Witness Name: Helen Herniman
Statement No.: 7
Exhibits: 4
Dated: 24 January 2025

THIRLWALL INQUIRY

WITNESS STATEMENT OF HELEN HERNIMAN

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1. I provide this supplementary witness statement to the Inquiry in response to the two Rule 9 requests received on 09 January 2025. This is my third statement to the Inquiry, and it follows the oral evidence session I attended on 08 January 2025.

2. I have been asked by the Inquiry to address several points in this statement. The first Rule 9 request regards the fitness to practise data we hold from over the past ten years in relation to registrants when acting as a Board Director. The second Rule 9 request seeks further information touching on points raised in my oral evidence session. This includes (1) further detail about our guidance for nursing and midwifery professionals on using social media and instant messaging services; (2) further information about our planned review of revalidation, and potential changes to the use of health and character declarations as part of that; and (3) any further comments we have on the Employer Link Service (ELS) statement (**INQ0108377**) and the addendum to that statement (**INQ0108376**). This statement will address each of these points in turn.

Fitness to practise data

3. The Inquiry has requested further information about the fitness to practise data we hold from over the past ten years in relation to registrants when acting as a Board Director. This includes information such as the number of referrals received, the number of interim order applications made, and further detail about case progression and substantive outcomes.

4. Firstly, before answering the specific questions put forward by the Inquiry, I would like to start by providing a brief explanation about the fitness to practise data we hold, the way that we record that information, and the caveats that exist.

5. As explained at paragraph 192 of Andrea Sutcliffe's first witness statement (**INQ0002412**), all new fitness to practise referrals we receive are logged on our case management system. Fitness to practise cases are opened against individual professionals on our register and are each allocated a unique case reference. Over time, the information we record and the way that we store that information has evolved. Since 2009 we have captured structured electronic fitness to practise data including the registrant's name, PIN, registration type and case stage. Since 2017, we have also logged allegation type and employer information for each case.

6. Once the data has been logged, our screening team is responsible for completing an initial assessment on all new referrals, in line with our three-stage screening test, as set out at paragraph 97 of Andrea Sutcliffe's first witness statement. As part of this assessment, using our high-profile criteria (**Exhibit HH017**), the screening team will also consider whether a case [INQ0108839] is high-profile; and whether it should be referred to our Major Investigations Team for ongoing case management. The criteria for marking a case as high-profile includes, but is not limited to, factors such as:

    a. Whether the referral relates to an ongoing major investigation or public inquiry; and

    b. Cases involving high profile registrants, such as senior staff members at NHS Trusts, Boards or large-scale providers.

7. By marking a case as high-profile we identify that elements of the case may be particularly sensitive, and our case handling may require a more tailored approach. Our Major Investigations Team will typically manage referrals related to inquiries, reviews, serious criminal investigations and certain referrals relating to very senior registrants. The allocation of cases to this team depends on their identification by the screening team.

8. A cross-departmental tracker was introduced in October 2024, which lists all referrals relating to senior registrants.[1] This spreadsheet is separate to our formal case management system and is used as tool to help maintain oversight of fitness to practise cases related to senior registrants. The spreadsheet itself includes the following information:

    a. The name of the Trust/ Collective.

    b. The registrant's name, pin and employer.

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[1] Whilst specific role titles can vary, 'senior registrants' includes positions such as National Chief Nursing / Midwifery Officers, Regional Chief Nursing / Midwifery Officers, Directors of Nursing or Midwifery, or Head of Nursing or Midwifery. It can also include Chief Executive Officers who are also a registrant. Senior registrants may include Board Directors, but we draw a distinction on their job titles rather than the role(s) they fulfil as that might not be known to us.

c. A unique case reference number.

d. Why it meets the criteria for a high-profile referral.

e. Whether it related to an Inquiry.

f. The case owner handling the case and their team.

g. The date the registrant was referred.

h. The type of referral made (i.e., via a member of public, a colleague, self-referral etc.)

i. Whether an interim order is in place and its expiry date.

j. A brief summary of the concern.

k. The current position of the investigation.

l. What next steps need to be taken.

