Both the clinical leads and I were new in post and new to the company so were unable to support each other very well.”

The panel noted Ms McDade’s assertion that her responsibilities as Home Manager were ‘unrealistic’. It also noted although Ms McDade was new to the role, she was an experienced nurse. After hearing from Ms 1, who was the Investigating Officer, the panel considered that Ms McDade was provided with appropriate induction into her role. Further, it took the view that subsequently she was given ample opportunity to seek support and escalate concerns to Safeguarding. In addition, Ms 1 told the panel that she found behavioural charts in Ms McDade’s desk, which she had been given by the staff, and therefore should have been aware of the extent of the behaviours at the relevant time.

With regard to the risk of repetition, the panel considered that dishonesty is difficult to remediate and there was no evidence of remediation before it. In her reflective pieces, Ms McDade makes no reference to the allegations of dishonesty and makes no comment on the witness statements of Colleagues A, B and C. This left the panel to conclude that she has demonstrated limited insight or remorse in relation to charges 2 and 3.

The panel was of the view that, upon reflection, Ms McDade did accept that she placed patients at unwarranted risk of harm. It took particular reference to her statement:

“I acknowledge that I should have tried harder to resolve the situation sooner and sought help and advice from other professionals...”

I failed to protect vulnerable adults from harm and abuse which is contradictory to my code of conduct...I have potentially damaged the health and wellbeing of clients and the public’s faith in nursing as a profession.”

Whilst Ms McDade does accept her failure to report to Safeguarding may have impacted 'clients' and the nursing profession, the panel do not accept that Ms McDade's reflective pieces was sufficient to remediate her misconduct. The panel also considered that she was not cognisant of the impact that her actions may have on Resident A in particular, and her family, and deemed her insight to be limited.

The panel drew further reference to her reflective piece, where Ms McDade stated:

"I have undertaken further safeguarding training at a local college with positive feedback from my tutor."

Although Ms McDade stated that she has undertaken further training, the panel has seen no evidence of this, and could not attach much weight to it. In addition, the panel had no information before it as to how Ms McDade would handle a similar situation differently in the future.

The panel noted that Ms McDade's dishonesty was not isolated, involved a pattern of behaviour and involved an abuse of trust. The panel concluded that in the absence of remediation, there is a high risk of repetition. The panel determined that in these circumstances, a finding of impairment is necessary on the grounds of public protection.

The panel went on to consider whether a finding of impairment is also necessary to uphold proper professional standards and public confidence in the profession. The panel determined that a finding of dishonesty in a clinical setting, involving an abuse of a position of trust is particularly serious. Informed members of the public with knowledge of the circumstances of this case would be alarmed if a finding of impairment were not made and public confidence would be undermined as a result. In view of these considerations, the panel determined that a finding of impairment on public interest grounds was required to uphold public confidence and mark Ms McDade's behaviour as unacceptable.

The panel next considered whether Ms McDade's fitness to practise is impaired by reason of her police caution. Ms McDade received a police caution for ill treatment/wilful

neglect of a person without capacity, contrary to S44 on the Mental Health Capacity Act 2005. The panel considered the caution to be particularly serious, in that, this was persistent course of conduct in a work context directed by a nurse in relation to a highly vulnerable person, under her care. The panel considered that the reputation of the nursing profession would be undermined if a finding of current impairment were not made against her fitness to practise, given the seriousness of her police caution and the associated dishonest misconduct. The panel therefore decided that, in this case, a finding of impairment on public interest grounds is also required.

Having regard to all of the above, the panel has decided that Ms McDade's fitness to practise is currently impaired by reason of her misconduct and police caution.

## **Determination on sanction**

The panel has considered this case very carefully and decided to make a striking-off order. The effect of this order is that the NMC register will show that Ms McDade's name has been struck off the register.

In reaching this decision, the panel has had regard to all the evidence that has been provided in this case. It took into account the submissions from Mr Scott on behalf of the NMC. It also had regard to written submissions on behalf of Ms McDade.

Mr Scott addressed the panel on the aggravating and mitigating features of Ms McDade's case and made submissions in relation to the approach the panel should take at this stage, having regard to NMC's Sanction's Guidance (SG). Mr Scott referred the panel to guidance on the seriousness of dishonesty. He submitted that the NMC's view is that the dishonesty in this case was at the more serious end of the spectrum of dishonest conduct given the aggravating factors identified. Mr Scott invited the panel to have regard to the case *Parkinson v NMC [2010] EWHC 1898 (Admin)*, and submitted that the NMC's sanction bid was that of a striking off order as the behaviour in relation to matters found proved was fundamentally incompatible with Ms McDade remaining on the register.

The panel heard and accepted the advice of the legal assessor in relation to the factors it should take into account at this stage.

The panel has had regard to the NMC's overriding objective, in particular the promotion and maintenance of public confidence in the profession and the promotion and maintenance of proper professional standards for members of the profession.

The panel first considered the aggravating and mitigating factors in this case.

The panel considered that the aggravating factors in this case were that:

- The ongoing actual harm suffered by Resident A could have been stopped, if Ms McDade had not deceived colleagues, who subsequently were not in a position to take action;
- Ms McDade's dishonesty was not isolated and persisted over a period of some three and a half months;
- Ms McDade demonstrates a lack of insight;
- Ms McDade was the Home Manager with the overall responsibility for the wellbeing and safety of residents.

