

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

**Substantive Hearing
Wednesday 1 – Wednesday 8 February 2023**

Virtual Hearing

Name of Registrant: Erica Irene Garman

NMC PIN 73A1174E

Part(s) of the register: RN1: Adult nurse, level 1 (28th August 1995)
RN2: Adult nurse, level 2 (4th January 1975)

Relevant Location: Basingstoke

Type of case: Misconduct

Panel members: Georgie Hill-Jones (Chair, Lay member)
Pamela Campbell (Registrant member)
Vicki Harris (Lay member)

Legal Assessor: Cyrus Katrak

Hearings Coordinator: Anya Sharma

Nursing and Midwifery Council: Represented by Crash Wigley, Case Presenter

Mrs Garman: Not present and unrepresented at this hearing

Facts proved: All

Facts not proved: None

Fitness to practise: Impaired

Sanction: Strike-off

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Garman was not in attendance and that the Notice of Hearing letter had been sent to Mrs Garman's registered email address on 7 December 2022.

Ms Wigley, 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.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Garman's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Garman 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 Mrs Garman

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

Ms Wigley referred the panel to the relevant documentation which included email correspondence between Mrs Garman and the NMC.

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 Mrs Garman. In reaching this decision, the panel has considered the submissions of Ms Wigley 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 Mrs Garman;
- The panel noted that Mrs Garman had stated in an email to the NMC on 10 December 2022 that it would be unlikely that she would be able to sit through the hearing;
- Mrs Garman has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A number of witnesses have been prepared to give live evidence today, others have been warned over the next few days;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2017 and 2018;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Garman in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered

address, she will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Garman'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 to proceed in the absence of Mrs Garman. The panel will draw no adverse inference from Mrs Garman's absence in its findings of fact.

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

At the outset of the hearing, Ms Wigley made a request that parts of this case be held in private on the basis that proper exploration of Mrs Garman's case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

Having read the supporting documents relating to this case, the panel considered that the issues relating to [PRIVATE] are so intrinsically linked to the allegations that the entirety of the hearing should be heard in private as it would be impracticable to constantly determine what is, and is not, relating to [PRIVATE].

Background

Mrs Garman was referred to the NMC on 8 October 2018 by Hampshire Hospitals NHS Foundation Trust ('the Trust'). At the time of the alleged concern, Mrs Garman was working at Basingstoke and Hampshire Hospital ('the Hospital'), part of the Trust, as a staff nurse.

The allegations are in relation to two incidents. The first incident occurred on 26 December 2017, and the second incident occurred on 19 April 2018. In both these incidents, it is alleged that Mrs Garman was caught concealing and/or attempting to conceal medication that belonged to the Hospital, where Mrs Garman worked, without authorisation, [PRIVATE].

Additionally, it is alleged that Mrs Garman's actions in relation to both of the two incidents were dishonest, in that she was attempting to take medication from her employer when she was aware that she was not supposed to.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Wigley, on behalf of the NMC, to amend the wording of charge 1.

The proposed amendment was to change the incorrect date in the charge from '29 December 2017' to '26 December 2017'. Ms Wigley submitted that this incorrect date in the drafting of the charge is a typographical error arising from the Trust investigation report. It was submitted by Ms Wigley that the proposed amendment would more accurately reflect the evidence.

That you a registered nurse

1. On **26** 29 December 2017 whilst at work, concealed and/or attempted to conceal medication belonging to your employer in an attempt to take it from them, without authorisation.

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

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there was sufficient evidence to show that the amended date was the date that the incident had occurred. It was confident that there would be no prejudice to Mrs Garman and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Details of charge as amended

That you a registered nurse

1. On 26 December 2017 whilst at work, concealed and/or attempted to conceal medication belonging to your employer in an attempt to take it from them, without authorisation.
2. On 19 April 2018 whilst at work, concealed and/or attempted to conceal medication belonging to your employer in an attempt to take it from them, without authorisation.
3. Your actions at charges 1 and/or 2 were dishonest in that you attempted to take medication from your employer when you knew that you were not supposed to.

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

Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Mrs Garman.