9. The purpose of this spreadsheet is to identify and list all open referrals about senior registrants for visibility for senior colleagues. This spreadsheet is manually maintained and relies on colleagues to identify a relevant case for inclusion. It is reviewed monthly by senior managers from each department, who are responsible for providing case progress updates and for ensuring the information is accurate.

10. Once updated, this spreadsheet is also shared with our Employer Link Service ("ELS") for our Regulation Advisers to review, to inform their regular conversations and fitness to practise reviews with employers. As explained at paragraph 25 of my supplementary statement (**INQ0108437**), we maintain a single point of contact (SPOC) list for every Trust, Health Board and large private provider in the UK, which will often be the Chief Nurse or Director of Nursing, or Deputy. If an FtP referral is received about a SPOC, we would not discuss their referral with them and if the referral is serious or is related to a linked FtP referral, then we would change them as our main contact. We are reflecting on our approach in this area, including how to ensure that ELS are aware of any fitness to practise referrals relating to senior leaders.

Question 1: Have fitness to practise or interim order proceedings been conducted in relation to a registrant when acting as a Board Director in the last ten years

11. The Inquiry have asked specifically about whether we have conducted fitness to practise or interim order proceedings in relation to registrants in their role as Board Directors over the past ten years.

12. As with all organisations, our data comes with some intrinsic caveats. Whilst most fitness to practise requests can easily be responded to, the way that we currently capture and record our data make the Inquiry's request challenging:

    a. Whilst we have captured our data electronically since 2009, we do not currently hold structured or readily accessible data on the roles or job titles of registrants going through our fitness to practise process, which means that we are unable to search our case management system to identify cases related to registrants in Board Director roles.

    b. Though we have an allegation category called 'management issues', these allegations could apply to a wide range of roles and varying levels of accountability which also means that it is not possible to determine whether these allegations relate specifically to a Board Director.

    c. Whilst our senior registrant spreadsheet contains the details of senior registrants which may be helpful for the Inquiry's purposes, the list of senior registrants does not necessarily relate to Board Directors.

    d. As with all data, the reliability in the reporting is dependent on consistent and accurate user input. This means that the data we do have is subject to change. The senior registrant spreadsheet in particular is updated manually on a case-by-case basis by the senior managers. Because it is collected outside our usual data governance processes, we cannot definitively verify or fully quality-assure the data.

13. We have plans to introduce a new case management system which will improve our data collection and reporting capabilities in the future. We are currently developing the criteria for the new system, and we will explore the possibility of including the job titles of registrants, including whether a registrant is an Executive Director, as a new data field.

14. We met with the Inquiry Team on 13 January 2025 where we explained that these limitations mean that we are unable to provide the Inquiry with a definitive response as to whether fitness to practise or interim order proceedings have been conducted against a registrant Board Director. It was noted that whilst the senior registrant spreadsheet does not necessarily relate to Board Directors, the data may provide some insight of relevance to the Inquiry and may help us respond to the Inquiry's request. We agreed to respond to the Inquiry's request based on the information contained in the senior registrant spreadsheet, noting the caveats listed above.

15. In response to question 1 from the Inquiry, noting the caveats listed above, we have reviewed the senior registrant spreadsheet data and can confirm that it contains 49 cases of referrals relating to senior registrants, including one case which has been re-opened and is being reconsidered by us (**Exhibit HH018**). [INQ0108840] As agreed, we have based our response to the Inquiry's requests on this case list.[2]

16. We have manually reviewed the case files of these 49 cases to try and identify which, if any, relate to a registrant in their role as a Board Director as opposed to in a clinical or department head role. Through this exercise we have been able to identify 11 cases which appear to relate to a registrant in their role as Board Director. However, it is important to reiterate that due to the way our data is stored we are not able to provide a definitive number of cases relating to Board Directors at this time. Whilst we have identified 11 cases, there is the possibility that there are additional cases related to a registrant in their capacity as a Board Director, but which do not reference them as being Board Directors. Our review has also focused on director roles in Trusts. There is also the possibility that cases related to Board Directors have not been identified and flagged for inclusion in the senior registrant spreadsheet and therefore do not appear on this refined list.