The panel considered that the mitigating factors in this case were that:

- Ms McDade has expressed a degree of remorse in respect of the police caution;
- Ms McDade was experiencing some difficult personal circumstances at the time in question.

The panel next turned to the question of which sanction, if any, to impose. It considered each available sanction in turn, starting with the least restrictive sanction and moving upwards.

The panel first considered whether to take no action. The panel bore in mind that it had identified at the impairment stage that there remained a high risk of repetition in this case. Any repetition would bring with it a risk of harm to others. To take no action would therefore not provide protection to the public. In addition, the panel considered that to take no further action would be inadequate to mark the seriousness of Ms McDade's misconduct and police caution and it would therefore not address the public interest considerations of this case.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel considered that Ms McDade's impairment as a result of her misconduct and police caution was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the matters found proved. In light of the risk of repetition identified at the impairment stage, it would offer no protection to the public, as it would not restrict Ms McDade's practice. Therefore, the panel decided that it was not proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms McDade's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. Ms McDade's failings do not relate to her clinical skills, but to dishonesty and ill treatment/wilful neglect. The panel took the view that it was not possible to formulate conditions which would be able to address these issues. The panel therefore concluded that placing conditions on Ms McDade's registration would not adequately address the seriousness of this case, protect the public nor address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the SG where it states:

“Key things to weigh up before imposing this order include:

- whether the seriousness of the case require temporary removal from the register?
- will a period of suspension be sufficient to protect patients, public confidence in nurses and midwives, or professional standards?

[...]

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident

- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.”

The panel considered that Ms McDade’s misconduct had placed the public at unwarranted risk of harm by not escalating sexual abuse of a resident to Safeguarding. The panel noted that Ms McDade has not demonstrated any insight into her dishonesty, and that her misconduct and attempts to shift responsibility for her actions onto her colleagues were indicative of attitudinal issues. The panel considered that Ms McDade’s misconduct was not isolated, but amounted to premeditated dishonest behaviour over a period of time. It also bore in mind that a police caution for ill treatment/wilful neglect as a carer, is inherently serious, and that the wider public would expect the NMC as a regulator to take restrictive action. In the panel’s judgement, Ms McDade’s dishonesty, which involved a deliberate breach of duty of candour and is compounded by her police caution, was particularly serious and at the high end of the spectrum of dishonest conduct. Having carefully considered the guidance on the seriousness of dishonesty in the SG, the panel concluded that Ms McDade’s dishonesty involved:

- failure to prevent harm to Resident A, a highly vulnerable person, over three and a half months;
- deliberate breach of duty of candour;
- misuse of power and deliberately deceiving junior colleagues;
- premeditated, systematic and persistent dishonesty, within Ms McDade’s professional capacity.

The panel determined that Ms McDade’s misconduct, as highlighted by the facts found proved was a significant departure from the standards expected of a registered nurse. The panel concluded that the serious breaches of the fundamental tenets of the profession evidenced by Ms McDade’s misconduct and police caution are fundamentally incompatible with her name remaining on the register. The panel determined that a suspension order would therefore not be a sufficient, appropriate or a proportionate sanction to protect the public or satisfy the public interest considerations

of this case. In the panel's judgement, public confidence in the profession and the NMC as a regulator would be undermined by the imposition of a suspension order.

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

"This sanction is likely to be appropriate when what the nurse or midwife has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

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

The panel noted that Ms McDade has not demonstrated any insight into her dishonest conduct, nor has she demonstrated significant insight into her police caution. Therefore the panel considered that she remains firmly in a position of risk with regard to her misconduct and her police caution. The panel could not identify any obvious personal gain on Ms McDade's behalf. Nonetheless, it determined that her dishonest behaviour was premeditated, systematic and persistent. The panel concluded that, although dishonesty is a serious matter in any case, Ms McDade's misconduct was at the higher end of the spectrum of dishonesty due to the vulnerability of Resident A and the actual and ongoing harm caused.

Finally, in looking at a striking-off order, the panel noted that Ms McDade's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with Ms McDade remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms McDade's actions were particularly serious and that they had not been remediated. In all the

circumstances, the panel has decided that to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Accordingly, the panel directs that Ms McDade's name be removed from the Register.

## **Decision on interim order**

Mr Scott submitted that an interim suspension order should be imposed on the basis of protection of the public and otherwise in the wider public interest. He submitted that the interim suspension order, which would take immediate effect, should be for a period of 18 months to cover the possibility of an appeal being lodged by Ms McDade in the 28 day appeal period.

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

The panel considered the circumstances of the case and its decision for imposing a striking off order.

The panel had particular regard to its earlier finding that there remained a risk of repetition of Ms McDade's misconduct. It also bore in mind the seriousness of the matters which it has found proved and concluded that in light of its earlier decisions on impairment and sanction, an interim order was necessary for the protection of the public and is otherwise in the public interest in order to uphold professional standards and maintain public confidence in the profession.

For the reasons already set out in detail in the decision on sanction, the panel considered that a workable interim conditions of practice order could not be formulated to protect the public pending any appeal. The panel therefore concluded that it was necessary for Ms McDade's registration to be subject to an interim suspension order on the grounds of public protection and in the public interest. To do otherwise would be inconsistent 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 suspension order will be replaced by a striking off order 28 days after Ms McDade is sent the decision of this hearing in writing.

That concludes this determination.