

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

**Substantive Meeting
Monday, 10 June – Wednesday, 12 June 2024**

Virtual Meeting

Name of Registrant:	Linda Jane Stewart
NMC PIN	86C0113S
Part(s) of the register:	RN1: Adult nurse, level 1 (20 June 1996)
Relevant Location:	Scottish Borders
Type of case:	Misconduct
Panel members:	Michelle McBreeze (Chair, lay member) Nilla Varsani (Lay member) Carole McCann (Registrant member)
Legal Assessor:	Natalie Amey-Smith
Hearings Coordinator:	Rim Zambour
Facts proved:	Charges 1 and 2
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Miss Stewart's registered email address by secure email on 24 April 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates (that this meeting was to be heard on or after 29 May 2024) and the fact that this meeting was to be heard virtually.

In the light of all of the information available, the panel was satisfied that Miss Stewart has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse, whilst employed at the Borders General Hospital ('BGH'):

1. On one or more occasions on the dates set out in Schedule 1, misappropriated one or more ampoules of Midazolam 10mg/2ml injections, which belonged to BGH.
2. Your conduct at charge 1 was dishonest in that you intended to appropriate one or more ampoules of Midazolam 10mg/2ml injections for your own use when you knew they belonged to BGH.

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

Schedule 1

16th October 2021

15th January 2022

7th February 2022
6th March 2022
7th March 2022
13th March 2022
3rd April 2022
7th April 2022
13th April 2022
15th April 2022
23rd May 2022
29th May 2022
5th June 2022
15th June 2022
19th June 2022
21st June 2022

Decision and reasons on redaction of private matters

At the outset of the meeting the panel determined, of its own volition, to consider whether this case be held in private.

The legal assessor reminded the panel that although meetings are held in private, where a registrant's fitness to practise is found impaired, and a sanction is given, the Nursing and Midwifery Council (NMC) always publish the panel's decision. Therefore, the panel should have in mind whether any of the written determination needs to be in private, [PRIVATE].

The panel determined that any mention of private matters is to be redacted from the public determination as and when such matters arise.

Admissibility of evidence

The NMC included evidence in the Statement of Facts which related to a previous NMC referral in which Miss Stewart was suspended for a period of six months due to similar concerns. The NMC also included in the bundle the previous determination from the 2016 proceedings against Miss Stewart.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of the admissibility of the previous decision of the NMC in relation to the 2014 charges. 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 legal assessor drew the panel's attention to Rule 31 (1) and Rule 24 (13) (c). The legal assessor referred the panel to the cases of: *R (H) v NMC* [2013] EWHC 4258 (Admin), *McLennan v GMC* [2020] CSIH 12, and *Constantindines v Law Society* [2006] EWHC 725 (Admin).

The panel determined that it would not be fair to Miss Stewart to admit the previous NMC decision into evidence at this fact-finding stage. It was of the view that this additional information provided background to this case which may be a relevant factor at a later stage, if reached, but not at the facts stage.

Decision and reasons on panel recusal

In light of the panel's decision on the inadmissibility of the evidence relating to Miss Stewart's previous NMC referral, the panel then went on to consider whether it should recuse itself having had sight of this information.

The panel noted that it is important for the public to have confidence in the administration of justice, and that tribunals must not be biased and should exercise impartial, independent and objective judgement.

The panel heard and accepted the advice of the legal assessor in relation to recusal. The legal assessor referred to the cases of *Porter v Magill* [2001] UKHL 67 and *Mafouz v GMC* [2004] EWCA Civ 233.

The panel took into account the test as to bias in *Porter v Magill*. The test is:

'A panel must first ascertain all circumstances which have a bearing on the suggestion that a panel is biased. It must then ask whether those circumstances

would lead a fair minded and informed observer to conclude that there was a real possibility that the tribunal was biased.'

The panel determined that it could continue to hear this case in an unbiased manner. It considered that a fair minded and informed individual would be aware that this is a knowledgeable and fully trained panel and that it would be capable of putting this information out of its mind when considering the case.

Background

The NMC received a referral from NHS Borders (the Referrer) on 4 July 2022 regarding concerns about Miss Stewart's practice. Miss Stewart was working shifts at Borders General Hospital ("BGH"), which is operated by the Referrer, through the agency Social Care Community Partnership.

