

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

**Substantive Hearing**  
**Monday, 19 August 2024 – Friday, 23 August 2024**  
**Tuesday 27 August 2024**  
**Monday, 2 September 2024 – Wednesday, 4 September 2024**  
**Thursday, 31 October 2024- Friday, 1 November 2024**

Virtual Hearing

**Name of Registrant:** **Rose Stark**

**NMC PIN** 22A1435E

**Part(s) of the register:** Registered Nurse – Sub part 1  
Adult Nursing – 22 January 2022

**Relevant Location:** Bradford

**Type of case:** Misconduct

**Panel members:** Judith Webb (Chair, lay member)  
Patience McNay (Registrant member)  
Dave Lancaster (Lay member)

**Legal Assessor:** Jayne Salt (19 August 2024 – 27 August 2024)  
Charles Apthorp (2 September 2024 – 4  
September 2024)  
Robin Hay (31 October 2024-1 November 2024)

**Hearings Coordinator:** Claire Stevenson  
Hanifah Choudhury (31 October 2024-1  
November 2024)

**Nursing and Midwifery Council:** Represented by Uzma Khan, of counsel

**Miss Stark:** Present and not represented (Days 1, 3, 4 and 5)  
Not present and not represented (Day 2)  
Not present and not represented (Day 7, 8 and  
9)  
Not present but represented by Ms 5 (Day 10  
and 11)

**Facts proved:** Charges 1, 2, 3, 4, 5 and 6

<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	<b>Impaired</b>
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## Details of charge

That you, a registered nurse:

- 1) On or about 18 December 2022, incorrectly signed, as supervisor or assessor, your 'Safe administration of Breast Milk in Bradford Neonatal service competency assessment' indicating that you had completed required competencies.
- 2) Your conduct in charge 1 was dishonest in that you deliberately sought to represent that a supervisor or assessor had signed off that you had completed the competency when you knew that they had not.
- 3) On or about 18 December 2022, incorrectly signed, as supervisor or assessor, your 'Bradford Neonatal Staff Nurse clinical skills and competency assessment' indicating that you had completed required competencies.
- 4) Your conduct in charge 3 was dishonest in that you deliberately sought to represent that a supervisor or assessor had signed off that you had completed the competency when you knew that they had not.
- 5) On or about 18 December 2022, incorrectly signed, as supervisor or assessor, your 'Safe supplementation and administration of expressed breast milk and artificial formula milk feed competency assessment' indicating that you had completed required competencies.
- 6) Your conduct in charge 5 was dishonest in that you deliberately sought to represent that a supervisor or assessor had signed off that you had completed the competency when you knew that they had not.

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

## **Background**

You commenced employment as a Band 5 staff nurse at Bradford Teaching Hospital (the Trust) in the Neonatal Intensive Care Unit on 27 November 2022. All new starters, regardless of grade or experience are provided with an induction competency booklet at the beginning of their employment. The competency booklet holds a number of separate competency documents relating to different topics and form small collections of skills or knowledge related to aspects of neonatal care. It is said that some of the competencies can be signed off relatively quickly however some of competencies can take much longer depending on what situations may arise.

You attended shifts on 28 November 2022 and 30 November 2022 before you took a period of sickness leave. The absences had been documented by Witness 2 and there was an alleged lack of communication from you during this time. You returned to clinical duties on 15 December 2022 and your final clinical shift was undertaken on 18 December 2022. On 20 December 2022 it is alleged you presented the competency booklet to Witness 2 which had a significant amount of the competencies completed and signed off. However, you had only worked four clinical shifts. When Witness 2 examined the booklet she decided to review the contents, having been concerned with the speed in which the competencies had been signed off, she stated in her evidence that she was in their office when you approached her with your competency booklet as there was an area that required Line Manager signing.

Having consulted Witness 4, who you alleged to have signed you off as competent, Witness 4 denied that the signatures were hers and confirmed she did not sign the competency booklet in the areas shown to her. As a result of this Witness 2 made further enquiries with other staff members who also denied signing your competency booklet. When you were asked directly you denied the falsification of the signatures, suggesting

that Witness 4 signed the booklet when you were not present. At this point you left the shift early stating a relative had fallen and needed assistance.