Question 2 (A): Please provide information about the number of referrals raising a concern for initial assessment

17. Based on the list of 49 cases we have used, we can confirm that 10 cases received a decision not to investigate and were closed at screening. Of these, 4 cases were closed due to insufficient credible evidence; 2 cases were closed on the basis that the concern was not serious enough for fitness to practise impairment; and 1 case was closed 'for other reason'. 2 cases have been coded with two closure reasons, both of which being 'not serious enough for fitness to practise impairment' and 'insufficient evidence to support the concern raised'. The remaining case was closed because it was a duplicate of another existing case.

18. Of the 49 cases, we can confirm that 22 cases are listed as being open in screening, which means that a decision is yet to be made about whether further investigation is required. This includes the case that is being reconsidered by us. The additional 17 cases have been progressed to the next stage of our fitness to practise process, which will be explained below.

19. For the avoidance of doubt, the figures above reflect the entire senior registrant case list. Of the 11 cases we have identified as potentially relating to a registrant in their role as a Board Director, 2 cases were closed at Screening due to there being insufficient credible evidence

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[2] Please note that this data is subject to change. It was accurate at the time of writing on 20 January 2025.

to support the concern raised. 9 cases are currently open; 6 cases are at the screening stage; and 3 have progressed to the investigation stage.

Question 2 (B): How many cases were accepted for further investigation and how many were dismissed by case examiners? Please also provide the number of interim order applications made.

Question 2 (C): How many investigations resulted in a case to answer and no case to answer?

Question 2 (D): For investigations where there was no case to answer, please indicate whether that was based on sufficiency of evidence to establish the facts or insufficient evidence to make a finding of current impairment.

20. Based on the list of 49 cases we have used, we can confirm that 22 cases are still open in screening and awaiting a decision, and that 17 cases have been accepted for further investigation following our initial screening assessment. Of these 17, 9 have received a case to answer decision following review by Case Examiners and have been referred to the fitness to practise committee. The remaining 8 cases are still in the investigation stage, meaning they have not yet been reviewed by Case Examiners. Of the 11 cases we have identified as relating to a registrant in their role as a Board Director, 3 of these cases are in the investigation stage.

21. Of the 49 cases listed, there were three interim order applications made in total. Of these, two resulted in refusal, and one resulted in an Interim Conditions of Practice Order. This Conditions of Practice Order has been renewed twice and is due to be reviewed again on 30 January 2025. Of the three interim order applications made, two were made in cases identified as relating to a registrant in their role as a Board Director. One resulted in a refusal, and the other has been renewed twice.

22. In response to question 2 (D), based on the list of 49 cases we can confirm that there have been no cases resulting in no case to answer to date. As stated above, there are currently 8 cases still in the investigation stage and awaiting a decision by Case Examiners.

Question 2 (E): How many fitness to practise proceedings have resulted?

Question 2 (G): Please provide a breakdown of the outcome of the fitness to practise proceedings by reference to whether there was no further action, caution or advice, conditions of practice, suspension or removal from the register.

23. Based on the list of 49 cases we have used, we can confirm than none of these cases have yet been considered by a fitness to practise committee. As above, 9 cases have been reviewed by Case Examiners and have been referred to the fitness to practise committee, but

the hearing is yet to take place. Of these cases, the oldest referral was made in June 2018. The reason for the delay in progressing this case is that it was paused in 2018 whilst the Police Service of Northern Ireland conducted a linked investigation, which took place over a number of years. Our screening decision was made in August 2023 and our Case Examiner decision was made in August 2024.

24. As no fitness to practise hearings have taken place, we can confirm that there are no substantive outcomes to report to date.

Question 3: Do the NMC retain subject matter experts in relation to this issue?

25. We have a Clinical Advice Team within our Professional Regulation Directorate, including nursing and midwifery professionals. Whilst some of our clinical advisers have previously held board-level roles, this was not selection criteria used in their appointment. We do not retain subject matter experts in relation to this issue.

