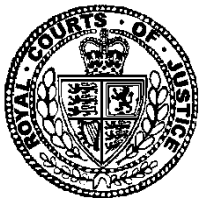

Neutral Citation Number: [2025] EWHC 373 (Admin)

Case No: AC-2024-LON-000530

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Friday, 21st February 2025

Before:
ALAN BATES
(sitting as a Deputy Judge of the High Court)

- -

Between:

LAURA YALDA HINDLE

Appellant

- and –

THE NURSING AND MIDWIFERY COUNCIL

Respondent

- -

Megan Fletcher-Smith (instructed by the Royal College of Nursing) for the **Appellant**.
Bianca Huggins (of the Nursing and Midwifery Council) for the **Respondent**.

- -

Hearing date: 28 November 2024
Confidential draft judgment circulated: 18 February 2025
Judgment Released: 21 February 2025

- -

Judgment

This judgment was handed down remotely at 2:00 p.m. on 21 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

- -

ALAN BATES

THE DEPUTY JUDGE:

Introduction and summary

1. This appeal raises questions as to the standard of reasoning to be expected of fitness to practise ("FtP") and other professional discipline tribunals when making findings of fact, on the 'balance of probabilities', which turn on witnesses' conflicting factual narratives. The questions relate to: (a) whether, and in what circumstances, the tribunal is required to set out its assessment of the general credibility and reliability of each witness's evidence; and (b) the extent of the forensic analysis and reasoning required for making such assessments.

2. The Appellant in these proceedings is a nurse. Her appeal is against a decision of a panel of the Nursing and Midwifery Council's Fitness to Practise Committee (the "Panel") relating to incidents alleged to have occurred during her employment at Stonyhurst College ("Stonyhurst"), an independent boarding school.

3. In the proceedings before the Panel, the Appellant faced 32 disciplinary charges brought against her by her professional regulator, the Nursing and Midwifery Council ("NMC"). This extraordinarily high number of charges arose from a "collective grievance" jointly submitted by four nurses (the "Complainant Nurses") who were under the Appellant's line management in the boarding school's health centre. That collective grievance was submitted not only to their employer, but also to the NMC. By their complaint, the Complainant Nurses raised a blizzard of allegations against the Appellant relating to incidents said to have occurred during the 17-month period for which she had by then been working at the school.

4. The 32 charges brought by the NMC against the Appellant were based on the Complainant Nurses' allegations and fell within the following broad categories: (1) physically manhandling a student; (2) speaking to students in an aggressive or dismissive manner; (3) speaking in an inappropriate way about a student to other staff in the health centre; (4) failure to follow the correct record-keeping procedures in relation to certain drugs that had been prescribed for individual students and were being kept in the health centre; (5) breaching a child's confidentiality when speaking with a parent of another child about an incident in which both children had been involved; and (6) dishonesty when providing information to the school's management about the health centre's staffing needs.

5. It was a matter for the NMC, as prosecutor, to decide how many charges to bring against the Appellant and what those charges should be. The decision to bring so many charges

inevitably placed a considerable burden on the Panel, which had to make findings in relation to an unusually large number of allegations.

6. For the reasons set out in this judgment, I have concluded that the reasoning of the Panel in its statement of reasons (the "Reasons") was inadequate for sustaining the findings that were made against the Appellant. In summary, the Panel did not properly assess the general credibility and reliability of certain witnesses who provided written and oral evidence and were cross-examined, and whose evidence was crucial to determining the charges the Appellant had denied (the "Disputed Conduct Allegations"). Those witnesses – whom I will refer to as the "Key Witnesses" – were the four Complainant Nurses, the Appellant, and one of their colleagues (whom I have, for convenience, referred to as "the Paramedic").

7. The Disputed Conduct Allegations that the Panel had to determine turned very substantially on factual accounts given by the Complainant Nurses which were contradicted by the Appellant and, in relation to some allegations, by the Paramedic. The differences between the Key Witnesses' respective factual accounts were unlikely to be explicable by mere differences in individuals' honest recollections or perceptions of events. Both the Appellant and the Paramedic asserted in their evidence that the Complainant Nurses had "*fabricated*" their versions of events as part of a concerted campaign to undermine the Appellant and drive her out from her job as their manager.

8. Against this background, a vital element of the Panel's task in these proceedings was to decide which witnesses' accounts could be relied on in relation to the various disputed allegations. In my judgment, this required the Panel to take into account, as a relevant consideration, the extent to which each of the Key Witnesses was generally credible and reliable, and whether there were factors present which should cause her or his evidence to be viewed with caution or circumspection. The Panel had also to explain, in respect of the disputed allegations it found proved, *why* it had preferred the account given by one or more of the Complainant Nurses to the contrary account given by the Appellant and, where relevant, by the Paramedic. It was not sufficient for the Panel merely to set out the witnesses' respective accounts, and to then say, "*We prefer the evidence of [name of witness(es)] and therefore find this charge proved*". The Applicant was entitled to know why her evidence on the relevant matter had not been relied upon by the Panel, and such reasons as were given in that regard had to be rational and based on weighing up all legally relevant considerations. Such considerations ought to have included the Panel's assessment of the relevant witnesses' general credibility and reliability, taking all relevant factors into account.

9. Of course, witnesses' factual accounts may be honest but mistaken; and a witness may, for a variety of reasons, tell some lies, whilst being truthful about other matters. The fact that a witness has been found to have given an incorrect account, or even to have deliberately lied, in relation to one matter does not mean that everything the witness says is untrue or to be disregarded.

10. But it does not follow that forming an assessment of the general credibility and reliability of witnesses' evidence is unimportant or irrelevant. On the contrary, such an assessment will often be an important input to the tribunal properly evaluating whether a burden of proof has been satisfied in respect of matters on which there is a conflict between the accounts of different witnesses. If one part of a witness's evidence appears to be untrue, then this may properly be taken into account when the tribunal is considering whether, and to what degree, it can place reliance on another part of her evidence. This is common sense. It will often be appropriate for the tribunal also to consider *why* the witness's evidence was false or incorrect on a certain matter, as this may be relevant to the extent to which the witness's evidence generally, or in relation to certain other matters, being viewed with caution. For example, the tribunal may discern that the witness has a tendency to rush to draw negative inferences or conclusions about a particular person or group of persons, or that she appears to have been motivated by an objective or desire to achieve a particular self-serving result.

11. In my judgment, the Panel's approach of considering the evidence relating to each charge against the Applicant on an individual charge-by-charge basis, effectively in silos, has led it into error. It has, for example, failed to consider whether the fact that the Complainant Nurses' factual accounts in relation to one allegation was found (by reason of those accounts having been contradicted by CCTV evidence) to be incorrect should affect the degree of confidence it should place on those witnesses' assertions in support of other allegations. It has also failed to properly evaluate the contextual evidence relating to the Complainant Nurses' behaviour prior to, and during their employer's investigation of, their joint complaint submission, which was relevant to a proper assessment of the degree to which the Panel could have confidence in the truthfulness and reliability of their evidence.

12. The crux of the Appellant's case was that the Complainant Nurses had created a catalogue of fabricated and exaggerated allegations against her, to rid themselves of a manager with whose decisions they disagreed and whose job they thought should have gone to one of them. The Panel's failure to properly grapple with assessing the credibility and reliability of the Key Witnesses had the consequence that it failed to deal adequately with the Appellant's case.

Factual background

13. Stonyhurst provides boarding and day education to approximately 450 boys and girls aged 13 to 18. Its operations also include a preparatory school, St Mary's Hall, which provides education for boys and girls aged 3 to 13.

14. The Appellant began working at Stonyhurst in November 2016. Her position was that of Nurse Manager (or, in some documents, "*Health Centre Manager*"). Her role was essentially to lead and manage a small team of nurses and health care assistants ("HCAs") providing health care services for students, as well as some staff members, at Stonyhurst and St Mary's Hall. The team was based in a health centre within the Stonyhurst estate which operated on a 24-hour basis.

15. At the time when the Appellant started working at Stonyhurst, she was already an experienced nurse who had worked in a variety of challenging settings. These included a hospital accident and emergency department, a neonatal intensive care unit, and latterly in the Police, first in a child protection related role, and subsequently as a forensic and custody nurse. The evidence before the Panel included very positive testimonials from organisations and professional colleagues with whom she had worked, many of which spoke warmly of her kindness, commitment to patients, good working relationships with colleagues, and professionalism.

16. On any reasonable assessment of the evidence, the working environment she entered when she assumed her role as manager of the Stonyhurst health centre was difficult and unpleasant. The evidence presented by the NMC included written and oral evidence from Stonyhurst's Human Resources Director, as well as from its Deputy Head Pastoral during the relevant time, who was the Appellant's line manager. The evidence of those prosecution witness was, in fact, generally supportive of the Appellant's case. The Deputy Head Pastoral gave oral evidence about the challenges faced by the Appellant in attempting to manage the Complainant Nurses, describing two of those individuals as being "*particularly difficult to manage*". The Human Resources Director's approach to giving oral evidence was very cautious and measured, but even she described the health centre nurses under the Appellant's management, two of whom had applied for the Nurse Manager job ultimately given to the Appellant, as "*slow to change, not always wanting to move or change practices easily*".

17. It is clear from the evidence that the Complainant Nurses had a very negative view of the Appellant and were keen to criticise her to her line manager. The Deputy Head Pastoral recalled them repeatedly coming to him to make complaints about the Appellant, whilst declining to raise those complaints formally. He explained that his

assessment of the situation at the time was that those nurses were "*trying to undermine [the Appellant]*" and that it was "*a witch-hunt*".

