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A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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Wrestling with Witness Weaknesses

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Hearing panels often make credibility assessments. Many times, the finding is based on the most reliable evidence even though no witness was “lying”. Events might not have been observed closely. Memories might have faded. Motivation might have tainted the witness’ recollection. However, sometimes one of the witnesses is simply not being candid.

In the English case of [*Hindle v The Nursing And Midwifery Council*](#) [2025] EWHC 373 (Admin), the Court gave guidance on managing this type of challenging credibility conundrum. Four nursing colleagues working at a boarding school jointly submitted a “collective grievance” containing a “blizzard of allegations” against their manager to both their employer and the managing nurse’s regulator. The allegations included verbal and physical abuse of students, breaching confidentiality, dishonesty with management, and record keeping failures. Upon being notified of the complaint, the managing nurse took sick leave and eventually left her employment by “mutual agreement”.

The regulator brought 32 allegations of misconduct against the managing nurse. Except for acknowledging some minor administrative deficiencies, the managing nurse’s defence was that the complaining 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.” Once the managing nurse was gone from the position, the complaining nurses were less eager to assist in either of the employer’s or regulator’s investigations or at the discipline hearing. In fact, one of them had to be summonsed to testify.

The hearing panel found that about half of the allegations were proven and that the managing nurse’s fitness to practise was impaired (i.e., worthy of protective sanctions). Her registration was suspended for six months and an interim suspension pending appeal was also imposed. By the time the Court rendered its decision, the managing nurse had been suspended for 13 months.

The Court reversed the finding on the basis that the credibility findings were not justified. In particular, the Court noted the following issues with the hearing panel decision:

1. **Need for reasons.** Where, as here, the evidence is so strikingly inconsistent, it was insufficient for the hearing panel to summarize the conflicting evidence and prefer one version over the other. An explanation was required as to why one version was accepted and the other was not.
2. **Assessment of Overall Credibility.** The assessments of credibility were separated for each finding. The Court said:

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 [regulator'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.

A troubling (but far from only) example was that contemporaneous video evidence demonstrated that a specific allegation of physically mishandling a student was incorrect. While acknowledging that

witnesses can be unreliable on some issues and reliable on others, the Court said:

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.

While it is not obligatory in every case to analyze the overall credibility of key witnesses, in this case the Court concluded it was necessary.

3. **Collusion.** The hearing panel failed to adequately address the concern that the complaining nurses had not only made a "collective grievance", but they had also collaborated in the formulation of their specific concerns. Despite denying it, there were substantial indications that collusion had occurred. The hearing panel wrongly characterized this concern as whether there was "a conspiracy to deceive" without considering the other possible impact of the collusion on the credibility of the complaining nurses' testimony.
4. **Addressing Inconsistencies.** The hearing panel did not adequately address the inconsistencies in the complaining nurses' evidence. For example, in at least one instance, a complaining nurse stated that she was present for an incident when other compelling evidence indicated she was not. Similarly, one of the complaining nurses was inconsistent

as to whether she had burned or shredded contemporaneous notes (either of which would be disturbing). Also, a complaining nurse denied applying for the managing nurse's job after it became available, while other documented evidence indicated that she had.

5. **Evasiveness.** When cross-examined on several points, some of the complaining nurses were evasive. In fact, at least one of the complaining nurses refused to answer questions on cross-examination (and the hearing panel did not compel her to answer). In another instance, a complaining nurse indicated that the managing nurse had posted a "bullying", "aggressive" or "intimidating" note; but when confronted with the actual note which could not reasonably be characterized in that way, she continued to insist that it was.
6. **Inferences.** The Court was also concerned about some of the inferences made by the hearing panel. For example, the fact that the managing nurse was frustrated by a particular student did not corroborate a finding that she had shouted at them.

The Court accepted a characterization that the complaining nurses engaged in a "witch-hunt". The Court said: "Their collective grievance, though copied to the NMC [regulator], was not truly motivated by a concern to protect the public interest."

Some other issues addressed by the Court include the following:

- a) **Proving Standards of Practice.** For borderline issues, such as how to document certain events, the regulator should have provided objective evidence of the

professional expectation through a written policy or a formal opinion of an accepted standard of practice that applied.

- b) **Delay and Over-Charging.** The Court was critical of the regulator proceeding with 32 allegations, not all of which were serious, for almost six years. The Court noted that the managing nurse had worked without concern for 4.5 years after the complaint was made and lost that position because the regulator's proceedings were taking so long.
- c) **Interim Suspension Pending Appeal.** While the interim suspension order was not before the Court, it noted:

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.

Panels making credibility findings, particularly where the competing version of events are so dramatically different, should

consider and address the weaknesses in the witnesses' evidence.

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