26. In some cases, we also instruct independent expert witnesses. We have not reviewed the cases on the senior registrant spreadsheet to identify if we have instructed an expert witness on that case. If the Inquiry would like us to do so, we can do this.

NMC Social Media Guidance

27. In my oral evidence to the Inquiry, the Inquiry asked about our guidance on using social media and for my view on whether it should be updated to include explicit reference to instant messaging services, such as Whatsapp and Facebook Messenger. This suggestion was made following incidents where healthcare professionals shared private information about patients on these platforms, which was extremely upsetting for the families of those involved. In my response, I confirmed with the Inquiry that we would review our guidance to consider whether changes should be made to make our expectations clearer about professionals' use of these platforms, and to help prevent this from happening.

28. Our guidance on using social media responsibly was first introduced on 31 March 2015 (**Exhibit HH019**) [INQ0108841]. It was published alongside updates made to our Code in 2015 when we introduced standard 20.10, which requires registrants to 'use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, always respecting the right to privacy of others (**INQ0002419**). This was the first time that our Code referenced the use of social media. Our guidance on using social media underpins standard 20.10 and was introduced to support registrants to use social media responsibly and lawfully. The guidance was updated in 2018 to include reference to nursing associates, after they came

under our regulatory ambit (**Exhibit HH020**, [INQ0108842]). Other than this small revision, the document has not been amended or updated since it was first published in 2015.

29. Our guidance emphasises the need for professionals to use all social media and networking platforms appropriately and clearly explains that registrants may put their registration at risk, and students may jeopardise their ability to join our register, if they act in any way that is unprofessional or unlawful. This includes but is not limited to things such as sharing confidential information inappropriately. It also explains that it is unacceptable to discuss matters related to the people in their care outside clinical settings.

30. The guidance applies to all forms of social media and social networking sites and platforms. These terms are broadly defined in our guidance as follows:

    a. 'Websites and applications that enable users to create and share content or to participate in social networking' (social media)

    b. 'The use of dedicated websites and applications to interact with other users, or to find people with similar interests to one's own (social networking).

31. At the time of developing our guidance, many of the social messaging systems that are prevalent today were in their infancy or did not exist. We decided not to list individual sites or systems in the guidance because such lists can very quickly become out-of-date and can lead to confusion over whether such guidance applies to sites or systems that are not contained in the list. The definitions above are therefore intentionally broad and are drafted to include instant messaging services, such as those mentioned during evidence given to the Inquiry.

32. It remains our position that a high-level approach to guidance is the most effective way to avoid confusion and to prevent our guidance from becoming outdated. However, we recognise that there is potential opportunity for greater clarity about the types of sites and platforms our guidance applies to. We already have plans to review the social media guidance in our planned review of the Code and we will consider the feedback from the Inquiry as part of this.

33. The Code and associated guidance review will involve extensive engagement with a wide range of stakeholders, and a full public consultation which we are legally obliged to undertake. As such, it is likely to take several years for us to implement updates. We will have further detail about the timetable for this review including the timing of any public consultation later this year. In the interim, we believe a swift and appropriate solution is to update our social media webpages to specify that the current guidance applies to all forms of social media and social networking, including those referred to during evidence given to the Inquiry. We will strengthen the wording by March 2025.

Revalidation and Health and Character Declarations

34. As explained in paragraph 75 of Andrea Sutcliffe's first witness statement, we introduced our revalidation process in April 2016. Professionals on our register must revalidate every three years. They must declare that they have completed the appropriate number of hours of practice and continuous professional learning, collected several pieces of practice-related feedback and completed reflective activities. They must also sign a health and character declaration, confirm their professional indemnity arrangements and have a confirmer validate their submission. Our requirements for revalidation are set out in our revalidation guidance (**INQ0002560**).

