

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Hearing
Wednesday, 28 October 2020 – Tuesday, 3 November 2020**

Virtual Hearing

Name of registrant:	Marillena Klimko
PIN:	07F1549E
Part(s) of the register:	Registered Nurse – Sub-part 2 Adult Nursing – September 2007
Area of registered address:	England
Type of case:	Misconduct
Panel members:	Derek McFaull (Chair, Lay member) Sue O’Sullivan (Registrant member) Darren Shenton (Lay member)
Legal Assessor:	Jayne Salt
Panel Secretary:	Philip Austin
Nursing and Midwifery Council:	Represented by Helen Guest, Case Presenter
Miss Klimko:	Not present and not represented in absence
Facts proved by admission:	Charges 1a, 1b, 1c(i), 1c(ii), 1d, 1f(i), 1h, 1i, 2 and 3
Facts proved:	Charges 1e and 1f(iii)
Facts not proved:	Charges 1f(ii) and 1g
Fitness to practise:	Currently impaired
Sanction:	Striking off order
Interim order:	Interim suspension order – 18 months

Decision and reasons on service of Notice of Hearing

At the start of this hearing, the panel noted that Miss Klimko was not in attendance, nor was she represented in her absence.

The panel was informed that notice of this hearing was sent by email to the address that the Nursing and Midwifery Council (“NMC”) had for Miss Klimko on 28 September 2020. The panel noted that the emergency statutory instrument in place allows for electronic service of the notice of hearing to be deemed reasonable in the current circumstances, involving COVID-19. This was the email address on the WISER system that had previously been used by Miss Klimko to correspond with the NMC.

Ms Guest, on behalf of the NMC, submitted that the service by email had complied with the requirements of Rules 11 and 34 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (“the Rules”).

The panel accepted the advice of the legal assessor.

The panel took into account that the notice of hearing provided details of the time, date and venue of the hearing and, amongst other things, information about Miss Klimko’s right to attend, be represented and call evidence, as well as the panel’s power to proceed in her absence. The panel noted that due to the current circumstances relating to COVID-19, today’s hearing would take place remotely for practical reasons and to avoid unnecessary travel. Miss Klimko had been provided with the details relating to this virtual hearing, including the specific reference number, telephone number and access code, should she wish to participate.

In the light of the information available, the panel was satisfied that Miss Klimko had been served with the notice of hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Klimko

The panel next considered whether it should proceed in the absence of Miss Klimko. It 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 Guest invited the panel to continue in the absence of Miss Klimko on the basis that she had voluntarily absented herself. She referred the panel to the cases of *R v Jones (Anthony William) (No.2) [2002] UKHL 5* and *General Medical Council v Adeogba [2016] EWCA Civ 162* and submitted that the panel should proceed with the hearing today unless there is a good reason not to do so.

Ms Guest took the panel through the background in scheduling this hearing. She informed the panel that Miss Klimko had initially requested for this matter to be considered at a meeting, however, a panel of the Fitness to Practise Committee (“FtPC”) referred this matter to a hearing. Ms Guest submitted that Miss Klimko had made it clear in her Case Management Form (“CMF”) signed 18 November 2019 that she would not be attending a hearing, and this was corroborated by subsequent email correspondence between Miss Klimko and the NMC case officer dated 4 September 2020 and 13 October 2020.

Ms Guest submitted that Miss Klimko had not requested an adjournment of this hearing, nor is there any reason to believe that an adjournment would secure her attendance on some future occasion. She specifically referred the panel to the email from Miss Klimko dated 13 October 2020, in which she states “*I give my consent for the proceedings to go ahead in my absence*”.

Ms Guest informed the panel that four witnesses have been warned to give oral evidence to this panel, and delaying this matter further may have an adverse effect on their recollection in relation to the charges, which date back as far as 2010. She submitted that the public interest elements of this case suggest that this matter should be dealt with expeditiously.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised ‘*with the utmost care and caution*’ as referred to in the case of *R v Jones (Anthony William) (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Miss Klimko. In reaching this decision, the panel has considered the oral submissions of Ms Guest and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *GMC v Adeogba*, as well as the overall interests of justice and fairness to all parties. It noted that:

- Miss Klimko has provided a clear indication that she will not be attending the hearing, as evidenced by her email dated 4 September 2020;
- Miss Klimko gave her consent for the panel proceeding in her absence at this hearing in an email dated 13 October 2020;
- No application for an adjournment has been made by Miss Klimko;

- There is no reason to suppose that adjourning would secure Miss Klimko's attendance at some future date;
- Miss Klimko has provided the panel with a response to the charges, as well as other written representations in support of her case;
- Four witnesses have been warned to give oral evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred as far back as 2010;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

The panel noted that Miss Klimko emailed the NMC case officer on 4 September 2020 stating *"I will not be attending the hearing, not because I do not care [PRIVATE]...You are welcome to email me at any of those dates, I will always reply and provide yourselves with any information needed..."*. Whilst Miss Klimko asserts that the reason for her non-attendance relates to a sensitive health matter, the panel noted that she had not sought to provide it with any independent medical evidence to support this claim.

There is some disadvantage to Miss Klimko in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give oral 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. Furthermore, the limited disadvantage is the consequence of Miss Klimko's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In taking account of all the above, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Klimko. The panel will draw no adverse inference from Miss Klimko's absence in its findings of fact.

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

During the application to proceed in the absence of Miss Klimko, the panel, of its own volition, made a request that parts of the hearing be held in private on the basis that proper exploration of this case may involve reference to Miss Klimko's health. This application was made pursuant to Rule 19 of the NMC (Fitness to Practise) Rules 2004, as amended ("the Rules").

Ms Guest agreed with the application to enter into private session when matters were raised relating to Miss Klimko's health. She submitted that any public interest in these parts of the case being aired in public session is outweighed by the need to protect Miss Klimko's privacy in this respect.

The legal assessor reminded the panel that while Rule 19 (1) of the Rules 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.

The panel noted that 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 noted that there may be reference to Miss Klimko’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.

Details of charge

That you, a registered nurse,

1. Between 2010 and 2017, failed to maintain professional boundaries with a number of patients and their relatives, namely that you,
 - a. Exchanged a number of personal text messages with Patient A.
 - b. Met with Patient B outside of work, on more than one occasion.
 - c. Made a personal visit to the home of:
 - i. Patient B's mother.
 - ii. Patient D.
 - d. Had your details listed on Patient B's ICU documentation as his partner.
 - e. Visited Patient B in ICU when he was not under your professional care as a nurse.
 - f. Accepted lifts home from:
 - i. Patient B.
 - ii. The family of Patient C.
 - iii. The family of Patient G.
 - g. Whilst caring for Patient C, did not disclose to your employer that you were in a relationship with Person 1, who was the son of Patient C.
 - h. Loaned money to the wife of Patient E.