18. The Panel also received evidence from another Stonyhurst employee, the Paramedic. He was a qualified paramedic employed by Stonyhurst, during the relevant period, as its paramedic and medical instructor. His roles included providing first aid to students, transporting students to hospital in an ambulance, and providing first aid training to staff. He was still a Stonyhurst employee, albeit in a different role, at the time of the Panel hearing. He described the Complainant Nurses as having been "*difficult members of staff to deal with*", "*devious and deceitful*", and said they had carried on a "*toxic campaign*" against the Appellant. He singled out two of those nurses – Angela Bell and Gillian Kellett – as the principal actors in this campaign. He described them as being "*very difficult people to deal with and manage*", who "*would just refuse, basically, or just non-cooperate with any form of suggestion or task that was being given to them*". He also claimed that one of the HCAs in the health centre had been "*bullied out of her job by Angela Bell*".

19. In October 2017, two of the four Complainant Nurses – namely, Angela Bell and Gillian Kellett – consulted with an external human resources adviser, Ms Charlotte Coupe of Problems At Work, with regard to their unhappiness with the Appellant. It appears that Ms Bell and Ms Kellett paid for Ms Coupe's advice, sharing the cost between themselves. Ms Bell's evidence was that Ms Coupe's advice to them at that time had been to "*keep persisting with the internal complaint system*". I note, however, that, at that stage, none of the Complainant Nurses had made any formal complaint to Stonyhurst's management regarding the Appellant.

20. In March 2018, Stonyhurst's Human Resources Director proposed to the Appellant that the nurses in the health centre start wearing nurses' uniforms, so as to encourage recognition and respect for their distinctive role at Stonyhurst. The Appellant sought to implement this policy and asked the Complainant Nurses to make themselves available to the seamstress to be measured for uniforms. It is clear from the witness evidence, including that of the Complainant Nurses, that they disagreed with the decision to introduce uniforms and sought to undermine it by ignoring the Appellant's relevant instructions. It also appears that they blamed the Appellant personally for the decision to introduce uniforms; it is not clear whether they appreciated that the proposal had in fact come from the Human Resources Director.

21. In April 2018, Ms Bell and Ms Kellett, together with the other two Complainant Nurses (Tracey Metcalf and Ingrid Haigh) met with Ms Coupe. It appears that, at this stage, they had agreed with each other that they would all contribute towards paying Ms

Coupe's fees. Ms Coupe advised the Complainant Nurses to submit a "collective grievance". According to Ms Bell's witness statement, the four Complainant Nurses then each sat down and, separately from each other, wrote their own individual grievance statements. They then packaged the individual grievance statements together so as to constitute the collective grievance which they jointly sent to multiple senior people at Stonyhurst, including the Chair of Governors. They also sent it to the NMC.

22. In early May 2018, Stonyhurst informed the Appellant about the collective grievance. She was, perhaps unsurprisingly, shocked and very upset by it. She was signed off work on sick leave. In December 2018, she had still not returned to work, and she left Stonyhurst's employment by mutual agreement. The end of her employment with Stonyhurst must have been a particularly consequential event for her, given that her job came with housing for herself and her family on the Stonyhurst estate.

23. Stonyhurst commissioned an external solicitor, Mr Stuart Lowery of Napthens Solicitors LLP, to carry out an investigation of the collective grievance on Stonyhurst's behalf. Mr Lowery had not previously undertaken work for Stonyhurst. He was selected by Stonyhurst because it wanted to ensure that the investigation was conducted by someone who was independent and impartial.

24. I have not seen the report that Mr Lowery produced as the outcome of his investigation; and nor, it appears, did the Panel. That report was completed by him in July 2018. In my view, it would have been helpful for the Panel to have seen it, since it would probably have provided significant information as to matters such as: (a) the degree to which the Complainant Nurses co-operated with his investigation; (b) the extent to which the information the Complainant Nurses provided to Mr Lowery whilst being interviewed by him was consistent with other accounts they had given before, or have given after, the dates of those interviews; and (c) whether students and parents who were directly involved in alleged incidents referenced in the collective grievance were contacted by Mr Lowery and, if he did contact them, what information they provided about those alleged incidents. I note that the relevant students were, in many cases, 16 or 17 years old, so it may well have been appropriate for Mr Lowery to seek their versions of events. The witness evidence before the Panel from the Human Resources Director indicated that Mr Lowery had been able to reach conclusions in respect of some of the allegations (though I do not know which ones), but he was unable to reach conclusions on other allegations, at least partly because he had received only limited co-operation from relevant staff members.

25. The NMC considered the allegations set out in the Complainant Nurses' collective grievance and subsequently brought the 32 charges against the Appellant (summarised above at paragraph 4).

26. Of those 32 charges, three of them – Charges 14(d), 15 and 16 – were admitted by the Appellant. These were as follows:

(1) Charge 14(d): "*On 5 September 2017 having made an entry in the controlled drug register you … did not arrange for the medication to be returned to the local pharmacy as required to do so.*"

(2) Charge 15: "*On 18 November 2017 having received a student's medication you failed to add the relevant entry into the controlled drugs register whilst you were on duty and at the end of the shift emailed colleagues asking them to do this for you*"; and

(3) Charge 16: "*On a date in February 2018 you failed to ensure that the correct procedure was being followed in relation to locking and storing medication in the controlled drugs cupboard*".

27. Save for those admissions, the Appellant denied the charges.

28. The matter was assigned to a Panel comprised of Carolyn Rollitt (Chair), Melanie Lumbers, and Richard Goodenough-Bayly. The Panel's hearing of the charges took place in 2023, between 13 and 22 March, 11 and 13 July, and then 26 to 31 July.

29. The Panel decided that there was no case to answer in respect of three of the charges: Charges 1, 4, and 5(b).

30. The Panel then took until January 2024 to make its findings of fact on the remaining charges. I note that, by this time, the allegations made against the Appellant by the collective grievance had already been hanging over her for approaching 6 years. The allegations thus related to alleged incidents that were said to have occurred, in some cases, around 7 years previously. Even allowing for the impact of the Covid-19 pandemic, the time taken by the NMC to progress this matter has been far too long.

31. After leaving Stonyhurst's employment in December 2018, the Appellant had found new employment at Derian House, a hospice providing respite and end-of-life care for children and young people. That employment started in May 2019. It came to an end by mutual agreement in October 2023, apparently because Derian House did not feel able to wait any longer for the outcome of the NMC proceedings the Appellant was facing. By that time, the Appellant had been working at Derian House for around 4½ years. Testimonials from her employer and colleagues confirm that Derian House had

"*no issues or concerns with her practice*". Her colleagues there described her as having "*a friendly [and] caring personality that is demonstrated by her relationship when communicating and working with [children and young people]*". She was said to be "*funny and cheerful with the young people (they appear to love her sense of humour and enjoy being around her) all whilst remaining professional*".

32. On 15 to 17 January 2024, the Panel held further hearing days on which it received oral submissions on whether the Appellant's FtP was currently impaired, and what, if any, limitations it should impose on her practise as a nurse.

33. The Panel's decision and Reasons were issued on 19 January 2024. The Panel found the following non-admitted charges to have been proved: Charges 3, 5(a), 6(a), 6(b), 9, 10, 11, 12, 13, 14(a), 14(b), 17(a), 20, 21, 22(a), 22(b), and 23.

34. The Panel then found that Charges 5(a), 6(a), 9, 10, 11, 12, 13, 14(a), 14(b), 14(d), 15, 16, 20, 21, 22 and 23, each of which had been admitted or found proved, amounted to misconduct. The Panel then decided that, having regard to those matters, the Appellant's FtP was currently impaired. The Panel ordered that she be suspended from practise for 6 months, with a review before expiry (which could result in the suspension coming to an end or being extended, or even to a decision that she be struck off from the nurses' register). The Panel stated that the 6-month suspension was "*appropriate … to mark the seriousness of the misconduct found proved*".

35. The Panel also acceded to a request by the NMC's presenting officer, Ms Muir, to "*impose an interim suspension order in order to cover any appeal period*". The Panel imposed an interim suspension order of 18 months' duration. (I set out my observations on this aspect of the Panel's decision at paragraphs 120-122 below.)

36. The Appellant has exercised her right to appeal to this Court against the Panel's decisions. She appeals against both the Panel's findings in relation to the Disputed Conduct Allegations, and the Panel's decision on sanction. The consequence of the Panel's interim suspension order has been that she has been suspended from practise pending the determination of this appeal. Thus, as at the date of this judgment, she has already served a suspension of over 13 months, and thus of longer than twice the length of the 6-month suspension period that the Panel imposed as the substantive sanction.

The law

37. The principal legislation governing the disciplinary functions of the NMC and its FtP Committee is the Nursing and Midwifery Order 2001 ("the Order"). Article 3(4) sets out that the over-arching objective of the NMC in exercising its functions is the

protection of the public. Article 22 sets out the categories under which the NMC will consider allegations against the FtP of a registrant. Article 26D requires the FtP Committee to consider any allegation referred to it by the NMC or its Investigation Committee. The proceedings of the FtP Committee are governed by the Nursery and Midwifery Council (Fitness to Practise) Rules 2004.

38. Articles 29(9) and 38 of the Order allow a registrant to appeal against an order made by a panel of the FtP Committee. By virtue of Article 38(3), the court may:

(1) Dismiss the appeal;

(2) Allow the appeal and quash the decision appealed against;

(3) Substitute the decision appealed against for any other decision the FtP Committee could have made; or

(4) Remit the case to the FtP to be disposed of in accordance with the directions of the court.

