

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

**Substantive Hearing
Wednesday 6 April 2022 – Thursday 7 April 2022**

Virtual Hearing

| | |
|---------------------------------------|--|
| Name of registrant: | Jo Brackley |
| NMC PIN: | 08I0794E |
| Part(s) of the register: | Registered Nurse Adult Nurse Level 1 – February 2009 |
| Area of registered address: | Buckinghamshire |
| Type of case: | Misconduct |
| Panel members: | Andrew Harvey (Chair, lay member) Manjit Darby (Registrant member) Helen Eatherton (Registrant member) |
| Legal Assessor: | Hala Helmi |
| Hearings Coordinator: | Shela Begum |
| Nursing and Midwifery Council: | Represented by Aoife Kennedy, Case Presenter |
| Miss Brackley: | Not present and unrepresented |
| Facts proved: | All |
| Facts not proved: | None |
| Fitness to practise: | Impaired |
| Sanction: | Conditions of practice order (12 months) |
| Interim order: | No order |

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Brackley was not in attendance and that the Notice of Hearing letter had been sent to Miss Brackley's registered email address by secure delivery on 7 March 2022.

Ms Kennedy informed the panel that the Notice of Hearing makes reference to a physical hearing, however during a case conference on 14 March 2022 at which Miss Brackley's former Royal College of Nursing (RCN) representative was present, it was agreed by both parties that the hearing would take place in a virtual setting. Ms Kennedy further informed the panel that whilst a fresh Notice of Hearing was not served, Miss Brackley's case coordinator sent her an email on 4 April 2022 which stated:

"I appreciate you are not attending the hearing on 6-7th April 2022 at 9am and are no longer represented, but just to make you aware that the hearing will be a virtual hearing."

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Brackley's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Kennedy, on behalf of the Nursing and Midwifery Council (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.

In the light of all of the information available, the panel was satisfied that Miss Brackley 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 Miss Brackley

The panel next considered whether it should proceed in the absence of Miss Brackley. It had regard to Rule 21 and heard the submissions of Ms Kennedy who invited the panel to continue in the absence of Miss Brackley. She submitted that Miss Brackley had voluntarily absented herself.

Ms Kennedy referred the panel to a letter, dated 29 March 2022, from Miss Brackley's former representative at the RCN which stated:

*"Please note that Ms Brackley will not be attending the hearing on 06-07 April 2022 before the Fitness to Practise Committee...
... Kindly note that the RCN are now no longer acting for Ms Brackley. Please ensure that our name is removed from the record and that all future correspondence is sent direct to the registrant."*

Ms Kennedy also referred the panel to the email from Miss Brackley dated 4 April 2022 in which she states:

*"I will not be able to attend the hearing on the 6-7 th April
Sorry"*

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 Brackley. In reaching this decision, the panel has considered the submissions of Ms Kennedy, the representations made on Miss Brackley's behalf, the response from Miss Brackley, 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 Miss Brackley;
- Miss Brackley has confirmed that she is aware of the date, time and venue of this hearing and stated she will not be in attendance.
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The charges relate to events that occurred in 2019; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Brackley in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The limited disadvantage is the consequence of Miss Brackley'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 these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Brackley.

Details of charge

That you, a registered nurse:

- 1) On 14 November 2019 administered 500mg of vancomycin to Patient A intravenously when it should have been administered orally. **[PROVED BY ADMISSION]**
- 2) On 23 December 2019 administered prolonged release co-careldopa to Patient B when you should have administered immediate release co-careldopa. **[PROVED BY ADMISSION]**

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

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Kennedy who informed the panel that Miss Brackley made full admissions to charges 1 and 2.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of Miss Brackley's admissions.

Background

The charges arose whilst Miss Brackley was employed as a band 5 registered nurse by Buckinghamshire Healthcare NHS Trust (the Trust). The charges concern two incidents relating to unsafe medications administration, in that Miss Brackley administered medications in a way which was contrary to the prescriptions on 14 November 2019 and 23 December 2019.

On 14 November 2019, Miss Brackley administered 500mg of vancomycin intravenously to Patient A when the dosage was prescribed to be administered orally. The ward pharmacist at the Trust was informed by Miss Brackley of her actions the following day and was told that Miss Brackley knew that the medicines were to be administered orally but made the decision herself to administer the medicines intravenously. When addressed on the route Miss Brackley had taken to administer the medicines to Patient A, it was reported by the ward pharmacist that she had a '*blasé*' attitude and was very dismissive.