- i. Had one or more patient and patient family members as contacts on your Facebook account.
2. On or around 7 November 2013 left a morphine sulphate tablet beside the bed of Patient R but signed to say you had administered the tablet.
3. Your conduct at charge 2 was dishonest in that you knew you had not administered the morphine sulphate tablet and you intended to mislead your colleagues to believe that you had.

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

NMC Opening

Miss Klimko joined the NMC register on 24 September 2007.

On 1 December 2017, the NMC received a referral from Bradford Royal Infirmary (“the Infirmary”), part of the Bradford Teaching Hospitals NHS Foundation Trust (“the Trust”), in relation to Miss Klimko, where she had worked as a Band 5 Staff Nurse on Ward 7 (a Haematology Ward) since 22 October 2007.

The Trust commenced an investigation into Miss Klimko’s conduct and behaviour, having received a complaint from Ms 1, the wife of Patient A (deceased). During this investigation, a number of concerns arose relating to Miss Klimko’s interaction with a number of patients and their family members.

It is alleged that between 2010 and 2017, Miss Klimko failed to maintain professional boundaries with a number of patients and their relatives, namely that she exchanged a

number of personal text messages, met patients outside of work, and made visits to the homes of patients and their family members without clinical justification.

It is alleged that Miss Klimko visited a patient whilst he was in the Intensive Care Unit (“ICU”) at the Infirmary, despite him not being under her professional care. Furthermore, Miss Klimko was also allegedly listed as his partner on the patient records in the ICU.

It is also alleged that Miss Klimko accepted lifts home from family members of patients, as well as the patients themselves. She allegedly did not disclose to her employer that she was in a relationship with Person 1, who was the son of a patient.

Miss Klimko allegedly loaned money to the wife of a patient, and she also allegedly had one or more patients as contacts on her Facebook account, as well as patient’s family members.

There is also a separate allegation relating to dishonesty, dating back to 7 November 2013, when Miss Klimko allegedly left a morphine sulphate tablet beside the bed of Patient R but signed to say that she had administered the tablet. It is alleged that Miss Klimko knew that she had not administered the morphine sulphate tablet to the patient, and that she had intended to mislead colleagues into believing that he had.

Miss Klimko was dismissed from her role on 20 October 2017.

Decision and reasons on facts

The panel noted from the CMF that Miss Klimko had made a number of admissions to the charges that had been put to her in advance of this hearing. Miss Klimko has admitted charges 1a, 1b, 1c(i), 1c(ii), 1d, 1f(i), 1h, 1i, 2 and 3.

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

As Miss Klimko was not present or represented at this hearing, the panel decided to consider each charge in turn, as it determined that it would be fair and equitable to do so.

Therefore, the panel bore in mind Miss Klimko's admissions to the charges, in its deliberation on each individual charge.

In reaching its decisions on the facts, the panel took account of all the oral and documentary evidence adduced in this case. It had particular regard to the documentary evidence provided by Miss Klimko, which included a response to the NMC referral, supporting diagrams, appendices, and a CMF document signed 18 November 2019.

The panel also took account of the submissions made by Ms Guest, on behalf of the NMC, as well as the advice of the legal assessor.

The panel has drawn no adverse inference from the non-attendance of Miss Klimko.

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

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

- Ms 2: Matron for Oncology, Haematology, Stroke and Neurology at the Trust.

- Ms 3: Junior Sister and subsequent Ward Manager at the Trust.
- Ms 4: Band 5 Staff Nurse at the Trust

Additionally, the panel accepted into evidence the witness statements of Ms 1, the wife of Patient A (deceased) and Ms 5, Chief Nurse at the Trust since August 2016.

The panel first considered the overall credibility and reliability of the witnesses it had heard from. It made the following conclusions:

The panel found Ms 2 to be a credible, reliable and straightforward witness. It considered her to have remained consistent with the documentary evidence. The panel noted that Ms 2 had conducted the Trust's investigation into the concerns raised which had initially been a much more wide-ranging and serious investigation than the matters that this panel are now being asked to consider. The panel was of that view that Ms 2 had been fair and balanced during cross-examination from the panel, in that she accepted when she was not able to recollect certain events due to the lapse in time. Ms 2 did not attempt to embellish her evidence, as she recognised when she was unable to comment on particular aspects of this case. The panel found Ms 2 to have been clear and helpful in interpreting and clarifying important pieces of evidence, and she was able to give background information relating to the professional working relationships on Ward 7. It considered her to have attempted to assist it to the best of her knowledge and belief.

The panel found Ms 3 to be a clear, helpful and straightforward witness. The panel was aware that Ms 3 would have worked in close proximity to Miss Klimko and other nursing staff around the time of the events, as she was initially the Junior Sister on the Ward and then subsequently, Ward Manager. However, the panel considered there to be some inconsistencies in her oral evidence, in comparing her evidence with that of Ms 4 and Miss Klimko. The panel noted that Ms 3 had stated in her oral evidence that she was unaware of Miss Klimko's relationship with Person 1 until after his father, Patient C, had died. Miss

Klimko and Ms 4, the latter during her oral evidence, both stated that Miss Klimko's relationship with Person 1 was common knowledge on the Ward, as it was only a small nursing team. Nonetheless, the panel did not consider Ms 3 to have been evasive during questioning from the panel, but it did consider there to be some confusion around the chronology of events due to the lapse in time. Ms 3 was able to give contextual information relating to the working practices in a close-knit nursing team, and was able to provide detail about the working relationships between staff and patients. She also accepted the errors that she had made in failing to document informal meetings she had with Miss Klimko in relation to the concerns.

The panel found Ms 4 to be a credible, reliable and straightforward witness. It considered her to have been open and honest during her oral evidence, in that she was clear on what she had directly witnessed, and clear on what she would consider to be hearsay evidence. Ms 4 had stated during her oral evidence that she was a junior member of staff at the time, having recently qualified as a registered nurse. However, the panel determined that Ms 4 had been consistent with her documentary evidence in respect of Patient C and Patient G, and she also accepted when she could not remember certain events due to the lapse in time. The panel considered her to have attempted to assist it to the best of her knowledge and belief.

The panel then considered each of the charges in turn and made the following findings. During its deliberations, the panel noted that Miss Klimko was often referred to as 'Matty'.

Charge 1

1. Between 2010 and 2017, failed to maintain professional boundaries with a number of patients and their relatives, namely that you,

Charge 1a

- a. Exchanged a number of personal text messages with Patient A.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 1, Ms 2, Ms 5 and Miss Klimko.

