Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 19 May 2025 – Tuesday, 27 May 2025

Virtual Hearing

Name of Registrant:	**Sandra Gray**
NMC PIN	16I2854S
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nursing (Level 1) – 1 October 2019
Relevant Location:	Glasgow Edinburgh
Type of case:	Misconduct
Panel members:	Suzy Ashworth (Chair, Lay member) Jim Blair (Registrant member) Sally Kitson (Lay member)
Legal Assessor:	Paul Housego
Hearings Coordinator:	Stanley Udealor
Nursing and Midwifery Council:	Represented by Ben Jones, Case Presenter
Ms Gray:	Not present and unrepresented at the hearing
Facts proved:	Charges 1, 2a, 2b, 2c, 2d, 3, 4 and 5
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
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 Ms Gray was not in attendance and that the Notice of Hearing letter had been sent to her registered email address by secure email on 27 March 2025.

Mr Jones, 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 Ms Gray'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 the information available, the panel was satisfied that Ms Gray 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 Ms Gray

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

Mr Jones referred the panel to the emails between Ms Gray and the NMC dated 5 February 2025 in which Ms Gray expressly confirmed that she is content for the hearing to proceed in her absence.

Mr Jones referred the panel to the NMC Guidance on '*Proceeding with hearings when the nurse, midwife or nursing associate is absent'* (CMT-8) and the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162. He submitted that Ms Gray has voluntarily absented herself and has not requested an adjournment of this matter. In conclusion, he submitted that it is fair for the hearing to proceed in the absence of Ms Gray.

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 Ms Gray. In reaching this decision, the panel has considered the submissions of Mr Jones, the proceeding in absence bundle 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.* The panel also had regard to the overall interests of justice and fairness to all parties. It noted that:

- Ms Gray confirmed in her email to the NMC dated 5 February 2025 that she will not be attending this hearing, and she is content for the hearing to proceed in her absence.
- No application for an adjournment has been made by Ms Gray.
- There is no indication that Ms Gray is unable to attend the hearing by reason of illness.
- There is no reason to suppose that adjourning would secure her attendance at some future date.
- Three witnesses are scheduled to give live evidence.
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services.

- The charges relate to events that occurred in 2019, 2020 and 2021, and further delay may have an adverse effect on the ability of witnesses to accurately recall events.
- There is a strong public interest in the expeditious disposal of the case.
- The correspondence shows that Ms Gray has deliberately chosen not to attend or to instruct lawyers to represent her.

There is some disadvantage to Ms Gray in proceeding in her absence. Although the evidence upon which the NMC relies was sent to Ms Gray at her registered email 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, will carefully scrutinise the evidence and explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Ms Gray's decision not to attend the hearing or be represented.

In these circumstances, the panel decided that it is fair to proceed in the absence of Ms Gray. In making its findings of fact the panel will draw no adverse inference from Ms Gray's absence.

Details of charge

That you, a registered nurse:

1) Between October 2019 and September 2020 operated an aesthetics clinic in Glasgow prior to being registered with Healthcare Improvement Scotland.

2) After October 2019 failed to follow regulatory requirements in that you:

   a) Had unlicensed Botulax in the pharmaceutical refrigerator in the clinic.

b) Had items in the pharmaceutical refrigerator that could not be identified and were not labelled in English.

c) Had other items in the pharmaceutical refrigerator that were not clearly labelled.

d) Offered a minor surgical procedure despite not being registered to provide this service.

3) After 25 February 2021 failed to register your Edinburgh clinic with Healthcare Improvement Scotland.

4) Advertised the Edinburgh clinic referenced at charge 3 despite it not being registered.

5) Your conduct at charge 4 was dishonest in that you intended to operate the clinic despite knowing that it was required to be registered.

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Jones under Rule 31 to admit the following hearsay documents into evidence:

- Witness statement of Ms 1
- Supplementary witness statement of Ms 1
- Witness statement of Ms 2 and its associated exhibit.

Mr Jones referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). He submitted that this case laid out a series of factors to be

considered in admitting hearsay evidence and to which he would make reference in his submissions.

Mr Jones submitted that the purpose of the evidence of Ms 2 was to provide the relevant background and context with respect to charge one. He submitted that it was the NMC's position that Ms 2's witness statement and its associated exhibit were not controversial, and they could simply be read into evidence.

i. Whether the statements were the sole and decisive evidence in support of the charges:

Mr Jones submitted that the evidence of Ms 1 and Ms 2 was neither sole nor decisive in this case. He submitted that their evidence was relevant to charge 1. He asserted that their evidence demonstrated that Ms Gray was in fact carrying out treatments through the Glasgow clinic prior to it being registered with Healthcare Improvement Scotland (HIS). He stated that the bookings for the treatment were made through the clinic's Facebook page and Ms 1 and Ms 2 attended the Glasgow Clinic initially before being directed to Ms Gray's home address. Mr Jones submitted that their evidence corroborated the evidence of the live witnesses. It also supported Ms Gray's own evidence in the Registrant Response Bundle.

ii. The nature and extent of the challenge to the contents of the statements:

Mr Jones highlighted that the case management form was not completed by Ms Gray, and she had not communicated any objections to the NMC regarding the respective witness statements of Ms 1 and Ms 2.

iii. Whether there was any suggestion that the witnesses had reasons to fabricate their allegations:

Mr Jones submitted that there was no evidence to suggest that Ms 1 and Ms 2 had fabricated their evidence.

iv. The seriousness of the charge, taking into account the impact which adverse findings might have on the registrant's career:

Mr Jones submitted that it was undoubtable that the charges in this case were serious and that an adverse finding would have significant impact on Ms Gray's nursing career. He stated that this was however tempered somewhat by the fact that Ms Gray had requested a voluntary removal from the NMC register.

v. Whether there was a good reason for the non-attendance of the witness and whether the regulator had taken reasonable steps to secure the witness's attendance:

Mr Jones submitted that the NMC had taken all reasonable steps to secure the attendance of Ms 1. He stated that Ms 1 did not respond to any correspondence from the NMC until 14 May 2025. He told the panel that a trace was conducted on Ms 1's home address and she had to be tracked down in order to make sure that she would be able to give evidence. Unfortunately, she is still unable to attend the hearing due to work commitments, being aircraft cabin crew flying abroad.

