



Neutral Citation Number: [2024] EWHC 2835 (Admin)

Case No: AC-2024-LON-002309

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 8 November 2024

**Before :**

**MRS JUSTICE LANG DBE**

**Between :**

**JOANNE BUDZICHOWSKA**

**Applicant**

**- and -**

**THE NURSING AND MIDWIFERY COUNCIL**

**Respondent**

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**Nair Maqboul** (instructed by the **Royal College of Nursing**) for the **Applicant**  
**Leeann Mohamed** (instructed by the **Nursing and Midwifery Council**) for the **Respondent**

Hearing date: 17 October 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30 am on 8 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LANG DBE

**Mrs Justice Lang :**

1. The Applicant applies, pursuant to Article 31(12)(a) of the Nursing and Midwifery Order 2001 (“the NMC Order”), to terminate the interim suspension order, for a period of 18 months, made by a panel (“the Panel”) of the Fitness to Practise (“FTP”) Committee of the Respondent (“the NMC”), on 5 June 2024.
2. The allegations against the Applicant are due to be heard by the FTP Committee at a final hearing listed on 21 October to 5 November 2024. The interim suspension order under challenge, and any interim suspension order that I may make on this application, will cease to have effect when the FTP Committee reaches its decision on the allegations (Article 31(5)(a)(iv) of the NMC Order)<sup>1</sup>. Therefore this application is likely to become academic shortly, unless the final hearing is unexpectedly adjourned.
3. The NMC conceded that the length of the suspension order was disproportionate, bearing in mind that the substantive hearing was listed to be heard some 4 months after the panel hearing. Bearing in mind the possibility that the hearing in October 2024 might be adjourned, the NMC suggested that the order be reduced to 12 months.

**History**

4. The Applicant is a nurse who was registered with the Respondent on 17 August 2007. She qualified in Poland in 1999.
5. The allegations against the Applicant are as follows:

**“Allegations**

That you, a registered nurse:

*Whilst working at the Old Convent Nursing Home, between October 2017 and March 2019:*

1) On the night shift of 19-20 May 2018:

a) Between 22:00 and 08:00, having been informed that Resident C was being admitted to hospital and/or showing signs of a deterioration in their health:

i) Failed to carry out observations on Resident C;

ii) Failed to record observations on Resident C’s notes.

b) Failed to recognise that Resident C was showing a deterioration in their health.

2) Failed to answer and/or silenced call bells for Residents D and/or E and/or F.

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<sup>1</sup> At the conclusion of the substantive hearing, if the allegations are proved, the FTP Committee may impose sanctions, and must consider whether or not to impose an interim order until the end of the appeal period.

- 3) Swung a call bell at Resident D's face.
- 4) Slept whilst on duty.
- 5) Failed to treat patients with kindness and compassion in that you:
  - a) Pointed your finger in Resident F's face;
  - b) Shouted at Resident F for continuously ringing the call bell;
  - c) Made rude jokes about Resident F;
  - d) Made comments about wanting to kill the residents and/or shutting them up and/or giving them tablets to put them to sleep;
  - e) Told Resident C 'her mother is dead and to stop asking for her' or words to that effect;
  - f) Said Resident C has 'shit herself, I'm not doing her' or words to that effect;
  - g) Left Resident C in her faeces for a period of up to 20 minutes;
  - h) Stuck your middle finger up at Resident E.
- 6) Asked colleagues to sign controlled drugs book after you had checked and/or administered the medication without them being in attendance.
- 7) Used your colleagues' signatures to sign as a second checker.
- 8) Your conduct at charge 6 was dishonest in that you knew you had checked and/or administered medication without a second checker.
- 9) Your conduct at charge 7 was dishonest in that you used your colleagues' signature to reflect they had been in attendance when you were checking and/or administering medication when you knew they hadn't.

*Whilst working at Plas Penmon Care Home between December 2018 and September 2022:*

- 10) Between February 2022 and April 2022, in relation to Resident A:
  - a) Refused to assist Resident A when they couldn't get up off the floor and/or did not use the hoist to assist Resident A back up into their chair;
  - b) Suggested Resident A crawl along the floor to the chair;

c) Sat in the chair nearest to Resident A so that they had to crawl to another one.

11) Your actions at charge 10b and/or 10c were intended to humiliate Resident A.

12) On or around 25 July 2022, in relation to Resident A:

a) Raised your voice;

b) Pushed them into a room and closed the door;

c) Left them alone in their room;

d) Said ‘what do you expect me to do’ or words to that effect when they came to you for assistance.

13) On or around 9 May 2022, in relation to Resident B:

a) Pulled the covers off them instead of gently waking them up;

b) Said ‘you are going for a shower now’ or words to that effect;

c) Shoved them into the lift;

d) Grabbed their face;

e) Said ‘don’t you ever do that to me again’ or words to that effect.

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

6. The NMC received two separate referrals about the Applicant, which I shall refer to as Referral 1 and Referral 2.

### **Referral 1**

7. On 9 August 2019 the NMC received Referral 1 from Colwyn Bay Old Convent Nursing Home (“Home 1”), raising concerns about the Applicant.
8. It was alleged that during the night shift of 19/20 May 2018 a resident was seriously ill and awaiting an ambulance, but the Applicant did not attend to the resident. There were no nursing notes to evidence that the Applicant attended to the resident. A family member was present during the evening and alleged that only support workers attended. They stated that the duty nurse was rude and uncaring and only wanted to deal with the medication.
9. Conwy County Council safeguarding team carried out an investigation, and part of the outcome was that the Applicant had been neglectful in her duties as a night nurse.

