Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

23 January 2023 – 3 February 2023,
7 February 2023 – 13 February 2023,
(10 – 11 July 2023 and 16 October 2023 in-camera)
17 October 2023
(8 – 10 April 2024 in-camera)
11 – 12 April 2024 and 22 – 23 April 2024
17 – 21 June 2024, (9 October 2024 in-camera)
11 October 2024, 21 – 23 October 2024, (24 October 2024 in-camera)
(28 - 29 October 2024 in-camera), 30 October 2024,
25 – 27 November 2024, and 9 – 13 December 2024
3 - 7 February 2025 and 10 – 12 February 2025
10-13 March 2025 and (17-20 March 2025 in camera and handed down on 20 March 2025 PM)
8 – 11 April 2025
8-10,15-16 (in camera), 22 (in camera) and 29-30 (in camera) September 2025
13, 14, 15 and 17 October 2025

Virtual Hearing

Name of Registrant:	**Eunice Amma Asiedu-Baning**
NMC PIN:	05G0821O
Part(s) of the register:	Registered Midwife – 19 August 2010 Registered Nurse – Sub Part 1 Adult Nursing - July 2005
Relevant Location:	Milton Keynes
Type of case:	Misconduct
Panel members:	Melissa D'Mello (Chair, Lay member) Diane Gow (Registrant member) Catherine Askey (Registrant member) 23 January 2023 - 30 October 2024 Vikki Coleman (Registrant member) from 25 November 2024
Legal Assessor:	John Donnelly 23 - 31 January 2023, 1 – 13 February 2023, 10 – 11 July 2023

	Christopher McKay 8-11 April 2025 Ruth Mann 17-20 March 2025 and 8-10 and 15-16 September 2025 Nigel Pascoe from 16 October 2023 – 13 March 2025 and 22 and 29-30 September 2025 and 13 October 2025 Sean Hammond from 14 October 2025 onwards
Hearings Coordinator:	Chandika Cheekhoory-Hughes-Jones 23 - 31 January 2023, 2 – 13 February 2023 Phil Austin 1 February 2023 Ruth Bass 10 – 11 July 2023 and 16 -17 October 2023, 8 – 12 April 2024, 22 – 23 April 2024, 17 – 21 June 2024, 21 – 24 October 2024, 28 – 30 October 2024, 25 – 27 November 2024 and 9 – 10 -13 December 2024, 3 - 7 February 2025, 10 – 12 February 2025 and 10-13 March 2025 Max Buadi 9 and 11 October 2024 Hamizah Sukiman 5 February (AM only) Vicky Green 26 November 2024 and from 17 March 2025 onwards
Nursing and Midwifery Council:	Represented by Claire Stevenson, Case Presenter
Mrs Asiedu-Baning:	Present and represented by Neomi Bennett, Equality 4 Black Nurses (‘E4BN’) 23 January 2023- 3 February 2023, 7-13 February 2023 and 17 October 2023 Not present but represented by Neomi Bennett 11-12 April 2024 and 21 June 2024 Present and represented by Neomi Bennett 22-23 April 2024, 17-20 June 2024 and from around 14:30 on 11 October 2024 Present and unrepresented until around 14:30 on 11 October 2024, 21-23 October 2024, 30 October 2024, 25-27 November 2024, 9,10 and 13 December 2024, 3-7 February 2025 and 10-12 February 2025

	Present and represented by Chima Umezuruike, Counsel, 10-13 March 2025 and 20 March 2025 to receive decision Not present and not represented in her absence 8-11 April 2025, September 2025 and October 2025
Facts proved:	Charges 1)i), 1)ii), 2 (in respect of charge 1)i) and 1)ii)), 3)ii) and 4 (in respect of charge 3)ii))
Facts not proved:	Charges 3)i), 4 (in respect of charge 3)i)) and 5(in its entirety)
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order – 18 months

Decisions and reasons to amend typographical errors in the charge sheet

On day 2 of the hearing, the panel observed that the charge sheet which sets out the charges of these proceedings, contained four typographical errors, namely in the opening line of the charges, as well as in charge 1 (ii), charge 2 and charge 4. In relation to three out of these four typographical errors, this panel observed that the previous panel had already determined that these be corrected. The panel therefore invited submissions from Ms Bennett, on your behalf, and from Ms Stevenson, on behalf of the Nursing and Midwifery Council ('NMC'), with regard to the typographical errors in the charges being amended as follows:

"That you, whilst **you were** *working as a registered midwife at Milton Keynes Hospital, on the night shift 03-04 November 2017*

1) In relation to Baby A you

i) Made an incorrect entry in Baby A's medical records that you had taken a blood sugar reading at approximately 2415, when you had not done so

ii) Made an incorrect entry in Baby A's medical records in that you recorded that you took a blood sugar reading of 5.2 ~~mols~~ **mmols** *at approximately 0400 which was not an accurate record of a test you had carried out*

*2) You***r** *conduct at Charge 1i) and/or Charge 1ii) above was dishonest because you created a record/s providing information about the state of Baby A's health which was not true*

3) In relation to Baby B you

i) Made an incorrect entry in Baby B's medical records that you had taken a blood sugar reading at approximately 0230, when you had not done so;

ii) Made an incorrect entry in Baby B's medical records that you had taken observations at approximately 0230, when you had not done so

*4) You**r** conduct at Charge 3i) and/or Charge 3ii) above was dishonest because you created a record/s providing information about the state of Baby B's health which was not true*

5) You administered medication to Patient B, namely a 'brown tablet',

i) Which was not clinically indicated for her at that time and/or
ii) Which you were later unable to identify and /or advise upon.

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

Both Ms Bennett and Ms Stevenson agreed that the errors in relation to the opening line of the charge sheet as well as in charge 2 and charge 4 were typographical errors which ought to have been amended by the NMC following the determination of the previous panel. Both Ms Bennett and Ms Stevenson agreed that these now be amended on the basis of being typographical errors.

In relation to the error in charge 1(ii), both Ms Bennett and Ms Stevenson agreed that the error amounted to a typographical error and that charge 4 be amended to correct the typographical error and for the sake of clarity.

The panel accepted the advice of the legal assessor.

The panel was of the view that such amendments constitute minor typographical or grammatical corrections and determined that the amendments be made to reflect the determination of the previous panel on amendments to the charge and for the sake of clarity. The panel was satisfied that no prejudice would be caused to either party by the proposed amendments being allowed.

Decisions and reasons on admissibility of witness summonses of Patients A and B

The panel heard an application made by Ms Bennett to allow into evidence the witness summonses of Patient A and Patient B dated 17 January 2023 ('the witness summonses'). The application was made pursuant to Rule 31 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Bennett submitted that neither you nor anyone on your behalf was involved in determining the order of proceedings of witnesses. She submitted that this was done by the NMC *ex parte*. She submitted that once the witness order has been discharged, all parties to the proceedings, including the panel, must have sight of the documents on the grounds of transparency. She submitted that she intended to refer to the witness summonses of Patient A and Patient B in due course, after 31 January 2023.

Ms Stevenson submitted that you and Ms Bennett have been put on notice of the witness difficulties the NMC had encountered. She submitted that by doing so, the NMC has gone above and beyond what is required of it at this stage. She submitted that how the NMC brings its own witnesses to a hearing is a matter for the NMC, and that the NMC has been as transparent as it can be. She referred to the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and conceded that the panel will need to have sight of the witness summonses in order to determine on Ms Bennett's application.

However, Ms Stevenson submitted that the witness summonses are, at this stage, not relevant. She stated that the NMC agreed to the prompt disclosure of the witness summonses for the purpose of timetabling, as opposed to for the purpose of these witness summonses being relied upon as evidence. She reminded the panel that the

test on admissibility is not whether the document which is sought to be admitted is prejudicial, but whether the document is relevant and fair and reminded the panel that it should not move away from the evidential test. She submitted that the disclosure of a document does not automatically mean that this document becomes part of the proceedings, and that transparency is not the reason as to why the witness summonses should be considered as relevant.

Ms Stevenson further submitted that admitting the witness summonses in evidence might be prejudicial to the witnesses, Patients A and B, and to whether they might engage.

Ms Stevenson stated that the other information provided yesterday to the panel was to assist it in its understanding of this unusual case and what happened previously, but that it was not evidence upon which the NMC relies. She submitted that if the application is denied, there may be other opportunities, at a later stage, for Ms Bennett to renew her application.

The panel accepted the advice of the legal assessor.

The panel was previously made aware of the existence of the witness summonses and has now had sight of them for the purpose of determining Ms Bennett's application. It noted that the witness summonses are fairly short documents, namely three pages each and seem to focus on the summoning in writing of Patients A and B *"to attend a Virtual Hearing on 30 & 31 January 2023 at 09.00am"* and the consequences of failing to comply with the relevant witness summons.

The panel gave careful consideration to the application. The panel noted that Ms Bennett was seeking the admissibility of the witness summonses on the basis of transparency. The panel bore in mind that the test regarding admissibility is to determine whether the document which is sought to be admitted is '*relevant and fair'*. However, based on the evidence before it and the submissions from both parties, the panel determined that the witness summonses do not meet the first threshold of '*relevance'*, It had sight of the witness summonses and determined that there is no

probative value in the witness summonses at this time. It concluded that these were essentially *pro-forma* documents, are not relevant to the issues before the panel and that these do not assist the panel at all.

In these circumstances, the panel having found that the witness summonses do not meet the threshold of '*relevance'*, it was of the view that the second threshold of '*fairness'* falls. The panel therefore denies Ms Bennett's application at this stage.

Details of charge

"That you, whilst you were working as a registered midwife at Milton Keynes Hospital, on the night shift 03-04 November 2017

1) In relation to Baby A you

i) Made an incorrect entry in Baby A's medical records that you had taken a blood sugar reading at approximately 2415, when you had not done so

ii) Made an incorrect entry in Baby A's medical records in that you recorded that you took a blood sugar reading of 5.2 mmols at approximately 0400 which was not an accurate record of a test you had carried out

2) Your conduct at Charge 1i) and/or Charge 1ii) above was dishonest because you created a record/s providing information about the state of Baby A's health which was not true

3) In relation to Baby B you

i) Made an incorrect entry in Baby B's medical records that you had taken a blood sugar reading at approximately 0230, when you had not done so;

ii) Made an incorrect entry in Baby B's medical records that you had taken observations at approximately 0230, when you had not done so

4) Your conduct at Charge 3i) and/or Charge 3ii) above was dishonest because you created a record/s providing information about the state of Baby B's health which was not true

5) You administered medication to Patient B, namely a 'brown tablet',

i) Which was not clinically indicated for her at that time and/or
ii) Which you were later unable to identify and /or advise upon.

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

No admissions were made to the charges.

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

On day four of the hearing, Ms Stevenson made a request that this case be held partially in private on the basis that proper exploration of your case involves reference to patients and their children. The application was made pursuant to Rule 19 of the Rules.

Ms Bennett indicated that she supported the application.

The panel also invited submissions from the parties as to the anonymisation, both in the evidence bundles and in the hearing, of any names that are not directly related to the matters in discussion. The panel further invited submissions on witnesses taking the oath or affirmation in private and thereafter their name being anonymised in the public hearing and that the transcript be marked retrospectively in respect of these anonymisations.

Ms Stevenson agreed that full anonymisation was preferable and subsequently marking the transcript as such.

Ms Bennett submitted that the patients and their offspring and witnesses should be anonymised. However, other names that had been mentioned throughout the hearing should not be anonymised as they are people in a position of authority, and it is in the public interest that anybody who wishes to review the case can do so. Ms Bennett agreed with marking the transcript in retrospect.

The panel accepted the advice of the legal assessor with regard to Rule 19.

The panel has undertaken a careful balancing act and weighed up the respective interests of these parties against your own. It considered there was a risk of reputational damage to third parties who may not have known that their names were being referenced. The panel also recognised that those names might be the subject of enquiries from future employers or may be stigmatised publicly. The panel wished to recognise the rights and interests of these individuals. The panel determined to go into private session when parties were going to be named in order to protect the privacy of the patients and their family members, witnesses and third parties. The panel determined that the transcript would retrospectively be marked in private and any names mentioned to be replaced by the relevant anonymisation.

Indication from Ms Bennett for application to admit Witness 5's witness statement and complaint form from Milton Keynes Hospital ('The Hospital')

On day four of the hearing, the panel heard an application from Ms Bennett to admit in evidence the witness statement of Witness 5, a potential defence witness, and the complaint form from the Hospital.

Ms Stephenson submitted that whilst these documents are admissible, more information would be required regarding the date and provenance of these documents.

Ms Bennett clarified that she had telephoned the Hospital and enquired about the process for filing a complaint as a patient or as a member of the public. She stated that she was signposted by the Hospital's switchboard to the Hospital's website, which is where the document comes from. She stated that she could send the website link to Ms Stephenson which is where she downloaded the document from.

Ms Bennett conceded that the document was not dated and that it is likely that the document was not in force at the time of these events. Ms Bennett resolved to make further enquiries to see if the appropriate document, in place at the time of these events, could be obtained.

In those circumstances, the witness statement of Witness 5 was now served on the NMC and the application to admit the complaint form from the Hospital was not pursued.

Ms Bennett's withdrawn assertion of racism and bias from the panel

In light of Ms Bennett's now withdrawn assertion of racism and bias, the panel set out limited extracts from the evidence to demonstrate the nature of this allegation and its subsequent withdrawal.

On day six of the hearing, Ms Bennett submitted that she had concerns that the panel was glossing over matters as a result of racism or bias. Ms Bennett referred the panel to a case cited in an NMC document entitled '*Looking back, learning lessons and improving'*. Ms Bennett stated the following in relation to that document:

> *"In that case, the NMC said, 'We're committed to learning' from that case, whereby a white registrant, a white registrant, didn't get enough severe of a sanction. So I'd just like to remind you of what the NMC said. They said that they're committed to learning from that case. I can send you the paperwork if you like. So that they get it right decisions in future cases involving racism and discrimination. Glossing over is a pertinent aspect of you being able to identify… glossing over can prevent you from getting it right"*.

The Chair of the panel asked whether Ms Bennett was suggesting that the Chair was biased.

In response, Ms Bennett stated:

> *"Unfortunately, Chair, I will have to say yes. I believe that the whole process that we are about to go through from the day 1 is completely biased. No disrespect to people here, but there's an old saying, 'Those who know it, feel it'. Unfortunately there's nobody that can identify with myself or the Registrant to understand the racism that we face day to day. I'm really trying my hardest to help you guys to understand that, but it seems like it's going to be a bigger effort, because it's not resonating because, like I said, an important point wasn't acknowledged by three people that are going to be making the overall decision. So it does feel like there's bias at the heart of this, and I do believe that discrimination is underpinning this case. But the Registrant has been waiting for five years, and we just want to crack on and get on with it."*

In response to a clarification question from the panel as to whether Ms Bennett is of the view that the panel is biased and that you cannot be afforded a fair hearing, Ms Bennett sought some time to seek instructions from you.

Upon resuming, Ms Bennett clarified as follows:

> *"…I think I realise that the question you asked me, I answered it as a general. But it was actually specific to one point, which was 'Did Witness 1 consider racism?' I think it was just the fact – well, yes, when I highlighted it, only some people had seemed to have heard it. That just one instance there, we felt that – I felt that that bit there was the bias. But the whole process of the NMC, the Registrant and myself, we're confident that everybody's professional. So again, I can only apologise if it sounded like I was saying the whole process. It was just limited to that specific thing…"*

Ms Bennett further stated that *"So no, we don't believe that the panel and the NMC process is biased. We believe that everybody here is professional"* and that you *"have confidence that this is a professional panel and that there is no bias in the process"*. She clarified that the process has to be fair and free from prejudice and that earlier she had raised her concerns regarding an aspect of the process, however that she is reassured as *"you are the NMC, and you're all professional"*. Ms Bennett clarified that *"the other issue, in how I asked the question, some people, in my organisation, would say it's called tone-policing"* and that, as suggested by Ms Bennett's legal team Counsel, going forward, as opposed to saying *"Black"*, she would *"maybe use the word 'Race'"*. Ms Bennett apologised if she *"accused the whole process as racist and bias"* and stated that she does not consider the chair as biased and *"racist in the process"*.

When the Chair asked Ms Bennett to confirm her position on whether any panel member or the panel as a whole was either biased or racist, Ms Bennett replied *"so at this moment in time I do not believe that there's any bias or discrimination or prejudice within the panel. So at this moment in time we are confident that the panel is fair and they're just."*

Ms Bennett stated that she is confident that *"the NMC is doing due diligence in choosing their panel"*.

Ms Stephenson submitted that it is arguable as to whether an application was made by Ms Bennett, and that after instructions, it seems that no application was made as it was withdrawn. She submitted that there is nothing further to this application to be considered.

In reply to questions from the panel, Ms Stephenson stated that it was a factual query and that she does not consider that there is racism or bias on behalf of the Chair and the panel.

The panel heard and accepted the advice of the legal assessor. Ms Bennett's submissions were in two parts; firstly, regarding *"glossing over"* and recognition of racism, and secondly, regarding the proper approach and the use of the word *"black"* to

be replaced by *"race"*. Ms Bennett had submitted that *"bias was underpinning the case and it is what it is"*. Ms Bennett had had the opportunity to readdress the panel during submissions and that *'tone-policing'* was a course for the future. Ms Bennett's submissions on racism or bias were no longer being pursued. Consequently, there was no obligation on Ms Stephenson to respond to them. The panel was referred to the case of *Rasul v General Pharmaceutical Council* [2015] EWHC 217 (Admin) which sets out the test for bias.

The panel noted Ms Bennett's apology for suggesting the panel was racist and biased and that she had withdrawn those comments.

The panel was satisfied that it would seek to continue to adjudicate upon this case in an independent, objective, fair and unbiased approach, and that its findings will be based on the evidence before it, including oral and documentary evidence.

The panel was minded to continue with the hearing, but wished to clarify the following point submitted by Ms Bennett:

- *"you* [the panel] *are the NMC, and you're all professional"*. – the panel is not a part of the NMC, and has been convened to make an independent determination on the evidence placed before it.

Decision and reasons on application to admit policy documents

On day eight of the hearing, the panel heard an application from Ms Bennett to admit in evidence four documents respectively entitled 'NMC Fitness to Practise - what will happen next', 'NHS Workforce Race Equality Standard Strategy' dated March 2022, 'The Information Governance Review' dated March 2013 and NHS England 'Information Governance Operating Model 2016/2017' (Department of Health document).

Ms Bennett stated that she wanted to know which of the witnesses knew about the NMC process and wanted the witnesses to understand the seriousness of their

evidence and the allegations. She stated that she wanted to talk about racism and diversity in the NMC, which she submitted is a relevant theme in this case. Ms Bennett considered it fair for Witness 3 to be able to answer any questions that she may have about race equality and diversity that NHS Hospitals implement within their organisations. Ms Bennett submitted that the documents are relevant and fair to the case.

Ms Stephenson submitted that Ms Bennett had attempted to explain the relevance but that it was not clear that all the documents are relevant. She submitted that it may become clear as the case progresses, so the question of fairness and relevance can be revisited by the panel. She submitted that at this stage, the NMC did not object to the material being a part of the hearing. Ms Stevenson submitted that the documents should be considered within the remit of the panel, and witnesses should not be questioned outside of what is within their reasonable knowledge.

The panel accepted the advice of the legal assessor.

The panel determined that the 'NMC Fitness to Practise - what will happen next' document, was not relevant. The panel found that the document is a basic summary of the process explained, carries no probative value, is not relevant to Witness 3 and is not relevant to the charges which the panel has to consider. The panel noted that despite Ms Bennett's attempt to clarify the relevance, it remained unclear. It further noted that Ms Bennett's initial submissions related to data protection and later changed to matters concerning race discrimination. Having determined that the document is not relevant, the limb of fairness falls.

The panel determined that the 'NHS Workforce Race Equality Standard Strategy' document dated March 2022 is not relevant. The panel found that the document did not relate to the charges under consideration. The panel also noted that the document postdates the events giving rise to the charges, and that this document did not exist in November 2017. The panel also considered that the document has no probative value. Having determined that the document is not relevant, the limb of fairness falls.

With regard to the ‘The Information Governance Review’ document, the panel determined that this document was not relevant. The panel noted that the document, which talks about individuals’ personal private information, is not relevant to the charges and has no probative value in respect of matters before the panel. Having determined that the document is not relevant, the limb of fairness falls.

With regard to the ‘NHS England ‘Information Governance Operating Model 2016/2017’ document, the panel found this to be of no relevance to the charges before it and therefore of no probative value.

Renewed application to admit documents

On day nine of the hearing, the panel paused the oral evidence of Witness 3 in order to hear a renewed application from Ms Bennett to admit into evidence ‘The Information Governance Review’ document dated March 2013, and the NHS England ‘Information Governance Operating Model 2016/2017’ document. Ms Bennett stated that in cross-examination, Witness 3 confirmed that they are governed by the document. In light of this, Ms Bennett requested the panel to review its earlier decision to admit that document into evidence. Ms Bennett stated that the 2017 document underpins the General Data Protection Regulations (GDPR) and data protection of patients, individuals, members of the public and staff data.

Ms Bennett submitted that she had contacted the Department of Health and her contacts at NHS England, who confirmed that the two documents she was seeking to admit into evidence underpin the GDPR and the data governance of NHS hospitals across the country. Ms Bennett submitted that these documents were relevant to the charges because Witness 1 had conducted her own independent investigation in her own time and Ms Bennett wished to ensure that GDPR and patients’ data had not been breached during Witness 1’s investigation. Ms Bennett wished to look at the reliability of the evidence that Witness 3 had produced and wished to ask questions of Witness 3 to enable justice for you, members of the public and patients.

Ms Stephenson adopted her earlier submissions on this issue and further stated that it is a matter for the panel. However, she submitted that Witness 3's answer referred to a Milton Keynes Hospital ('the Hospital') document whereas the document referred to by Ms Bennett was an NHS England document. Ms Stevenson submitted that she wished to reinforce the point that witnesses should be answering questions within their knowledge.

The panel accepted the advice of the legal assessor.

The panel heard that Ms Bennett's application is a renewed application under Rule 31, and that in light of the answers given by Witness 3 during cross-examination, relevance and fairness of the document is to be reconsidered.

The panel noted that the documents referred to are NHS England documents in the public domain and were not challenged by the NMC. The panel noted that Ms Bennett had stated that national policy underpins the Hospital's own policies and that the document is a national policy on which all hospitals based their own governance on. The panel was of the view that the documents may clarify the line of cross-examination and the submissions of Ms Bennett. The panel considered that these documents may have some potential relevance.

The panel moved on to address the issue of fairness. It noted that the documents are not contested by the NMC and that they may underpin the Hospital's own policy. The panel was of the view that the admission of these documents did not result in unfairness or prejudice to either party.

Decision and reasons on whether to admit a document

On day 11 of the hearing, the panel heard an application from Ms Bennett to admit in to evidence a further Hospital document entitled 'Maternity Health Records and Record Keeping Guideline' dated March 2015, that she had received from the NMC.

Ms Bennett informed the panel she now seeks to put the content of this document to Witness 1 and Witness 2. She stated that the document is relevant and that it will help to understand *"…it will show the proper way that the entries in the documentation, the allegations, are directly linked to this documentation in how things should have been done, and how things may have been compromised*".

Ms Bennett submitted that the admission of this document would be fair as it would give her the opportunity to look at the guidance available in that department. She submitted that this would be fair to you.

In reply to questions from the panel, Ms Bennett stated that the document addressed record keeping of the clinical care events and comprises the record keeping guideline for the Hospital at the time of the allegations. Ms Bennett stated that the document includes record keeping of mothers' notes, for example, and that it also covers data protection issues.

Ms Stevenson explained that this document formed part of the Case Examiner's master bundle that had been previously disclosed to you. Within this master bundle was a schedule of unused material; on the schedule the document to which Ms Bennett referred was labelled as '*inspectable'* and therefore was something that you and Ms Bennett could have inspected upon request. Ms Stevenson submitted that, in the spirit of transparency, and given that the existence of policies more generally had become a feature of this case, the NMC considered that it was appropriate to disclose the document, even though it had not been requested for inspection by either you or your representative. Ms Stevenson submitted that the NMC does not rely on the document and is unsure as to its relevancy, but that the NMC is neutral on any application. Ms Stevenson reminded the panel of Rule 31 with regard to relevance and fairness.

The panel accepted the advice of the legal assessor.

The panel noted the NMC's neutral position regarding the admissibility of this document. The panel determined that the document is relevant with regard to how patients' clinical

notes and observations are documented and signed for at the Hospital. It found that this document is linked to the charges which relate to record keeping.

The panel determined that admitting this document is fair. It noted that Ms Stevenson explained that these documents were part of the Case Examiners' Bundle and were available for inspection and that Ms Bennett considered it relevant to her case. The panel was satisfied that the admission of this document would not cause any unfairness to either party.

Observations of the panel on abuse of process

On day 12 of the hearing, the panel felt it necessary to articulate concerns and issues that had arisen from its observations throughout the hearing, and handed down the following:

'The panel has been mindful that Ms Bennett, the registrant's representative, whilst receiving support and advice from her own legal advisers and Counsel, is not herself from a legal background. In the light of this, the panel has sought to afford Ms Bennett every opportunity to consult with her legal team, Counsel and with you.

Over the course of the hearing, the panel raised with the parties that it had become increasingly concerned at the frustration to the hearings process by the defence and the disregard for the principles of fairness to witnesses, case management and to the NMC.

The defence has repeatedly disregarded and breached the rules of fairness, the panel's directions and the legal assessor's guidance with regard to the hearing process.

For example, in terms of fairness, we have a witness who was engaging and had a concise statement which dealt with identifiable areas to be challenged. Witness 2 has been severely inconvenienced by being on call for three weeks, during which she had the added pressure of waiting all day for six days to come back to continue her evidence. Further as a practising registered midwife, this unnecessary inconvenience would have adversely impacted on her employer and the patients under her care.

Following protracted and repeated questioning in cross-examination, remarking inappropriately upon and making implied criticisms of some of Witness 2's answers has resulted in Witness 2 being unfairly ground down. The panel has been advised that Witness 2 has been left feeling distressed and vulnerable. The panel considers that this is clearly not tolerable.

This is not an isolated occurrence. Witness 1 and Witness 2 were treated in a similar unfair manner. Other witnesses were also subjected to unattractive cross-examination. There is a compelling inference that this is a course of conduct designed to reach that end.'*

*On further reflection, the panel seeks instead to express this concern as follows:
At times, the similar pattern and manner of questioning presented itself as plainly intimidatory towards witnesses. The danger of such questioning is that such a witness would be inhibited from giving the evidence that they wished.

'The panel recognises that an advocate has a duty to put their case, challenge the evidence where necessary and may adopt a robust style. However, the panel considers that the questioning of witnesses, as adopted by the defence, was excessive and unnecessary.

The panel considers that this constitutes an abuse of process and unfairness to other parties, particularly witnesses.

The panel had regard to the guidance to which it referred and read out parts of earlier in the hearing, namely:

> *"Case management during hearings Reference: CMT-9 Last Updated: 01/07/2022*
>
> *Where a person is behaving inappropriately - for example, being rude or hostile towards another person - the Chair of the panel should intervene and remind the*

person of the standards of behaviour expected during a hearing (see Our expectations of everyone involved in a hearing).

We expect this will be sufficient in most cases to manage proceedings. Where a person continues to behave inappropriately, the Chair should remind the person again of the standards of behaviour expected during a hearing.

Where a person continues to behave inappropriately despite repeated reminders, the Chair should warn the person that disruptive behaviour may result in their exclusion from all or part of the hearing."'

The panel invited submissions from the parties on this matter to be heard the following morning.

Submissions from the parties and pause in proceedings to allow Ms Bennett to seek a review or an appeal

On day 13 of the hearing, the panel reconvened to hear the submissions of the parties regarding the matters it had raised on day 12, as outlined above. The panel confirmed with the parties that they had had sufficient time to take instructions and advice from their legal teams.

Ms Stevenson, on behalf of the NMC, submitted that Rule 20 of the Rules allowed the panel to exclude any person whose conduct disrupted or was likely to disrupt proceedings She submitted that the panel's determination served as such a warning and that the NMC would reserve the right to raise an issue should such conduct continue. Ms Stevenson asked the panel to direct that all remaining cross-examination of NMC witnesses be made by way of written questions, and for the timetabling of witness evidence to be adhered to. She submitted that these directions would seek to remedy the unfairness to the witnesses that had been raised.

Ms Bennett submitted that she did not regard the panel's findings as correct or factual stating *"As a direct consequence therefore as the cart has bolted before the horse, the*

only options available to me in light of these findings of fact is either to seek a review or an appeal in regard to the same in accordance with the tribunal's rules of procedure."

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

The panel decided to adjourn proceedings in order to allow Ms Bennett to seek a review or an appeal, as she had indicated. The panel directed that both the transcripts and the audio recordings of these proceedings be made available for any future jurisdictions. The panel invited any reviewing body to read the transcripts in full and listen to the complete audio recordings of these proceedings.

The panel intended to use the remaining listed hearing days to work on the drafting of the applications and issues raised to date. If the panel was in a position to hand down, it would advise the parties on Monday, Day 15. If not, it would agree a further date for handing down.

Clarification regarding adjournment

The hearing reconvened on day 14 at the request of Ms Stephenson, on behalf of the NMC, for clarification on a number of points raised by the panel. At Ms Bennett's request, Ms Stephenson's request for clarifications was circulated in writing to Ms Bennett, the legal assessor and the panel. The NMC's request for clarifications was as follows:

> *"(1) Was it a decision or had the panel provided a pre- decision narrative/view?*
> *(2) What is the current status of either?*
> *(3) Was this a warning or an exclusion?*
> *(4) When the panel suspended/adjourned was that to allow NB time to obtain legal advice or submit an appeal or review."*

Ms Stevenson submitted that it was unclear to the NMC whether the decision to adjourn the day before was to allow an appeal or to allow Ms Bennett to seek advice. She submitted that she was unclear on the status of the hearing, and that if there were to be

any legal challenges, the NMC needed to understand what legal decision was being challenged.

Ms Bennett submitted that her position remained the same as per her submissions in the letter dated 9 February 2023, namely:

> *'1. From my observations of the information in the two-page document sent to me via egress yesterday for and on behalf of the NMC independent panel. It is apparent that the information contained in the two-page document are not allegations but are merely the findings of the independent panel, which have been made and discharged without first allowing me to make submissions on the contents contained therein.*
>
> *2. As a direct consequence, therefore, as the cart has bolted before the horse, the only options available to me in light of these findings of fact is either to seek a review or an appeal in regard to the same in accordance with the tribunal rules of procedure.*
>
> *3. The only submission I make in this regard is I don't hold such findings to be correct or factual, and, therefore, I will be seeking legal advice after the close of these proceedings and what option is available to me as an advocate/representative because it is apparent from my respectful point of view that your findings have been made to aid the NMC in making some type of cost application against me directly.*
>
> *4. This, we believe, has come about as a direct result of the submission of the expert opinion surrounding the handwriting of Witness 2.*
>
> *5. Therefore, your findings of fact have left the registrant and me in a position where we feel that a fair hearing might not be discharged based on the apparent biased opinion you have discharged without allowing me to defend myself.*

6. You have made findings of fact for which you are now seeking my submissions after you have made them, whereas the proper course of fairness and objectivity would be to first submit those as allegations for my response before making such conclusions.

7. Allegations of which, in some cases, are vague and or unambiguous in the sense that the examples of the conduct mentioned are not fully particularized and therefore do not place me in a position where I can first seek full legal advice and respond fully on them.

8. I, therefore, contend that the actions of the tribunal to be in breach of the principles of Article 6 of the Human Rights Act 1998 and wholly unfair for the benefit of the respondent.

9. I will, therefore, in light of the fact that you have already made those findings, ask the tribunal to place those findings on its headed paper as they have already been particularized without being varied and to afford me the opportunity of either seeking a review or appealing those findings to the appeal court.'

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

The panel addressed each of the NMC's points seeking clarification in turn.

With regard to the first question *"Was it a decision or had the panel provided a pre-decision narrative/view?"*, the panel clarified as follows:

- Following repeated verbal reminders throughout the hearings process to Ms Bennett, the panel handed down a summary of concerns and observations which constitutes its decision to give a written warning to Ms Bennett. Mindful of the NMC guidance, CMT-9 (as referred to on days 6 and 13 of the hearing), the panel's decision to issue a written warning escalated from the frequent verbal reminders to Ms Bennett that were repeatedly disregarded.

With regard to the second question *"What is the current status of either?"*, the panel clarified as follows:

- The panel's decision to issue a written warning stands. Following the panel's written warning to Ms Bennett on day 13 of the hearing, the panel invited submissions from the parties on how to subsequently progress with the hearing. The panel heard the NMC's submissions where the NMC referred to the panel's powers under Rule 20(5), reminded the panel of the requirement for a warning before exclusion, where the NMC stated that it *"…considers the panel determination serves such a warning…"*, and suggested two directions to be given in order to address the issues of fairness to witnesses. Firstly, for all remaining cross-examination questions to be submitted to the panel in advance in writing and that to stray from these would be unfair unless they genuinely arise out of new information. Ms Stephenson referred to point 14 in the NMC Guidance 'Supporting people to give evidence in hearings CMT-12'. Secondly, all timetabling of witness evidence to be adhered to.

- In light of Ms Bennett's submissions seeking a review or an appeal on day 13 of the hearing, the panel had not yet deliberated on any directions to be given.

With regard to the third question *"Was this a warning or an exclusion?":*

- The panel reiterated that this was a written warning. Ms Bennett had the benefit of extensive guidance during the first three days of the hearing dedicated to preliminary matters, including during preliminary meetings with Ms Stephenson and the legal assessor, during which the hearings process was explained multiple times. Ms Bennett was further allowed time on numerous occasions to consult her external legal advisers and counsel. Despite Ms Bennett being given ongoing guidance and reminders throughout regarding the hearings process, case management process, protocol and behaviour expected of participants to the hearing, these were repeatedly disregarded throughout. This course of events culminated in a warning.

With regards to the fourth question *"When the panel suspended/adjourned was that to allow NB* [Ms Bennett] *time to obtain legal advice or submit an appeal or review"*:

- The panel clarified that the hearing was suspended in light of Ms Bennett's application to seek a review or an appeal as she had indicated.

- The panel had now taken into account the advice of the legal assessor that an appeal was not an available recourse to Ms Bennett at this stage of the proceedings. Therefore, the panel further clarified that the hearing would be suspended to enable Ms Bennett time to seek a review.

Application by Ms Bennett for the panel to review its previous decision

On day 15 of the hearing the panel heard an application by Ms Bennett for the panel to review its decision in relation to an abuse of process on day 12. Ms Bennett clarified that she understood that what the panel had handed down on day 12 of the hearing was a written warning to her, and explained that she was now seeking for the panel to review its own decision in respect of the warning. She submitted that the allegations were vague, and that she was unsure of what the allegations were, and that if there was not a favourable review, she would then seek legal advice with regard to an appeal court.

Having clarified that Ms Bennett was asking the panel to review its own decision, Ms Stevenson submitted that the suspension of the hearing could now be lifted. The panel did not need to review its own decision, but it was a matter for the panel as to whether it did and the NMC remained neutral in this regard.

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

The panel considered matters to determine whether it acted on the basis of a mistake or lack of care in giving a warning to Ms Bennett.

The panel's decision had not changed in light of the parties' submissions that day, and the panel stood by its decision. The panel was satisfied that its decision was not made in error nor on the basis of lack of care. It was also satisfied that the written decision handed down to the parties on day 12 was detailed. The panel was further satisfied that the parties had had an opportunity to seek clarification in respect of that decision on days 13 and 14 of the hearing, and that clarification was handed down by the panel orally.

The panel's decision is therefore upheld.