On 21 June 2022 the Senior Charge Nurse in the Medical Admissions Unit (MAU) highlighted a discrepancy with their stock of the medication Midazolam over two consecutive days. Midazolam is a Schedule 3 controlled drug. It is a mild sedative that is most used for minor procedures, and on rare occasions can be used in ward settings to treat seizures.

During her time at the hospital, Miss Stewart worked across Wards 4, 5 and 6. Wards 4, 5 and 6/MAU have Omnicell. Omnicell is an automated medicines dispensing system, which at the time of the incidents was being rolled out across BGH and was therefore only on certain wards. Only registered professionals, typically nurses and pharmacy staff, are registered to use it. Miss Stewart was, at the time, an authorised user of Omnicell.

On initial investigation that day by the Quality Improvement Facilitator and Non-Medical Prescribing Medicines Governance Lead (Witness 1), with the Trust's controlled drugs (CD) officer, it was discovered that none of the patients on Ward 6/MAU had received Midazolam since their admission. At 16.27 hours the CD Officer and Witness 1 recorded on Omnicell that there were 12 vials in stock. Witness 1 then requested an Omnicell audit report to ascertain who had accessed it for Midazolam.

On the morning of 22 June 2022 Witness 1 returned to MAU to complete another stock check and discovered that there were 10 vials in stock i.e., 2 vials had been removed since the stock check the day before. The Senior Charge Nurse verbally confirmed that there had been nothing handed over from the previous shift about Midazolam being administered to patients. Witness 1 received the Omnicell audit report and saw that Miss Stewart, who had worked the immediately preceding night shift, had accessed Omnicell for Midazolam at 22.23 hours on 21 June 2022.

Witness 1 escalated the matter to the Associate Director of Nursing, and it was subsequently reported to Police Scotland and the NMC. Miss Stewart's future shifts were cancelled pending investigation.

On 28 September 2022 Witness 1 was instructed to investigate the missing Midazolam. As Miss Stewart had also worked on Wards 4 and 5, Witness 1 reviewed their Omnicell data as well.

On 17 October 2022 Police Scotland informed the NMC that whilst Miss Stewart had been subject to investigation between 24 June 2022 and 12 October 2022 for allegations of theft, a decision had been made to take no further action as there was insufficient evidence to charge.

Miss Stewart has not provided a response to the NMC allegations.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the written representations made by the NMC in the Statement of Facts. For the avoidance of doubt, the panel did not take into account the previous decision of the NMC against Miss Stewart, having earlier found it inadmissible at this stage.

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 had regard to the written statements of the following witness on behalf of the NMC:

- Witness 1: Quality Improvement Facilitator and Non-Medical Prescribing Medicines Governance Lead employed by Border General Hospital at the time.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by Witness 1.

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

Charge 1

“That you, a registered nurse, whilst employed at the Borders General Hospital (‘BGH’):

1. On one or more occasions on the dates set out in Schedule 1, misappropriated one or more ampoules of Midazolam 10mg/2ml injections, which belonged to BGH.”

This charge is found proved.

In reaching this decision, the panel took into account the contemporaneous evidence of the Omnicell data and the NMC statements of Witness 1 who investigated the missing medication at the time.

The panel relied on the statements of Witness 1 in finding this charge proved. Witness 1 states that Miss Stewart had accessed a high amount of Midazolam and referenced ‘*floor change*’ (a term for restocking), but this drug is not one that would be restocked on a

regular basis. Witness 1 did not find any evidence during their investigation of patients having received this medication.

The panel considered Miss Stewart's explanation (which she gave to BGH at the time of the investigation) that she had given her Omnicell User ID to someone else. However, the evidence before the panel from Witness 1 suggests that there would have been no reason for this, and it was not difficult for others to obtain a temporary code if needed rather than using Miss Stewart's User ID.

The panel determined that the evidence in the bundle in relation to this charge is contemporaneous and credible. It also did not accept Miss Stewart's version of events. Therefore the panel determined that this charge is found proved on the balance of probabilities for all of the dates mentioned in Schedule 1.

Charge 2

"That you, a registered nurse, whilst employed at the Borders General Hospital ('BGH'):

2. Your conduct at charge 1 was dishonest in that you intended to appropriate one or more ampoules of Midazolam 10mg."

This charge is found proved.