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 witnesses called on behalf of the NMC:

- Ms 1: Clinical Matron at the Trust
- Ms 2: Band 6 Deputy Sister at the Trust
- Ms 3: Former Clinical Matron at the Trust who conducted the internal investigation

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC.

The panel then considered each of the disputed charges and made the following findings.

Charge 1

1. On 26 December 2017 whilst at work, concealed and/or attempted to conceal medication belonging to your employer in an attempt to take it from them, without authorisation.

This charge is found proved.

In reaching this decision, the panel took into account the witness statement and oral evidence of Ms 1.

During the Trust's internal investigation, Mrs Garman did not dispute Ms 1's evidence.

The panel considered that it is clear from the evidence before it that Mrs Garman was at work on 26 December 2017, in the utility room, despite her having not started her shift: *'there was no need for [Mrs Garman] to be in there at that point as she hadn't started her shift and hadn't been given handover yet'*.

The panel noted the oral evidence from Ms 1, who had directly observed the incident on 26 December 2017. Ms 1 told the panel that she saw Mrs Garman move the box of medication slowly underneath the Total Parenteral Nutrition (TPN) bag. Ms 1 inferred that the only reason why Ms Garman would slowly move a box of medication underneath something else, in this case the TPN bag, was to conceal that item. Ms1 in her witness statement described the following:

'I then saw [Mrs Garman] put something surreptitiously under the TPN (total parenteral nutrition) bag which was warming to room temperature but I could not really see what it was and the TPN bag was not see through, it's a thick green bag so I could not see what was underneath it.'

The panel noted that a TPN Bag is a big bag full of opaque fluid, and that something would not normally be put underneath it, in this case medication, as these are two unrelated items.

The panel considered that Ms 1's witness statement provides that Mrs Garman attempted to conceal the medication box under the TPN Bag, and admitted to doing so:

'I caught a glimpse of the pattern and size of the box [Mrs Garman] was hiding and I could see the drug cupboard was slightly open. I didn't see the box for sure, but from the glimpse I got I recognised the medication as codeine phosphate from my years of experience. I asked [Mrs Garman] something along the lines of "do you have medication / codeine under there?" and [Mrs Garman] replied in the affirmative. I can't remember if she nodded or said yes. I said something along the lines of "have you taken something?" (implying had she taken something from the ward stock) and [Mrs Garman] replied in the affirmative. [PRIVATE]. I asked "are you hiding something under there?" and [Mrs Garman] said "yes". I then said to her, "you know you have to put that back" and she said "I know" indicating that she would put it back. I can't remember my exact words or the order I asked these questions because this incident occurred almost four years ago.'

The panel took into account that the medication that Mrs Garman had attempted to take was medication that belonged to the employer, as it was from the drugs cupboard. The panel determined that there would be no reason for Mrs Garman to conceal the box of codeine phosphate if she were giving it to a patient, and that Mrs Garman would not be giving medication to a patient if she had not started her duty and if she did not have a prescription chart with her.

The panel on the balance of probabilities therefore find this charge proved.

Charge 2)

2. On 19 April 2018 whilst at work, concealed and/or attempted to conceal medication belonging to your employer in an attempt to take it from them, without authorisation.

This charge is found proved.

In reaching this decision, the panel took into account the witness statements and oral evidence from Ms 1, Ms 2 and Ms 3. The panel noted that Mrs Garman in her interview during the Trust's internal investigation denied this charge.

The panel considered the evidence of Ms 2 and noted that Mrs Garman was at work and was on duty on 19 April 2018 at the time of the incident.

The panel noted Ms 2's evidence in relation to Mrs Garman's body language and her reaction once she realised someone was coming into the utility room:

'I needed to go to our utility room to begin preparation for the shift. I swiped my badge access to enter the room and it made this beep sound. As I pushed the door open, I saw [Ms Garman] physically jump, like she was surprised. The jump surprised me and I was already aware that [Ms 1] had caught [Mrs Garman] with codeine before in similar circumstances... It was her reaction that made me suspicious'

'...She kept her back completely towards me. She was in front of the oral medication stock cupboard, with the door open and her body was very close to the open cupboard... keeping her back towards me the whole time. In her body language she was quite stiff and wouldn't look at me. I looked and noticed she was placing something in the dressing draw of the cupboard... I noticed she had concealed a box of codeine phosphate 30mg, in between dressings, in the draw and the box was open.'