Directions given by the panel on adjournment

On the last day of the scheduled hearing (day 15), in light of repeated and ongoing frustrations to the hearing process, the panel directed that by 13 March 2023, the parties should comply with the following:

1. Confirm to the NMC Case Officer which witnesses they will be recalling and calling
2. Confirm to the NMC Case Officer the timings for each witness in terms of examination in chief and cross-examination – the panel will hold parties to this
3. Disclose to and/or serve witness statements on the other party and agree any redactions
4. Serve any additional documents. Any response to these additional documents should be served by 16:00 within 7 days thereof
5. Serve any legal submissions in writing. Any response to these should be served by 16.00 within 7 days thereof.

The panel further directed that:

- The NMC to ensure that disclosure of the transcripts and/or audio be made available to the parties at the earliest opportunity
- All preliminary matters be sent 14 days in advance of the recommencing of the hearing, in writing, to the other party

- Written witness questions be sent to the panel one day in advance of the witness appearing to give evidence. (The panel will not allow any further questions, unless genuinely arising from new information being directly relevant to the charges)
- The witness timetable be strictly adhered to. (The panel will intervene and restrict parties after their allocated time.)
- All legal submissions should be made in writing
- As indicated at the outset of the hearing, the panel requests written closing submissions at the facts stage.

Following further legal advice during in-camera drafting on 16 October 2023, the panel clarified that it did not preclude essential supplementary oral questions, as directly relevant to the charges, where written questions would not put your case properly.

Contextual features

During the course of the hearing, the panel recognised that although Ms Bennett was not a legally qualified advocate, she did have experience with the NMC hearing process. Notwithstanding, the panel sought to make appropriate allowances by providing extensive general guidance, directing Ms Bennett and you to the relevant information and guidance available on the NMC website and allowing considerable time for Ms Bennett to consult with her legal team and you, as and when she required it.

Despite these allowances, Ms Bennett continued to question witnesses frequently in ways which were more than robust and thus were both inappropriate and unfair. Regrettably, that approach extended on occasions in discourteous observations directed towards the witnesses. The detail of the panel's concern would be apparent from the transcript and the audio recordings.

The panel makes it plain that its concerns should not be seen as a criticism of all aspects of the approach and questions of Ms Bennett. It acknowledges that some of her questions were both legitimately robust and relevant.

The panel noted that there was little attention to any form of case management in that Ms Bennett frequently served on both the NMC and the panel substantial material not directly relevant to the charges which impacted upon the hearing process resulting in significant delays.

So far as is possible, it is essential that significant delays must be avoided in all subsequent proceedings. That will be assisted by the presentation only of evidence that is strictly relevant to the charges.

The panel was mindful to ensure that the frustrations and delays which caused the hearing to be adjourned part-heard did not distract from its proper consideration of your case. The panel wishes to emphasise that it remains wholly committed to its primary responsibility to make a completely detached and careful evaluation of the relevant evidence on each specific charge.

Thursday 11 April 2024

Decision and reasons on service of Notice of Hearing

The panel was informed that Mrs Asiedu-Baning was not present.

Ms Bennett informed the panel that in November 2023 the NMC had provided potential dates for the hearing to resume for a week in February 2024, one week in March 2024 and 8 – 24 April 2024. She submitted that there had been no certainty about these dates and that Mrs Asiedu-Baning and she had been on standby. Ms Bennett submitted that she had emailed the NMC last week to seek clarity of the dates but did not receive any response. She further submitted that both Mrs Asiedu-Baning and herself had been on standby for all of the potential dates but had no contact from the NMC. She stated that she received an email yesterday (10 April 2024) at about 16:50 advising that the hearing would be starting the next day. Ms Bennett informed the panel that as a result of the late notice, Mrs Asiedu-Baning was unable to attend the hearing as she was unable to make childcare arrangements.

[PRIVATE].

Ms Stevenson informed the panel that the Notice of Hearing was sent on 30 November 2023 to Mrs Asiedu-Baning via email to her registered email address. She submitted that various dates were set out in the notice of hearing which included 4 April to 12 April 2024. She submitted that the notice of hearing was sent within the service period required, contained the relevant dates and was served in accordance with the Rules. She further submitted that although there had been an issue with regards to what dates the hearing would actually be sitting, the dates for this period were included.

The panel heard and accepted the advice of the Legal assessor.
The panel acknowledged that some of the dates contained in the notice of hearing were now incorrect. However, the dates set out for April 2024 were correct. The panel was therefore satisfied that service had been effected in accordance with the Rules.

Application to adjourn

Ms Bennett's submissions regarding the notice of hearing was adopted at this stage and she made an application to adjourn the hearing until the next listed hearing block of 22 April 2024.

Ms Bennett submitted that for the hearing to be fair, adequate notice must be given. She submitted that due to an administration error, Mrs Asiedu-Baning was not aware of the hearing dates and as such proceeding would be inequitable and unfair. She submitted that the oversight from her team in not sending Mrs Asiedu-Baning the dates should not result in a detriment to Mrs Asiedu-Baning.

In response to panel questions, Ms Bennett confirmed that both Mrs Asiedu-Baning and she had received the notice of hearing dated 30 November 2023 and that they were both aware of the original notice of the hearing dates, which included this week and 22 and 23 April 2024.

However, subsequent to Ms Stevenson's submissions, Ms Bennett agreed to the hearing proceeding for the purpose of handing down the panel's decisions to date and dealing with the issue regarding the expert report.

Ms Stevenson submitted that the hearing should continue in the absence of Mrs Asiedu-Baning. She submitted that the notice of hearing was sent in November 2023 and contained the relevant dates. She submitted that the fact that some of the earlier dates did not proceed did not invalidate the notice.

Ms Stevenson further submitted that Ms Bennett was copied into an email dated 1 February 2024 from the NMC, regarding the current dates of the hearing.

Ms Stevenson submitted that the public interest was highly engaged at this point, and there would be significant inconvenience to the witnesses if the hearing were not to proceed. She submitted that Mrs Asiedu-Baning was represented by Ms Bennett, who could ask questions on her behalf.

Ms Stevenson further submitted that, even if the panel was minded to adjourn, then the NMC would invite the panel to consider whether there were matters that could be progressed without the registrant being present, such as the handing down of the decision and also dealing with the single legal argument that had yet to be dealt with in relation to the expert report.

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

The panel determined that there was a strong public interest in the expeditious disposal of this case which it deemed prolonged and protracted. It gave serious consideration to the witnesses who had been adversely affected by the ongoing delays in this case and the level of inconvenience caused to them.

The panel was of the view that although Ms Bennett had been sent the email communication concerning the amended dates, the NMC also should have sent that information to Mrs Asiedu-Baning. Notwithstanding, the panel determined that the notice

of hearing had been served in accordance with the Rules and included the dates of this sitting period. Further it was satisfied that there were legal issues that could be addressed properly today. It therefore determined that it was both fair and proportionate to proceed in the absence of Mrs Asiedu-Baning.

Application for expert report to be admitted as evidence

Ms Bennett informed the panel that it is Mrs Asiedu-Baning's defence that she did not make the entries in the records. She submitted that the expert handwriting report was relevant in this regard, and that it would be fair to admit it into evidence.

Ms Stevenson on behalf of the NMC referred the panel to her previous submissions on the last application by Ms Bennett to submit a document. In addition she submitted that the Case Management Form had not been completed by Mrs Asiedu-Baning, and the NMC did not know what Mrs Asiedu-Baning's case was until now. If the NMC was aware that it was Mrs Asiedu-Baning's case that she did not make the entries, the NMC could have considered this and would have obtained an expert report, but now say that is not proportionate.

Ms Stevenson submitted that the NMC accepts that if it is the Registrant's defence that she herself did not enter those entries in the records, then of course the NMC concedes that this evidence must be relevant. The NMC cannot see any objection to the form of the report or the expert himself. The issue, therefore, is fairness.

Ms Stevenson submitted that, to have raised it at such a late stage, the NMC submit it is that unfair, especially when the majority of the NMC's witnesses have concluded their evidence. The two remaining witnesses have already been subjected to a drawn-out cross-examination. However, the NMC's position is that perhaps a cure for the unfairness is that the matters must be put to Witness 2 in particular as this is something she must be afforded opportunity to answer. Ms Stevenson submitted that this must be done fairly and with proper controls upon questions and the NMC ask that the Panel directs that any further questions regarding the expert report to be provided in writing 5 days in advance of the hearing recommencing on 22 April 2024.

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

The panel determined to admit the expert report in respect of it being relevant to Witness 2's evidence.

With regard to fairness, the panel took into account the fact that Ms Bennett had only recently made known Mrs Asiedu-Baning's defence, despite already having heard evidence from the witnesses. The panel also took into account that the witnesses had been previously severely inconvenienced and treated adversely during the course of the last sitting. However, it was of the view that the expert report may be relevant for Mrs Asiedu-Baning's defence, and as such it determined that it would be fair to allow the expert report with careful management with regard to the questions to be put.

The panel further determined that the expert report was only relevant to Witness 2 at this stage as it made comparisons to Witness 2's handwriting. It was of the view that relevance to Witness 1 would need to be determined upon hearing further submissions of Ms Bennett.

Friday 12 April

Application for the expert report to be put before Witness 1

Ms Bennett made an application to cross examine Witness 1, to ensure the accuracy and integrity of the local investigation called into question by the handwriting report. She submitted that the key objectives of cross examination would be to clarify how the conclusion was drawn, and to investigate racism in the initial approach used and why *"black, brown and ethnic staff"* were not questioned during the investigation. She referred the panel to five objectives that she had in putting the document to the witness; these were:

“1. To clarify how initial conclusions were drawn and ensure they were based on thorough evidence analysis.

2. To investigate potential racial biases in the investigative approach, mainly why specific individuals were targeted and believed more than others.

3. Why all the black, brown or ethnic minority staff were excluded from the investigation and not called to create context when they were key witnesses?

4. Response to new evidence. To evaluate how witness one plans to integrate this new contradictory evidence into the ongoing investigation.

5. To discuss potential changes in investigative procedures to prevent future errors and ensure fairness.”

Ms Stevenson submitted that the NMC had concerns with Ms Bennett’s objectives, in particular objectives 4 and 5. She submitted that there appeared to be a misconception in what Ms Bennett was trying to achieve with this witness as all this witness can answer are things that were in her knowledge at the time. Ms Stevenson submitted that anything as to future investigation processes or previous matters to other people are not relevant. The relevance and how the expert report is applicable to Witness 1 is limited. Objectives 4 and 5 are misconceived in terms of the scope of the witness, and this forum is for looking back at what happened in this case at the time.

In relation to the first three objectives, Ms Stevenson submitted that there was very limited scope as to relevance.

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

The panel determined that the expert report was not relevant to Witness 1.

The panel considered each objective. With regard to objectives 1, 2, and 3 the panel found that Witness 1 had already responded to these questions which had already been put to her concerning these matters.

With regard to objectives 4 and 5, the panel determined that the scope of this hearing is for the panel to consider and adjudicate upon the charges before it and not to address wider alleged issues in the Trust. The panel therefore determined that the document was not relevant in relation to objectives 4 and 5.

Panel's ruling on list of questions to be put to Witness 2

Ms Bennett submitted that her understanding of providing the questions for Witness 2 to the panel was for the panel to be satisfied that they were not repetitive.

The panel clarified that the reason for the questions being provided in advance was also for the panel to be satisfied that they were appropriate and relevant as Ms Bennett's list of questions included that some were not within the scope of these charges nor within the remit of this panel.

Ms Stevenson submitted that this case was to examine what happened at the time of the incidents, and that the witness could only speak to matters within her knowledge. She submitted that some of the questions presented were out of the scope of Witness 2's knowledge or expertise or related to future outcomes which the defence may wish to receive, were repetitive, or that it was not clear what the relevance of the questions were. She made objections to all the questions being put except question 1.

Ms Bennett submitted that she was trying to prove Mrs Asiedu-Baning's innocence by providing the context behind the allegations and what actually took place. She submitted that the questions were necessary to prove Mrs Asiedu-Baning's innocence, and that by putting restrictions on the questions she asked would make it difficult to do this.

The panel had regard to the submissions of Ms Stevenson and Ms Bennett and accepted the advice of the legal assessor. It determined that questions 4, 5, 8, 9, 13, 14 and 17 to 19 and 20 to 27 may not be put as they related to either questions that Witness 2 would not be able to/or be unfair for her to answer in respect of the expert's handwriting report, were repetitious, or outside of the scope of the panel's remit. The remaining questions were allowed.

17 June 2024

Application regarding the expert report being shown to Witness 2

In consideration of whether Witness 2 should be shown the witness report, Ms Stevenson referred the panel to the overarching evidential principles in rule 31 of relevance and fairness.

Ms Stevenson submitted that there was no need for Witness 2 to have sight of it, in whole or in part. Ms Stevenson submitted that as Witness 2 was not an expert, she could not comment on the expert's findings nor how and why he had come to them and that it would not be fair to ask Witness 2 to do so. Ms Stevenson submitted that the conclusions of the expert were outside the scope of Witness 2's knowledge and were matters for the panel to determine. Ms Stevenson submitted that only factual matters should be put to Witness 2. She also submitted that there was a risk of repetition with matters that had already been dealt with when Witness 2 had given evidence previously.

Ms Bennett submitted that she understood that the NMC had concerns about ensuring the questions were within Witness 2's scope and competence. She submitted that the questions were designed to cover critical facts to the alleged falsified records and that Witness 2 should be given the chance to respond. Ms Bennett acknowledged that Witness 2 is not an expert and should not be asked to interpret the expert's findings. She submitted that the questions did not require her to comment on the methodology or the expert report, but respond to factual findings and provide any relevant context that

might explain the findings. She submitted that it remained within the bounds of fairness and would allow Witness 2 to testify to matters within her knowledge, such as whether Witness 2 was on duty at the time. Ms Bennett submitted that Witness 2 needed to be able to see the expert report as it would be easier for her to see what she is being asked, and also that it was right for the witness to see what the expert witness had said. Ms Bennett submitted that it was reasonable to ask Witness 2 if she had any factual context that might explain why the expert found similarities in the handwriting. The expert report is an important document which contains detailed comparisons and goes beyond what is in the bundle. She submitted that by seeing the report, Witness 2 may be able to give a more accurate response, and that seeing the report would allow more specific questions to be put and for specific answers to be given. Ms Bennett also submitted that the expert report was an important and crucial part of the evidence in this case.

The panel had regard to the submissions of Ms Stevenson and Ms Bennett and accepted the advice of the legal assessor, which included the need to give the witness advice on her privilege to refuse to answer questions on the grounds of self-incrimination.

With regards to the expert report being shown to Witness 2, the panel determined that it was not appropriate to be put before Witness 2. It was of the view that your case could be put to Witness 2 by being made aware of the conclusion of the expert report and by taking her to the source data contained in the exhibits. The expert report was about the analysis of handwriting, and Witness 2 was not an expert who could challenge such evidence. The panel was of the view that it would not be appropriate for a lay person who is not a handwriting expert to be able to decipher and respond to an expert report and that this could only be done by another expert. The panel was satisfied that specific entries in the medical records could be put to Witness 2 and that she could be asked whether she recognised those entries.

With regard to the questions that could be put to Witness 2, the panel determined that any questions which fall outside of the scope of knowledge or expertise of the witness, questions that are speculative and questions that are repetitive would not be allowed.

18 June 2024

Application for Subject Access Request (SAR) document to be admitted to be put to Witness 1

During the course of Witness 1's oral evidence on day 25, Ms Bennett questioned the witness about a SAR document that was not before the other hearing participants. Witness 1's evidence was paused in order to hear submissions regarding this document.

Ms Bennett submitted that your SAR to the hospital and the hospital's response had been sent to the NMC on 1 March 2023. Ms Bennett submitted that it was important for the panel to see this document because it showed that no due process was carried out and that there was nothing with your name on it and that Witness 1 could explain why they had no documentation. Ms Bennett submitted that the SAR document was very relevant as there was no legal document to say that you were put through any kind of process that has been the origins of why we are here today. Ms Bennett submitted that one has to go to the root of the cause so that we can see what actually happened and see that this allegation was founded on gossip.

Ms Bennett later conceded that the six-page email trail regarding the SAR document may not have been sent to the NMC.

Ms Stevenson objected to the admissibility of the document; she submitted that it was not relevant and fair to be put before Witness 1 nor for Witness 1 to be asked questions about it. Ms Stevenson submitted that Witness 1 was a clinical member of staff and not part of the human resources team, nor any administration or information processes team. The document related to GDPR issues, and so it was unclear why you sought to

put the document to Witness 1 as it seemed from the document that you felt the response to the SAR was not satisfactory.

Ms Stevenson submitted that the panel should be focussing on the charges and not local disciplinary issues or information request issues, but that it is a matter for the panel itself to consider if this matter should be explored.

Ms Stevenson submitted that this was another example of Ms Bennett serving material not directly relevant to the charges which impacted upon the hearing process, resulting in delays. Ms Stevenson further submitted that any preliminary matters should have been set out before the hearing resumed and that Ms Bennett had had the document since 1 March 2023, for one year and three months, and that significant amount of hearing time had been spent to ensure that no further issues would arise during the course of the witness's evidence.

Ms Stevenson submitted that the NMC was being further ambushed and having to respond off the cuff because of Ms Bennett's failure to follow the directions that had been put in place. She further submitted that there was unfairness due to further non-compliance with the case management set out by the panel.

Ms Bennett then submitted that the SAR document should be admitted because it is relevant and important. She submitted that the email trail is essential for a thorough examination of Witness 1, could show the context of the information, and went towards the credibility of witnesses and other parties. The document is critical in assessing the reliability of witnesses and contains information that can show bias and irregularities in the processes that were used in the beginning of the process. She submitted that not allowing the email trail would prejudice the case, and that you should not be penalised for delays resulting from Ms Bennett [PRIVATE].

Ms Stevenson submitted that if the document went to credibility, then the NMC would concede, but it was not clear how the document went to the credibility of any witnesses.

The panel had regard to the submissions of Ms Stevenson and Ms Bennett and considered the advice of the legal assessor.

The panel could not see how it was relevant for Witness 1 to be questioned about your general SAR request and the hospital's response or how that related to the charges. It therefore determined that the SARS document was not relevant.

The panel was of the view that there was considerable evidence before it which would allow it in due course to determine the credibility of the witnesses on the specific issues under consideration. Accordingly, the panel rejected the submissions of Ms Bennett.

Thursday 20 June

Ms Bennett confirmed that she had completed her cross examination of Witness 2 on day 27 (19 June 2024) and Witness 2 had been informed that on the following morning she would be asked re-examination questions from Ms Stevenson lasting circa 15 minutes.

On Day 28 (20 June 2024) Ms Bennett informed the panel that she had further crucial questions to put to Witness 2.

The first question was '*did the registrant ever mentor or guide you during your time as a student nurse between 2016 – 2019?';* Ms Bennett submitted that there were such interactions. The second question was *'can you recall any specific interaction or guidance you received from the registrant?'*. Ms Bennett submitted that this was relevant because the registrant had given feedback that was less than desirable for Witness 2 which was important to explain her actions. The third question was *'What was your reaction when the registrant refused to sign you off in 2016 and your practice book in 2016.'* The fourth question was '*did the refusal for the registrant to sign your book impact your professional progress?'.*

Ms Stevenson objected to the first question on the ground of fairness to the proceedings. With regard to question two, she submitted that the witness had already given evidence that she could not recall any interaction. With regard to questions three and four, Ms Stevenson objected on the grounds of fairness to the proceedings. She submitted that substantial time had been wasted during this hearing, and stated that if the questions were crucial to your case why were they only been raised now when the witnesses had already given evidence. Ms Stevenson stated that her previous understanding of your case was that you allege that Witness 2 had falsified certain entries and that it now seems that your case is going beyond that to the extent that you are alleging that Witness 2 had a motive to set you up.

Ms Stevenson submitted that this witness has had a number of questions put to her over a number of days and it was confirmed yesterday by Ms Bennett that she had completed her questions. Ms Stevenson submitted that it is unfair on the witness having been told that the cross examination had been completed. Ms Stevenson submitted that you have had more than enough opportunity to put your case.

The legal assessor advised that there was no harm in question 1 being put to the witness, and that question three could be asked but not explored.

The panel considered carefully the submissions from Ms Bennett and Ms Stevenson and the advice of the legal assessor.

The panel found that the questions were not sufficiently relevant to the charges before it. It further considered that it would be unfair to the proceedings, the NMC and Witness 2 to allow further cross examination questions at this stage. The panel observed that Ms Bennett has had some 16 months to prepare questions for Witness 2 and these matters have not been raised previously nor were they on the list of topics identified as requiring further exploration earlier this week by Ms Bennett.

21 June 2024

Application to adjourn the hearing for the purpose of the NMC obtaining an expert handwriting report

On 21 June 2024, Ms Stevenson made an application to adjourn the hearing to obtain an expert report. She submitted that when the hearing resumed on 9 October 2024, the NMC would then be in a position to make an application to adduce the report. The application to adjourn the hearing was made under Rule 32 of the Rules.

Ms Stevenson set out the reasons why the expert could not be instructed previously, namely: that Ms Bennett had only made your case clear during this sitting of the hearing; Ms Bennett produced the expert witness report part way through Witness 2's evidence; the NMC had been clear that it did not accept the content of the expert report and that it required the expert to attend and be cross examined. The NMC had kept this matter under review and considered that it was the proper and due process, and it would not have been appropriate for the NMC to instruct an expert when Witness 2's response to the defence expert report was not known. She submitted that it was not appropriate for the NMC to approach Witness 2 to discuss these matters during her evidence.

Ms Stevenson submitted that the evidence given by Witness 2 is inconsistent with the conclusion of the handwriting expert, and that those conclusions therefore need to be challenged and cannot be explained by Witness 2 who gave straight denials.
She submitted that an expert report is required to allow the NMC to put its case and challenge the defence's case. Now that the NMC know that Witness 2 denies that the entries are hers, the NMC wish to robustly challenge it. Obtaining an expert report may not only assist the NMC but also the panel who will have to consider the disputed evidence. The allegations being made are serious allegations where the legal assessor warned Witness 2 as to self-incrimination. The NMC will be at a disadvantage if there was only evidence from the expert pitted against the non-expert, Witness 2.

Ms Stevenson submitted that there is no prejudice to you if the hearing were to adjourn. She submitted that the defence witnesses would not be available until October 2024 and that you would not be available the next day (when the hearing would go part-

heard) and that would mean you would be under oath or affirmation without the opportunity to speak to your legal team and representation which would be unfair. She further submitted that there would be prejudice to the NMC because there would not be equality of arms if the NMC was not able to have an expert, and it would not be in the public interest.

Ms Bennett was in support of the NMC's application.

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

The panel had regard to the fact that this was the last day of the hearing in this sitting period, and that the registrant was not present to begin her evidence. The hearing would therefore would not be able to progress.

The panel took into account the fact the NMC only became aware of your handwriting expert's report during the course of Witness 2's evidence. The NMC was therefore not able to speak with Witness 2 until she had finished giving her evidence under affirmation. The NMC therefore only knew Witness 2's position with regard to the report after she had given evidence. The panel took into consideration that the conclusion of the expert report is serious and resulted in legal advice being given to Witness 2 regarding self-incrimination. The panel also took into account the welfare of Witness 2 in possibly being recalled to give further evidence. However, in the interest of justice it determined that it would be fair and appropriate to allow the NMC time to instruct an expert. It also took into account that Ms Bennett was in agreement with the application and that neither Mrs Asiedu-Baning or her witnesses were available today for the hearing to progress. It determined that it would be fair to adjourn the hearing to allow the NMC to produce an expert report on a clearly contested issue.

21 June 2024

Application pertaining to panel member replacement

Ms Stevenson referred the panel to the case of *R. (On the application of Michalak) v General Medical Council [2011] EWHC 2307(Admin).* Ms Stevenson submitted that this

case sets out the process regarding a panel member who can no longer sit and, in particular, she drew the panel's attention to paragraphs 10, 11 and 12. She further submitted that the NMC's position is that the panel are a professional panel that can consider the relevant factors of *Michalak* and declare on record that it can substitute another panel member and continue to hear the case.

Ms Stevenson submitted that this is a matter for the panel and one whereby the parties would not need to make formal submissions.

Ms Bennett confirmed that she had received a copy of the aforementioned case law and that she agreed with the NMC's submissions, including that there was no need to hear formal submissions.

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

The panel considered the relevant factors of *Michalak,* particularly paragraphs 10, 11 and 12:

> *"10 It is noteworthy that there are checks upon the exercise of that power. It is clear from Rule […] that the power conferred under Rule […] could be exercised only if it was in the interests of justice to do so..."*

The panel bore in mind that there is a public interest in the expeditious disposal of this case. As the panel is potentially liable to be inquorate because of the unavailability of the registered midwife panel member, the panel was therefore satisfied that it was in the interest of justice and for all parties involved to replace this professional panel member with another professional, registered midwife panel member.

> *"11 Secondly, as with any power of this kind, the power would have to be used for a proper purpose. That constitutes a further check. Furthermore it also appears to me that, given the potential importance of the power, both as regards the GMC itself and the person before it, that proper procedures should be followed. In other words the parties should be told in advance what the situation*

is and what is contemplated and why it is considered to be in the interests of justice to make a substitution so that both parties may make, if they so are minded, appropriate presentations about the exercise of the power."

The panel had raised this matter in advance with the parties and had requested their submissions. The panel took into account that both Ms Stevenson and Ms Bennett agreed that they did not need to make formal submissions.

12 Furthermore, as indeed happened in this case, the panel itself is responsible for its own procedures and has a duty to ensure at all times that those procedures are fair. Therefore again, in my judgment, there is power, which was exercised in this case, for the panel to consider whether indeed the substitution is for a proper purpose, the proper procedures have been followed and that it is in the interests of justice to make the substitution.

The panel considered that the substitution was for a proper purpose and was of the view that proper procedures had been followed. It had requested submissions from the parties, taken representations from parties and accepted the legal advice. Additionally, the panel also considered that, on 21 June 2024 (the end of the previous block of sitting days), it had issued a direction pending its decision on the matter. The relevant direction was as follows:

"The panel has yet to deliberate upon the matter of a possibility of a substitute panel member. Notwithstanding, in order to avoid to any delay to the agreed hearing timetable, the NMC should plan proactively for the possible substitution of a registered midwife panel member. The panel suggests that the NMC give their full consideration to the time required for reading the material to date (of all hearing materials to date from January 2023 (including all transcripts)) and requisite experience of this individual. Any substitute panel member would be required to be fully prepared to start adjudication from 01 November 2024. A substitute panel member must be able to attend all of the agreed listed dates for this hearing;"

In light of its careful consideration of the relevant factors in *Michalak,* the panel was satisfied that it would substitute the registered midwife panel member at the end of the current block of sitting days, namely, 30 October 2024.

11 October 2024

The hearing resumed on 11 October 2024.

Before the panel could hand down its determination, Ms Bennett made the panel aware that she would be unavailable until 14:00. The panel invited submissions from Ms Stevenson as to whether it should hand down its determination in the absence of Ms Bennett, albeit it would be sent to her via email, or to wait until she was available.

Ms Stevenson submitted that the NMC are neutral pertaining to when the panel decide to hand down its determination. She submitted that, as Ms Bennett had indicated that she would not be available until 14:00, it may be sensible for all parties to resume the hearing at 14:00 so that it could consider the next steps, case management and to confirm the date the hearing is going to resume and what will happen on that date.

The panel asked if you had anything that you wished to add and you indicated that you did not.

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

The panel had regard to the fact that your representative, Ms Bennett, is currently not present. It was of the view that it would be in your best interests for the panel to hand down its decision at 14:00 when she was available.

The hearing resumed at 14:00 and Ms Bennett was not present. The panel invited submissions from Ms Stevenson as to whether it should hand down the determination in the absence of Ms Bennett.

Ms Stevenson submitted that if Ms Bennett did not attend, then the panel could hand down the determination. She submitted that there would be no prejudice caused to you, if the determination was handed down in the absence of your representative.

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

The panel determined to hand down the determination in the absence of Ms Bennett. A copy of the determination will be sent to her via email.

Ms Bennett joined the hearing at 15:10 and she was provided with a summary of what discussions had taken place in her absence.

Decision and reasons on application to admit NMC's expert report into evidence

Ms Stevenson provided the panel with written submissions for an application to admit the NMC's expert report into evidence under Rule 31 of the Rules.

With regard to relevance, the written submissions stated that the NMC's expert report was relevant to the issue in this case which was raised by the defence part way through the NMC's case, namely that certain entries had been falsified. It was the NMC's position that Witness 2's evidence was inconsistent with the conclusions of your expert witness' report. Therefore, the NMC deemed it necessary to instruct a person with specialist knowledge or expertise to allow the NMC to challenge your case.

With regard to fairness, the written submissions stated that the defence *"was an ambush"* upon the NMC at a very late stage of the proceedings. The written submissions stated that it was only fair to allow the NMC to rely on its own expert report to properly present the NMC's case and challenge the defence's case.

Ms Stevenson provided the panel with oral submissions to supplement the written submissions. She submitted that if the panel were to grant the application, then she would invite the panel to consider further case management directions. She submitted that, to assist the panel, these would allow both experts to exchange reports before they

give evidence and for both to attend a case conference to discuss the matters in relation the report.

Ms Bennett did not object to the application.

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

With regard to relevance, the panel was of the view that the NMC's expert report was relevant to the matters before it.

With regard to fairness, the panel was of the view that it was fair for you to put forward your case and have it tested. It was also fair to the NMC to have an expert report so they could challenge the case you have put forward. The panel also considered that it had already admitted your expert's report and was of the view that it would only be fair for the NMC to rely on its own expert report to properly present its case and challenge your case.

The panel also noted that Ms Bennett did not object to Ms Stevenson's application.
In light of the above, the panel decided that it would be fair and relevant to admit the NMC's expert report.

Monday 21 October 2024

On 21 October 2024 at 09:39, the panel was provided with an email from Equality for Black Nurses advising that it would not be representing you. You were given some time (until 14:30) to make contact with your former representatives to establish whether and when they would be able to represent you again. At 14:28, you provided an update, by way of email, advising that you had not been able to resolve matters and that you would like the rest of the day to do so, and would be available to re-join on the following day.

When asked to update the hearing participants on record, you informed the Hearings Coordinator, during a telephone call, that today had been very difficult for you, and you were not able to return to the hearing today.

The panel considered your communications to be a request to adjourn the hearing until tomorrow.

Ms Stevenson, on behalf of the NMC submitted that, whilst the NMC were sympathetic to the position concerning your representative when the initial email was received, it would now be opposing the application to adjourn.

Ms Stevenson referred to the email dated 21 October 2024 from Equality for Black Nurses and pointed out that it stated there were steps that had not been completed by you. She submitted that this was an ongoing matter before today, and Equality for Black Nurses no longer represented you. It was your responsibility to resolve this matter and you had time prior to today to do so. Ms Stevenson further submitted that it was unclear how much time was required, there had been no response or update as to when the issue was likely to be resolved, or if at all, and if the matter kept getting put back it would effectively be an adjournment through the back door.

Ms Stevenson further submitted that the panel had warned the defence about disruptions and delays caused by them before. She submitted that there was work to be done, there was a tight timetable, and that the hearings are designed to work with unrepresented registrants. She submitted that it would be disproportionate and adverse to the proceedings to keep adjourning the hearing. Ms Stevenson submitted that the hearing could continue today and deal with the expert report issues.

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

The panel gave careful consideration to the application.

The panel agreed that the submissions made by Ms Stevenson were cogent and persuasive. However, it took into account that you had told the panel that you had received the email from Equality for Black Nurses, shortly before the panel had received it.

The panel considered the circumstances that you were faced with today, the emotional impact this may have had on you and your inability to continue with the hearing before tomorrow morning. It determined that it would be fair to you, and in the interests of justice, to adjourn the hearing until 09:00 tomorrow, to allow you further time to establish the status of your representation.

On 22 October 2024 you informed the panel that you did not have representation, was seeking representation, but needed to have the bundles relating to your case in order to do so.

Ms Stevenson submitted that she would be opposing any further delay or adjournment. She submitted that you wanted representation but did not know how long it would take for you to get it, you had not disclosed what was happening with your former representatives, and with limited information the NMC would invite the panel to continue in the public interest.

You submitted that you did not wish to continue without representation, and could not give a time because you did not have the relevant documentation to provide to potential representatives. You submitted that you were at a disadvantage without the bundles to seek adequate representation. [PRIVATE], and that you had only found out the day before that Equality for Black Nurses was not going to represent you. You requested that the hearing be adjourned for these reasons.

Ms Stevenson submitted that if the panel were to continue today, the hearing could proceed with the issues relating to the experts, namely, to consider the application for an order which Ms Bennett had previously provided written submissions for, and the timetabling of the experts. She submitted that the NMC had a proposed plan with regard to the practicality of scheduling of the experts.

You agreed to pause your application for an adjournment and deal with Ms Bennett's application for an order to obtain further handwriting samples and the NMC's proposal for dealing with the expert evidence.

Application for an order to obtain handwriting samples

On 11 October 2024 the panel heard the oral submissions of Ms Bennett which she subsequently provided in writing to the hearing. You endorsed the written submissions of your former representative (Ms Bennett), for an order to obtain handwriting samples, which stated:

> *'…We respectfully request that the Panel issue an order requiring both* [you] *and* [Witness 2] *to provide additional handwriting samples for forensic analysis in the ongoing investigation into the authorship of questioned entries in medical records. Forensic experts have identified limitations due to the poor quality of photocopied documents and insufficient comparable handwriting samples.*
>
> *Obtaining comprehensive and contemporaneous handwriting samples from* [you] *and* [Witness 2] *is essential for a thorough analysis and to assist the Panel in reaching a fair decision. The lack of sufficient samples has limited the forensic analysis conducted by* [Expert Witness 6] *and* [Expert Witness 7]*. A direct comparison between their handwriting and the questioned entries, particularly in relation to initials, signatures, and numerical characters, will help identify which, if either, of the nurses is more likely to have authored the entries.*
>
> *Collecting these samples will allow the investigation to focus on the correct individual by eliminating one nurse if their handwriting does not match the questioned entries.*
>
> *This ensures a fair process, with both nurses being considered equally. If either nurse's handwriting matches, this will significantly narrow the investigation.*
>
> *Both experts have highlighted the limitations of their analysis due to photocopied documents and the need for more sufficient samples. Obtaining original documents and additional handwriting samples will address these limitations, allowing experts to examine writing pressure, fluency, and ink, while providing a more comprehensive basis for comparison.*

We request that the Panel order the collection of the following handwriting samples from both [you] *and* [Witness 2]

1. Handwriting samples from contemporaneous medical records from around the same time as the questioned entries. These should include records in formats similar to the questioned documents, such as Newborn Early Warning Charts or other medical records.
2. Samples that include initials, signatures, numerical entries, and other relevant formats to allow a thorough comparison.
3. Samples from both formal and informal contexts, such as patient care notes, staff logs, and personal notes, to ensure that natural handwriting variation is accounted for.

These samples will allow for a thorough forensic comparison and provide the necessary material for experts to make a reliable determination of authorship…'

Ms Stevenson provided written submissions opposing the application, which stated:

'…

10. *The order should not be made because as far as the NMC understands the position to be there are no original samples of the evidential material available therefore the adverse effect / impact on case progression of this further investigation is disproportionate to the perceived benefit.*

…

12. *The NMC submit it has provided the Panel with all of the relevant evidence in order for the Panel to understand the background of the incident and to consider all the relevant facts and make a fair and fully informed decision that best protects the public.*

13. *With regards to the first reason, that there are 'no original samples of the evidential material available', the NMC acknowledges that its expert,* [Expert Witness 7] *states, at 1.4:*

> *My examination has been significantly limited by a number of factors. These include, the exceptionally poor quality of the non-original copy documents submitted for examination, the amount and nature of the questioned writing, as well as, the small samples of comparable writing from both* [you] *and* [Witness 2]*.*

14. *However, the NMC submits, firstly the 'small samples' are but one of a number of factors which has limited the expert's examination. As the expert states, her 'examination was significantly limited by a number of factors'.*

15. *In the report the Expert refers to the poor quality of the non-original copy documents and the lack of original copies. She acknowledges this exact point at paragraph 5.42:*

> *Nonetheless,* ***I cannot guarantee*** *that further samples of writing from both Nurses would assist the examination or alter the opinions expressed above* ***because the lack of the original documents and the nature and amount of questioned writing would always be significant limitations in this case****.*

16. *The Guidance explains that a panel should direct further investigation for a number of reasons such as:*
    a. *The information currently before a panel is obviously incomplete or does not cover all the areas of concern. One example of this could be missing pages from patient notes, or from some other important document.*
    b. *Further information is essential to clarify or expand on evidence already obtained*

17. *The NMC submits that the information before the panel is not incomplete, because the Panel have been provided with all the material available by the*

Trust. Furthermore, it is not essential to clarify or expand on the evidence already obtained because, as the Expert states, the further samples would not be a guarantee that it would assist the examination or alter the opinions expressed.