In reaching this decision, the panel took into account all of the contemporaneous evidence, as well as the written witness statements.

The panel heard and accepted the advice of the legal assessor on the test to be applied when considering a charge of dishonesty which is found in the guidance of the Supreme Court in *Ivey v Genting Casinos (UK) LTD t/a Crockfords [2017] UKSC 67*.

The panel found that Miss Stewart had misappropriated Midazolam 74-78 vials over a period of time between October 2021 and June 2022, and being the same drug every time, this suggests an intentional act.

The panel determined that by the standards of ordinary decent people, her conduct by misappropriating the drug when she knew it was not being administered to patients would be deemed as dishonest.

Therefore the panel found this charge proved on the balance of probabilities.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Stewart's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Stewart's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' ("the Code") in making its decision.

In a written submission the NMC invited the panel to take the view that the facts found proved amount to misconduct.

The NMC identified the specific, relevant standards where Miss Stewart's actions amounted to misconduct which were sections 20, 20.1, 20.2 and 20.8 of the Code.

The NMC also provided the following written submissions:

'[I]t is submitted that Miss Stewart's [sic] conduct detailed in charges 1 and 2 fell far short of what would have been expected of a registered nurse. Miss Stewart's significant departure from the principles of promoting professionalism and trust by dishonestly misappropriating Midazolam, for her own personal use, would be seen as deplorable by fellow practitioners and would damage the trust that the public places in the profession. Registered professionals occupy a position of privilege and trust in society and are expected at all times to be professional. Acting with honesty and integrity at all times are integral to the standards expected of a registered nurse and central to the Code.'

'Miss Stewart's conduct fell far below what would be expected of a registered nurse and a finding of misconduct must follow.'

'The provisions of the Code constitute fundamental tenets of the profession and Miss Stewart's actions have clearly breached these in so far as they relate to promoting professionalism and trust.'

...

'The NMC consider the misconduct serious because Miss Stewart sought to circumvent these controls by taking the controlled drugs from BGH on multiple occasions over approximately 8 months, for her personal use. Her actions were dishonest in that she knew she was not entitled to take the medications but did so anyway.'

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC provided the following written submissions on impairment:

'It is submitted that Miss Stewart's fitness to practice is impaired by reason of her misconduct on both the grounds of public protection and public interest.

...

It is the submission of the NMC that (a) to (d) [of the Grant test] can be answered in the affirmative in this case. Dealing with each one in turn:

By misappropriating/removing medication she was not entitled to from her employers, Miss Stewart's actions potentially placed patients at unwarranted risk of harm as it could have reduced sufficient supplies for patients who required the medication and prevented them from receiving it. Miss Stewart's colleagues would also not be able to rely upon the official records of medication if medication was removed and may have consequently based clinical decisions on medication which was not available (misappropriated).

Miss Stewart's conduct has brought the profession into disrepute – the misconduct in this case is serious and aggravated because Miss Stewart has been dishonest on more than one occasion; not only are there 74-78 vials that have been misappropriated over a period of time from October 2021 – June 2022 ... This behaviour brings the nursing profession into disrepute and undoubtedly damages the reputation of the nursing profession.

Miss Stewart's actions demonstrate a flagrant departure from the standards expected of a registered nurse and a breach of the fundamental tenets of the profession.

...

The NMC's guidance titled 'Serious concerns which are more difficult to put right' (FTP-3a) provides that some concerns are so serious that it may be less easy for the registered professional to put right the conduct or aspect of their attitude which led to the incident(s) happening. One criterion that causes a concern to qualify as such is '... abusing the position of a registered nurse, midwife or nursing associate for financial or personal gain.' The NMC considers that this case falls within this category.

It also appears that there are attitudinal concerns here. It is often said that conduct of an attitudinal nature is difficult to remediate...

The NMC consider Miss Stewart has displayed no insight. According to the local investigation report, when approached about the discrepancies Miss Stewart alleged that another nurse may have been using her login details and acknowledged she had given her details to a colleague but would not say who.

She has not engaged meaningfully with the NMC's proceedings nor provided a response to the allegations. The NMC note, however, that on 05 March 2023 Miss Stewart emailed the NMC to advise that she had limited use of her phone and emails. [PRIVATE]. Miss Stewart is aware and has no objections to the case being heard at a substantive meeting.

