

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

**Substantive Hearing
5 – 7 July 2021**

Virtual Hearing

Name of registrant:	Paul Martin O'Hagan
NMC PIN:	09F2225E
Part(s) of the register:	Registered Nurse – Adult (November 2009)
Area of registered address:	County Tyrone
Type of case:	Misconduct
Panel members:	Gregory Hammond (Chair, lay member) Jane Jones (Registrant member) Séamus Magee (Lay member)
Legal Assessor:	Fiona Moore
Panel Secretary:	Tara Hoole
Nursing and Midwifery Council:	Represented by Zahra Evans, Case Presenter
Mr O'Hagan:	Not present nor represented
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on potential panel member conflict

Prior to the start of the case Ms Jones informed the hearing that she had sat on a previous meeting for Mr O'Hagan's case in January 2021. She advised that she could not remember the case apart from recognising the paperwork. She said that she did not recall having a detailed discussion regarding the evidence at that time and that she had not formed a view on the evidence. She confirmed that she had no memory of the meeting and said that she did not think that there was a conflict of interest.

It was confirmed that Ms Jones had sat on the substantive meeting on 20 January 2021 in respect of Mr O'Hagan's case. The panel at that hearing decided that the matter would be better heard at a substantive hearing where a case presenter would be able to guide them through the evidence.

Ms Evans confirmed that she was content for the hearing to proceed since Ms Jones did not remember any discussions from the previous meeting and in the light of Ms Jones' confirmation that she had not formed any pre-conclusions in regards to the evidence.

The legal assessor was satisfied that there was no reason for Ms Jones not to continue with the case given her confirmations.

The panel was satisfied that there was no conflict of interest and that it could proceed to hear Mr O'Hagan's case.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr O'Hagan was not in attendance and that the Notice of Hearing letter had been sent, on 26 May 2021, to Mr O'Hagan's registered email address as recorded on the Nursing and Midwifery Council (NMC) system.

Ms Evans, on behalf of the NMC, submitted that it 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 allegations, the time, dates and venue of the hearing and, amongst other things, information about Mr O'Hagan's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence. It also included a link to the virtual hearing.

In the light of all of the information available, the panel was satisfied that Mr O'Hagan has 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 Mr O'Hagan

The panel next considered whether it should proceed in the absence of Mr O'Hagan. It had regard to Rule 21 and heard the submissions of Ms Evans who invited the panel to continue in the absence of Mr O'Hagan.

Ms Evans told the panel that Mr O'Hagan had not responded to the emails and correspondence from the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion. She submitted that there was a public interest in the expeditious disposal of this case. She submitted that the panel should proceed in Mr O'Hagan's absence.

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 Mr O’Hagan. In reaching this decision, the panel has considered the submissions of Ms Evans 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 *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr O’Hagan;
- Mr O’Hagan has not engaged with the NMC since 13 May 2020 when he requested that his case was reviewed at the earliest possible date;
- Mr O’Hagan has not responded to any of the letters sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- One witness is due to give live evidence to the panel today;
- Not proceeding may inconvenience the witness and their employer;
- The charges relate to events that occurred in 2017, 2018 and 2019;
- Further delay may have an adverse effect on the ability of witnesses to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr O’Hagan in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to him, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his 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 Mr O'Hagan's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr O'Hagan. The panel will draw no adverse inference from Mr O'Hagan's absence in its findings of fact.

Decision and reasons on application to admit written statements of Ms 1 and Ms 2

The panel heard an application made by Ms Evans under Rule 31 to allow the written statements of Ms 1 and Ms 2 into evidence. She submitted that their evidence was clearly relevant to all of the charges.

In the preparation of this hearing, the NMC had indicated to Mr O'Hagan that it was the NMC's intention to apply for Ms 1's and Ms 2's written witness evidence to be admitted into evidence. Mr O'Hagan has not provided a response. On this basis Ms Evans advanced the argument that there was no lack of fairness to Mr O'Hagan in allowing Ms 1's and Ms 2's written statements into evidence.

Ms Evans submitted that neither Ms 1 or Ms 2 was a primary witness in this case, rather they both introduce documentary evidence that they had gathered in the course of their professional duties. She told the panel that Ms 3 would be attending to provide live evidence which would speak to matters covered in the evidence of Ms 1 and Ms 2 in relation to charges 5, 6 and 7.

Ms Evans referred the panel to the cases of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and *El Karout v NMC* [2019] EWHC 28 (Admin) which set out the considerations

a panel should take into account when considering whether to admit written witness statements in the absence of witnesses.

Ms Evans submitted that both Ms 1 and Ms 2 have provided evidence in respect of their professional roles and, as the evidence is not contentious, it would not be a pragmatic use of witnesses' time to attend. They would not be able to provide any further evidence beyond that which is in the documents before the panel. She submitted that their evidence is reliable, both witnesses are providing the evidence as part of their professional roles and there is no suggestion that either witness has fabricated the evidence.