39. Pursuant to CPR 52.21(3), this Court will allow the appeal against the Panel's decision only if that decision was either: (a) "*wrong*"; or (b) "*unjust because of a serious procedural or other irregularity*". As Ritchie J observed in *Aga v General Medical Council* [2023] EWHC 3208 (Admin), at 57:

> "CPR Part 52 governs this type of statutory appeal. CPR PD52D applies, in particular para 19(1)(c). This is a "rehearing" not a review. However, in my judgment the word "rehearing" is misleading. The appellate Court does not rehear or resee any live witnesses. Instead, what the appellate Court does is re-analyse the transcript of the evidence and the bundles of evidence put before the PCC. So, it is actually an appeal by way of reanalysis, not a full rehearing."

40. The court's approach to appeals against factual findings and other decisions at first instance was summarised as follows by Sharp LJ and Dingemans J in *General Medical Council v Jagjivan* [2017] 1 WLR 4438, at [40]:

(1) It is not appropriate to add any qualification to the test in CPR Part 52, for instance that decisions are 'clearly wrong': see *Fatnani v GMC* [2007] EWCA Civ 46, at [21], and *Meadow v GMC* [2007] 1 WLR 1460, at [125] to [128].

(2) The court will correct material errors of fact and of law: see *Fatnani* at [20].

(3) The appeal court must be extremely cautious about upsetting findings of primary fact, particularly where the findings depended upon the assessment of the credibility of the witnesses, who the tribunal, unlike the appellate court, has had the advantage of seeing and hearing, see *Assicurazioni Generali SpA v Arab Insurance Group (Practice Note)* [2002] EWCA Civ 1642; [2003] 1 WLR 577,

at paragraphs 15 to 17, cited with approval in *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325 at [46], and *Southall v GMC* [2010] EWCA Civ 407 at [47].

(4) Where the question is: "what inferences are to be drawn from specific facts?" an appellate court is under less of a disadvantage. The court may draw any inferences of fact which it considers are justified on the evidence: see CPR Part 52.21(4).

(5) A failure to provide adequate reasons may constitute a serious procedural irregularity which renders the Tribunal's decision unjust (see *Southall* at [55] to [56]).

41. In *Southall v General Medical Council* [2010] EWCA Civ 407, Leveson J observed, at [47]:

> "First, as a matter of general law, it is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually unassailable …; more recently, the test has been put that an appellant must establish that the fact finder was plainly wrong …. Further the court should only reverse a finding on the facts if it "*can be shown that the findings…were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread*" (per Lord Hailsham of *St Marylebone LC in Libman v General Medical Council* [1972] AC 217 at 221F …). Finally, in *Gupta v General Medical* [2002] I WLR 1691, Lord Rodger put the manner in this way (at [10] page 1697D):
>
> "*In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant, and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position.*"

42. As to the approach to be taken by a court when considering appeals against decisions of medical profession tribunals in relation to FtP and sanctions, the applicable principles were summarised by Nicola Davies LJ in *Sastry v General Medical Council* [2021] EWCA Civ 623, at [102]-[103] (referring to the Medical Act 1983, since that was the legislation applicable in the context of that case):

> "[102] Derived from *Ghosh* are the following points as to the nature and extent of the section 40 appeal and the approach of the appellate court:
>
> i) an unqualified statutory right of appeal by medical practitioners pursuant to section 40 of the 1983 Act;
>
> ii) the jurisdiction of the court is appellate, not supervisory;
>
> iii) the appeal is by way of a rehearing in which the court is fully entitled to substitute its own decision for that of the Tribunal;
>
> iv) the appellate court will not defer to the judgment of the Tribunal more than is warranted by the circumstances;
>
> v) the appellate court must decide whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate;
>
> vi) in the latter event, the appellate court should substitute some other penalty or remit the case to the Tribunal for reconsideration.
>
> [103] The courts have accepted that some degree of deference will be accorded to the judgment of the Tribunal but, as was observed by Lord Millett at [34] in *Ghosh*, "*the Board will not defer to the Committee's judgment more than is warranted by the circumstances*". In *Preiss*, at [27], Lord Cooke stated that the appropriate degree of deference will depend on the circumstances of the case. Laws LJ in *Raschid* and *Fatnani* … stated that on such an appeal material errors of fact and law will be corrected and the court will exercise judgment but it is a secondary judgment as to the application of the principles to the facts of the case ([20]). In *Cheatle* Cranston J accepted that the degree of deference to be accorded to the Tribunal would depend on the circumstances, one factor being the composition of the Tribunal. He accepted the appellant's submission that he could not be "*completely blind*" to a composition which comprised three lay members and two medical members".

Consideration of the Appellant's grounds of appeal

43. The Appellant advanced four grounds of appeal before me.

44. Ground 1 was that the Panel "*reversed the burden of proof, which amounted to a serious procedural irregularity rendering the findings of fact unfair*". The Appellant advanced that ground by reference to the Panel's reasoning in relation to Charge 8, which it found 'not proved'. The Panel's reasoning in respect of that charge stated:

> "The panel was persuaded, based on all the evidence before it, that you did not shout at Student I in an aggressive manner. Therefore, the panel finds this charge not proved."

Ms Fletcher-Smith, who appeared for the Appellant both before the Panel and before me, argued that this text (together with certain similar text elsewhere) within the

Reasons, indicated that the Panel had, at times, proceeded on the basis that the burden of proof was upon the Appellant to prove that the allegation had not occurred. The legally correct position was, of course, that the burden was upon the NMC to prove on the balance of probabilities that these events had occurred, as alleged.

45. There is, in my judgment, no merit in this ground, which is advanced based on viewing, in isolation, a few phrases of text extracted from the Reasons. As discussed further below, I have found that the Panel's reasoning in respect of the Disputed Conduct Allegations it found proved were insufficient for explaining why it accepted the relevant witness evidence of the Complainant Nurses despite the Appellant's denials. This could be seen as being, in a sense, a failure by the Panel *to properly apply* the burden of proof. Based on a reading of the Reasons as a whole, however, I am satisfied that the Panel understood that the burden of proof was on the NMC throughout. The Reasons expressly stated that "*the burden of proof rests on the NMC*". Further, in relation certain of the charges that the Panel found 'not proved', the Reasons record that the Panel so found because it was "*not persuaded on the balance of probabilities*" that the alleged conduct occurred (see, e.g. the Panel's reasoning in respect of Charge 2).

46. I therefore dismiss Ground 1 for essentially the reasons as were set out by Turner J in *Pope v General Dental Council* [2015] EWHC 278 (Admin), at [32]:

> "The findings were part of the narrative of this long and detailed decision and plainly not intended to identify where the burden of proof was presumed to lie. Strictly speaking, it would have been apt for the PCC to have said of any given failure that they were "satisfied that it had occurred" rather than "not being satisfied that it had not occurred". Nevertheless, taken in the context of the 33 pages of the detail of the determination as a whole, the examples relied upon by Mr Pope reveal no more than an occasional informality of language rather than solid ground upon which to base sound forensic criticism."

47. Ground 2 was "*want of reasons*": the NMC "*failed to provide reasons for preferring certain evidence, in relation to charges which turned on the credibility of witnesses; rendering the findings of fact unfair.*" As set out further below, I have found the Panel's reasoning in respect of the Disputed Conduct Allegations it found 'proved' to be insufficient, principally because the Panel failed to make a proper assessment of the credibility and reliability of the factual accounts of the Key Witnesses. Ground 2 therefore succeeds.

48. Ground 3 was that the Panel "*failed to have regard to significant evidence in favour of the Appellant; rendering the findings of fact unfair*". As with Ground 2, I have considered the Appellant's points in support of this ground, as part of my assessment

of the adequacy of the Panel's reasoning in respect of the Disputed Conduct Allegations it found 'proved'. Ground 3 also succeeds.

49. Ground 4 is in respect of the Panel's finding of current impairment and the imposition of a 6-month suspension order. I have considered those matters below at paragraphs 112-119.

Assessment of the adequacy of the Panel's reasoning for finding Disputed Conduct Allegations to have been proved

50. I have already remarked upon the scale of burden that was placed upon the Panel by the NMC's decision to bring so many charges against the Appellant. (It has also led to a considerable burden being placed on this Court. I have had to grapple with an appeal against some 16 conduct findings that the Panel found proved and to be misconduct, at a hearing listed for just one day. I have spent many hours studying the witness statements and the hearing transcripts provided to me.)

51. But the scale of this case could not dilute the Panel's duty to provide adequate reasoning in respect of each Disputed Conduct Allegation that it found proved and then relied upon as constituting 'misconduct' and as supporting a conclusion of 'current impairment' of the Appellant's FtP. In respect of each such conduct allegation, it was incumbent upon the Panel to provide informative rational reasons for its finding that the NMC had discharged its burden of proof in relation to all the facts necessary for supporting that allegation.

52. That is, of course, so in every case that comes before a professional discipline or FtP tribunal. But the nature and extent of the reasoning required – including precisely what issues need to be grappled with as part of the reasoning in order to justify a finding a fact – will vary depending on the nature of the factual dispute and the relevant evidence. Where an allegation is based on factual accounts asserted by certain witnesses which are directly contradicted by the person facing the allegation or by other witnesses, the tribunal will need to carry out a careful and thorough forensic analysis for deciding whether the burden of proof is satisfied. Such an analysis should seek to draw upon all available relevant indicators as to whether each witness's account is reliable. Those indicators will often include the tribunal's overall impression of the witnesses it has seen giving oral evidence. As Baroness Hale observed in *In re B (Children) (Care Proceedings: Standard of Proof)* [2009] 1 AC 11, at [26]:

> "In this country we do not require documentary proof. We rely heavily on oral evidence, especially from those who were present when the alleged events took place. Day after day, up and down the country, on issues large and small, judges

> are making up their minds whom to believe. They are guided by many things, including the inherent probabilities, any contemporaneous documentation or records, any circumstantial evidence tending to support one account rather than the other, and their overall impression of the characters and motivations of the witnesses. The task is a difficult one. It must be performed without prejudice and preconceived ideas. But it is the task which we are paid to perform to the best of our ability."