'[Mrs Garman] was clearly trying to hide the box from me because she stood in front of the door with her back towards me... it's clear that she attempted to cover the box.'

The panel considered that the codeine phosphate in normal circumstances would not be put inside the dressings cabinet, especially not between dressings in the dressing

drawer as explained by Ms 2 in her evidence. The panel determined it is clear from the evidence before it that the medication belonged to Mrs Garman's employer and that by attempting to conceal her actions, she was attempting to take it from her employer without the necessary authorisation by way of her concealing her actions.

The panel noted that Mrs Garman would have known as a registered nurse and given the incident on 26 December 2017 as set out in charge 1, that her actions were wrong as she was attempting to take the medication from her employer without authorisation.

The panel also took into account the evidence of Ms 1. Ms 1 in her witness statement set out that she had received a phone call from Mrs Garman following the incident on 19 April 2018. Ms 1 stated that *'[Mrs Garman] told me about all the issues that were bothering her, including that she was in pain, and I asked her if that was why she took it, and [Mrs Garman] replied yes... I remember [Mrs Garman] admitted taking codeine out of the cupboard'*.

The panel therefore on the balance of probabilities find this charge proved.

Charge 3

3. Your actions at charges 1 and/or 2 were dishonest in that you attempted to take medication from your employer when you knew that you were not supposed to.

This charge is found proved in respect of charges 1 and 2.

In reaching this decision, the panel took into account the witness statements and oral evidence of Ms 1, Ms 2 and Ms 3.

The panel noted from Ms 1's evidence that Mrs Garman on her own admission had been attempting to take codeine phosphate from her employer in December 2017. The panel determined that on balance Mrs Garman would have known, as she has been a

nurse for many years, that it was not acceptable practice to take and use drugs, that are intended for patient use, for [PRIVATE].

The panel noted that in relation to charge 1, Mrs Garman had admitted to attempting to take the medication when she should not have done so and that she believed her actions were wrong. It was of the view that Mrs Garman knew that she was not supposed to be doing this and her actions are therefore dishonest.

The panel noted its findings in relation to charge 2 and considered that when Mrs Garman was found in the utility room by Ms 2, her body language and actions were those of someone caught doing something which she knew was wrong. The panel considered that if Mrs Garman was not doing something that she considered to be wrong, she would not have reacted in the way that she did.

The panel considered that a reasonable person, fully apprised of the facts and in the knowledge that Mrs Garman was aware that her actions were wrong, would consider that her conduct was dishonest.

The panel took into account that there was no suggestion of victimisation or bad feeling towards Mrs Garman, and that [PRIVATE]. The panel also noted that Ms 2 stated in her evidence that she looked up to Mrs Garman when she had first joined the Hospital.

The panel therefore on the balance of probabilities find this charge 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 Mrs Garman'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, Mrs Garman's fitness to practise is currently impaired as a result of that misconduct.

Application for panel to consider whether redacted evidence should be admitted

Ms Wigley made an application to correct what she considered to be an error of procedure that has arisen at this stage of the case and bring it to the attention of the panel, so it can make a decision on whether or not to admit it. The panel were provided with a redacted copy of the proceeding in absence bundle on the basis that there was a sentence that was prejudicial in an email dated 10 December 2022 sent by Mrs Garman to the NMC as follows:

'...and I don't know why I thought I could prove my case so I am going to say I am guilty'

Ms Wigley submitted that on reflection and having reviewed the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*, the correct approach would have been for the panel to have been provided with the email in a fully unredacted form in the first instance. It would have then been a matter for the panel to admit the email and whether it would have been fair to Mrs Garman, rather than this decision being made by Ms Wigley and the legal assessor to be redacted.

Ms Wigley said that this matter has arisen at this stage as whilst there may have been an argument that this sentence was prejudicial at the facts stage, there are also

arguments that Mrs Garman could make, had she attended this hearing, to rely on this admission in relation to the panel's findings on misconduct, impairment and sanction.

Ms Wigley submitted that this application concerns an email that was sent to the NMC by Mrs Garman in discussions about preparation for this case.