35. At paragraph 26 of my reflective statement (**INQ0107926**), I explained that we have already committed to undertaking a review of our revalidation process. This review will include the lessons we learnt from our reflections on our handling of the Lucy Letby (LL) and Alison Kelly (AK) cases. These lessons include the need to make the language about the purpose of revalidation between our various documents and guidance more consistent and strengthening our guidance for confirmers.

36. Our review of our handling of the LL and AK cases also identified the opportunity to strengthen our health and character guidance. We said that we would review this guidance and consider whether any improvements could be made by March 2025. We have completed this initial review and concluded that, given the interdependencies between our health and character guidance and revalidation process, the improvements we want to make should instead be considered as part of our wider revalidation review. I discuss this in more detail at paragraphs 48-51 below.

37. At the time of writing my reflective statement, though scoping for our revalidation review had started, the timeline was uncertain. The Inquiry has asked for a timetable for our review of revalidation.

38. We understand the concerns raised during the evidence session about how people on our register can revalidate when there are concerns about their health and character, such that local restrictions are in place, but they are not part of any formal fitness to practise investigation. Our legislation sets out registration (including renewal) and fitness to practise as distinct regulatory processes [3] and uses different terminology in relation to each area.

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[3] Part III of the Nursing and Midwifery Order 2001 ('the Order' sets out the process and requirements for registration and renewal of registration.
Fitness to Practise is established under Part V of the Order.

39. Revalidation is the key assurance mechanism we use to ensure that those on our register continue to meet our requirements for safe and effective practise[4]. It is not a formal assessment of whether someone is 'fit to practise' and it cannot guarantee that they will not practise out of line with the Code. Revalidation is a decision about whether a person on our register meets the requirements for revalidation and is allowed to practise.

40. The fitness to practise process involves detailed investigations of an individual on our register. That is the process where we consider allegations that a professional's fitness to practise is impaired and can result in a range of outcomes.[5]

41. At the moment, individuals on our register who meet our revalidation requirements and have demonstrated that they are capable of safe and effective practice are allowed to revalidate. When professionals on our register are asked to provide a health and character declaration as part of their revalidation, they must declare any police charges, convictions or conditional discharges and they must also declare whether they have been subject to a determination by a professional or regulatory body. Where a declaration is made, we will consider this evidence when deciding whether a person meets our requirements for revalidation. In cases where we are not satisfied that they continue to meet the health or character requirements for registration, we may refuse their renewal.

42. Our guidance on making a health and character declaration makes clear that if an employer or individual has a concern about a person's ability to practise safely, they have a responsibility to refer those concerns to us through our fitness to practise process (**INQ0002422**). However, if an individual on our register declares a proven allegation when revalidating, such as a police conviction or caution, we will then consider the impact on their character, and this could result in their renewal being refused. Furthermore, if someone on our register is subject to either an interim or substantive suspension order, they are not permitted to revalidate until the conclusion of the substantive fitness to practise investigation where we decide whether their fitness to practise is impaired. If a professional subject to fitness to practise proceedings does not revalidate, our legislation prevents their registration from lapsing automatically. This means their registration will be held effective until the conclusion of the fitness to practise investigation, after which they will automatically lapse from the register.

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[4] Article 10(2)(a) & Article 9(2)(b) of the Order.
[5] Article 22(1)(a) of the Order.

43. The question of why LL was able to revalidate in August 2017 is linked with the question of why the NMC did not apply for an interim suspension order at an earlier point in the timeline. This issue has already been covered in detail in previous statements submitted to the Inquiry.

44. For the avoidance of doubt, had LL been the subject of an interim suspension order at the time of her revalidation application, LL would have been unable to revalidate. However, receiving a revalidation application which mentions a local concern or suspicion is not sufficient evidence for us to refuse to revalidate a person, as this would be a pre-determination about a person's fitness to practise, resulting in removal from the register without a thorough assessment of all available evidence. The fitness to practise process must be followed to allow for a fair, objective and thorough investigation into concerns raised during the revalidation process.

45. If a concern was identified during revalidation which indicated an imminent risk to the public, the fitness to practise process is the appropriate place for this to be considered, so that we can apply for an interim order to suspend or restrict their practice. By contrast where a registrant's revalidation application is refused, they can appeal the decision and they would be reinstated onto the register pending an appeal, without any powers to impose interim restrictions.