The Matron of the Trust confirmed that there was no long term patient harm resulting from Miss Brackley's actions but, by having the medications intravenously, Patient A had essentially missed a dose. The Matron expressed the view that Miss Brackley acted outside her scope of competence as only a prescriber, pharmacist or a doctor can make changes to a prescription. When addressed by the Matron, Miss Brackley said that she believed she did what was best for Patient A. As a result of this incident and the report (Datix) raised, Miss Brackley was placed on supervised medication rounds.

On 23 November 2019, Miss Brackley independently decided to administer prolonged release co-careldopa orally to Patient B instead of immediate release co-careldopa as prescribed.

The Matron said that it is never acceptable to substitute immediate release medications with prolonged release medications and that Miss Brackley would have knowledge of this from her general nursing and medications management training. Miss Brackley indicated that this was a genuine error and presented as upset when she had learned what she had done.

When the alleged incidents occurred Miss Brackley was subject to an 18 month final written warning for an incident which occurred on 4 April 2018 and involved a failure to escalate a deteriorating patient. This was dealt with at the Trust at a local level and resulted in a period of supervision and training.

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 Brackley'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 Brackley'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.*' The misconduct must be '*serious*'.

Ms Kennedy invited the panel to take the view that the facts found proved amount to misconduct. 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 Kennedy identified the specific, relevant standards where Miss Brackley's actions amounted to misconduct and invited the panel to apply its own judgement to the relevant parts of the code.

Ms Kennedy submitted that the misconduct in this case concerns Miss Brackley's unsafe medications administration, in that she administered medications contrary to the prescription. Ms Kennedy submitted that the role of nurses is to provide safe and effective care to patients and practice within their competencies and further submitted that Miss Brackley's failure to do so put patients at a serious risk of harm.

Ms Kennedy submitted that the conduct found proved fell far short of what is expected of a registered nurse and that the facts are sufficiently serious to constitute misconduct.

Submissions on impairment

Ms Kennedy moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

Ms Kennedy reminded the panel that a finding of impairment is a forward looking exercise and that it should consider whether Miss Brackley's fitness to practise is impaired as of today's date. Ms Kennedy referred the panel to Rule 31(7)(b) of the Rules which states that departure from the code is not in itself sufficient to establish impairment and that this is a matter for the panel's professional judgement. Ms Kennedy also referred to the Dame Janet Smith's Fifth Shipman Report endorsed in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). She submitted that the first three limbs of the test are engaged in this case.

Ms Kennedy submitted that the matters found proved placed patients at a risk of unwarranted harm. She further submitted that the nursing profession demands high standards of medication administration in order to maintain patient safety and failure to administer medications in accordance with the prescriptions means that both patients were exposed to harm.

Ms Kennedy submitted that the misconduct did bring the nursing profession into disrepute and the public expects that nurses will provide appropriate and competent care as well as work within the realms of their competence. Ms Kennedy submitted that Miss Brackley's conduct had the potential to undermine the public's confidence in nursing. She submitted that the provisions of the code constitute fundamental tenets of the profession and that Miss Brackley's actions breached the.

Ms Kennedy invited the panel to consider remediation, insight and risk of repetition and referred the panel to the NMC's guidance in relation to these points.

Ms Kennedy submitted that the concerns raised are capable of remediation and relate to identifiable areas of Miss Brackley's clinical practice which can be addressed through training and supervision. However, she informed the panel that today's panel does not have positive evidence of good practice or remediation from Miss Brackley since these incidents occurred.

Ms Kennedy informed the panel that Miss Brackley claimed that both errors occurred as she was acting in the patient's best interests and referred the panel to the underlying attitudinal concerns. However, she submitted that the seriousness is lesser in relation to the attitudinal issues which are remediable. She also informed the panel that Miss Brackley has admitted the charges and that she had made mistakes for which she expressed deep regret. She submitted that there is evidence of insight at a local level however, as Miss Brackley has not engaged further with the NMC to demonstrate developed insight during these proceedings, she submitted that the insight is limited.

Ms Kennedy further informed the panel that Miss Brackley's former RCN representative has indicated to the NMC that she does not intend to return to nursing practice and submitted that in these circumstances, the misconduct has not been remedied. In light of the limited insight and the lack of remediation, Ms Kennedy submitted that there is a risk of repetition. She submitted that the concerns are serious and pose a risk of unwarranted harm to patients as well as to the reputation of the profession.