10. Anonymous letters of concern about the Applicant were sent to the Care Inspectorate Wales who notified Home 1 in January 2019. The allegations made were investigated by Home 1, and she was dismissed on 8 February 2019.
11. On 6 October 2021, the NMC's Case Examiners decided that there was no case to answer on Referral 1, under Article 26(2)(d)(i) of the NMC Order. They considered the allegations under the following headings:
  - i) Regulatory concern 1: Failure to act appropriately in response to a deteriorating resident, in that you failed to carry out observations on Resident A on 19 May 2018.
  - ii) Regulatory concern 2: Failure to safeguard residents' care by failing to answer call bells and failure to maintain accurate records, including care plans and risk assessments.
  - iii) Regulatory concern 3: Failure to follow medication policy by engaging in secondary dispensing, signing MAR prior to ensuring effective administration, failing to administer medication direction, and failure to follow medication administration policy.
  - iv) Regulatory concern 4: Inappropriate behaviour towards residents.
  - v) Regulatory concern 5: Sleeping whilst on duty.
12. The Case Examiners applied the two limb test, namely, whether there was a realistic possibility that the FTP Committee would decide that:
  - i) the incidents alleged did happen; and
  - ii) as a result of the incidents, the registrant's fitness to practise was impaired.
13. The Case Examiners concluded that there was a realistic possibility that the FTP Committee would find the facts proved in regulatory concerns 2, 3, 4 and 5, but not 1. However, they concluded that there was not a realistic possibility that the FTP Committee would find that the Applicant's fitness to practise was currently impaired. In summary, the incidents did not appear to be demonstrative of a pattern of behaviour given the current evidence of continued safe practice and no further similar issues had been raised by the Applicant's current employer. They considered that she had demonstrated sufficient insight and remediated the alleged failings. Therefore they were satisfied that she was not a risk to the health, safety or wellbeing of the public.
14. Following receipt of Referral 2 (see below), the NMC identified that there may have been a material flaw in the Case Examiners' decision and requested a review in accordance with Rule 7A of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004. On 26 September 2022 an Assistant Registrar of the NMC directed further investigation into the concerns raised in Referral 1 in accordance under Rule 7A.
15. Upon completion of the further investigation, on 5 December 2023, an Assistant Registrar of the NMC concluded that the previous decision of the Case Examiners was materially flawed, and she substituted a fresh decision. She concluded that there was a

realistic possibility that the FTP Committee would find that the incidents alleged in regulatory concerns 1, 2, 3, 4 and 5 did happen, as well as the further incidents and concerns she identified. She also found that there was a realistic possibility that the FTP Committee would find that the Applicant's fitness to practise was impaired, by reason of these incidents, if they are indicative of an attitude towards patients and a pattern of behaviour which present a risk to the health, safety and wellbeing of patients. Given the nature of the multiple concerns, the public's confidence and trust in the nursing profession could be affected. Therefore she concluded that there was a case to answer, and she referred the matter to the FTP Committee on 5 December 2023.

## **Referral 2**

16. On 2 September 2022, the NMC received Referral 2 from Plas Penmon Nursing Home ("Home 2") where the Applicant was employed as a night nurse from 2018 to 2022. Following an investigation and a disciplinary hearing, the Applicant was dismissed from her employment.
17. On 27 July 2023, the Case Examiners decided that there was a case to answer, and referred the case to the FTP Committee. In regard to Resident B, the Case Examiners found that there was a realistic possibility that the FTP Committee would find the facts proved for regulatory concerns 1, 2 and 5 which were as follows:
  - i) Regulatory concern 1: Verbal abuse of a patient.
  - ii) Regulatory concern 2: Threatening conduct towards a patient.
  - iii) Regulatory concern 5: Physical abuse of a patient.
18. In regard to Resident A, the Case Examiners found that there was a realistic possibility that the FTP Committee would find the facts proved for regulatory concerns 3 and 4 which were as follows:
  - i) Regulatory concern 3: Psychological abuse of a resident by deliberately humiliating them.
  - ii) Regulatory concern 4: Refusal to assist a resident when required.
19. The Case Examiners found that some of the concerns in Referral 1, which was under review, were similar to the concerns in this referral and that suggested underlying attitudinal issues. The concerns did not appear to be isolated and may suggest a pattern of behaviour and a risk of repetition. The Case Examiners concluded that there was a realistic possibility that the Applicant's fitness to practise would be found to be currently impaired. Accordingly, they referred the case to the FTP Committee on 27 July 2023.

## **Interim orders**

20. On 13 September 2022, the NMC undertook a risk assessment following receipt of the allegations contained within Referral 2. As a result, the NMC considered it necessary

to make an application for an interim order to restrict the Applicant's practice. The application was referred to the Investigating Committee ("IC") for determination.

21. Following a hearing on 10 October 2022, a panel of the IC imposed an interim conditions of practice order for a period of 18 months, pursuant to Article 31(2) of the NMC Order. The panel was of the view that there was a risk of repetition and of harm to patients. It considered that the allegations were serious and involved vulnerable residents with limited capacity. It noted that there were similar concerns in Referral 1 from a different care home. The order was imposed on the grounds that it was necessary for public protection and was otherwise in the public interest, in order to maintain confidence in the profession and the regulator. The panel concluded that the appropriate and proportionate order was a conditions of practice order.
22. As the Applicant had been working at Queen Elizabeth Court Care Home ("Queen Elizabeth CCH") for three years without concerns being raised, and they were apparently supportive of her, the panel considered that it was possible to formulate workable conditions that would protect the public. The order required her to limit her practice to Queen Elizabeth CCH, with supervision and notification requirements.
23. On 7 November 2022, the Applicant's representatives informed the NMC that the Applicant's employment had been terminated by Queen Elizabeth CCH due to its inability to provide the supervision required under the conditions of practice order. Therefore, at a review hearing on 30 November 2022, a panel of the IC varied paragraph 1 of the order, providing that she must "limit her nursing practice to one substantive employer which must not be an agency".
24. The Applicant was subsequently employed by Fairways at Ceris Newydd Nursing Home and Glyn Menai Dementia Care Centre.
25. On 9 May 2023, after a review hearing, a panel of the IC revoked the interim order with immediate effect. The panel was informed by the Applicant's representative that the allegations of physical harm to residents had been "narrowed" to emotional harm, and referred to that in its reasons. The panel noted the favourable testimonials and supervision reports, and the Applicant's insight, and concluded that the risks had been sufficiently mitigated. The panel found, based on the information before it, there was no longer a real risk of significant harm to the public should an interim order not be in place, nor was it proportionate or necessary in all the circumstances to impose an interim order on the grounds of public interest.

### **The challenged decision**

26. On 3 June 2024, the NMC undertook a further risk assessment identifying "a material change in the level of risk and cogent and reliable evidence of a pattern of behaviour towards vulnerable residents".
27. On 5 June 2024, a further interim order hearing took place before the Panel of the FTP Committee. By this time, the substantive hearing before the FTP had been listed for 21 October to 5 November 2024, and the allegations against the Applicant had been formulated.