18. *Additionally, the Guidance continued to refer to the situation when Panels are aware that evidence exists, the NMC submit again this is not applicable because, the Panel are aware that in fact that evidence does not exist because the Trust have confirmed that they do not have the original copies of the records.*

19. *Therefore, even if further samples were to be obtained, it is unlikely it would assist to fully resolve the matter, as the poor quality of the non-original copy documents would remain a limiting factor.*

20. *In relation to the second reason 'The impact on case progression and proportionality the NMC submits the following;*

21. *The Registrant is asking for:*
    a. *Handwriting samples from contemporaneous medical records from around the same time as the questioned entries. These should include records in formats similar to the questioned documents, such as Newborn Early Warning Charts or other medical records.*
    b. *Samples that include initials, signatures, numerical entries, and other relevant formats to allow a thorough comparison.*
    c. *Samples from both formal and informal contexts, such as patient care notes, staff logs, and personal notes, to ensure that natural handwriting variation is accounted for.*

22. *To obtain such a large variety of documentation will require time, from the Hospital involved to go through archived documents and time from Witness 2 and the Registrant.*

23. *Additionally, the experts would need further time to consider the samples, undertake a further examination and provide further reports. All such matters will have significant implications on the progression of this case.*

24. *Whilst further delay in the hearing is a factor to consider, if the delay would resolve the issue it may be proportionate delay however the NMC's position is that, give the limitations outlined by* [Expert Witness 7], *there will still be significant limitation in the evidence as a result of factors outside the parties control and thus the further investigation sought is, in these circumstances, not proportionate.*

25. *Therefore, for the above reasons the NMC submit that it is neither reasonable nor proportionate to undertake such further investigations, especially when it it cannot be guaranteed that the further samples of would assist the examination or alter the opinions expressed.*

26. *The NMC submits that if the panel are not with the NMC in its position that this order should not be made, and further investigation should not be ordered, the panel ought to seek an views from both Experts as to how impactful the material requested would be on their ability to form safe conclusions in this case, before ordering the work be undertaken…'*

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

The panel carefully considered your adopted submissions that further handwriting samples were required because what was available was not of sufficient quality for your handwriting expert to analyse. However, the panel took into account that the Trust had been asked to look for original hardcopy documents and the Trust had confirmed that they only had electronic copies. Further, the panel previously had requested a list of signatories from the Trust and the Trust had responded that it did not have a list that they could produce. The panel was satisfied that it had copies of the original entries which related to the charges, and that the original paper records in relation to this were not available.

The panel determined that it was not proportionate to request additional sampling as the Trust had confirmed that no original paper copies were held. As the Trust was unable to provide the original paper records relating to the charges, the panel felt that issuing a request for further electronic copies from similar medical records made around the same time as the questioned entries would not be justified. The panel took into consideration that the handwriting experts had expressed the limitations of analysis from the copies of the records already provided. Further, the panel took the view that it was not appropriate to ask either you or Witness 2 to provide current handwriting examples as these may not be representative of your handwriting styles in the medical records at the time of the alleged index events, which took place some seven years ago. It therefore did not accede to the application.

Directions relating to the presentation of expert evidence

On 23 October 2024, the panel considered Ms Stevenson's written proposal for the presentation of expert evidence, together with her oral submissions from June 2024, which were not opposed by you.

The panel endorsed the NMC's approach in principle. It took into account that there seemed to be some differences of opinion contained in your expert report and the NMC's expert report, and that any possible areas of dispute could be explored by the two appointed experts.

The panel was of the view that calling the experts to give evidence could result in a very extensive and prolonged process, and that the proportionate way forward would be for the experts to provide a joint report in which they confirmed any areas of agreement and addressed any areas of dispute.

The panel had already determined in June 2024 that the expert reports should be exchanged, that a case conference should be held between them and that they should produce a joint report.

The panel further determined that the approach suggested by the NMC was fundamentally fair to both sides and may assist the panel in its decision making at the facts stage, and did not preclude any party from making a request to call the expert witnesses following receipt of the report.

Ms Stevenson raised further oral submissions and referred the panel to the NMC's email to the Trust dated 8 August 2924 at 14:39 which stated *'I am hoping you can assist me, we are hoping to obtain the original paperwork related to this case (i.e. the original paper records)*
In particular ,we (sic) *would like to know if you have the original paper of the Exhibit* [PRIVATE] [Baby A's postnatal notes] *and Exhibit* [PRIVATE] [Baby A's observation chart]*. I have attached copies of these for your ease of reference.'* Ms Stevenson then referred to the Trust's response to the NMC dated 9 August 2024, at 11:36, which stated *'I can confirm that we do not have the original copies of the records you are requesting, we have them all recorded electronically'.* Ms Stevenson suggested that the panel might make a direction to ask the Trust to confirm that their response above referred to all the original paperwork relating to this case and not only Exhibits [PRIVATE].

The panel had already determined that the Trust had been referring to all of the original paperwork in this case. Notwithstanding, in the light of the new submissions, and for the avoidance of doubt and in the interests of justice, the panel would include this matter in its directions below.

The panel therefore made the following directions:

1. In the absence of Mrs Asiedu-Baning being represented, the panel encourage her to liaise directly with her NMC Case Coordinator in an effort to assist her with complying with the forthcoming directions as soon as possible.

2. Within 24 hours of obtaining new representation, the Mrs Asiedu-Baning is to inform her NMC Case Coordinator of her new and/or reinstated representative and their contact details, even if that is a return to her previous representative. In the absence of such notification, the NMC will treat Mrs Asiedu-Baning as

representing herself and will not send any communications about this matter to any third party, including previous representatives.

3. By 12:00 midday on 1 November 2024, the Registrant is to provide:
    i. Written consent for the NMC to liaise with the Defence Expert Witness 6; and
    ii. Should the contact details for Expert Witness 6, which feature on the front cover of his report dated 8 February 2023, no longer be current, the Registrant should provide updated details.

4. By 12:00 midday on 5 November 2024, the Experts are to disclose their reports to each other; the NMC should facilitate this.

5. By 12:00 midday on 11 November 2024, all parties are to send their questions to be put to the Experts to the NMC Case Coordinator.

6. By 25 November 2024, the Experts should hold a conference where they can provide answers to the parties' questions, discuss the matters set out below and any other issues. *

    *[As outlined in the case presenters submissions, the NMC will pay costs incurred by the experts in respect of direction 6].

7. By 12:00 midday on 4 December 2024, the Experts are directed to produce a 'joint statement on the issues' ('the statement'). * The statement is in accordance with CPR 35.12[1];
    1. *The statement ought to address the issues in dispute between the Expert, and also any other questions that the parties want to out to them (the parties are the Registrant, the NMC and the panel in this case given they are seized). The questions asked effectively stand as the examination in chief/cross -examination of the experts.*

[1] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35#IDAJH0HC

* [As outlined in the case presenters submissions, the NMC will pay costs incurred by the experts in respect of direction 7].

8. Unless the statement raises any matters which require oral evidence (and this will be a matter to be determined on application to the panel) the two Expert reports and the joint statement will then stand as the totality of the expert evidence in the case i.e. the experts will not give evidence in the proceedings.

9. i. By 12:00 midday on 11 November 2024 the NMC are to seek confirmation from the Trust as to whether its response contained in the email dated 9 August 2024 relates to all of the original papers relating to this case or only to Exhibits [PRIVATE].

    ii. By 12:00 midday on 13 November 2024 the NMC to communicate the Trust response to Direction 9 i. to all parties.

10. The NMC to send the transcripts for October 2024 hearing dates to all parties by 12:00 midday on 15 November 2024.

Monday 25 November 2024

Application to adjourn

The hearing resumed on day 37. You were in attendance and unrepresented. You indicated that as you had been unable to secure representation and that you would be seeking an adjournment. You made an application to adjourn on the basis of needing the papers from the previous hearing (i.e. the one before this panel was involved in your case) to be re-sent to you in order to secure representation for this hearing. [PRIVATE]. You further submitted that a potential representative had requested the papers from the previous hearing as they needed to know how things had got to this point; and intended to make an abuse of process application in the future. You submitted that you had requested the papers from the NMC Case Coordinator repeatedly, and that these had not been forthcoming. You told the panel that you had had discussions with a potential representative who had informed you that they would require all documentation relating

to the previous hearing, so that they could understand how you had got to this stage before they could act on your behalf.

In response to panel questions, you confirmed again that you had been re-sent all the papers and transcripts relating to this hearing by 30 October 2024.

In view of your submissions, the panel requested further information from Ms Stevenson regarding what documentation had been requested by you and then sent to you by the NMC Case Coordinator.

Tuesday 26 November 2024

Following this request, on day 38, the panel was provided with a redacted trail of email communications from 15 October to 25 November 2024 between the NMC and you. The panel also received from you three email trails between you and the NMC dated 5 March 2020, 6 March 2020 and 19 September 2023 respectively. Having received this further information, the panel invited you to continue with your application for an adjournment.

Decision and reasons on application to adjourn

You confirmed your application to adjourn this hearing until 9 December 2024 to allow you time to secure representation.

You confirmed that you had been sent several further documents from your NMC case coordinator on 25 November 2024 at 16:29. When asked by the panel whether these additional documents are sufficient to secure representation; you said that you *"hoped so"* but could not confirm at this stage. The panel also asked whether you would be able to secure representation by tomorrow, you said that you would not be able to.

In response to a question from the panel, concerning whether you would be content to deal with matters relating to the case management of the experts without having a representative, you said that you would be content to progress the case management of

the experts as you did not want any further delay and wanted to ensure that the remaining time in the hearing was used constructively. The legal assessor assured you that any new representative would have the right to revisit issues of law which had been discussed at this stage. You told the panel that you *"reserve the right to revisit"*.

Ms Stevenson, on behalf of the NMC, submitted that your application to adjourn this hearing is opposed. She referred the panel to the NMC Guidance on *'When we postpone or adjourn hearings'* (Reference: CMT-11 Last Updated 13/01/2023). Ms Stevenson submitted that there is a public interest in the efficient disposal of cases. She submitted that in relation to potential inconvenience, expert witnesses are not yet ready to appear in the hearing and may not be ready to give evidence until the hearing resumes in December 2024.

In respect of fairness to you, Ms Stevenson submitted that, whilst the NMC is sympathetic to the situation you find yourself in, you have had from 23 October 2024 until 25 November 2024 to secure representation. She submitted that you were afforded time during the hearing in October 2024 to ensure that you had all documentation that would be needed for you to be able to instruct a representative. Ms Stevenson provided the panel with an update of the documentation provided to you between 15 October – 25 November 2024 by the NMC. She acknowledged that additional documentation relating to a previous hearing was provided to you yesterday (at 16:29). Ms Stevenson submitted that documentation relating to a previous hearing, whilst desirable, is not necessary to be able to obtain representation.

Ms Stevenson submitted that there is no confirmation of whether the potential representative will be able to appear on your behalf, and if so, when this would be possible. She submitted that your application to adjourn is opposed.

Ms Stevenson informed the panel that there is an issue in relation to the expert witnesses. She submitted that before any adjournment, in order to use time efficiently, issues in relation to the expert witnesses could be resolved before the hearing resumes in December 2024.

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

The panel had regard to the NMC Guidance on *'When we postpone or adjourn hearings'* (Reference: CMT-11 Last Updated 13/01/2023), in particular, the following:

'In deciding whether or not to grant a postponement or adjournment, the decision maker should consider all relevant factors, including the following.

- ***The public interest in the efficient disposal of the case***

  There is a public interest in considering fitness to practise allegations swiftly, in order to protect the public, and maintain confidence in the professions and us as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For instance, if we need more time to get further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.

- ***The potential inconvenience***

  Postponing or adjourning a hearing may cause inconvenience to people who have made themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a hearing at a later date.

- ***Fairness to the nurse, midwife or nursing associate***

  Postponing a hearing may allow a nurse, midwife or nursing associate, who is unable to attend original hearing dates, to attend a future hearing and give their evidence in person. For example, due to short term ill health or other commitments that were arranged before they were informed of the hearing date.'

The panel was mindful of the significant delays experienced to date in this hearing and that it had been extremely protracted. The panel was also mindful that the public would expect for scheduled hearing time to be used as efficiently as possible. The panel noted that you indicated that you are also keen to use hearing time as constructively as possible.

Having noted Ms Stevenson's submissions that there are issues with the expert witnesses and that they may not be able to give evidence until December 2024, the panel decided that there would be no direct inconvenience to these witnesses if it adjourned today. However, the panel noted that there are a number of practical issues in relation to these witnesses that could be resolved to avoid further delays in the hearing.

The panel acknowledged that you have indicated that you do not want to represent yourself at this hearing and that an adjournment would allow you time to secure representation.

The panel noted that, during the last hearing block in October 2024, you told the panel that you were unable to access all of the documents that had been sent to you previously during this hearing as you had a new device. The panel took into account that you had indicated in October 2024 that you had been in communication with potential representatives and that you had submitted that you are unable to proceed with possible representation until you had been re-sent all documents relating to this hearing. Therefore, the panel and the Hearings Coordinator ensured that you were re-sent all documentation, including the transcripts. On 30 October 2024 you confirmed that you had received all of the documents relating to this hearing. The panel had sight of some email communications between the NMC and you, communications between the NMC and your potential representative, and detail relating to what documents had been sent between 15 October – 25 November 2024.

The panel had regard to the NMC Guidance entitled '*Supporting people to give evidence in hearings'* (Reference: CMT-12 Last Updated 01/08/2023). It had particular regard to the example *'support measure'* of transcripts being provided where a case is

part heard. The panel took into account that, in addition to all relevant documentation, transcripts were again sent to you and sent to your potential representative.

The panel found that, by 30 October 2024, you had been re-sent and were in possession of all relevant documentation relating to this hearing, and it was of the view that it was your responsibility to ensure that any potential representative had the relevant documentation. The panel was mindful that you have had from 30 October 2024 until 25 November 2024 to share documents and to secure representation.

In respect of the previous hearing's papers (which this panel was not involved in), this panel noted that by 15 November 2024, your potential representative had confirmed receipt of the transcripts relating to the previous hearing for the period between 25 October and 1 November 2021. The panel noted that you have also been sent other papers relating to the previous hearing.

The panel was satisfied that you had been provided with the relevant papers relating to the charges before it, to obtain representation for the purposes of this hearing. Whilst the panel note that you have raised other matters not relating to this hearing, it did not consider that these matters were crucial to the present application to adjourn these proceedings. The panel also took into account that, currently, you have been unable to confirm that your potential representative would be available to attend the hearing in December 2024 and no timeline was presented as to if/when representation may be available.

Balancing all of the above factors and having already delayed proceedings to allow you time to secure representation, the panel determined that the public interest in the efficient disposal of cases has become the predominant factor at this stage. It was of the view that there were no sufficiently compelling reasons to permit the adjournment. The panel therefore rejected your application for an adjournment.

If you are unable to obtain representation, the panel will continue to ensure that these proceedings remain transparently fair. That encompasses a full consideration of the

position of a registrant who has become unrepresented in these very protracted proceedings.

27 November 2024

Ms Stevenson invited the panel to consider the NMC's position statement with regard to case management of the handwriting experts and its possible implications in respect of recalling Witness 2, given that the handwriting experts required further information and instruction before they would be in a position to provide a joint report.

You did not have any comment to make at this stage with regard to the NMC position statement.

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

The panel considered the case management required in respect of managing the timings for the handwriting experts and made the following directions:

1. In the absence of Mrs Asiedu-Baning being represented, the panel encourage her to liaise directly with her NMC Case Coordinator in an effort to assist her with complying with the forthcoming directions as soon as possible.

2. Within 24 hours of obtaining new representation, Mrs Asiedu-Baning is to inform her NMC Case Coordinator of her new and/or reinstated representative and their contact details, even if that is a return to her previous representative. In the absence of such notification, the NMC will treat Mrs Asiedu-Baning as representing herself and will not send any communications about this matter to any third party, including previous representatives.

3. By 12:00 midday on 2 December 2024 the NMC to send a brief and associated material to the NMC Expert Witness regarding production of an additional report

covering the same criteria and based on the same material as the Registrant's Expert Witness.

4. By 12:00 midday on 15 January 2025 the NMC Expert Witness to provide the additional report to the NMC.

5. By 16:00 on 15 January 2025 the NMC to send the NMC Expert Witness additional report to the Registrant's Expert Witness.

6. By 22 January 2025, the Experts should hold a conference where they can provide answers to the parties' questions, discuss the matters set out below and any other issues. *

*[As outlined in the case presenters submissions, the NMC will pay costs incurred by the experts in respect of direction 6].

7. By 12:00 midday on 30 January 2024, the Experts are directed to produce and send to the NMC a 'joint statement on the issues' ('the statement'). * The statement is in accordance with CPR 35.12[2];

    2. *The statement ought to address the issues in dispute between the Experts, and also any other questions that the parties want to put to them (the parties are the Registrant, the NMC and the panel in this case given they are seized). The questions asked effectively stand as the examination in chief/cross -examination of the experts.*

* [As outlined in the case presenters submissions, the NMC will pay costs incurred by the experts in respect of direction 7].

8. By 16:00 on 30 January 2025, the NMC to send the Experts' joint statement to the hearing parties, the legal assessor and the panel.

[2] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35#IDAJH0HC

9. Unless the statement raises any matters which require oral evidence (and this will be a matter to be determined on application to the panel) the two Expert reports and the joint statement will then stand as the totality of the expert evidence in the case i.e. the experts will not give evidence in the proceedings.

10. By 12:00 midday on 12 December 2024, the NMC to send the transcripts for November 2024 hearing dates to all parties.

11. All preliminary and legal matters to be raised formally by application at the resumed hearing; where possible these should be made in writing in advance of the hearing and provided to the other party via the NMC Case Coordinator.

12. The panel does not consider it necessary to recall Witness 2, it being the panel's view that the evidence has been explored in detail by both parties with Witness 2, and that Witness 2's evidence would be considered alongside all the evidence in the case at the appropriate stage.

Hearing resumed 9 December 2024

The panel pointed out that the date given in respect of direction 10 above was an error and that, on 27 November 2024, it had given instructions after the hearing adjourned for the transcripts to be provided by 6 December 2024 so that all parties could have the transcripts prior to the hearing resuming today.

Application for the witness statement of Witness 2 to be put before the handwriting experts

On 9 December 2024 you enquired why the NMC had not provided the experts with the witness statement of Witness 2. You submitted that the case against you was based on a specific entry, and you believed there was a similarity between Witness 2's entry and the entry in question. You submitted that the expert report did not

include the sample [from Witness 2's statement] and you would like to know why. You further submitted that if the sample from Witness 2's statement was analysed it would undermine the NMC's case and exonerate you, and that was why the NMC had attempted to circumvent it.

Ms Stevenson submitted that it was a matter for the NMC as to what samples it provides to its expert as part of their instructions, but that both experts now had the exact same comparative samples before them.

With regard to further samples being provided from Witness 2's statement, Ms Stevenson submitted that the panel had already said, in its earlier determination, that further samples were not required and that the NMC did not seek to go behind the panel's decision which had previously been handed down. She submitted that in every case the NMC had to give the panel all relevant evidence, and that all the relevant evidence had been provided. She submitted that the NMC's expert had already set out the problem with regard to there being a lack of original documents. She further submitted that Witness 2's statement was not from the time of the incident, and that the panel had previously determined that it would not be appropriate to ask for current hand-writing samples. Ms Stevenson acknowledged that your request for Witness 2's statement to be included was a slightly different request. However, she submitted that the principles remained the same and that it would not be proportionate to put this further sample before the experts.

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

The panel carefully considered your application.

The panel first considered the date of Witness 2's statement and noted that this was over 1 year after the alleged events. It was of the view that the time frame of the witness statement was not sufficient to draw a like for like comparison.

The panel also noted that Witness 2's statement had been available from the outset of the hearing and could have been given to your expert at the time he was instructed by you.

The panel also took into consideration the fact that the style of writing contained in Witness 2's statement was freestyle handwriting and not confined to a small box like the entries in the clinical medical records to which it would be compared. It also was of the view that the handwriting from the statement was unlikely to have been written under the same time pressure and work pressure that would be found in a clinical setting. It therefore did not consider the handwriting in the witness statement to be a like for like comparison.

The panel determined that it would not be fair to put the statement of Witness 2 before the handwriting experts. It referred to its previous decision on providing further samples to the experts and was of the view that its decision remained the same; that further copy samples would not be useful as they may not be in the style of handwriting at the time of the incidents.

Additionally, the panel took into consideration that it did not have the equivalent sample from you at the same time. It concluded that it would be unfair to add the witness statement into the analysis as the document was not part of the clinical medical records, and there would be no comparison for the other party.

In light of the above, the panel decided not to accede to your request to place Witness 2's statement before the expert witnesses.

Hearing resumed 3 February 2025

Application for the panel to direct the NMC to request further information

The panel received a written application from you on 10 December 2024, requesting the following:

‘I wish to address several critical points regarding the ongoing matter and to formally request the assistance of the panel in ensuring that my case is handled fairly and with the utmost diligence.

The NMC and hearing panel have a duty to investigate all allegations thoroughly to ensure that nurses are treated fairly and justly throughout the FtP process. This principle of fairness and justice is fundamental to upholding public trust and confidence in the profession and its regulatory processes. However, I am deeply concerned that, at present, the NMC appears more focused on securing a win /favourable outcome in its case rather than seeking the truth and ensuring justice.

…

I believe the NMC’s overarching objective of public protection necessitates a thorough and impartial investigation. Therefore, I respectfully request that the NMC, Panel take the following actions:

1. *Request and review the ‘ADT Administration Discharge Transfers’ records for November 3, 2017, specifically between 8:00 PM and 9:30 PM.*

2. *Obtain a statement from the labour ward lead on duty that night, who would have managed staff-to-patient ratios. Alternatively, access records documenting this information for the specified time period.*

   The relevance of this request lies in its ability to confirm staffing levels both before and after my arrival on the ward. The Trust appears reluctant to fulfil this specific request, likely due to the risk of exposing woefully inadequate staffing levels, which would validate the safety concerns I had raised regarding the department. however, it will further prove I wasn't on the ward at said time of W2 statement so event as stated did not occur / is false

3. *Investigate and confirm whether ‘Witness 2’’s ‘Blood Glucose Monitoring’ policy was applicable at the time of the shift in question. I request that the NMC obtain a*

copy of the relevant policy that was in effect on the date in question, as well as the preceding policy, including their respective release dates.

4. *Obtain Patient A's labour notes, which would include the plan of care for her neonate. These notes would have been documented by the midwife who cared for Patient A and handed over care. This documentation is essential, as it adheres to the BM policy that 'Witness 2' failed to follow.*

   To cover up this incompetency, 'Witness 2' set the allegations against me in motion.

   Relevance W2 statement said she had to apologise to Patient A as BM wasn't required, if the above is done will show otherwise

5. *Investigate the claim that 'Witness 2' denied knowing or working with Ms. 1, despite Ms. 1 being a senior staff member, labour ward coordinator, and later a Consultant Midwife. It is highly improbable that 'Witness 2' would not have known Ms. 1 during her training and post-qualification shifts on labour or maternity wards. Furthermore, shift leads are always identified at the beginning of a shift, further invalidating 'Witness 2''s statement.*

   relevance - Examine this pattern of inaccuracies in 'Witness 2''s testimony, highlighting the dishonesty and unreliability of her statements.

   I trust that the NMC and Panel will recognize their responsibility to ensure an open and fair hearing by seeking the requested evidence. As an individual, I lack the authority to obtain some of this material, whereas the NMC or Panel, by virtue of their statutory powers, is better positioned to do so.

   …knowingly and willingly admitting a false statement into a hearing is an offense.

   When suspicions arise regarding the integrity of evidence, it is imperative to thoroughly investigate all allegations of fraudulent testimony. While this may involve considerable time and effort from practitioners and forensic experts, it ultimately ensures justice and fairness in the proceedings. It also safeguards the

integrity of the case by undermining baseless or dishonest claims, which can significantly impact the outcome.'

Ms Stevenson provided a 21 page written response to your application, including as follows:

*'… **ADT records***

29. In her witness statement dated 30/07/2018, Witness 2 alleges:

a. [at para 3] 'on 03 November 2017, I was working a long day shift which started at 07:00 and finished at 20:30. I was responsible for the patients and babies in bay 1. At approximately 20:00, agency midwife Amma arrived for her night shift. I provided handover of my patients in bay 1 to Amma with an individual handover for each of my patients which included two patients: Patient A and Patient B.

b. [at para 8] I returned to the Hospital at 07:00 on 4 November 2017 for an early shift. I received handover from Amma.

30. The Registrant takes issue with Witness 2's evidence. In particular that Witness 2 did not hand over to her as she was not present in the unit/department at the time of her handover and departure.

31. The Registrant in her application states 'I have consistently stated via my representative that 'Witness 2' did not hand over to me, as I was not present in the unit/department at the time of her handover and departure. Notably, 'Witness 2''s statement specifies 8:30 PM as the time she left the ward.'

32. This area of dispute was put to W2 during her evidence. For example, see the public transcript dated 30 January 2023, page 57, line 1 to page 58 line 23.

33. At page 28 of the Panel's determination thus far, the Panel found:

a. During the course of the hearing, the panel recognised that although Ms Bennett was not a legally qualified advocate, she did have experience with the NMC hearing process. Notwithstanding, the panel

sought to make appropriate allowances by providing extensive general guidance, directing Ms Bennett and you to the relevant information and guidance available on the NMC website and allowing considerable time for Ms Bennett to consult with her legal team and you, as and when she required it.

b. *…*

c. *The panel noted that there was little attention to any form of case management in that Ms Bennett frequently served on both the NMC and the panel substantial material not directly relevant to the charges which impacted upon the hearing process resulting in significant delays.*

d. *…*

e. *The panel was mindful to ensure that the frustrations and delays which caused the hearing to be adjourned part-heard did not distract from its proper consideration of your case. The panel wishes to emphasise that it remains wholly committed to its primary responsibility to make a completely detached and careful evaluation of the relevant evidence on each specific charge.*

34. *As the Panel will be aware, the Panel then actively case managed this case, making directions that preliminary legal submissions, or legal matters, and questions of witnesses should be provided in advance.*

35. *Due to the scheduling of this case, plenty of time was afforded to the Registrant and her representatives to prepare its case and yet directions were still not complied with and no disclosure requests were made.*

36. *The Registrant and her representatives were fully aware of their ability to seek disclosure as they made other disclosure requests, such as seeking disclosure of a 'signature list'.*

37. At no point throughout this case, since it commenced on 23 January 2023, has it been suggested that there was the possibility of further evidence sought by the Registrant.

38. These could have been requested prior to the hearing commencing to allow the NMC time to obtain the records and further allow these records to be put to Witness 2 for her to consider and respond to.

…

56. With regards to obtaining 'a statement from the labour ward lead on duty that night, who would have managed staff-to-patient ratios' the Registrant has not provided a name of the labour ward lead. It is unclear why this point couldn't have been put to any of the NMC's witnesses, for example Witness 1 who investigated the concerns at local level.

57. The issue around staffing levels was something that could have been put to the NMC witnesses. It is not proportionate of the NMC's time and resources to seek this further evidence which may require a further witness to give up their time to attend the hearing

58. With regards to the 'Blood Glucose Monitoring' policy was applicable at the time of the shift in question. The only policy Witness 2 exhibits is the 'Hypoglycaemia of the Newborn (Postnatal ward Identification and Management)' policy ('the Policy') (Exhibit [PRIVATE]). When Witness 2 adduced the Policy in oral evidence, she confirmed it was the specific policy she was referring to in her witness statement. See the public transcript for 30 January 2023, page 43, lines 12-21. Furthermore, the Policy at Exhibit [PRIVATE] is dated 04 October 2017, with the review of that policy being due in May 2020. The charges relate to 03 – 04 November 2017. Therefore, the NMC submits the Policy was clearly the Policy applicable at the time of the shift in question.

59. In relation to obtaining Patient A's labour notes, in accordance with NMC Guidance titled 'Directing further investigation during a hearing' reference

DMA-5, the NMC considers that it has, 'given the panel all the relevant evidence. The panel needs to understand the background including the context in which the incident occurred, consider all the relevant facts and make a fair and fully informed decision that best protects the public.' The Panel have Patient A's Medical Notes and Patient A's baby notes and observation notes.

60. *In relation to the claim that Witness 2 denied knowing or working with Ms. 1. It is unclear how this is relevant to the charges in this case. If it simply goes to credibility, then that can be a submission to raise for closing submissions or no case to answer.*

61. *With regards to all of the disclosure requests above the NMC refers the Panel again the NMC Guidance titled 'Directing further investigation during a hearing' (reference DMA-5) and 'Disclosure' (reference PRE-5).*

62. *In light of its submissions above, the NMC submits that it is questionable as to the relevance of the information sought. It is not essential.*

63. *It is unclear as to the steps the Registrant has taken to obtain this information. Whilst the Registrant has expressed that she is an individual and so the NMC are better placed to investigate and seek the information sought, she was represented before and the Panel have considered that at page 28 of the Panel's determination thus far, that 'although Ms Bennett was not a legally qualified advocate, she did have experience with the NMC hearing process. Notwithstanding, the panel sought to make appropriate allowances'.*

64. *…*

65. *The NMC cannot answer the question in the Disclosure Guidance 'Are we better placed to obtain this material from the organisation or person that holds it?' unless it know what efforts the Registrant has made.*

66. *The NMC submits the disclosure requests are not as a result of new information coming to light that neither the NMC nor the Registrant have seen.*

67. *The information currently before the Panel is not obviously incomplete and does cover all the areas of concern.*

68. *The further information sought is not essential to clarify or expand on evidence already obtained. Particularly as the Registrant's case has been put to Witness 2.*

69. *The Registrant has not provided new information about the context in which the incident occurred which would have a material impact on the outcome of the case. The Registrant first put her case to Witness 2 in January 2023, no requests for this information now sought when subsequently made until now, nearly 2 years later.*

70. *The evidence sought whilst it seems it may go towards the Registrant's case, is not important to an issue that the Panel has to decide. The issues have been put to Witness 2 and therefore it is a matter for the Panel to consider, when forming a view as to Witness 2's credibility and reliability, but it does not go specifically to the charges in the case.*

71. *The NMC submit if such evidence is sought and adduced, it may mean one or more witness will need to be recalled. Witness 2 in particular who the Panel considered had been 'unfairly ground down.'*

72. *The NMC submit that the Panel can consider its decision and reach a satisfactory conclusion without this evidence.*

73. *The NMC submits it would not be proportionate to obtain this information as requested because it does not go to the charges but rather a wider context of*

credibility. It would result in further time and money being spent on investigating these matters creating further delay.

74. *Additionally, there is a public interest in the expeditious disposal of this case and acceding to the Registrant's request may mean witnesses may have to attend to give evidence which can be a potential inconvenience and cause further delay.*

75. *It is not proportionate or fair, at this stage of proceedings, for the Registrant to now raise the number of disclosure requests that she has. As stated above:*
    a. *Plenty of time has been afforded to the Registrant and her representatives to prepare its case. The Registrant and her then representatives have at the very least, since October 2021 to prepare its case and raise disclosure requests. In reality they have had longer than that as one would expect a party to have prepared its case prior to the hearing commencing;*
    b. *The Registrant and her representatives were fully aware of their ability to seek disclosure as they made other disclosure requests;*
    c. *The case management form was not fully completed and it did not set out the Registrant's case, what they took issues with or any disclosure requests;*
    d. *No disclosure requests were received by the NMC from the Registrant or her representatives before either the original hearing in October and November 2021 or this hearing commenced;*
    e. *At no point throughout this case, since it commenced on 23 January 2023, nearly 2 years, has it been suggested that there was the possibility of further evidence sought by the Registrant.*
    f. *The Registrant has been given more than one opportunity to present her case to Witness 2 and to make any disclosure requests to assist her in doing so.*
    g. *There is no good reason why this information was not sought earlier, particular before the hearing commenced, to allow the NMC time to*

obtain the information and further allow this information to be put to the witnesses to consider and respond to.

…

79. In light of the above the NMC subject that the Registrant's request for further investigation and disclosure should not be acceded to.'

The panel heard and accepted the legal advice, which was set out in writing as follows:

'I have now considered further the detailed submissions of the Registrant set out in Exhibit 41A. With one important qualification which I will explain shortly, I advise the panel that the great bulk of the points made by the registrant do not fall to be decided at this stage. But some issues if pursued by the registrant may be considered either on an application for abuse of…process or submission of no case in both cases at the end of the fact stage.

For example, it may be submitted at such a stage that evidence on a specific charge is tenuous or inconsistent. I will give the [panel] *more detailed advice on the way to approach such submissions if they are made.*

But the panel should not, broadly speaking, seek to resolve the issues raised by the registrant [at] *this stage.'*

The panel accepted the advice of the legal assessor in its entirety, that at no stage should the panel be perceived as entering the arena so as to improve the case of either side by calling for evidence independently of the party to resolve specific charges.

In making this decision the panel took into account the NMC guidance:

- *'Directing further investigation during a hearing' reference DMA-5*
- *'Disclosure' (reference PRE-5)*

The panel determined the following with regard to your application.

1. With regard to your request for the ADT administration records, the panel was of the view that having sight of the ADT administration records, as described by you, between 20:00 and 21:30 would not assist it in making its decision on the charges which sit outwith the timings as detailed in the charges. The panel was satisfied, based on the NMC guidance, that it was not essential to direct that the ADT administration records be requested.

2. With regard to your request to obtain a statement from the labour ward lead on duty, the panel was of the view that further details regarding staffing levels would not assist it in making its decision on the specificity of the charges. The panel was satisfied, based on the NMC guidance, that it was not essential to direct a statement from the labour ward lead be obtained.

3. With regard to your request to obtain the Blood Glucose Monitoring policy at the time of the shift in question, the panel was of the view that it had been provided with the policy that was in effect at the time of the incidents in question. The panel was satisfied, based on the NMC guidance, that it was not essential to direct that another Blood Glucose Monitoring policy be obtained to assist the panel in making its decision on the specificity of the charges.

4. With regard to your request to obtain Patient A's Labour notes, the panel took into account the fact that it had copies of relevant pages of Patient A's Postnatal notes and Patient A's baby's Postnatal notes and observation charts. The panel was of the view that Patient A's Labour notes would not assist it in making its decision on the specificity of the charges which relate to care delivered on the Postnatal ward. The panel was satisfied, based on the NMC guidance, that it was neither relevant or essential to direct that Patient A's Labour notes be obtained.

5. With regard to your request to investigate the claim that Witness 2 denied knowing or working with Ms. 1, despite Ms. 1 being a senior staff member, labour ward coordinator, and later a Consultant Midwife, the panel was of the view that this would not assist it in determining the specificity of the charges. Having considered the NMC guidance, it was unclear to the panel how your request was relevant to the charges in this case.

The panel would like it to be noted that its decision in respect of your application does not stand in the way of you making further submissions at the appropriate stage(s).

The panel wishes to make it plain that nothing in this determination should be taken as any indication that this panel has made up its mind on any of the specific charges. Specifically, it has not done so. It will continue to seek to act entirely independently. The panel wishes to emphasise that it remains wholly committed to its primary responsibility to make a completely detached and careful evaluation of the relevant evidence on each specific charge at the appropriate stage in proceedings.