You did not return to duties after this shift. You did email Witnesses 1 and 2 directly on 1 January 2023 to explain you would not be returning to work until the signature issue had been resolved and subsequently tendered your resignation on 19 January 2023 which was accepted. On 30 January 2023 you did attend an investigation interview where you explained your position and denied falsifying the signatures but did admit to adding the dates and you left your competency booklet out so that it was available for colleagues to sign and that you believed the signatures belonged to Witness 4.

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

The panel invited submissions from parties to go partly into private.

Ms Khan submitted she has no objections.

You also confirmed you have no objection for the hearing to go partly into private.

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 go partially into private session when reference is made to [PRIVATE] in order to protect your privacy.

## **Decisions and reasons on application to proceed in absence**

You said that [PRIVATE] and you would rejoin after the NMC witness testimony had been heard. You wished to voluntarily absent yourself.

The panel accepted that you wished to voluntarily absent yourself for part of the hearing.

## **Decision and reasons on NMC application to admit hearsay evidence**

Ms Khan invited the panel to consider admitting the entirety of the bundle as hearsay evidence under Rule 31. She referred the panel to the hearsay bundle contained within the NMC papers. She submitted that there are twenty-nine declarations that were made by various members of staff who were also working on 18 December 2023. All of the named staff members were asked whether or not the signatures in the competency booklet were theirs. All staff members confirmed they were on shift that day but confirmed they had not signed the booklet and had not been approached by you to do so. She submitted that all but one of the witnesses had signed and dated the declarations in their witness statements and the other had provided an email confirmation. She submitted this evidence is fair and relevant and ought to be admitted.

Ms Khan drew the panel's attention to the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*, particularly the factors a panel is required to consider when admitting hearsay evidence as outlined in paragraph 56 of *Thorneycroft*.

- *Whether the statements were the sole and decisive evidence in support of the charges;*
- *The nature and extent of the challenge to the contents of the statements;*
- *Whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
- *The seriousness of the charge, taking into account the impact which adverse findings might have on the Registrant's career;*

- *Whether there was a good reason for the non-attendance of the witnesses;*
- *Whether the Regulator had taken reasonable steps to secure the attendance of the witness;*
- *The fact that the Registrant did not have prior notice that the witness statements were to be read.'*

Ms Khan applied the principles set out in *Thornycroft* to this case. She submitted that the hearsay evidence is not the sole or decisive evidence, and it would be fair to admit it as relevant. She submitted there is no evidence before the panel to suggest the witnesses fabricated the allegations as it is simply these witnesses are denying their involvement.

Ms Khan acknowledged that the charges are serious, and if found proven, may have a negative impact on your career.

Ms Khan submitted that given four witnesses have attended and given live evidence, it would be unnecessary to call all of the hearsay witnesses to the hearing to reiterate the same information. In addition, you have been provided with the contents of the hearsay bundle. She submitted that nothing has been submitted by you to suggest this cannot be relied upon.

You submitted you had no objection to Ms Khan's hearsay application.

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 gave the application in regard to the NMC hearsay evidence careful consideration. The panel noted that the statements had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true

to the best of my information, knowledge and belief' and signed by all but one of them. It noted that the hearsay evidence is not challenged by you.

The panel considered whether the evidence of the witnesses was sole or decisive. The panel determined that the statements were not the sole and decisive evidence which go to the charges. The panel noted that there were four live witnesses in this case who speak to the same competency booklet and are able to comment on this. The panel conducted a careful balancing exercise and took account of the principles in *Thorneycroft*. It considered fairness to the NMC and to you. The panel noted that these are serious allegations however, there are signed statements from the witnesses. The panel is of the view there was no reason to suspect fabrication by these witnesses. In these circumstances, the panel determined that this evidence is relevant and can be admitted without any unfairness to you. At a later stage it will consider the weight to be given to that evidence.

### **Decision and reasons on application to admit your hearsay evidence**

You made a hearsay application to admit the statement of your mother. You submitted your mother had been your only witness and you were unaware she could not be a witness and a supporter at the same time. You noted that she had been in the same room as you whilst you were in the hearing virtually. You said that she had not heard much of the hearing as you had joined the hearing using headphones.

Ms Khan objected to the application, and she submitted that your mother's statement is not relevant. She submitted that she will be unable to cross examine your mother, and her evidence cannot be tested.