Ms Evans submitted that the evidence of Ms 1 and Ms 2 was relevant and that it would be fair to admit it.

Ms Evans further applied to admit 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) into evidence to assist the panel in its consideration of the charges.

The panel accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 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 applications serious consideration. The panel noted that Ms 1's and Ms 2's witness statements had been prepared in anticipation of being used in these proceedings and contained the paragraph, '*This statement ... is true to the best of my information, knowledge and belief*' and are signed by them.

The panel considered that the evidence of Ms 1 and Ms 2 is clearly relevant to all of the charges. Both have gathered information during the course of an investigation in their professional roles and neither is a witness to any primary evidence of fact.

In considering fairness the panel noted that as Mr O'Hagan had been provided with a copy of Ms 1's and Ms 2's witness statements and, as the panel had already determined that Mr O'Hagan had chosen voluntarily to absent himself from these proceedings, he would not be in a position to cross-examine these witnesses in any case. The panel considered there was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statements of Ms 1 and Ms 2 but would give that evidence such weight that it deemed appropriate once the panel had heard and evaluated all the evidence before it.

The panel allowed the application to admit the Code into evidence. As a registered nurse Mr O'Hagan had signed up to the standards of the Code and there is no prejudice to him in admitting it into evidence.

Details of charge

That you, a registered nurse, whilst employed at the Southern Health and Social Care Trust;

- 1) On one or more of the dates in Schedule 1, participated in a private exchange of messages via 'whatsapp' with another person in which you discussed or responded to descriptions of sexual activity with children. **[Found proved]**
- 2) On 20 July 2017, sent one or more messages via 'whatsapp' to another person in which you described yourself sexually touching a child/children. **[Found proved]**
- 3) Your actions at charges 1 and/or 2 were sexually motivated. **[Found proved]**

- 4) Between June 2017 & 14 November 2018, failed to notify the police or other authorities that you had on one or more occasions received electronic messages from another person relating to sexual activity with children. **[Found proved]**

- 5) On or around 4 January 2019 during a disciplinary investigation, when asked by your employer if you had sent messages of a sexual nature about children, inaccurately stated that the messages/communications were not of a sexual nature. **[Found proved]**

- 6) On or around 11 June 2019 during a disciplinary investigation, inaccurately informed your employer that you had never engaged/communicated in a sexual conversation about children. **[Found proved]**

- 7) Your actions at charges 5 & 6 above were dishonest, in that you attempted to conceal the sexual nature of your communications from your employer. **[Found proved]**

And in light of the above your fitness to practise is impaired on grounds of misconduct.

Schedule 1:

17 June 2017

20 June 2017

23 June 2017

24 July 2017

2 September 2017

Background

The charges arose whilst Mr O'Hagan was employed by Southern Health and Social Care Trust (the Trust) where he was employed as a Registered Nurse and Bed Manager/Clinical Coordinator.

Mr O'Hagan was arrested (on suspicion of Sexual Activity with a Child) and interviewed by the Police Service of Northern Ireland (PSNI) on 14 November 2018 after the police had identified communication (WhatsApp messages) from Mr O'Hagan on another suspect's device.

In the messages Mr O'Hagan discussed or responded to descriptions of sexual activity with children. On 20 July 2017 he sent one or more messages via WhatsApp to another person in which he described himself touching a child/children.

The police conducted an investigation, but they were unable to identify any of the children that Mr O'Hagan had referred to in his WhatsApp messages. The investigation resulted in "No further action" against Mr O'Hagan. Mr O'Hagan co-operated with the police investigation, admitted to sending the WhatsApp messages but denied having any sexual interest in children and stated that the children referred to in his WhatsApp messages did not exist and that the reference to them was fictional. Mr O'Hagan provided similar admissions during the Trust's local investigation.

Mr O'Hagan made a self-referral to the NMC following his arrest.

During all three disciplinary investigation meetings with the Trust Mr O'Hagan stated that the messages he had sent were not of a sexual nature.

Mr O'Hagan resigned from his position at the Trust. His resignation was accepted on 13 September 2019 and the planned disciplinary hearing was cancelled.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Evans on behalf of the NMC and considered the witness and documentary evidence provided.

The panel has drawn no adverse inference from the non-attendance of Mr O'Hagan.

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 live evidence from the following witness called on behalf of the NMC:

- Ms 3: Senior HR advisor at the Trust at the time of the incidents who was involved in the local investigation

The panel considered the evidence of Ms 3 and made the following conclusions: The panel considered the evidence of Ms 3 to be credible and reliable. She had a very clear recall of the disciplinary investigatory meetings with Mr O'Hagan. She answered all of the questions asked of her and did her best to assist the panel.

The panel also accepted into evidence the written witness statements and supporting documentation of Ms 1 (NMC Case Coordinator) and Ms 2 (Inspector at the PSNI, Unit Manager in the Protective Disclosure Unit).