53. In such a case, it is not sufficient for the tribunal to simply consider each charge individually (i.e. in isolation from the other charges and allegations on which the witnesses have given testimony), briefly summarise the witnesses' competing narratives relevant to that charge, and then say, "*We prefer the evidence of [name of witness(es)] and therefore find this charge proved*". But that is the approach that the Panel has taken again and again in its Reasons. On my first reading of the Reasons, I repeatedly wrote "*Why?*" in the margin, signifying my inability to understand why the Panel had chosen to prefer the evidence of one or more of the Complainant Nurses over the contrary evidence of the Appellant and, where relevant, the Paramedic.

54. The concept of witness 'credibility', and the way that a tribunal should go about assessing it, was discussed by Lord Pearce in *Onassis v Vergottis* [1968] 2 Lloyd's Rep 403, at p.431:

> "Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? [...] Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

55. As Lord Pearce noted, contemporaneous documents are very important for assessing a witness's credibility, as they enable the tribunal to assess how well the witness's factual accounts appear to fit with those documents. That was a point also emphasised by Leggatt J (as he then was) in *Gestmin SGPS S v Credit Suisse (UK) Ltd* [2013] EWHC

3560 (Comm). In some cases (of which the present case is one), however, there may be very few contemporaneous documents before the tribunal which are relevant to the matters on which witnesses have given differing factual accounts. In such cases, the tribunal is likely to need to take particular care to make its own assessment of each witness's oral evidence, so as to form a view as to that witness's general credibility and reliability: see *Natwest Markets plc v Bilta (UK) Ltd* [2021] EWCA 680, at [50]-[51].

56. This does not mean falling back onto discredited notions that the truthfulness of a witness's evidence can be ascertained from observing her 'demeanour' whilst giving evidence, such as whether she is looking downwards when giving her answers, or whether she appears 'shifty': *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin), at [39]-[42], *per* Warby J. Rather, it means listening very carefully to the *content* of what the witness says in her oral evidence, and: (a) considering the extent to which it is consistent with relevant factual accounts the witness has given in her witness statement and other documents; and (b) assessing other indicators relevant to whether the tribunal can have confidence in the witness's testimony.

57. As a helpful guide to making that latter assessment, a tribunal may find it helpful to have in mind the non-exhaustive list of indicators of unsatisfactory witness evidence which Lewison J (as he then was) provided in *Painter v Hutchinson* [2007] EWHC 758 (Ch) at [3]. One such indicator, for example, is whether the witness gives straightforward, non-evasive answers to the cross-examination questions put to her, rather than seeking to evade, deflect or argue. Also of assistance is Cotter J's non-exhaustive list of factors to be considered when critically assessing witness evidence, set out in *Muyepa v Ministry of Defence* [2022] EWHC 2648 (KB), at [20]. Those factors include, for example, the witness's likely motivations, and the potential for her evidence to be affected by unconscious bias.

58. In the present case, a feature of the Panel's Reasons is that the Panel set about considering, and making findings on, the individual charges without first setting out a broad assessment of each of the witnesses from whom they had heard, and whether that witness's evidence was generally credible and reliable. In my judgment, however, such an assessment was vital in a case such as this one, if the Panel's findings were to be fair. The Disputed Conduct Allegations turned almost exclusively on witnesses' mutually irreconcilable factual accounts. The key prosecution witnesses were the Complainant Nurses. Their allegations were generally not corroborated either by any documentary evidence or any evidence from other eyewitnesses (such as the young people the Applicant was said to have mistreated, or the parent to whom she was alleged to have inappropriately provided confidential information). The Appellant's case was that the Complainant Nurses had fabricated their allegations against her as part of a

malicious campaign to force her out of her job. In this context, evaluating the credibility and reliability of the witnesses was central to making a proper evaluation of whether the NMC had discharged its burden of proof in respect of each of the Disputed Conduct Allegations.

59. The Panel's approach of considering each charge individually in a silo, and its failure to assess the overall credibility and reliability of each of the Complainant Nurses, led the Panel to ignore an important relevant consideration when assessing whether the burden of proof had been met in respect of each charge. The fact that those witnesses appeared to have given incorrect accounts in relation to certain of the charges that the Panel had found 'not proved' was simply ignored when the Panel was considering whether it could rely on those witnesses' evidence as satisfying the NMC's burden of proof in respect of other allegations. In the circumstances of this case, it was not rationally open to the Panel to simply ignore that matter by taking the rigidly siloed approach that it did.

60. An example of a charge in respect of which the Complainant Nurses had given an account that appears to have been incorrect is Charge 2. By that charge, the NMC alleged that the Appellant had, in "*February 2017, approached student C outside the Health Centre, held him by the elbow in a firm grip and escorted him to the Health Centre for an appointment whilst shouting at him*". As noted by the Panel in its Reasons, "*the original grievance was made from contemporaneous notes from the four nurses at the time, which detail[ed] [that the Appellant] had the student in a firm grip, but that there is no mention of you shouting.*" "*[Gillian Kellett's] oral evidence [was] that she saw Student C pulling away from [the Appellant].*" But "*when the CCTV of the incident was viewed, it was clear that [the Appellant] did not hit or grab Student C.*" Stonyhurst's internal investigation had therefore "*found no evidence that [the Appellant] had held Student C by the elbow in a firm grip and escorted him to the Health Centre for an appointment whilst shouting at him.*" Accordingly, this charge – unlike with most of the charges – was one in respect of which the Panel had the benefit of a form of contemporaneous objective evidence against which the witnesses' competing accounts could be verified.

61. By taking advantage of that contemporaneous objective evidence, the Panel was able to discern that, in respect of that charge, the Complainant Nurses' accounts were incorrect, whereas the Appellant's and the Paramedic's accounts had been truthful and reliable. Accordingly, the Panel rightly found Charge 2 'not proved'. Yet there is nothing within the Reasons to suggest that the Panel then asked itself whether, and how, the apparent unreliability of the Complainant Nurses' version of this incident should influence the view taken of the reliability of the Key Witnesses' factual evidence

generally, including in relation to the charges for which no contemporaneous objective evidence was available. In my judgment, this was a significant gap in the Panel's reasoning in relation to those charges.

62. In so finding, I am not, of course, suggesting that, if the Complainant Nurses were found to have given fabricated, or at least an unreliable, account in respect of Charge 2, then it should necessarily follow that the Panel should reject their versions of events in relation to all the other allegations. Nor would it necessarily follow from a finding that the Appellant and the Paramedic had given true and reliable evidence in respect of Charge 2, that all their other evidence must also be taken to be true and reliable. As recognised by the '*Lucas* direction' frequently given to juries, witnesses lie for many reasons, and a witness who has lied about one matter may nevertheless be telling the truth about another matter (*R v Lucas* [1981] QB 720). Likewise, a witness who has been mistaken about one matter may be giving a reliable account about another matter. Indeed, even where a court has assessed a witness's evidence as not being generally credible and reliable, or has found the witness to have acted dishonestly, this does not necessarily preclude the court from relying on parts of her evidence as being reliable: *Arroyo v Equion Energia Ltd (formerly BP Exploration Co (Colombia) Ltd)* [2016] EWHC 1699 (TCC), at [250]-[251]. (For an example of judicious reasoning justifying reliance on the evidence of such a witness, see the judgment of Roth J in *Slocom Trading Ltd v Tatik Inc* [2012] EWHC 3464 (Ch), at [21]-[26]. Roth J's judgment was upheld upon an appeal brought on other points: [2014] EWCA Civ 831.)

63. It was, however, incumbent upon the Panel to provide, within their reasoning, rational explanations as to why they had preferred the Complainant Nurses' accounts, despite the clear indications that those witnesses' evidence in relation to some allegations had been unreliable. But the consequence of the Panel's siloed approach was that it did not consider this important dimension of a fair factfinding approach in this case.

64. There were also other features of the factual accounts that had been given by the Complainant Nurses which cast doubt on their credibility and reliability. One particularly glaring example related to 'Student I'. Both Angela Bell and Gillian Kellett had given supposedly first-hand accounts about an interaction between the Appellant and Student I. Yet whilst Ms Bell had referred, five times, to Student I as being male ("he"), Ms Kellett referred to Student I as being female ("she"). Despite Ms Bell being apparently unaware that Student I was a female, Ms Bell provided evidence that she distinctly remembered that the Appellant was "*irritable and harsh*" with Student I as he had not taken "*his medication*". The inconsistency in the evidence of the two nurses regarding the Appellant's interaction with Student I was set out in the Panel's reasoning in respect of Charge 8(d), which was found 'not proved'. But nowhere did the Panel

consider what the inconsistency might indicate about the credibility and reliability of the Complainant Nurses' evidence, and whether this should be taken into account when assessing whether the *other* Disputed Conduct Allegations could be found proved based solely or mainly on their assertions.

65. In my judgment, the Panel therefore made essentially the same error as a first instance judge was found to have made in *K v K* [2022] EWCA Civ 468 at a factfinding hearing in private law proceedings under the Children Act 1989. In that case, the Court of Appeal found that the first instance judge had erred by determining one of the mother's specific allegations against the father by focusing only on evidence relating to that allegation. The judge had thus ignored evidence, relevant to credibility, about the mother having made other allegations against the father which he contended, and sought to show, were false. Sir Geoffrey Vos MR, giving the judgment of the Court, stated:

> "[61] In this case, however, by failing to step back and take into account the whole of the evidence before him, the judge placed unjustifiable weight on the issue of whether the mother had had a conversation with the father about her unhappiness at his initiating sex when she was asleep. [She] elevated that issue into the determinative one, saying that if it were proved, the allegations would themselves be made out. The judge failed to bring the various points of challenge made by the father into his evaluation. Those failures meant that there cannot be said to have been a fair consideration of these important allegations from the father's perspective. At no stage did the judge step back and consider the mother's credibility in the round, bringing into account his findings that the mother had put forward false allegations of reporting to Dr C, of financial control, and (also) of isolation from her family when in fact the family had lived with her parents between 2004 and 2012.
>
> [62] In all the circumstances, we have concluded that the finding that the father raped the mother during the marriage is unsafe and must be set aside."