Application to adduce documents

On 4 February 2025, you made an application to adduce nine documents you wanted the panel to consider. The documents provided were as follows:

a. Letter from Milton Keynes Hospital NHS Foundation Trust ('the Hospital') dated 27 January 2025;
b. Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Management)' last reviewed April 2016.
c. Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Management' last reviewed May 2017.
d. Email chain between the Registrant and the Hospital dated 30-31 January 2025;
e. Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Identification and Management) last reviewed May 2017
f. The Registrant's letter requesting clarification from the Trust dated 31 January 2025;
g. Handover sheet;
h. Google timeline screenshot;
i. Single page of Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Identification and Management) last reviewed May 2017.

You made oral submissions in respect of your application and later provided the panel with written submissions expanding on your oral submissions.

You submitted that Document A was the response that you had received from the Trust to the freedom of information request that you had made. The Trust provided Document B (the preceding policy to the effective policy at the time) and Document C (the effective policy during the time of the incidents). Document D was your email to the Trust which attached Documents E and F. Document F was your letter to the Trust asking them to account for the differences between the policy they said was current at the time and the policy provided by Witness 2 (Document E). Document G, the handover sheet, had typing at the bottom of the page which states *'The new hypo pathway has been withdrawn until further notice. Continue using the old one on the intranet'*. You provided Document H, the Google timeline, to show that you were enroute to the Hospital at the time when Witness 2 stated you were present at the handover. With regard to Document I, you had asked the Hospital if it was the policy effective at the relevant time and they had said it was, but you noted there were differences to the policy the Trust had provided as the effective policy.

You submitted that you believed Witness 2 had given false testimony under oath, to include: Witness 2 saying she did not know a Senior Midwife, who was likely to have played a role in her training or recruitment; stating you were present at the hand over when you were not; and providing an incorrect version of the relevant policy. You submitted that Witness 2's testimony should be struck out as it was not credible. You further submitted that the nine documents were all relevant and that it was fair that these documents be allowed into evidence.

With regard to relevance and fairness, you submitted:

> ***'Relevance of This Submission***
> *I respectfully submit this document to highlight critical concerns regarding the accuracy, fairness, and potential bias in the consideration of evidence in this matter. My submission is directly relevant to ensuring an evidence-based and just decision-making process, for the following reasons:*
> ***1. Handover Attendance Misrepresentation***

- *I have been falsely accused of being present at a handover, despite no objective evidence supporting this claim. (H) relevance will show my location at time of hand over*
- *My testimony should hold equal weight, yet Witness 2 (W2)'s statement has been accepted without any corroboration.*
- *The requested document—such as patient tracking records or a statement from the transferred patient—would provide factual confirmation of my whereabouts and disprove W2's assertion.*
- *Additionally, my Google Timeline (H) can further corroborate my movements.*
- *It is deeply concerning that W2's word has been accepted without question, despite the availability of objective evidence that could refute her claim. This raises serious questions about whether white privilege is affording W2 undue credibility and protection, while my evidence is being disregarded.*

2. Presentation of Incorrect Policy

- *W2 submitted a policy document as evidence, despite it not being in effect during the relevant period (3–4 November 2017). (E,I)*
- *I specifically requested the correct version, yet neither the panel nor the NMC made efforts to obtain it. Nor was W2 asked to produce the source of this Document*
- *I have since secured the correct policy, (C) which proves that W2 submitted false evidence.*
- *The failure to challenge W2's submission, despite clear evidence contradicting it, raises concerns about selective scrutiny and whether W2 is being protected from accountability.*
- *The requested document is crucial, as it verifies the applicable policy at the time, exposes any misrepresentation, and ensures a fair assessment of my actions.*

3. False Testimony Under Oath

- *W2 testified under oath that she did not know a senior midwife, despite training in the same hospital.*
- *Given that this senior midwife likely played a role in her training or recruitment, this statement is highly implausible.*
- *The fact that W2's inconsistent statements have gone unchallenged, while my evidence has been met with resistance, raises concerns that white privilege may be influencing how credibility is being assigned in this case.*
- *The requested document could further establish the reliability of my claims and expose contradictions in W2's testimony.*
- *G – this will show that there were policy changes at that time as confirm by W1, contrary to W2 testimony*

Conclusion

The discrepancies outlined above not only call into question the integrity of the evidence presented against me but also raise concerns about the role of white privilege in how this case is being handled. It appears that W2's testimony is being protected from scrutiny, while my own evidence—despite being verifiable—is being overlooked.

A fair and transparent process requires all evidence to be evaluated objectively, without bias or preferential treatment. I urge the panel to ensure that justice is not compromised by systemic privilege and to consider the requested document and/ admit it as evidence in the interest of fairness and truth…'

Ms Stevenson provided written submissions by way of a response. Within her written submissions, Ms Stevenson submitted that Documents A, C, E, H and I were relevant. However, she submitted that Documents A and H were not directly relevant to the charges, Document C coincided with the dates of the charges, and Documents E and I were already before the panel as exhibits.

With regard to Document G, Ms Stevenson submitted that it may be relevant, as it referred to the *'Guidance/Policy of note within this case'*, but it was not clear what version of the policy was being referred to.

With regard to Documents B, D and F, Ms Stevenson submitted that they were not relevant. She submitted that Document B preceded the dates applicable to the charges; that the substance of the content of Document D *'is non-consequential'* and did not go towards the charges; and that Document F was not evidence which went towards the charges.

With regard to whether to decide upon this application at this point in the proceedings, Ms Stevenson submitted the following:

> 4. *'As the NMC understands from the Registrant's' submissions, it seems that some of the documents, such as Document H, the google timeline, are being introduced solely to undermine Witness 2's credibility.*
>
> *…*
>
> 6. *… it may not be appropriate to resolve this application during the NMC's case but rather resolve it during the Registrant's case.*
>
> 7. *The NMC understands that the Registrant is unrepresented and that the position as to the Registrant's case has not always been clear.*
>
> 8. *Therefore, if the Panel considers that it is most appropriate to deal with these issues at this stage, then the NMC do not object to the Panel taking that course and provides the following submissions in response.*
>
> 9. *Furthermore, the Panel may be of the view that the material is required for it to make an assessment of the NMC's case at the half time point, therefore this application will need to proceed at this stage.'*
>
> *…*

With regard to fairness, Ms Stevenson submitted the following:

> ***'Fairness***
>
> 33. *The NMC submit that it would be unfair the admit the documents for the following reasons.*

34. *First, there is unfairness by admitting the document because the evidence may be unchallenged.*

35. *The NMC make that submission because although technically Witnesses 1 and 2 could be recalled it would be wholly inappropriate and unfair to recall them due to the history of the case and the fact that, as the Panel have found (at page 19 of the Panel's determination thus far):*

    a. *For example, in terms of fairness, we have a witness who was engaging and had a concise statement which dealt with identifiable areas to be challenged. Witness 2 has been* ***severely inconvenienced*** *by being on call for three weeks, during which she had the added pressure of waiting all day for six days to come back to continue her evidence. Further as a practising registered midwife, this unnecessary inconvenience would have adversely impacted on her employer and the patients under her care.*

    b. *Following protracted and repeated questioning in cross-examination, remarking inappropriately upon and making implied criticisms of some of Witness 2's answers has resulted in Witness 2 being* ***unfairly ground down****. The panel has been advised that Witness 2 has been left* ***feeling distressed*** *and* ***vulnerable****. The panel considers that this is* ***clearly not tolerable****.*

    c. *This is not an isolated occurrence****. Witness 1 and Witness 2 were treated in a similar unfair manner.*** *Other witnesses were also subjected to unattractive cross-examination.* ***There is a compelling inference that this is a course of conduct designed to reach that end****.'**

    d. **On further reflection, the panel seeks instead to express this concern as follows: At times, the similar pattern and manner of questioning presented itself as plainly intimidatory towards witnesses. The danger of such questioning is that such a witness would be inhibited from giving the evidence that they wished.*

e. *'The panel recognises that an advocate has a duty to put their case, challenge the evidence where necessary and may adopt a robust style. However, the panel considers that the questioning of witnesses, as adopted by the defence, was* ***excessive and unnecessary****.*

f. *The panel considers that this constitutes an* ***abuse of process*** *and* ***unfairness*** *to other parties,* ***particularly witnesses****.*

[emphasis added]

36. *Therefore, the NMC considers that as Witness 1 and 2 should not be recalled, this evidence would be unchallenged and therefore should not be admitted. If that causes a level of unfairness towards the Registrant there whilst that is unfortunate, there are reasons for why the legal system has certain processes and procedures in place.*

37. *The Panel are invited to consider NMC Guidance titled 'Engaging with your case' (reference FTP-16) which states:*

Raising issues at a late stage in proceedings

g. *Suppose a nurse, midwife or nursing associate raises an issue at a late stage (such as the final hearing) that could reasonably have been raised at an earlier stage. In this case, the panel may consider whether there's a reasonable explanation for this and whether to adjourn the matter for further investigation.*

h. *For example, a nurse, midwife or nursing associate could raise, for the first time at a final hearing, that they were overloaded at the time of the incident due to staffing shortages. This may be something they could have reasonably raised with us earlier on in the fitness to practise process (*<u>See our guidance on directing further investigation during a hearing</u>*).*

i. ***If the panel considers that there's no reasonable explanation for the issue being raised late, it may, subject to it being fair, decide to take that into account when assessing the nurse, midwife or nursing associate's credibility in relation to the matter raised.***

[emphasis added]

38. *This leads to the NMC's second submission, that there is a general level of unfairness as to the timing of this application.*

39. *At page 19 of the Panel's determination thus far, the Panel found:*

    j. *Over the course of the hearing, the panel raised with the parties that it had become increasingly concerned at the frustration to the hearings process by the defence and the disregard for the principles of fairness to witnesses, case management and to the NMC.*
    k. *…*
    l. *The defence has repeatedly disregarded and breached the rules of fairness, the panel's directions and the legal assessor's guidance with regard to the hearing process.*

40. *At page 28 of the Panel's determination thus far, the Panel found:*

    m. *During the course of the hearing, the panel recognised that although Ms Bennett was not a legally qualified advocate, she did have experience with the NMC hearing process. Notwithstanding, the panel sought to make appropriate allowances by providing extensive general guidance, directing Ms Bennett and you to the relevant information and guidance available on the NMC website and allowing considerable time for Ms Bennett to consult with her legal team and you, as and when she required it.*
    n. *…*
    o. *The panel noted that there was little attention to any form of case management in that Ms Bennett frequently served on both the NMC and the panel substantial material not directly relevant to the charges which impacted upon the hearing process resulting in significant delays.*
    p. *…*

q. *The panel was mindful to ensure that the frustrations and delays which caused the hearing to be adjourned part-heard did not distract from its proper consideration of your case. The panel wishes to emphasise that it remains wholly committed to its primary responsibility to make a completely detached and careful evaluation of the relevant evidence on each specific charge.*

41. *During her oral submissions the Registrant accepted that she only sent the further information request in January 2025. She explained that she had made attempts to get the documents from Witness 1 in 2017 and before this case started in January 2023.*

42. *It is submitted plenty of time has been afforded to the Registrant and her representatives to prepare its case and raise issues.*

43. *As the Panel are aware, this is a re-hearing, as this matter was previously listed in October and November 2021. This hearing started in January 2023. W2 started her evidence on Monday 30 January 2023 (day 6) her evidence was not completed on that day, and she was asked to return another day. Her evidence could not be completed and so she returned on 19 and 20 June 2024.*

44. *The Registrant and her then representatives have at the very least, since October 2021 to prepare its case and raise disclosure requests. In reality they have had longer than that as one would expect a party to have prepared its case prior to the hearing commencing and as the Registrant's accepted during her oral submissions, she herself knew of this documentation and that she required it because she raised it with Witness 1 in 2017.*

45. *The case management form was not fully completed and it did not set out the Registrant's case, what they took issues. No disclosure requests were received by the NMC from the Registrant or her representatives before either*

the original hearing in October and November 2021 or this hearing commenced.

46. *At no point, since this case commenced on 23 January 2023, until November 2024 has it been suggested that there was the possibility of further evidence required and/or being sought by the Registrant.*

47. *These documents and why the Registrant required them could have been requested prior to the hearing commencing to allow time to obtain such documents to then be put to Witness 1 and/or 2 for them to consider and respond to.*

48. *It is of great concern that these issues were not raised prior to the hearing starting in January 2023 either by her representative or of her own accord.*

49. *Whilst the Registrant explained that she did put the request to her representative, it was always open to her to raise it either with her representative or the Panel prior to the hearing commencing but more importantly prior to the witness's evidence. Even during the witness's evidence, the Registrant's then representative would always be afforded an opportunity to speak with the Registrant to ensure that everything had been put to the witnesses in accordance with the Registrant's' instructions.*

50. *The Registrant has not been denied the opportunity to present her case to Witness 2. She has had two opportunities to property put her case to Witness 2 in January 2023 and June 2024 and to make any disclosure requests to assist her in doing so.*

51. *Whilst the Registrant submitted that she did not know she could raise a further information request until someone advised her, as the Panel found at page 28 of the Panel's determination thus far, that 'although Ms Bennett was not a legally qualified advocate, she did have experience with the NMC hearing process. Notwithstanding, the panel sought to make appropriate*

allowances'. She therefore had the benefit of an experienced representative who could have obtained the documents she required and knew about these documents as the Registrant requested.

52. *Additionally, the Registrant has been able to obtain these documents within a month and she commented as to the ease of how she was able to obtain these documents. This therefore raises further concerns as to why this was not before.*

53. *Therefore, it is not proportionate or fair, at this stage of proceedings, for the Registrant to now seek to adduce further evidence. As stated above:*
    a. *Plenty of time has been afforded to the Registrant and her representatives to prepare its case. The Registrant and her then representatives have at the very least, since October 2021 to prepare its case and raise disclosure requests. In reality they have had longer than that as one would expect a party to have prepared its case prior to the hearing commencing;*
    b. *The Registrant and her representatives were fully aware of their ability to seek disclosure as they made other disclosure requests;*
    c. *The case management form was not fully completed and it did not set out the Registrant's case, what they took issues;*
    d. *No disclosure requests were received by the NMC from the Registrant or her representatives before either the original hearing in October and November 2021 or this hearing commenced;*
    e. *At no point throughout this case, since it commenced on 23 January 2023, until November 2024, nearly 2 years, has it been suggested that there was the possibility of further evidence sought by the Registrant.*
    f. *The Registrant has been given more than one opportunity to present her case to Witness 2 and to make any disclosure requests to assist her in doing so.*
    g. *There is no good reason why the issue pertaining to these documents were not sought earlier, particularly before the hearing commenced, to*

allow for time to obtain the information and further allow this information to be put to the witnesses to consider and respond to.

…

59. There is no legal process available to eliminate or strike out Witness 2'sevidence. Her evidence will be available to the Panel as will any other evidence adduced in this case from both parties. The Panel will consider the evidence as a whole and decide what weight if any to place on parts of the evidence and the Panel will decided which witnesses are credible and/or reliable.

…

61. Taking the above submission in turn:

a) *…*

b) *Witness 2's evidence was questioned by the Registrant's representative on more than one occasion. Witness 2 is not being afforded white privilege, if anything she has been 'unfairly ground down' by the Registrant's representative's questioning. Witness 2 has not been afforded undue credibility and protection, the Panel have not yet determined credibility and Witness 2 is entitled to the same level of fairness as every party in this case. The Registrant has not yet given evidence and therefore it cannot be said that it has been disregarded.*

c) *The submissions made under 'false testimony under oath' are submissions to raise for closing submissions or no case to answer.'*

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

The panel's understanding was that your reason for seeking to adduce Documents A – I was on the basis that they would assist you in your assertion that Witness 2's credibility had been undermined. The panel took into account that the question of credibility as to Witness 2, or any of the witnesses, was not part of its consideration at this stage of the hearing, and would become a consideration when the panel came to make a decision on the facts. It therefore was of the view that it was not the appropriate time to resolve

the issue of credibility at this stage, but that the application could be considered during your case.

The panel accepted the submissions of Ms Stevenson which stated:

> *58. 'Only once both sides have closed their cases will the Panel retire to consider the facts of this case and consider matters such as credibility.*
>
> *…*
>
> *61. …*
>
> c) *The submissions made under 'false testimony under oath' are submissions to raise for closing submissions or no case to answer.'*

The panel therefore decided that, balancing all of the submissions and the advice of the legal assessor, it was not required to decide the issues raised within this application at this stage.

Application to adjourn

On the morning of 7 February 2025, you made an application to adjourn the hearing until the morning of Monday 10 February 2025. You informed the panel that you required further time to consider the next steps you would be taking in your case and to prepare your submissions.

Ms Stevenson did not oppose the application. She acknowledged that as an unrepresented registrant you may require more time. However, Ms Stevenson stated that there was a limit as to how much time could be given.

The panel heard and accepted the legal advice.

At the close of the NMC's case, the panel noted that it had allowed time yesterday afternoon for you to reflect upon and to consider whether you would be making halftime submissions or opening your case and calling your witnesses. The panel was mindful that allowing this adjournment would result in a further delay to the expeditious disposal

of this case. However, it acknowledged that, as an unrepresented registrant, you had asked for more time to prepare your case. It also took into account that Ms Stevenson had not opposed the application. The panel further noted that this adjournment would not cause any inconvenience to witnesses as it had not been advised that any witnesses were warned for this week. The panel was therefore satisfied that it was reasonable for you to be given further time today, as an unrepresented registrant, to prepare your oral and written submissions to present to the panel at 09:00 on 10 February 2025. It therefore allowed the application.

Decision as to whether a document should be recorded in private

The panel considered an email from you dated 7 February 2025, and whether the contents of that email should be heard and recorded in private, as well as an email from the NMC. Both of these emails were read into the private transcript. It considered the advice of the Legal Assessor thereafter and determined that the content of the email should remain in private so as not to prejudice any possible third-party enquiries.

Application to adjourn the hearing until 10 March 2025

On 10 February 2025, you made an application to adjourn the hearing until 10 March 2025, when you hoped to have secured representation. You provided the panel with dates that a potential representative would be available during the listed hearing dates and the suggested additional hearing dates in September 2025. You stated that your potential representative was not available this week, nor on 3 March, and 17 – 20 March 2025. You submitted that at this stage of the hearing, where you had anticipated making a no case to answer application, an abuse of process application and to present your case; you thought you would be able to do it. [PRIVATE].

Ms Stevenson submitted that whilst the NMC were sympathetic to your position, it opposed the application. She acknowledged your efforts to obtain representation but submitted that the representation had not definitely been confirmed and was simply a possibility at this stage.

Ms Stevenson submitted that you had sought to adjourn the hearing on three previous occasions to allow you time to seek representation and to prepare for these applications. Ms Stevenson submitted that you had been aware for some time of what was required and that you had been afforded further time on last Thursday and Friday to prepare to give your [half time] submissions today and that adjourning the hearing again would waste further hearing time which had already been scheduled. She submitted that the hearings timetable was in place, this was now the time for the no case to answer application to be made and that the potential representative had only got in touch this morning.

Ms Stevenson submitted that hearings are designed to accommodate unrepresented registrants. She referred to the NMC guidance entitled *'When we postpone or adjourn hearings'* and submitted that the efficient disposal of cases was in the public interest. She invited the panel to continue in light of this public interest.

However, Ms Stevenson submitted that, if the panel was minded to allow you time to obtain representation, that the dates for this week should remain listed until there was confirmation as to whether or not you are represented.

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

During its deliberations, the panel decided that it required further information from you to assist it in making a decision. It returned back to the hearing to ascertain whether confirmation of representation could be provided. [PRIVATE].

[PRIVATE].

You confirmed that you would contact your [potential] representative for confirmation as to whether they would represent you from 10 March 2025. On 10 February 2025 you provided written confirmation that your legal representation had been confirmed.

The panel received the written confirmation on 11 February 2025 and invited further submissions from Ms Stevenson and [PRIVATE] and confirmation of representation.

Ms Stevenson submitted that, [PRIVATE] could be mitigated by a short delay and having a representative, then the NMC would endorse that application.

You referred the panel back to your previous submissions.

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

The panel took into account that it had received confirmation that you had now secured legal representation.

[PRIVATE].

The panel was of the view that adjourning the hearing to 10 March 2025, when you would have representation, would be appropriate in these circumstances. It therefore allowed your application to adjourn until 10 March 2025.

Directions

The panel directs that:

1) By 14 February 2025 the NMC to send a revised notice of hearing regarding currently scheduled dates to April 2025 and new dates in September 2025, noting that 3 March 2025 is vacated and the email from the registrant dated 11 February 2025 waiving the notice period for the listing on the week commencing 10 March 2025;

2) By 18 February 2025, the registrant to send to her new representative all transcripts prior to February 2025 and all hearing papers;

3) By 20 February 2025, the NMC to ensure that the February 2025 transcripts are sent to all participants (including the registrant's new legal representative);

4) The revised hearing timetable (as agreed by the parties on 12 February 2025), to be strictly adhered to;

5) All legal submissions should be made in writing;

6) By 10 March 2025*, any halftime submissions (including abuse of process and/or no case to answer) to be submitted in writing;

*The panel has allowed extra time for the newly appointed registrant's representative to prepare the written submissions, and hence has not requested these in advance of the hearing.

7) If no half-time submissions are to be made by the registrant, all defence witnesses (including the registrant should she choose to give evidence) to be on standby to attend the hearing to give evidence from 10 March 2025;

8) As indicated at the outset of the hearing, the panel would be greatly assisted by written closing submissions at the facts stage.

[This hearing resumed on 10 March 2025]

At the outset of this resumed hearing, on day 53, the panel was informed that the current legal assessor, Mr Pascoe, was unable to sit on this hearing after 13 March 2025 for reasons unrelated to this case. Given Mr Pascoe's unavailability, a new legal assessor would be assigned to this hearing from 17 March 2025 onwards. Mr Pascoe informed the panel that he would provide a handover to the new legal assessor.

On the first day of the resuming hearing, Mr Umezuruike produced written submissions in respect of an *'Abuse of process'* and a *'No Case to Answer'* application. It was agreed with the parties that the panel would consider the *'Abuse of Process'* application first. The application regarding *'No Case to Answer'* would only be considered if the panel did not 'stay' the proceedings as an abuse of process. It was also agreed by the parties that Mr Pascoe would provide legal advice in respect of the *'Abuse of Process'* and *'No Case to Answer'* submissions as it would utilise the available listed time, and prevent any undue delay to the hearing process. The panel would be able to consider both applications during the *'in camera'* days set aside next week.

Decision and reasons on 'Abuse of Process' application

Mr Umezuruike, on your behalf, provided the panel with written submissions in respect of an abuse of process application as follows:

1. *'In these proceedings, the Registrant ("R") faces five charges in respect of events that allegedly happened on 3rd and 4th November 2017. R denies all the charges.*

2. *It would appear that these proceedings started in 2021. The substantive hearing started on 23rd January 2023 and it is still ongoing.*

3. *R's applications for the case to be struck out on the grounds of abuse of process and that there is no case to answer will be dealt by the committee from 10th March to 14th March 2025. In the event that those applications are not*

successful, R would be expected to give evidence in her defence on 8th April 2025.

4. *It is the R's case that because of the delay in prosecuting these charges, a fair trial will no longer be possible.*

5. *Article 6 of Schedule 1 to the Human Rights Act 1998 provides as follows: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law……..".*

6. *In HABIB BANK LTD v JAFFER (GULZAR HAIDER) [2000] C.P.L.R 438, CA, a claim was struck out where delays were caused by the claimant acting in wholesome disregard of the norms of conducting serious litigation and doing so with full awareness of the consequences. Delay, even a long delay, cannot by itself be categorized as an abuse of process without there being some additional factor which transforms the delay into an abuse (ICEBIRD LTD -v- WINEGARDNER [2009] UKPC 24).*

7. *In this case, the events leading to the charges are said to have taken place on 3rd and 4th November 2017. There was a delay of four years before it first came to the committee in 2021. There was a further delay of two years before the hearing started in January 2023. During the hearing, the proceedings were adjourned for one year in order to accommodate witness 2 who went on a year-long holiday.*

8. *It is respectfully submitted that these delays have prejudiced R as she can no longer have a fair trial. She cannot now be expected to remember events that occurred in November 2017.*

9. *In the event that these proceedings are not stopped now, R's right to a fair trial will be breached.*

10. *The committee is therefore respectfully invited to strike out all the five charges against R.'*

Ms Stevenson provided the following written submissions:

1. *'The NMC opposes the Registrant's application to stay the proceedings as an abuse of process.*

THE LAW

2. *The burden of establishing that the bringing or continuation of proceedings amounts to an abuse of process is on the Registrant; the standard of proof is the balance of probabilities (R v Telford Justices ex parted Badhan [1991] 2 Q.B. 78).*

3. *As per the NMC guidance, titled Abuse of Process (reference DMA-4, last updated 21.02.2019):*

> *If the nurse, midwife or nursing associate makes the application, they will* ***only succeed if they can show*** *that it's* ***more likely than not*** *that the alleged abuse of process can't be properly rectified in any other way than to stop the case.*[3]

[emphasis added]

4. *It is accepted that as a general principle, it will normally be necessary for the defence to prove not only that an abuse has taken place but that the Registrant has been prejudiced in the presentation of his or her case as a result, so that a fair trial (or hearing) is no longer possible.*

5. *In Maxwell [2011] 4 All ER 941 (at [13]), cited in Warren v A-G for Jersey [2012] 1 AC 22 (at [22]), Lord Dyson summarised the two categories of case in which the court has the power to stay proceedings for abuse of process:*

> *It is well established that the court has the power to stay proceedings in two categories of case, namely (i)* ***where it will be impossible to give the accused a fair trial****, and (ii)* ***where it offends the court's sense of***

[3] https://www.nmc.org.uk/ftp-library/ftpc-decision-making/abuse-of-process/

justice and propriety to be asked to try the accused in the particular circumstances of the case. *In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises.*

[emphasis added]

6. *The NMC guidance 'Abuse of Process' states:*

> *In deciding whether there has been an abuse of process which means the case should be stopped, the panel will consider whether the alleged abuse of process (such as delay, or a failure to disclose evidence) has caused serious prejudice or unfairness to the nurse, midwife or nursing associate*
>
> *In accordance with its overarching public protection objective, the panel will also consider whether there are ways of putting right the serious prejudice or unfairness, so that the nurse, midwife or nursing associate can have a fair hearing without stopping the case.*

7. *The Registrant submits that there is an abuse of process due to delays which 'have prejudiced R as she can no longer have a fair trial'.*

8. *In relation to unreasonable delay, the NMC guidance 'Abuse of Process' states:*

> *The nurse, midwife or nursing associate's* ***right to a fair hearing under human rights legislation includes a right to having their case heard within a reasonable time****,*[4] *so the length of any delay is a relevant consideration for the panel.*

[4] Article 6(1) European Court of Human Rights

For our purposes, the relevant time runs from when we first notified the nurse, midwife or nursing associate that we were sending their case for an investigation.[5]

The panel will only use its power to stop all or part of a case due to delay, in ***exceptional circumstances****. This could be where there is real prejudice to the nurse, midwife or nursing associate which means that a fair hearing would be impossible because of the delays.*

In an argument about delay, the panel will hear submissions from the nurse, midwife or nursing associate, and from us, on the circumstances leading up the application.

These will include the chronology of events, any possible reasons for delays, the way the nurse or midwife engaged with our process, and what any external third parties did or failed to do.

*Unreasonable delay will be a possible abuse, if the period of the delay gives grounds for '****real concern'****.*[6]

In considering this, ***it will be relevant to consider the effect of the delay on the proceedings and any unfairness it could cause*** *to the nurse, midwife or nursing associate.*[7]

If the delay affected the memory or availability of witnesses or documentary evidence, these may be factors the panel takes into account in deciding whether the delay means it's no longer possible for the nurse, midwife or nursing associate to have a fair hearing.

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[5] *Deweer v Belgium* (1980) 2 E H R R 439 - time begins - Attorney – General's Reference (No 2 of 2001) [2004] 2 AC 72 HL – "time runs from the earliest time when the defendant was officially alerted to the likelihood of criminal proceedings being taken against him or her, which would normally be when he or she was charged or served with a summons"

[6] *Dyer v Watson* [2004] 1 AC 379

[7] *Okeke v Nursing and Midwifery Council* [2013] EWHC 714

It will also be relevant to consider the stage the hearing has reached, and what steps we could take to lessen the effect of the delay and make sure a fair hearing is still possible.[8]

If the panel could make a direction, or the parties could take a particular course of action to put the unfairness right, it will be important to explore those options before the panel decides that the hearing should be stopped as an abuse of process.

The complexity of the case or delay caused by a nurse, midwife or nursing associate will not be a reason to stop all or part of the proceedings.[9] *[emphasis added]*

SUBMISSIONS

WITNESS 2

9. *The Registrant asserts 'During the hearing, the proceedings were adjourned for one year in order to accommodate witness 2 who went on a year-long holiday.'*

10. *This section of the hearing commenced on 23 January 2023 and was listed until 13 February 2023.*

11. *On 13 February 2023, the hearing had to be adjourned because the Registrant's previous representative had not finished her questions for the NMC's witnesses. In particular Witness 2, who, the Panel found (at page 19 of the Panel's determination thus far) had been:*
    a. *severely inconvenienced by being on call for three weeks, during which she had the added pressure of waiting all day for six days to come back to*

[8] *R (Gibson) v General Medical Council and* another [2004] EWHC 2781 (Admin) 'mere unreasonable delay, absent prejudice'
[9] *Haikel v General Medical Council* [2002] UKPC 37

continue her evidence. Further as a practising registered midwife, this unnecessary inconvenience would have adversely impacted on her employer and the patients under her care.

12. *On 13 February 2023, the Panel stated that the hearing was not likely to resume until October 2023. (**See transcript 13 February 2023, page 51 lines 5-12**).*

13. *Additionally, on 13 February 2023 the Panel set directions which included a direction that:*
    a. *All preliminary matters be sent 14 days in advance of the recommencing of the hearing in writing to the other party. (**See transcript 13 February 2023, page 52 lines 15-16**).*

14. *Subsequently, the hearing was scheduled for the parties to attend on 17 October 2023. (please see **the attached schedule).***

15. *The NMC, seeking to comply with the Panel's direction, albeit slightly late, sent an email to the Registrant on 06 October 2023 about the upcoming hearing scheduled for 16 October 2023 to 20 November 2023. Within that email the NMC put the Registrant on notice about availability issues regarding Witness 2 and sent a bundle of communication log.*

16. *On 17 October 2023, the matter was called on however, the remainder of that listing was adjourned due to panel member availability**. Please see transcript dated 17 October 2023, page 2, lines 24-29.***

17. *By the time the matter was next listed, on 11 April 2024, Witness 2's availability was no longer an issue, so the NMC did not have to make its application. Witness 2 subsequently attended to give evidence on 20 June 2024.*

18. *In any event, the time elapsed between 17 October 2023 to 11 April 2024 was approximately 6 months, not a year*

19. *Of particular importance is the fact that the NMC, if it had made its application, would have invited the Panel to proceed without further evidence from Witness 2 and oppose any adjournment application which may have been made by the Registrant and/or the Panel.*

20. ***Therefore, the hearing has at no stage been adjourned for one year in order to accommodate Witness 2 who went on a year-long holiday as asserted by the Registrant. The hearing on 16 October 2023 was adjourned due to Panel availability.***

DELAY

21. *To assist the Panel the NMC have complied three chronologies.*
    a. ***Appendix 1*** *provides a chronology of events that took place before this matter was listed for a substantive hearing.*
    b. ***Appendix 2*** *provides a chronology of the first substantive hearing;*
    c. ***Appendix 3*** *provides a chronology for the current substantive hearing.*

Time between the referral and the first substantive hearing

22. *As the Panel will see from* ***Appendix 1****, whilst it took from 23 February 2018 (when the referral was received) until 25 October 2021 (when the first substantive hearing commenced), approximately 3.5 years, there are very good reasons for this length of time.*

23. *First, a Rule 7A request had to be undertaken[10] which meant the case had to be further reviewed.*

24. *Secondly, Covid 19 pandemic occurred which disrupted people's lives globally and resulted in the adjournment of the hearing which had been scheduled to take place in April 2020.*

[10] https://www.nmc.org.uk/ftp-library/reviews/reviewing-case-examiner-decisions/

25. *Thirdly, due to the fact that the Registrant was not subject to an interim order, this meant that her case did not meet the highest operational prioritisation criteria that the NMC formed to recover operations for scheduling substantive hearings once restrictions were lifted.*

26. *The authority of Icebird Ltd v Winegardner [2009] UKPC 24 (**Exhibit 48B**), as relied upon by the Registrant, can be distinguished from this case because it relates to an application to strike out, not an application of abuse of process. In any event, the Privy Council found:*

    a. *Delay in prosecuting an action and abuse of process were separate and distinct grounds on which an application to strike out the action might be made, but might sometimes overlap. If there was an abuse of process, it was not necessary to establish want of prosecution. A long delay for which the claimant could be held responsible could not be categorised as an abuse of process without some additional factor which transformed the delay into an abuse, Grovit v Doctor [1997] 1 W.L.R. 640, [1997] 4 WLUK 364 considered.*

27. *The NMC submits that such a finding supports the NMC's position, whilst there may have been a delay investigating and listing this matter for a FtPCSH, firstly, the NMC cannot be held solely responsible as the Covid-19 pandemic was unforeseen and out of its control, and secondly, as found, this does not constitute an abuse of process without some additional factor which transformed the delay into an abuse, the NMC submit there is no such additional factor(s).*

28. *The authority of Okeke v NMC [2013] EWHC 714 (Admin) can be distinguished from this case because:*
    a. *The Registrant has not been subject to an interim order which could have prevented her from practising during this time;*
    b. *There has been a level of complexity in this case requiring the instruction of expert evidence. Accordingly, those matters reasonably took a certain time.*

c. *It is suggested in this case that the Registrant and/or her previous representatives took steps to prolong the proceedings against her and some period of day can be attributed to conduct on their part.*
d. *There has been explanations by the NMC as to length of time taken to investigate and prepare this matter for a FtPSH.*

29. *Therefore, by the time the matter was listed for the first substantive hearing, the time lapsed did not amount to 'unreasonable delay' delay'[sic] as the time had been spent on reasonable progression of the fitness to practise processes and delayed by COVID-19 pandemic and recovery of the NMC's operations.*

Time between the first substantive hearing and the current substantive hearing commencing

30. *The Panel will see from **Appendix 2** that the first substantive hearing was effective from 25 October 2021 and applications were made by both parties. However, the matter had to be adjourned.*

31. *The NMC do not agree with the Registrant's submissions that 'There was a further delay of two years before the hearing started in January 2023.' The time between the first and current substantive hearing was approximately 1 year and 3 months.*

32. *Furthermore, during this time, the Assistant Registrar, upon receipt of representations from the Registrant's representative held a preliminary meeting on 29 April 2022.*

33. *The NMC invite the Panel to read **Exhibits 6 - 8**.*

34. *The preliminary meeting was convened for a chair to hear submissions and make a decision on whether or not preliminary decisions, that were agreed at the*

original substantive hearing, should stand or whether a newly constituted panel that will hear the substantive part of the case should also reconsider the preliminary issues.

