

**Nursing and Midwifery Council  
Fitness to Practise Committee**

**Substantive Hearing**

**Monday, 25 November 2024 – Monday 2 December 2024**

Nursing and Midwifery Council  
10 George Street, Edinburgh, EH2 2PF

<b>Name of Registrant:</b>	<b>Lea Mary Stewart</b>
<b>NMC PIN</b>	<b>0411737S</b>
<b>Part(s) of the register:</b>	Registered Nurse – Adult (October 2007)
<b>Relevant Location:</b>	West Lothian
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Paul O'Connor (Chair, Lay member) Linda Holloway (Registrant member) Kamaljit Sandhu (Lay member)
<b>Legal Assessor:</b>	Michael Bell
<b>Hearings Coordinator:</b>	John Kennedy (25 – 29 November 2024) Leigham Malcolm (2 December 2024 only)
<b>Nursing and Midwifery Council:</b>	Represented by Kirsty Shaw, Case Presenter
<b>Miss Stewart:</b>	Not present or represented
<b>Facts proved:</b>	Charges 1 and 2
<b>Fitness to practise:</b>	Stage not reached
<b>Sanction:</b>	Stage not reached
<b>Interim order:</b>	Interim suspension order (6 months)



## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Stewart was not in attendance and that the Notice of Hearing letter had been sent to Miss Stewart's registered email address by secure email on 16 October 2024.

Ms Shaw, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing, amongst other things, information about Miss Stewart's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Stewart has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Miss Stewart**

The panel next considered whether it should proceed in the absence of Miss Stewart. It had regard to Rule 21 and heard the submissions of Ms Shaw who invited the panel to continue in the absence of Miss Stewart. She submitted that Miss Stewart had voluntarily absented herself.

Ms Shaw referred the panel to the documentation from Miss Stewart which included an email dated 18 November 2024 which stated:

*'As per our conversation earlier I would like the hearing to proceed and can confirm I will not be attending.'*

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Stewart. In reaching this decision, the panel has considered the submissions of Ms Shaw, the representations from Miss Stewart, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Stewart;
- Miss Stewart has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- One witness has been scheduled to attend today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2020;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Stewart in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Stewart's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Stewart. The panel will draw no adverse inference from Miss Stewart's absence in its findings of fact.

### **Details of charge**

That you, a registered nurse:

- 1) Between March – September 2020 accessed patient records without clinical justification for some or all of the dates listed in schedule 1 below
- 2) That some or all of the patient records you accessed belonged to people that were known to you

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

### Schedule 1

- a) Patient 1 on 7 July 2020 at 1332
- b) Patient 2 on 7 July 2020 at 1337

- c) Patient 2 on 26 July 2024 at 0432
- d) Patient 3 on 26 July 2020 at 04:38
- e) Patient 4 on 25 July 2020 at 19:41 to 20:07
- f) Patient 5 on 25 July 2020 at 02:02
- g) Patient 6 on 4 July 2020 at 13:22
- h) Patient 7 on 4 July 2020 at 13:26
- i) Patient 8 on 4 July 2020 at 13:27 to 13:28
- j) Patient 9 on 4 July 2020 at 13:29
- k) Patient 10 on 28 March 2020 at 06:43
- l) Patient 11 on 11 March 2020 at 06:09 to 08:43
- m) Patient 12 on 15 August 2020 at 15:07 to 15:09
- n) Patient 13 on 18 August 2020 at 04:02 to 04:07
- o) Patient 15 on 19 August 2020 at 23:04
- p) Patient 16 on 29 March 2020 at 04:10
- q) Patient 17 on 8 August 2020 at 15:55
- r) Patient 18 on 10 August 2020 at 0246
- s) Patient 19 on 19 August 2020 at 23:10
- t) Patient 20 on 10 August 2020 at 0241
- u) Patient 21 on 5 March 2020 at 1401
- v) Patient 21 on 10 August 2020 at 0244
- w) Patient 22 on 2 September 2020 at 03:36 to 03:40

### **Decision and reasons on application to admit hearsay evidence of Witness 1**

The panel heard an application made by Ms Shaw under Rule 31 to allow the hearsay testimony of Witness 1 into evidence. Despite numerous attempts, the NMC had not been able to secure the attendance of Witness 1 at this hearing but have a signed statement which was prepared for these proceedings. Ms Shaw submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations.