66. Another example of inconsistency in the Complainant Nurses' factual accounts was Ms Kellett's claim that she drafted her grievance statement (which subsequently formed part of the collective grievance submission) herself and did so independently of the other Complainant Nurses. In cross-examination, the Appellant's Counsel confirmed with Ms Kellett that she maintained that version of events, and then asked her why her grievance statement had included the phrase "*G[illian] K[ellett] and I*", thus referring to herself in the third person. If she had drafted her grievance statement herself, without input from anyone else, then why would she have referred to herself in that way? Ms Kellett's response to this challenge was evasive and unsatisfactory:

> Q. There, your grievance says 'GK and I' doesn't it?
> A. Yes

Q. You've slipped up there, haven't you?
A. I don't know what it's about. I haven't- I can't recall what it's even about.
Q. You're GK aren't you?
A. I'm GK, yes. But I don't know what it's discussing or what it's in relation to.
Q. If you've written GK and I someone else did have a hand in your grievance, didn't they?
A. I can't comment because I don't know what it's about.
Q. You don't need to know what it's about to know you are GK.
A. No comment.

67. The Appellant's Counsel also drew the Panel's attention to several examples of a Complainant Nurse giving an account, supposedly from her personal knowledge, of an interaction she claimed to have observed between the Appellant and a student, despite the evidence of another Complainant Nurse about the same alleged incident stating or implying that that nurse was not present. The Appellant's Counsel reasonably drew upon these examples as reinforcing a concern that the Complainant Nurses had been co-ordinating their factual accounts with one another, and that their claims to have written their grievance statements independently of one another was untrue.

68. Another significant matter to be considered in relation to the credibility and reliability of the Complainant Nurses' factual accounts was how they responded to questions put to them in cross-examination. Ms Kellett's oral evidence was particularly unsatisfactory. She had initially refused to give oral evidence at all and had to be summonsed. When she did give oral evidence, she had no difficulty in expressing criticisms of the Appellant but, when challenged about aspects of her evidence (such as, for example, internal inconsistencies, or inconsistencies with factual accounts given by other Complainant Nurses), her response, time after time, was "*No comment*". The Panel's Chair did not intervene at all in relation to this. In my view, the Panel Chair ought to have intervened to instruct the witness to either answer the question or make clear that she was claiming her right not to incriminate herself. But no such intervention came. Nor do the Panel's Reasons even mention Ms Kellett's giving of "no comment" answers.

69. The Panel Chair did, however, make a different intervention whilst Ms Kellett was giving her evidence: namely, a request to the Appellant's Counsel (Ms Fletcher-Smith) to "*tweak her questioning*". This was after Ms Kellett had responded to a question put to her by Ms Fletcher-Smith by saying, "*I'm finding you very aggressive*", and then claiming that Ms Fletcher-Smith was "*intimidating*" her. The exchange between the Chair and Ms Fletcher-Smith was as follows:

> THE CHAIR: … Ms Fletcher-Smith, can I just – just a word really – the Panel understands that you have a duty to your client to be robust in your questioning, absolutely, and you're doing that. There's no issues with that. The witness has said that she finds your tone intimidating and aggressive. Now as a Panel, we need the witness to give as good an account as possible, so could I just ask that you tweak your questioning accordingly, please, just to allow her to give us best possible? I'm not asking you to rephrase or anything like that, just bearing in mind how she reacts sometimes to your questioning. Is that okay?
>
> MS FLETCHER-SMITH: Madam, unless I am being aggressive and intimidating, I would be concerned about not being challenging towards this witness. The questions that I have are very similar to the questions posed to other witnesses, who haven't raised concerns that I've been aggressive or intimidating.
>
> THE CHAIR: I accept that. All I'm saying is that our witness is saying that. She's saying that your tone is that. So all I'm asking is, can we try and get the best out of this witness as possible, because obviously, as a Panel, we've – I mean if she doesn't want to answer the questions and doesn't remember, then that's fair enough – but all I'm asking is, if possible, if you could try and not make it easier for you, but see – it might just need a rephrasing or something. That's all. We'll see how we get on. If she doesn't want to answer, then she doesn't want to answer, but certainly from the Panel's perspective, I'd like to hear what she's got to say. So if you're not able to do that, then maybe the Panel will have to come in with some questions later, when we come to our bit, to see if we can get the best out of her. That's all I'm asking.

70. In my view, Ms Fletcher-Smith was doing her job by robustly testing Ms Kellett's evidence. It was not Ms Fletcher-Smith's responsibility to "*tweak*" her questioning so as to assist the Panel in "*get[ting] the best out of*" Ms Kellett in terms of her oral evidence. Ms Fletcher-Smith's forensic questioning was, in my view, effective in revealing information that was itself potentially very useful to the Panel, namely the way that Ms Kellett responded when she was being asked searching questions about her various written factual accounts. Ms Kellett's attempts to deflect the questioning were not a good reason for the Chair to ask Ms Fletcher-Smith to modify her approach.

71. Ms Kellett gave oral evidence that the Appellant had put up a "*bullying note*" on noticeboard, saying that "*if we [didn't] go to [the] sewing room and get measured for uniforms then she would personally take us there ourselves*". The Appellant's Counsel subsequently placed a copy of the note before Ms Kellett which showed that this was untrue. The exchange went as follows:

> Q. I want to talk about the note from the notice board in relation to the uniform, Ms Kellett. And I just want to check what it was you said in answer to Mr

Bayly's question, 'The note said basically if we don't go to sewing room and get measured for uniforms then she would personally take us there ourselves.' Do you recall saying that?
A. I did give him that – the gist of that but I have not got the board. I do not know why I have not got a copy of the board. If you have got a copy of what is written on the board I'd be happy to see it and comment on it then.
Q. Do you recall that that's what you said to Mr Bayly?
A. I'd be happy to look at your board if you've got the board and –
Q. Ms Kellett, can you answer my question, please. My question is very simple. Do you recall that that is what you said to Mr Bayly?
A. I can't recall what I've just said to him because that wasn't a conversation with him.
Q. You did describe it as a bullying note, didn't you?
A. I did feel that it was a bullying note that was on the board, yeah.
Q. Sharmilla, could we have the exhibit 8 put on the screen please – sorry, exhibit 11 9 I think we're on, sorry. This is the note isn't it, Ms Kellett?
A. We'd already established that from that that she wanted us to wear uniforms.
Q. So, yes, this is the note, yes.
A. Yeah.
Q. So the note says, 'Please can everyone write down their trouser size and style by Tuesday evening so I can order them by Wednesday. If a size/style isn't chosen, I will have to do my best and choose for you and you will have to get sewing room to adjust. All trousers come in short, regular and tall. Thanks, Laura.' Have I read that correctly?
A. You have read that correctly.
Q. So at no point in that note does Ms Hindle threaten to walk you to sewing herself does she?
A. No, that's what Laura – I would think have said or recall she said or I – it's still asking me to go into uniform. And if I don't choose the uniform she was going to choose it for me.
Q. Ultimately it's a decision for the manager whether a nurse wears a uniform or not isn't it?
A. [Inaudible].
Q. Nurses can make their voices known and their opinions heard but it's ultimately a managerial decision, isn't it?
A. No.
Q. Note was not at all bullying was it?
A. It was.

72. That exchange, seen together with Ms Kellett's complaints about the entirely appropriate cross-examination by the Appellant's Counsel, seems to me obviously to indicate a propensity on her part to respond to being challenged, or to being asked to do things she does not wish to do, by mischaracterising the way she was being communicated with as "*bullying*", "*aggressive*" or "*intimidating*". This might fairly be thought an important factor for the Panel to have considered when assessing the degree

to which it could rely on Ms Kellett's evidence about the Appellant having *shouted at* students or spoken to them *in an aggressive tone* or *in an intimidating manner*. But the Reasons provide no indication that the Panel considered this.

73. Ms Kellett claimed, in her oral evidence, to have "*burned*" the contemporaneous notes she had made and which, it was claimed, informed her drafting of her grievance statement. In that part of her oral evidence, she expressed certainty that she had burnt the notes. Later in her oral evidence, however, she gave a different account, stating that she "*presume[d]*" she had burnt them, but that she might have shredded them instead. This internal inconsistency in Ms Kellett's evidence was, at the very least, an indication that Ms Kellett's evidence could not be regarded as entirely reliable even where she stated 'facts' with apparent absoluteness and certainty.

74. Further, the fact that Ms Kellett had claimed to have burnt potentially important contemporaneous documents, and that such documents had apparently not been provided to the NMC when the Complainant Nurses' witness statements were being produced, might itself reasonably have been thought a factor raising doubt as to the reliability of their evidence. Notably, Ms Metcalf also claimed in her oral evidence that her contemporaneous notes had also been burnt – though she was not clear as to who had burnt them. This was concerning, especially as a striking feature of this case was the lack of other contemporaneous material. The Complainant Nurses' witness statements were generally comprised of assertions made without exhibiting any supporting contemporaneous material (such as, for example, WhatsApp messages exchanged between the Complainant Nurses at around the times when they said the incidents occurred).