Ms Wigley submitted that this is something that the panel may consider to be relevant in respect of misconduct, impairment and if it is reached, sanction. Should the panel decide that it is fair to admit this evidence, this will have to be considered at the misconduct and impairment stage. Ms Wiley submitted that this sentence does not make any difference to the panel's assessment of impairment. She submitted that this is not a case where Mrs Garman has shown insight or acknowledged what was wrong with the actions she took. Ms Wigley submitted that Mrs Garman recognised that she has a weak case. Ms Wigley informed the panel that this is not something which will alter the submissions by her on misconduct and impairment.

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

The panel decided to admit the redacted sentence into evidence.

The panel was of the view that the redacted sentence is not a formal admission of the charges and adds little to the proceedings. It considered that it is relevant and fair to Mrs Garman for it to be admitted into evidence as it does provide a little more insight into Mrs Garman's view but makes no material difference to its decisions on the misconduct and impairment stage onwards.

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 Wigley invited the panel to take the view that the facts found proved amount to serious 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 Wigley identified the specific, relevant standards where Mrs Garman's actions amounted to misconduct.

Ms Wigley submitted that the misconduct in this case is serious, and that Mrs Garman's behaviour was dishonest. She submitted that it is particularly significant that the behaviour was repeated by Mrs Garman after she had been caught in December 2017 and warned expressly by her manager that the behaviour could not be repeated.

[PRIVATE].

Submissions on impairment

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

Ms Wigley referred the panel to the four limbs of Dame Janet Smith's test as set out by Mrs Justice Cox in the case of *Grant*. She submitted that in this case, the first limb of the test, '*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*', is not relied upon by the NMC, but the second, third and fourth limbs of the test are relied upon.

Ms Wigley submitted that in this case, Mrs Garman's actions brought the profession into disrepute, Mrs Garman breached a fundamental tenet of the nursing profession, being the requirement to act honestly. Mrs Garman was dishonest in relation to these incidents.

Ms Wigley submitted that that it is important for the panel to consider the context of this case, in that Mrs Garman did not return to practice at the Trust after the 19 April 2018 incident. Mrs Garman was employed for a period as a night duty nurse at a care home between April 2019 and February 2020. Mrs Garman failed to revalidate in January 2020 and ceased working shortly thereafter. Mrs Garman has not been practising as a nurse since.

Ms Wigley submitted that in light of the issues around engagement, there is little evidence in relation to that period of Mrs Garman's practise to demonstrate any level of insight. Ms Wigley informed the panel that Mrs Garman has indicated to the NMC that she is retired, is not practising as a nurse and does not seek to practise as a nurse.

Ms Wigley submitted that Mrs Garman's fitness to practise continues to be impaired, and that Mrs Garman's lack of engagement with these proceedings is significant. Mrs Garman has failed to attend these proceedings; she has failed to provide any written evidence which may be capable of demonstrating some form of insight or reflection. Mrs Garman has also failed to respond to NMC case management forms in this case, which would have included an indication of whether she accepted any of the charges against her. Ms Wigley submitted that Mrs Garman's lack of engagement points to a lack of insight into the importance of these proceedings and the seriousness of the allegations made against her.

Ms Wigley stated that the panel do not have evidence from Mrs Garman to demonstrate any form of insight.

Ms Wigley said that in light of the circumstances that have been suggested by Mrs Garman's manager at the time of the incidents, this may have been a case where a reflective piece from Mrs Garman could have gone a long way in relation to the panel's concerns. She submitted that this is not what has happened in this case and there is no evidence of reflection or insight coming from Mrs Garman for the panel to consider. Ms Wigley informed the panel that Mrs Garman was provided with an opportunity to take initiative in relation to her conduct after she was caught in the December 2017

incident. Mrs Garman was effectively given a second chance by her employer, who was willing to support her at the time with clinical supervision meetings. Ms Wigley set out that the panel heard live evidence from Ms 1, who informed the panel about the difficulties she had arranging meetings with and engaging with Mrs Garman about her practise. Ms Wigley submitted that it was Mrs Garman's failure to take advantage of that opportunity, which led to her behaviour being repeated in April 2018. She submitted that this instance of repetition raises questions as to whether Mrs Garman appreciates the seriousness of her conduct in this case.