In the preparation of this hearing, the NMC had indicated to Miss Stewart in the Case Management Form (CMF), dated 22 September 2024, that it was the NMC's intention for Witness 1 to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Witness 1, Miss Stewart made the decision not to attend this hearing. On this basis Ms Shaw advanced the argument that there was no lack of fairness to Miss Stewart in allowing Witness 1's hearsay testimony into evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel was of the view that, although Miss Stewart had chosen not to attend this hearing, she was not aware at the time of making that decision, of this application to allow Witness 1's hearsay testimony into evidence.

The panel determined that it was a basic principle of fairness that Miss Stewart has notice of Ms Shaw's application and be given the opportunity to factor this into any defence Miss Stewart chose to present to the panel.

The panel had regard to the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) in reaching its decision. The panel also had regard to the NMC's guidance on 'hearsay evidence and fairness' (DMA-6). Some of the evidence to be presented by the witness would be sole and decisive, and therefore inherently unfair to Miss Stewart to admit as hearsay.

The panel heard evidence as to why the witness could not attend. The panel decided that there was good reason for the witness' non-attendance and noted that the witness would be available the following week.

In these circumstances the panel refused the application.

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

During witness evidence, Miss Shaw made a request that this case be held in private on the basis that proper exploration of Miss Stewart's case involves references to her health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to hold those parts of the hearing where Miss Stewart's health is referred to in private.

## **Background**

The charges arose whilst Miss Stewart was employed as a registered nurse by St. John's Hospital on the ENT ward. It is alleged that between 29 February and 2 September 2020 Miss Stewart accessed 22 patient records without clinical justification.

## **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Shaw.

The panel has drawn no adverse inference from the non-attendance of Miss Stewart.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact



will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live oral evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Senior Charge Nurse at St John's Hospital
  
- Witness 2: Clinical Nurse Manager at St John's Hospital

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Miss Stewart.

The panel then considered each of the disputed charges and made the following findings.

### **Charge 1**

'That you, a registered nurse:

- 1) Between March – September 2020 accessed patient records without clinical justification for some or all of the dates listed in schedule 1 below'

In reaching this decision, the panel considered all the documentary evidence provided, alongside the oral evidence of Witness 1 and Witness 2.

The panel took account of Miss Stewart's user access log for the Hospital's IT system, provided by Witness 2. The panel considered the access log to amount to a third-party recording of Miss Stewart's activity on the system. Having questioned the witnesses carefully, the panel was satisfied that the particular activities set out within the access log could only have been made by Miss Stewart. It was therefore of the view that the

access log provided a reliable record of Miss Stewart's access to the notes of the patients set out in Schedule 1.

The panel considered both Witness 1 and Witness 2 to be fair, balanced and measured in the evidence they provided. Neither witness appeared to hold a grudge against Miss Stewart or display any ill feeling towards her. On the contrary, the panel was of the view that both Witness 1 and Witness 2 were compassionate in their search for plausible explanations as to why Miss Stewart may have accessed the patient records without clinical justification.

The panel also took account of Miss Stewart's emails to the NMC dated 22 May 2022 and 6 June 2022. The email dated 22 May 2022 stated the following:

*'Please find the attachments on the patients I accessed alongside the course contents and learning outcomes of the course I am doing.'*

Miss Stewart's email of 6 June 2022 provides explanations as to why she accessed the records of several patients. The panel was of the view that Miss Stewart's email of 6 June 2022 amounted to a partial admission.

From all of the evidence before the panel, including the access log and the evidence of Witness 1 and Witness 2, it was clear that Miss Stewart accessed the patient records, as charged and as set out in schedule 1.