Mr Jones submitted that the NMC considered it unnecessary to contact Ms 2 to attend the hearing as a witness given what he described as the uncontroversial nature of her evidence, which also formed part of the Registrant's Response Bundle. He indicated that the evidence of Ms 2 was helpful but not central to the case.

vi. Whether the registrant had prior notice that the witness statement would be read:

Mr Jones accepted that Ms Gray had no knowledge that a hearsay application would be made with respect to the witness statements of Ms 1 and Ms 2. He submitted that it should however be noted that there were no specific objections raised by Ms Gray about the contents of their witness statements.

Mr Jones submitted that the hearsay evidence was relevant to Charge 1.

In conclusion, Mr Jones submitted that the test set out in Rule 31 has been satisfied and it is therefore fair and appropriate for the hearsay documents to be admitted into evidence.

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. He pointed out that the first consideration was relevance, and the second fairness. He advised that irrelevant matters might be prejudicial.

The panel first considered whether the hearsay documents were relevant to this case. The panel considered that the hearsay documents only demonstrated that Ms 1 and Ms 2 attended appointments at Ms Gray's home for Botox treatment. There was no allegation that this was improper. The panel considered that there was no direct or clear link between the hearsay documents and any of the charges against Ms Gray. The reference to treatments at Ms Gray's home was not background to Charge 1, but extraneous. The panel therefore considered that the hearsay witness statements did not add anything to the evidence in this case, rather, they explored issues that were not charged against Ms Gray but were potentially prejudicial.

Accordingly, the panel determined the hearsay documents were not relevant to this case, and that it would be unfair to admit them. The panel therefore refused the hearsay application, and therefore, the hearsay documents (the witness statements of Ms 1 and Ms 2 and its associated exhibit) would not be admitted into evidence.

Background

The NMC received a referral from HIS on 22 October 2021 in relation to Sandra Gray, a registered nurse who was the sole director of Harlohs Aesthetics Ltd (Harlohs Glasgow) and Harlohs Aesthetics Edinburgh Ltd (Harlohs Edinburgh).

It was alleged that Harlohs Glasgow, an aesthetics clinic, had opened and commenced operations between October 2019 and September 2020 prior to being registered with HIS. Harlohs Glasgow was then registered with HIS on 2 September 2020 to provide non-surgical procedures.

Due to concerns that Harlohs Glasgow was operating prior to its registration with HIS, an announced inspection was conducted by HIS on 10 June 2021. Multiple requirements and recommendations were made by HIS, and the post inspection service risk assessment was rated as '*very high*'.

It was reported by Witness 1 that, during the inspection by HIS, Ms Gray had informed her that she was hoping to add polydioxanone (PDO) thread lifts to the services offered at Harlohs Glasgow. Witness 1 advised Ms Gray that this would not be covered by Harlohs Glasgow's existing registration as it was a minor surgical procedure. Subsequently, it was alleged by Witness 1 that Harlohs Glasgow began offering PDO thread lifts as a bookable option on its website despite not applying to vary its conditions of registration (which did not include this treatment).

An unannounced inspection of Harlohs Glasgow was carried out by HIS on 28 October 2021. HIS Inspectors allegedly found the following items in Harlohs Glasgow's pharmaceutical refrigerator

- Unlicensed Botulax
- Items that could not be identified as they were not labelled in English
- A number of other items that were not clearly labelled.

The inspectors were unable to establish who was prescribing the Botulax but one of the staff members claimed it was for her personal use. On 29 October 2021, HIS issued an emergency conditions notice prohibiting Harlohs Glasgow from providing any treatments to the head and neck. The service remained rated by HIS as '*very high risk*'.

It was alleged by HIS that it discovered on social media that a new aesthetics clinic, Harlohs Edinburgh, was actively advertising services, without being registered with HIS. There were many emails sent to Ms Gray by HIS advising that Harlohs Edinburgh must cease trading until registered with HIS. However, Ms Gray claimed that the clinic did not require registration. She asserted that treatments were being carried out by a non-medic and prescription medication was not being offered at the clinic. Nevertheless, on 14 May 2021, Ms Gray submitted a pre-registration form to HIS, in respect of Harlohs Edinburgh.

Following various correspondence and chasers between HIS and Ms Gray, a Notice of Intention to Refuse Registration was issued on 27 July 2021 by HIS and a Notice of Proposal to Refuse Registration was later issued on 26 October 2021.

Despite these notices, when HIS inspectors attended Harlohs Edinburgh on 29 October 2021, it was open and providing treatments to clients. On 31 October 2021, Ms Gray resigned as director of Harlohs Edinburgh.

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, including the documentation provided by Ms Gray, together with the submissions made by Mr Jones. It accepted the advice of the legal assessor.

The panel has drawn no adverse inference from the non-attendance of Ms Gray.

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. In respect of charge 5, the panel applied the test for dishonesty set out in paragraph 74 of *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords)* [2017] UKSC 67.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Inspector at HIS at the time of the incidents.
- Witness 2: Head of Service Review at the time of the incidents.
- Witness 3: Inspector at HIS at the time of the incidents.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

1) Between October 2019 and September 2020 operated an aesthetics clinic in Glasgow prior to being registered with Healthcare Improvement Scotland.

This charge is found proved.

The panel took account of the witness statement of Witness 1 in which she stated:

> *'On 13 February 2020, I received a phone call from Ms Gray to query how to pay the registration fee for the registration of Harlohs Aesthetics….During the call I informed Ms Gray that it was an offence to provide an unregistered independent health care service in Scotland, and she must cease trading immediately. Ms Gray always maintained in her dealings with HIS, prior to registration of the Glasgow*

clinic, that no clinicians were operating at the service and that all treatments were offered and provided by non-clinicians.

However, I saw on social media, before Harlohs Aesthetics was registered with HIS, that prescription only treatments such as dermal fillers and botulinum toxin were being offered. As these treatments required a prescription, this meant that a prescriber (a healthcare professional) would have to be involved with the clinic, meaning that the clinic should have been registered.'

The panel noted that there is common ground between Witness 1 and Ms Gray that a registered nurse who provides an independent healthcare service in Scotland must register with HIS.

The panel noted that after the investigation carried out by Witness 1, Ms Gray had raised a complaint against Witness 1 to HIS. The panel accepted the evidence of Witness 1 that because of the complaint she had no further involvement with Harlohs Glasgow and that the complaint was investigated and was not upheld. This complaint could not be explored further by the panel due to the absence of Ms Gray at these proceedings. The panel decided that this did not undermine the credibility of the evidence of Witness 1.

The panel took into consideration Ms Gray's email to the NMC dated 3 February 2025. In this email she stated that she had never refused to register her Glasgow clinic and offered the explanation that it was opened during the coronavirus pandemic and was managed by someone who was a non-medic, therefore a registration was not applicable. As Ms Gray did not attend, there was no evidence before the panel to support this assertion.