Before making any findings on the facts, the panel accepted the advice of the legal assessor who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 6 when considering the charge relating to dishonesty. The panel considered each of the disputed charges and made the following findings.

Charge 1

- 1) On one or more of the dates in Schedule 1, participated in a private exchange of messages via 'whatsapp' with another person in which you discussed or responded to descriptions of sexual activity with children.

This charge is found proved.

In reaching this decision, the panel took into account the transcript of the PACE (police) interview on 14 November 2018, the transcript of WhatsApp messages between Mr O'Hagan and another person dated between 17 June 2017 and 12 May 2018, and the summary of the disciplinary investigation meeting with the Trust on 25 July 2019.

The panel had regard to the transcript of the police interview. When asked to confirm his telephone number Mr O'Hagan confirmed his number and that no one apart from him would have had access to his phone over the course of several months. The telephone number Mr O'Hagan confirmed as his was the telephone number used in the WhatsApp message exchange between Mr O'Hagan and another person, which the panel has been provided a transcript of. The panel noted that Mr O'Hagan admitted that this was his conversation during the police interview.

In the summary of the disciplinary investigation meeting with the Trust on 25 July 2019 it is stated '*I [Mr O'Hagan] was then asked whether this type of [sexual] conversation about children was a normal conversation for us which I said no. I stated that I was not denying that we had sent messages but that any response I sent was in banter but that I can appreciate it's not right*'.

The panel noted that Mr O'Hagan, in the police interview, claimed that he '*answered to whatever [the other person] wanted to hear as a response to the message*'.

The panel was satisfied that the transcript of WhatsApp messages provided evidence that Mr O'Hagan participated in a private exchange of messages with another person which clearly involved descriptions of sexual activity with children. The panel considered that the conversation was undoubtedly sexual in nature and involved discussion of, or reference to, sexual activity with children on the dates detailed under Schedule 1.

The panel therefore determined that on the dates detailed in Schedule 1 Mr O'Hagan participated in a private exchange of messages via 'WhatsApp' with another person in which he discussed or responded to descriptions of sexual activity with children.

Accordingly this charge is found proved.

Charge 2

- 2) On 20 July 2017, sent one or more messages via 'whatsapp' to another person in which you described yourself sexually touching a child/children.

This charge is found proved.

In reaching this decision, the panel took into account the transcript of the PACE (police) interview on 14 November 2018, the transcript of WhatsApp messages between Mr O'Hagan and another person dated between 17 June 2017 and 12 May 2018, and the summary of the disciplinary investigation meeting with the Trust on 25 July 2019.

The panel had regard to the transcript of WhatsApp messages for 20 July 2017. It noted that Mr O'Hagan initiated the conversation at 08:31 saying that he was '*Doing some babysitting this morning*'. When asked by the other person who he was babysitting he provided two names. He proceeded to say '*Tho no fun was had*'. When asked by the other person '*Not even a little wrestling?*' Mr O'Hagan responded '*I picked them up my hand was in good areas*'.

The panel considered that the WhatsApp messages provide evidence of Mr O'Hagan initiating a conversation via WhatsApp with another person in which he describes himself sexually touching a child or children. Mr O'Hagan tells the other person he is babysitting, names two children and then proceeds to say that his hand touched 'good areas'. The panel was in no doubt that the conversation was sexual in nature.

The panel noted that in the police interview Mr O'Hagan says that '*any of the messages that are in response... I was just making them up, it's not a factual response*'. He said that he made up the names and the response that his hand was in good areas was done to 'egg on' the other person because they are 'hard work' and would keep messaging.

The panel noted that, in the police interview, Mr O'Hagan claimed that he only responded to the other person messaging in this way. However, the panel was clear that Mr O'Hagan was the one who initiated this conversation and he actively describes something which he says he has done albeit that he later says, in the police interview, that the names are fictional.

In the summary of the disciplinary investigation meeting with the Trust on 25 July 2019 Mr O'Hagan is recorded as saying '*I stated that I was not denying that we had sent messages but that any response I sent was in banter but can appreciate it's not right*'. The panel rejected Mr O'Hagan's version that it was 'banter' as stated to his employer. The panel considered that what Mr O'Hagan said was very clear within the WhatsApp message transcript, is evidently inappropriate and could not be considered as innocent 'banter'.

The panel determined that on 20 July 2017, Mr O'Hagan sent one or more messages via WhatsApp to another person in which he described himself sexually touching a child/children.

The panel therefore found this charge proved.

Charge 3

3) Your actions at charges 1 and/or 2 were sexually motivated.

This charge is found proved.

In reaching this decision, the panel took into account the transcript of the PACE (police) interview on 14 November 2018 and the transcript of WhatsApp messages between Mr O'Hagan and another person dated between 17 June 2017 and 12 May 2018.