In establishing whether there was a 'failure' in this case, the panel first considered whether there was a duty imposed on Miss Klimko to maintain professional boundaries. The panel determined that as Miss Klimko is a registered nurse, there is a duty imposed on her to maintain professional boundaries with patients and their relatives.

The panel noted from Ms 1's NMC witness statement that she had stated *"There were two phones and so it looked like [Patient A] was sending things from one phone, then reading what was sent back on the other. That's how he did it. Everything is still on the phones as it was, including messages from Patient A to the registrant"*. This was corroborated by the evidence of Ms 2, who had also stated in her NMC witness statement that *"The registrant also admitted that she had in fact been in contact with Patient A on multiple occasions (after initially denying this), and had been in contact with other patients post-discharge...We had evidence that she had sent him 144 messages in total"*.

In considering this charge, the panel had sight of the transcript of the text messages that had been exchanged between Miss Klimko and Patient A.

It also took account of the contemporaneous notes that were completed by the Trust at the investigatory meeting on 23 August 2017. In these notes, Miss Klimko is recorded in these notes as having accepted that she had exchanged a number of personal text messages with Patient A. Miss Klimko had subsequently been provided a copy of these notes, made

amendments, and then signed and dated them on 1 September 2017, confirming the accuracy of their contents.

Miss Klimko had admitted this charge in her CMF, and stated in her response to the NMC referral dated 31 March 2017 that *“My only communication with Patient A was via text message. I admit communicating with Patient A was completely unprofessional”*.

Therefore, the panel found charge 1a proved.

Charge 1b

b. Met with Patient B outside of work, on more than one occasion.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2, Ms 3 and Miss Klimko.

The panel noted from Ms 2’s NMC witness statement that she had stated *“The registrant initially denied any contact, before admitting when questioned further, and confronted with the text messages she had sent Patient A about Patient B, that she had seen Patient B outside of the ward, but still denied being in a relationship with him or having any romantic relationships since January 2015”*.

Furthermore, this was supported by the evidence of Ms 3, who had stated in her witness statement that *“Patient B was the only patient whose interactions outside of work with the registrant that I witnessed myself, as I saw them together twice in the supermarket. Patient B had been a patient of ours and prior to being transferred to Leeds for a bone marrow transplant.”*

The panel noted that Miss Klimko had accepted the facts of this charge at the investigatory meeting on 23 August 2017, and that she had signed and dated the meeting notes on 1 September 2017 confirming that these were an accurate representation of what was said. Miss Klimko had also admitted this charge in her CMF document in response to the regulatory concerns.

Miss Klimko had also signed a Statement of Facts to the Trust on 7 July 2017 confirming that she was in a relationship with Patient B until January 2016 when he passed away.

Therefore, the panel found charge 1b proved.

Charge 1c

- c. Made a personal visit to the home of:
 - i. Patient B's mother.
 - ii. Patient D.

This charge is found proved in its entirety.

In reaching this decision, the panel took account of the evidence of Ms 2 and Miss Klimko.

In considering charge 1c(i), panel took account of Ms 2's NMC witness statement, in which she had stated "*...I put the evidence in front of her. Her union rep who was present had no idea about this and the registrant then was forced to admit she knew Patient B, had met him outside work and had even gone to his mother's house*".

The panel noted from the investigatory meeting notes made on 23 August 2017 that Miss Klimko was asked by Ms 2 "*Have you ever been to [Patient B's] house or his mum's*

house?" to which she responded by saying "I've been to his mum's house. For tea and cakes. She invited me round".

Furthermore, in considering charge 1c(ii), the panel also had regard to Ms 2's NMC witness statement, in which she stated "*Another matter we discussed regarding professional boundaries was the issue of Patient D, as other staff had noted the registrant's visit to her with bottles of wine. Patient D had been put on a fast track go home from the ward due to her end of life status. I understand she was discharged from hospital on 31 October 2011 and died on 3 November 2011 and that within those three days, the registrant had turned up at the address with bottles of wine. Trust records showed the family had made contact to say this was totally inappropriate and the registrant should not have even been to visit. Haematology staff, like all of our ward staff don't do home visit; the only people who do home visits to patients are those designated to do that such as District Nurses or those taking blood products direct to the home, but this is not a service run from the haematology ward...*"

The panel noted from the investigatory meeting notes made on 23 August 2017 that Miss Klimko was asked by Ms 2 "*Tell me about Patient D. There is an allegation that you went to her house with wine and she complained*" to which she responded by saying "*I didn't go to her house with wine. She asked me to go and see her whilst she was well. It was her sister who wasn't happy that I did that...[it] wasn't OK to. Because I knew she was close to end of life, I didn't want her to be upset. She wanted to say her goodbyes and thank you personally*".

Therefore, the panel found that Miss Klimko had accepted the facts of this charge in its entirety at the investigatory meeting on 23 August 2017, and had signed and dated the meeting notes on 1 September 2017 confirming that these were an accurate representation of what was said.

Miss Klimko had also admitted this charge in its entirety in her CMF document in response to the regulatory concerns.

Therefore, the panel found charges 1c(i) and 1c(ii) proved.

Charge 1d

d. Had your details listed on Patient B's ICU documentation as his partner.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2, Miss Klimko and ICU documentation.

The panel took account of Ms 2's NMC witness statement, in which she had stated "*...we had documentation from the hospital's Intensive Care Unit (ICU) for Patient B that listed the registrant as his "partner" and indicating that that Patient B's girlfriend had been at his bedside along with other notes referring to "SN from Ward 7 (Matty)". The registrant was down as next of kin and this patient's mother asked her to be removed and that she not be contacted*"[sic].

The panel noted from the investigatory meeting notes made on 23 August 2017 that Ms 2 had put to Miss Klimko that "*On [Patient B's] ICU notes you are down as his partner*". Miss Klimko responded by saying "*I was in a good relationship with his mum and dad*". Ms 2 then asked "*Why are you down as partner?*" and Miss Klimko stated "*I didn't tell them to put that down. [Ms 6] asked me if I wanted them to add my number in case anything happened*".

The panel noted that Miss Klimko had accepted the facts of this charge at the investigatory meeting on 23 August 2017, and that she had signed and dated the meeting notes on 1 September 2017 confirming that these were an accurate representation of what

was said. Miss Klimko had also admitted this charge in her CMF document in response to the regulatory concerns.

Therefore, the panel found charge 1d proved.

Charge 1e

- e. Visited Patient B in ICU when he was not under your professional care as a nurse.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2 and Miss Klimko.