There is no evidence of any training, or any reflection undertaken by Miss Stewart to address the misconduct in this case. In any event, in a case such as this one and in a case where behaviours could suggest underlying problems with the nurse's attitude it is less likely the nurse will be able to address their conduct by taking steps such as completing training courses or supervised practice to remedy their behaviour and address the concerns.

There is a significant risk of harm to the public were Miss Stewart be allowed to practice without restriction. Therefore, a finding of impairment is required for the protection of the public.'

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Stewart's conduct in dishonestly misappropriating Midazolam did fall significantly short of the standards expected of a registered nurse, and that this amounted to a breach of the Code. Specifically:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 *keep to and uphold the standards and values set out in the Code*

20.2 *act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

20.8 *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. Miss Stewart's dishonest conduct occurred over a significant period of time and placed patients at risk. The panel determined that this is conduct that showed a flagrant disregard to the Code and would be considered deplorable by fellow nurses as well as an ordinary informed member of the public.

The panel found that Miss Stewart's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to serious professional misconduct.

Decision and reasons on impairment

The panel heard and accepted the advice of the legal assessor.

The panel next went on to decide if as a result of the misconduct, Miss Stewart's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest, open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that patients were placed at risk of harm as a result of Miss Stewart's misconduct in reducing the amount of Midazolam on the ward without letting anyone know. The panel found that Miss Stewart's misconduct did breach the fundamental tenets of the nursing profession as honesty is integral in all aspects of nursing. As a result of breaching the fundamental tenets and putting patient at risk, the panel found that Miss Stewart's actions had brought the nursing profession's reputation into disrepute. It is satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. The panel found that limbs a, b, c and d of the *Grant* test are engaged.

The panel then went on to consider the following elements set out in *Cohen v GMC* [2008] EWHC 581 (Admin):

- Whether the conduct that led to the charge(s) is easily remediable.
- Whether it has been remedied.
- Whether it is highly unlikely to be repeated.

The panel determined that the conduct in this case is not easily remediable as it relates to deep-seated attitudinal concerns and dishonesty. The panel found that Miss Stewart deliberately misappropriated Midazolam with the knowledge that this could put patients at risk.

The panel took into account that Miss Stewart has not meaningfully engaged with the NMC investigation. The panel has not had sight of any evidence of remediation, remorse, insight or strengthening of practice. The panel therefore determined that Miss Stewart's misconduct has not been remedied.

The panel found that Miss Stewart's misconduct was not a one-off in that it had occurred over a prolonged eight month period and involved misappropriating 74-78 Midazolam vials. This, taken with the lack of evidence of engagement and insight, concluded in the panel finding that if Miss Stewart continues to practise unrestricted there remains a high likelihood of this misconduct being repeated.

The panel decided that a finding of impairment is necessary on the grounds of public protection. It determined that patients were placed at risk of harm and there is a high risk of repetition of the misconduct in this case.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined due to the seriousness of the misconduct if a finding of impairment were not made in this case and therefore also found Miss Stewart's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Stewart's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Stewart off the register. The effect of this order is that the NMC register will show that Miss Stewart has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor which included reference to the case of *Mirtorabi v Nursing and Midwifery Council* [2017] EWHC 476.

Representations on sanction

The panel bore in mind the following written submissions provided by the NMC:

‘ ...

In its contemplation the NMC have considered the following aggravating and mitigating factors:

Aggravating factors:

- *Abuse of position of trust.*
- *Lack of insight and/or remorse.*
- *Conduct sustained over a period of approximately 8 months, involving a significant volume of controlled drugs.*
- *Previous fitness to practise findings for similar behaviour i.e., misappropriation of controlled drugs, as per Rule 24(13)(c) of the Nursing & Midwifery Council (Fitness to Practise) Rules 2004 and also see case of *Mirtorabi v Nursing and Midwifery Council* [2017] EWHC 476.*

Mitigating factors:

- *No patient harm*

With regard to our sanctions guidance, the following aspects have led us to this conclusion:

Taking no further action or imposing a caution order would be wholly inappropriate as they would not reflect the seriousness of the misconduct, nor would they protect the public or maintain the public confidence in the profession.