46. As explained in my reflective statement, in March 2024 we updated our Interim order guidance so that it now makes clear that, in cases of the utmost seriousness, it may be appropriate to apply for an interim suspension order before criminal charges are brought, even based on limited information. This change means that we are now more effectively able to stop the revalidation process when we have serious concerns about a person on our register. The changes we made were previously shared with the Inquiry and are demonstrated in Exhibits **INQ0017804**, **INQ0017805**, **INQ0017806**, **INQ0017807.**

47. It is important that everyone involved in revalidation sees it as a way to reflect on and learn from events in everyday practice, to support ongoing learning and development and to promote open and just cultures. However, we have reflected on questions raised during my evidence to the Inquiry, and we accept that there are actions we can take to improve our approach to revalidation and to help clarify the links with our fitness to practise process.

48. As explained at paragraph 35 above, we are planning a wide-ranging review of our revalidation process as a whole. This review will also incorporate our health and character guidance, as the two are closely interlinked.

49. As part of our revalidation review, we will:

a. Consider the opportunities we have to review the relationship between fitness to practise and revalidation, whilst still being clear about the differences reflected in our legislation.

b. Explore opportunities for using the revalidation process as a way of gathering information (from both those on our register and third parties) that might be relevant to fitness to practise. This will include those very serious misconduct cases which might result in us making an application for an interim suspension order and stopping the revalidation process. As part of this, we will review the questions that we ask individuals on our register and third parties (such as confirmers) as part of the declarations of good character and we will consider whether the questions suggested during my evidence to the Inquiry could be incorporated. We will also consider opportunities to strengthen internal links between our fitness to practise and revalidation colleagues to help ensure intelligence is effectively shared across key parts of the NMC.

c. Consider whether there are circumstances or mechanisms, other than those already covered by an interim or substantive suspension order, where it would be appropriate and lawful to stop the revalidation process and prevent an individual from practising.

d. Consider opportunities to strengthen our guidance with regards to the role and responsibilities of confirmers.

50. Reviewing our revalidation process is a key corporate priority, but it is essential that we get it right. We have already gathered a considerable amount of evidence on revalidation since we introduced it in 2016. The revalidation requirements are set out in a combination of legislation, standards and guidance and we must consult on any proposed changes. We have already started the discovery phase of the review, and our review will require extensive engagement and consultation, communication, implementation and evaluation.

51. This means it is challenging to provide the Inquiry with a definitive conclusion date. Initial scoping for this work has been undertaken, and we will continue the discovery phase throughout 2025 to clarify some evidence gaps that remain. We have several consultations that we plan to carry out in the next two years and are working on the detailed planning for each one. Once that is complete, we will share a more detailed timetable with regards to public consultation and next steps.

ELS Statement and Addendum

52. The Inquiry has asked whether we have any further comments to make in relation to the ELS statement (**INQ0108377**) and addendum (**INQ010837**).

53. Further reflections and comments on the ELS statement and addendum were covered in detail in my supplementary statement to the Inquiry (**INQ0108437**) which was submitted in November 2024. For the avoidance of doubt, the challenges raised by members of the ELS team have since been clarified and the ELS Team have confirmed that they are assured that the information and evidence provided to the Inquiry is accurate.

54. In August 2024 we introduced our new culture of curiosity guidance (**INQ0108435**). As explained at paragraph 49 of my supplementary statement, this guidance applies to all colleagues across the NMC and throughout our regulatory process, including when providing pre-referral advice. Initial feedback from colleagues indicated that this was not clear, and we committed to adjusting the language by the end of 2024 to clarify that the guidance applies to all NMC colleagues and not just people working in fitness to practise teams. This update was made in December 2024. In addition to this update, since submitting my supplementary statement, we have delivered presentations on curiosity to teams across the NMC, including the ELS team, to help embed the culture of curiosity guidance.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: Personal Data

Dated: 24 January 2025