The panel took into account that Harlohs Glasgow was only registered with HIS on 2 September 2020, and that Ms Gray was the registered manager. In this regard, the panel had sight of the certificate of registration for Harlohs Glasgow. It also noted that Ms Gray became qualified as a registered nurse in October 2019, which was the month the clinic

commenced operation. The panel noted that a registered nurse operating an aesthetics clinic was required to register it with HIS.

The panel noted the content of an email between Ms Gray and the NMC dated 22 April 2020. This stated that she was misled by her trainer, who, she said, told her that she could administer Botox to clients without prescription and that she had therefore thought it was permissible for her to administer Botox to Ms 2 on 2 November 2019. There was no evidence before the panel to support that assertion, which would, in any event would not result in the charge not being found proved.

The panel had sight of Ms Gray's clinic consultation notes with Ms 2 dated 2 November 2019, her social media messages with Ms 2 and the consent forms signed by Ms 2 dated 2 November 2019.

The panel noted that the above documents supported the evidence of Witness 1 and therefore accepted her evidence.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that between October 2019 and September 2020, Ms Gray operated an aesthetics clinic in Glasgow prior to being registered with Healthcare Improvement Scotland. Accordingly, the panel found charge 1 proved.

Charge 2a

2) After October 2019 failed to follow regulatory requirements in that you:

   a. Had unlicensed Botulax in the pharmaceutical refrigerator in the clinic.

This charge is found proved.

The panel took account of the witness statement of Witness 1 which stated that HIS received intelligence from an HIS registered independent health care service provider that

Ms Gray was selling Botulax, and so on 28 October 2021 conducted an unannounced inspection on Harlohs Glasgow. Witness 1 was involved in that inspection. She stated that, during the inspection, they found:

> *'2 x 200 unit boxes of Botulax in the pharmaceutical fridge. Each box contained one 200 unit vial of Botulax. A standard treatment using botulinum toxin would use 50-70 units, meaning that each 200 unit vial could potentially be used for 3-4 treatments. In addition, there was one 200 unit vial of Botulax that had been opened and pierced…'*

Witness 1 also stated that HIS requires that all medications used in registered premises are licensed by the Medicines and Healthcare products Regulatory Agency (MHRA) and that the use of any botulinum toxin product must be prescribed by a qualified practitioner. Witness 1 stated that HIS was unable to identify a prescriber of the Botulax and that Ms Gray's personal assistant had told her that that the Botulax was her own personal supply, although she could not give the name of a person who prescribed it for her. Witness 1 further stated that it was unlikely that the Botulax found in Harlohs Glasgow was a personal supply given that the volume found there was enough to carry out around ten to twelve treatments. The panel accepted that evidence.

An Emergency Conditions Notice was therefore issued by HIS to Harlohs Glasgow as a result of this inspection.

The panel noted that Ms Gray did not dispute that it was a regulatory requirement that obtaining and use of Botulax must be licensed by MHRA.

The panel took into consideration that in her email to the NMC of 9 November 2021 Ms Gray accepted that HIS found Botulax in the fridge at Harlohs Glasgow but stated that it was not owned by her or Harlohs Glasgow but belonged to a staff member. Ms Gray also stated that she was not aware of the items contained in the refrigerator and had been so

concerned that she immediately dismissed the person concerned. The panel was not able to evaluate this explanation as the absence of Ms Gray deprived it of evidence about it.

The panel had sight of the contemporaneous photograph of the Botulax packages in the refrigerator, the local statement of Witness 1 dated 2 November 2021, the Enforcement Report and the Emergency Conditions Notice. The panel noted that these contemporaneous documents supported the evidence of Witness 1. The panel accepted the evidence of Witness 1 that it was reasonable to infer that the Botulax in the refrigerator of Harlohs Glasgow was intended for commercial use given the volume found there. It was also of the view that it was the responsibility of Ms Gray as the registered manager to be aware of all medications in Harlohs Glasgow's premises and to ensure that they were licensed in accordance with regulatory requirements.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that after October 2019, Ms Gray failed to follow regulatory requirements in that she had unlicensed Botulax in the pharmaceutical refrigerator in the clinic. Accordingly, the panel found charge 2a proved.

Charge 2b

2) After October 2019 failed to follow regulatory requirements in that you:

    b. Had items in the pharmaceutical refrigerator that could not be identified and were not labelled in English.

This charge is found proved.

The panel took account of the witness statement of Witness 1 in which she stated that when HIS received intelligence from another HIS registered independent health care service provider that Ms Gray was selling Botulax, it conducted an unannounced inspection on Harlohs Glasgow on 28 October 2021. Witness 1 was involved in that inspection. She stated that, during the inspection, they found:

'…medical products in the fridge that could not be identified as they were not labelled in English'

Witness 1 also stated that HIS requires that all medications used in registered premises are licensed by MHRA and that the instructions for the medication need to be in English so it is clear what the product is and what it can be used for. It was a clear regulatory requirement that any botulinum toxin product must be prescribed. As set out in relation to charge 2a, as a result, an Emergency Conditions Notice was issued by HIS to Harlohs Glasgow.

The panel took into consideration that Ms Gray stated in her email to the NMC dated 3 February 2025 that the pharmaceutical refrigerator was used by other members of staff for their personal use when she was not at the clinic.

The panel had sight of the contemporaneous photograph of the items, not labelled in English, in the refrigerator. It also had sight of the local statement of Witness 1 dated 2 November 2021, the Enforcement Report and the Emergency Conditions Notice. The panel noted that these contemporaneous documents supported the evidence of Witness 1. The panel therefore accepted her evidence. It was of the view that it was the responsibility of Ms Gray as the registered manager to be aware of all items in Harlohs Glasgow's refrigerator and to ensure that they could be identified and labelled in English.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that after October 2019, Ms Gray failed to follow regulatory requirements in that she had items in the pharmaceutical refrigerator that could not be identified and were not labelled in English. Accordingly, the panel found charge 2b proved.

Charge 2c

2) After October 2019 failed to follow regulatory requirements in that you:

c. Had other items in the pharmaceutical refrigerator that were not clearly labelled.

This charge is found proved.

The panel took account of the witness statement of Witness 1 in which she stated that when HIS received intelligence from another HIS registered independent health care service provider that Ms Gray was selling Botulax, it conducted an unannounced inspection on Harlohs Glasgow on 28 October 2021. Witness 1 was involved in that inspection. She stated that, during the inspection, they found:

'…other items in the pharmaceutical fridge that were not clearly labelled…'

Witness 1 stated that, as a result of this and the other concerns, an Emergency Conditions Notice was issued by HIS to Harlohs Glasgow.