28. The Panel was satisfied that there was new information available to it which the previous interim order panels did not have. Credible and cogent witness statements had been provided by the Applicant's former colleagues in the care homes where she worked which set out further detail and highlighted the level of risk. The Assistant Registrar had found material flaws in the Case Examiners' investigation on Referral 1, and referred it to the FTP Committee.
29. The Panel concluded that an interim suspension order was required, for a period of 18 months or until the matter was determined at the substantive hearing. The Panel determined, on the basis of the information before it, that there was a risk of repetition and consequent harm if the Applicant practised without restriction and so an interim order was necessary to protect the public.
30. The Panel concluded that an interim order was also in the public interest to maintain public confidence in the professions and to declare and uphold proper standards of conduct. A fully informed member of the public would be concerned to learn that a registered nurse who is facing such serious allegations that posed a risk to vulnerable members of the public was practising unrestricted. The Panel considered that this lack of confidence in the profession may prevent members of the public from seeking care.
31. The Panel reminded itself that it should act proportionally in considering the least restrictive order, having regard to the Applicant's interests, and which would protect patients and be in the public interest. The Panel concluded that it was not possible to devise a conditions of practice order which would be workable and sufficient to protect the public or meet the public interest. The Panel was satisfied that, in the particular circumstances of this case, an interim suspension order of 18 months was necessary and proportionate.

## Legal framework and NMC guidance

### **NMC Order**

32. By Article 31(2) of the NMC Order, a Practice Committee may make an interim order, pending a further decision:

“(2) ...if the Practice Committee is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interest of the person concerned, for the registration of that person to be suspended or to be made subject to conditions, it may –

(a) make an order directing the Registrar to suspend the person's registration (an “interim suspension order”), or

(b) make an order imposing conditions with which the person must comply (an “interim conditions of practice order”).”
33. Article 31(12) of the NMC Order, as amended, provides as follows:



“(12) Where an order has effect under paragraph (2), (7) or (9), the court may, on an application being made by the person concerned –

(a) in the case of an interim suspension order –

(i) terminate the suspension;

(ii) replace the interim suspension order with an interim conditions of practice order;

(b) in the case of an interim conditions of practice order –

(i) revoke or vary any condition imposed by the order –

(ii) replace the interim conditions of practice order with an interim suspension order;

(c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it),

And the decision of the court under any application under this paragraph shall be final.”

### **Case law**

34. In *Perry v Nursing and Midwifery Council* [2013] EWCA Civ 145 the Court of Appeal gave the following guidance on the imposition of interim orders:

“19. The statutory function of the Committee relevant in this appeal is its duty to determine whether to make an interim order....For this purpose the Committee must decide whether, on the basis of the allegation and evidence against the registrant, including any admission by him, it is satisfied that an order is necessary for the protection of the public, or otherwise in the public interest or in the interest of the registrant himself. The Committee must of course permit both parties to make their submissions on the need for an interim order and, if one is to be made, its nature and its terms. For that purpose it must consider the nature of the evidence on which the allegation made against the registrant is based. It is entitled to discount evidence that is inconsistent with objective or undisputed evidence or which is manifestly unreliable. The Committee may receive and assess evidence on the effect of an interim order on the registrant, and the registrant is entitled to give evidence on this. The registrant may also give evidence, if he can to establish that the allegation is manifestly unfounded or manifestly exaggerated; but the Committee is not otherwise required to hear his evidence as to whether or not the substantive allegation against him is or is not

well founded that is not the issue on the application for an interim order.

20. What the Committee cannot do, and should not do, is seek to decide the credibility or merits of a disputed allegation; that is a matter for the substantive hearing of the allegation by the Conduct and Competence Committee, pursuant to Article 27 of the Order. Necessarily, at the interim stage, the Committee must not and cannot decide disputed issues of fact in relation to the substantive allegations. The Committee must also be extremely cautious about rejecting or discounting evidence on the basis that it is incredible or implausible.”

35. In *General Medical Council v Hiew* [2007] EWCA Civ 369, the Court of Appeal gave guidance on the Court’s power to extend an interim order under section 41A(7) of the Medical Act 1983. Arden LJ observed, at [26], that Parliament had provided for the court, not for the regulator, to decide whether an extension should be granted, and concluded that “[u]nder this scheme, the exercise in decision making is to be performed by the court as the primary decision maker”. It is not a judicial review of a Committee’s decision.
36. Arden LJ held, at [28], that the criteria for the exercise by the court of its power to extend an interim order are the same as for the making of the original order, namely protection of the public, the public interest or the practitioner’s own interests. The court can take into account such matters as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not been concluded and the prejudice to the practitioner if an interim order is continued.
37. In *R (Sheikh) v General Dental Council* [2007] EWHC 2972 (Admin), a suspension order was imposed in the public interest on a dentist who had been convicted of a conspiracy to defraud (it was agreed that he did not pose a risk to the safety of the public). Davis J. said, at [16]:

“At all events, in the context of imposing an interim suspension order, on this particular basis, it does seem to me ..... that the bar is set high; and I think that, in the ordinary case at least, necessity is an appropriate yardstick. That is so because of reasons of proportionality. It is a very serious thing indeed for a dentist or doctor to be suspended .... in many cases just because of the impact on that person’s right to earn a living. It is serious in all cases because of the detriment to him in reputational terms. Accordingly, it is, in my view, likely to be a relative rare case where a suspension order will be made on an interim basis on the ground that it is in the public interest. I do not use the words “an exceptional case” because such language is easily capable of being twisted and exploited in subsequent cases .... Ultimately, of course, all these things have to be decided on the facts of each particular case.”

38. Davis J. considered the approach to be taken by the Court to an application under section 32(12) of the Dentists Act 1984 which is drafted in very similar terms to Article 31(12) of the NMC Order. He said:

“10. ... The Court has to approach the task by reference to its powers under 32(12) as a matter of original jurisdiction. At the same time, it seems to me that in the ordinary way the Court will show respect for the decision of a panel in this context, given that the panel is an expert body which is well acquainted with the requirements that a particular profession needs to uphold and with issues of public perception and public confidence.”

39. In *Sandler v General Medical Council* [2010] EWHC 1029 (Admin), Nicol J. considered the Courts approach to applications under Article 31(12) of the NMC Order and stated:

“12. Both parties agreed that the role of the Court was not confined to exercising a judicial review type jurisdiction. In other words, the power to terminate Dr Sandler’s suspension (or to substitute a different period) is not dependent on showing some error of law on the part of the IOP. That is the point that I understand the Court of Appeal to have made in *GMC v Hiew* [2007] 1 WLR 2007 where at [27] Arden LJ said ‘the powers conferred by s.41A(10) are also original powers and not merely powers of judicial review’. In that case, the Court was directly concerned with an application to extend a doctors suspension. The maximum period for which an IOP can suspend a doctor is 18 months. Any longer extension can only be granted by the Court under s.41A(7). In such a situation, the only order or orders by the IOP will have expired (or be about to expire). If nothing further is done the suspension will come to an end. It is unsurprising in these circumstances that the Court of Appeal characterised the Courts jurisdiction as ‘original’. The position with an application under s.41A(10) is different. The IOP has suspended Dr Sandler. His application is for that suspension to be terminated. My consideration of the application must surely start from the position that the IOP has thought that interim suspension is the right course...To describe the process as an ‘appeal’ may not do full justice to the power of the Court. It would seem to me that the Court does have power to consider subsequent developments and (where appropriate) fresh evidence. However, in my judgment the term does correctly acknowledge that in this context, unlike an application under s.41A(7), the Court is faced with an extant order of the IOP which it would only terminate if it thought that the order was wrong.”