35. *The Registrant's application was denied. The chair considered that to re-hear the applications would be procedurally unfair and allowing either party the opportunity to repeat an application already determined by a properly constituted panel would be contrary to the effective and efficient administration of fitness to practise hearings. The chair further confirmed that any concerns relating to the availability of evidence and the lack of a local investigation into the concerns raised around the Registrant's practice could be adequately and fully explored during the reconvened hearing with a newly constituted panel.*

Current substantive hearing

36. *This matter was first listed on 23 January 2023.*

37. *The NMC have compiled the chronology at **Appendix 3** to set out the key events of what has occurred during the current hearing.*

38. *The NMC submit that whilst the hearing has been protracted, much of the delay is attributable to the Registrant and her previous representatives for the following reasons:*
    a. *First, the Registrant's previous representative's handling of witnesses;*
    b. *Second, the Registrant and her previous representative's disruptions; and*
    c. *Third, the Registrant has on more than one occasion sought to adjourn the proceedings.*

39. *First, the Registrant's previous representative's handling of witnesses.*

40. *During witness evidence the Registrant's previous representative would make applications or raise issues which meant the witnesses' evidence had to be paused whilst submissions were made and the Panel decided on the application.*

41. *The Registrant's previous representative took a lengthy period of time to question the witnesses meaning that the hearing was adjourned due to lack of time. It also required the Panel to strongly case manage this hearing and set directions requiring the Registrant's previous representative to comply with directions which included providing her questions of witnesses in writing.*

42. *As the Panel found (at page 19 of the Panel's determination thus far):*
    a. *For example, in terms of fairness, we have a witness who was engaging and had a concise statement which dealt with identifiable areas to be challenged. Witness 2 has been* ***severely inconvenienced*** *by being on call for three weeks, during which she had the added pressure of waiting all day for six days to come back to continue her evidence. Further as a practising registered midwife, this unnecessary inconvenience would have adversely impacted on her employer and the patients under her care.*
    b. *Following protracted and repeated questioning in cross-examination, remarking inappropriately upon and making implied criticisms of some of Witness 2's answers has resulted in Witness 2 being* ***unfairly ground down****. The panel has been advised that Witness 2 has been left* ***feeling distressed*** *and* ***vulnerable****. The panel considers that this is* ***clearly not tolerable****.*
    c. *This is not an isolated occurrence****. Witness 1 and Witness 2 were treated in a similar unfair manner.*** *Other witnesses were also subjected to unattractive cross-examination.* ***There is a compelling inference that this is a course of conduct designed to reach that end****.'**
    d. **On further reflection, the panel seeks instead to express this concern as follows: At times, the similar pattern and manner of questioning presented itself as plainly intimidatory towards witnesses. The danger of such questioning is that such a witness would be inhibited from giving the evidence that they wished.*
    e. *'The panel recognises that an advocate has a duty to put their case, challenge the evidence where necessary and may adopt a robust style. However, the panel considers that the questioning of witnesses, as adopted by the defence, was* ***excessive and unnecessary****.*

f. *The panel considers that this constitutes an **abuse of process** and **unfairness** to other parties, **particularly witnesses**.*

[emphasis added]

43. *Of particular importance is the fact that the **Panel found that the Registrant and her previous representative created an abuse of process and unfairness to other parties, particularly witnesses.***

44. *Secondly, the Registrant and her previous representative delayed the hearing on a number of occasions. For example, please see the chronology and applicable transcripts for the following dates:*
    a. *27 March 2023 – seeking to adduce evidence part way through Witness 1's evidence;*
    b. *30 January 2023 – seeking to adduce evidence and raising issues and then withdrawing them;*
    c. *31 January 2023 - sending further documents to adduce before Patient B's evidence and raising disclosure issues before Patient A's evidence;*
    d. *01 February 2023 – seeking to adduce further documents;*
    e. *02 February 2023 – seeking to re-open a previous decision of the panel, making disclosure requests and raising issues about defence witnesses; and*
    f. *07 February 2023 – application to adduce evidence and the first mention of a handwriting expert.*

45. *The above examples led the Panel to find that there had been a frustration of the hearing process (at page 19 of the Panel's determination thus far):*

> *The panel has been mindful that Ms Bennett, the registrant's representative, whilst receiving support and advice from her own legal advisers and Counsel, is not herself from a legal background. In the light of this, the panel has sought to afford Ms Bennett every opportunity to consult with her legal team, Counsel and with you.*

Over the course of the hearing, the panel raised with the parties that it had become increasingly concerned at the frustration to the hearings process by the defence and the disregard for the principles of fairness to witnesses, case management and to the NMC.

The defence has repeatedly disregarded and breached the rules of fairness, the panel's directions and the legal assessor's guidance with regard to the hearing process.

46. *Even after the findings from the Panel were handed down there were further applications and non-compliance with directions causing further delay. For example, please see the chronology and applicable transcripts for the following dates:*
    a. *12 April 2024 - the Registrant and her then representative were directed to provide written questions for Witness 2 by 18 April 2025.*
    b. *17 June 2024 – within this transcript the Panel will see the discussion over the lack of compliance with directions by the Registrant and her then representative.*
    c. *18 June 2024 – application to admit further evidence*
    d. *18 June 2024 - 20 June 2024 – issues around questions for Witness 2*
    e. *22 October 2024 – application for an order*
    f. *09 December 2024-10 December 2024 – applications to consider representations / disclosure*
    g. *04 February 2025 – application to adduce evidence*

47. *The Registrant and her previous representative were, and are, entitled to raise matters of law, equally the NMC itself has had to make legal arguments during the hearing. The point the NMC seeks to convey is that the time spent on this case has been necessarily and reasonably lengthy given the number of applications that have been made, which must be responded to, and necessarily the Panel will need time to carefully consider and decide them and provide determinations in relation to these matters as necessary.*

48. *Thirdly, the Registrant, on representing herself in the proceedings, on more than one occasion applied to adjourn:*
    a. *21 October 2024;*
    b. *22 October 2024 (although she withdrew the application after discussion);*
    c. *26 November 2024 (NMC partially agreed but wanted to resolve case management issue first); and*
    d. *10 February 2025.*

49. *The NMC concedes that it too has made more than one application to adjourn, although its applications to adjourn were primarily due to expert issues which arose as a result of the Registrant's previous representative adducing new evidence part way through the hearing.*

50. *Whilst the Registrant is entitled to make an application to adjourn, the point the NMC seeks to convey is that some of these adjournments have been as a result of the Registrant requesting these adjournments*

51. *It is submitted that when a party has requested adjournments which resulted in delay, that will strongly point to a finding that the delay which then necessarily ensues when the application is granted should not be found to be unreasonable delay resulting in abuse of process.*

PREJUDICE

52. *The Registrant submits that she 'cannot now be expected to remember events that occurred in November 2017'.*

53. *First, the Registrant has been actively engaged with this case throughout and has been able to instruct her previous advocate to address issues of evidence and, in fact, has been able to do so herself.*

54. *Secondly, it is understandable that memories fade however, the NMC submits that the delay affecting the Registrant's memory does not mean that it is no longer possible for her to have a fair hearing.*

55. *In due course any unfairness which is identified as a result of the protracted nature of the proceedings can be mitigated by the Legal Assessor who can provide legal advice to the Panel, when considering the evidence it has heard, to attach the appropriate weight to that evidence, in light of the delay in the case.*

CONCLUSION

56. *In light of the above submission the NMC submit that whilst these proceedings have undoubtedly been protracted there has not been unreasonable delay in this case.*

57. *When deciding what is reasonable the Panel must take into account that some of the adjournments have been at the request of the Registrant, some have been at the request of the NMC, and some delay has been caused by the way the defence has been conducted, as outlined above and as noted formally by the Panel.*

58. *Furthermore, the NMC submits that the hearing has been necessarily and reasonably lengthy given the number of applications that have been made, which must be responded to, and necessarily the Panel will take time to carefully consider and decide them and provide determinations in relation to these matters as necessary.*

59. *If there is any detriment to recollections of the events as a result of delay which is identified, the remedy for this will be appropriate legal advice about how the panel should approach such evidence as set out above.'*

Mr Umezuruike responded to Ms Stevenson's written submissions. He submitted that, in paragraph 18, it was conceded that there was a delay due to Witness 2's availability

and that even if it was a six month delay, this was still unreasonable. Mr Umezuruike referred the panel to paragraph 23 and submitted that the Rule 7a request was delayed and carried out within an unreasonable timeframe. He also submitted that the COVID-19 pandemic, as referred to in paragraph 24, cannot be an excuse for your case being delayed, as hearings were being carried out remotely in other court rooms and tribunals. Mr Umezuruike submitted that in respect of paragraph 31, one year and three months is still an unreasonable delay. [PRIVATE]. In respect of paragraphs 38-44, Mr Umezuruike submitted that you and your representative are criticised for the delay, however, Ms Stevenson does not specify the period of the delay caused by you and your representative. In response to paragraph 55, Mr Umezuruike submitted that Ms Stevenson has not set out how the legal assessor can enable you to remember, and that legal advice cannot remove any prejudice or mitigate against the unfairness to you in having to recollect events that happened eight years ago.

Mr Umezuruike referred the panel to the case of *Okeke v Nursing and Midwifery Council* [2013] EWHC 714 (Admin). He submitted that in this case, the Court held that the delay which occurred from when the referral was notified to the registrant until the hearing took place four and a half years later, was unreasonable and breached Article 6 of the Human Rights Act (1998). Mr Umezuruike submitted that the delay in this case is a breach of Article 6 and that the remedy is not in the hands of the Legal Assessor. He submitted that you would be prejudiced if you were required to give evidence on events that happened eight years ago.

In response to Mr Umezuruike's submissions, Ms Stevenson submitted that it is not conceded by the NMC that the hearing was delayed by Witness 2's availability. Ms Stevenson stated that she was correcting the record that the delay from 17 October 2023 until April 2024 was six months and it was not as a result of Witness 2's availability. In early October 2023, the NMC had shared with you its intention to make an application to proceed without recalling Witness 2. However, due to extenuating circumstances, the hearing in October 2023 was adjourned until April 2024 and Witness 2 was available when the hearing resumed.

Ms Stevenson submitted that the COVID-19 pandemic changed the way that the NMC worked, and, as with criminal courts, it took time for systems and processes to be put in place to facilitate remote hearings. She submitted that the NMC also had to create a process of recovery which prioritised cases where registrants were subject to interim orders; this was similar to the courts prioritising those in custody, over those on bail. In response to Mr Umezuruike's request to quantify the length of delays for which you and your previous representative have been criticised, Ms Stevenson submitted that the delays had happened throughout this hearing. She submitted that it is not alleged that the delays are wholly attributable to you and your previous representative. The numerous applications made by you have required adjudication by the panel which has been necessary and reasonable.

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel had regard to the oral and written submissions provided by Mr Umezuruike and Ms Stevenson. The panel had regard to the NMC Guidance on *'Abuse of Process'* (Reference: DMA-4 Last Updated 21/02/2019), and in particular, the following section:

> *'**Unreasonable delay***
>
> *The nurse, midwife or nursing associate's right to a fair hearing under human rights legislation includes a right to having their case heard within a reasonable time, [2] so the length of any delay is a relevant consideration for the panel.*
>
> *For our purposes, the relevant time runs from when we first notified the nurse, midwife or nursing associate that we were sending their case for an investigation.[3]*
>
> *The panel will only use its power to stop all or part of a case due to delay, in exceptional circumstances. This could be where there is real prejudice to the nurse, midwife or nursing associate which means that a fair hearing would be impossible because of the delays.*

In an argument about delay, the panel will hear submissions from the nurse, midwife or nursing associate, and from us, on the circumstances leading up the application.

These will include the chronology of events, any possible reasons for delays, the way the nurse or midwife engaged with our process, and what any external third parties did or failed to do.

Unreasonable delay will be a possible abuse, if the period of the delay gives grounds for 'real concern'.[4]

In considering this, it will be relevant to consider the effect of the delay on the proceedings and any unfairness it could cause to the nurse, midwife or nursing associate.[5]

If the delay affected the memory or availability of witnesses or documentary evidence, these may be factors the panel takes into account in deciding whether the delay means it's no longer possible for the nurse, midwife or nursing associate to have a fair hearing.

It will also be relevant to consider the stage the hearing has reached, and what steps we could take to lessen the effect of the delay and make sure a fair hearing is still possible.[6]

If the panel could make a direction, or the parties could take a particular course of action to put the unfairness right, it will be important to explore those options before the panel decides that the hearing should be stopped as an abuse of process.

The complexity of the case or delay caused by a nurse, midwife or nursing associate will not be a reason to stop all or part of the proceedings.[7']

The panel had regard to the chronologies set out in Appendices 1-3 and noted the following as set out in Appendix 1:

23 February 2018	New referral
20 September 2018	Notice of Case Examiners meeting sent (i.e investigation complete)
02 November 2018	CE decision to refer case to FtPC
23 November 2018	Rule 7A request made
09 July 2019	Post-investigation work ('PIW') raised
16 August 2019	Rule 7A initial decision letter
12 September 2019	Rule 7A final decision letter
Date unknown	Provisional hearing date identified for 20-28 April 2020
12 March 2020	PIW completed and served
24 March 2020	April 2020 hearing date postponed due to COVID 19
13 July 2021	Hearing date scheduled for 25 October 2021 (no interim order on this case so it didn't meet high prioritisation criteria for re-scheduling once restrictions lifted)
25 October 2021	FtPCSH commenced (see Appendix 2)
02 November 2021	FtPCSH adjourned (see Appendix 2)
29 April 2022	Preliminary meeting

	[Please see exhibit 7]
03 May 2022	Outcome letter sent to the Registrant Chair refused the Registrant's application. [Please see exhibit 7]
23 January 2023	Current FtPCSH commenced.

Having regard to the chronology of events and all of the information before it, the panel considered that the relevant time is approximately seven years from February 2018.

The panel took into account it took approximately three and a half years from when the NMC received the referral until your case was first listed for a hearing. The panel also noted that this delay was as a result of a Rule 7A review of the Case Examiner decision. The panel had regard to the NMC guidance on *'Reviewing case examiner decisions'* (Reference: REV-1 Last Updated 13/01/2023). Whilst there is no guidance on how long this process should take, the panel considered that this initial delay may not be unreasonable in the circumstances.

The panel also noted that your case was originally listed to be heard in April 2020 which was at the outset of the COVID-19 pandemic (the pandemic). Due to the pandemic, your hearing was postponed which caused a further delay. The panel was of the view that the delay in these circumstances was reasonable, given that the pandemic presented unprecedented challenges and the NMC had to respond to these and implement new ways of working. In assessing the impact of the delay on your case, the panel have taken into consideration how the NMC attempted to prioritise cases during the pandemic and the reasonableness of such an approach as aligned to that adopted by the courts and tribunals.

When considering the chronology of your case in order to address the issues of delay which have been raised, the panel noted that the substantive hearing which

commenced on 25 October 2021 was adjourned on 2 November 2021(Appendix 2). A number of days were taken to consider an abuse of process application submitted on your behalf. In addition, the hearing was adjourned due to the recusal of the Chair. The panel considered this is not a case whereby efforts have not been made to complete the hearing in good time and on that occasion a recusal application was unforeseeable.

The panel noted that a preliminary hearing took place on 29 April 2022 and a hearing with this re-constituted panel commenced on 23 January 2023 (Appendix 3). Since this hearing commenced, this panel has made significant efforts to progress your case expeditiously and has ensured that you are having a fair hearing, including the opportunity to bring any applications, and that these are adjudicated on fairly. Considering legal applications properly takes time and often extends the time needed in hearings. The panel has also afforded you opportunities to recall and cross examine the NMC witnesses to enable you to put your best case.

The panel acknowledged Mr Umezuruike's submission that this hearing was delayed for a year due to the unavailability of Witness 2. The panel did not accept this submission and noted that on 17 October 2023, the NMC was in a position to proceed without recalling this witness, however, due to extenuating circumstances, this hearing was adjourned and resumed six months later in April 2024.

The panel also acknowledged Mr Umezuruike's submission that proceeding would be unfair to you as you cannot recollect events that took place eight years ago. Whilst the panel appreciated that passage of time may impact on recollection, it noted that it has already heard evidence from the NMC witnesses, it has had sight of local statements and witness statements and there are contemporaneous documentary records, including from you.

The panel is of the view that you have actively participated in the hearing, including posing questions to witnesses and questioning evidence, either directly or through your representative. As such, the panel considered that you have been able to present your case and that it is still possible for you to continue to have a fair hearing.

The panel had regard to the case of *Okeke* and considered that whilst it was held that a delay of four and a half years was an undue delay and amounted to a breach of Article 6, the features of this case are different. In the case of *Okeke*, the panel noted that the delay was in part attributed to a period of inactivity as well as unreasonable delays in bringing the case to a hearing, with no clear justification for these.

The panel consider that in your case delays have been multifactorial, including the COVID-19 pandemic, the recusal of the Chair in the first substantive hearing, participant unavailability in this hearing, some extenuating personal circumstances of participants and frequent non-compliance with the panel's directions. Further, the panel has taken time to fairly and properly adjudicate on the numerous applications, some which were introduced during witness evidence. The panel considered that delays were also attributable to the late challenges of evidence, the introduction of expert evidence and the recalling of witnesses. In order for you to receive a fair hearing, this panel has not sought to curtail your defence and has afforded you sufficient time throughout the hearing to properly confer with your representatives, legal team and/or Counsel and for your representatives to take instruction from you in order to present your case.

There have been occasions during the hearing process whereby you have been unrepresented. This is not unusual, and it is often the case that Registrants appear before the panel with no prior knowledge of the fitness to practice process. To allow you the opportunity to access guidance and information in order to present your best case, time has been afforded throughout. This has resulted in the proceedings progressing at a slower pace, a pace that has been necessary in the interests of fairness.

The panel considered the case of *Maxwell* namely, if this case were to continue, would this offend the panel's sense of justice and propriety. The panel was mindful that whilst the delays were clearly undesirable, these are serious allegations and there is a duty to ensure serious allegations are considered, and resolving questions regarding the registrant's fitness to practise is in the public interest.

The panel had regard to the chronology of the current hearing and the protracted nature of this case in its entirety and acknowledged that whilst some of the delays had been

very unfortunate, the panel has gone to significant lengths to ensure that you receive a fair hearing. This has included taking steps to mitigate any potential unfairness to you such as permitting late introduction of evidence, allowing the recall of witnesses and additionally, providing regular opportunities to seek further guidance and to re-visit representations. Given the steps that the panel has taken, it considered that there was no real prejudice caused to you by the delays such that it would not be possible for you to receive a fair hearing.

Having regard to all of the above, continuing with this hearing would not offend the panel's sense of justice and propriety. The panel was also mindful of the public interest in the expeditious disposal of hearings and considered that a fully informed member of the public, whilst they may be concerned about the time elapsed, they would have regard to the NMC's overarching objectives and expect this case to continue and for the regulatory concerns to be properly and fairly adjudicated on.

Having regard to all of the above, the panel rejected your application to stop this hearing on the grounds of abuse of process due to delay.

Decision and reasons on application of No Case to Answer

Mr Umezuruike provided the following written submissions in respect of a no case to answer application:

1. *'The charges against R are that she made incorrect entries in relation to Baby A and Baby B and that she administered a wrong medication on Patient B. She denies making those incorrect entries.*

2. *[Expert Witness 6] and [Expert Witness 7] were instructed to determine the authorship of the disputed handwritten entries on the medical reports.*

3. *Both handwriting experts compared the disputed writing with the known writing of R ("Nurse A"), Nurse B and Nurses C, D and E.*

4. *In their joint report dated 23rd January 2025, both handwriting experts agree that the evidence as to whether or not Nurse A, B, C, D and/or E was responsible for any of the disputed entries on Appendix 3 and Appendix 4 is inconclusive.*

5. *In R -v- GALBRAITH (1981) 73 Cr. App. R. 124 CA, the earlier authorities on submissions of no case to answer were reviewed and guidance given on the proper approach:*

> *"(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty-the judge will stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weaknesses or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury" (per Lord Lane CJ at page 127).*

6. *The case against R is that she made the entries in the medical records. The joint expert's report is that the evidence as to whether or not Nurse A, B, C, D and/or E was responsible for any of the disputed entries is inconclusive.*

7. *It is therefore respectfully submitted that the main evidence against R is of such a tenuous character that R has no case to answer.*

8. *The charges against R should therefore be struck out.'*

Mr Umezuruike referred the panel to the joint handwriting experts report and submitted that the conclusion of both the experts joint report was inconclusive as to who the incorrect entries were made by. He referred the panel to the case of *Galbraith* and submitted that if there is no evidence to support the charges, or where the evidence is unreliable or of a tenuous character, then the jury must be instructed to acquit.

Mr Umezuruike submitted that the main evidence in respect of the charges is unreliable, and as such you should be given the benefit of the doubt and should not be required to answer to the accusations. He submitted that there is no direct evidence that you made the entries, and it was inferred that you made the entries because you were on duty. Mr Umezuruike further submitted that you were not seen by anyone making the entries in question, and as such the main evidence (patient medical records) for the entries is unreliable.

Ms Stevenson provided written submissions in response to Mr Umezuruike's submissions. She submitted that there is a case to answer on all of the charges and that the NMC had adduced 'sufficient evidence' such that a properly directed panel could find the facts proved. Ms Stevenson drew the panel's attention to the following as set out in Rule 24(7) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended:

> *"Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and - (i) either upon the application of the registrant, or (ii) of its own volition, The Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer…"*

She also referred the panel to the principles set out in the case of *Galbraith* and the NMC Guidance on *'Evidence'* (Reference: DMA-6 Last Updated 02/12/2024).

In her written submissions, Ms Stevenson set out the following in respect of the charges:

‘Stem of the charges

That you, whilst you were working as a registered midwife at Milton Keynes Hospital, on the night shift 03-04 November 2017

5. *The NMC submit there is sufficient evidence that the Registrant was working as a registered midwife at the Hospital on the night shift 03-04 November 2017 as follows:*
    a. *Exhibit 2A, pdf page 2, Witness 1’s WS para 2,*
        i. *On 3 / 4 November 2017, Amma worked a night shift at the Milton Keynes University Hospital. The night shift started at 20:00 and finished at 07:30…On 3 November 2017, she was originally allocated to work on the Labour Ward but Ward 9, a postnatal ward ("the Ward"), was short staffed so she was moved to Ward 9 at 21:30. The Ward is divided into four bays of six patients and there are also several side rooms. A midwife is allocated to each bay.*
    b. *Exhibit 2A, pdf page 15, Patient B’s WS para 2:*
        i. *Amma was the midwife on duty during the evening of 3 November 2017. She introduced herself and said she was allocated to me.*
    c. *Exhibit 14, page 2, Patient A’s WS para 5:*
        i. *At approximately 06:00, the midwife on duty during the night, who I later became aware was known as Amma, came to see me and Baby A This was the first time A that I met Amma.*
    d. *Exhibit 3B, pages 26-27, Registrant’s Statement dated 15 December 2017:*
        i. *I worked the night of 3rd into 4th November 2017 in MK Hospital.*
        ii. *I took over care of Bay 1 and some of the side rooms on ward 9.*

Charges 1 & 2

1) In relation to Baby A you

i) Made an incorrect entry in Baby A's medical records that you had taken a blood sugar reading at ***approximately 2415****, when you had not done so*

ii) Made an incorrect entry in Baby A's medical records in that you recorded that you took a ***blood sugar reading of 5.2 mols at approximately 0400*** *which was not an accurate record of a test you had carried out*

2) Your conduct at Charge 1i) and/or Charge 1ii) above was dishonest because you created a record/s providing information about the state of Baby A's health which was not true

6. *The NMC submit sufficient evidence has been presented to find the facts of Charges 1 and 2 proved.*

7. *In relation to Patient A there is evidence that the following entries were recorded within Baby A's medical records (Exhibit 3C):*
    a. *At 00:00 a blood sugar reading of 3.4 mmol. ("Entry 1a")*
    b. *At 04:00 a blood sugar reading of 5.2 mmol. ("Entry 1b")*

8. *The NMC alleges that those entries are incorrect because:*
    a. *Patient A recalled that observations had been taken once not twice.*
        i. *Exhibit 14, page 2, paras 5-6:*
            1. *At approximately 06:00, the midwife on duty during the night, who I later became aware was known as Amma, came to see me and Baby A.* ***This was the first time A that I met Amma****. She tested Baby A blood sugar by doing a prick test on her heel.* ***Amma said that the blood sugar reading was 5.2*** *and that this was quite high.* ***I did not see or speak to Amma again.***

2. ***I confirmed to the day Midwife that Amma had only done one blood sugar reading at 06:00.***

b. *Patient A's oral evidence was consistent with her NMC statement, that the Registrant had only taken the blood sugar reading once (Transcript dated 31.01.2023):*

i. *Page 88, lines 14-19:*

1. *Do you know what, I can't remember.* ***I remember her pricking my baby's heel****, because she screamed, and s****he only pricked it once; she only did her blood sugar once.*** *(Q What time was that?) And my partner's a diabetic****. 6.00, I think it was, because she literally screamed the whole thing down****. She was on my chest when she did it.*

i. *Page 91 (whole page)*

b. *W2 could only see one prick on Baby A's foot:*

i. *Exhibit 2A, pdf page 12, Witness 2's WS, para 15:*

1. *I checked the baby's feet and could only see one prick mark which indicated that* ***only one blood sugar reading had been taken*** *since birth which corresponds to Patient A's account.*

c. *Patient B recalled the concern Patient A raised with her during her oral evidence*

i. *Transcript dated 31.01.23, page 17 lines 14-16):*

1. *She said* ***Amma is not coming to check the blood sugar****. She just write in her paperwork, but she not checked; she not coming all night to check the blood sugar of the child.*

[emphasis added]

9. *Given the observations in Midwife [Witness 2] statement about the intrusive nature of a blood sugar reading being taken from a new baby (para 14) it is*

considered unlikely a mother would sleep through such a test being carried out in any event.

10. *Patient A's oral evidence further supports Witness 2's position (see paragraph 8(b) above).*

11. *Furthermore, to support the assertions made by the NMC witnesses, there is objective evidence of the Blood Sugar Monitoring machine results (Exhibit 3B, pages 3-4, Exhibit [PRIVATE]).*

12. *Witness 3 explains how the Blood Sugar Monitoring machines work and how reliable they are (Exhibit 2A, pdf pages 17-20). No issue was taken by the Registrant as to the accuracy to the readings contained in the Blood Sugar Monitoring machine results.*

13. *The report does not provide readings which correlate with Entry 1a or Entry 1b. Any figures around a similar time do not resemble Entry 1a or Entry 1b.*

14. *Turning this point on its head, there is no evidence that Baby A's blood sugar was tested at:*
    a. *2415 or 0015; or*
    b. *0400 recording a level of 5.2*

15. *The only reading of 5.2 from the blood monitor machine was not taken until 0713 therefore it is not accurate to say that the Baby's blood sugar level at 0400 was 5.2 mols.*

16. *The Registrant's name does not appear on the report however, there is evidence that as she was an agency nurse and did not have an access code and the Registrant confirmed that she had used another member of staff's access code during the shift in question. (Exhibit 2A, page 4, Witness 1's WS, para 10).*

17. *[Witness 4] was another midwife working on the shift in question confirms that the Registrant had her access code and she confirms that she did not undertake the blood sugar testing on Baby A or Baby B as per the Blood Sugar Monitor Report (Exhibit 2A, pages 21-22, paras 2 and 8-12). In her oral evidence she confirms that:*
    a. *She did not perform the blood sugar testing where her names appears Blood Sugar Monitoring machine results (Exhibit 3B, pages 3-4, Exhibit [PRIVATE]) (for example, transcript 03.02.23 page 36, lines 25-32);*
    b. *she gave the Registrant her barcode, (for example, transcript 03.02.23 page57, lines 14-18 and 24-28);*
    c. *she did not remember if she had done any blood sugar testing prior to giving the Registrant her card, but if she had, she would have documented it in the notes and she did not have such tests documents in the notes (for example, transcript 03.02.23 page 46, lines 21-31 and page 53 lines 29-32).*

18. *The NMC alleges that the Registrant made the incorrect entries.*

19. *As above at paragraph 5, there is evidence that the Registrant was on duty working that night shift and had been allocated to Patient A.*

20. *Whilst the Registrant has disputed making the entries in question and has confirmed her case is that Witness 2 falsified the entries, Witness 2 denies falsifying the entries and the Expert's joint conclusion has been inconclusive.*

21. *On the other hand, the Registrant has accepted:*
    a. *Exhibit 3B, pages 26-27, Registrant's Statement dated 15 December 2017:*
        i. *I was overwhelmed with the volume of work that needed to be done on the shift that night.*
        ii. *I believe this may have had an impact on my documentation but care given was not affected as I spent more time attending to patient needs than writing my notes.*

iii. *I cannot recollect document observations on Patient A's Daughter bay 1 bed 1 as per **my documentations**.*

iv. *Regardless of ongoing issues my documentation should have been precise.*

[emphasis added]

22. *Furthermore, as above at paragraphs 9 and 12, there are entries within the Blood Sugar Monitoring machine results made by Witness 4 who has confirmed she did not make those entries but the Registrant had her access code.*

23. *Therefore, the NMC submit there is sufficient evidence to draw an inference that the Registrant herself inputted the incorrect Entries 1a and 1b.*

24. *It is further alleged that from the evidence presented by the NMC, the inference can be drawn that the Registrant inputted Entries 1a and 1b providing information about the state of Baby A's health which was not true and there her actions were therefore dishonest.*

25. *It is submitted therefore that there is sufficient evidence presented and that the evidence is not of a tenuous character, being neither inherently weak or vague. Therefore, there is a case to answer for Charges 1 and 2.*

<u>Charges 3 & 4</u>

3) In relation to Baby B you

*i) Made an incorrect entry in Baby B's medical records that you had taken a **blood sugar reading** at **approximately 0230**, when you had not done so;*

*ii) Made an incorrect entry in Baby B's medical records that you had **taken observations** at **approximately 0230**, when you had not done so*

4) Your conduct at Charge 3i) and/or Charge 3ii) above was dishonest because you created a record/s providing information about the state of Baby B's health which was not true

26. *The NMC submit sufficient evidence has been presented to find the facts of Charges 3 and 4 proved.*

27. *In relation to Patient B there is evidence that the following entries were recorded within Baby B's medical records (Exhibit 3D):*
    a. *At 02:30 a blood sugar reading of 3.2 mmol. ("Entry 3a")*
    b. *At 02:30 observations were taken ("Entry 3b")*

28. *The NMC alleges that those entries are incorrect because:*
    a. *Patient B recalls that observations had not been taken.*
        i. *Exhibit 2A, page 16, Patient B's WS, para 5:*
            1. *My daughter had already had her blood sugar readings taken throughout the day. I do not recall any further blood sugar readings or observations being taken during the night.W2 could only see one prick on Baby A's foot.*
    b. *Patient B's oral evidence was consistent with her NMC statement, that the Registrant had not taken observations/the blood sugar reading (Transcript dated 31.01.2023):*
        i. *[page 36 lines 15-20):*
            1. *(Q So, at about 2.30 in the morning, do you recall whether Ms Amma took a blood sugar reading for your baby, Baby B?) I'm not sure if she came. No, I can't remember if she came.* ***She not came because always, if midwife coming to take the blood sugar test, they always wake up us to said about they take their blood sugar test,*** *but nobody was there, I think.*
        ii. *[pages 36-37, lines 33-2):*
            1. *(Q Things like temperature, heart rate; things like that. When they were done during your stay in the hospital, were you also asked for consent for those observations to be taken?) Yes,* ***but this night it wasn't****.*
        iii. *[page 39 lines 6-8):*
            1. *Yes, during the day was every few hours, somebody's*

coming and check the blood sugar. ***I can remember because my child always crying when they take the sugar test, the bloo****d. And I can remember. (Q Yes. And I asked you previously, and you said that the other staff at other times asked for permission to do those observations.)* ***Yes****. (Q But on this occasion, you feel that at 2.30, you think you were asleep; you were asleep.* ***Is it possible that the Registrant might have done these observations without waking you to ask for consent****?)* ***No, because like I said before, my daughter is crying. No, it's not possible****.*

c. *Witness 2 recalls cross-referencing other documents to see if there were corresponding entries and speaking with Patient B:*
    i. *Exhibit 2A, pdf page 12, Witness 2's WS, paras 21 and 22*
        1. *I looked at Baby B clinical notes and there was nothing recorded about blood sugar readings being taken or what indication there was that meant a blood sugar reading was needed.*
        2. *I asked Patient B why a blood sugar reading and 2 sets of observations were carried out during the night Patient B looked at me with a puzzled expression and said that no observations or blood sugar readings had been done overnight and that the midwife (Amma) had not handled her baby. I showed the observation chart which showed 2 sets of observations and 1 blood sugar reading documented for baby overnight.* ***Patient B was adamant these were not completed****…****Patient B continued to confirm that there was no observations or blood sugars done overnight.***

[emphasis added]

29. *Given the observations in Midwife [Witness 2] statement about the intrusive nature of a blood sugar reading being taken from a new baby (para 14) it is*

considered unlikely a mother would sleep through such a test being carried out in any event.

30. *Patient B's oral evidence further supports Witness 2's position (see paragraph 26(b) above).*

31. *Additionally, Patient B clearly states at para 3 that she was awake after 1am. Whilst in her oral evidence she suggest she was asleep at 2:30am, it is submitted that the Panel still have sufficient evidence from her NMC witness statement dated 01 August 2018 and submissions as to the reliability of her evidence can be made at the closing of the fact stage.*

32. *Furthermore, to support the assertions made by the NMC witnesses, there is objective evidence of the Blood Sugar Monitoring machine results (Exhibit 3B, pages 3-4, Exhibit [PRIVATE]).*

33. *Witness 3 explains how the Blood Sugar Monitoring machines work and how reliable they are (Exhibit 2A, pdf pages 17-20). No issue was taken by the Registrant as to the accuracy to the readings contained in the Blood Sugar Monitoring machine results.*

34. *The report does not provide a reading which correlate with Entry 3a. Any figures around a similar time do not resemble Entry 3a.*

35. *Turning this point on its head, there is no evidence that Baby B's:*
    a. *blood sugar was tested at 0230; or*
    b. *observations were taken at 0230*

36. *The only reading of 3.1 from the blood monitor machine was not taken until 0659 therefore it is not accurate to say that the Baby's blood sugar level at 0230 was 3.1 mols.*

37. *As explained above, the Registrant's name does not appear on the report however, there is evidence that as she was an agency nurse and did not have an access code and the Registrant confirmed that she had used another member of staff's access code during the shift in question. (Exhibit 2A, page 4, Witness 1's WS, para 10). [Witness 4] was another midwife working on the shift in question confirms that the Registrant had her access code and she confirms that she did not undertake the blood sugar testing on Baby A or Baby B as per the Blood Sugar Monitor Report (Exhibit 2A, pages 21-22, paras 2 and 8-12).*

38. *The NMC alleges that the Registrant made the incorrect entries.*

39. *As above at paragraph 5, there is evidence that the Registrant was on duty working that night shift and had been allocated to Patient AB*

40. *As explained above, whilst the Registrant has disputed making the entries in question and has confirmed her case is that Witness 2 falsified the entries, Witness 2 denies falsifying the entries and the Expert's joint conclusion has been inconclusive.*

41. *On the other hand, Witness 1 explains that:*
    a. *Exhibit 2A, page 5, Witness 1's WS, para 15:*
        i. *When I spoke to Amma (I can only confirm that this took place week beginning 6 November) and showed her the observation chart, she circled the 3.1 mmol reading and said that she did not document it. I checked the report ([PRIVATE]) of the information on the blood sugar machines for Ward 9 and Ward 10. There is a reading of 3.1 mmol on the blood sugar machines but this was taken at 06:59 on 4 November 2017 according to the report. Therefore, Amma could not have used the machines at 02:30 to take a blood sugar reading.* ***Amma told me that she had taken observations and that she had taken the blood glucoses as documented.***

[emphasis added]

42. *Furthermore, as above at paragraphs 9 and 12, there are entries within the Blood Sugar Monitoring machine results made by Witness 4 who has confirmed she did not make those entries, but the Registrant had her access code.*

43. *Therefore, the NMC submit there is sufficient evidence to draw an inference that the Registrant herself inputted the incorrect Entries 3a and 3b.*

44. *It is further alleged that from the evidence presented by the NMC, the inference can be drawn that the Registrant inputted Entries 3a and 3b providing information about the state of Baby B's health which was not true and there her actions were therefore dishonest.*

45. *It is submitted therefore that there is sufficient evidence presented and that the evidence is not of a tenuous character, being neither inherently weak or vague. Therefore, there is a case to answer for Charges 3 and 4.*

<u>Charge 5</u>

5) You administered medication to Patient B, namely a 'brown tablet',

i) Which was not clinically indicated for her at that time and/or

ii) Which you were later unable to identify and /or advise upon.