The panel took account of Ms 2's NMC witness statement, in which she had stated "*The registrant advised that she had been at the bedside and had visited Patient B in ICU twice...*". This was corroborated by the investigatory meeting notes made on 23 August 2017, as Ms 2 had put to Miss Klimko "*Refer to ICU documentation. Did you ever visit Patient B in ICU? The ICU notes refer to a girlfriend who was at the bedside. Was that you at the bedside*". Miss Klimko has amended the investigatory meeting notes to say "*Yes, I went to ICU twice*".

Furthermore, the registered nurse involved in Patient B's care in the ICU had recorded in the patient's records "*spoke with parents and girlfriend at bedside...*" on 2 January 2016. The panel had previously noted that Miss Klimko had accepted that she was down on Patient B's ICU records as being his 'partner', although she had said that "*she didn't tell them to put that down*". In having regard to the above, the panel determined that the words 'partner' and 'girlfriend' had been used interchangeably in this respect.

As Patient B had been admitted to ICU, the panel determined that Patient B was not under Miss Klimko's care as a registered nurse at the time of this incident. The evidence before it suggested that Miss Klimko was off sick from work at the time, so there was no confusion as to whether she should have been informed of Patient B's presenting condition. Miss Klimko had later accepted that she had "*no rights*" in accessing Patient B whilst he was on the ICU according to the investigatory meeting notes.

The panel noted that Miss Klimko had accepted the facts of this charge at the investigatory meeting on 23 August 2017, and that she had signed and dated the meeting notes on 1 September 2017 confirming that these were an accurate representation of what was said.

Miss Klimko did not admit this charge in her CMF document in response to the regulatory concerns. However, on the balance of probabilities, the panel determined that Miss Klimko had visited Patient B in ICU when he was not under her professional care as a registered nurse.

Therefore, the panel found charge 1e proved.

Charge 1f

- f. Accepted lift's home from:
 - i. Patient B.
 - ii. The family of Patient C.
 - iii. The family of Patient G.

This charge is found proved in respect of charge 1f(i) and 1f(iii). This charge is found not proved in relation to charge 1f(ii).

In reaching this decision, the panel took account of the evidence of Ms 2, Ms 4 and Miss Klimko.

In considering charge 1f(i), the panel took account of Ms 2's NMC witness statement, in which she had stated *"It had also been alleged that Patient B used to come to the ward to take the registrant home, the two of them had been seen together in a supermarket by other staff on more than one occasion..."*.

The panel noted from the investigatory meeting notes made on 23 August 2017 that Ms 2 had put to Miss Klimko that *"Prior to being on ICU Patient B was on Ward 7. His mum had come to ward and spoken to [Ms 3] – she was concerned he wouldn't come in. [Ms 3] convinced Patient B's mum to ring him. His mum was overheard on the phone saying "you can't pick Matty up now, you need to come to hospital. I'm asking you again – have you seen Patient B face to face?"*. Miss Klimko responds by saying *"Only in the supermarket"*. Ms 2 then asks Miss Klimko *"So why would he be picking you up?"* and she responds by saying *"I don't know"*.

The panel noted that whilst Miss Klimko did not confirm that she had accepted lifts home from Patient B during the investigatory meeting on 23 August 2017, she had admitted this charge in her CMF document, in response to the regulatory concerns.

In considering charge 1f(ii) and charge 1f(iii), the panel took account of Ms 4's NMC witness statement, in which she had stated *"In my interview I also mentioned concerns about the registrant getting lifts home with the families of patients; they would wait for finish of the shift to take her home. I would have seen this maybe five or six occasions although I know it happened more than that. I cannot recall any specific dates when this occurred. One of the patients I remember this happening with, was with a lady called Patient G, whose surname I can't recall now, but I know the registrant would get a lot of rides home from the family. It was also the same when Patient C was a patient; she would get rides with his family, although there was more going on here. This was not usual for*

nurses on our ward; I certainly wouldn't go home with a patient's family. I don't think anybody addressed this at the time".

However, during her oral evidence, Ms 4 told the panel that she had never directly witnessed Patient C's family giving Miss Klimko a lift home, and that she had relied on hearsay evidence in respect of this. The panel noted Miss Klimko vehemently denies that she accepted lifts home from Patient C's family in her CMF document as she states *"Patient C family never brought me home, the son of Patient C who I became involved with did not have a car"*[sic].

In having regard to the information before it, the panel was not satisfied that there was any evidence to support the allegation in charge 1f(ii). It was of the view that the NMC had failed to discharge its burden of proof.

Ms 4 was clear in her oral evidence that she had directly witnessed the family of Patient G offering lifts after work to Miss Klimko and then waiting for her to finish her nursing shift. They then left together down the ward corridor. Whilst she had not seen Miss Klimko leave the premises in any form of transport with Patient G's family, Ms 4 had been convincing in describing the detail in which she could recollect this incident. The panel noted that whilst Miss Klimko has denied the charge in her CMF document, she provided a caveat by stating *"As far as I can recollect I didn't accept lifts"*.

In taking account of the compelling oral evidence of Ms 4, the panel determined that on the balance of probabilities, Miss Klimko had accepted lifts home from Patient G's family.

Therefore, the panel found this charge proved in respect of 1f (i) and 1f(iii). It did not find charge 1f(ii) proved.

Charge 1g

- g. Whilst caring for Patient C, did not disclose to your employer that you were in a relationship with Person 1, who was the son of Patient C.

This charge is found NOT proved.

In reaching this decision, the panel took account of the evidence of Ms 2, Ms 3, Ms 4 and Miss Klimko.

The panel took account of Ms 2's NMC witness statement, in which she had stated *"Another relationship we looked into during the course of the investigatory meeting was the registrant's relationship with Person 1. Person 1 was the son of a patient, Patient C, who died in 2014. The registrant admitted to this relationship noting that her relationship with Person 1 had lasted from about 2012 for about a year and a half...Patient C became a recurrent patient on the haematology ward and while Person 1 was not a patient, there was a suggestion that she may have met Person 1 when he was in visiting his father. Patient C got discharged, then readmitted and she carried on her relationship in between but she did not disclose the relationship with his son and cared for Patient C during his readmission (including administering medications such as complex drug, chemotherapy and blood transfusions). Patient C died in hospital following his readmission. The registrant only disclosed her relationship with Person 1 after the fact once they had split up. As the relationship with Person 1 was undeclared to the Trust, the registrant's contact with Patient C could not be managed properly and this was not acceptable"*.