40. At [14], Nicol J. did not adopt Davis J.’s test of necessity when applying the public interest limb (at [16]), observing that the Court must be cautious about superimposing additional tests over and above those which Parliament has set, but he agreed that suspension in the public interest must be “at least desirable in the public interest”. He

agreed that the Panel must consider very carefully the proportionality of their measure, weighing the significance of any harm to the public interest in not suspending the doctor against the damage to him by preventing him from practising.

41. In *R (MM) v NMC* [2022] EWHC 2482 (Admin), a registrant was suspended following non-disclosure of a barring order imposed after he received a police caution for slapping his step-daughter, which had been sent to the wrong address and never received by him.
42. Mr David Lock QC, sitting as a Deputy High Court Judge, observed, at [23], that “there has to be a measure of proportionality applied to that exercise in order to balance the real nature of the risks, the detriment to patients from being deprived of the services of an otherwise competent nurse (particularly at a time of intense shortage of nurses in the NHS) and the very real detriment to the individual nurse who is subject to suspension”.
43. In *Dr MXM v GMC* [2022] EWHC 817 (Admin), Steyn J. terminated a suspension order imposed on a General Practitioner who was alleged to have had sexual relations with a patient, on the grounds that the panel’s evaluation was flawed and the order was disproportionate. She also found that the panel did not provide adequate reasons for its conclusions on the need for a suspension order and its duration (at [85] – [86]).
44. Steyn J. adopted the same approach as Nicol J. in *Sandler*, at [35] on the approach that the Court should take. She added, at [37]:

“The court will always be mindful that it is being asked to overturn a decision of a specialist disciplinary tribunal, but the weight to be given to the opinion of the tribunal is a matter for the court to determine, as it thinks fit in the circumstances of the individual case.”

45. Steyn J. cited the following authorities on the duty to give reasons:

“32. In *Abdullah v General Medical Council* [2012] EWHC 2506 (Admin) Lindblom J observed at [102]:

“... the GMC’s guidance discourages the giving of “long detailed reasons”. What the IOP had to do – no more and no less – was to explain why their decision was the one they had announced. In most cases, probably in every case, this can be done briefly. The IOP were exercising a statutory power framed in simple terms. Three interests are embraced in that provision: first, “the protection of members of the public”, second, “the public interest”, and third, “the interests of a fully registered person”. The IOP had to exercise their judgment within those statutory parameters. And it is in this context that the adequacy of their reasons must be assessed. The parties knew what the contentious issues had been. They could expect to be told how those issues had been resolved and why the decision went the way it did. The losing side could expect to learn why it had lost. But the IOP did not have to provide an elaborate explanation

of their decision. Reasons were required, but not reasons for reasons.”

33. Any inadequacy in the IOT’s reasons would not, of itself, provide a ground for terminating an interim order but if the reasoning is inadequate or opaque the weight to be attached to the professional opinion of the IOT will be diminished: Harry at [2]; Hussain v GMC [2012] EWHC 2991 (Admin), HHJ Pelling QC at [12].”

46. In *Professional Standards Authority for Health and Social Care v GMC & Uppal* [2015] EWHC 1304 (Admin), I summarised the duty to give reasons as follows:

“42. Failure to provide adequate reasons for a decision was held to be a serious irregularity leading to a remittal in *Council for the Regulation of Health Care Professionals v. General Dental Council & Marshall* [2006] EWHC 1870 (Admin) because the Judge was unable to determine whether or not the sanction was appropriate.

43. In this case, I did not find the reasons to be inadequate, bearing in mind that they are the reasons of a regulatory panel (comprising of health practitioners and a lay member, with a legal assessor), which is not expected to give reasons to the same standard as a court. I found them intelligible and sufficient to enable the parties to know why they won or lost, and for the PSA to consider whether the decisions were too lenient.

44. At times the PSA embarked upon a forensic examination of the determination, seeking to identify ambiguities, omissions or infelicities of expression. The Panel is comprised of lay members, not lawyers, and the determination is drafted under pressure of time during the hearing, so allowance must be made for imperfect drafting. Its reasons will be adequate if they summarise the Panel’s findings on the principal important issues. The Panel need not record every point made to it in evidence and submissions in order to show that it has taken it into account. This is particularly so in fitness to practise hearings where the parties and the appeal court has a full transcript of the hearing.”

47. In this case, the NMC cited *Moyo v Nursing and Midwifery Council* [2015] EWHC 3547 (Admin) in which I applied the same principles to the reasons given by a FTP panel of the NMC, at [13].

### **NMC guidance**

48. The NMC guidance titled ‘Decision making factors for interim orders’ (version dated 10 April 2024) provides materially as follows:

“Overview

The test that a panel uses when deciding whether to impose an interim order is found in A.31(2) of the NMC Order 2001. The panel may make an order if they are satisfied that:

- (a) it is necessary for the protection of members of the public; or
- (b) it is otherwise in the public interest; or
- (c) it is in the interests of the person concerned.

The panel's role involves conducting a risk assessment in the light of the three grounds above. The panel is asking themselves "In this particular case, what would be the risk or risks involved in allowing this person to keep practising without restriction?"

....

### **Guiding Principles for Interim Order Consideration**

It is important that panels consider each individual case on its own circumstances and merits. They will need to identify and weigh up the risks specific to that case and decide whether they are satisfied that one or more of the three grounds is met. If they are satisfied that one or more grounds is met, they will then need to consider what type of interim restriction is appropriate for that particular case.

The panel should have in mind the following principles when making their decision:

- (a) Evidence of the concern

As part of their consideration of the case as a whole, it will be necessary for the panel to look at the evidence which relates to the concerns we have about the professional's fitness to practise. Whilst there is no evidential threshold in the NMC Order, there needs to be some evidential basis for the concern in order for the panel to then go on to decide what risks the concern presents, and whether they need to take any action in relation to those risks.