In closing, Ms Kennedy submitted that Miss Brackley's fitness to practise is impaired on the grounds of public protection and in the wider public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. This included: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). The legal assessor advised the panel in respect of the information put before it by Ms Kennedy regarding further concerns which have been raised about Miss Brackley (specific details of which were not given). The legal assessor advised that the panel should approach the case on the basis that there have not been any other regulatory findings and that the panel should decide the question of impairment on the basis of the charges found proved. The legal assessor advised that, in the circumstances, Miss Brackley should be seen as a person of good character and that this should be taken into account when considering her credibility in relation to the explanations she gave in her written statements and the investigatory meetings at local level which were in the evidence. The legal assessor advised that it was a matter for the panel as to what weight to give this issue.

Decision and reasons on misconduct

When determining whether the facts found proved in relation to charges 1 and 2 amount to misconduct, the panel had regard to the terms of the Code. The panel was of the view that Miss Brackley's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Brackley's actions amounted to a breach of the Code. Specifically:

1 *Treat people as individuals and uphold their dignity*

1.2 *make sure you deliver the fundamentals of care effectively*

2 *Listen to people and respond to their preferences and concerns*

2.1 *work in partnership with people to make sure you deliver care effectively*

8 *Work co-operatively*

8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

8.2 *maintain effective communication with colleagues*

8.5 *work with colleagues to preserve the safety of those receiving care*

Preamble to section 13

'You make sure that patient and 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.

- 13 Recognise and work within the limits of your competence**
- 13.3 *ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*
- 18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations**
- 18.1 *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*
- 18.3 *make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines*
- 20 Uphold the reputation of your profession at all times**
- 20.1 *keep to and uphold the standards and values set out in the Code*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered the charges individually and collectively.

In relation to Charge 1, the panel considered that Miss Brackley made a conscious decision to alter the route that was instructed in the prescription and, in doing so, she acted outside her scope of practice. The panel also considered that Miss Brackley's actions in changing the route of administration and considered that she had failed to take account of the need to review the dosage, check the patient's renal function and clinical

effectiveness of administering by this route and therefore placed the patient at a serious risk of unwarranted harm. The panel noted that, although the medication was not administered as prescribed, the particular drug was usually intended for intravenous administration. The panel further that when addressed on this matter, her attitudes were described as 'blasé', however it also noted that Miss Brackley expressed regret in her written statement.

In relation to Charge 2, the panel noted that this incident occurred following a serious drug error only a number of weeks before and resulted in Miss Brackley being placed under supervision as well as undertaking training in medications management. The panel further noted that Miss Brackley made an unauthorised clinical decision when it was not appropriate for her to do so by making a conscious decision to administer a slow release tablet instead of immediate release, rather than contact the pharmacy for the correct formulation of the drug. The panel also noted the importance of the timeliness of all medications administration and the potential risk of underdosing or overdosing the patient.

The panel was of therefore of the view that Miss Brackley's actions fell seriously short of the conduct and standards expected of a nurse and were sufficiently serious to constitute to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Brackley fitness to practise is currently impaired.

The panel took into account that the two incidents occurred within a short period of time and that Miss Brackley made admissions to making unauthorised decisions not to administer the medications as per the prescription. The panel noted that the second incident occurred whilst Miss Brackley was under supervision, however it considered that there was some indication that the supervision may have been inadequate to support Miss Brackley.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the 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) ...'

On the basis of all the information before it, the panel determined that limbs a – c of Dame Janet Smiths “test” are engaged in charges 1 and 2. The panel finds that patients were put at an unwarranted risk of serious harm as a result of Miss Brackley’s misconduct. She had failed to escalate the patient’s unwillingness to take the drug orally, failed to seek advice about how to manage the non-compliance and failed to adequately address the clinical considerations required in making a decision to change the route of administration. Miss Brackley did not have the competence of a nurse prescriber to enable her to make such a decision.

The panel is of the view that Miss Brackley’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to failure to safely administer medications extremely serious.