Imposing a conditions of practice order would be inappropriate. There are no areas of clinical concern which might more readily be addressed by way of training or assessment. The concerns in this case do not involve clinical failings but instead relate to Miss Stewart's misappropriation of medication from her employer. Her actions were dishonest and indicates that there is an underlying attitudinal/behavioural problem which cannot be addressed by a conditions of practice order. There are no practical conditions that can be imposed to reflect the seriousness of the facts of this case, nor address public interest concerns.

The NMC guidance on suspension orders states that this sanction may be appropriate where there is a single isolated incident and where there is no evidence of a deep seated and/or harmful attitudinal issue.

Miss Stewart has displayed attitudinal concerns which are taken very seriously by the regulator, and it is submitted that they engage the public protection and public interest at a high level. Miss Stewart displayed dishonest behaviour for a protracted length of time. Miss Stewart knowingly misappropriated between 74-78 vials of Midazolam over a period of 8 months whilst working for BGH. Miss Stewart was previously suspended by the NMC for similar dishonest behaviour.

Miss Stewart has provided no real explanation or remediation for her actions, albeit dishonesty cannot be easily remediated. A suspension order which was imposed in the previous case has not prevented Miss Stewart from repeating dishonest behaviour. It is therefore submitted that a suspension order is neither appropriate nor proportionate in this case.

A striking-off order is the appropriate order in this case. The behaviour giving rise to the charges falls far short of what is expected of a Registered Nurse and is fundamentally incompatible with being a registered professional. Miss Stewart has demonstrated no insight or remorse. The fact that there has been a substantive sanction (suspension order) imposed on Miss Stewart's registration in the past by a Fitness to Practise Committee for similar matters suggests there is a deep-seated attitudinal issue present and a pattern of behaviour that cannot be easily

remediated. Having reviewed the key considerations set out in the NMC guidance at SAN-3e, the NMC submit that Miss Stewart's actions raise fundamental concerns about her professionalism, and the public's confidence in the profession would be undermined if Miss Stewart were not removed from the register. Furthermore, we consider that a striking-off order is the only sanction which will be sufficient to not only protect patients and members of the public, but to maintain professional standards.

...

Here, and as mentioned above, although there were no concerns around Miss Stewart's clinical skills, it can nonetheless be argued that a strike-off is still appropriate because this is the 'price' you pay for being a registered professional and maintaining the reputation of the profession. Miss Stewart's actions raise fundamental concerns about her professionalism and public confidence in nurses cannot be maintained if she is not removed from the register. A striking-off order is the only sanction which will be sufficient to protect patients, members of the public, maintain professional standards and address the public interest in this case.'

Decision and reasons on sanction

Having found Miss Stewart's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

At this stage the panel admitted the evidence in relation to Miss Stewart's previous regulatory findings, in accordance with Rule 24(13)(c).

The panel took into account the following aggravating features:

- Previous regulatory findings of a similar nature

- Abuse of a position of trust
- No evidence of insight into failings
- A pattern of misconduct over a period of approximately eight months
- Misconduct which put patients at risk of suffering harm.

The panel did not find any mitigating features.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would not adequately protect the public nor satisfy the public interest concerns identified in this case to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Stewart's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Stewart's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Stewart's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Stewart's registration would not adequately address the seriousness of this case and would not protect the public or satisfy the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate in cases where the misconduct is not fundamentally incompatible with the nurse continuing to be a registered professional, and where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel took into account that this was repeated dishonest misconduct from October 2021 to June 2022, and, the misconduct in this case was similar in nature to the admitted misconduct which had resulted in the NMC suspending Miss Stewart for six months in 2016. The panel took into account its conclusion that there was evidence of harmful deep-seated attitudinal problems and that it had no evidence before it of any remediation or insight into the misconduct.

The misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Stewart's actions is fundamentally incompatible with Miss Stewart remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel determined that these questions can all be answered in the affirmative. Miss Stewart's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Stewart's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Stewart's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Miss Stewart in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It 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 until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that:

'In the event that a sanction resulting in the restriction of Miss Stewart's practice is imposed, it is also necessary for the protection of the public and otherwise in the public interest for there to be an interim suspension order of 18 months to cover the appeal period.'

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order 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, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal period in order to protect the public and meet the public interest considerations in this case.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after Miss Stewart is sent the decision of this hearing in writing.

That concludes this determination.