Ms Wigley further set out that the panel also have evidence of how Mrs Garman responded to the allegations during her employment at the Trust. She submitted that when she was confronted, there were initially denials from Mrs Garman. However, on both occasions she later confided in her manager that she had taken the codeine phosphate as [PRIVATE]. After making these admissions, Mrs Garman then proceeded to deny the incidents in the subsequent disciplinary hearing. Ms Wigley submitted that this demonstrates a lack of insight and a lack of reflection into these allegations.

Ms Wigley submitted that the conduct has not been remedied in this case and it is likely to repeated in the absence of any evidence of reflection from Mrs Garman and that there has already been repetition in this case.

Ms Wigley submitted that this is a case where an informed member of the public would be concerned if no finding of impairment was made, due to the use of hospital medication for [PRIVATE]and acting dishonestly to conceal attempts to use hospital medication for [PRIVATE], which is a significant breach of the honesty and integrity expected of a registered nurse.

The panel accepted the advice of the legal assessor, which included reference to a number of relevant judgments.

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 Mrs Garman's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Garman's actions amounted to a breach of the Code. Specifically:

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.2 act with honesty and integrity at all times...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mrs Garman's actions did fall seriously short of the conduct and standards expected of a registered nurse. The panel considered that Mrs Garman had repeated her actions, which were found to be dishonest, despite having a very supportive employer, and failed to attend support meetings set up by her manager. The panel also noted that Mrs Garman had extremely limited engagement with the NMC. The panel was therefore of the view that Mrs Garman's actions were not only dishonest, but also amounted to serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the serious misconduct found, Mrs Garman'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/her/ fitness to practise is impaired in the sense that S/He:

- a) ...
- 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 was of the view that Mrs Garman's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into

disrepute. It was satisfied that public confidence in the nursing profession would be undermined if its regulator did not find dishonesty extremely serious.

Regarding insight, the panel noted that it does not have any information before it from Mrs Garman demonstrating any insight or reflection into her actions that took place in both incidents. The panel was satisfied that the misconduct in this case is capable of being addressed, but that Mrs Garman had not provided any evidence of remediation, remorse or insight into her dishonest misconduct. The panel also noted that dishonesty is difficult to remediate and that it relates to attitudinal concerns which are also difficult to remediate. It noted that Mrs Garman had repeated the misconduct once in April 2018 and considered that there is nothing before it to suggest that Mrs Garman would not repeat the conduct again if she were to find herself in a similar situation in the future.

The panel had no evidence to show that Mrs Garman has taken steps to strengthen her practice. The panel took into account that Mrs Garman was provided with an opportunity to take initiative in relation to her conduct after the December 2017 incident. Mrs Garman was given a second chance by her employer, who was willing to support her at the time with the opportunity of clinical supervisory meetings, in which Mrs Garman had decided not to engage. The panel considered that it had heard evidence to support this, and that Mrs Garman failed to engage despite meetings being set up in advance for her. The panel noted that the conduct was also then repeated by Mrs Garman in the April 2018 incident. The panel was therefore of the view that there is no evidence of any remorse from Mrs Garman, and her actions give rise to serious attitudinal concerns.

The panel is of the view that there is a risk of repetition based on the lack of evidence in relation to Mrs Garman's remediation and insight into her dishonesty and serious misconduct. 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. It was of the view that a well-informed reasonable member of the public would be concerned to learn that Mrs Garman was permitted to practise unrestricted as a registered nurse, given the risk of repetition as a result of the lack of remediation and insight into the serious misconduct and the concerns in relation to Mrs Garman's dishonesty.

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

Having regard to all of the above, the panel was satisfied that Mrs Garman'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 Mrs Garman off the register. The effect of this order is that the NMC register will show that Mrs Garman 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 had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Wigley submitted that Mrs Garman's behaviour is fundamentally incompatible with her remaining on the NMC Register, and only a striking-off order would be capable of maintaining public trust and confidence in the nursing profession. She referred the panel

to the NMC Sanctions Guidance (SG), in particular the following questions to be considered by the panel when considering strike-off.