The panel took into consideration that Ms Gray stated in her email to the NMC dated 3 February 2025 that the pharmaceutical refrigerator was used by other members of staff for their personal use when she was not at the clinic.

The panel had sight of the contemporaneous photograph of the multiple items in the pharmaceutical refrigerator that were not clearly labelled. It also had sight of the local statement of Witness 1 dated 2 November 2021, the Enforcement Report and the Emergency Conditions Notice. The panel noted that these contemporaneous documents supported the evidence of Witness 1. The panel therefore accepted her evidence. It was of the view that it was the responsibility of Ms Gray as the registered manager to be aware of all items in the pharmaceutical refrigerator at Harlohs Glasgow and to ensure that they were clearly labelled appropriately.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that after October 2019, Ms Gray failed to follow regulatory requirements in that she had

items in the pharmaceutical refrigerator that were not clearly labelled. Accordingly, the panel found charge 2c proved.

Charge 2d

2) After October 2019 failed to follow regulatory requirements in that you:

d. Offered a minor surgical procedure despite not being registered to provide this service.

This charge is found proved.

The panel took account of the witness statement of Witness 1 in which she stated that, during HIS inspection on 10 June 2021, Ms Gray had informed her that she was hoping to offer polydioxanone (PDO) thread lifts at the clinic. Witness 1 noted that such treatment was classified as a minor surgical procedure as it involves a foreign body (dissolvable sutures) being inserted under the skin. She stated that Harlohs Glasgow was not permitted to carry out minor surgical procedures, so she advised Ms Gray to apply for a variation to the conditions of her registration if she wanted to provide such treatment.

Witness 1 further stated that Harlohs Glasgow did not apply for a variation of the conditions to permit minor surgical procedures, however, through looking at the website of the clinic, she later discovered that it was possible to book PDO thread lifts at Harlohs Glasgow. She therefore told Ms Gray to cease offering such treatment and to remove it from the clinic's booking page with immediate effect.

The panel took into consideration that, in her email to the NMC dated 3 February 2025, Ms Gray generally denied all the allegations against her. Ms Gray said that anyone asking for such a treatment was told that it was not currently available. In the absence of Ms Gray to give evidence of this, or any other evidence relating to such an explanation, the panel did not accept it.

The panel accepted the evidence of Witness 1 that minor surgical procedures could not be offered by an independent health care service unless that service had been specifically registered to do so. The panel accepted that PDO thread treatment is a minor surgical procedure. The panel had sight of the certificate of registration for Harlohs Glasgow and it noted that Harlohs Glasgow was permitted only to provide non-surgical procedures. The panel also had sight of the contemporaneous email from Witness 1 to Ms Gray dated 10 June 2021 in which she stated that she discovered that it was possible to book PDO thread lifts at Harlohs Glasgow booking page and that in that email, she therefore directed Ms Gray to cease offering such treatment. Ms Gray had not responded to that email.

Although the panel did not have sight of such booking page that offered minor surgical procedures, it had no reason to doubt the reliability of Witness 1's evidence as she was clear and consistent in both her oral and documentary evidence, including the email of 10 June 2021. The panel therefore accepted the evidence of Witness 1 that Harlohs Glasgow was offering a minor surgical procedure, PDO threads.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that after October 2019, Ms Gray failed to follow regulatory requirements in that she offered a minor surgical procedure despite not being registered to provide this service. Accordingly, the panel found charge 2d proved.

Charge 3

3) After 25 February 2021 failed to register your Edinburgh clinic with Healthcare Improvement Scotland.

This charge is found proved.

The panel took account of the witness statement of Witness 1 in which she stated that Ms Gray operated an unregistered aesthetics clinic in Edinburgh, Harlohs Edinburgh, and that despite several emails and letters to her, she did not register the Edinburgh clinic with HIS.

The panel noted that there is a common ground between Witness 1 and Ms Gray that any nurse who is providing an independent healthcare service in Scotland must register that service with HIS.

The panel took into consideration Ms Gray's contention that the Edinburgh clinic did not require registration, [PRIVATE], its services were provided by a non-medic and that there was no prescription medication offered. She also stated that she was in the process of leaving the NMC register as a registered nurse, the implication being that if she managed the clinic herself, when not a nurse, it would not need to be registered. However, the panel noted that in her email to Witness 1 dated 9 May 2021, Ms Gray requested advice on the registration process for the Edinburgh clinic. The panel considered that this undermined that explanation, as if it were correct she would not have needed to register and so would have no reason to seek advice about doing so. Further, in the absence of evidence from Ms Gray or [PRIVATE], the panel could not accept this explanation.

The panel noted that Ms Gray submitted a pre-registration form for the Edinburgh clinic to HIS on 14 May 2021. However, she was issued with a Notice of Intention to Refuse Registration by HIS in an email dated 27 July 2021 on the basis that she had continued to operate her Edinburgh clinic without registration. HIS based this on several advertisements on social media about aesthetic services offered at Harlohs Edinburgh.

The panel had sight of screenshots of several social media posts that showed that Harlohs Edinburgh was offering services to the public. The panel further had sight of a screenshot of '*masterclass training'* offered at Harlohs Edinburgh by Ms Gray. The panel also had sight of series of emails between HIS and Ms Gray sent in September and October 2021 in which Ms Gray was directed to complete her registration of the Harlohs Edinburgh and to cease operation until registration. The panel noted that Witness 1 sent a Notice of Proposal to Refuse Registration to Ms Gray in relation to Harlohs Edinburgh on 26 October 2021. The panel further noted that Witness 2 confirmed in his witness statement that when he visited Harlohs Edinburgh on 29 October 2021 to serve the Emergency

Conditions Notice, the clinic was open and providing treatments to clients despite being not registered. The panel accepted the evidence of that Witnesses 1 and 2 that Harlohs Edinburgh was never registered with HIS.

The panel took into account that Witnesses 1 and 2 were both clear and consistent in their oral and documentary evidence that Ms Gray failed to register Harlohs Edinburgh with HIS when registration was required. The panel therefore accepted their evidence.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that after 25 February 2021, Ms Gray failed to register her Edinburgh clinic with Healthcare Improvement Scotland. Accordingly, the panel found charge 3 proved.

Charge 4

4) Advertised the Edinburgh clinic referenced at charge 3 despite it not being registered.

This charge is found proved.