75. There were also various apparent inconsistencies between the factual evidence given by the Complainant Nurses and facts that were objectively verifiable from other sources. An example is Ms Bell's clear and unequivocal denials that she applied for the permanent Nurse Manager role after the Appellant had left Stonyhurst's employment. The Human Resources Director's evidence was that Ms Bell had made such an application. The Human Resources Director then made certain this was right, by checking her email inbox and locating Ms Bell's application.

76. A further matter relevant to the credibility and reliability of the Complainant Nurses' factual accounts was the evidence from Stonyhurst's Human Resources Director indicating that they had provided only limited co-operation with the investigation of the collective grievance Stonyhurst instructed Mr Lowery (the external solicitor) to carry out. The Human Resources Director's evidence was that at least one of the Complainant Nurses, Gillian Kellett, had resisted or refused to be interviewed individually, insisting

that she would only be interviewed in a group with the other complainants. The reason Ms Kellett gave was that being interviewed individually would bring back bad memories for her and cause her distress. The Human Resources Director was asked by a member of the Panel whether the Complainant Nurses' "*lack of engagement*" with the internal investigation "*wasn't through wilful covering up, it was more from previous trauma that they had suffered and led them to a very emotional state which was unaddressed*". It was less than ideal that the Panel member asked that question in the form of a leading question, rather than in more open terms. In any event, the Human Resources Director's response was as follows:

> "I think partially, but I do think that there's a certain amount of wilfulness or their attitude to it. I remember one statement being given to me, passed to me that, '*Well, like we've told you, we've written it down, that's our evidence. You have to trust us*'. Well, that's not how it works."

77. These various points going to the credibility and reliability of the Complainant Nurses factual accounts were relevant to each and all of the Disputed Conduct Allegations. The Appellant's Counsel was entitled to draw such points to the attention of the Panel, as she did, as being points that undermined the credibility of the Complainant Nurses' factual accounts and should lead to their evidence being regarded with caution. The Panel should have given express, careful consideration to all those points (albeit that it would have been for the Panel to assess how much weight to give to them, after giving careful thought to how the Complainant Nurses had responded to the questions put to them in cross-examination). In my judgment, the Panel failed to do so.

78. The Panel also made no assessment, or even any comment, with respect to the general credibility or reliability of either the Appellant or her former colleague, the Paramedic. This, too, was a significant failure. Factual evidence from the Complainant Nurses was directly contradicted by evidence from the Appellant and the Paramedic. The Panel's reasoning therefore needed to be adequate to enable the Appellant to understand why the Panel had, in relation to the Disputed Conduct Allegations it found 'proved', believed the evidence of the Complainant Nurses and thus, implicitly, rejected the contrary evidence of the Appellant and (where relevant) the Paramedic. In my judgment, the reasoning could not properly do this without addressing the issues of credibility and reliability.

79. The closest the Panel's Reasons come to assessing the credibility or reliability of any of the Key Witnesses is the following text:

> "You have stated that, in the main, you dispute the evidence of [the Complainant Nurses]. The panel noted your stated position is that those who made the

> allegations against you have fabricated their accounts of these incidents and "*colluded*" in presenting their accounts. The panel was in no doubt that [the Complainant Nurses] were familiar with each other and that your appointment as nurse manager of the College health centre caused friction in relation to wide-ranging matters. The panel was also in no doubt that those colleagues discussed their concerns with each other, decided to seek advice as a group from an independent HR adviser at their own cost, and worked together in putting together a formal, collective grievance. The panel, however, considered "*collusion*" to mean "*a conspiracy to deceive*" and found no evidence of collusion between these witnesses as you had asserted, such that their evidence was rendered generally unreliable. The proper approach was for the panel to consider the evidence from each relevant witness in relation to each factual charge and make its findings."

80. It appears that the Panel, having decided that the Complainant nurses had not "*colluded*", then treated the evidence of all the Key Witnesses as essentially having equal value and gave no more thought to the issue of credibility. In my judgment, the Panel was wrong to reduce the Appellant's concerns regarding the Complainant Nurses having "*colluded*" in presenting their accounts, to a specific allegation that there had been "*a conspiracy to deceive*" (a definition provided by the Panel itself, not by the Appellant, and which was thus effectively 'putting words into her mouth'). That error was compounded by the Panel then implicitly placing a burden to proof on the Appellant in respect of that allegation and then finding that she had not discharged that burden.

81. It was obvious from the factual evidence that the Complainant Nurses *had* co-ordinated and collaborated with each other, over a significant period, with a view to jointly raising complaints regarding the Appellant. The fruit of that collaboration was the development and joint submission of the collective grievance, which was in the nature of a multi-allegation 'super-complaint' and was submitted, not only to Stonyhurst's management, but also to the Appellant's professional regulator. An important point that was being made by the Appellant about "*collusion*" was that the collaboration amongst the Complainant Nurses – who had surely been discussing with each other, for some time, their various gripes about the Appellant – was a relevant and important matter to be taken into account when the Panel was assessing the reliability of their evidence.

82. Further, the Appellant had relied, in support of that overarching point, on specific features of the evidence provided by the Complainant Nurses which, in her Counsel's submission, supported a conclusion that the factual accounts each of them had given at various times appeared to be an attempt to all support a common narrative. I refer, in that regard, to the matters set out above at paragraphs 64, 66-68, and 73-74. Those

features suggested that those witnesses were not limiting themselves to providing their own recollections of events that were within their own knowledge.

83. I also refer to the instances of a Complainant Nurse raising an allegation about an incident which she could not have seen and was not personally involved and must therefore have been relying on information being shared amongst them. For example, Ms Bell's witness statement cites an incident said to have occurred on 1 December 2016, when a student ('Student P') came into the health centre but the Appellant was on the phone and did not immediately attend to him. Ms Bell's witness statement accepted that she was "*not on duty on this date*". It is not clear why she took it upon herself to give evidence about this incident, given that she was not present. When she was asked in cross-examination about this, she denied that she had made complaints about matters of which she had no first-hand knowledge.

84. In addition to my concerns that the Panel has not properly assessed the credibility and reliability of the Key Witnesses, I find that the Panel's reasoning reveals that it took several approaches that I consider were legally unsustainable.

85. The first unsustainable approach was the Panel's sometimes choosing to prefer a witness's written evidence, even if she did not maintain the same account, and even if she had contradicted that written evidence, when giving her oral evidence and being cross-examined.

86. An example of the Panel taking such an approach is its reasoning in respect of Charge 9. The charge was that the Appellant, "*on one or more occasions, shouted at Student J who would often forget to collect his medication for ADHD, and displayed intimidating behaviour towards him*". One of the Complainant Nurses, Ingrid Haigh, gave oral evidence that effectively supported the Appellant's case in respect of this charge. As the Panel's reasoning records, "*in [Ms Haigh's] oral evidence, she described [the Appellant'] tone as 'clear, concise and firm' rather than 'intimidating'*". Yet the Panel then effectively rejected Ms Haigh's oral evidence and preferred her written evidence, stating:

> "Based on all the information before it, the panel preferred the evidence of [Ms Kellett and Ms Haigh's] written statement as it determined that this is the more accurate account of the incident namely, that you did shout at Student J and displayed intimidating behaviour towards him."

87. The Panel's reason for finding Ms Haigh's written evidence to be "*the more accurate account*" appears to have been its view that the door to the medical room was likely to have been closed at the time, and therefore the Appellant must have been shouting if

she could be heard by people outside the room. But this was little more than speculation on the Panel's part, based on its being "*more plausible for the door to have been closed whilst a student was being seen*".

88. The right to cross-examine one's accusers is a precious right and an important protection. The very reason why parties to litigation are entitled to cross-examine witnesses who have provided written evidence is to test that written evidence. In my judgment, it would only be in exceptional circumstances that a tribunal might contemplate preferring a witness's written evidence in circumstances where she has been called to give oral evidence and has, whilst being cross-examined, contradicted her written evidence. (An example of circumstances where this might be appropriate would be a case in which the witness appears to have been intimidated or otherwise put in fear prior to giving her oral evidence.)

89. In circumstances where a witness, in her oral evidence, has effectively abandoned an allegation she made in her written statement, it will generally be inappropriate for the tribunal to place any reliance on the relevant part of her written evidence. This seems to me to follow naturally, as a matter of fairness and logic, from the high value the common law attaches to cross-examination as the best available tool for revealing where the truth lies. That is especially so in a case in which the accused person challenges the veracity of the witness evidence against her. As Cotter J stated in *Muyepa* (cited above at paragraph 57), at [16], "*Where witnesses are accused of lying […,] cross-examination still remains the gold standard test*". The reasons why the common law accords such high value to cross-examination were explained in detail by Mostyn J in *Carmarthen County Council v Y* [2017] EWFC 36, at [7]-[17].

90. Another example of the Panel taking an approach of preferring a witness's written evidence to her oral evidence was the Panel's reasoning in respect of Charges 6(a) and 6(b), which the Panel found 'proved'. The Panel stated:

> "The panel preferred the evidence of [Ms Bell]. The panel acknowledged that due to the passage of time, [Ms Bell] could not accurately recall all events clearly and therefore they relied on the documentation, which was produced closer to the time of the alleged incident, namely the collective grievance signed on 27 April 2018 …."

91. By this reasoning, the Panel has effectively preferred a witness's written evidence in circumstances where that evidence has been tested by cross-examination and the witness has not 'come up to proof'. The Panel's supposed justification was that the written evidence had been produced earlier in time and was therefore fresher in her memory. In my judgment, that is a wrong approach and risks undermining the value of

the right of an accused person to test, by cross-examination, the case against her. If the witness appeared, when giving her oral evidence, to be struggling to remember the relevant events, then the NMC's presenting officer should have asked the Panel's permission for the witness to refer to her relevant statement so as to refresh her memory. That is the correct and fair way to deal with such a difficulty.