So how should the panel approach this part of their consideration? The panel would need to be satisfied that the evidence is cogent, and is not fanciful, not frivolous, not obviously contradicted by other evidence or entirely misconceived.

The panel will need to examine the evidence before it critically and keep the following in mind in doing so:

- The interim order panel cannot and must not attempt to make findings of fact.

- The nature and strength of the evidence ....
- The source of the evidence ....
- The accuracy of the information and whether it's sufficiently clear for the professional to understand the basis of the concern. ....
- Whether the nurse, midwife or nursing associate has seen or been given an opportunity to see the evidence given to the panel so that they are able to give a fully informed response to the interim order request. ....

Unlike a final substantive hearing, witnesses do not normally attend to give evidence and the panel will make a decision on the papers, taking into account representations from both the NMC and the nurse, midwife or nursing associate.

**(b) The nature and seriousness of the concern, and associated risks:**

The panel will need to assess the nature and circumstances of the fitness to practise concern or concerns, so that they can understand the gravity of what is alleged to have happened in that specific case.

Having established the seriousness of what is said to have happened, the panel can then focus on the implications going forward in terms of risk. The panel will consider the potential risks of allowing the professional to continue to practise without restriction whilst the NMC look into the concerns alleged against the professional, whether or not those concerns are ultimately found to be true.

The panel should have regard to the following when assessing each case:

- Whether there is a direct link between the concern and the professional's clinical practice
- How much harm the alleged conduct has already caused, or could have caused, to the public. This could include physical, mental, emotional or financial harm
- How likely it is that the conduct would be repeated if some form of restriction was not put on the professional's practice
- The professional's past or current fitness to practise history

- Whether there are existing restrictions in place imposed by the police (bail conditions), an employer or another regulator
- How likely is it that there would be serious damage to public confidence in the professions, if their practice was not restricted whilst the concerns were investigated
- If they are considering an order in the professional's own interests, how likely it is that the person concerned would suffer harm if their practice was not restricted.

We have separate guidance on seriousness and insight and strengthened practice which the panel may find helpful to consider when thinking about seriousness, or how likely it is that incidents may reoccur.

**(c) Proportionality and applying the test:**

When the panel has established the risks they think are involved in a particular case they will then need to weigh those risks up against the professional's interests.

Considering the interests of the nurse, midwife or nursing associate includes considering their right to practise unrestricted, damage to their professional reputation, and their ability to address any concerns through demonstrating safe practice (although this may be less relevant in cases that do not relate to the nurse, midwife or nursing associate's clinical ability).

The panel conducts this balancing exercise with the three grounds of the interim order test in mind. When considering the three grounds, the panel would need to bear in mind the following:

For an interim order to be considered necessary for the protection of the public, it is not enough for the panel to consider that an interim order is merely desirable. The panel must be satisfied that there is a real risk to patients, colleagues or other members of the public if an order is not made.

It would be relatively rare for an interim order to be made only on the grounds that an order is otherwise in the public interest, if there is no evidence of a risk of harm to the public, so the threshold for imposing an interim order solely on this ground is high ....

It is a significant step to place restrictions on a professional's practice on the basis that it is in that person's own interests. The panel would have to very carefully assess the risk of harm to that



individual, including the likelihood and seriousness, and balance that against any other competing interests the person might have.

If the panel concludes that an interim order is required in a particular case, it will then need to give careful consideration to what kind of restriction is required, bearing in the mind that any interim order should be proportionate to the risk identified in that particular case.”

### **Grounds of challenge**

49. The Applicant relied on six grounds of challenge, as set out below.

#### **Ground 1**

50. Under Ground 1, the Applicant submitted that the Panel erred in failing to provide sufficient weight to the Applicant’s positive ongoing work over the last 13 months, where such work was completed without any order in place. It was not necessary to impose any interim order.
51. Although the Panel noted that the Applicant was able to practise for 13 months without further concerns, it failed to give her career history any real scrutiny and did not properly consider how much weight should be attached to it.
52. The Panel placed significant weight on the risk of repetition in circumstances where the Applicant had demonstrated a lengthy period of positive work where no new concerns arose.
53. Previous panels were aware of the extent of the allegations, under both Referrals 1 and 2 but did not consider an interim order to be necessary.

#### **Grounds 2 and 3 (linked)**

54. Under Ground 2, the Applicant submitted that the Panel failed to apply the proportionality principle appropriately in that they failed to consider adequately the time from October 2022 to May 2023, when the Applicant worked subject to a conditions of practice order without adverse incident.
55. Under Ground 3, the Applicant submitted that the Panel ought to have properly set out their rationale for not imposing a conditions of practice order when the Applicant had previously worked successfully under conditions.
56. In support of these Grounds, the Applicant submitted that the Panel failed properly to consider whether conditions were workable, particularly in circumstances where indirect supervision had been successful, as demonstrated by the absence of further concerns being raised and positive references from the current employer.

57. The Panel failed to address why a conditions of practice order was no longer appropriate in circumstances where an earlier panel, which was aware of both sets of allegations, had considered it to be a workable alternative to a suspension order.

#### **Ground 4**

58. Under Ground 4, the Applicant submitted that the Panel failed to assess risk appropriately in the circumstances of this case when the particulars and details of the regulatory concerns were known to previous panels who either imposed a conditions of practice order, or no order, when the same facts were available.
59. The Panel did not adequately consider the Applicant's ability to address the concerns raised by demonstrating safe practice. The positive testimonial evidence provided by the Applicant's current employer confirmed the absence of any concerns, as did the 13 month period of unrestricted practice.

#### **Ground 5**

60. Under Ground 5, the Applicant submitted that the Panel erroneously relied upon the presence of witness statements as new information when the details of the concerns was known to panels previously who were also aware that the initial decision to close a regulatory investigation was under review.
61. The Applicant submitted, at paragraph 31 of Ms Maqboul's skeleton argument, that the Panel:

“... wrongly considered the witness statements as factors which elevate the level of risk rather than the natural legal progression in a case. The information contained in the statements is not new, it is the iteration of the earlier allegations in a different evidential format. Earlier Committees were aware of both referrals and the nature of the allegations. Formalising those allegations within a witness statement neither constitutes a material change in circumstances nor increases the level of risk. In real terms, there had not been a change to the face of either case. The only material change being the Applicant had been able to demonstrate a prolonged period of safe and unrestricted practice.”