The panel took account of the witness statement of Witness 1 in which she stated that, in her email to Ms Gray dated 13 May 2021, she noted that whilst HIS had not received the pre-registration form, Harlohs Edinburgh was actively advertising services on social media including prescription only medication.

The panel took into account that Ms Gray was issued with a Notice of Intention to Refuse Registration by HIS in an email dated 27 July 2021 on the basis that she had continued to operate her Edinburgh clinic without registration. This was based on several advertisements on social media of services offered at Harlohs Edinburgh. The panel had sight of screenshots of several social media posts that showed that Harlohs Edinburgh was offering services to the public, despite not being registered. The panel further had sight of a screenshot of '*masterclass training*' offered at Harlohs Edinburgh by Ms Gray.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that Ms Gray advertised the Edinburgh clinic despite it not being registered. Accordingly, the panel found charge 4 proved.

Charge 5

5) Your conduct at charge 4 was dishonest in that you intended to operate the clinic despite knowing that it was required to be registered.

This charge is found proved.

Having found charge 4 proved, the panel went on to consider whether Ms Gray's conduct in charge 4 was dishonest in that she intended to operate the Edinburgh clinic despite knowing that it was required to be registered. In considering whether Ms Gray's conduct was dishonest, the panel had regard to the NMC Guidance on Making decisions on dishonesty charges, (DMA-8). It also had regard to the test laid down in the case of *Ivey v Genting Casinos UK Limited* [2017] UKSC 67 which provides:

- what was the registrant's actual state of knowledge or belief as to the facts; and
- was that conduct dishonest by the standards of ordinary decent people?

In applying the first limb of the test to charge 4, the panel took into account that, despite several emails and notices from the HIS to Ms Gray between February and October 2021 directing her to register the Edinburgh clinic, it remained unregistered.

The panel took into consideration that Ms Gray contended that the Edinburgh clinic did not require registration [PRIVATE], its services were provided by a non-medic, there was no prescription medication offered and that she was in the process of leaving the NMC register as a registered nurse.

Nevertheless, the panel noted that in her email to Witness 1 dated 9 May 2021, Ms Gray requested advice on the registration process for the Edinburgh clinic. The panel noted that Ms Gray submitted a pre-registration form for the Edinburgh clinic to HIS on 14 May 2021. Based on the evidence before it, the panel was satisfied on the balance of probabilities that Ms Gray knew that her Edinburgh clinic was required to be registered with HIS.

The panel had sight of screenshots of several social media posts that showed that Harlohs Edinburgh was offering services to the public, despite not being registered. The panel further had sight of a screenshot of '*masterclass training*' offered at Harlohs Edinburgh by Ms Gray. The panel further noted that Witness 2 confirmed in his witness statement that when he visited Harlohs Edinburgh on 29 October 2021 to serve the Emergency Conditions Notice, the clinic was open and providing treatments to clients despite being not registered.

Therefore, the panel was satisfied on the balance of probabilities that Ms Gray intended to, and did, operate the Edinburgh clinic despite knowing that it was required to be registered with HIS.

In applying the second limb of the test to this case, the panel was of the view that given that prescription only medications and related services were being advertised by Harlohs Edinburgh's services, the public would reasonably expect that the clinic had complied with all regulatory requirements and that it was registered with appropriate authorities. The panel also noted that in one of the screenshots of the social media posts by Harlohs Edinburgh, the logo of HIS was included and this would mislead the public into believing that the clinic was registered.

The panel considered whether this intentional breach of regulatory requirements was dishonest. Ms Gray was knowingly offering aesthetic services to the public knowing that she was not registered to do so, and that she was required to be registered to operate her clinic.

In the panel's judgement, an ordinary decent person knowing the facts would regard Ms Gray's conduct in advertising her unregistered clinic, Harlohs Edinburgh, despite knowing that registration with HIS was required, to be dishonest. This was because she was deceiving those visiting her website, and her clients.

Accordingly, the panel determined that Ms Gray's conduct in charge 4 was dishonest and it therefore found charge 5 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 Ms Gray'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 Ms Gray's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Jones referred the panel to the case of *Roylance v General Medical Council (No.2) [2000] 1 A.C. 311* in which Lord Clyde defined misconduct in paragraph 35*:*

> *'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed.....in the particular circumstances.'*

Mr Jones further referred the panel to the cases of *R (Calhaem) v General Medical Council (GMC)* and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). He stated that they further provide that misconduct connotes a serious breach which indicates that the registered professional's fitness to practise is impaired, and further, the adjective serious must be given its proper weight. He told the panel that, in other cases, misconduct had been described as conduct which would be regarded as deplorable by fellow practitioners.

Mr Jones submitted that Ms Gray's actions amount to a blatant disregard for the regulatory processes of HIS, and the duties imposed upon Ms Gray as a nurse, in setting up an independent healthcare service in Scotland.

Mr Jones submitted that the following parts of the Code: Professional standards of practice and behaviour for nurses and midwives 2018 (the Code) are engaged in this case and have been breached. He submitted that they are sections 13.4, 19.1, 19.4, 20.1, 20.2, 20.4 and 21.4.

Mr Jones submitted that Ms Gray's conduct breached sections 13.4, 19.1 and 19.4 of the Code in that her actions constituted a risk to patient safety and that the unlicensed medication could have caused harm to members of the public. He highlighted that Witness 2 stated in his oral evidence that by having unlicensed medication that has not been approved for use by the MHRA, there was no chain of production and distribution. He submitted that this was a fundamental safety requirement in the use of drugs, and failure

to have a record of the production and distribution of drugs in her care and used in her clinic was in clear contravention of the regulatory requirement to do so. He submitted that the regulatory framework was put in place to protect the public and patient safety. He asserted that Ms Gray's conduct in not complying with her registration requirements, placed her patients and the public at an unwarranted risk of harm.

Mr Jones submitted that section 20.1 speaks for itself in terms of Ms Gray's flagrant disregard for regulatory requirements.

Mr Jones submitted that Ms Gray's conduct also breached sections 20.2 and 20.4. He submitted that Ms Gray's conduct in including the HIS logo in her advertisements would be misleading to the public and it would mislead the public into believing that the clinic was registered and was meeting its regulatory requirements.

In conclusion, Mr Jones submitted that the NMC accepts that not every breach of the Code would amount to misconduct, however, Ms Gray's behaviour was very concerning and constituted serious breaches of the Code. Mr Jones invited the panel to find that Ms Gray's actions in the charges found proved amounted to misconduct.