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate 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?*

Ms Wigley submitted that dishonesty is at the heart of the charges found proved in this case. Dishonesty is a fundamental affront to the standards expected of nurses as regulated professionals, and cuts against a core tenet of the profession, undermining public trust and confidence in the profession. Nurses are placed in positions of considerable responsibility and expected by the Code to act with honesty and integrity at all times, in light of this responsibility.

Ms Wigley submitted that this is not a one-off incident; it involves repeated behaviour. No evidence is available from Mrs Garman as to her reasons for attempting to take medications from the Hospital supply. [PRIVATE]. In the evidence before the panel, there was no risk to patients. These allegations relate to her professional life.

The allegations in this case fall into the category of being a serious concern which is more difficult to remediate.

Ms Wigley set out the aggravating and mitigating features of this case. She said that there has been a suggestion of personal mitigation. The panel heard evidence from Ms 1, [PRIVATE]. The panel could only be relying on evidence of Mrs Garman's manager and Ms 1.

[PRIVATE]

[PRIVATE].

[PRIVATE]. She submitted that this does not excuse Mrs Garman's conduct in any way, particularly after the December 2017 incident, when her employer made it clear that they were willing to make adjustments and provide Mrs Garman with [PRIVATE]. This offer was not taken up by Mrs Garman.

Ms Wigley submitted that the panel has no detail about [PRIVATE] as a result of Mrs Garman's failure to engage in this process.

Ms Wigley submitted that there is no evidence of insight in this case . She stated that this might have been a case where a reflective piece from Mrs Garman could have gone a long way in assuaging the panel's concerns. The panel do not have this before it. Ms Wigley set out that Mrs Garman admitting the evidence in an email to the NMC dated 10 December 2022 does not show any insight or any recognition of wrongdoing on her part.

Ms Wigley submitted that Mrs Garman has failed to cooperate with these proceedings and has failed to respond to the NMC case management forms. Mrs Garman has been advised about her right to apply for voluntary removal from the register, which is not a route she has elected to undertake.

Ms Wigley submitted that it is particularly indicative of the seriousness of the charges against Mrs Garman that this behaviour was repeated after she had been given a second chance and had been supported by her employer after the first incident. After being caught a second time, Mrs Garman denied the incidents, claimed her actions had been misinterpreted and disputed the allegations. Ms Wigley submitted that this is significant in showing a lack of insight and indicates that this was more than just a one-off incident.

Ms Wigley set out that the panel is aware that Mrs Garman is not currently practising as a nurse. She has informed the NMC that she has retired and that she does not intend to practice in the future. Ms Wigley stated that this is not a factor of significance that the panel should take into account, and that a strike-of order is necessary to mark the

disapproval of Mrs Garman's conduct, maintain standards of conduct in the profession and ensure public confidence in the profession and the NMC as a regulator.

Ms Wigley submitted that it is the NMC's case that there is no issue of public protection that arises from the facts of this case, and that any sanction should be considered on the basis of public interest alone, but that this is a matter for the panel to come to its own conclusions on.

Decision and reasons on sanction

Having found Mrs Garman's fitness to practise currently impaired on the grounds of public protection and public interest, 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 Sanctions Guidance. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered that any dishonesty could be a potential threat to public protection.

The panel took into account the following aggravating features:

- Mrs Garman's repeated behaviour in that following the incident in December 2017, there had been a repetition in April 2018
- Mrs Garman's dishonesty, which is a discredit to the nursing profession
- Mrs Garman's lack of remorse and insight about her conduct
- Lack of meaningful engagement from Mrs Garman

The panel also took into account the following mitigating features:

- [PRIVATE]
- [PRIVATE]

- Previous unblemished career and good character

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, an order that does not restrict Mrs Garman'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 Mrs Garman's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Garman's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Mrs Garman's dishonesty and misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Garman's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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;*
- *No evidence of repetition of behaviour since the incident;*

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

Mrs Garman's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Garman's actions is fundamentally incompatible with Mrs Garman remaining on the register.

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?*

The panel considered that Mrs Garman's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Garman's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mrs Garman in writing.

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 Mrs Garman's own interests until the striking-off sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Wigley. She submitted that an interim suspension order for a period of 18 months would be appropriate and proportionate to cover the 28-day appeal period.

Decision and reasons on interim order

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

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any appeal.

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

That concludes this determination.