The panel considered that the conversation on the WhatsApp message transcript was overtly sexual as a whole and was clearly of a sexual nature.

The panel noted that in the police interview Mr O'Hagan referred to the other person sending him photographs of children aged 7, 8 and 9 (although there is no evidence of any such photographs). There are also numerous sexual references to children within the WhatsApp messages for example '*He's into everything we like*' followed by '*and young little things*' and '*younger older b[oy] and g[irl]*'.

The panel noted Mr O'Hagan's confirmation, in the police interview that he had a sexual relationship with the other person involved in the WhatsApp messages.

The panel considered that there was no other plausible explanation for the explicit WhatsApp messages regarding children other than that they were sexually motivated and in pursuit of sexual gratification.

The panel therefore determined that Mr O'Hagan's actions at charge 1 and charge 2 were sexually motivated.

Accordingly the panel found this charge proved.

Charge 4

- 4) Between June 2017 & 14 November 2018, failed to notify the police or other authorities that you had on one or more occasions received electronic messages from another person relating to sexual activity with children.

This charge is found proved.

In reaching this decision, the panel took into account the Code, the transcript of the PACE (police) interview on 14 November 2018, the transcript of WhatsApp messages between Mr O'Hagan and another person dated between 17 June 2017 and 12 May 2018, and the summary of the disciplinary investigation meeting with the Trust on 25 July 2019.

The panel had regard to paragraph 17 of the Code which states:

'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'

The panel considered that it is clear that between June 2017 and 14 November 2018 Mr O'Hagan was receiving messages relating to potential sexual activity with children and which were coming from a person with an obvious sexual interest in children.

The panel noted that as a registered nurse Mr O'Hagan had committed to uphold the standards set out in the Code. In this respect Mr O'Hagan had a clear obligation to raise this matter with the police or other authorities. His failure to deal with that section of the Code in respect of reporting this to police is a clear breach of the Code and did not address what was a clear risk to vulnerable people, in this respect children. Rather than report this Mr O'Hagan went along with and encouraged the sexual conversation about children.

The panel noted that in the police interview Mr O'Hagan said he believed that the other person was '*into younger people*' that their messages indicated that they were and he '*was like fair enough*'. When asked what he meant by younger people Mr O'Hagan confirmed he meant children.

The panel was in no doubt that the content of the WhatsApp messages gave serious cause for concern and ought to have been reported. The panel further noted that Ms 3, in her oral evidence, confirmed that Mr O'Hagan denied saying anything of a sexual nature about children in messages. The panel therefore concluded that he had not raised any concerns regarding the messages he received about sexual activity with children, with the police or with his employer.

The panel determined that between June 2017 and 14 November 2018, Mr O'Hagan failed to notify the police or other authorities that he had on one or more occasions received electronic messages from another person relating to sexual activity with children.

The panel therefore found this charge proved.

Charge 5

- 5) On or around 4 January 2019 during a disciplinary investigation, when asked by your employer if you had sent messages of a sexual nature about children, inaccurately stated that the messages/communications were not of a sexual nature.

This charge is found proved.

In reaching this decision, the panel took into account Ms 3's witness evidence and the summary of the disciplinary investigation meeting with the Trust on 4 January 2019.

Ms 3 took the panel through the chronology of the disciplinary investigation meetings which were held in respect of this matter with Mr O'Hagan. The first disciplinary investigation meeting was held on 4 January 2019 at which Ms 3 described Mr O'Hagan as being very aloof. She told the panel that he *'insisted that he was innocent and he stated that he had not engaged in any sexual activity with a child'* and *'he stated that he did not understand why he was arrested and maintained that he was in fact a witness'*. Ms 3 told the panel that she challenged Mr O'Hagan, stating it made no sense for him to be arrested if he was a witness, but he maintained that he was innocent and had not engaged in any inappropriate conversation about children.

The panel had regard to the summary of the disciplinary investigation meeting on 4 January 2019 which is signed and dated 19 January 2019. Ms 3 confirmed that the signature was Mr O'Hagan's. She told the panel that the document had been drafted by the HR team and Mr O'Hagan had signed that he agreed with the content. Within the summary it states *'I was then asked whether the messages were in relation to children. I replied that the messages were not of a sexual nature about children. I stated that I don't know what evidence the police have as I have done nothing.'*

In the previous charges the panel had found that the messages being referred to were of a sexual nature.

The panel considered that Ms 3's evidence is corroborated by the summary notes of the disciplinary investigation meeting on 4 January 2019.

The panel concluded that, on the balance of probability, during a disciplinary investigation on 4 January 2019, when asked by his employer if he had sent messages of a sexual nature about children, Mr O'Hagan inaccurately stated that the messages/communications were not of a sexual nature.

The panel therefore found this charge proved.

Charge 6

- 6) On or around 11 June 2019 during a disciplinary investigation, inaccurately informed your employer that you had never engaged/communicated in a sexual conversation about children.