The panel determined that your mother's statement is relevant to specific allegations, also it considered the witness statement is not sole and decisive evidence of any of the charges. It took into account that your mother was prepared to come to the hearing to give evidence and be cross examined. The panel concluded that this evidence can be admitted and that it will consider what weight, if any, to attach at a later date.



## **Decision and reasons on facts**

The panel heard from you that you deny all the charges.

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

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 evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Matron on the Neonatal ward at the Trust.
- Witness 2: Ward Manager on the Neonatal ward at the Trust.
- Witness 3: Staff Nurse on the Neonatal Ward at the Trust.
- Witness 4: Sister on the Neonatal Ward at the Trust.

The panel also heard evidence from you under oath.

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 you.

Ms Khan clarified that all the signatures subject to the charges are not those admitted by you to be yours but rather those which appear either in the second and third columns of the competency booklet or at the end of the document which are clearly labelled as intended for the assessor or supervisor.

The panel then considered each of the disputed charges as highlighted by Ms Khan in turn and made the following findings.

### **Charge 1)**

On or about 18 December 2022, incorrectly signed, as supervisor or assessor, your 'Safe administration of Breast Milk in Bradford Neonatal service competency assessment' indicating that you had completed required competencies.

### **This charge is found proved**

In reaching this decision the panel had regard to all of the evidence before it. The panel took into account the oral evidence of Witness 1, Witness 2, Witness 3 and Witness 4 along with their statements and related exhibits, the Hearsay bundle statements and your oral evidence. It had particular regard to the competency booklet, and the investigation meeting minutes. The panel also had regard to your evidential bundle.

The panel noted from the Trust's investigation meeting minutes that efforts had been made to contact all members of staff named in the Hearsay bundle who were questioned on whether they signed your competency booklet. All of whom denied it was their signature and the panel additionally noted that no-one had recognised any of the signatures as belonging to someone else.

Witness 3 and Witness 4, who were the nurses you were working with, both denied signing the booklet and also stated that they thought you were overconfident of your skill level.

Both told the panel that you did not listen carefully and sometimes spoke over them. They were of the view that you believed your previous Trust's way of working was better. The panel next considered your evidence and noted you admit to signing and dating the first column in your competency booklet, which was headed "supervised practice". You denied signing it to prove you were deemed competent but that you signed it to demonstrate that you felt you were ready to be assessed. You believed this was the correct way to do it as you had recently qualified, and this is how it was done at university when you were a student. However, these are not the disputed signatures relating to the charges. The panel noted that the signatures in question were essentially a squiggle that could mean anything. You deny forging the signatures. The panel noted the NMC's position that there is no other explanation for the booklet being signed and the panel came to the same conclusion that it is highly unlikely someone else signed it. It determined the squiggle signature was deliberately indecipherable and that you inputted the dates, it noted that all of the number 8s were similar to the dates you admitted entering.

You told the panel you said you raised a lot of issues about unsafe practices on the ward and that you approached Witness 1 on multiple occasions about this. The panel noted you believe the previous Trust's electronic ways of working is more efficient. It determined the only person that could benefit from the competency booklet being signed and filled in was you. There is no evidence to suggest anyone else signed the competency booklet. You believe that someone had signed your book as they did not like you and that you were the one who raised it with Witness 1. However, both Witness 1 and Witness 2 were very clear that you presented the signed competency booklet to Witness 2 which required to be signed off by her as your line manager and who was concerned as to how you could be signed off in only four shifts. In her evidence Witness 2 told the panel she took it to Witness 1 who then began an investigation into the matter.

You told the panel that you were relaxed about getting signed off as competent, you were happy to go through it slowly. However, Witness 2 gave evidence that on multiple occasions you asked her about getting signed off as competent.

The panel next considered your statement where it noted the inconsistencies in your statement and oral evidence. It also noted you admit to lying to your employer on at least two occasions. Therefore, it determined you are unreliable, are not a credible witness and found your evidence to be implausible. There is no plausible explanation that the signatures were filled in by anyone else and extensive enquiries had been made by the Trust. The panel also noted that the Trust has modified the competency booklet since these events.

The panel gave significant weight to the NMC Hearsay bundle but did not give weight to your mother's statement. The panel found that your mother's statement was unreliable.

The panel considered all of the evidence before it. The panel determined that the NMC had discharged its evidential burden. Therefore, the panel found this charge to be proved.