Submissions on impairment

Mr Jones referred the panel to the NMC Guidance on Impairment (DMA-1) which states that impairment is not defined in legislation but is a matter for the fitness to practise committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is as follows:

> *'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'*

Mr Jones stated that impairment needs to be considered as of today's date. He highlighted that the NMC defines impairment as the registrant's suitability to remain on the register

without restriction, there is no burden or standard proof to apply as this is a matter for the panel's own professional judgement.

Mr Jones submitted that, in considering impairment, the panel should consider the test formulated By Dame Janet Smith in the *Fifth Shipman Report,* quoted in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin). He submitted that limbs a, b, c and d of the *Grant* test are engaged in this case when looking at past conduct, and also when looking forward to the future.

Mr Jones submitted that in line with the case of Grant, impairment can be split into two broader considerations, firstly, whether the registrant poses the current risk to the public through her practice, which is public protection, and secondly, where the finding of impairment is needed to maintain public confidence in the profession and uphold professional standards, which is the public interest test.

Mr Jones submitted that Ms Gray's conduct including her dishonesty had not been addressed in any meaningful way by her. He asserted that there was no evidence of any real insight from Ms Gray, nor has she presented any reflective piece to address the concerns. Mr Jones highlighted that Ms Gray had placed the blame for the medications that were found in her Glasgow clinic squarely on the shoulders of her employees and she had not engaged fully with HIS, often disregarding its advice and their requirements. He submitted that Ms Gray had shown little remorse over her actions, and she had demonstrated no real accountability for her conduct.

Mr Jones submitted that Ms Gray's conduct raises concerns about her attitude and professionalism. Mr Jones stated that Ms Gray knew that her actions were dishonest, and yet she still went on to advertise services at the Edinburgh clinic without registration. He submitted Ms Gray's conduct demonstrated an attitudinal or behavioural issue that would be very difficult to remedy. He asserted that there is a clear risk of repetition of these concerns if Ms Gray were to open a new clinic in the future.

Mr Jones submitted that the public interest concerns arise as a result of the dishonesty that had been shown by Ms Gray. He submitted that a finding of impairment would be appropriate to uphold the proper professional standards and conduct to maintain public confidence in the profession.

In conclusion, Mr Jones invited the panel to find that Ms Gray's fitness to practise is impaired on both public protection and public interest grounds.

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 Ms Gray's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically, the following sections of the Code

> ***13 Recognise and work within the limits of your competence***
> *To achieve this, you must, as appropriate:*
> ***13.4*** *take account of your own personal safety as well as the safety of people in your care*
>
> ***19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice***
> *To achieve this, you must:*
> ***19.1*** *take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

19.4 *take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care 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, ….*

20.4 *keep to the laws of the country in which you are practising*

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

To achieve this, you must:

21.4 *make sure that any advertisements, publications or published material you produce or have produced for your professional services are accurate, responsible, ethical, do not mislead or exploit vulnerabilities and accurately reflect your relevant skills, experience and qualifications*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

Charges 1 and 3

The panel bore in mind that the public expects registered nurses to uphold the standards and values of the profession by following regulatory requirements including those of other regulatory bodies. The panel noted that Ms Gray was aware of her obligation to register her aesthetic clinics with HIS given the numerous notices issued to her to do so by HIS and her request for assistance with registration to Witness 1 on two occasions. Therefore, the panel was concerned that, despite several reminders from HIS, Ms Gray operated her Glasgow clinic without registration until 28 October 2021 and commenced and continued to operate her Edinburgh clinic without registration, while knowing that HIS considered that it required to be registered. The panel was of the view that Ms Gray's conduct

demonstrated a pattern of behaviour in which she displayed a flagrant disregard for regulatory requirements over an extensive period of time. The panel noted that regulatory requirements were made to ensure the safety of the public and therefore her failure to follow those provisions placed the public at risk of harm.

The panel therefore determined that Ms Gray's actions fell short of the fundamental obligations that registered nurses are expected to perform to patients under their care. Consequently, the panel determined that Ms Gray's actions in charges 1 and 3 were serious and amount to misconduct.

Charges 2a, 2b and 2c

The panel bore in mind that it had earlier found that it was the responsibility of Ms Gray as the registered manager to be aware of all medications in Harlohs Glasgow's premises, to ensure that they were licensed, identifiable and clearly labelled in English, in accordance with regulatory requirements. The panel was of the view that Ms Gray's conduct in failing to follow regulatory requirements in respect of items in pharmaceutical refrigerator posed a serious risk of harm to the members of the public. The panel therefore determined that Ms Gray's conduct fell short of the fundamental obligations that registered nurses are expected to perform to patients under their care. Consequently, the panel determined that Ms Gray's actions in charges 2a, 2b and 2c were serious and amount to misconduct.

Charges 2d, 4 and 5

The panel was of the view that Ms Gray's conduct in offering a minor surgical procedure, despite not being registered to provide this service, posed a serious risk of harm to the public. It was concerned that despite being directed by Witness 1 not to offer such service without a variation of conditions of registration, Ms Gray still went ahead to offer such service to the public. Therefore, Ms Gray placed her interests over others and displayed a brazen disregard for regulatory requirements.

The panel also considered Ms Gray's conduct in advertising the unregistered Edinburgh clinic to the public to be misleading and deceptive. The panel was of the view that Ms Gray's conduct amounted to a breach of the public trust placed in her as a registered nurse that her services were in compliance with all relevant regulatory requirements. The panel considered honesty, integrity and trustworthiness to be the bedrock of the nursing profession and, in being dishonest in the running of her clinic, it found Ms Gray to have breached a fundamental tenet of the nursing profession. The panel considered Ms Gray's dishonest behaviour to be unprofessional and would be seen as deplorable by other members of the profession and the public. Therefore, the panel was in no doubt that Ms Gray's actions in charges 2d, 4 and 5 amount to misconduct.

Consequently, having considered the proven charges individually and in totality, the panel determined that Ms Gray's actions in the charges found proved, 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, Ms Gray's fitness to practise is currently impaired.

Registered 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.

The panel had regard to the NMC Guidance on Impairment especially the question which states:

> '*Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'*

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

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel first considered whether any of the limbs of the Grant test were engaged in the past. The panel determined that Ms Gray's actions in operating a clinic before registration, her failures to register the Edinburgh clinic and to follow regulatory requirements, placed patients and the public at unwarranted risk of harm.

The panel bore in mind that honesty and cooperation with regulatory authorities are fundamental tenets of the nursing profession, which Ms Gray had breached by her misconduct. The panel also found that Ms Gray's misconduct constituted a serious breach of fundamental tenets of the nursing profession in that she failed to preserve safety and promote professionalism and trust. It determined that Ms Gray failed to uphold the standards and values of the nursing profession, thereby bringing the reputation of the nursing profession into disrepute. The panel also found Ms Gray to have acted dishonestly.