This charge is found proved.

In reaching this decision, the panel took into account Ms 3's witness evidence and the summary of the disciplinary investigation meeting with the Trust on 11 June 2019.

The panel had regard to the summary of the disciplinary investigation meeting on 11 June 2019 which is signed and dated 27 June 2019. Ms 3 confirmed that the signature was Mr O'Hagan's. Within the summary it states '*I was asked whether I had ever had a sexual conversation about children. I stated that I never had a sexual conversation about children but that myself and [the other person] did have relations and some of the messages would be explicit between us... I stated that myself and [the other person] had banter and that the conversations had been ongoing for 5-6 years and that it was never anything incriminating. I was asked to clarify again what the messages had been about. I stated that it had been in relation to just myself and [the other person].*'

Ms 3 told the panel that, during the second disciplinary interview on 11 June 2019, Mr O'Hagan had stuck to the same story as at the first disciplinary interview – that he did not know why the police had interviewed him and that there may have been explicit conversation between him and the other person but that there was nothing about children. She said he had described it as 'banter' and said that it was nothing incriminating.

Ms 3 told the panel that she had specifically challenged Mr O'Hagan regarding the nature of the conversation about children and that he said he could not recall the details of the conversation.

The panel was of the view (as found in the previous charges) that Mr O'Hagan had engaged in sexual conversations about children. From the information before it the panel concluded that when asked by his employer Mr O'Hagan denied that the conversation contained within the WhatsApp messages was of a sexual nature about children. The panel noted that Ms 3, during the course of her investigation, had never seen the WhatsApp messages and only had access to limited information sent to her by the PSNI.

The panel determined that, on the balance of probability, during a disciplinary investigation on 11 June 2019, Mr O'Hagan inaccurately informed his employer that he had never engaged/communicated in a sexual conversation about children.

The panel therefore found this charge proved.

Charge 7

- 7) Your actions at charges 5 & 6 above were dishonest, in that you attempted to conceal the sexual nature of your communications from your employer.

In reaching this decision, the panel took into account the legal assessor's advice in relation to the case of *Ivey* as well as all of the evidence it has received in this case.

The panel first considered what Mr O'Hagan had done. It has found at charges 5 and 6 that he did not disclose to his employer what he knew about the nature of the WhatsApp messages and he made inaccurate statements in relation to this on 4 January and 11 June 2019. The panel noted that Mr O'Hagan stuck to the same story across all three of the disciplinary meetings (4 January, 11 June and 25 July 2019), maintaining that he did not know why the police had interviewed him, that there was nothing incriminating in the WhatsApp messages and denied having sexual conversations about children. Mr O'Hagan's initial denial to his employer was maintained on two further occasions despite his having had the opportunity to reflect on his actions and his initial denial.

The panel has found that the WhatsApp messages did contain sexual conversations about children and Mr O'Hagan must have been aware of this. Further, having reviewed the transcript of the police interview, the panel concluded that Mr O'Hagan was aware of the serious nature of the police investigation, the inappropriateness of the content of the conversation between him and the other person, and that the police considered it to be sexual conversation about children.

The panel considered that Mr O'Hagan was not honest and up front with his employer about what was happening regarding his arrest, interview and the police investigation. The panel was of the view that Mr O'Hagan did not wish to reveal the true nature of the content of the WhatsApp messages. The panel considered that Mr O'Hagan was aware that the conversations were inappropriate and that he deliberately tried to mislead and conceal this from his employers when questioned about it.

The panel considered that ordinary, decent people would regard Mr O'Hagan's actions (in deliberately withholding information and inaccurately informing his employer that he had not had sexual conversations about children) as dishonest.

The panel considered a member of the public would be concerned that a nurse (particularly a senior nurse) would act in that way and conceal it from their employer. The panel noted there were various inaccuracies and inconsistencies in Mr O'Hagan's accounts to his employer, including playing down the police interview by saying that he was a witness, that he was only asked six questions and by saying that the police interview only lasted 15 minutes when in reality it lasted 37 minutes.

The panel considered that there was no alternative explanation for Mr O'Hagan's actions other than an attempt to deliberately mislead and conceal from his employer what he was being interviewed about.

The panel therefore determined that Mr O'Hagan was dishonest in that he attempted to conceal the sexual nature of his communications from his employer during the disciplinary interviews on 4 January and 11 June 2019.

Accordingly this charge is found 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 Mr O'Hagan'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, Mr O'Hagan's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard 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 Evans invited the panel to take the view that the facts found proved amount to misconduct. She directed the panel to the cases of *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas* [2006] EWHC 464 (Admin), *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin), *Calheam v GMC* [2007] EWHC 2606 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) in making its decision.

Ms Evans identified the specific, relevant standards where, in her submission, Mr O'Hagan's actions amounted to misconduct.