46. *The NMC submit sufficient evidence has been presented to find the facts of Charge 5 proved.*

47. *Patient B provides clear evidence that the Registrant gave her a brown tablet (Exhibit 2A, page 14, paras 3-4):*

    a. *I went to sleep after 22:00 and woke up approximately 01:00 in a large amount of pain as I had had a caesarean. I went to the ward reception and asked a member of staff for a pain killer. Amma, the midwife on duty, told me to go to bed and that she*

would bring something in for me. I waited for approximately 30 minutes but she did not come to see me. I went back to see her and she apologised and said that she had forgotten about me. After one to two minutes, Amma brought me a white paracetamol tablet, a pink ibuprofen tablet and ***one brown tablet.***

b. *Later in the morning, I do not recall the time, I asked Amma what the tablet was that she had given me* ***but she said that she did not know****. I later identified, searching on the internet and speaking to other members of staff at the Hospital, that the brown tablet was diclofenac. I do not know whether I was meant to receive this medication during the night.*

[emphasis added]

48. *Patient B confirmed the following during her oral evidence (transcript dated 31.01.23):*

    a. *[page 12 line 31 – page 13 line 8):*

        i. *Yes, one second. I just told you, before I write, after one to two minutes, Amma brought me a white paracetamol tablet and pink ibuprofen tablet and one brown tablet. I write wrong because Amma brought me just a brown tablet. I remember – before, my English it was worse than now – and maybe I just can't say it properly. And I think I told about they give us only two tablets, paracetamol, and two tablets of ibuprofen. But this time, she just brought me a brown tablet; it was just one tablet on this time. I wrote wrong before. (Q: And when you say, 'this time', what time are you referring to; what time do you mean?) When I write this witness statement on this time. What I said, my English was worse before, and maybe I write not properly.* ***But I can remember, it was just one tablet; just a brown tablet****.*

    b. *[page 22 lines 27-34]*

i. *It's exactly same, not exactly same. It's about paragraph 3, I said. Amma not bring me tablets, paracetamol and ibuprofen, and brown tablet. She just brought me brown tablet. (Q And what time was that?) After 1.00.* ***I go to Amma*** *because I wake up with big pain, and I go to ask her if she can bring me something to painkiller, and she said, 'Yes, I will come', but she not coming****. Then, again, I go to her and ask her and she, 'Oh, sorry, I just forgot about you'. And then she bring me the brown tablet.***

[emphasis added]

49. *There is sufficient evidence to allege that the brown tablet was not clinically indicated for Patient B at that time:*
    a. *Patient B confirmed the following during her oral evidence (transcript dated 31.01.23):*
        i. *Page 28, lines 8-13*
            1. *(Q So what I'm saying, the four hours previous, could it have been the same tablets?)* ***No, no. They bring us the white tablets*** *– it was paracetamol – and I ask what* ***is the pink tablet****. And that lady, the Polish woman, she said, '****It's just ibuprofen'****. And I ask her* ***why I've got the brown tablet and she was shocked because she said – I'm sure they bring us just pink and white tablets.***

[emphasis added]

50. *Exhibit 3B, page 6 (Exhibit [PRIVATE]) shows Patient B's drug chart which demonstrates that Diclofenac was prescribed to her for 02/11/17 and it does not appear to be PRN. At page 14 of Exhibit 3B it states Paracetamol and Ibuprofen are prescribed as 'regular prescriptions'.*

Therefore, the inference can be drawn that Patient B was not prescribed Diclofenac.

51. *There is sufficient evidence to allege that Registrant was later unable to identify and /or advise upon the brown tablet:*
    a. *Patient B confirmed the following during her oral evidence (transcript dated 31.01.23):*
        i. *Page 41, lines 13-27*
            1. *No, because she finish her shift. No, one second, the Polish lady,* ***she came to Amma, ask her about the brown tablet, but she don't know nothing; she don't remember she give me something about this. (Q*** *And when the Polish lady had the conversation with the Registrant about it, was that in front of you; was that close to you?) No, she go to the reception. I didn't hear that conversation. (Q And so what leads you to think that they did have that conversation, if you didn't see it or hear it?)* ***I feel lost because, I feel lost when she came back and told me, 'Amma does not remember', and I was scared then because I don't know what I taken. Yeah, I feel scared before****. (Q And one final question, when you were given the tablet that you described as a brown tablet in that very little white container,* ***did the Registrant then explain what it was to you?) No.***

[emphasis added]

52. *It is submitted therefore that there is sufficient evidence presented and that the evidence is not of a tenuous character, being neither inherently weak or vague. Therefore, there is a case to answer for Charge 5.*

CONCESSIONS

1. It is fact that the Registrant did not have a barcode to take blood sugars.'

The panel accepted the advice of the legal assessor.

Before the panel commenced deliberations on this application on 17 March 2025, it received the following further legal advice from Ms Mann:

1. *'I am the Independent Legal Assessor appointed to the case of EUNICE AMMA ASIEDU-BANING 17th March -20th March 2025.*

2. *I have had sight of the legal advice provided by the previous Legal Assessor, Mr Nigel Pascoe KC. I have this morning, prior to panel deliberations provided the following, further legal advice. The additional legal advice relates to application of No Case to Answer and the provision of reasons. It is as follows:*

3. *In Sharaf v General Medical Council [2013] EWHC 3332 (Admin) Carr J quoted the advice which had been given to the conduct committee by its legal assessor at [38] of her judgment. That advice was as follows:*

   "There is one final word I should give you. That is this. If you allow this submission you should give detailed reasons for doing so. If, however, you dismiss the application and the case proceeds, it is generally considered better to say as little as possible in case in giving detailed reasons you give some indication as to the way in which you are considering the evidence at this stage and it would be improper for you to do so. That is my advice."

4. *It is implicit from [73] of her judgment that Carr J endorsed the legal assessor's advice.*

5. *This advice is to be sent to the parties on 17.3.25. If any party wishes to address the panel on this additional legal advice, please notify the Hearing Co-ordinator immediately.*

6. *The advice will need to be added into the record. If there is no objection or comment on this advice, then I propose that the advice can be read into the record when the parties next convene. However, I invite confirmation regarding this course of action.'*

This additional legal advice was sent to you and to Ms Stevenson and receipt was confirmed on 17 March 2025.

In reaching its decision, the panel had regard to the following principles established in the case of *Galbraith*. The panel also had regard to the NMC Guidance on *'Evidence'* (Reference: DMA-6 Last Updated 02/12/2024), in particular, the following:

*'**No case to answer***

There may be situations where, at the close of our case, the nurse, midwife or nursing associate feels that we just haven't put forward enough evidence to mean they still have a case to answer.

There will be no case for a nurse, midwife or nursing associate to answer where, at the close of our case, there is:

1. *no evidence*
2. *some evidence, but evidence which, when taken at its highest, could not properly result in a fact being found proved against the nurse, midwife or nursing associate, or the nurse, midwife or nursing associate's fitness to practise being found to be impaired.*

The question of whether there is a case to answer turns entirely on our evidence. Evidence which might form part of the nurse, midwife or nursing associate's case will not be taken into account.

Where the strength or weakness of our evidence depends on the weight it should be given, a submission that there is no case to answer is likely to fail. That issue is best considered after all the evidence has been heard.'

The panel considered and made a decision on each sub charge separately. In considering charges 1 and 3, the panel had regard to the joint expert report, namely that the outcome of determining whether the relevant entries made could be attributed by you was *'inconclusive'*.

Charge 1

In respect of charges 1)i) and 1)ii), the panel noted that the NMC case does not rely solely on the expert report. The NMC has adduced Baby A's medical records, Patient A's witness statement and oral evidence, and the witness statements and oral evidence of Witnesses 1, 2, 3 and 4. The panel noted that the NMC has also adduced contemporaneous documentary evidence to support this charge. The panel considered the evidence before it and decided that there is some evidence that is not of a tenuous nature, which, if taken at its highest, could properly result in the facts being found proved.

Charge 2

The panel noted that charge 2 is a dishonesty charge that relies on either charge 1)i) and/or 1)ii) being found proved. As the panel has decided that charge 1 will proceed, so will charge 2 at this stage. Once the panel has made its determination on the facts, it will either proceed to determine this charge, or if it finds charge 1 not proved, this charge will fall away at that stage. Charge 2 will therefore proceed to be considered when the panel makes its determination on the facts.

Charge 3

In respect of charges 3)i) and 3)ii), the panel noted that the NMC case does not rely solely on the expert report. The NMC has adduced Baby B's medical records, Patient B's, and Witnesses 1, 2, 3 and 4's witness statements and oral evidence. The NMC has also adduced the Blood Sugar Monitoring machine results. The panel considered the evidence before it and decided that there is some evidence that is not of a tenuous nature, which, if taken at its highest, could properly result in the facts being found proved.

Charge 4

The panel noted that charge 4 is a dishonesty charge that relies on either charge 3)i) and/or 3)ii) being found proved. As the panel has decided that charge 3 will proceed, once the panel has made its determination on the facts, it will either proceed to determine this charge, or if it finds charge 3 not proved, this charge will fall away at that stage. Charge 4 will therefore proceed to be considered when the panel makes its determination on the facts.

Charge 5

In respect of charge 5, the NMC has adduced the witness statements and oral evidence of Patient B, Patient A and Witness 1. The panel considered the evidence before it and decided that there is some evidence that is not of a tenuous nature, which, if taken at its highest, could properly result in the facts being found proved.

The panel therefore considered that there is a case to answer in respect of all of the charges. What weight the panel gives to any evidence remains to be determined during the facts deliberation stage.

[This hearing resumed on 8 April 2025]

Decision and reasons on application to stay proceedings/adjournment

When the hearing resumed on day 61, the panel was informed that Mrs Asiedu-Baning was not in attendance. The panel noted that the Notice of Hearing (the Notice) had been sent to Mrs Asiedu-Baning's registered email address by secure email on 14 February 2025. The panel also noted that the Notice was sent to Mrs Asiedu-Baning's representative by secure email on 14 February 2025.

Ms Stevenson drew the panel's attention to a number of email communications from Mrs Asiedu-Baning to the NMC in which she has stated that she has lodged an appeal to the High Court. She referred the panel to an email sent by Mrs Asiedu-Baning dated 1 April 2025 in which the following was stated:

> *'I have attached a copy of the Appellant's Notice, grounds of appeal and skeleton argument that I intend to file in the High Court today. They are being sent to NMC by way of courtesy. The sealed copy of the Appellant notice will of course be served on NMC when it is filed. You will see from the Appellant's Notice that I have applied for the stay of the proceedings at the Nursing and Midwifery Council Fitness to Practise Committee.*
>
> *I have instructed counsel to appear before the duty judge at the King's Bench Division, Royal Courts of Justice, Strand, London at 11 am on 2nd April 2025 to apply for a stay of those proceedings. It will be a matter for NMC if it wants to instruct a lawyer to attend the hearing.'*

Ms Stevenson also drew the panel's attention to an email sent by Mrs Asiedu-Baning to the Hearings Coordinator on 7 April 2025 at 15:47 in which she stated the following:

> *'Once more, I attach a copy of the application bundle for a stay of the NMC proceedings. The application is awaiting to be dealt with by a judge of the High Court.*

I would respectfully suggest that no further hearing of the Panel should take place until the High Court has dealt with my application for a stay of proceedings.'

Ms Stevenson referred the panel to the most recent email from Mrs Asiedu-Baning to the Hearings Co-ordinator on 7 April 2025 at 16:58 in which she stated the following:

*'**Subject:** Request to Pause Proceedings Pending Outcome of High Court Appeal*

Dear NMC Case Presenter and Legal Assessor,

Thank you for your email. I appreciate that you have forwarded my request and arranged a meeting to discuss it. However, I regret to inform you that I am unable to attend the 9am discussion [PRIVATE].

*As I have submitted a valid **N161 appeal to the High Court and N244** seeking an adjournment. I respectfully request that the NMC pause all proceedings in this matter until the outcome of these submissions is determined.*

This would help avoid unnecessary duplication of process and ensure that any future action aligns with the final ruling of the High Court. I would be grateful if you could acknowledge this request and confirm the NMC's position in writing.
will let you /NMC know of any updates from the courts'

Ms Stevenson informed the panel that after making enquiries with the HM Courts & Tribunals Service on 8 April 2025, the NMC was advised that an application was lodged by Mrs Asiedu-Baning on 2 April 2025 and it is currently pending further review by the High Court. She also informed the panel that during a telephone call with the Administrative Court Office, the NMC was advised that the matter has not been issued and there have not been any hearings.

Ms Stevenson submitted that there are two matters to consider in determining whether to proceed in Mrs Asiedu-Baning's absence or to allow an adjournment. The first

consideration, in her submission should be whether to allow Mrs Asiedu-Baning's application to stay proceedings. [PRIVATE].

Ms Stevenson informed the panel that Mrs Asiedu-Baning has made an application for the NMC proceedings to be *'paused'* until the High Court has dealt with her appeal application. She submitted that whilst an appeal has been lodged, it has not been issued by the High Court and there have not been any hearings. Ms Stevenson also submitted that the *'Notice of Appeal'* does not specify the legislative grounds or basis under which the appeal has been brought.

Ms Stevenson drew the panel's attention to Article 38 of the NMC Order 2001:

39. *An appeal from— (a) any order or decision of the [Fitness to Practise Committee] other than an interim order made under article 31, shall lie to the appropriate court*

She submitted that the NMC reads this in conjunction with Article 29 of the Order which gives the appropriate time limit for such an appeal, but this relates to decisions that have been made by the Fitness to Practise panel and if the allegation(s) is considered as well founded (Article 29(1) or (3)).

Ms Stevenson informed the panel that Article 29(5) of the Order sets out the different sanctions available to the Committee and Article 29(9) of the Order sets out that the person concerned has a right of appeal against the order imposed pursuant to Article 29(5) of the order. She drew the panel's attention to Article 29(10) of the Order which sets out the following:

> *'Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.'*

Ms Stevenson submitted that Mrs Asiedu-Baning has lodged an application to appeal however, within her appeal documents, she applies to *'stay'* proceedings. She

submitted that there is no right in the statute to apply to stay proceedings. Ms Stevenson submitted that a stay of proceedings may be appropriate, however this can only be sought through a Judicial Review application.

Ms Stevenson submitted that as this hearing has not been concluded, an application for an appeal to the High Court is premature. She therefore invited the panel to proceed with this hearing, despite the appeal application being lodged, as the High Court has not issued the appeal and it is submitted that the statutory right of appeal is not engaged at this stage.

[PRIVATE].

[PRIVATE].

The panel accepted the advice of the legal assessor.

The panel first considered Mrs Asiedu-Baning's application to stay these proceedings and adjourn the hearing pending the outcome of her application to the High Court.

The panel had regard to the submissions of Ms Stevenson, the legal advice and to the provisions set out in the NMC Order. It considered that in view of the information before it, namely that the panel has not made any decisions about whether the allegations are well founded or imposed a sanction, an application to appeal is premature and unlikely to be taken any further at this stage. The panel was not provided with any information about how long the appeal or judicial review process would take, therefore the stay/adjournment was being sought for an undefined period of time.

The panel had regard to the NMC Guidance on *'When we postpone or adjourn hearings'* (Reference: CMT-11 Last Updated 13/01/2023) and in particular, the following:

> *'In deciding whether or not to grant a postponement or adjournment, the decision maker should consider all relevant factors, including the following.*

- ***The public interest in the efficient disposal of the case***

  There is a public interest in considering fitness to practise allegations swiftly, in order to protect the public, and maintain confidence in the professions and us as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For instance, if we need more time to get further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.

- ***The potential inconvenience***

  Postponing or adjourning a hearing may cause inconvenience to people who have made themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a hearing at a later date.

- ***Fairness to the nurse, midwife or nursing associate***

  Postponing a hearing may allow a nurse, midwife or nursing associate, who is unable to attend original hearing dates, to attend a future hearing and give their evidence in person. For example, due to short term ill health or other commitments that were arranged before they were informed of the hearing date.'

The public interest in the efficient disposal of the case

The panel considered that it is likely that the High Court Appeal application has been lodged prematurely as no determinations on the facts or sanction have been made in this case. The panel had regard to the public interest in considering fitness to practise allegations swiftly, and given the protracted nature of this hearing so far, together with the application for a stay/adjournment for an unspecified period of time, it determined that the public would expect this hearing to proceed. The panel decided that any further

delay to this hearing on the basis that Mrs Asiedu-Baning has lodged a potentially erroneous appeal to the High Court would not be in the public interest. Given the amount of time that has already elapsed, the panel determined that there is an urgent need to expedite this hearing in order to maintain public confidence in the professions and the NMC as its regulator.

The potential inconvenience

The panel considered the potential inconvenience to participants and witnesses if Mrs Asiedu-Baning's application for a stay/adjournment were to be granted. Whilst the panel noted that the NMC has called all of its witnesses, according to the agreed hearing timetable, the panel was due to hear Mrs Asiedu-Baning's case and from her potential witnesses between 8-11 April 2025.

Fairness to the nurse, midwife or nursing associate

Whilst the adjournment is being sought by Mrs Asiedu-Baning, the panel considered that no unfairness would be caused to her if this hearing proceeded. During previous sittings, a timetable was agreed between the parties, and it was expected that Mrs Asideu-Baning would be in attendance and present her case. The panel determined that Mrs Asiedu-Baning has had sufficient notice of this resuming hearing.

Having regard to all of the above, the panel decided to reject Mrs Asiedu-Baning's application to stay/adjourn this hearing.

[PRIVATE].

Decision and reasons on application to adjourn

On day 62, the panel resumed to hand down its decision on Mrs Asiedu-Baning's application to stay/adjourn proceedings. It noted that neither Mrs Asiedu-Baning nor her representative were in attendance. Ms Stevenson drew the panel's attention to an email

chain between the Hearings Co-ordinator and Mrs Asiedu-Baning. She referred the panel to Mrs Asiedu-Baning's response dated 9 April 2025 at 09:21:

[PRIVATE]

Ms Stevenson invited the panel to proceed in Mrs Asiedu-Baning's absence [PRIVATE].

The panel accepted the advice of the legal assessor.

The panel had regard to the NMC Guidance on *'When we postpone or adjourn hearings'* (Reference: CMT-11 Last Updated 13/01/2023) and in particular the following:

> *'In deciding whether or not to grant a postponement or adjournment, the decision maker should consider all relevant factors, including the following.*
>
> - ***The public interest in the efficient disposal of the case***
>
> *There is a public interest in considering fitness to practise allegations swiftly, in order to protect the public, and maintain confidence in the professions and us as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For instance, if we need more time to get further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.*
>
> - ***The potential inconvenience***
>
> *Postponing or adjourning a hearing may cause inconvenience to people who have made themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a hearing at a later date.*

- ***Fairness to the nurse, midwife or nursing associate***[3]

  Postponing a hearing may allow a nurse, midwife or nursing associate, who is unable to attend original hearing dates, to attend a future hearing and give their evidence in person. For example, due to short term ill health or other commitments that were arranged before they were informed of the hearing date.'

[PRIVATE]

Whilst the panel acknowledged that we are at an important stage of this hearing as Mrs Adiedu-Baning is due to present her case, and despite a number of measures having been implemented to support her in allowing her to present her best case, the hearing has not progressed. Since October 2024, adjournments have been granted to allow Mrs Asiedu-Baning time to seek legal representation and prepare her case; she was represented from March 2025. However, since 8 April 2025, Mrs Asiedu-Baning has not attended the hearing and has not been represented in her absence.

The panel found that this was a finely balanced decision, it noted that fairness to all parties must be considered which includes the NMC being able to carry out its regulatory function and meet its overarching objectives. The panel was of the view that a further adjournment would be unfair to the NMC given the significant amount of time that has elapsed. The panel considered that there may be some relief to Mrs Asiedu-Baning in this matter being brought to a conclusion as expediently as possible.

The panel considered that, since this hearing commenced in January 2023, as a significant amount of time has elapsed without any progress, the public interest in the disposal of this case is heightened. The panel also noted that the length of Mrs Asiedu-Baning's requested adjournment is unknown, and the panel found that it is not in the public interest for the hearing to adjourn for an undefined period of time. [PRIVATE].

The panel determined that a further adjournment would not be in the public interest. It considered that a fully informed member of the public would expect this hearing to

progress and for the NMC to be able to carry out its regulatory function and ensure that the overarching objectives are met. The panel was mindful of paragraph 65, as set out above, however, in the particular circumstances and the protracted nature of this case, the panel considered that fairness to all parties and the wider public interest in the hearing being concluded outweighed Mrs Asiedu-Baning's interests in respect of this adjournment application.

Having regard to all of the above, the panel decided to reject the application to adjourn and to proceed in Mrs Asiedu-Baning's absence.

Decision and reasons on previous application to admit evidence

As the panel decided to proceed in Mrs Asiedu-Baning's absence, before moving on to closing submissions, Ms Stevenson reminded the panel of the application made by Mrs Asiedu-Baning on 4 February 2025 to adduce evidence. She submitted that whilst it was not for the NMC to run Mrs Asiedu-Baning's case in her absence, this application was formally raised and responded to previously during the hearing. It was decided that it was not appropriate to hear the application when it was put forward on 4 February 2025, but that it would be considered when Mrs Asiedu-Baning presented her case.

Given Mrs Asiedu-Baning's absence, Ms Stevenson submitted that it is not clear as to whether she would have continued to pursue the application. However, she submitted that there is an implied expectation that this application would be considered at this stage. Ms Stevenson referred the panel to Mrs Asiedu-Baning's written submissions provided on 4 February 2025:

> *'**4th Jan 2025***
>
> ***Relevance of This Submission***
>
> *I respectfully submit this document to highlight critical concerns regarding the accuracy, fairness, and potential bias in the consideration of evidence in this*

matter. My submission is directly relevant to ensuring an evidence-based and just decision-making process, for the following reasons:

1. Handover Attendance Misrepresentation

- *I have been falsely accused of being present at a handover, despite no objective evidence supporting this claim. (H) relevance will show my location at time of hand over*
- *My testimony should hold equal weight, yet Witness 2 (W2)'s statement has been accepted without any corroboration.*
- *The requested document—such as patient tracking records or a statement from the transferred patient—would provide factual confirmation of my whereabouts and disprove W2's assertion.*
- *Additionally, my Google Timeline (H) can further corroborate my movements.*
- *It is deeply concerning that W2's word has been accepted without question, despite the availability of objective evidence that could refute her claim. This raises serious questions about whether white privilege is affording W2 undue credibility and protection, while my evidence is being disregarded.*

2. Presentation of Incorrect Policy

- *W2 submitted a policy document as evidence, despite it not being in effect during the relevant period (3–4 November 2017). (E,I)*
- *I specifically requested the correct version, yet neither the panel nor the NMC made efforts to obtain it. Nor was W2 asked to produce the source of this Document*
- *I have since secured the correct policy, (C) which proves that W2 submitted false evidence.*
- *The failure to challenge W2's submission, despite clear evidence contradicting it, raises concerns about selective scrutiny and whether W2 is being protected from accountability.*

- *The requested document is crucial, as it verifies the applicable policy at the time, exposes any misrepresentation, and ensures a fair assessment of my actions.*

3. False Testimony Under Oath

- *W2 testified under oath that she did not know a senior midwife, despite training in the same hospital.*
- *Given that this senior midwife likely played a role in her training or recruitment, this statement is highly implausible.*
- *The fact that W2's inconsistent statements have gone unchallenged, while my evidence has been met with resistance, raises concerns that white privilege may be influencing how credibility is being assigned in this case.*
- *The requested document could further establish the reliability of my claims and expose contradictions in W2's testimony.*
- *G – this will show that there were policy changes at that time as confirm by W1, contrary to W2 testymony*

Conclusion

The discrepancies outlined above not only call into question the integrity of the evidence presented against me but also raise concerns about the role of white privilege in how this case is being handled. It appears that W2's testimony is being protected from scrutiny, while my own evidence—despite being verifiable—is being overlooked.
A fair and transparent process requires all evidence to be evaluated objectively, without bias or preferential treatment. I urge the panel to ensure that justice is not compromised by systemic privilege and to consider the requested document and/ admit it as evidence in the interest of fairness and truth.

I appreciate your time and consideration and look forward to a just resolution.
Kindy incorporate my oral submission

Yours sincerely,
Amma

A – Letter from MK Trust
B – Hypo -g policy 1 – previous
C – Hypo - g policy 2 – effective at the time
D – Email from Registrant Amma with 2 attachments
E – Attachment 1 Hypo policy 17 pages (produced by Wit 2)
F – Attachment 2 - 1 page – letter from Registrant Amma to the trust 31 January
G – Handover sheet 3/11/17
H – Timeline screen shot
I – Hypo -g policy screen shot (this is the version submitted by W2) it's the front version of E'

Ms Stevenson referred the panel to Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, the NMC Guidance on *'Evidence*' (Reference: DMA-6, Last Updated: 02/12/2024. She also referred the panel to her written submissions in response to Mrs Asiedu-Baning's application dated 5 February 2025:

'<u>Relevance</u>

<u>Document A</u>
Letter from Milton Keynes Hospital NHS Foundation Trust ('the Hospital') dated 27 January 2025

13. *The NMC accepts this is **relevant** as to the context behind the Guidance/Policies referred to in this case.*

14. *However, this document is not directly relevant to the charges before the Panel and in due course the NMC will provide further submissions as to the weight to be attached to this document and this element of the Registrant's case.*

<u>Document B</u>

Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Management)' last reviewed April 2016

15. *This document precedes the dates applicable to the charges in this case which are 03-04 November 2017.*

16. *The Registrant herself, in her oral submissions on 04 January 2025, stated 'it's 2016, it doesn't apply'.*

17. *Therefore, the NMC submits Document B is* ***not relevant****.*

<u>Document C</u>
Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Management' last reviewed May 2017

18. *The NMC accept that Document C* ***is relevant.*** *The dates of when this document was in force, coincides with the dates of the charges before the Panel.*

<u>Document D</u>
Email chain between the Registrant and the Hospital dated 30-31 January 2025

19. *This document contains correspondence between the Registrant and the Hospital in relation to her request for further information. The substance of the content, of the correspondence contained in Document D, is non-consequential.*

20. *Whilst the document helps present the Registrant's application, it is not evidence which goes towards the charges. As such, the NMC submits it is* ***not relevant****.*

<u>Document E</u>

Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Identification and Management) last reviewed May 2017

21. *The NMC submits that Document E is **relevant** as the NMC relies on the same document at Exhibit MB/1 at Exhibit Bundle 3B pages 33 to 49.*

22. *Additionally, the NMC submit that there can be no unfairness to either party by refusing to admit this document because it is a document that is already exhibited before the Panel.*

23. *However, as this document is already exhibited before the Panel it **does not need to be admitted**.*

Document F

The Registrant's letter requesting clarification dated 31 January 2025

24. *This document demonstrates the efforts of the Registrant to seek further clarification from the Hospital as part of her request for further information. It is correspondence which helps present the Registrant's application.*

25. *It is not evidence which goes towards the charges. As such, the NMC submits it is **not relevant**.*

Document G

Handover sheet

26. *Whilst this may be relevant as to the context behind the alleged failings, as it refers to the Guidance/Policy of note within this case, the NMC submit it arguable it should not be admitted as it is not clear as to what version of Guidance/Policy is being referred to.*

Document H

Google timeline

27. *The NMC accepts this is **relevant** as to the context behind the alleged failings because it demonstrates the Registrant's movements on the 03 November 2017.*

28. *However, this document is not directly relevant to the charges before the Panel and in due course the NMC will provide further submissions as to the weight to be attached to this document and this element of the Registrant's case.*

29. *Whilst the Registrant was able to demonstrate the provenance of this document, the NMC have concerns over the reliability of the document.*

Document I

Single page of Guideline titled 'Hypoglycaemia of the Newborn (Postnatal Ward Identification and Management) last reviewed May 2017

30. *The NMC submits that Document I is **relevant** as the NMC relies on the same document at Exhibit MB/1 at Exhibit Bundle 3B pages 33 to 49.*

31. *Additionally, the NMC submit that there can be no unfairness to either party by refusing to admit this document because it is a document that is already, in full, exhibited before the Panel.*

32. *However, as this document is already exhibited, in full, before the Panel it does **not need to be admitted**.*

Fairness

33. *The NMC submit that it would be unfair the admit the documents for the following reasons.*

34. *First, there is unfairness by admitting the document because the evidence may be unchallenged.*

35. *The NMC make that submission because although technically Witnesses 1 and 2 could be recalled it would be wholly inappropriate and unfair to recall them due to the history of the case and the fact that, as the Panel have found (at page 19 of the Panel's determination thus far):*

    a. *For example, in terms of fairness, we have a witness who was engaging and had a concise statement which dealt with identifiable areas to be challenged. Witness 2 has been* ***severely inconvenienced*** *by being on call for three weeks, during which she had the added pressure of waiting all day for six days to come back to continue her evidence. Further as a practising registered midwife, this unnecessary inconvenience would have adversely impacted on her employer and the patients under her care.*

    b. *Following protracted and repeated questioning in cross-examination, remarking inappropriately upon and making implied criticisms of some of Witness 2's answers has resulted in Witness 2 being* ***unfairly ground down****. The panel has been advised that Witness 2 has been left* ***feeling distressed*** *and* ***vulnerable****. The panel considers that this is* ***clearly not tolerable****.*

    c. *This is not an isolated occurrence****. Witness 1 and Witness 2 were treated in a similar unfair manner.*** *Other witnesses were also subjected to unattractive cross-examination.* ***There is a compelling inference that this is a course of conduct designed to reach that end****.'**

    d. **On further reflection, the panel seeks instead to express this concern as follows: At times, the similar pattern and manner of questioning presented itself as plainly intimidatory towards witnesses. The danger of such questioning is that such a witness would be inhibited from giving the evidence that they wished.*

    e. *'The panel recognises that an advocate has a duty to put their case, challenge the evidence where necessary and may adopt a robust*

*style. However, the panel considers that the questioning of witnesses, as adopted by the defence, was **excessive and unnecessary**.*

f. *The panel considers that this constitutes an **abuse of process** and **unfairness** to other parties, **particularly witnesses**.*

[emphasis added]

36. *Therefore, the NMC considers that as Witness 1 and 2 should not be recalled, this evidence would be unchallenged and therefore should not be admitted. If that causes a level of unfairness towards the Registrant there whilst that is unfortunate, there are reasons for why the legal system has certain processes and procedures in place.*

37. *The Panel are invited to consider NMC Guidance titled 'Engaging with your case' (reference FTP-16) which states:*

Raising issues at a late stage in proceedings

a. *Suppose a nurse, midwife or nursing associate raises an issue at a late stage (such as the final hearing) that could reasonably have been raised at an earlier stage. In this case, the panel may consider whether there's a reasonable explanation for this and whether to adjourn the matter for further investigation.*

b. *For example, a nurse, midwife or nursing associate could raise, for the first time at a final hearing, that they were overloaded at the time of the incident due to staffing shortages. This may be something they could have reasonably raised with us earlier on in the fitness to practise process (**See our guidance on directing further investigation during a hearing**).*

c. ***If the panel considers that there's no reasonable explanation for the issue being raised late, it may, subject to it being fair, decide to take that into account when assessing the nurse, midwife or nursing associate's credibility in relation to the matter raised.***

[emphasis added]

38. *This leads to the NMC's second submission, that there is a general level of unfairness as to the timing of this application.*

39. *At page 19 of the Panel's determination thus far, the Panel found:*

    a. *Over the course of the hearing, the panel raised with the parties that it had become increasingly concerned at the frustration to the hearings process by the defence and the disregard for the principles of fairness to witnesses, case management and to the NMC.*
    b. *…*
    c. *The defence has repeatedly disregarded and breached the rules of fairness, the panel's directions and the legal assessor's guidance with regard to the hearing process.*

40. *At page 28 of the Panel's determination thus far, the Panel found:*

    a. *During the course of the hearing, the panel recognised that although Ms Bennett was not a legally qualified advocate, she did have experience with the NMC hearing process. Notwithstanding, the panel sought to make appropriate allowances by providing extensive general guidance, directing Ms Bennett and you to the relevant information and guidance available on the NMC website and allowing considerable time for Ms Bennett to consult with her legal team and you, as and when she required it.*
    b. *…*
    c. *The panel noted that there was little attention to any form of case management in that Ms Bennett frequently served on both the NMC and the panel substantial material not directly relevant to the charges which impacted upon the hearing process resulting in significant delays.*
    d. *…*
    e. *The panel was mindful to ensure that the frustrations and delays which caused the hearing to be adjourned part-heard did not distract from its proper consideration of your case. The panel wishes to*

emphasise that it remains wholly committed to its primary responsibility to make a completely detached and careful evaluation of the relevant evidence on each specific charge.