#### **Ground 6**

62. Under Ground 6, the Applicant submitted that the decision to impose a suspension order was in breach of Article 8 ECHR as the Panel did not adequately consider the impact of the suspension on the life of the Applicant and its order prevented the Applicant from demonstrating safe practice to reduce the likelihood of repetition.
63. The Applicant submitted that the interim suspension was excessive in circumstances where the Applicant had always been permitted to practise. The Panel failed to take proper account of the impact of the suspension on family life.

## **Conclusions**

64. The Applicant's Grounds overlap significantly, and so to avoid undue repetition, I have considered them as a whole.
65. Applying the principles in *Hiew*, *Sandler*, *MXM* and *Sheikh*, as cited above, the Court is exercising an original jurisdiction conferred by Parliament by Article 31(12) of the NMC order, to decide whether the interim suspension order should be varied or terminated. This is not an appeal or a judicial review jurisdiction and so the decision is not dependent on finding an error of law on the part of the Panel. However, the Court will be mindful that it is being asked to overturn an order made by a specialist tribunal and will only do so if it considers the order to be wrong.

### **Departing from the decisions of previous panels**

66. Under all six Grounds, the Applicant complains that the Panel erred in imposing a suspension order in circumstances where:
- i) no interim order had previously been made on Referral 1;
  - ii) on 10 October 2022, an IC panel made a conditions of practice order which enabled the Applicant to continue working, for 18 months;
  - iii) on 9 May 2023, an IC panel revoked the interim order altogether; and
  - iv) no further order was made until 5 June 2024, more than a year later.
67. In my judgment, the NMC was correct in its submission that the Panel meeting on 5 June 2024 was the first occasion upon which a panel was tasked with considering all the allegations against the Applicant, identified following sufficient investigation, and supported by evidence.
68. When Referral 1 was first submitted, the NMC did not make an application for an interim order, presumably because the NMC considered that the criteria for such an application were not met. Subsequently, the Case Examiners closed the case against the Applicant on 6 October 2021. Although they found that there was a realistic possibility that the allegations in Regulatory concerns 2, 3, 4 and 5 would be proved, they concluded that there was not a realistic possibility that the FTP Committee would find that the Applicant's fitness to practise was currently impaired. In their view, the incidents did not appear to be demonstrative of a pattern of behaviour, given the current evidence of continued safe practice, and the absence of any similar issues being reported by her current employer. They considered that she had demonstrated sufficient insight and had remediated the alleged failings.
69. Because Referral 1 was closed, no referral for an interim order was made to the IC. When Referral 2 was referred to the IC on 10 October 2022 and 9 May 2023, Referral 1 was only considered as part of the Applicant's regulatory history, not for consideration of an interim order. Although the IC was aware that the decision to close Referral 1 was under review, its status remained "closed" unless or until that decision was overturned.

70. Following Referral 2, which was received on 22 September 2022, the NMC reviewed the decision to close Referral 1. The Assistant Registrar conducted a thorough assessment and, in her report dated 5 December 2023, she concluded that the previous decision was materially flawed, for the following reasons:
- i) In regard to Regulatory concern 1 (failure to act appropriately in response to a deteriorating Resident A), further investigation was conducted into who was responsible for monitoring the resident. Further evidence from the Home Manager indicated that it was the Applicant's responsibility to monitor the resident, as nurse in charge, and that the resident would not have been visible from the workstation or communal areas. In further evidence, Resident A's daughter stated that the Applicant did not check on her mother at all during the night or early morning, contrary to the response given by the Applicant. The Assistant Registrar found that there was a material flaw in the Case Examiners' decision as this concern was not properly investigated. There was evidence to support that it was the Applicant's responsibility to monitor the resident and that she failed to do so.
  - ii) In regard to Regulatory concern 2 (failure to safeguard residents' care), the Assistant Registrar found that the Case Examiners failed to consider the evidence before them which alleged that the Applicant frequently silenced residents' call bells instead of attending to residents' needs. This gave rise to a concern that the Applicant was failing to deliver the fundamentals of care effectively.
  - iii) In regard to Regulatory concern 4 (inappropriate behaviour towards residents), the Case Examiners recognised this as serious but noted that there was no evidence of physical abuse or harm, as the behaviour was limited to inappropriate comments, and could be remediated through reflection, insight and further training. The Assistant Registrar found that the Case Examiners failed properly to consider the allegation that the Applicant was swinging the call bell towards resident TW's face, which was an allegation of physical abuse. There was also direct witness evidence that the Applicant made comments about wanting to kill the residents, shutting them up, or giving them tablets so that they would sleep. The Assistant Registrar noted that the NMC's guidance on seriousness describes concerns such as deliberately harming patients as being so serious that it may be less easy for the registrant to put right the problems in their practice or attitude which led to these incidents occurring. In this case the Applicant had denied these allegations and had not provided any information to suggest that she had shown sufficient insight or reflection on these serious allegations of abuse towards residents in her care.
  - iv) In regard to Regulatory concern 5 (sleeping on duty), there was witness evidence that the Applicant was sleeping on duty and neglecting residents. The Case Examiners failed to consider all the relevant evidence in regard to this allegation. The allegation was disputed by the Applicant, but there was a realistic possibility that it could be proved. There was insufficient information to support the Case Examiners' finding that the Applicant had demonstrated sufficient insight and remediated the alleged failings.

- v) The Case Examiners failed to consider the evidence that the Applicant failed to treat residents and family with kindness and compassion, which included reference to JJ (Resident A's daughter), stating that the Applicant was rude, uncaring, and just wanted to deal with the medications. Further evidence had been obtained from JJ in which she described the Applicant's demeanour as aggressive, unhelpful and intimidating. The other Allegations under this heading which were before the Case Examiners and have since been referred to the FTP are at 5(a) – (e) and (h).
  - vi) In regard to Regulatory concern 3 (medication), the Case Examiners did not properly consider the evidence that the Applicant was mastering colleagues' signatures and signed the controlled drugs book in their names, so as to misrepresent that she had administered medication with a second checker when she had not.
71. The Assistant Registrar concluded that there was a realistic possibility that the FTP Committee would find that the incidents alleged in Regulatory concerns 1, 2, 4 and 5 did happen, as well as the further incidents and concerns she identified. She also found that there was a realistic possibility that the FTP Committee would find that the Applicant's fitness to practise was impaired, by reason of these incidents, if they are indicative of an attitude towards residents and a pattern of behaviour which present a risk to the health, safety and wellbeing of residents. Given the nature of the multiple concerns, the public's confidence and trust in the nursing profession could be affected. Therefore she concluded that there was a case to answer, and she referred the matter to the FTP Committee on 5 December 2023.
72. The Assistant Registrar's substituted decision on Referral 1 was not available to the IC panels at the hearings on 10 October 2022 or 9 May 2023. As stated above, Referral 1 was not referred to those panels for consideration for an interim order. It was presented to the panels as part of the regulatory history.
73. Following a risk assessment carried out on 2 May 2024, the NMC concluded that an interim order hearing was necessary, for the following reasons:
- “Given the opening of closed linked case 073775/2019, it appears there has been a material change in the level of risk and there appears to be cogent and reliable evidence of a pattern of behaviour towards vulnerable residents and what also appears to be an underlying attitudinal issue. The concerns are serious in nature and involve vulnerable residents. The Registrant's practice may need to be restricted whilst these concerns are investigated as there otherwise might be a real risk to members of the public and serious damage to public confidence in the profession.”
74. At the hearing on 5 June 2024, the Panel had the benefit of the following material which was not before the previous interim order panels:
- i) Fully pleaded 'Allegations', in preparation for the forthcoming substantive FTP hearing, which included all the allegations made in Referrals 1 and 2, and some