Ms Evans provided written submissions for the panel. She noted that the charges found proved included sexual misconduct and repeated dishonesty, as well as a failure to act when he received messages from someone else relating to sexual activity with children. She submitted that this raised fundamental questions about Mr O'Hagan's trustworthiness as a nurse. She submitted that his behaviour undermined public confidence in the profession and was at the more serious end of the fitness to practise spectrum.

Ms Evans submitted that in all of the circumstances of this case, Mr O'Hagan departed from good professional practice and that the facts as found were sufficiently serious to constitute misconduct.

Submissions on impairment

Ms Evans 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), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin).

Ms Evans submitted that Mr O'Hagan had acted in a way which put people at risk of harm, had brought the profession into disrepute, had breached fundamental tenets of the profession and had acted dishonestly.

Ms Evans invited the panel to consider whether Mr O'Hagan's conduct was capable of remediation, whether it had been remediated, and whether his actions were likely to be repeated in future.

Ms Evans reminded the panel that Mr O'Hagan had not admitted any of the charges and submitted that any evidence of insight was limited. She submitted that Mr O'Hagan had provided no information as to what steps he has taken personally and professionally to ensure that similar behaviour would not be repeated. However, she submitted that such behaviour may be difficult to put right. She submitted that Mr O'Hagan had not demonstrated any substantial insight, nor had he reflected on his actions.

Ms Evans submitted that Mr O'Hagan's actions were so serious that a finding of current impairment was required in order to protect the public and maintain public confidence in the professions and NMC and to uphold proper professional standards. She submitted that the public confidence in the profession and the NMC as its regulator would be undermined if Mr O'Hagan's behaviour were allowed to pass effectively unmarked.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

The panel was of the view that Mr O'Hagan's actions did fall significantly short of the standards expected of a registered nurse, and that Mr O'Hagan's actions amounted to breaches of the Code, specifically:

'Preserve safety

You make sure that ... public safety is not affected. You work within the limits of your competence, exercising your professional 'duty of candour' and raising concerns immediately whenever you come across situations that put patients or public safety at risk. You take necessary action to deal with any concerns where appropriate.

16 Act without delay if you believe that there is a risk to ... public protection

16.1 raise and, if necessary, escalate any concerns you may have about ... public safety

17 Raise concerns immediately if you believe a person is vulnerable or at risk...

To achieve this, you must:

- 17.1** take all reasonable steps to protect people who are vulnerable or at risk ...
- 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

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

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...
- 20.3** be aware at all times of how your behaviour can affect and influence the behaviour of other people
- 20.8** act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to
- 20.10** use all forms of spoken, written and digital communication (including social media and networking sites) responsibly...

23 Cooperate with all investigations and audits'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the charges in this case were extremely serious and all of the charges were proven on the basis of the panel's

examination of the evidence. The panel noted that charge 4 was found proved on the basis of a breach of paragraph 17 of the Code.

The panel considered that the sexual misconduct in this case involved communications about sexual acts with children and reference to photographs of young children being sent to him (although the police investigation did not find any photographs on Mr O'Hagan's device). The panel noted the NMC Guidance on serious cases and the definition of pornography, which includes writings for the purpose of inciting sexual excitement. The panel concluded that this was Mr O'Hagan's motivation.

The failure to not act and report receiving messages from someone else relating to sexual activity with children clearly breached the Code and fell short of what would be expected of a registered nurse.

In respect of the dishonesty charge, the panel considered that Mr O'Hagan's actions were blatantly dishonest and were clearly deliberate acts to subvert the Trust's investigation process and attempt to cover up the full extent of his wrongdoing.

The panel concluded that a fellow professional would find his conduct deplorable.

The panel determined that, given the magnitude and severity of the charges, Mr O'Hagan's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the misconduct, Mr O'Hagan'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. 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 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 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 that all of the limbs of Dame Janet Smith's 'test' were engaged in this case. The panel considered that Mr O'Hagan, despite his misconduct not being directly related to his clinical practice, acted in a way so as to put the public (including children) at unwarranted risk of harm. The panel considered that Mr O'Hagan's actions as found proved in the charges amounted to a breach of the fundamental tenets of the profession. The panel considered that the findings of sexual misconduct involving children, the failure to report receiving messages relating to sexual activity with children, and repeated dishonesty had brought the nursing profession into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not regard dishonesty and sexual misconduct as extremely serious.

The panel noted that Mr O'Hagan made an apology within his reflective piece, dated 13 May 2020, in which he stated '*After much reflection I would like to sincerely apology (sic) to the Nursing and Midwifery Council. My conduct fell below expected standards and for this I am truly sorry*'. However, the remainder of the reflective piece detailed his relationship with the other person involved in the WhatsApp message exchange, explained that he was in a new relationship, and that he had worked hard to become a nurse. Mr O'Hagan does not address any of the charges or expand on what he is sorry for and why. His remorse is focused solely on his own personal circumstances.