The panel noted from the investigatory meeting notes made on 23 August 2017 that Ms 2 had asked Miss Klimko *"Patient C. Were you in a relationship with his son?"* and Miss Klimko had responded by saying *"Person 1. Yes"*. Ms 2 followed this up by asking *"His dad was a patient on the ward. Did you tell anyone you were in a relationship with his son?"* and Miss Klimko is recorded as saying *"Everyone knew I think?"*. Ms 2 asked *"Who did you tell?"* and Miss Klimko said *"all the staff nurses knew"*. Ms 2 then asked *"Did you tell sister?"* and Miss Klimko stated *"Yes, [Ms 3] knew. Can't remember who boss was at the time"*.

However, in taking account of Ms 3's NMC witness statement, she had stated "*I also recall that at one stage the registrant was seeing the son of one of our patients for a while, but this was after his father had died...*". This contradicted the statements made by Miss Klimko at the investigatory meeting.

The panel also had sight of Ms 4's NMC witness statement, in which she had stated "*I was on maternity leave for most of the time Patient C was on the ward. Some of the issues with the registrant and Patient C's family I picked up myself, others I heard from other staff on the ward. I went back to work shortly before Patient C passed away. I recall it was all quite fresh then and the registrant told me a few things had happened between her and Patient C's son. She told me about two occasions and can't recall exactly when these were, but it was at least two or more years ago, where she had been out in pubs somewhere with Patient C's son. She was in a relationship with Patient C's son at the time*".

Ms 4 had stated during her oral evidence that more experienced staff on Ward 7 were aware of the relationship between Miss Klimko and Person 1, and that if this had been escalated to Ms 3, Sister on Ward 7 at the time of the events, then this would be regarded as having been disclosed to the Trust.

The panel considered there to be some inconsistencies in the accounts provided by the NMC witnesses. Ms 3 had initially stated in her NMC witness statement that she was not aware of Miss Klimko's and Person 1's relationship at the time Patient C remained under her nursing care. However, the panel had received evidence contrary to that from both Miss Klimko and Ms 4, suggesting that Miss Klimko's relationship with Person 1 was common knowledge on Ward 7, as it is a small unit and the staff were quite a close-knit team.

In taking account of the evidence before it, the panel was not satisfied that the NMC had been able to discharge its burden on the balance of probabilities. The panel considered

there to be insufficient evidence before it to suggest that Miss Klimko had not disclosed her relationship with Person 1 to the Trust, whilst she was providing nursing care to Patient C.

Therefore, the panel found charge 1g not proved.

Charge 1h

h. Loaned money to the wife of Patient E.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2, Ms 4 and Miss Klimko.

The panel took account of Ms 2's NMC witness statement, in which she had stated "*[Miss Klimko] admitted to...in one instance loaning money to a family member of one of her former patients she was friends with on Facebook*". This was corroborated by Ms 4's NMC witness statement, in which she had stated "*After Patient E passed away, [Miss Klimko] went to his wife's house, to visit her and gave her money; the Facebook post from Patient E's wife thanked her for this and said the registrant was an angel and had gone and got all her shopping for her, that sort thing. I think people had mentioned it on the ward after they saw it as well*".

The panel noted from the investigatory meeting notes made on 23 August 2017 that Ms 2 had asked Miss Klimko "*Why did you give [Patient E's wife] money?*" and Miss Klimko responded by saying "*She was in debt and she needed money for kids for food. I lent her some money and she paid me back*". Miss Klimko then confirmed that she had lent £60-70 to Patient E's wife and that her actions in doing so were not appropriate.

The panel noted that Miss Klimko had accepted the facts of this charge at the investigatory meeting on 23 August 2017, and that she had signed and dated the meeting notes on 1 September 2017 confirming that these were an accurate representation of what was said. Miss Klimko had also admitted this charge in her CMF document in response to the regulatory concerns.

Therefore, the panel found charge 1h proved.

Charge 1i

- i. Had one or more patient and patient family members as contacts on your Facebook account.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2, Ms 4 and Miss Klimko.

The panel took account of Ms 2's NMC witness statement, in which she had stated "*The registrant had 17 patient (or their close relatives, as some had patients had passed away) listed as contacts on Facebook...She admitted to having patients (or family members) as contacts on Facebook and attending the funerals of some of her previous patients...*". This was corroborated by Ms 4's NMC witness statement, in which she had stated "*I became aware of issues regarding the wife of Patient E after the registrant was tagged in a Facebook post in 2014 which I could see...*".

The panel noted from the investigatory meeting notes made on 23 August 2017 that Ms 2 had asked Miss Klimko, in respect of Patient E "*Friends with his wife on Facebook. What's the relationship there?*" and Miss Klimko responded by saying "*Just FB friend*". It also

noted that various other patients and their relatives are put to Miss Klimko as being her Facebook friend throughout the course of the investigatory meeting.

The panel noted that Miss Klimko had accepted the facts of this charge at the investigatory meeting on 23 August 2017, and that she had signed and dated the meeting notes on 1 September 2017 confirming that these were an accurate representation of what was said. Miss Klimko had also admitted this charge in her CMF document in response to the regulatory concerns.

There was evidence before the panel from Ms 2 that other staff on Ward 7 had contact on Facebook with patients and their family members. This was significantly less frequent or personal than that of Miss Klimko.

Therefore, the panel found charge 1i proved.

Charge 2)

2. On or around 7 November 2013 left a morphine sulphate tablet beside the bed of Patient R but signed to say you had administered the tablet.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2 and Miss Klimko.

The panel took account of Ms 2's NMC witness statement, in which she had stated *"My first really direct involvement with the registrant her was in 2014 in relation to a drug error, where she left a morphine sulphate tablet (a controlled drug) beside bed of patient without this being administered, but had signed for it as if she had administered this correctly...the registrant was issued a verbal warning, having admitted she did not follow the Trust's policies on this occasion...This patient was in pain and was a complex and difficult patient*

without capacity and I understand they refused to take the drug when then registrant and ...tried to give it to her. Rather than take the tablet away and come back to try again, the nurses signed to say they had given it and left it beside the patient. You don't sign to say a drug has been administered when you have left it un-administered beside the patient".

The panel had sight of the Datix incident report dated 7 November 2013 which confirmed that the incident involved Miss Klimko failing to administer 100mg of a morphine sulphate tablet, which was later found on Patient R's table.