41. *During her oral submissions the Registrant accepted that she only sent the further information request in January 2025. She explained that she had made attempts to get the documents from Witness 1 in 2017 and before this case started in January 2023.*

42. *It is submitted plenty of time has been afforded to the Registrant and her representatives to prepare its case and raise issues.*

43. *As the Panel are aware, this is a re-hearing, as this matter was previously listed in October and November 2021. This hearing started in January 2023. W2 started her evidence on Monday 30 January 2023 (day 6) her evidence was not completed on that day, and she was asked to return another day. Her evidence could not be completed and so she returned on 19 and 20 June 2024.*

44. *The Registrant and her then representatives have at the very least, since October 2021 to prepare its case and raise disclosure requests. In reality they have had longer than that as one would expect a party to have prepared its case prior to the hearing commencing and as the Registrant's accepted during her oral submissions, she herself knew of this documentation and that she required it because she raised it with Witness 1 in 2017.*

45. *The case management form was not fully completed and it did not set out the Registrant's case, what they took issues. No disclosure requests were received by the NMC from the Registrant or her representatives before either the original hearing in October and November 2021 or this hearing commenced.*

46. *At no point, since this case commenced on 23 January 2023, until November 2024 has it been suggested that there was the possibility of further evidence required and/or being sought by the Registrant.*

47. *These documents and why the Registrant required them could have been requested prior to the hearing commencing to allow time to obtain such documents to then be put to Witness 1 and/or 2 for them to consider and respond to.*

48. *It is of great concern that these issues were not raised prior to the hearing starting in January 2023 either by her representative or of her own accord.*

49. *Whilst the Registrant explained that she did put the request to her representative, it was always open to her to raise it either with her representative or the Panel prior to the hearing commencing but more importantly prior to the witness's evidence. Even during the witness's evidence, the Registrant's then representative would always be afforded an opportunity to speak with the Registrant to ensure that everything had been put to the witnesses in accordance with the Registrant's' instructions.*

50. *The Registrant has not been denied the opportunity to present her case to Witness 2. She has had two opportunities to property put her case to Witness 2 in January 2023 and June 2024 and to make any disclosure requests to assist her in doing so.*

51. *Whilst the Registrant submitted that she did not know she could raise a further information request until someone advised her, as the Panel found at page 28 of the Panel's determination thus far, that 'although Ms Bennett was not a legally qualified advocate, she did have experience with the NMC hearing process. Notwithstanding, the panel sought to make appropriate allowances'. She therefore had the benefit of an experienced representative who could have obtained the documents she required and knew about these documents as the Registrant requested.*

52. *Additionally, the Registrant has been able to obtain these documents within a month and she commented as to the ease of how she was able to obtain these documents. This therefore raises further concerns as to why this was not before.*

53. *Therefore, it is not proportionate or fair, at this stage of proceedings, for the Registrant to now seek to adduce further evidence. As stated above:*
    a. *Plenty of time has been afforded to the Registrant and her representatives to prepare its case. The Registrant and her then representatives have at the very least, since October 2021 to prepare its case and raise disclosure requests. In reality they have had longer than that as one would expect a party to have prepared its case prior to the hearing commencing;*
    b. *The Registrant and her representatives were fully aware of their ability to seek disclosure as they made other disclosure requests;*
    c. *The case management form was not fully completed and it did not set out the Registrant's case, what they took issues;*
    d. *No disclosure requests were received by the NMC from the Registrant or her representatives before either the original hearing in October and November 2021 or this hearing commenced;*
    e. *At no point throughout this case, since it commenced on 23 January 2023, until November 2024, nearly 2 years, has it been suggested that there was the possibility of further evidence sought by the Registrant.*
    f. *The Registrant has been given more than one opportunity to present her case to Witness 2 and to make any disclosure requests to assist her in doing so.*
    g. *There is no good reason why the issue pertaining to these documents were not sought earlier, particularly before the hearing commenced, to allow for time to obtain the information and further allow this information to be put to the witnesses to consider and respond to.*

Issues regarding the Policies/Guidelines and other linked documents

54. *There two versions of the Guidance/Policy (Document C and Exhibit [PRIVATE]). As the NMC itself has relied on exhibit [PRIVATE] in its case, it seems it is likely necessary to scope out confirmation from the Hospital as to the which Guidance/Policy was in force at the time of the shift in question, and when any changes were rolled out to staff practically.*

55. *The NMC are of the view that the material parts of the policy appear to be consistent however there is a difference with the wording and so it seems unsatisfactory to have multiple versions of a Guidance/Policy in evidence with no help as to which one is best to rely on.*

56. ***If the Panel considers that it needs to know the position and which policy to rely on, the NMC will take steps to contact the Hospital to see if a definitive answer can be sought before it closes its case.***

Other

57. *The Registrant submitted in her oral submissions on 04 February 2025:*
    a. *Witness 2 has been given undue credibility without supporting evidence.*
    b. *Witness 2's statement alone has been accepted without corroboration.*
    c. *Witness 2's statement is wrong and should be struck out/eliminated before we move on.*

58. *This is not correct. The Panel have not yet retired to determine the facts of the case. At present the NMC are still presenting its case and by doing so, is entitled to rely on its own witnesses. The next stage of the proceedings will be for the Registrant's case and she is entitled to rely on the witnesses she chooses. Only once both sides have closed their cases will the Panel retire to consider the facts of this case and consider matters such as credibility.*

59. *There is no legal process available to eliminate or strike out Witness 2'sevidence. Her evidence will be available to the Panel as will any other evidence adduced in this case from both parties. The Panel will consider the evidence as a whole and decide what weight if any to place on parts of the evidence and the Panel will decided which witnesses are credible and/or reliable.*

60. *The Registrant has further submitted in her written submissions:*

a) *My testimony should hold equal weight, yet Witness 2 (W2)'s statement has been accepted without any corroboration.*
b) *It is deeply concerning that W2's word has been accepted without question, despite the availability of objective evidence that could refute her claim. This raises serious questions about whether white privilege is affording W2 undue credibility and protection, while my evidence is being disregarded… raise concerns about the role of white privilege in how this case is being handled. It appears that W2's testimony is being protected from scrutiny, while my own evidence—despite being verifiable—is being overlooked.*
c) *False Testimony Under Oath [and the submissions under that sub-heading]*

61. Taking the above submission in turn:

a) *The Registrant has not yet given evidence under oath/affirmation. As stated above, at present the NMC are still presenting its case and by doing so, is entitled to rely on its own witnesses. The next stage of the proceedings will be for the Registrant's case and she is entitled to rely on the witnesses she chooses. Only once both sides have closed their cases will the Panel retire to consider the facts of this case and consider matters such as credibility. Witness 2's evidence has not been accepted without any corroboration as the Panel have not yet made a decision on the facts of the case.*
b) *Witness 2's evidence was questioned by the Registrant's representative on more than one occasion. Witness 2 is not being afforded white privilege, if anything she has been 'unfairly ground down' by the Registrant's representative's questioning. Witness 2 has not been afforded undue credibility and protection, the Panel have not yet determined credibility and Witness 2 is entitled to the same level of fairness as every party in this case. The Registrant has not yet given evidence and therefore it cannot be said that it has been disregarded.*
c) *The submissions made under 'false testimony under oath' are submissions to raise for closing submissions or no case to answer.'*

In addition to her written submissions, Ms Stevenson submitted that as Mrs Asiedu-Baning is not present, there is a limitation on how much the panel can understand the evidence without her giving evidence to speak to it which is a consequence of her non-engagement.

The panel accepted the advice of the legal assessor.

The panel had regard to Rule 31 of the Rules which sets out the following:

> *'Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).'*

The panel had regard to the NMC Guidance on *'Evidence'* (Reference: DMA-6, Last Updated 02/12/2024), and in particular, the section entitled *'Admissibility of evidence'* in which the following is stated:

> *'The only evidence that may be provided to the panel is evidence which is relevant to one of the issues the panel needs to decide. It also needs to be fair to the people involved in the case, including patients, family members and loved ones, the nurse, midwife or nursing associate and us as a regulator, that the panel considers that evidence. Evidence may be unfair where it cannot be challenged.*
>
> *For example, this could be where the person who gives the evidence cannot be questioned, or where it relates to a subjective opinion as opposed to an objective (although possibly disputed) fact.'*

The panel noted that documents E and I are already contained within the evidence. It therefore went on to consider the admissibility of documents A, B, C, D, F, G and H and applied the test of relevance and fairness.

The panel accepted the points raised by Ms Stevenson, on behalf of the NMC in respect of the timing of Mrs Asiedu-Baning's application and that the evidence is unchallenged. The panel accepted that there is some unfairness caused to the NMC; notwithstanding this, the panel considered that this was a finely balanced decision in terms of fairness to the NMC and to Mrs Asiedu-Baning.

Document A (letter from Milton Keynes Trust)

The panel had sight of the letter from Milton Keynes Trust and noted that the information contained within this letter is not directly linked to any of the charges. However, the panel considered that this letter does provide some contextual information which may be potentially relevant and of assistance when it assesses all of the evidence. Given that this evidence may be potentially relevant to establishing contextual factors, the panel determined that it is fair to Mrs Asiedu-Baning to admit it. What weight to be attached to this evidence will be determined when the panel considers all of the evidence during its deliberations on the facts.

Document B (Hypo-g policy 1 – previous) and Document C (Hypo-g policy 2 - previous)

The panel noted that Mrs Asiedu-Baning has raised concerns about the policy version that was provided in the NMC bundle of evidence. Whilst the policies do not directly relate to the charges, the panel was of the view that they may provide contextual information. Therefore, the panel considered that these are potentially relevant and should be considered together with all of the evidence adduced so far. The panel was of the view that it would be fair to Mrs Asiedu-Baning to admit them into evidence. What weight to be attached to this evidence will be determined when the panel considers all of the evidence during its deliberations on the facts.

Document D (Email from Mrs Asiedu-Baning containing two attachments) and Document F (letter from Mrs Asiedu-Baning to the Trust dated 31 January)

The panel considered Documents D and F together, as Document D was an email with Document F attached. Having reviewed these documents, the panel found that whilst they do not relate directly to the charges, they may provide some potentially relevant contextual information. Having found that these documents may provide some potentially relevant information, the panel considered that these should be admitted in fairness to Mrs Asiedu-Baning. What weight to be attached to this evidence will be determined when the panel considers all of the evidence during its deliberations on the facts.

Document G (Handover Sheet 3/11/2017)

The panel noted that Document G is a screenshot of a handover sheet. The panel had regard to the charges and was of the view that this evidence does not directly relate to them. Furthermore, the panel found that it was unable to ascertain the provenance and date of this partially scanned document, nor is it clear as to what version of guidance/policy it related to or whether it was an official Hospital document. As such, the panel was unable to find that this document was relevant to the charges before it. The panel therefore decided that it would not admit Document G into evidence.

Document H (Google Timeline Screenshot)

The panel noted that Document H is a screenshot which is alleged to document Mrs Asiedu-Baning's movements at a time relevant to the charges. The panel considered that this may potentially provide context and may be relevant. The panel considered that as this evidence may be potentially relevant to the charges, it would be fair to Mrs Asiedu-Baning to allow it into evidence. What weight to be attached to this evidence will be determined when the panel considers all of the evidence during its deliberations on the facts.

Weight

The panel noted that the evidence provided will not be able to be tested, and as Mrs Asiedu-Baning is not in attendance, she will not be able to provide further information.

The panel considered that this will be a factor to consider when it determines what weight should be attached to the evidence.

Decision and reasons on interim order

Before the close of the hearing, on day 64 (11 April 2025), pursuant to Rule 32(5) of the Rules, the panel invited submissions from Ms Stevenson on whether an interim order is necessary. [PRIVATE].

Following questions from the panel, Ms Stevenson sought instructions on whether Mrs Asiedu-Banning is currently working as a registered nurse and/or midwife, in what capacity and what client group. She informed the panel that there is no information about Mrs Asiedu-Baning's current employment status.

Ms Stevenson submitted that the NMC is not seeking an interim order at this stage. [PRIVATE].

[PRIVATE]. She submitted that an interim order is not currently necessary to protect the public and is not otherwise in the public interest.

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel had regard to the submissions made by Ms Stevenson and to the NMC Guidance on *'Interim orders, their purpose, and when we impose them'* (Reference: INT-1, Last Updated: 25/03/2024) and *'Decision making factors for interim orders'* (Reference: INT-2, Last Updated: 02/12/2024).

[PRIVATE].

Balancing all of the above, and having regard to the principles of proportionality, the panel decided that an interim order was not necessary to protect the public, nor otherwise in the public interest, nor in Mrs Asiedu-Baning's interests at this stage.

[This hearing resumed on 8 September 2025]

Notice of hearing

At the outset of the resumed hearing, on day 65, the panel was informed that neither Mrs Asiedu-Baning nor her representative were in attendance.

Ms Stevenson drew the panel's attention to the proof of service bundle and in particular, Notice of Hearing letter (the Notice) dated 16 August 2025. Ms Stevenson submitted that the Notice was sent to Mrs Asiedu-Baning's registered email address on 16 August 2025. She referred the panel to Rule 32(3) of the Rules and submitted that the NMC had served the Notice of the resuming hearing dates as soon as practicable.

Ms Stevenson referred the panel to the NMC Guidance on *'Notice of our hearings and meetings'* (Reference: PRE-6 Last Updated: 14/10/2022). She submitted that there is no minimum notice period and no legal requirement for there to be written confirmation of resuming dates. Nevertheless, Ms Stevenson submitted that the NMC has ensured that the Notice was sent to Mrs Asiedu-Baning in accordance with the Rules. She also submitted that the last Notice of hearing informed Mrs Asiedu-Baning of the resuming dates.

The panel accepted the advice of the legal assessor.

Having regard to the Notice dated 16 August 2025 and the Notice sent prior to the last hearing, the panel was satisfied that good service has been effected in accordance with the Rules.

Decision and reasons on proceeding in the absence of Mrs Asiedu-Baning

Ms Stevenson drew the panel's attention to the *'Proceeding in absence'* bundle which included the following email from Mrs Asiedu-Baning to the NMC dated 4 September 2025 in which she stated the following:

(*Bold typeface as written by Mrs Asiedu-Baning)

> ***'Judicial Review: Asiedu-Baning v NMC (AC-2025-LON-001133)***
> *You are aware that I have applied for a* ***Judicial Review (Forms N461 and N463)****, including an order* ***staying the disciplinary proceedings pending the resolution of this application****, which has been duly served and responded to.*
>
> *The High Court has now* ***allocated my applications****.*
>
> *Despite this, I have received a* ***notice of hearing commencing 8th September 2025****. The NMC must* ***not repeat April 2025****, when a hearing proceeded despite my direct appeal to the Panel and NMC for a stay pending Judicial Review, which they rejected.*
>
> *Proceeding with the September hearing while the Court considers my application would:*
>
> - *Be* ***unlawful****;*
> - *Cause* ***irreparable harm*** *to my career and reputation;*
> - *Risk* ***rendering my Judicial Review claim nugatory****;*
> - *Be* ***unfair and procedurally improper****, contrary to established case law, including:*
>   - *R (Medical Justice) v SSHD [2010] EWHC 1925 (Admin);*
>   - *R (Independent Workers Union of Great Britain) v Central Arbitration Committee [2019] EWHC 2875 (Admin);*
>   - *R (Begum) v Governors of Denbigh High School [2006] UKHL 15;*
>   - *R v Home Secretary ex p Fire Brigades Union [1995] 2 AC 513.*

*I therefore **formally request** that the NMC adjourn the September hearing **immediately** until the Court has ruled on my applications*

*Please confirm **without delay** whether the NMC will comply.*

*I have **informed the Court** to bring this matter urgently before a judge due to the potential for contempt if the hearing proceeds.'*

Ms Stevenson submitted that after Mrs Asiedu-Baning sent this email, on 5 September 2025 the High Court refused permission to proceed with Mrs Asiedu-Baning's Judicial Review application. She referred the panel to an email dated 5 September 2025 from external solicitors instructed by the NMC to Mrs Asiedu-Baning in which it was confirmed that this hearing will proceed as scheduled. On 6 September 2025, Mrs Asiedu-Baning sent an email in which she stated that she will be appealing the decision of the High Court and requested a reconsideration of her case.

Ms Stevenson referred the panel to the NMC Guidance on *'Proceeding with hearings when the nurse, midwife or nursing associate is absent'* (Reference: CMT-8 Last Updated: 13/01/2023). She submitted that when deciding whether to proceed in Mrs Asiedu-Baning's absence, the panel must exercise care and caution. She also submitted that fairness to the nurse, midwife or nursing associate is a prime consideration but that fairness to the regulator and public interest considerations should be taken into account.

Ms Stevenson submitted that this hearing has been ongoing for a significant period of time and that further delay is not in the interests of justice. She submitted that as all witnesses have been called, further delay would not inconvenience any witnesses. Ms Stevenson submitted that it appears that Mrs Asiedu-Baning has requested for the hearing to adjourn pending the outcome of the High Court proceedings. She submitted that the High Court has decided on her application and has refused permission for her to proceed with the Judicial Review application. Ms Stevenson submitted that there is

no date as to when a hearing will take place, and no injunctive relief has been granted that would prevent this panel from proceeding with this hearing.

Ms Stevenson submitted that there would be a level of unfairness in proceeding in Mrs Asiedu-Baning's absence. She submitted that whilst Mrs Asiedu-Baning would not be able to put forward her closing submissions, throughout the hearing both she and her representatives have been able to articulate her views on the case. Ms Stevenson submitted that unfairness has been minimised in light of this. [PRIVATE].

During Ms Stevenson's submissions, an email was received at 14:08 by the Hearings Coordinator from Mrs Asiedu-Baning in response to an email that had been sent to her and her representative at 8:28am providing the hearing link. In the email Mrs Asiedu-Baning stated the following:

(*Bold typeface as written by Mrs Asiedu-Baning)

> *'I only just saw your email, as I have been dealing with my court appeal, which has been passed from pillar to post, causing significant frustration. For clarity, I sent an email on* ***6th September 2025*** *(copied to Mr Tilche, Ms Hussain, CPPTeam8, and Ms Marks) requesting confirmation that the NMC would* ***stay the hearing scheduled for 8TH September 2025 at 9am****, pending the Court's urgent consideration of my Judicial Review appeal (AC-2025-LON-001133).****Asiedu-Baning v NMC***
>
> *The Court did not respond to the previous matter until* ***5 September 2025****, giving me less than a day to seek legal advice, gather myself, and prepare as a litigant person [PRIVATE]. As I write, I am still on calls with the Court and may need to attend in person tomorrow.*
>
> *I am actively pursuing an* ***appeal****. Under* ***CPR 54.12****, a refusal does not take effect until the appeal period expires or, if appealed, Until the appeal is determined, The matter is therefore still live before the Court.*

*I have formally served the NMC with **Form N215**, which must be adhered to. Proceeding with the hearing under these circumstances would be **unfair and prejudicial**, undermining natural justice, and risks repeating the procedural failures that occurred in **April**.*

*Please note that any attempt to continue with the hearing despite the live appeal and N215 service could itself constitute **procedural impropriety** and may be subject to further legal challenge.*

*I request urgent confirmation on whether my request to **stay the hearing** has been acknowledged and will be respected.'*

Ms Stevenson submitted that Mrs Asiedu-Baning is requesting an adjournment on the same grounds as April 2025. Ms Stevenson requested that her previous submissions and previous legal advice be taken into account and asked the panel to read specific pages from the April 2025 transcripts. Ms Stevenson submitted that there is no confirmation of a date that any reconsideration of Mrs Asiedu-Baning's application would take place. In respect of Mrs Asiedu-Baning's interpretation of the Civil Procedure Rule (CPR) 54.12, Ms Stevenson submitted that on her reading of the CPR 54.12, she cannot see any part that states that the refusal of the Judicial Review application does not take effect or that the matter is still live before the High Court.

The panel accepted the advice of the legal assessor.

The panel was mindful that this adjournment application was similar to the one submitted by Mrs Asiedu-Baning in April 2025. The panel noted that, on 5 September 2025, the High Court refused Mrs Asiedu-Baning's application to proceed with a Judicial Review. The panel noted that, in her email of 8 September 2025, Mrs Asiedu-Baning had requested that this hearing be adjourned now due to her appeal of the High Court's decision.

The panel had regard to Mrs Asiedu-Baning's representations and specific points raised in her emails dated 4, 6 and 8 September 2025. It also had regard to the submissions of

Ms Stevenson, the legal advice and to the provisions set out in the NMC Order. The panel was not provided with any information about how long the reconsideration or judicial review process would take, therefore the adjournment was being sought for an undefined period of time.

The panel had regard to the NMC Guidance on *'When we postpone or adjourn hearings'* (Reference: CMT-11 Last Updated 13/01/2023) and in particular, the following:

'In deciding whether or not to grant a postponement or adjournment, the decision maker should consider all relevant factors, including the following.

- ***The public interest in the efficient disposal of the case***

  There is a public interest in considering fitness to practise allegations swiftly, in order to protect the public, and maintain confidence in the professions and us as a regulator. Although delaying a hearing may mean that witnesses find it harder to remember their evidence, there may also be a public interest in delaying the hearing. For instance, if we need more time to get further evidence that will provide the Committee with a full understanding of the concerns when they make their decision.

- ***The potential inconvenience***

  Postponing or adjourning a hearing may cause inconvenience to people who have made themselves available to attend and give evidence on the original hearing dates, and who may be unable to attend a hearing at a later date.

- ***Fairness to the nurse, midwife or nursing associate***

  Postponing a hearing may allow a nurse, midwife or nursing associate, who is unable to attend original hearing dates, to attend a future hearing and give their evidence in person. For example, due to short term ill health or other

commitments that were arranged before they were informed of the hearing date.'

The public interest in the efficient disposal of the case

The panel considered that given the amount of time that has elapsed since this hearing commenced in January 2023, and since the charges arose in 2017, the public interest in the expeditious disposal of the case remains heightened. The panel was of the view that a fully informed member of the public, given the seriousness of the charges and the protracted nature of this hearing so far, would expect for this hearing to proceed and to be brought to a conclusion as soon as possible.

The potential inconvenience

The panel noted that the NMC has called all of its witnesses and there would therefore be no inconvenience caused to them in adjourning. Mrs Asiedu-Baning had previously informed the panel that she would be calling a witness but as she has disengaged from these proceedings the panel had no further information about this.

Fairness to the nurse, midwife or nursing associate

The panel noted that Mrs Asiedu-Baning has requested for this hearing to adjourn and not proceed today. Whilst the panel acknowledged that there may be some unfairness in proceeding today, it determined that Mrs Asiedu-Baning was aware as early as February 2025 that this hearing was scheduled to resume today and has therefore voluntarily absented herself. The panel noted that Mrs Asiedu-Baning's engagement throughout these proceedings has diminished. In the panel's view, her previous active engagement (both whilst represented and unrepresented) may mitigate against some of the potential unfairness in proceeding in her absence. The panel acknowledged that Mrs Asiedu-Baning is continuing to pursue a Judicial Review through the High Court, however, these are separate proceedings and this hearing should not be delayed as a result of Mrs Asiedu-Baning's decision to pursue an appeal with the High Court.

Having regard to all of the above, the panel decided to reject Mrs Asiedu-Baning's application for an adjournment and it considered that it was fair, appropriate and proportionate to proceed in her absence.

Background

When the charges arose, Mrs Asiedu-Baning was working at Milton Keynes Hospital (the Hospital) as an agency midwife. She worked at the Hospital on a regular basis.

On the night shift of 3-4 November 2017, Mrs Asiedu-Baning was originally allocated to work on the Labour Ward but due to staffing issues, she was moved to Ward 9 shortly after she started on shift. Ward 9 is a postnatal ward which is divided into four bays of six patients. A midwife is normally allocated to each bay. Following the night shift of 3-4 November 2017, Patient A and Patient B raised complaints about the care that they had received.

Decision and reasons on facts

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

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

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:

- Patient A: Patient at the Hospital.
- Patient B: Patient at the Hospital.
- Witness 1: Inpatient Maternity Matron (at the time of these events).
- Witness 2: Rotational Midwife.
- Witness 3: Point of Care Testing Services Lead.
- Witness 4: Band 6 Rotational Midwife.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessors. It considered the witness and documentary evidence provided by both the NMC and Mrs Asiedu-Baning. The panel then considered each of the charges and made the following findings.

Before considering the particulars of the charges, the panel first considered whether the stem of all of the charges was made out.

> *'That you, whilst you were working as a registered midwife at Milton Keynes Hospital, on the night shift 03-04 November 2017'*

The panel had regard to all of the evidence before it. The panel accepted the evidence of Witness 1, the Inpatient Maternity Matron, who stated that *'on 3/4 November 2017 Amma worked a night shift at Milton Keynes University Hospital ("the Hospital") the night shift started at 20:00 and finished at 07:30'* and that Mrs Asiedu-Baning was originally allocated to work on the Labour Ward but, due to short staffing, was moved to Ward 9. She stated that Mrs Asiedu-Baning was an Agency Midwife who was recruited

from ID Medical and *"used on a regular basis"*. The panel also had regard to the evidence of Witness 4 who stated that she had worked on the night shift at the Hospital on Ward 9 on 3-4 November 2017 and that Mrs Asiedu-Baning was one of the other two midwives on duty there.

The panel heard evidence from Witness 2, the midwife who was on the day shift. In her evidence Witness 2 told the panel that she provided a handover to Mrs Asiedu-Baning before leaving the Ward and that Mrs Asiedu-Baning had handed over to her on the morning on 4 November 2017. The panel also had sight of a letter from Witness 1 to you dated 23 November 2017 in which it was stated that you worked a night shift on 3 November 2017 into 4 November 2017.

The panel noted that although Mrs Asiedu-Baning contested the time she arrived for her shift, she has never disputed that she worked as a registered midwife on the night shift of 3-4 November 2017. This was confirmed in Mrs Asiedu-Baning's local statement *'WRITTEN FROM PATIENTS RECORD AND MY RECOLLECTION OF EVENTS'* dated 15 December 2017 in which she stated the following:

> *'I worked on the night of 3rd into 4th November 2017 in MK hospital.'*

Having regard to all of the above, the panel decided that, on the balance of probabilities, the stem was made out.

Blood sugar readings

Before considering the charges, the panel noted that charges 1)i), 1)ii), 3)i) and 3)ii) relate to blood sugar readings.

Following concerns about blood glucose tests carried out on the night shift of 3-4 November 2017, Witness 1 requested that the blood sugar monitoring machines be examined and a report produced which was undertaken by Witness 3.

The panel found the evidence of Witness 3, a registered Biomedical Scientist holding the position of Point of Care Testing Services Lead, to be cogent and persuasive. The panel found him to be a knowledgeable professional, who was consistent and measured in his responses, and the panel placed considerable weight on his evidence. He explained in depth the information contained in the Blood Sugar Monitoring Machines Report and stated that it was an accurate and reliable report of the blood glucose tests that had been taken on the night shift in question.

The panel noted the following from Witness 4's witness statement:

> *'All midwives at the Trust undergo annual training before they are allowed to use the blood sugar monitors... Once you have completed the training, you receive a barcode sticker which goes on the back of your hospital identification card. During training, midwives are informed that the barcode is only allocated to that individual midwife and that midwives should not let anyone else use their barcode.*
>
> *However, it was and still is common practice amongst midwives on the Unit to use each other's barcodes. The reason for this is that sometimes midwives cannot attend the training in time, which means that the barcode expires, or that the barcode has faded and is not functional. A midwife could be allocated women and babies who need regular blood sugar testing, regardless of whether she has a functional barcode or not.*
>
> *In order to take a blood sugar reading, a midwife has to scan her barcode sticker, the mother or baby's barcode from their hospital notes, and then the barcode on the sample strip. A blood sample is taken and applied to the strip which is then tested on the blood sugar monitor to acquire the reading. All information entered, the date and time of the sample, and the blood sugar reading is then retained on the blood sugar monitor.*
>
> *After taking a blood sugar reading, my normal practice is to record the blood sugar reading in the mother's or the baby's hospital notes along with a plan of*

action. If the baby is on a hypoglycaemic pathway then the blood sugar reading is also recorded on the vital signs chart.

Towards the end of the shift on 3 I 4 November 2017, at a time between approximately 06:00 and 07:30, I was at the Midwives' Station with Eunice and [Witness 5]. Eunice asked us if we had a blood glucose swipe, meaning a barcode sticker that she could use. [Witness 5] said that her barcode did not work or that it was no longer valid. I felt that I would have to let Eunice use my barcode sticker. I did not think that there would be any concern in doing so as Eunice was a regular midwife on the Ward and that [Witness 5] would have given her barcode sticker to Eunice if hers was working. [Witness 5] was in charge and had been a Supervisor of Midwives at the Trust.

Eunice did not say whether she had completed the Trust's training. I thought that in order to use the blood sugar monitor she must have received the training. Eunice did not say what blood sugar readings she needed to take or what patients she was going to see.

Eunice came across as though she was confident in using the blood sugar monitor. She did not say that she had never used the machine before or asked either of us how to use the blood sugar monitor. It appeared as though it was common place for her to ask to use another midwife's barcode sticker. I have not previously been involved in a situation where an agency midwife has asked to use my barcode sticker.

I do not recall how long she had my barcode sticker for. Eunice returned it to me before I left the Hospital when my shift had ended.

I have had sight of the blood sugar monitor report exhibited by [Witness 1]. I did not perform blood sugar testing on those babies at any time.'

The panel accepted the evidence of Witness 4 and accepted the contents of the blood sugar monitor report. It noted that on the night shift of 3-4 November 2017, Blood sugar

readings were recorded under Witness 4's name at 00:58, 03:51, 06:54, 06:59 and 07:13. The panel noted that Witness 4 did not give you her barcode until after 06:00 on 4 November 2017.

Assessment of Documents provided by Mrs Asiedu-Baning on 4 February 2025

The panel reviewed the series of documents provided by Mrs Asideu-Baning, some of which were subsequently adduced into evidence. Mrs Asiedu-Baning asserted that these documents challenged the credibility of Witness 2.

Witness 2 stated that the Hypoglycaemia policy had recently changed prior to her shift on 3 November 2017. In respect of the Hypoglycaemia policy documents and correspondence with the Trust, the panel found that it was unclear as to which version of the policy was in effect at the time. Notwithstanding, the panel determined that this evidence did not assist it with the charges as these relate to making incorrect entries and not whether or not the blood sugar readings should have been taken in accordance with the policy.

In relation to Document H, which is a screenshot of a Google Timeline, the panel accorded no weight to this evidence as there was no independent, objective provenance evidence provided and there was no opportunity to test this evidence.

Therefore, the panel did not place any weight on the Hypoglycaemia policies, correspondence and Google Timeline as they neither provided relevant detail in respect of the charges before the panel nor did they speak persuasively to the credibility of Witness 2.

Handover from Witness 2 to Mrs Asiedu-Baning

The panel noted that Witness 2 originally stated that she had handed over to Mrs Asiedu-Baning on 3 November 2017. Subsequently in her oral evidence, some seven years later, Witness 2 could no longer recall from memory whether she had handed over to Mrs Asiedu-Baning but confirmed that her July 2018 witness statement would

have been correct. Notwithstanding, whether or not Witness 2 did or did not hand over to Mrs Asiedu-Baning does not assist the panel in adjudicating upon the charges before it.

Charge 1)i)

1) In relation to Baby A you

i) Made an incorrect entry in Baby A's medical records that you had taken a blood sugar reading at approximately 2415, when you had not done so

This charge is found proved.

In reaching this decision the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A and placed weight separately on the evidence of Witness 1, Witness 2, Witness 3 and Witness 4.

The panel had sight of Baby A's Newborn Early Warning Chart and noted that there was an entry in the blood sugar reading of 3.4mmol at 00:00 which had been signed for with the initials *'AB'*. During cross examination, it became clear through Mrs Asiedu-Baning's representative that Mrs Asiedu-Baning denied making this entry, and it was put to the witnesses that this had been entered deliberately by someone else who was purporting to be Mrs Asiedu-Baning.

The panel received evidence from two handwriting experts and noted that the findings in their joint report were inconclusive in determining whether it was Mrs Asiedu-Baning's handwriting or that of her colleagues. The panel heard evidence from Witness 1 who was familiar with the handwriting of the midwives and she said that she believed that the entries were made by Mrs Asiedu-Baning.

The panel accepted the Trust's Datix report dated 4 November 2017 relating to Patient A's complaints as outlined in charges 1)i) and 1)ii).

The panel had regard to the evidence of Witness 2 who stated that the signature at 00:00 was not hers. During robust and extensive cross examination, Witness 2 was asked if she had falsified this entry and she said emphatically and repeatedly that she did not. The panel had regard to Witness 2's responses during cross examination and noted that she said the following:

> *'I'm horrified, and I deny that I had done that. I would have no intention to do that. I wouldn't be updating, or correcting or changing any entries made by anybody than myself and I – as we've discussed – wasn't on the night shift.*
>
> *…*
>
> *The answer is no I've not falsified any entries… I haven't falsified anything.*'

Patient A was also asked during cross examination if she had falsified the record and she said that she had not.

The panel determined that there was no objective evidence to suggest that either Witness 2 or Patient A would have any reason or motive to falsify records to *'set up'* Mrs Asiedu-Baning.

The panel found no evidence to suggest that the entry at 00:00 was entered by someone purporting to be Mrs Asiedu-Baning. The panel found that in all of the circumstances, and in the light of Mrs Asiedu-Baning's acceptance that it was a busy shift and her record keeping was affected, it was more likely than not that the entry at 00:00 was made by Mrs Asideu-Baning.

The panel found the evidence of Witness 1 and Patient A to be consistent and credible in respect of this charge. The panel recognised that there were some inconsistencies in Witness 2's evidence, however, these matters did not directly relate to this charge. Notwithstanding elements of inconsistencies in Witness 2's accounts, the panel was mindful of the statements made closer to the time of the incidents by Mrs Asiedu-

Baning. Mrs Asiedu-Baning was the midwife in charge of the care of Patient A and her baby.

The panel noted Mrs Asiedu-Baning's local statement dated 15 December 2017 in which she alluded to the requirement for a blood glucose monitoring but did not mention undertaking a blood sugar test on Baby A at around 00:00 and she stated that *'I cannot recollect doing observations on Patient A's daughter bay 1 bed1 as per my documentations'*. The panel also noted that Mrs Asiedu-Baning stated that it was a busy shift and that she was *'overwhelmed with the volume of work that needed to be done on the shift that night.'* In this statement, Mrs Asiedu-Baning had reviewed her notes and accepted that these were *'not detailed nor in-depth to give a clear picture of care given and the events on the shift'.*

In her witness statement, Patient A stated the following:

> *'During the night, I was laying with Baby A on my chest. I was breast feeding Baby A every 2 hours. I did not sleep very much during the night because I was feeding and it was a busy ward with several other new mothers and babies. During the night, a Care Assistant came to check my observations.*
>
> *I did not see the midwife on duty during the night shift. She did not introduce herself to me at the beginning of the night shift. The midwife did not perform any observations of Baby A or take Baby A blood sugar readings during the night. In order to take a blood sugar reading the midwife performed a prick test of Baby A heel. The heel prick causes Baby A to cry afterwards and therefore it would not have been possible to perform a heel prick test without waking me or Baby A.*
>
> *At approximately 06:00, the midwife on duty during the night, who I later became aware was known as Amma, came to see me and Baby A. This was the first time that I met Amma. She tested Baby A blood sugar by doing a prick test on [Baby A's] heel. Amma told me that the blood sugar reading was 5.2 and that this was quite high. I did not see or speak to Amma again.'*

Patient A's oral evidence was consistent and it remained consistent during robust cross examination. Patient A was adamant that it would not have been possible for a heel prick test to be taken without Baby A screaming and she was also adamant that Mrs Asiedu-Baning only took one heel prick test at around 06:00. The panel found Patient A's evidence to be credible and reliable and found her explanation of why she would have been aware if Baby A's blood sugar test had been carried out to be persuasive. The panel noted the witnesses' evidence that the heel prick test is invasive and would have likely resulted in a baby crying. The panel therefore found that it is more likely than not that you did not undertake a blood sugar test on Baby A at around 00:00.

The panel also considered Mrs Asiedu-Baning's responses in her local statement that she was overwhelmed with the volume of work and that her record keeping had been impacted. This, in the panel's view, added more weight to the likelihood of the entry being incorrect.

The panel also heard evidence from Witness 3 and had sight of the blood monitoring machines report. It also had regard to the evidence of Witness 4 who said that she did not give you her barcode until after 06:00 on 4 November 2017. The panel found no evidence to demonstrate that you had taken Baby A's blood sugar reading at approximately 00:00.

The panel heard evidence from Witness 1 whose evidence was objective, considered and balanced. The panel found her evidence to be internally consistent from her initial involvement from 5 November 2017 to her oral evidence in this hearing, including under robust and extensive cross examination. The panel determined that Witness 1's evidence in respect of her interviews with Patient A, her analysis of Baby A's records and the blood monitoring machines report and her recognition of Mrs Asiedu-Baning's signature was persuasive.

The panel found that it was more likely than not that Mrs Asiedu-Baning did not undertake a blood sugar reading on Baby A at approximately *'24:15'* and that the entry was more likely than not attributable to her. The panel therefore found that the entry at approximately *'24:15'* was incorrect and found this charge proved.

Charge 1)ii)

1) In relation to Baby A you

ii) Made an incorrect entry in Baby A's medical records in that you recorded that you took a blood sugar reading of 5.2 mmols at approximately 0400 which was not an accurate record of a test you had carried out

This charge is found proved.

In reaching this decision the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A and placed weight separately on the evidence of Witness 1, Witness 2, Witness 3 and Witness 4. The panel had regard to its reasoning as set out in charge 1)i).

The panel had sight of Baby A's Newborn Early Warning Chart and noted that there was an entry at 04:00 with a reading of 5.2mmols. The panel noted that the initials in the column in the chart under the heading 'initials of observer' were not clear. Applying the rationale as set out in charge 1)i), the panel determined that it was more likely than not that Mrs Asiedu-Baning, as the midwife responsible for the care of Patient A and her baby at this time, made this entry.

The panel had regard to the evidence of Patient A, as set out in charge 1)i) and noted that she accepted that a blood sugar test had been taken at around 06:00 and that she was advised by Mrs Asiedu-Baning that her baby's blood sugar reading was 5.2mmols.

The panel heard evidence from Witness 3 who provided data from the blood monitoring machines which indicated that a blood sugar test was performed at 07:13 with a reading of 5.2mmols. The panel considered that whilst this is some time after Patient A recollected the test being taken, this was closer to her recollection than to the recorded

reading. In any event, the entry that was made at 04:00 was incorrect as there was no evidence to support that a test had been undertaken around this time.

The panel found that it was more likely than not that Mrs Asiedu-Baning did not undertake a blood sugar test on Baby A at around 04:00 and that the entry was more likely than not attributable to her. The panel found that the entry at 04:00 was incorrect and found this charge proved.

Charge 2)

> *2) Your conduct at Charge 1i) and/or Charge 1ii) above was dishonest because you created a record/s providing information about the state of Baby A's health which was not true*

This charge is found proved.