Regarding insight, the panel considered that Miss Brackley did demonstrate some insight at the time of the incidents in that she was honest and made early admissions to failures. The panel noted that Miss Brackley was able to demonstrate her reflections on the shortcomings and that she accepted where she went wrong. The panel was also mindful of the concerns that Miss Brackley presented as dismissive on a number of occasions when addressing the medication errors. As Miss Brackley was not present at this hearing, the panel did not have evidence of how her insight into the incidents may have developed and her reflections on how she would handle the situation differently in the future. The panel was therefore not satisfied that Miss Brackley has demonstrated sufficient insight and described it as limited.

The panel was satisfied that the misconduct in this case is capable of remediation. The panel noted that the failures to administer medications safely and according to the prescription can be remedied. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Brackley has remedied her practice. The panel took into account that, after the first incident, Miss Brackley was placed under supervision and undertook training in medications management. However, the panel noted that, since the second incident, there is no evidence of remediation or evidence of training that Miss Brackley may have undertaken to address the concerns. The panel did not have any evidence before it to demonstrate that Miss Brackley has taken positive steps towards strengthening her practice. The panel noted that Miss Brackley has indicated her intention of not returning to nursing practice.

The panel is of the view that there is a real risk of repetition, and that Miss Brackley is liable to put patients at an unwarranted risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession. The panel noted that Miss Brackley justified her actions by stating that she was doing what she thought was best for the patient. The panel is of the view that Miss Brackley acted outside of her scope of practice in what she did and, when these concerns were put to her, she was described as dismissive on more than one occasion. The panel is therefore of the view that the evidence of attitudinal concerns heightens the risk of repetition.

The panel bore in mind that 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 protection grounds is required as Miss Brackley's acted outside the scope of her practice and in doing so presented a real risk of potential harm to patients in her care.

In addition, the panel concluded that public confidence in the profession and the need to uphold proper standards would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Brackley's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Brackley's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 1 year. The effect of this order is that Miss Brackley's name on the NMC register will show that she is subject to a conditions of practice order and anyone who enquires about her registration will be informed of this order.

Submissions on sanction

The Notice of Hearing, dated 7 March 2022, the NMC had advised Miss Brackley that the NMC would seek the imposition of a conditions of practice order for a period of 18 months if it found Miss Brackley's fitness to practise currently impaired. Ms Kennedy invited the panel to consider the imposition of this order and referred the panel to the NMC's Sanctions Guidance (SG) in making its decision.

Ms Kennedy submitted that any sanction should be proportionate and balance the registrant's rights against the NMC's overarching objective of public protection and should go no further than necessary to meet that objective.

Ms Kennedy submitted that the aggravating features in this case are:

- The charges do not relate to an isolated incident and instead two separate incidents relating to two different patients; and
- The conduct put these patients at risk of suffering harm.

Ms Kennedy submitted that the mitigating features in this case are:

- Miss Brackley made full admissions to the facts both at a local level and for the NMC's proceedings; and
- Miss Brackley has demonstrated some insight at a local level.

Ms Kennedy invited the panel to consider each available sanction beginning with the least severe. She submitted that taking no action or imposing a caution order would not be appropriate given the seriousness of the conduct and the risk of repetition identified at the impairment stage. Ms Kennedy submitted that such action would not address the public protection concerns.

In relation to a conditions of practice order, Ms Kennedy submitted that the concerns relate to clinical practice, and they are remediable. She further submitted that a conditions of practice order would support supervision and training and that Miss Brackley has demonstrated some insight at local level and admitted to the charges. She submitted that workable and measurable conditions could be formulated.

Ms Kennedy noted that an incident occurred whilst Miss Brackley was under supervision and that the panel found the attitudinal concerns heightened the risk of repetition. However, she submitted that this does not render conditions of practice unworkable in this case. Ms Kennedy submitted that the facts found proved related to two identifiable clinical errors and conditions of practice would adequately mitigate the public protection risks identified.

Ms Kennedy submitted that a suspension order would not be proportionate at this stage as it would not address the clinical failings and it is not the only sanction which would address the public protection and public interest concerns.

Ms Kennedy invited the panel to impose a conditions of practice order and referred them to the conditions which she deemed relevant in this case which included limiting Miss Brackley's nursing practice to one substantive employer and a requirement for direct supervision in relation to medications management.