The panel considered that Mr O'Hagan appeared to blame the other person for his actions in the charges; he stated that the '*relationship became difficult and unhealthy and it ended*'. He said he has '*had no contact with this party in over 2.5 years [and] will not be having any further contact with them ever*'.

Mr O'Hagan concluded his short reflective piece by stating, '*I want to (sic) opportunity to prove to the NMC I pose no risk. I want to be able to gain the professional trust from the NMC and my nursing colleagues again. I describe myself as a dedicated and hard-working nurse with vast advanced clinical skills. I want to prove to my profession, family and friends I can practice and uphold the NMC standards... I am now asking you to please review my case at the earliest possible date so I can return to practice.*'

The panel concluded that Mr O'Hagan had demonstrated extremely limited, if any, insight. The panel considered that his reflective piece was primarily focused on himself and what he wanted. He appeared to blame the other person for his actions whilst ignoring his own part in initiating some of the conversations. Further he makes no mention about the impact of his actions on potential victims nor has he demonstrated any understanding of why what he did was wrong or how this impacted negatively on the reputation of the nursing profession.

The panel noted that there has been no engagement by Mr O'Hagan with the NMC since the receipt of the reflective piece, almost 14 months ago. As Mr O'Hagan has not engaged, he has not provided any further evidence of his insight or reflections.

In considering whether Mr O'Hagan has demonstrated remediation, the panel noted that the concerns in this case relate to Mr O'Hagan's character and behaviour outside of work. The charges found proven are not related to clinical competence and therefore are not easily capable of being remediated by re-training.

The panel has received no information as to how Mr O'Hagan might have addressed the concerns, nor is there any demonstration as to how he poses 'no risk'. The panel has no information as to Mr O'Hagan's character or behaviour, nor any references or testimonials. The panel therefore was unable to assess what remediation, if any, has taken place. Further, the panel was not confident that the misconduct, being of such a serious nature involving sexual misconduct and repeated dishonesty, is capable of remediation.

The panel was of the view that there is a significant risk of repetition based on the lack of insight, remorse or remediation. The panel considered that Mr O'Hagan had demonstrated a pattern of behaviour both in terms of the sexual misconduct (the inappropriate sexual conversations regarding children spanned many months) and the sustained dishonesty (over a period of seven months in respect of the three disciplinary investigation meetings). The panel concluded that there is a deep seated attitudinal problem revealed by Mr O'Hagan's misconduct and his reflective statement which, in the panel's view, is an entirely self-serving document. This is exemplified in Mr O'Hagan's closing line in which he makes the assumption that he should be returned to practice at the earliest possible date. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 determined that a finding of impairment on public interest grounds is required, given the magnitude and severity of the charges found proved which include sexual misconduct relating to children and sustained dishonesty.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore finds Mr O'Hagan's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr O'Hagan'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 Registrar to strike Mr O'Hagan off the register. The effect of this order is that the NMC register will show that Mr O'Hagan has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Evans informed the panel that in the Notice of Hearing, dated 26 May 2021, the NMC had advised Mr O'Hagan that it would seek the imposition of a striking-off order if the panel found Mr O'Hagan's fitness to practise currently impaired.

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

Ms Evans, whilst recognising that the decision on sanction was for the panel alone, submitted that a striking-off order was the only appropriate sanction in the circumstances. She reminded the panel that it has found sexual misconduct and dishonesty as well as no insight, remorse or remediation from Mr O'Hagan. Further, he has not engaged with this hearing. She submitted that anything less than a striking-off order would put future patients at risk of harm and would impact negatively on the public's confidence in the profession and the NMC as its regulator.

Decision and reasons on sanction

Having found Mr O'Hagan'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, including the guidance on serious cases, specifically cases involving dishonesty and cases involving sexual misconduct. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- The panel found Mr O'Hagan to lack any insight, nor had he demonstrated meaningful remorse or set out attempts to remediate;
- There was a pattern of sexual misconduct over a sustained period;
- Mr O'Hagan initiated and encouraged sexual conversations about children;
- Mr O'Hagan failed to report the potential abuse of children to the relevant authorities;
- Mr O'Hagan's misconduct put people (particularly children) at a risk of harm;
- Mr O'Hagan placed blame on the other party and has demonstrated no insight into his own actions;
- The panel found sustained, serious dishonesty, towards the higher end of the spectrum of dishonesty, in his repeated attempts to conceal his sexual misconduct from his employer;
- The nature of the misconduct found raises fundamental questions about Mr O'Hagan's professionalism; and
- Mr O'Hagan has failed to engage with his regulator since May 2020 and has not attended this hearing.

The panel also took into account the following mitigating features:

- Mr O'Hagan made a self-referral to the NMC after his arrest; and
- Mr O'Hagan ticked the box to admit the regulatory concern of 'communicated having sexual activity with a child under 13' in his response form dated 31 October 2019.