The panel therefore concluded that limbs a, b, c and d of the Grant test are potentially engaged in respect of Ms Gray's past conduct.

The panel next considered whether the limbs of the *Grant* test are engaged as to the future. In this regard, the panel considered the case of *Cohen v GMC* in which the court addressed the issue of impairment with regard to the following three considerations:

a. *'Is the conduct that led to the charge easily remediable?*

b. *Has it in fact been remedied?*

c. *Is it highly unlikely to be repeated?'*

In this regard, the panel also considered the factors set out in the NMC Guidance on Insight and strengthened practice (FTP-15).

The panel first considered whether Ms Gray's misconduct is capable of being addressed. The panel was of the view that Ms Gray's misconduct is potentially capable of being addressed through a process of insightful reflections, retraining in the areas of concern and evidence of good practice. However, the panel considered that Ms Gray's misconduct was premeditated and deliberate, which occurred over an extensive period of time. The panel was of the view that Ms Gray's actions including her dishonest conduct were suggestive of deep-seated attitudinal concerns. It therefore decided that the concerns are difficult to remediate due to their deep-seated attitudinal nature.

The panel then went on to consider whether the concerns has been addressed and remediated. It had regard to the NMC Guidance – Has the concern been addressed (FTP-15b). The panel took into account the Registrant Response Bundle provided by Ms Gray.

Regarding insight, the panel noted that in her email to the NMC dated 22 April 2020, Ms Gray stated that, on reflection, she believed she was naive in accepting inaccurate advice from her trainer in operating her Glasgow clinic prior to registration and administering unlicensed Botox. However, the panel did not consider her statement as demonstrating insight.

The panel noted that there was no evidence of remorse as Ms Gray sought to deflect responsibility for some of her actions and tended to provide justifications for them. The panel was concerned that Ms Gray failed to demonstrate any understanding of the seriousness of her misconduct, nor did she show any insight into the risk of harm her actions posed to patients and the wider public. The panel noted that she did not further demonstrate any insight into the impact of her actions on the reputation of the nursing profession nor into any step she would take to prevent any of the concerns from re-occurring in the future. The panel considered that Ms Gray had refused to engage with these proceedings in that she dismissed the concerns as *'totally irrelevant'* on the basis that she is no longer a practising nurse and did not intend to practise in the future. The panel therefore determined that Ms Gray has failed to demonstrate insight into her misconduct.

In considering whether Ms Gray has strengthened her nursing practice, the panel considered the various training certificates contained in the Registrant Response Bundle. The panel noted that the training certificates were outdated and irrelevant to the concerns against Ms Gray. Therefore, the panel attached no weight to them given that it is considering current impairment. The panel noted that there was no other evidence of strengthened practice before it.

In light of this, the panel was not satisfied that Ms Gray's misconduct had been remediated nor has she strengthened her nursing practice. Accordingly, the panel determined that Ms Gray's misconduct is not highly unlikely to be repeated. Therefore, limbs a, b, c and d of the *Grant* test are engaged as to the future.

The panel therefore concluded that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold 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 had regard to the serious nature of Ms Gray's misconduct and the public protection issues identified. It was of the view that Ms Gray's unremediated long-term deliberate failure to follow regulatory requirements in the clinics she operated as a registered nurse, coupled with her dishonesty in the setting up and in the running of clinical practice, meets the high threshold for a finding of current impairment in the public interest, based on past conduct .

Accordingly, the panel determined that public confidence in the nursing profession would be undermined if a finding of impairment were not made in this case. For these reasons,

the panel determined that a finding of current impairment on public interest grounds is required. It decided that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold proper professional standards for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that Ms Gray's fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Ms Gray off the register. The effect of this order is that the NMC register will show that Ms Gray 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

Mr Jones submitted that it is the NMC's position that a striking off order should be imposed given the findings of the panel that Ms Gray's fitness to practise is currently impaired.

Mr Jones submitted that the aggravating factors in this case are as follows:

- The clear awareness of a breach of a regulatory requirement.
- Deep seated attitudinal concerns
- Dishonesty
- Lack of insight and remorse.

Mr Jones submitted that the only mitigating factor is Ms Gray's limited engagement with these proceedings.

Mr Jones submitted that, in considering the available sanctions from the least restrictive order, taking no further action and a caution order would be wholly inappropriate in this case given the seriousness of the concerns, the risks to the public identified in this case and the gravity of the misconduct and impairment.

Mr Jones submitted that a conditions of practice order would not be appropriate in this case. He asserted that Ms Gray's actions demonstrated deep-seated attitudinal issues which would be difficult to remediate through a conditions of practice order. He highlighted that Ms Gray had indicated that she considered that these proceedings were totally irrelevant to her as she is no longer practising as a registered nurse and had no wish to resume practice. He submitted that given Ms Gray's views, it is unlikely that she would be willing to retrain in the areas of concern. He there submitted that there are no workable and proportionate conditions that could address the concerns in this case.

Mr Jones referred the panel to the SG on suspension orders. He submitted that the checklist provided in the SG does not apply in this case. He asserted that a suspension order would not be suitable in this case and that the seriousness of the case requires permanent removal from the register and not just temporary removal. He argued that a temporary removal from the register will not adequately address the regulatory concerns nor the public protection and public interest issues stemming from the concerns in this case, especially when taking into consideration Ms Gray's lack of professionalism and trustworthiness.

Mr Jones submitted that Ms Gray's behaviour was not a single instance of misconduct but a prolonged pattern of misconduct across two separate clinics. He highlighted that Miss Gray deliberately ignored her legal obligations to register her clinics with HIS and she operated those clinics whilst they were not registered. He reminded the panel that Ms Gray has showed little to no insight into her behaviour. He stated that Ms Gray had not

expressed any remorse and nor had she accepted any substantial responsibility for her actions. He concluded that, given Ms Gray's lack of insight, she clearly poses a significant risk of repeating her misconduct and therefore a suspension order would not be appropriate in this case.

With respect to a striking-off order, Mr Jones referred the panel to the NMC Sanctions Guidance on striking-off orders. He submitted that there are key considerations for imposing a striking-off order. First, '*do the regulatory concerns about the nurse, midwife or nursing associate, raise fundamental questions about the professionalism?*' He submitted that the answer to this question is '*yes*'. He submitted that Ms Gray's professionalism is clearly in question, given the dishonest nature of her actions.