92. The second unsustainable approach was the Panel's unjustified assumptions that the Appellant's evidence did not relate to the same incident as that which was the subject of the charge, and then proceeding to find the charge proved based on the supposed absence of evidence from the Appellant about that incident.

93. This approach is exemplified by the Panel's reasoning in respect of Charge 11. The allegation was that, "*on 16 March 2017 whilst dealing with Student N who attended the Health Centre in a distressed state, [the Appellant] shouted at her in a loud, aggressive manner and told her to 'stop being silly' or words to this effect*". The Panel rejected the Appellant's evidence relating to this incident, stating that the Panel "*was not persuaded by [the Appellant's] account and was of the view that [her] response to this charge did not relate to the incident inside the Health Centre*". I do not see the basis for that reasoning, given that the oral evidence of the Appellant at pages 847-849 of the Appellant's Bundle appears to me to relate to precisely the same incident as was being described by Tracey Metcalf (the Complainant Nurse on whose evidence the charge effectively rested).

94. The third unsustainable approach was the Panel's reliance on its assessment of the Appellant as having had a difficult relationship with a particular student, or as having felt a degree of frustration when dealing with that student, as evidence justifying a conclusion that the Appellant "shouted at", or otherwise behaved inappropriately towards, that student. In any walk of life, all of us work with people we find difficult, or sometimes *feel* frustrated. This is not a fair or rational basis for inferring that we have *acted* inappropriately or unprofessionally.

95. An example of this approach is the Panel's reasoning in respect of Charge 3. The allegation was that "*on 7 or 8 February 2017 [the Appellant] had an altercation with Student D and referred to him as a 'little scrote' or words to that effect*". The Panel provided the following supposed justification for its finding this charge 'proved':

> "The panel aware of the issues you had with Student D, preferred the evidence of [Ms Bell] and therefore find this charge proved."

96. Another example is the Panel's reasoning in respect of Charge 10. The allegation was that "*on 20 April 2018 in the presence of two … colleagues, [the Appellant] shouted at*

Student K, L and M". The Panel provided the following supposed justification for its finding this charge 'proved':

> "You gave evidence that you did not shout at the students.
> The panel was mindful that the students had been sent to you to apologise for not attending the class that you had organised and preferred Colleague 2 and 3's accounts. The panel considered there to be an element of frustration in your own oral evidence as you recalled the time these students had not attended the lesson. The panel therefore found that it was more likely than not that you shouted at Students K, L and M.
> This charge is therefore found proved."

97. In my judgment, this reasoning approach amounted to little more than speculation as to how the Appellant's feelings *might* have led her to act in a certain way. It failed to keep in mind the proper starting point, namely that the burden was on the NMC to present cogent evidence sufficing to satisfy the Panel that the alleged conduct occurred. The fact that the standard of proof is the 'balance of probabilities' standard does not mean that a tribunal can properly find an allegation proved based on its own speculative guess as to what more probably happened: *Re A (A Child) (Fact-finding: Disputed findings)* [2011] EWCA Civ 12, at [26]. Rather, it will be the duty of the tribunal to find an allegation 'not proved' unless the party making the allegation has produced cogent evidence sufficing to satisfy the tribunal, on the balance of probabilities and after having considered the totality of the evidence before it, that the alleged conduct occurred.

98. This might initially seem a fine distinction, and it may be one that the Panel did not have clearly in mind. But it is a very important distinction for all factfinding tribunals to understand. That is especially so in the context of professional discipline hearings, where a finding, on the balance of probabilities, that alleged conduct occurred has the potential to deprive a person of her livelihood, or to destroy a professional reputation built up over many years. It would be monstrous for findings to be made based on preferring certain witnesses' accounts by reason of a mere 'educated guess' by the tribunal as to what it thinks probably happened. Rather, findings should only be made based on a careful evaluation of the prosecution evidence, as a result of which the tribunal is satisfied that the evidence can properly be relied upon for finding the allegation proved.

99. This principle is particularly important where the evidence in support of the allegation consists of assertions by witnesses which are uncorroborated by any contemporaneous objective evidence (such as contemporaneous documents or video or audio material). In such cases, the allegation should be found proved only if the tribunal is satisfied that

the relevant witness evidence has sufficient credibility and reliability for tribunal to consider itself able to place reliance on that evidence so that the burden of proof is satisfied. This requires the tribunal to apply, not speculation or 'guessology', but careful and thorough forensic analysis.

100. For all these reasons, I am satisfied that each of the Panel's findings a Disputed Conduct Allegation was 'proved' was not supported by adequate reasoning and/or was reached based on a legally unsustainable approach. Each such finding was therefore either "*wrong*" or "*unjust because of a serious procedural or other irregularity*" as per CPR 52.21(3). In coming to this conclusion, I have borne in mind that the Panel had the considerable benefit, which I have not had, of seeing the witnesses give live evidence, and was therefore better placed than I am to assess their credibility (see *Gupta*, cited above at paragraph 41). In a case in which a tribunal had taken advantage of that superior knowledge by making factual findings informed by proper assessment of the credibility and reliability of the witnesses, I would have been very slow to set aside its findings. For the reasons I have explained, however, that is not this case.

<u>In the circumstances of this case, is the Court able to itself re-determine whether the Disputed Conduct Allegations are proved, or is it necessary to remit that matter to the NMC's FtP Committee?</u>

101. It would, in my view, be undesirable to remit to the NMC's FtP Committee the task of re-determining whether the Disputed Conduct Allegations are proved, unless there was no other choice properly open to me. The charges relate to incidents said to have occurred between November 2016 and April 2018. These proceedings have already taken far too long.

102. Each of the Disputed Conduct Allegations turns on conflicting evidence and could, in my judgment, be found 'proved' only if the relevant evidence of one or more of the Complainant Nurses was regarded as sufficiently credible to warrant its being relied upon as satisfying the burden.

103. That is so even in respect of Charges 14(a) and 14(b), which each allege a failure by the Appellant to follow proper record-keeping procedures when documenting that a controlled medical drug prescribed to a student was no longer being taken by that student. In both cases, the Appellant clearly wrote the word "*Stopped*" in the controlled drugs register. The Complainant Nurses' evidence was that this was a breach of procedure, as the Appellant should instead have written "*Discontinued*" and also noted that the drug had been returned to the pharmacy.

104. There was no conflict of evidence as to what the Appellant had written in the controlled drugs register: that was a matter of agreement between the Appellant and the NMC. Nevertheless, these charges turn, in my view, on believing factual evidence from the Complainant Nurses, since their evidence was crucial as to the specific requirements of the procedure in use within the health centre, which the Appellant was said to have failed to fully follow. It was on the basis of their evidence that the Panel made a findings as to what the correct procedure within the health centre was at the relevant times.

105. The Appellant denied that what she had written in the register was a breach of the procedure being used in the health centre. She noted that it was, in fact, she who had been seeking to improve the procedures used in the health centre. Her evidence in this regard was broadly corroborated by the Deputy Head Pastoral, whose evidence referenced an identified need to improve record-keeping and other procedures in the health centre, and the efforts that were being made by himself and the Appellant to implement relevant positive changes.

106. Surprisingly, the NMC pursued these charges without placing into evidence any copy of a written policy – whether a Stonyhurst internal policy, or any policy that nurses or health centres generally are required to follow – with which the Appellant's recording entries were alleged to have been non-compliant. It *may* be that the entries she made in the register were not in accordance with best nursing practice, but that could not suffice to support a charge of conduct by the Appellant that could potentially constitute 'misconduct'. Absent reliable evidence from the Complainant Nurses that the Appellant had failed to follow a procedure that had been laid down in the health centre as the procedure to be followed, an allegation that the Appellant had failed to follow the requisite procedure could not get off the ground.

107. I have carefully considered the Disputed Conduct Allegations and read the transcripts and other materials in the Appellant's bundle. Having done so, I am satisfied that the NMC has not satisfied its burden of proof in relation to *any* of the Disputed Conduct Allegations. That is because the evidence from the Complainant Nurses on which the NMC was relying in respect of each of the relevant charges is not, in my judgment, evidence that is worthy of being relied upon, absent clear corroboration from contemporaneous documents. In that regard, I regret to say that, in my judgment, the evidence of the Complainant Nurses needs to be viewed with very considerable caution, given the matters set out above at paragraphs 60-83. Their evidence, seen as a whole, is characterised by multiple inconsistencies. Further, the way in which Angela Bell and Gillian Kellett, in particular, dealt with questions put to them in their oral evidence is not consistent with those witnesses having been fair-minded reasonable professionals on whose uncorroborated descriptions of alleged incidents a tribunal have confidence.

108. I do not need to observe live evidence from the Complainant Nurses to be satisfied, with a high degree of confidence, that they – especially Angela Bell and Gillian Kellett – were heavily biased against the Appellant and resented being managed by her. They took a very critical and negative view of everything she did, and they were keen to raise complaints about her, albeit unofficially, and thus to undermine her in the eyes of Stonyhurst's senior managers, at every opportunity. The Deputy Head Pastoral was, in my assessment of the evidence, entirely right to describe their complaints as being essentially "*tittle-tattle*" and to characterise what was happening as a "*witch-hunt*". They were insubordinate to her management and had made her job very difficult by simply ignoring her reasonable and proper instructions to them.

109. The Complainant Nurses ultimately embarked, in April 2018, on a common plan of developing and jointly submitting an omnibus complaint, raising a vast litany of matters (many of them individually quite trivial in nature) going back to 2016. It was not an attempt to prompt Stonyhurst's management to promote a better working environment or to bring about some positive behaviour change on the Appellant's part. Rather, it was a 'nuclear missile' intended to have a decisive impact in making it impossible for the Appellant to continue in her job.