### **Charge 2)**

Your conduct in Charge 1 was dishonest in that you deliberately sought to represent that a supervisor or assessor had signed off that you had completed the competency when you knew that they had not.

### **This charge is found proved.**

In reaching this decision, the panel took into account the competency booklet gives the criteria of what you should accomplish before it can be signed. It determined that the signatures are not accidental and are obviously fraudulent. The panel heard evidence for your propensity to not be completely truthful as you have admitted to lying to your new employer on at least two occasions.

The panel had regard to your fourth shift on the ward when you were not honest about why you had to leave your shift, you went off sick when challenged about the signatures and that you made up an excuse to leave the ward rather than being honest about not

being able to stay until the end of your shift. You also asked your mother to phone the ward on this occasion and say [PRIVATE] and needed your assistance which was untrue. It noted your evidence is inconsistent, as in your mother's statement she said she was sad for you as this was your dream job but in your oral evidence you stated it was merely an area you were interested in.

The panel had regard to the case of Ivey v Genting Casinos Ltd t/a Crockfords [2017] UKSC 67 which is a UK Supreme Court case that reconsidered the test for determining dishonesty. It refers to what did the person know or believe and that an ordinary person would know that is not honest. In this case you knew it was not for you to sign your booklet. The panel determined you signed a number of places despite knowing you had not been supervised undertaking the competency. The panel noted in the Trusts investigation meeting you make it look as if someone had signed it knowing that indicated you were signed off as competent which indicates you know it was dishonest.

In light of all of this the panel found this charge proved.

### **Charge 3)**

On or about 18 December 2022, incorrectly signed, as supervisor or assessor, your 'Bradford Neonatal Staff Nurse clinical skills and competency assessment' indicating that you had completed required competencies.

### **This charge is found proved.**

In reaching this decision the panel noted that there is obvious linkage with Charge 1 which also relates to the competency booklet. Witness 4 gave evidence confirming that it was not her signature and confirmed she was working with you on that day. The Hearsay bundle confirms no other staff members signed it but more importantly nobody identified who's signature it could be. The panel again noticed the inconsistencies where your statement contradicted what you said in your oral evidence. Despite your suggestion the

brackets used in conjunction with the disputed signatures in the competency booklet were not yours, the panel is of the view that it was unlikely anyone else would have added brackets and signed and dated all of the competencies on the same date.

The panel noted that the columns within the competency booklet are clearly titled supervised practice and competency achieved. You told the panel you had signed the booklet to say you were ready to be assessed but the panel determined it was obvious what each column is for as they were very clearly titled.

The panel therefore concluded that you did incorrectly sign as supervisor or assessor. The panel determined that the charge is proved.

#### **Charge 4)**

Your conduct in Charge 3 was dishonest in that you deliberately sought to represent that a supervisor or assessor had signed off that you had completed the competency when you knew that they had not.

**This charge is found proved.**

The panel had regard to its findings of your evidence as outlined above in Charge 2 and for the same reasons as given for Charge 2.

#### **Charge 5)**

On or about 18 December 2022, incorrectly signed, as supervisor or assessor, your 'Safe supplementation and administration of expressed breast milk and artificial formula milk feed competency assessment' indicating that you had completed required competencies.

**This charge is found proved.**

In reaching this decision, the panel took into account the record of administering and adding fortifier, and the final declaration sheet within the competency booklet. It is clearly set out that once a competency is achieved it must be signed by a supervisor or Line Manager. It is very specific about what is required to be achieved. The panel noted that even staff who join Bradford Trust and already hold the relevant competencies, must also complete the competency booklet and therefore previous experience was not sufficient. It was clear who should be signing in the various columns and assessment sheets.

In light of all of this the panel finds this Charge proved.

### **Charge 6)**

Your conduct in charge 5 was dishonest in that you deliberately sought to represent that a supervisor or assessor had signed off that you had completed the competency when you knew that they had not.

**This charge is found proved.**

The panel had regard to its findings of your evidence as outlined above in Charge 2 and Charge 4 for the same reasons as given for Charge 2 and Charge 4.

In light of all of this the panel finds this charge proved.

**[This hearing resumed on 2 September 2024]**

### **Decision and reasons on service of notice of the resuming hearing**

Ms Khan, on behalf of the Nursing and Midwifery Council (NMC), submitted that Notice of this resuming hearing had been sent to Miss Stark's registered email address on 30 August 2024 and that this was reasonable in the circumstances.