The panel noted from the investigatory meeting notes made on 17 December 2013 that Ms 2 had also interviewed Miss Klimko in respect of this incident, alongside the Charge Nurse and an HR Officer. During this investigatory meeting, Miss Klimko does not deny that she left a morphine sulphate tablet beside the bed of Patient R, nor does she deny signing to say that this medication had been administered. Ms 2 had asked Miss Klimko *"Why did you leave the patient?"* and Miss Klimko responded by saying *"I assumed if we went he would take it as he had nobody to talk to...I didn't go back in and check he had taken it...Should have taken the drug back and returned to the [Controlled Drugs] cupboard or should have returned to the patient later to ensure the drug was taken"*. Miss Klimko accepted that she did not follow the Trust's policy around the Safe Management of Controlled Drugs.

The panel noted that Miss Klimko had appeared to accept the facts of this charge at the investigatory meeting on 17 December 2013. Furthermore, Miss Klimko had also admitted this charge in her CMF document in response to the regulatory concerns.

Therefore, the panel found charge 2 proved.

Charge 3

3. Your conduct at charge 2 was dishonest in that you knew you had not administered the morphine sulphate tablet and you intended to mislead your colleagues to believe that you had.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2 and Miss Klimko.

It had regard to the case of *Ivey v Genting Casinos Ltd t/a Crockfords [2017] UKSC 67* in determining whether Miss Klimko had been dishonest in her actions, as outlined in charge 2. In particular, the panel 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 took account of its findings in charge 2, and noted that Miss Klimko had admitted signing for a controlled drug that she had not administered to a patient. Miss Klimko was aware that the patient had not taken the medication, and she had left it beside his bed.

The panel was of the view that in signing for the controlled drug, ordinary and decent people would expect that to mean that the medication was administered to the patient. If

the medication is not administered for any reason, then this would also be documented with an explanation as to why it had not been.

Miss Klimko had accepted that she did not follow the Trust's policy around the Safe Management of Controlled Drugs. She was aware that what she had done was wrong, and knew that she should have done something else. The panel did not have any evidence of any notes being made at the time of the incident by Miss Klimko.

In taking account of the above, the panel determined that Miss Klimko knew she had not administered the morphine sulphate tablet and she had intended to mislead her colleagues to believe that she had.

Miss Klimko also admitted charge 3 in her CMF document, in response to the regulatory concerns.

Therefore, the panel found charge 3 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Klimko'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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Klimko's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In her submissions, Ms Guest referred the panel to the case of *Roylance v General Medical Council (No. 2) [2000] 1 AC 311* which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Guest invited the panel to take the view that Miss Klimko's conduct amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives 2015* ("the 2015 Code") in respect of charge 1, and *The Code: Standards of conduct, performance and ethics for nurses and midwives 2008* ("the 2008 Code"), in respect of charges 2 and 3. Ms Guest directed the panel to specific paragraphs and identified where, in the NMC's view, Miss Klimko's actions amounted to misconduct.

In respect of charge 1, Ms Guest submitted that Miss Klimko had overstepped professional boundaries with a number of different patients at the Trust, and this behaviour lasted for a prolonged period of time.

Ms Guest submitted that Miss Klimko's actions had caused a significant amount of emotional harm to patients and their relatives, none more so than Patient A's wife, who was greatly impacted by Miss Klimko's interactions with Patient A. Furthermore, Ms Guest submitted that Miss Klimko's relationship with Patient B created professional difficulties between the ICU and Ward 7, as well as her and Patient B's family.

Ms Guest submitted that whilst some of Miss Klimko's action may have been well-meaning, specifically, in respect of loaning money to Patient E's wife, Miss Klimko should have been aware that in doing so, her actions would be regarded as being unprofessional.

Ms Guest submitted that the panel has received evidence to suggest that other members of staff did have patients and their family members listed as contacts on Facebook. At the time however, the Trust had no guidance around social media interactions conducted by staff with patients and whilst there was evidence of other members of staff having patients as Facebook contacts, this was not to the level and the extent of that of Miss Klimko.

In respect of charges 2 and 3, Ms Guest submitted that in dishonestly signing to say that medication had been administered to a patient when it had not been, Miss Klimko had attempted to create a misleading impression to other staff members responsible for the care of Patient R. However, Ms Guest submitted that the panel may consider the dishonesty in this case to fall at the lower end of the spectrum of severity, as this is an isolated incident that occurred in 2013, and was dealt with at a local level by the Trust. Ms Guest submitted that Miss Klimko's dishonest conduct was not motivated by personal gain; nor has there been any evidence of her making further medication errors or repeating her dishonesty. To the contrary, she submitted that the NMC witnesses called to give evidence at this case had all attested to Miss Klimko's excellent clinical abilities.

In summary, Ms Guest submitted that Miss Klimko's inappropriate behaviour identified in charge 1 fell far below the standards expected of a registered nurse and amounted to misconduct. However, Ms Guest submitted that it is a matter for the panel as to whether

charges 2 and 3 are sufficiently serious as to amount to misconduct, taking account of all the evidence provided.

Submissions on impairment

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

Ms Guest submitted that Miss Klimko has in the past put patients at an unwarranted risk of harm. She submitted that Miss Klimko has also breached fundamental tenets of the nursing profession, had brought the nursing profession into disrepute, whilst having acted dishonestly in the past.

Ms Guest invited the panel to consider whether Miss Klimko's conduct is capable of remediation, whether it has been remediated, and whether her actions are likely to be repeated in future.

Ms Guest submitted that Miss Klimko's conduct and behaviour could be suggestive of an attitudinal issue, so the panel should consider whether it is indeed capable of remediation. She submitted that by its very nature, attitudinal concerns are more difficult to remediate than clinical nursing concerns. She submitted that judging by Miss Klimko's behaviour, she may have abused her position as a registered nurse.

However, in having regard to Miss Klimko's documentary evidence, Ms Guest submitted that the panel may consider her to have demonstrated genuine remorse for her actions, in that she has attempted to reflect on the hurt she had caused to Patient A's wife, at what

was undoubtedly a difficult time in her life. Ms Guest submitted that Miss Klimko has also apologised for the impact of her behaviour on patients and their families, colleagues, the nursing profession and the wider public.

Ms Guest informed the panel that Miss Klimko was suspended shortly after the incident came to light with Patient A in 2017 and she has not worked in a clinical environment since being dismissed from the Trust in October 2017.

Ms Guest invited the panel to find that Miss Klimko's fitness to practise as a registered nurse is currently impaired on the grounds of public protection and public interest. She submitted that the panel should consider what a fully informed member of the public would think, should a finding of no current impairment be made in this case.

Decision and reasons on misconduct

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

When deciding whether the facts found proved amount to misconduct, the panel had regard to the terms of the 2008 Code and 2015 Code, in respect of charge 1, and the 2008 Code solely, in respect of charges 2 and 3.

The panel was of the view that Miss Klimko's actions did fall significantly short of the standards expected of a registered nurse, and it considered them to have amounted to several breaches of the Code.