Witness 1 and Witness 2, who collated the information during the Hospital's internal investigation, confirmed to the panel that there could not have been any clinical justification for Miss Stewart accessing these records as set out in the charge. Further, Miss Stewart provided explanations for her actions which were clearly non-clinical.

The panel considered that Ms Stewart ought to have known that she should not have accessed patient records without a clinical justification, regardless of the status of her GDPR training.

The panel noted that section c) within Schedule 1 is dated '2024'. It considered this to be a typographical error by the NMC and was of the view that it ought to correctly read '2020'.

On the basis of the evidence before it, and on balance, the panel determined that Miss Stewart did access all the patient records without clinical justification, as charged.

**This charge is found proved.**

## **Charge 2**

- 2) That some or all of the patient records you accessed belonged to people that were known to you'

In reaching this decision, the panel considered all the documentary evidence provided, alongside the oral evidence of Witness 1 and Witness 2. It also had regard to Miss Stewart's email to the NMC dated 6 June 2022, which included the following:

*'Episode 3 -My elderly neighbour and her husband who I was very close too. They helped with my daughter done baking with her and I in turn done errands for them over the years. He was admitted into hospital with undiagnosed dementia tho [sic] this had been on going for a long time. The husband was unwell with various cancers over the years and had been admitted to local care home. I spoke to their son and at one point he was exasperated with how things were going in the hospital and I looked to see update on nursing home plan. I also went to the ward to visit my neighbour tho [sic] asked the CN first. I didn't pass on any info to the son I was worried and wanted to know how things stood. [sic]'*

In her email Miss Stewart provides explanations for several of the patient notes which she accessed. Each of them is described as a neighbour, elderly relative or someone that she knew. The panel was of the view that Miss Stewart's email of 6 June 2022 amounted to an admission.

Again, Witness 1 and Witness 2, who collated the information for during the Hospital's internal investigation, confirmed to the panel that there could not have been any clinical justification for Miss Stewart accessing these patient records.

On the basis of the evidence before it, and on balance, the panel determined that Miss Stewart did access the records of patients that she knew, as set out in the charge.

**This charge is found proved.**

### **Decision and reasons on interim order**

After announcing its decision on the facts of Miss Stewart's case the panel had insufficient time remaining to consider misconduct, impairment, and potentially a substantive sanction.

As the panel have found the charges in Miss Stewart's case proved, it next considered whether an interim order is necessary for the protection of the public, or in the public interest, until such time as it is able to reconvene to conclude Miss Stewart's substantive case. The panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Stewart's own interests. The panel heard and accepted the advice of the legal assessor.

The panel took account of the submissions made by Ms Shaw on behalf of the NMC who submitted that whether an interim order was necessary or not was a matter for the panel.

The panel was satisfied that an interim order is necessary on the grounds of public protection as well as in the public interest. The panel had regard to the seriousness of the facts found proved in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case given the facts found proved and the concerns are not of a clinical nature. The panel therefore imposed an interim suspension order for a period of 6 months.

This interim order is for a period of 6 months, to allow sufficient time for the substantive hearing to conclude, and to allow for any unexpected delays.

The panel has still to deal with the matters of misconduct, impairment and potentially sanction in respect of Miss Stewart's substantive case.

The panel also wish to make it clear that today's decision in respect of an interim order is in no way indicative of conclusions the panel may make at later stages of this hearing.

The NMC will keep Miss Stewart informed of developments in relation to the substantive case.

Until Miss Stewart's substantive case concludes, this interim order must be reviewed before the end of the next six months and every six months thereafter. Additionally, Miss Stewart or the NMC may ask for the interim order to be reviewed if any new evidence becomes available that may be relevant to the interim order.

At any review the reviewing panel may revoke the interim order or any condition of it, it may confirm the interim order, or vary any condition of it, or it may replace the interim conditions of practice order with an interim suspension order.

This will be confirmed to Miss Stewart in writing.

That concludes this determination.