additional allegations that arose from further investigations by the Respondent (Allegation 5(f) and (g)).

- ii) The detailed decision of the Assistant Registrar on Referral 1.
- iii) Witness statements and/or exhibits which were in existence at the date of the earlier panels, but were not provided to those panels. They provided further detail and context to the allegations already recorded.

75. The Panel made reference to the new material in its decision:

“The panel was satisfied that there is new information before it that the previous panel did not have. It was of the view that this information, namely the witness statements, has set out further details which has highlighted the level of risk. It is evident from the AR decision that the NMC is now relying on the evidence of charges put forward by several witnesses. It was satisfied that there is evidence of concerns from identifiable, credible and cogent sources.”

76. In my judgment, there are numerous credible allegations of abuse and neglect of vulnerable care home residents, by a senior nurse, occurring over a lengthy period of time. I agree with the following conclusions by the Panel:

“It found the nature of the allegations to be very serious as they suggest attitudinal issues, including callous attitude and behaviour towards extremely vulnerable patients, dishonesty in relation to medication administration and disregard for patient safety. The panel concluded that the alleged behaviour would cause a risk of harm to patients if repeated.”

**Failing to give sufficient weight to the Applicant’s career, training, and positive testimonials and references**

77. In Grounds 1, 2, 3, 4, 5 and 6, the Applicant submits that the Panel erred in failing to give sufficient weight to the Applicant’s successful career, her training, the positive testimonials and references received from employers, and the absence of any recent complaints. This material was placed before the Panel and the Applicant’s representative, Mr Mackell, drew the Panel’s attention to it. Mr Mackell made the following submissions:

- i) Since May 2023, the Applicant has worked 3 shifts per week in a care home and there is no evidence of any incidents, referrals, disciplinaries or other concerns.
- ii) She is well thought of and well regarded in her current employment. She is mentoring junior nurses and she has been offered a clinical lead role.
- iii) She has completed numerous training courses, including as recently as 2023 and 2024.

- iv) Her reflective piece shows a degree of insight, and acceptance that her communication skills could be improved.
- v) She has multiple favourable testimonials from managers and colleagues. In particular, from Ms Jo Cairns, the home manager, dated 31 May 2024, which confirms that she has no concerns with her practice, that she is kindly, polite and courteous, and has continued to improve and develop in the past 16 months. Ms Cairns considers that she is fit to practise without restrictions. Also, Ms Jones, who was the care home manager at Plas Penmon (from where the Applicant was dismissed following an investigation into the allegations in Referral 2), provided a statement saying that she was an excellent nurse, with good knowledge, and she was reliable and would always help out, even at the last minute.

78. I do not accept that the Panel failed to have regard to this favourable evidence. It is apparent from the decision that Panel members did take account of it. The decision stated as follows:

“The panel had regard of the witness statements made between 2019 and 2021. It noted that the evidence of concerns regarding the allegations were made from witnesses and patients located in two different care homes at different times. The panel noted that the allegations are similar in terms of the attitudinal concerns suggested.

The panel noted the positive steps you have taken in providing a reflective statement, several online training certificates and a good number of positive testimonials, including from your current employer and the family of a patient. It also noted that you were able to practise for 13 months without further concerns. However, the panel considered that the allegations were attitudinal in nature and, given that there was a period of 3 years in between the allegations, the panel is satisfied that there is a risk of repetition.

The panel determined, on the basis of the information before it, that there is a risk of repetition and consequent harm should you be allowed to practise without restriction at this time. Therefore, the panel determined that an interim order is necessary to protect the public.”

79. The Panel had to assess the risk of repetition on the basis that the allegations could be well-founded; it was not tasked with determining whether or not the allegations were proved. In making its assessment the Panel had to decide how much weight to give to the competing factors, and in the exercise of its judgment, it was satisfied that there was a risk of repetition and consequent harm, and so an interim order was necessary to protect the public i.e. care home residents. This was a legitimate conclusion which the Panel was entitled to reach on the evidence before it.

80. In my view, the evidence revealed two different sides to the Applicant. On the one hand, she was an experienced, competent nurse, relied upon by managers. On the other hand, her attitude towards vulnerable residents could be unacceptably harsh and

sometimes neglectful. It is obvious that it was possible for those positive attributes to co-exist with the negative attributes.

81. I consider that the absence of further complaints or referrals after she was referred to the NMC did not necessarily mean that the allegations were untrue, or that the Applicant's attitude had permanently changed for the better. It may be that the Applicant was taking extra care to avoid any cause for complaint whilst she was subject to fitness to practise procedures. Furthermore, the negative side of her personality would not necessarily be obvious to managers, particularly on night shifts when the Applicant was in charge, and other managers would not be present. The residents were frail, many had dementia, and so they would have difficulty communicating complaints successfully, or be fearful of doing so. Also, some colleagues stated that they were fearful of reporting her because the Applicant was intimidating and had said she would find out if anyone reported her to management.
82. I also consider that the Panel was justified in concluding that an interim order was in the public interest for the reasons it gave, as follows:

“The panel concluded that an interim order is also in the public interest to maintain public confidence in the professions and to declare and uphold proper standards of conduct. It determined that a fully informed member of the public would be concerned to learn that a registered nurse who is facing such serious allegations that posed a risk to vulnerable members of the public is practising unrestricted. The panel considered that this lack of confidence in the profession may prevent members of the public from seeking care.”