Specifically, in respect of charge 1, the panel decided that the following standards of the 2015 Code applied:

“The Code: Professional standards of practice and behaviour for nurses and midwives

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...

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly...

21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this, you must:

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment"

In respect of charge 1, the panel decided that the following standards of the 2008 Code applied:

"The code: Standards of conduct, performance and ethics for nurses and midwives

Maintain clear professional boundaries

18. You must refuse any gifts, favours or hospitality that might be interpreted as an attempt to gain preferential treatment.

20. You must establish and actively maintain clear sexual boundaries at all times with people in your care, their families and carers."

Specifically, in respect of charges 2 and 3, the panel decided that the following standards of the 2008 Code applied:

“The code: Standards of conduct, performance and ethics for nurses and midwives

Keep clear and accurate records

42 You must keep clear and accurate records of the discussions you have, the assessments you make, the treatment and medicines you give, and how effective these have been”

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, in these circumstances, the panel decided that Miss Klimko’s actions in each of the charges found proved fell significantly short of the standards expected as to justify a finding of misconduct.

In respect of charge 1, the panel considered the charges to be serious both individually and cumulatively. It had found Miss Klimko to have breached professional boundaries with multiple patients and their family members, and it was of the view that her conduct in doing so had taken place over a seven year period. Miss Klimko had failed to adhere to professional boundaries by visiting patients and their family members at their homes and whilst not on duty. The panel also had information before it to suggest that Miss Klimko had entered into three inappropriate and unprofessional relationships, two being with patients, and one being the son of a patient.

The panel considered Miss Klimko to have exposed patients in her care, along with their family members, to an unwarranted risk of harm. It acknowledged Ms Guest’s submission that Patient A’s wife would have been caused a great deal of distress and emotional harm upon discovering the text message conversations that Miss Klimko had with Patient A, prior to him passing away. The panel noted that Miss Klimko had sent 144 private text messages to Patient A alone; the content of which it considered to be inappropriate, as Miss Klimko was discussing her own personal relationships and health matters with someone who was considered to be vulnerable.

In respect of charges 2 and 3, the panel noted that Miss Klimko had admitted to signing for a controlled drug to indicate that it had been administered to a patient when it had not, and that she had also sought to mislead staff at the Trust into believing that this had been administered when it had not been. Whilst this incident occurred seven years ago and involves a single, isolated incident, the panel was of the view that honesty, integrity and trustworthiness are the bedrock of the nursing profession. It noted that Miss Klimko had acted dishonestly in delivering patient care, and that this had the potential to expose the patient in question to a risk of harm. Therefore, the panel considered her dishonest actions to be sufficiently serious to amount to misconduct.

The panel determined that Miss Klimko's actions in being dishonest and in failing to maintain professional boundaries could have had serious ramifications for the patients in her nursing care, along with their family members. It was of the view that other registered nurses would consider Miss Klimko's actions to be deplorable in the particular circumstances of this case.

The panel found that Miss Klimko's actions in all of the charges did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Klimko's fitness to practise as a registered nurse is currently impaired. The panel viewed the charges as per the presentation of the NMC case as two separate and distinct areas; the breach of professional boundaries as per charge 1, and the medication administration error and associated dishonesty as per charges 2 and 3.

Registered 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 registered nurses with their lives and the lives of their loved

ones. To justify that trust, registered nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard, the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

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

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

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

The panel considered limbs a, b and c to be engaged in respect of charge 1, and all of the limbs above to be engaged in respect of charges 2 and 3. It noted that the regulatory concerns predominantly relate to Miss Klimko's conduct and behaviour, which occurred both inside and outside of the clinical environment.

The panel accepted the submission of Ms Guest, that Miss Klimko had exposed patients and their family members to an unwarranted risk of harm. Particularly in respect of Patient A's wife, the panel considered Miss Klimko to have caused her a significant amount of emotional harm. It also agreed that Miss Klimko had acted in a way that would have brought the nursing profession into disrepute, as she had breached fundamental tenets of the nursing profession by failing to maintain professional boundaries and in being dishonest.

The panel considered the factors set out in the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, specifically, whether Miss Klimko's conduct was capable of remediation, whether it had been remediated, and whether it is likely to be repeated again in future.

The panel considered the following in respect of charge 1:

The panel determined that Miss Klimko's failure to maintain professional boundaries with patients and their families to be a live and pertinent issue.

In assessing Miss Klimko's level of insight, the panel took account of all the documentary evidence she had provided to it in support of her case. The panel noted that Miss Klimko had admitted the majority of the charges found proved against her, and she had also accepted that her actions amounted to misconduct.

Nonetheless, the panel only considered Miss Klimko to have demonstrated limited insight into her misconduct, as she has not sufficiently reflected on her actions as set out in charge 1. The panel noted that Miss Klimko has apologised for her conduct, but it did not consider her to have sufficiently reflected upon the serious ramifications her actions could have had upon patients and their families, colleagues, the nursing profession and the wider public. The panel determined from her responses that Miss Klimko does not appear to accept full responsibility for the extent of her conduct and instead, directs blame on to other surrounding factors. In so doing, the panel considered Miss Klimko's reflections to be largely self-serving, in that she appears to be attempting to minimise her misconduct.

In assessing whether Miss Klimko had remediated the concerns identified in charge 1, the panel noted that Miss Klimko has not sought to provide the panel with any evidence of retraining in regards to maintaining professional boundaries, nor has she been able to provide evidence of this in any other respect. It noted that Miss Klimko has not worked in a nursing environment since being dismissed by the Trust in 2017. In the absence of any evidence to the contrary, the panel determined that there remained a high risk of repetition in this case, as no evidence had been adduced by Miss Klimko to demonstrate that she had remediated the concerns identified.

The panel considered the following in respect of charges 2 and 3:

The panel noted that dishonesty is often more difficult to remediate than clinical concerns, as it could be suggestive of a deep-seated attitudinal concern. However, in having regard to the particular circumstances involved in this case, the panel did not consider there to be evidence of Miss Klimko having a deep-seated attitudinal concern in this respect.

The panel noted that Miss Klimko's dishonesty was limited to a single act which, albeit serious, did not give rise to concerns that it was likely to be repeated in future. It noted that this matter had been resolved internally by the Trust, and that Miss Klimko had continued to work subsequently as a registered nurse without any new issues being raised in respect

of her clinical performance, or her honesty and integrity. It therefore considered Miss Klimko to have remediated her nursing practice with regard to her dishonest conduct.