The panel was aware that it could impose any of the following sanctions; take no action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

The panel considered the potential sanctions in ascending order of restrictiveness.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. Mr O'Hagan breached multiple fundamental tenets of the profession. The panel decided that it would be neither proportionate nor in the public interest to take no further action given the significant public protection and public interest issues identified.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict Mr O'Hagan's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr O'Hagan's misconduct was not at the lower end of the spectrum in respect of both his sexual misconduct and his dishonesty. The panel considered that a caution order would be wholly inappropriate. 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 conditions of practice on Mr O'Hagan's registration would be a sufficient and appropriate response. The panel was of the view that there are no relevant, practicable or workable conditions that could be formulated, given the nature of the misconduct in this case. The panel determined that, having found attitudinal concerns as well as sexual misconduct and repeated dishonesty, the public would be at risk of harm if Mr O'Hagan was permitted to practise even with restrictions.

The panel concluded that, even if practicable and workable conditions could be formulated, the placing of conditions on Mr O'Hagan's registration would undermine public confidence in the profession and the NMC as its regulator and would not adequately address the seriousness of this case or protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- ...
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- ...
- ...

The panel noted that Mr O'Hagan's sexual misconduct continued over a significant period of time. His dishonesty was also not a single instance of misconduct, rather it was sustained over a period of seven months. Mr O'Hagan had the opportunity on more than one occasion to reflect and be honest with his employer about his sexual misconduct and the police investigation, but chose not to do so.

The panel, in its determination on Mr Hagan's fitness to practise, found that there was evidence of harmful deep-seated attitudinal problems. Furthermore, the panel considered that Mr O'Hagan lacks insight into his misconduct and that there is a significant risk of his behaviour being repeated.

The panel had regard to the NMC Guidance on 'Considering Sanctions for Serious Cases' which includes guidance on cases involving sexual misconduct and dishonesty.

In respect of sexual misconduct this guidance states: *'Sexual offences include accessing, viewing, or other involvement in child pornography, which involves the abuse or exploitation of a child. These types of offences gravely undermine patients' and the public's trust in nurses...'*

In relation to dishonesty this guidance states *'Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse... should be allowed to remain on the register will involve:*

- ...
- ...
- *vulnerable victims*
- ...
- ...
- *premeditated, systematic or longstanding deception'*

Further, it states:

'The law about healthcare regulation makes it clear that a nurse... who has acted dishonestly will always be at risk being removed from the register.

Nurses... who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register.'

The panel considered that Mr O'Hagan's dishonesty was at the more serious end of the scale of dishonest conduct. It was sustained over a period of seven months and was intended to conceal the nature of the matters being investigated by the police. In the panel's view Mr O'Hagan has not demonstrated remorse or that he realises he acted dishonestly.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

- *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?*

Mr O'Hagan's actions, as highlighted by the facts found proved, were a significant departure from the standards expected of a registered nurse, and raise fundamental questions about his professionalism. All seven of the charges found proved by the panel are extremely serious and involve two of the most serious issues to be faced by a registrant at a fitness to practice hearing (sexual misconduct involving children and sustained dishonest conduct). In addition, Mr O'Hagan had knowledge that children may be at risk and he did not report this to anyone in authority in breach of his obligations under the Code; on the contrary, he encouraged his counterpart in those activities. Mr O'Hagan has failed to recognise the seriousness of his actions, has sought to blame others and has demonstrated a lack of insight or meaningful remorse. His reflective piece in May 2020 focused primarily on himself, and he has not demonstrated an understanding of the impact of his actions on the potential victims or the reputation of the profession. The

panel concluded that Mr O'Hagan's misconduct is fundamentally incompatible with his remaining on the register.

The panel was of the view that the findings in this particular case demonstrate that Mr O'Hagan's actions were so serious that to allow him to continue practising would undermine public confidence in the profession and in the NMC as its regulatory body.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr O'Hagan's actions in bringing the profession into disrepute the panel has concluded that nothing short of a striking-off order 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 in Mr O'Hagan's own interest until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Evans. She submitted that an interim suspension order, for a period of 18 months, should be made to cover the 28-day appeal period. She submitted that this was appropriate given the panel's findings.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. In reaching the decision to impose an interim order, the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order.

The panel concluded that not to make such an order would be incompatible with its earlier findings and with the substantive sanction it has imposed. The panel first considered whether it was appropriate to impose an interim conditions of practice order, but considered that this was not appropriate for the reasons identified at the sanction stage.

The panel therefore decided to impose an interim suspension order for the same reasons as it imposed the substantive order and to do so for a period of 18 months in light of the likely length of time that an appeal would take to be heard if one were lodged.

If no appeal is made, then the interim suspension order will be replaced by the striking-off order 28 days after Mr O'Hagan is sent the decision of this hearing in writing. If an appeal is lodged then the interim suspension order will continue until the appeal is determined.

This determination will be provided to Mr O'Hagan in writing.

That concludes this determination.