Mr Jones stated that the second question is '*can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife, or nursing associate is not removed from the register?'* He submitted that the answer to that question is '*no*'. He asserted that the concerns in this case could not be adequately remedied by any conditions that may be imposed or a temporary removal from the register. He argued that public confidence would be undermined if a nurse with deep-seated attitudinal issues was permitted to remain on the register and be allowed to practise, with or without restriction.

Mr Jones stated that the third question is, '*Is a striking off order the only sanction which would be sufficient to protect patients, members of the public or to maintain professional standards?*' Mr Jones submitted that the answer to that question is '*yes*'.

Mr Jones referred the panel to the NMC Guidance on '*Considering sanctions for serious cases', in particular, 'Cases involving dishonesty',* SAN-2. He submitted that a striking-off order is the only appropriate sanction in this case, and that any other sanction would be insufficient.

Decision and reasons on sanction

Having found Ms Gray'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 identified the following aggravating features:

- Ms Gray's misconduct placed patients and members of the public at unwarranted risk of harm.
- The flagrant disregard for regulatory requirements by a regulated professional.
- Ms Gray's lack of insight into the concerns.
- No evidence of remorse, remediation or strengthened practice.
- There was a pattern of misconduct over an extensive period of time.

The panel determined that there was insufficient evidence to indicate any mitigating features in this case.

The panel had regard to the NMC Guidance on *'Considering sanctions for serious cases', in particular, 'Cases involving dishonesty'*, SAN-2. The panel found that Ms Gray's conduct was not a one-off incident nor was it a spontaneous action, but instead a premeditated and deliberate course of conduct over an extended period of time. Ms Gray's dishonest conduct demonstrated a lack of respect for her professional obligations as a registered nurse towards her regulator. She placed her own interests over others, and over her professional regulator for her own personal gain. It was a longstanding deception which posed a serious risk of harm to the public and was very damaging to the reputation of the profession.

Given that the dishonesty was in relation to Ms Gray's professional regulatory obligations, the panel therefore found the dishonesty in this case to be serious.

The panel first considered whether to take no further action but concluded that this would be inappropriate in view of the seriousness of the case. It had found that there remains a risk of repetition, that Ms Gray breached fundamental tenets of the nursing profession, and that her misconduct undermines the public's confidence in the nursing profession if she were allowed to practise without restriction. The panel noted that Ms Gray's NMC personal identification number (PIN) only remains active due to these proceedings, as she had not revalidated her PIN. The panel was aware that if it takes no further action, Ms Gray's NMC PIN would lapse at the conclusion of these proceedings. However, the panel determined that given the serious public interest considerations in this case and the serious nature of the concerns, it would not be appropriate nor be in the public interest to take no further action, as the panel considered that the seriousness of the matters found proved should be marked by a sanction.

The panel 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 Ms Gray's nursing 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 Ms Gray'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 therefore determined that a caution order would neither protect the public nor be in the public interest.

The panel next considered whether placing conditions of practice on Ms Gray's registration would be a sufficient and appropriate response. The panel is mindful that any

conditions imposed must be relevant, proportionate, measurable and workable. The panel took into account the SG (SAN-3c), in particular:

> *'Conditions may be appropriate when some or all of the following factors are apparent:*
>
> - *No evidence of harmful deep-seated personality or attitudinal problems;*
> - *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
> - *No evidence of general incompetence;*
> - *Potential and willingness to respond positively to retraining;*
> - *……*
> - *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 bore in mind that it had earlier identified deep-seated attitudinal problems in this case including serious dishonesty on Ms Gray's part. It was of the view that these deep-seated attitudinal concerns could not be addressed through retraining and are difficult to remediate. The panel was not satisfied that there was any evidence to show that Ms Gray would comply with any conditions of practice given her persistent disregard for regulatory requirements. It noted that Ms Gray had also indicated that she is no longer a practising nurse and did not intend to practise in the future. There would be no possibility of Ms Gray engaging with conditions of practice for that reason. The panel further noted that conditions of practice usually relate to clinical concerns, and not to deep-seated attitudinal issues.

The panel determined that given the seriousness of the concerns, the deep-seated attitudinal issues and Ms Gray's lack of insight into the severity and the

potential impact of her actions on the public and the nursing profession, there were no relevant, proportionate, workable and measurable conditions that could be formulated to address the risk of repetition. This poses a risk of harm to patients' safety and the public should Ms Gray change her mind and seek to return to practice. Consequently, the panel determined that a conditions of practice order would not protect the public nor be in the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG (SAN-3d) 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;*
- *…….;*
- *……..'*

The panel noted that this was not a single instance of misconduct but rather a sustained pattern of misconduct over an extended period of time. It had found that Ms Gray failed to demonstrate insight into the severity and the potential impact of her actions on the public and the nursing profession. Although there is no evidence of repetition of the concerns since the incident, the panel had found that Ms Gray's actions are suggestive of deep-seated attitudinal concerns which heightens the significant risk of repetition. The panel further noted that that Ms Gray had also indicated that she is no longer a practising nurse and did not intend to practise in the future. The panel was not satisfied that a period of suspension would serve any useful purpose.

Accordingly, the panel determined that a period of suspension would not be a sufficient, appropriate or proportionate sanction. It would neither protect the public nor satisfy the public interest consideration in this case.

Finally, in considering a striking-off order, the panel took note of the following paragraphs of the NMC Sanctions Guidance on Striking-off (SAN-3e):

- *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 was of the view that all of the criteria set out above are met in this case. It was very concerned about the deliberate, persistent and blatant disregard for regulatory requirements by Ms Gray, who as a regulated professional, is expected to comply with all professional regulatory obligations. The panel concluded that the serious breach of fundamental tenets of the profession, evidenced by Ms Gray's actions and dishonest conduct, is fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case raise serious and significant questions about Ms Gray's professionalism 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, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

The panel considered that this order is 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 standards of behaviour expected and required of a registered nurse.

This will be confirmed to Ms Gray 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 Ms Gray's own interests until the striking-off sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Mr Jones. He submitted that, given the seriousness of the concerns and the panel's findings on sanction, an interim suspension order for a period of 18 months is necessary in order to protect the public and otherwise in the public interest, to cover the 28-day appeal period before the substantive order becomes effective.

The panel accepted the advice of the legal assessor.

Decision and reasons on 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 in reaching the decision to impose an interim order. The panel was therefore satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest.

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 in order to protect the public and otherwise in the public interest, during any potential appeal period. The panel determined that not to impose an interim order would be inconsistent with its earlier decisions.

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

That concludes this determination.