In reaching this decision the panel had regard to all of the evidence before it. Having found charges 1)i) and 1)ii) proved, the panel considered whether Mrs Asiedu-Baning's actions were dishonest in respect of these charges. The panel gave separate consideration to charges 1)i) and 1)ii) in respect of charge 2.

In determining whether Mrs Asiedu-Baning's actions were dishonest, the panel had regard to the NMC Guidance on *'Making decisions on dishonesty charges and the professional duty of candour'* (Reference: DMA-8 Last Updated 06/05/2025) which sets out the following factors that need to be considered:

- *'what the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*
- *whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or*
- *whether there is evidence of alternative explanations, and which is more likely.'*

The panel noted that in Mrs Asiedu-Baning's local statement dated 15 December 2017, she said that the ward was very busy on the shift in question and that her record keeping was impacted as a result of this. The panel was of the view that, regardless of whether or not the shift was busy, Mrs Asiedu-Baning would have known that she did not take Baby A's blood sugar readings at approximately '24:15' and 04:00, and in documenting that she did, her actions were dishonest.

In respect of alternative explanations, the panel was mindful of the nature of cross examination undertaken by Ms Bennett on Mrs Asiedu-Baning's behalf. It noted that during cross examination, Ms Bennett put to the witnesses that Mrs Asiedu-Baning did not make these entries and that these had been deliberately falsified following collusion between Patient A and Patient B. It was also put to the witnesses that they incorrectly identified Mrs Asiedu-Baning and that they had racist views, both assertions were vehemently denied by both witnesses under cross examination.

The panel also took into account the evidence of Witness 1 who led the local investigation and interviewed Patient A and Patient B separately and found no evidence of racial motivation. Witness 1 said *"I didn't see these two women as perpetrators of racism, I saw these two women as two concerned mothers, who were concerned about the observations of their babies".*

Additionally, the panel accepted that the two patients did not know each other and had not kept in contact after their time in hospital. The panel noted that results were documented both within Baby A's postnatal records and on the Newborn Early Warning Chart. The panel determined that it was inherently implausible that Patient A and Patient B, who were unlikely to have had the requisite knowledge to add data into a range of medical records, colluded to add multiple, detailed entries into different documents in their babies' records and jointly, *'set-up'* Mrs Asiedu-Baning.

In respect of Mrs Asiedu-Baning's assertion that Witness 2 had falsified the entries, the panel found that this was not a plausible alternative explanation for the reasons as previously stated in charge 1)i) above.

Having carefully assessed all of the evidence, which included contemporaneous and oral evidence, the panel found no evidence that any party had an *'axe to grind'* or reason to fabricate the entries. The panel noted that in your local statement, you did not raise any of these concerns and therefore found that this defence was implausible.

The panel had regard to the test as set out in the case of *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*. As set out above, the panel determined that Mrs Asiedu-Baning knew that she had not taken the blood sugar readings and recorded that she had. The panel considered that in light of Mrs Asiedu-Baning's knowledge, her conduct was dishonest by the standards of ordinary, decent people. The panel therefore found this charge proved on the balance of probabilities in respect of both charges 1)i) and 1)ii).

Charge 3)i)

3) In relation to Baby B you

i) Made an incorrect entry in Baby B's medical records that you had taken a blood sugar reading at approximately 0230, when you had not done so;

This charge is found not proved.

In reaching this decision the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient B.

The panel had sight of Baby B's Newborn Early Warning Chart and noted that there was an entry at 02:30 with a blood sugar reading of *'3.1'* which had been circled. The panel noted that the initials in the column in the chart under the heading 'initials of observer' were not clear. The panel had regard to the evidence of Witness 1 who stated the following in her witness statement:

'When I spoke to Amma (I can only confirm that this took place week beginning 6 November) and showed her the observation chart, she circled the 3.1 mmol reading and said that she did not document it.'

In Mrs Asiedu-Baning's local statement dated 15 December 2017, she stated the following:

'I did only sets of vitals observations on Patient B's daughter not blood sugar as BM's was not needed by this baby.'

The panel had regard to the documentation of Witness 2 in the postnatal notes for Baby B which confirmed that blood sugar readings were not required for Baby B on the night shift of 3-4 November 2017.

The panel noted that in Baby B's postnatal notes Mrs Asiedu-Baning had made an entry at 21:50 on 3 November 2017 *'care taken over hx [history] noted Plan continue PN care obs 4^0 [hourly]'*. The panel noted that there was no mention of blood sugar readings being required. A further entry by Mrs Asiedu-Baning at 22:00 on 3 November 2017 stated *'obs done no trigger by news [Newborn Early Warning Chart]'* and the subsequent entry at 02:00 did not make any reference to a blood sugar reading having been taken. The panel noted that there was no Trust Datix report before it in respect of this charge.

The panel had regard to the witness statement of Patient B in which she stated the following:

'[Baby B] had already had her blood sugar readings taken throughout the day. I do not recall any further blood sugar observations being taken during the night.'

The panel noted that Mrs Asiedu-Baning, unlike the other readings, denied having made this entry when challenged about it a few days after her shift on 6 November 2017. The panel bore in mind this specific feature of her immediate reaction to which it gave careful consideration. The panel placed weight on this contemporaneous denial by Mrs

Asiedu-Baning which is supported by her local statement where she said that Baby B did not require blood glucose monitoring. The panel also had regard to Mrs Asiedu-Baning's entries in Baby B's Postnatal Notes which make no reference to blood glucose being required. The panel therefore determined that it did not have before it sufficient evidence for it to be able to conclude on the balance of probabilities that Mrs Asiedu-Baning made the blood sugar entry in Baby B's Newborn Early Warning Chart medical record at 02:30. The panel therefore found that the NMC had failed to discharge its evidential burden and found this charge not proved.

Charge 3)ii)

3) In relation to Baby B you

ii) Made an incorrect entry in Baby B's medical records that you had taken observations at approximately 0230, when you had not done so

This charge is found proved.

In reaching this decision the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient B and placed weight separately on the evidence of Witness 1 and Witness 2.

The panel had sight of Baby B's postnatal notes in which there was an entry at 21:50 to say that Mrs Asiedu-Baning had taken over care. There were two further entries made by Mrs Asiedu-Baning at 22:00 and 02:00. At 22:00 it is recorded that observations had been carried out and there was no trigger in Newborn Early Warning Chart. At 02:00 it was recorded that Baby B had opened bowels, passed urine and *'awakes for feeding'*. The panel noted that Baby B's temperature, heart rate and respiratory rate were recorded on the Newborn Early Warning Chart at 22:30 and 02:30.

The panel noted that Mrs Asiedu-Baning in her local statement said that she had undertaken vital observations. The panel also had regard to the evidence of Witness 1

who said that Mrs Asiedu-Baning had informed her that she had undertaken observations of vital signs on Baby B.

The panel also considered Mrs Asiedu-Baning's responses in her local statement that she was overwhelmed with the volume of work and that her record keeping had been impacted. In this statement, Mrs Asiedu-Baning had reviewed her notes and accepted that these were *'not detailed nor in-depth to give a clear picture of care given and the events on shift'*. This, in the panel's view, added more weight to the likelihood of the entry being incorrect.

The panel had regard to Patient B's evidence and noted that she stated the following in her witness statement:

> *'I do not recall any further… observations being taken during the night'.*

With regard to observations of her baby not having been taken by Mrs Asiedu-Baning during the nightshift, the panel found the evidence of Patient B to be consistent from her concerns given at the time of the incident in 2017 to her witness statement dated 01 August 2018 to her oral evidence in this hearing including under cross examination.

The panel accepted the documentary evidence in Baby B's Postnatal Notes, where Witness 2 had documented at 13:20 on 04 November 2017:

> *'Noticed baby observations taken overnight… Mum reports that baby has not had any observations… overnight since 17:20 completed by myself on day shift.'*

The panel also placed some weight on the witness statement of Witness 2 who stated:

> *'I asked Patient B why… 2 sets of observations were carried out during the night. Patient B looked at me with a puzzled expression and said that no observations… had been done overnight and that the midwife (Amma) had not handled her baby. I showed Patient B the observation chart which showed 2 sets*

of observations… documented for baby overnight Patient B was adamant these were not completed…'.

Further, the panel acknowledged, under cross examination, Witness 2 explained she had identified that these two entries (at 22:30 and 02:30) in the Newborn Early Warning Chart were made by Mrs Asiedu-Baning based on the signature list that was available to her at the time that she made her initial statement.

Taking the evidence of Patient B and Witness 2 together, the panel found this charge proved on the balance of probabilities.

Charge 4

4) Your conduct at Charge 3i) and/or Charge 3ii) above was dishonest because you created a record/s providing information about the state of Baby B's health which was not true

This charge is found proved in respect of Charge 3)ii).

In reaching this decision the panel had regard to all of the evidence before it.

As charge 3)i) was found not proved, the panel did not go on to consider charge 4 in respect of charge 3)i).

Having found charge 3)ii) proved, the panel considered whether Mrs Asiedu-Baning's actions were dishonest in respect of this charge.

In determining whether Mrs Asiedu-Baning's actions were dishonest, the panel had regard to the NMC Guidance on *'Making decisions on dishonesty charges and the professional duty of candour'* (Reference: DMA-8 Last Updated 06/05/2025) which sets out the following factors that need to be considered:

- *'what the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*
- *whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or*
- *whether there is evidence of alternative explanations, and which is more likely.'*

The panel noted that in Mrs Asiedu-Baning's local statement dated 15 December 2017, she said that the ward was very busy on the shift in question and that her record keeping was impacted as a result of this. The panel was of the view that, regardless of whether or not the shift was busy, Mrs Asiedu-Baning would have known that she did not take Baby B's observations at around 02:30, and in documenting that she did, the panel considered her actions to be dishonest.

In respect of alternative explanations, the panel was mindful of the nature of cross examination undertaken by Ms Bennett on Mrs Asiedu-Baning's behalf. It noted that during cross examination, Ms Bennett put to the witnesses that Mrs Asiedu-Baning did not make these entries and that these had been deliberately falsified following collusion between Patient A and Patient B. It was also put to the witnesses that they incorrectly identified Mrs Asiedu-Baning and that they had racist views, both assertions were vehemently denied by both witnesses under cross examination.

The panel also took into account the evidence of Witness 1 who led the local investigation and interviewed Patient B and Patient A separately and found no evidence of racial motivation who said *"I didn't see these two women as perpetrators of racism, I saw these two women as two concerned mothers, who were concerned about the observations of their babies".*

Additionally, the panel accepted that the two patients did not know each other and had not kept in contact after their time in hospital. The panel noted that there was documentation relating to observations within Baby B's postnatal records and on the Newborn Early Warning Chart. The panel determined that it was inherently implausible

that Patient B and Patient A, who were unlikely to have had the requisite knowledge to add data into a range of medical records, colluded to add multiple, detailed entries into different documents in their babies' records and jointly, *'set-up'* Mrs Asiedu-Baning.

In respect of Mrs Asiedu-Baning's assertion that Witness 2 had falsified the entries, the panel found that this was not a plausible alternative explanation for the reasons as previously stated in charge 1)i) above.

Having carefully assessed all of the evidence, which included contemporaneous and oral evidence, the panel found no evidence that any party had an *'axe to grind'* or reason to fabricate the entries. The panel noted that in your local statement, you did not raise any of these concerns and therefore found that this defence was implausible.

The panel had regard to the test as set out in the case of *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*. As set out above, the panel determined that Mrs Asiedu-Baning knew that she had not taken the observations and recorded that she had. The panel considered that in light of Mrs Asiedu-Baning's knowledge, her conduct was dishonest by the standards of ordinary, decent people. The panel therefore found this charge proved on the balance of probabilities in respect of charge 3)ii) only.

Charge 5)

5) You administered medication to Patient B, namely a 'brown tablet',

i) Which was not clinically indicated for her at that time and/or
ii) Which you were later unable to identify and /or advise upon.

This charge is found not proved in its entirety.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient B and Witness 1.

Before considering the particulars of this charge, the panel first considered whether the stem was made out, namely whether Mrs Asiedu-Baning gave Patient B a *'brown tablet'*.

The panel had regard to the evidence of Patient B and noted the following in her witness statement:

> *'I went to sleep after 22:00 and woke up at approximately 01:00 in a large amount of pain as I had had a caesarean. I went to the ward reception and asked a member of staff for a pain killer. Amma, the midwife on duty, told me to go to bed and that she would bring something in for me. I waited for approximately 30 minutes but she did not come in to see me. I went back to see her and she apologised and said that she had forgotten about me. After one or two minutes, Amma brought me a white paracetamol tablet, a pink ibuprofen tablet and one brown tablet.*
>
> *Later in the morning, I do not recall the time, I asked Amma what the tablet was that she had given me but she said she did not know. I later identified, through searching on the internet and speaking to other members of staff at the Hospital, that the brown tablet was diclofenac. I do not know whether I was meant to receive the medication during the night.'*

In her oral evidence, Patient B amended her witness statement and said that Mrs Asiedu-Baning only gave her the brown tablet at the relevant time. In her oral evidence, Patient B told the panel that following her raising concerns about being given a brown tablet, and whether she could continue to breastfeed, her blood was taken and that a Polish carer and a Doctor had been involved in this.

The panel had sight of extracts from Patient B's medical notes and found that there was no information before it about any blood tests being taken on the morning of 4 November 2017. The panel noted that the carer and doctor who are said to have taken and assessed Patient B's bloods have not been called to give evidence. The panel also had regard to the evidence of Witness 2 who took over the care of Patient B from Mrs

Asiedu-Baning on the morning of 4 November 2017 and noted that there was no mention of the *'brown tablet'* or the blood tests referred to by Patient B.

Having regard to all of the above and in the absence of any corroborative evidence, the panel found that the NMC had failed to discharge its evidential burden. Having found that there was insufficient evidence to find that Mrs Asiedu-Baning administered a brown tablet to Patient B, the panel found this charge not proved in its entirety on the balance of probabilities.

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 Asiedu-Baning'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 ability to practise kindly, safely and professionally.

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 Asiedu-Baning's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Stevenson referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances'.* In respect of the definition of misconduct, she also referred the panel to the cases of *Nandi v the General Medical Council* [2004] EWHC 2317 (Admin) and *Meadow v General Medical Council* [2006] EWCA Civ 1390.

Ms Stevenson submitted that the facts found proved amounted to misconduct. She drew the panel's attention to the specific parts of *'The Code: Professional standards of practice and behaviour for nurses and midwives'* (the Code) which, in her submission, had been breached.

Ms Stevenson submitted that making incorrect entries in patient records amounts to a serious breach as midwives are required to keep clear and accurate records to ensure the level of continuity in the care that patients receive, as well as to ensure that any potential risks are identified. She also submitted that clear and accurate records ensure that colleagues are aware of any previous treatment given to patients and to be able to ensure that there is a record of patient care and steps taken to address any risks. Ms Stevenson further submitted that the incorrect entries made by Mrs Asiedu-Baning were a serious breach as they related to more than one vulnerable patient.

Ms Stevenson submitted that the dishonesty found in this case amounted to a serious breach. She submitted that honesty is of central importance to a midwife's practice, therefore, allegations of dishonesty will always be serious. Ms Stevenson also submitted that the dishonesty arose in relation to patient care, Mrs Asiedu-Baning created records which included incorrect information about the state of the health of vulnerable patients. She submitted that the dishonesty found is a serious breach as it occurred more than once, in relation to two different patients. Ms Stevenson further submitted that the dishonesty in this case is serious as colleagues should be able to trust Mrs Asiedu-Baning as a Registered Midwife and the records that she makes.

Ms Stevenson submitted that whilst no actual physical harm was caused, creating incorrect entries had the potential to cause actual physical harm. She referred the panel to the witness statement and oral evidence of Witness 1, who said that whilst no actual physical harm was caused, Patient A and Patient B were caused emotional and psychological harm as they were very concerned about the care of their babies.

Ms Stevenson submitted that Mrs Asiedu-Baning's actions fall far short of what would be expected from a Registered Midwife. She submitted that Registered Midwives are expected to communicate effectively and act with honesty. Ms Stevenson submitted that the public expect Registered Midwives to be dependable and to properly care for friends, relatives and members of the public. She submitted that the public would also expect Registered Midwives to uphold the reputation of the profession. Ms Stevenson, on behalf of the NMC, invited the panel to find that the charges found proved amounted to misconduct.

Submissions on impairment

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

Ms Stevenson drew the panel's attention to the cases of *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Pillai v General Medical Council* [2009] EWHC 1048 (Admin) and *Sawati v the General Medical Council* [2022] EWHC 283 (Admin).

Ms Stevenson also referred the panel to the NMC Guidance on *'Impairment'* (Reference DMA-1 Last Updated 03/03/2025), *'Can the concern be addressed?'* (Reference: FTP-15a Last Updated 27/02/2024), *'Has the concern been addressed?'* (Reference FTP-15b Last Updated: 29/11/2021) and *'Is it likely that the conduct will be repeated?'* (Reference: FTP-15c Last Updated: 14/04/2021).

In respect of the *'Grant'* test, Ms Stevenson submitted that all four limbs are engaged. She submitted that Mrs Asiedu-Baning placed patients at unwarranted risk of harm and caused psychological harm to Patient A and Patient B. She submitted that Mrs Asiedu-Baning undertook an unsatisfactory level of care in relation to more than one vulnerable patient which raised attitudinal concerns. Mrs Stevenson submitted that the charges found proved raise attitudinal concerns and brought the profession into disrepute. She submitted that Mrs Asiedu-Baning has breached fundamental tenets of the profession, including not keeping to and upholding the values set out in the Code and not acting with honesty and integrity at all times. Ms Stevenson submitted that Mrs Asiedu-Baning has plainly acted dishonestly.

Ms Stevenson submitted that there is no evidence of any personal factors that may have affected Mrs Asiedu-Baning's practice at the relevant time. She also submitted

that there is no evidence of environmental and cultural factors that could have impacted Mrs Asiedu-Baning's practice.

With regard to insight, Ms Stevenson submitted that the panel should consider Mrs Asiedu-Baning's attitude and behaviour, either directly or through her representative, during this hearing. She referred the panel to parts of the panel's determination in which it found, amongst other things, that this hearings process had been frustrated by Mrs Asiedu-Baning and her representative and that there had been a disregard for the principles of fairness to witnesses and case management with the NMC. Ms Stevenson submitted that the conduct of Mrs Asiedu-Baning, either directly and/or through her representatives, has been particularly egregious.

Ms Stevenson also referred the panel to the case of *Sawati* and in particular the following:

a. *'para [108]: the panel can take into account "the nature and quality of the rejected defence … [d]id it wrongly implicate and blame others, or brand witnesses giving a different account as deluded or liars?"'*

She submitted that Mrs Aseidu-Baning's assertion that the witnesses had colluded and falsified entries, *'set her up'* and that the witnesses had an *'axe to grind'* and were *"perpetrators"* of racism. Ms Stevenson submitted that these defences have been rejected by the panel. She submitted that, when deciding on current impairment, the panel can take into account the *'nature and quality the rejected defence'.*

Ms Stevenson submitted that dishonesty is difficult to remediate and whilst the dishonesty in this case may not be considered to be the most serious on the scale of dishonesty, there is no evidence of insight or remediation. She submitted that in the absence of insight and remediation, the risk of repetition remains.

Ms Stevenson submitted that a finding of impairment is also required in the public interest to mark the profound seriousness of Mrs Asiedu-Baning's conduct.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

The panel was of the view that Mrs Asiedu-Baning's actions fell significantly short of the standards expected of a Registered Midwife, and her actions amounted to a breach of the Code. Specifically:

> *'**8 Work cooperatively***
>
> *To achieve this, you must:*
>
> > ***8.2** maintain effective communication with colleagues*
>
> ***10 Keep clear and accurate records relevant to your practice***
>
> *This includes but is not limited to patient records. It includes all records that are relevant to your scope of practice.*
>
> *To achieve this, you must:*
>
> > ***10.1** complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event*
> >
> > ***10.3** complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*
>
> ***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*

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…*

20.8 *act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to.'*

Whilst the panel acknowledged that breaches of the Code do not automatically result in a finding of misconduct, it was of the view that Mrs Asiedu-Baning's conduct fell seriously short of the standards expected of a Registered Midwife and amounted to misconduct.

The panel found that Mrs Asiedu-Baning deliberately falsified entries on more than one occasion and in relation to more than one patient. Registered Midwives are expected to maintain accurate and contemporaneous patient records at all times to ensure patient safety. The panel was of the view that in deliberately falsifying patient records, Mrs Asiedu-Baning misrepresented that blood sugar readings and observations had been taken when they had not. The panel found this to be particularly serious as blood sugar readings and observations inform decisions on care, and in providing incorrect information, medical professionals would not have been able to undertake a proper risk assessment and this placed vulnerable patients at a risk of harm.

The panel found that Mrs Asiedu-Baning failed to prioritise patient safety and that her actions and omissions related to very vulnerable mothers and newborn babies. Her

conduct was compounded by the dishonesty, and in the panel's view, a fellow registrant would find her conduct to be *'deplorable'*.

The panel was also mindful of the impact of Mrs Asiedu-Baning's actions on her colleagues. The panel noted that in falsifying records, she placed colleagues who should be able to trust what has been recorded in a very difficult and compromised position as they would have had to act on erroneous information. Honesty and integrity are of central importance to the midwifery profession and is a fundamental tenet.

Patients receiving care and the public expect midwives to be open, transparent and act with integrity, and in falsifying records and acting dishonesty, the panel considered that Mrs Asiedu-Baning's actions fell seriously short of the standards expected and is likely to erode confidence in the profession.

The panel found that Mrs Asiedu-Baning's actions amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Asiedu-Baning's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the NMC Guidance on *'Impairment'* (Reference: DMA-1 Last Updated: 03/03/2025) in which the following is stated:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
>
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
>
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

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

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

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

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

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

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

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

The panel found all four limbs engaged in this case, both in relation to Mrs Asiedu-Baning's past conduct and what she is liable to do in the future.

In creating false records and misrepresenting that she had undertaken blood sugar readings and observations, the panel found that Mrs Asiedu-Baning placed patients at a risk of unwarranted harm. The panel was of the view that in making erroneous entries, subsequent care could have been impacted as other healthcare professionals would not have been able to make informed and accurate decisions on the patients' care. Whilst the panel found no evidence that actual physical harm had been caused, it heard evidence that the mothers of the babies were caused emotional and psychological harm. The panel considered that patients who had been informed that a Registered Midwife had entered false information into their records this would potentially affect their confidence and trust in health professionals and may result in them being reluctant to engage with healthcare services in the future.

In failing to undertake required tests and observations and in falsifying records and acting dishonestly, the panel found that Mrs Asiedu-Baning's actions were egregious, and she brought the profession into disrepute. The panel also found that, in failing to prioritise patient safety and not acting with honesty and integrity, Mrs Asiedu-Baning breached fundamental tenets of the profession. The panel determined that Mrs Asiedu-Baning acted dishonestly.

The panel went on to consider the principles set out in the case of *Cohen* and the NMC Guidance (FTP-15a) and whether the misconduct found is capable of remediation. The panel considered that Mrs Asiedu-Baning's actions and omissions were very serious and they were compounded by her dishonesty. The panel was of the view that the

misconduct and dishonesty found raised serious attitudinal concerns which, although not impossible, are inherently difficult to remediate.

In determining whether the concerns have been addressed, the panel had regard to the NMC Guidance (FTP-15b). The panel noted that Mrs Asiedu-Baning has not provided any evidence of insight, and the only documentation before it in which she has responded to the charges was her local statement dated 15 December 2017. The panel had regard to the nature of Mrs Asiedu-Baning's defence which was rejected by the panel. The panel was of the view that in seeking to apportion blame to colleagues and patients, Mrs Asiedu-Baning has not demonstrated any meaningful insight into her conduct. Having regard to all of the above, the panel found that Mrs Asiedu-Baning's insight was very limited.

The panel noted that there was no evidence of training, recent employment history or testimonials. The panel therefore concluded that there was no evidence to demonstrate that Mrs Asiedu-Baning had strengthened her practice and addressed the concerns.

The panel had regard to the NMC Guidance (FTP-15c) and considered the risk of repetition and whether it was highly unlikely that the conduct will be repeated. In the absence of any meaningful insight, remorse or remediation, the panel considered that it is likely that Mrs Asiedu-Baning's conduct will be repeated. Having found that there was a risk of repetition, the panel determined that there is a consequent risk of harm. The panel therefore found that a finding of impairment was required on public protection grounds.

The panel bore in mind that the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the midwifery profession and upholding the proper professional standards for members of those professions.

The public expect midwives to prioritise patient safety, to create a safe environment for patients and colleagues and to act with honesty and integrity. Mrs Asiedu-Baning

breached fundamental tenets of the profession and brought it into disrepute. In the panel's view, Mrs Asiedu-Baning's actions and omissions were compounded by the falsification of records, prioritising her own interests above the safety and wellbeing of vulnerable mothers and babies. The panel considered that a member of the public, appraised of these facts, would be shocked and public confidence in the profession and its regulator would be damaged if a finding of impairment was not made. The panel therefore found that a finding of impairment on public interest grounds is also required.

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

Application for a short adjournment

After the panel had handed down its decision on impairment and before moving on to the sanction stage, Ms Stevenson made an application for a short adjournment. She informed the panel that the NMC may be asking the panel to invite written representations from a witness pursuant to Rule 24(13) of the Rules which sets out the following:

> *'24.*
>
> *(13) When making its decision on sanction the Committee—*
> *(a) may invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Committee may direct'*

Ms Stevenson submitted that a short adjournment would allow the NMC to finalise ongoing engagement with the witness.

In answer to panel questions, Ms Stevenson informed the panel that the application related to Witness 2. Ms Stevenson submitted that at this stage, she is unable to confirm whether Witness 2 is willing to provide written representations, nor is she able

to provide any further details in relation to the potential subject matter of the written representations to prevent any prejudice to Mrs Asiedu-Baning's case. Ms Stevenson submitted that if the material does arrive then she would make an application, and if it does not, then she will proceed to make submissions on sanction. Ms Stevenson acknowledged that if the panel were to accede to her request for a short adjournment, it may not be possible to conclude the hearing within the current scheduled hearing dates, thus resulting in the hearing being adjourned part-heard.

The panel accepted the advice of the legal assessor.

The panel noted that Ms Stevenson was not requesting an adjournment in order for the NMC to be in a position to adduce further evidence at the sanction stage of the hearing, but was requesting an adjournment to allow the NMC further time to engage with Witness 2 to ascertain if she is willing to provide written representations, and then if she is, to ask the panel to exercise its powers to invite written representations pursuant to Rule 24(13) of the Rules.

The panel considered Rule 24(13) of the Rules and was of the view that, given that it has already heard extensive oral evidence from Witness 2 on more than one occasion during the hearing, it would not be assisted at the sanction stage by inviting any further written representations from Witness 2.

The panel was also mindful of the expeditious disposal of the hearing and considered that it would not be in the public interest to delay this hearing to allow the NMC time to seek representations that the panel did not request.

The panel therefore decided to reject this adjournment application and proceed to the sanction stage.

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 Asiedu-Baning off the register. The effect of

this order is that the NMC register will show that Mrs Asiedu-Baning 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 Stevenson informed the panel that the NMC sanction bid is that of a striking off order. She referred the panel to the NMC Guidance on *'Factors to consider before deciding on sanctions'* (Reference: SAN-1 Last updated: 02/12/2024) and in particular the following in respect of proportionality:

> *'finding a fair balance between the nurse, midwife or nursing associate's rights and the NMC's overarching objective of public protection.[1] A Panel needs to choose a sanction that doesn't go further than needed to meet this objective. This reflects the idea of right-touch regulation[2], where the right amount of 'regulatory force' is applied to deal with the target risk, but no more.'*

Ms Stevenson identified features that were aggravating and mitigating in her submissions. She submitted that whilst there are no previous regulatory findings in respect of Mrs Asiedu-Baning's practice, limited weight should be placed on this due to the seriousness of the conduct and attitudinal concerns.

Ms Stevenson also referred the panel to the SG (Reference SAN-2 and SAN-3a-e).

Given the panel's findings, Ms Stevenson submitted that the regulatory concerns raise fundamental questions about Mrs Asiedu-Baning's professionalism. She also submitted that public confidence in nurses, midwives and nursing associates cannot be

maintained if Mrs Asiedu-Baning was not struck off from the NMC Register. Ms Stevenson submitted that a striking-off order is the only order which will be sufficient to protect patients, members of the public and to maintain professional standards.

Decision and reasons on sanction

Having found Mrs Asiedu-Baning's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- The concerns arose out of direct patient care to vulnerable mothers and their newborn babies.
- Mrs Asiedu-Baning's actions and omissions placed vulnerable mothers and their newborn babies at an unwarranted risk of harm.
- Mrs Asiedu-Baning's actions, omissions and dishonesty caused actual emotional and psychological harm to Patient A and Patient B.
- Mrs Asiedu-Baning has demonstrated very limited insight into her failings.
- There is no evidence of remediation.
- The nature of Mrs Asiedu-Baning's rejected defences as set out below.

The panel accepted that Mrs Asiedu-Baning is entitled to robustly defend herself against the serious charges in this case. The panel had careful regard to the NMC Guidance (Reference SAN-2) and the judgment in the case of *Sawati*, as to when a rejected defence may amount to an aggravating feature of the case.

The panel noted that Mrs Asiedu-Baning's defences appeared to evolve throughout the hearing. Mrs Asiedu-Baning made some limited admissions during the local

investigation and she accepted that she had felt overwhelmed by the volume of work and that her record keeping may have suffered. In this hearing, in accordance with Mrs Asiedu-Baning's instructions, two mothers (Patient A and Patient B) were accused during cross-examination of mistakenly identifying Mrs Asiedu-Baning, colluding with each other with a view to trying to *"set up"* Mrs Asiedu-Baning, dishonestly altering the records of their own babies, and being *"perpetrators of racism"*. The panel found no evidence to support these lines of defence and considered that this defence demonstrated a blatant disregard for Patient A and Patient B, who had already been caused emotional and psychological harm. The panel also found Mrs Asiedu-Baning's defence in which she attempted to deflect blame on to Witness 2 who was a newly qualified Registered Midwife on her first shift as a midwife at the time of the events, particularly egregious. During cross examination, it was put to Witness 2 that she had an *'axe to grind'* and had falsified the patient records to *"set up"* Mrs Asiedu-Baning. Witness 2 categorically denied this. The panel found no evidence to support this very serious allegation against Witness 2.

Having regard to all of the above, the panel considered that the nature and quality of the defences advanced by Mrs Asiedu-Baning, and rejected by the panel, compounded the attitudinal concerns that arose out of the charges found proved and amounted to a significant aggravating feature of this case.

The panel found that there were no mitigating features in this case. It had regard to the contextual factors raised by Mrs Asiedu-Baning in her local statement, namely that it was a *'busy shift'*, that she felt *'overwhelmed'* and her record keeping may have been impacted as a result of this. The panel noted that there are normally four midwives on shift on the ward, but on the shift in question, there were only three. However, the panel found that regardless of whether a shift is busy or not, midwives should not be deliberately falsifying records. Accordingly, the panel found that this potential contextual feature could not be considered as a mitigating feature in this case.

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The panel went on to consider where the dishonesty found sits on the spectrum of seriousness. It had regard to the NMC Guidance on *'Sanctions for particularly serious cases'* (Reference: SAN-2 Last Updated: 06/05/2025) which sets out the following factors to consider in determining seriousness:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care*
- *…*
- *vulnerable victims*
- *…*
- *direct risk to people receiving care*
- *premeditated, systematic or longstanding deception.*

The panel considered that in deliberately falsifying entries in patient records, Mrs Asiedu-Baning attempted to conceal that she had not carried out the blood sugar readings and observations. In providing erroneous information, the panel considered that concealing that she had not undertaken blood sugar readings and observations, Mrs Asiedu-Baning placed patients at a risk of harm and compromised her clinical colleagues as previously set out. Whilst the dishonesty occurred during one shift, Mrs Asiedu-Baning made a number of falsified entries into more than one vulnerable patient's records. Having regard to all of the above, the panel decided that Mrs Asiedu-Baning's dishonesty was particularly serious. The panel also considered that the nature of Mrs Asiedu-Baning's rejected defence exacerbated the seriousness of the dishonesty.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the nature of the charges found proved. The panel was of the view that taking no action would not protect the public and it would be neither proportionate nor in the public interest.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, the nature of the charges found proved, and the public

protection issues identified, an order that does not restrict Mrs Asiedu-Baning's practice would not be appropriate in the circumstances. The NMC Guidance (Reference: SAN-3b Last Updated: 12/10/2018) 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 Asiedu-Baning'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 and the dishonesty found. 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 Asiedu-Baning's registration would be a sufficient, proportionate and appropriate response. The panel was of the view that there are no practical or workable conditions that could be formulated, given the seriousness and nature of the charges in this case. Falsifying entries in patient records and acting dishonestly in the panel's view, are not clinical in nature and are attitudinal concerns which are very difficult to address through the formulation of conditions of practice. In the panel's view, in the particular circumstances of this case, the degree of direct supervision required would be so onerous as to be tantamount to a suspension order and therefore unworkable. Furthermore, the panel concluded that the placing of conditions on Mrs Asiedu-Baning's registration would not adequately address the seriousness of this case and would not protect the public or address the public interest in this case.

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;*

Whilst the charges arose on a single nightshift, the panel noted that Mrs Asiedu-Baning deliberately falsified a number of entries in more than one patient's records. The panel therefore found that this was not a single instance of misconduct. In respect of the dishonesty found, the panel was mindful of the limited insight demonstrated by Mrs Asiedu-Baning, and her attempts to apportion blame to colleagues and patients and her rejected defence. The panel was of the view that given the nature of dishonesty found and in the absence of any meaningful insight and remediation, there is evidence of deep-seated attitudinal problems. The panel does not have any evidence before it relating to Mrs Asiedu-Baning's practice since these events. The panel considered that Mrs Asiedu-Baning's rejected defence raised further attitudinal concerns. The panel was not satisfied that Mrs Asiedu-Baning had sufficient insight and, as determined previously, it found that there is a significant risk of repetition of the behaviour and a consequent risk of harm to patients, colleagues and the public.

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?*

Mrs Asiedu-Baning's actions, omissions and dishonesty, in the panel's view were significant departures from the standards expected of a Registered Midwife, and raise fundamental questions about her professionalism. The panel also considered that Mrs Asiedu-Baning's rejected defence, namely attempting to apportion blame to patients

and a newly qualified colleague raised fundamental questions about her professionalism.

The panel was of the view that public confidence in the profession would be damaged if a Registered Midwife who attempted to conceal that she had not undertaken the required blood sugar readings and observations was able to continue practising. The panel was also of the view that public confidence in the profession would be damaged if a Registered Midwife who knowingly placed vulnerable patients at risk of harm was able to continue to practise. Furthermore, the panel considered that a member of the public would be shocked if a Registered Midwife who attempted to apportion blame to patients and a newly qualified Registered Midwife in the way that Mrs Asiedu-Baning did was able to continue to practise.

The panel was of the view that the findings in this particular case demonstrate that Mrs Asiedu-Baning's actions, omissions and dishonesty were so serious that to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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 Asiedu-Baning's actions in bringing the profession into disrepute by adversely affecting the public's view of how a Registered Midwife should conduct themselves in practice, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to protect the public, mark the importance of maintaining public confidence in the profession, and to send a clear

message to the public and the profession about the standard of behaviour required of a Registered Midwife.

Interim order

As the suspension 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 Asiedu-Baning's own interests until the striking-off order takes effect.

The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Stevenson. She submitted that in light of the panel's decision to impose a striking-off order and its findings on impairment, an interim order is necessary and proportionate to protect the public and address the public interest. Ms Stevenson invited the panel to impose an 18 month interim suspension order to cover any appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to 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, proportionate or workable 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 for the same reasons as set out previously and to cover the appeal period.

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

That concludes this determination.

This will be confirmed to Mrs Asiedu-Baning in writing.