83. The serious nature of the allegations and the vulnerability of the residents meant that the high threshold for an interim order in the public interest, to maintain public confidence and uphold standards of conduct, was met in this case.

#### **The Panel's decision not to impose a conditions of practice order**

84. In Grounds 2, 3, 4 and 6, the Applicant submitted that the Panel failed properly to consider the fact that the Applicant worked under a conditions of practice order, without adverse incident, between October 2022 and May 2023, and received favourable references from her employers. She also worked for some 13 months without any interim order in place, again without adverse incident, and with favourable references from her employers. In the post-hearing submissions, the Applicant submitted that the NMC failed to obtain an update about her performance at work from her current employer. As the Applicant's manager, Ms Cairns, provided a statement, and no one suggested that the statement was incomplete, I do not consider that the NMC was required to obtain a further statement from Ms Cairns.
85. It is telling that neither the Applicant nor the NMC invited the Panel to make a conditions of practice order. Nonetheless, the Panel was required to consider this less restrictive alternative, applying the principle of proportionality. In my view, the Panel clearly considered whether or not to make a conditions of practice order, and decided not to do so, for legitimate reasons. The Panel stated:



“The panel noted the positive steps you have taken in providing a reflective statement, several online training certificates and a good number of positive testimonials, including from your current employer and the family of a patient. It also noted that you were able to practise for 13 months without further concerns. However, the panel considered that the allegations were attitudinal in nature and, given that there was a period of 3 years in between the allegations, the panel is satisfied that there is a risk of repetition.

.....

The panel, having determined that an interim order was necessary, reminded itself that it was considering this matter afresh and that it should act proportionally in considering the least restrictive order which would protect patients and be in the public interest. It also considered your interests.

The panel considered whether to make an interim conditions of practice order and, in all the circumstances, it determined that such an order would be insufficient to protect the public and to meet the wider public interest considerations of this case. Due to the nature and the seriousness of the allegations, the panel was not satisfied that an interim conditions of practice order could be devised which would be sufficient to protect the public or meet the public interest. The panel determined that due to the allegations of harmful behaviour towards patients that appears to be attitudinal, dishonesty and disregard for patient safety, the panel find that the level of supervision that would be required to adequately protect the public would not be workable.

The panel is satisfied that, in the particular circumstances of this case, an interim suspension order is necessary and proportionate. It noted that substantive order is scheduled to take place from 21 October to 5 November 2024. Accordingly it has decided to make this interim order for a period of 18 months or until this matter is determined.

The panel has noted that this interim order will prevent you from working as a registered nurse and, as a result, you may suffer financial professional and reputational consequences. However, in applying the principle of proportionality, the panel determined that, in any event, the need to protect the public and the wider public interest outweighed your interest in this regard.”

86. I agree with the Panel’s reasoning. The Panel had assessed that there was a real risk of repetition of the Applicant’s harmful behaviour, notwithstanding the positive evidence of her work and absence of recent complaints. I refer to my observations and conclusions at [79]-[81] above. The incidents were frequent, occurred at different care homes, in regard to different residents, and they took place repeatedly over a lengthy period of time. The incidents were often brief and unpredictable. The Applicant was a

senior nurse who frequently worked nights when there were no other senior staff to supervise her. It was difficult to maintain current staff levels, let alone provide extra senior staff. More junior staff gave evidence that they were intimidated by her and therefore reluctant to raise their concerns either with her in person or to management. Therefore it was not workable to put in place the level of supervision of the Applicant that would reasonably be required to ensure that there was no repetition of her harmful behaviour.

87. The Applicant's representative submitted to the Panel that an interim suspension order would damage the Applicant reputationally, professionally and financially. The Panel accepted this, and weighed these adverse factors in the balance when undertaking the proportionality exercise. Applying the principles of proportionality (see *Sandler, MM* and *Sheikh*) I agree with the Panel's conclusion that the need to protect the public and the wider public interest outweighed the damage to the Applicant's interests.
88. After the hearing, pursuant to the Court's directions, the Applicant made written submissions in support of an alternative application for a conditions of practice order (having previously not appreciated that the Court had power to impose such an order). For the reasons I have set out above, I refuse that application.

### **Proportionality and Article 8 ECHR**

89. In Grounds 2 and 3, the Applicant submitted that the Panel failed to apply the principle of proportionality. In Ground 6, the Applicant submitted that, in breach of Article 8 ECHR, the Panel failed to have proper regard to the effect of a suspension on the Applicant's family life.
90. It can be assumed that this specialist Panel was familiar with the principles of proportionality from their training, their experience when sitting on previous cases, and the NMC guidance (set out above). The transcript records that the Legal Assessor gave the Panel advice on proportionality during its deliberations.
91. The Panel expressly referred to its application of the principle of proportionality: see the three references to proportionality in the passage of the decision quoted at [85] above. The Panel expressly had regard to the submissions of the damaging effects of an interim suspension order that were made by the Applicant's representative.
92. For these reasons, I am satisfied that the principle of proportionality was appropriately applied by the Panel and I repeat my conclusions at [87] above.

### **Reasons**

93. The Applicant made general submissions about the inadequacy of the Panel's reasoning, and specifically under Grounds 3 and 6. I refer to the authorities cited at [45] – [47] above, which set out the standard to be applied to a NMC panel. In my judgment, this Panel's reasons met the required standard. Its conclusions on the principal issues, and its explanation for them, were clearly stated.

### **Length of order**

94. The Panel decided to make an interim suspension order “for a period of 18 months or until this matter is determined”. The NMC conceded that the length of the suspension order was disproportionate, as the substantive hearing was listed to be heard some 4 months after the panel hearing. Bearing in mind the possibility that the hearing in October 2024 might be adjourned, the NMC invited the Court to reduce the length of the order to 12 months, to run from 5 June 2024. The Applicant made no submissions on the revised length.
95. I agree that the interim suspension order should remain in place until the fitness to practise proceedings are concluded, whereupon it will cease to have effect. It is common for fitness to practise hearings to be adjourned, for a variety of reasons, and if that happens, there is usually a considerable delay before another hearing can be listed, because of the volume of pending cases. It is also common for fitness to practise hearings to go part-heard, and it then takes time to reassemble the same panel. Therefore it is appropriate for the Panel’s order to be varied in duration from 18 months to 12 months.
96. In conclusion, the application to terminate the interim suspension order, or to substitute a conditions of practice order, is refused. The duration of the interim suspension order is to be reduced to 12 months, running from 5 June 2024.