After the panel retired to deliberate, Ms Kennedy sought permission to address the panel further in relation to the length of the proposed sanction. Ms Kennedy referred to another referral to the NMC in relation to Miss Brackley, the details of which she did not provide. Ms Kennedy did however inform the panel that the investigation of the second referral has concluded, and the next stage is for the case examiners to make a decision. She further informed the panel that the time estimate for the substantive hearing taking place is approximately 9 – 12 months from the point of the case examiners decision. Ms Kennedy informed the panel that Miss Brackley is currently subject to an interim suspension order in relation to both this referral and the second referral and therefore Miss Brackley would not be able to comply with any potential conditions of practice that the panel may decide to impose. For these reasons, Ms Kennedy submitted that the duration of the conditions of practice order should be imposed for a period of 18 months.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Miss Brackley'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.

The panel took into account the following aggravating features:

- The concerns do not arise from an isolated incident;
- Risk of harm to patients;
- The second incident occurred after a period of retraining in medications management;
- Miss Brackley's insight into the failings was limited; and
- Evidence of attitudinal concerns.

The panel also took into account the following mitigating features:

- Miss Brackley made early admissions to her failings; and
- Some evidence of an inadequate level of support in the supervision that was put in place following the first concern.

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

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 Miss Brackley'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 Miss Brackley's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 Miss Brackley's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *The evidence of attitudinal problems are not deep-seated;*
- *Identifiable areas of the nurses practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *The charges relate to clinical concerns that are remediable;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. Balancing all of the factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Brackley case because the concerns arising from the charges are considered remediable. The panel noted that a suspension order would not address the concerns and would not give Miss Brackley an opportunity to remediate and strengthen her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will protect the public, as well as mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

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

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your nursing practice to substantive employers and not work under an agency.
2. You must keep us informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
3. You must keep us informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
4. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any employers you apply to for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - d) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.

5. You must tell your case officer, within seven days of your becoming aware of:
 - a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

6. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

7. You must ensure that you are directly supervised by a registered nurse of band 6 (or equivalent) or above at any time you are administering medication.

8. You must send your case officer evidence that you have successfully completed an assessed course on drug administration, including intravenous competency before the first review hearing of this case.

9. You must work with a supervisor who must be a registered nurse of band 6 (or equivalent) or above to create a personal development plan (PDP). Your PDP must address medications administrations. You must:
 - Send your case officer a copy of your PDP in advance of the first review.
 - Meet with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP and record the outcomes of these discussions in the plan.
 - On completion of your PDP you must add to it a reflective piece which outlines your views on acting in the best interest of the patient.

The period of this order is for 12 months. The panel determined that this period of time would allow Miss Brackley to consider whether she intends to return to nursing practice, secure nursing employment and demonstrate compliance with the conditions of practice.

However, the panel noted that there is an interim suspension order placed upon Miss Brackley's registration which relates to a separate matter that is unknown to the panel. The panel noted that this would stop her from working as a nurse during this period.

In relation to Ms Kennedy's later submissions relating to the length of the order and a second referral, the panel considered that it would not be appropriate to extend this substantive conditions of practice order based on procedural matters relating to a separate case. The panel is of the view that a period of 12 months is sufficient to address the concerns in this case and upon review can be extended if necessary.

Before the order expires, a panel will hold a review hearing to see how well Miss Brackley has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Miss Brackley can request an early review hearing to be listed. At this hearing Miss Brackley will have the opportunity to make representations as to why the conditions of practice order should not be continued, in particular if she believes that she has successfully met the requirements of the order.

Any future panel reviewing this case would be assisted by:

- Miss Brackley's attendance at the next hearing;
- Miss Brackley's written representations if she does not attend the next hearing; and
- Evidence of a testimonial from any current employer, and in particular from a registered nurse with whom she works detailing her current practice.

Interim order

As the conditions of practice 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 Miss Brackley's own interest until the conditions of practice sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

Ms Kennedy submitted that the NMC does not seek to make an application for an interim order as there is already an interim suspension order upon Miss Brackley's registration relating to another matter. Ms Kennedy informed the panel that a review of the current interim suspension order will be scheduled as soon as possible after the conclusion of this hearing so that the risk can be assessed in light of the outcome of this hearing.

Decision and reasons on interim order

The panel had regard to the submissions of Ms Kennedy and was satisfied that an interim order is not necessary in this case for the protection of the public or otherwise in the public interest. The panel noted that there was already an interim suspension order in place upon Miss Brackley's registration and that this is going to be reviewed as soon as possible.

This will be confirmed to Miss Brackley in writing.

That concludes this determination.