110. After that objective had been achieved, the Complainant Nurses saw no further purpose for their allegations; hence their reluctance to give full assistance to the solicitor their employer instructed to investigate their allegations. Their attitude was most strikingly demonstrated by Ms Kellett having to be summonsed to give evidence to the Panel hearing. Their concern was to oust a boss they resented. Their collective grievance, though copied to the NMC, was not truly motivated by a concern to protect the public interest.

111. I am conscious that I have made these assessments without having heard directly from the Complainant Nurses myself. I have, however, read with care their evidence, including the transcripts of their being cross-examined by the Appellant's Counsel and then asked questions by the Panel. The relevant matters were fairly put to them by the Appellant's Counsel and I am satisfied that they were given a proper opportunity to respond.

<u>Misconduct, current impairment and sanctions</u>

112. The NMC's allegations against the Appellant were all of 'misconduct' by reason of which her FtP was impaired. Accordingly, insofar as any conduct charges were found 'proved' against her (whether by reason of their having been admitted by her, or

otherwise), the next steps would then be to consider: (a) whether the proved conduct constituted 'misconduct'; and, if it did, (b) whether her FtP was currently impaired.

113. Although I have not found any of the Disputed Conduct Allegations proved, there Appellant's admissions in respect of charges 14(d), 15 and 16 stand. I therefore need to consider: (a) whether the conduct described in those charges amounted to 'misconduct'; (b) whether, in view of those admissions and the surrounding circumstances, the Appellant's FtP is currently impaired; and (c) what, if any, practise limitations, conditions or sanctions should be imposed.

114. Charges 14(d), 15 and 16 are as follows:

> 14. On 5 September 2017 having made an entry in the controlled drug register you: (d) did not arrange for the medication to be returned to the local pharmacy as required to do so.
>
> 15. On 18 November 2017 having received a student's medication you failed to add the relevant entry into the controlled drugs register whilst you were on duty and at the end of the shift emailed colleagues asking them to do this for you.
>
> 16. On a date in February 2018 you failed to ensure that the correct procedure was being followed in relation to locking and storing medication in the controlled drugs cupboard.

115. The Panel found that Charges 14 (not limited to 14(d)), 15 and 16 amounted to 'misconduct' (but not 'serious misconduct'). The Panel's reasoning was as follows:

> "When considering whether the above charges amounted to misconduct, the panel had regard to your oral evidence during which you were able to highlight the importance of managing controlled medication correctly. You also told the panel about your awareness surrounding the potential abuse of ADHD medication. The panel heard evidence that during your employment at Stonyhurst College, you implemented a new policy in relation to controlled medication. Despite this, you failed to adhere to that policy. The panel noted that the medication mismanagement occurred over several months, that the errors varied and concerned a number of different students. It determined that a registered nurse, would have, or should have been aware of the importance of managing controlled medications correctly and the potential serious consequences of failing to do so properly. In light of this, the panel determined that your actions as found proved in charges 14a, b and d, 15 and 16 did fall significantly short of the standards expected of a registered nurse and therefore amounted to misconduct."

116. I bear in mind that this conclusion of the Panel was in respect of a set of conduct that included 14(a) and 14(b), and was thus modestly wider than the charges that have been

proved by admission. In my view, however, the wording and substance of the Panel's reasoning for finding 'misconduct' is consistent with its having found that the admitted conduct alone would itself have constituted 'misconduct'.

117. In my judgment, the Panel's conclusion on that matter is not one that I can properly find to have been wrong. Nor do I detect any error in the reasons the Panel gave in support of its conclusion. I also bear in mind that the NMC's FtP Committee has specialist expertise that makes it generally better placed than the Administrative Court to decide whether proved conduct was conduct that fell "*significantly short of the standards expected of a registered nurse*" (this being the test that the FtP Committee applies for identifying 'misconduct'). I must therefore uphold the conclusion that the charges admitted by the Appellant constituted 'misconduct'. I do so without enthusiasm, given that the sorts of errors and omissions underlying the charges admitted by the Appellant were of a kind that might normally be expected to be remedied through a healthcare provider's own in-house advice or training, rather than being referred to the NMC and becoming the subject matter of FtP proceedings.

118. Moving on to consider whether the Appellant's FtP is currently impaired: I am satisfied that it is not impaired. In that regard:

(1) Her 'misconduct' consisted essentially of administrative oversights in failing to consistently follow improved procedures she had commendably sought to implement in the health centre.

(2) These failures occurred whilst she was working in a toxic workplace environment and was likely to have been under great emotional strain. As the manager of the health centre, she was effectively the 'captain of the nurses' and did not have any nurse or medic supervising or guiding her.

(3) There is no evidence that her relevant failures caused any harm to patients. Nor is there evidence that she sought to cover up, or avoid taking responsibility for, those failures.

(4) For a period of 4½ years after leaving Stonyhurst, she has worked in a children's hospice. All the relevant evidence I have seen is consistent with her having practised kindly, safely and professionally throughout the whole of that long period. There is no evidence of any concerns having been raised about her administration of drugs, or indeed about any other aspect of her practise or conduct as a nurse. She no doubt benefited from working in a more supportive environment, with other nurses and medics who were senior to her.

(5) Given the history of these proceedings, I also have no doubt that the Appellant will take the utmost care in future to ensure that she administers and stores drugs in accordance with the policies and procedures of whatever establishment she may be working in at the time.

(6) The purpose of the FtP regulatory regime is to protect public safety and the reputation of the nursing profession, not primarily to punish for failings that occurred in the past.

119. Given that I do not find the Appellant's FtP to be currently impaired, there is no need to place any conditions on the Appellant's practise or consider imposing any sanction.

The interim suspension order

120. In addition to imposing a substantive sanction of 6-months suspension, the Panel also made an interim suspension order of 18-months' duration "*in order to cover any appeal period*". The consequence of that interim suspension order is that the Appellant has now been suspended from practising as a nurse for the past 13 months, and thus potentially for considerably longer that the total suspension period she might have served had she not appealed.

121. As the Appellant has not, in these proceedings, challenged the interim suspension order, I have no jurisdiction to set it aside. I think it right, however, to record my concern as to the lack of substantive reasoning provided by the Panel for imposing the interim order. No interim order had been made for restricting the Appellant's practise during the long period over which the FtP proceedings had been drawn out, prior to the Panel's decision. As noted above, for 4½ years of that period, she worked satisfactorily as a nurse in a children's hospice. There was no evidence that her practise at the hospice had been anything other than kind, safe and professional. Testimonials from colleagues show she was regarded as a reliable colleague and that she was popular with the children and young people for whom she cared.

122. Against this background, it is very difficult to understand why the Panel considered an interim suspension order to be "*necessary for the protection of the public*" and "*otherwise in the public interest*", as the relevant section of its Reasons asserted it to be. The Panel's reasoning (such as it was) evinces no consideration of the severity of the potential impact on the Appellant of an 18-month interim suspension order, its intrinsic potential to disincentivise her from appealing, or the risk of unfairness if her appeal ultimately succeeded but she had, in the meantime, been suspended from practising for a prolonged period. Those considerations ought, in my view, to be expressly thought about, and carefully weighed, by a Panel when it is considering

whether to impose an interim suspension order. The Panel should also be clear as to the nature of the harm it fears could occur, absent the contemplated interim suspension order. Absent such careful weighing of the competing interests at play, it is hard to see how a Panel could properly decide that the imposition of an interim order was necessary and proportionate.

Conclusion and disposal

123. For the reasons set out in this judgment, I allow the appeal. Further, I determine, in substitution for the Panel's decision, that: (a) the charges that were not admitted by the Appellant but were found 'proved' by the Panel are instead found 'not proved'; (b) the Appellant's current FtP is not currently impaired; and (c) no practise restriction or sanction is imposed.

124. It is a matter of regret that these matters have hung over the Appellant for so many years, and that patients (including terminally ill children in a hospice) have been unable to benefit from her care. The remedies I can grant her in these proceedings are limited to making an order as per the preceding paragraph. She also has the benefit of this public judgment, which she may show to any prospective employer.

Costs

125. The Appellant has been fortunate to have been supported by the Royal College of Nursing ("RCN"), which provided legal representation for her, both before the Panel and in this appeal. Given the number of charges that were brought against her, and the complexity and scale of the proceedings, it is realistic to wonder if she would have stood a chance of defending herself successfully without the RCN's assistance. The RCN is funded by subscriptions paid by its members.

126. She asks that I make an order for costs in her favour, relating to the RCN's costs of the appeal to this Court. The total amount sought is £7,453, which includes the professional fees of Counsel for drafting the grounds of appeal and skeleton argument, and for representing the Appellant at the hearing before me.

127. In my view, £7,453 is a surprisingly low sum, given the amount of work that has been done. Despite this, the NMC has urged me to reduce the amount by way of summary assessment. In support of that position, the NMC's Counsel has provided me with submissions contending, for example, that: (a) only 1 hour total should be allowed for the RCN solicitor's time in reviewing the Appellant's skeleton argument drafted by Counsel and considering the Respondent's skeleton argument; (b) no more than 6 hours, split between C and D grade fee-earners, should be allowed for producing the appeal

bundle; and (c) the time spent on the authorities bundle should not have exceeded "*thirty seconds*" reviewing the index. These submissions are, with respect to the NMC, wholly unrealistic. Moreover, the amount claimed is manifestly less than a proportionate sum. In the circumstances, I see no reason why the Court should spend time taxing down the Appellant's costs. I will therefore summarily assess the Appellant's costs as being the full amount claimed.