Whilst the panel determined that Miss Klimko's dishonesty amounted to misconduct, it was of the view that such a finding was sufficient to address this matter, and that current impairment in this regard was not made out on either public protection or public interest grounds. The panel was of the view that a fully informed member of the public, aware of all the evidence before it, would not require a finding of impairment to be made in this respect, taking account of the fact that this incident occurred seven years ago in 2013. It determined that the public interest elements of this case would be sufficiently satisfied by marking Miss Klimko's dishonest actions as misconduct. The panel also had regard to the judgment of *PSA v NMC [2017] CSIH 29* in considering this, which confirmed that it is possible for a finding of no current impairment to be made by a panel, even when dishonesty is found proven.

With respect to charge 1, the panel had no evidence before it to demonstrate that Miss Klimko is currently safe to practise as a registered nurse without some form of restriction.

In light of the above, the panel had no evidence before it to allay its concerns that Miss Klimko may currently pose a risk to patient safety. It considered there to be a real risk of repetition of the incidents found proved and it determined that there remains an unwarranted risk of harm to patients in her care, should she be permitted to practise as a registered nurse without restriction. 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 concerned by the panel's findings in respect of Miss Klimko's failure to maintain professional boundaries with vulnerable patients and their families. 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 determined that Miss Klimko's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the NMC Registrar to strike Miss Klimko off the NMC register. The effect of this order is that the NMC register will show that Miss Klimko has been struck-off the NMC register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance ("SG") published by the NMC.

Submissions on sanction

Ms Guest took the panel through aggravating and mitigating factors which, in the NMC's view, were present in this case.

Ms Guest informed the panel that the NMC had informed Miss Klimko of its sanction bid prior to this substantive hearing, and this was a striking off order. However, she submitted

that this is no way meant to usurp the function of the panel in having considered all of the evidence in this case.

Ms Guest submitted that as there is a continuing risk to patient safety, no further action would be inappropriate, and so would a caution order. Furthermore, she submitted that a conditions of practice order would not be a sufficient sanction to reflect the severity of Miss Klimko's conduct.

Ms Guest invited the panel to consider whether Miss Klimko's behaviour is incompatible with her remaining on the NMC register. She submitted that Miss Klimko engaged in three inappropriate relationships whilst working at the Trust, so this was not an isolated incident, and her conduct lasted for a significant period of time. Ms Guest submitted that judging by the nature of Miss Klimko's misconduct, temporary removal from the NMC register may be insufficient, as her actions may be incompatible with her remaining on the NMC register. She submitted that the panel may find that Miss Klimko's misconduct is not something that is capable of remediation, or remediated easily.

Ms Guest submitted that it is a matter for the panel as to what sanction is appropriate and proportionate in the particular circumstances of this case.

Decision and reasons on sanction

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

Having found Miss Klimko's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not

intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

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

- Miss Klimko's misconduct was serious and involved her breaching professional boundaries on multiple occasions with a number of different vulnerable patients and their family members.
- Miss Klimko had exposed patients and their family members to a risk of unwarranted harm, particularly Patient A's wife, who suffered emotional harm as a result of Miss Klimko's actions.
- Miss Klimko's misconduct occurred over a seven year period, and involved an abuse of her position as a registered nurse.
- Miss Klimko has only demonstrated limited insight into her misconduct.

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

- Miss Klimko had raised matters of ill-health and difficult personal circumstances that occurred around the time of the incidents, although she did not provide any independent medical evidence to support an adverse health condition.
- There are no outstanding clinical concerns in respect of Miss Klimko, and there was evidence that she was a competent clinical practitioner.
- Miss Klimko had demonstrated some remorse for her actions.

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 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 was of the view that Miss Klimko's misconduct was not at the lower end of the spectrum of fitness to practise 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 Miss Klimko'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 considered there to be no practical identifiable areas of retraining for Miss Klimko to embark on as there are no outstanding concerns relating to her clinical nursing practice. The concerns identified solely relate to her conduct and behaviour, inside and outside of the nursing environment. The panel reminded itself that it had found that Miss Klimko had not sufficiently reflected upon the serious ramifications her actions could have had on patients and their families, colleagues, the nursing profession and the wider public. The panel had determined from her responses that Miss Klimko did not appear to accept full responsibility for the extent of her conduct and instead, had sought to minimise her actions and deflect blame on to other surrounding factors.

In taking account of the above, the panel determined that placing a conditions of practice order on Miss Klimko's nursing registration would not adequately address the seriousness of this case, nor would it 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 Miss Klimko had breached professional boundaries on multiple occasions with both vulnerable patients and their family members, and that her actions in doing so had taken place over a seven year period. It noted that there were serious breaches of multiple standards of the Code, breaches of fundamental tenets of the nursing profession, and a breach of Miss Klimko's professional duty in this case. The panel had considered Miss Klimko to have abused her position as a registered nurse in entering into these inappropriate relationships and, in the panel's view, determined that her behaviour was indicative of an attitudinal issue.

Miss Klimko has only offered limited evidence by way of insight into her misconduct, as well as little attempt to alleviate any outstanding concerns in respect of her breaching professional boundaries; despite having a substantial amount of time to reflect on her behaviour. The panel noted that although Miss Klimko has not worked in a clinical environment since being dismissed from the Trust in October 2017, she could have taken steps to show to this panel that she had understood the consequences of her actions, that this was not a deep-seated attitudinal issue, and that she would not act in a similar way again in future.

Taking account of the above, the panel determined that Miss Klimko's actions were not merely serious departures from the standards expected of a registered nurse and serious breaches of the fundamental professional tenets, they were fundamentally incompatible with her remaining on the NMC register. In the panel's judgment, to allow someone who had behaved in this way to maintain her NMC registration would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on Miss Klimko both professionally and personally. However, the panel was satisfied that the need to protect the public and address the public interest elements of this case outweighs the impact on Miss Klimko in this regard.

Balancing all of these factors and after taking into account all the evidence before it adduced in this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Klimko'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.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in Miss Klimko's own interest until the suspension order takes effect.

Submissions on interim order

Ms Guest invited the panel to impose an interim suspension order for a period of 18 months. She submitted that this interim order is necessary on the grounds of public protection and it is also in the public interest.

Decision and reasons on interim order

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

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. Owing to the seriousness of the misconduct in this case and the risk of repetition identified, it determined that Miss Klimko's actions were sufficiently serious to justify the imposition of an interim suspension order until the striking-off order takes effect. In the panel's judgment, public confidence in the regulatory process would be damaged if Miss Klimko would be permitted to practise as a registered nurse prior to the substantive order coming into effect.

The panel decided to impose an interim suspension order in the circumstances of this case. To conclude otherwise would be incompatible with its earlier findings.

The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.