The panel accepted the advice of the legal assessor.

The panel noted that when this hearing went part heard on 27 August 2024, Miss Stark who was in attendance, was informed that this hearing would resume at the earliest possible date, and she was sent the Notice of this resuming hearing on 30 August 2024. The panel was satisfied that reasonable notice of this resuming hearing had been given.

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

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

Ms Khan referred the panel to the documentation from Miss Stark which included an email dated 2 September 2024 that states Miss Stark is content for the hearing to proceed in her absence as follows:

*'I will not be attending. Please proceed in my absence'*

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'*.

The panel has decided to proceed in the absence of Miss Stark. In reaching this decision, the panel has considered the submissions of Ms Khan 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 Stark;
- Miss Stark 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; and
- There is a strong public interest in the expeditious disposal of the case.

The panel noted that Miss Stark had been present for some of the earlier days of this hearing and had the opportunity to challenge the NMC's evidence and to give evidence on her behalf. The panel had regard to Miss Stark's email, and it noted that she had voluntarily absented herself from the resuming hearing and requested that it proceed in her absence. In these circumstances, the panel determined that it was fair to proceed in Miss Stark's absence and that it was in the public interest to deal with matters expeditiously. The panel will draw no adverse inference from Miss Stark's absence.

### **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 Stark'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 ability to practise kindly, safely and professionally.

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 Stark's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (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.*' (Reference: FTP-3a. Last Updated: 27/02/2024).

Ms Khan, on behalf of the NMC, submitted that the facts found proved amount to misconduct. She referred the panel to the NMC Guidance on '*Impairment*' (Reference: DMA-1 Last updated: 27/02/2024), '*Misconduct*' (Reference FTP-2a Last Updated: 27/02/2024) and '*Serious concerns based on public confidence or professional standards*' (Reference: FtP-3c Last Updated: 27/02/2024). She also referred it to '*The Code: Professional standards of practice and behaviour for nurses and midwives (2015)*' (the Code) in making its decision.

Ms Khan identified the specific, relevant standards where Miss Stark's actions amounted to misconduct. Ms Khan invited the panel to take the view that the facts found proved amount to misconduct and submitted that the following parts of the Code have been breached: 8, 8.1, 8.2 and 8.4. 9, 9.2, 10, 10.1 to 10.4, 20, 20.1, 20.2, 20.3, 22 and 22.3.

Ms Khan submitted that although there was no evidence before the panel to suggest that any patients were actually harmed by Miss Stark's actions, the risk continued to be high and ongoing. This is due to the fact that Miss Stark falsified training records which could have resulted in her being inadequately trained thus placing patients at risk of harm.

Ms Khan submitted that in all the circumstances of the case her actions in the charges found proved is a departure from good professional practice and also sufficiently serious to constitute serious misconduct.

### **Submissions on impairment**

Ms Khan moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and uphold proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

In respect of the test set out in the case of Grant, Ms Khan submitted that Miss Stark has acted in the past and/or is liable to do so in the future, act so as to put patients at an unwarranted risk of harm and has breached or is likely to breach in the future, the fundamental tenets of the profession or has in the past acted dishonestly and is liable to act dishonestly in the future which would put patients and colleagues who depend on her at risk of harm.

Ms Khan submitted that the purpose of the competency booklet is to safeguard the patient and observe newly qualified or nurses new on that particular ward to conduct the procedures and to have been adequately observed to be considered able to carry out the specific tasks contained within the competency booklet. Ms Khan submitted that dishonesty has been ongoing throughout this process which started with Miss Stark's expectations to be able to carry out those procedures without sufficient training and then went on to her entering signatures in the competency booklet despite clear information on who should sign. Miss Stark continued her dishonesty in subsequent interactions with her peers. Ms Khan told the panel that Miss Stark took it upon herself to complete the workbook after just four shifts. Miss Stark then maintained the documentation was accurate and said that it was normal practice among other staff to sign off their booklets

suggesting this was normal practice and acceptable. Miss Stark placed a dependency on the falsified documentation when confronted about the signatures within the booklet by senior staff.

Ms Khan submitted that Miss Stark acted dishonestly whereby she states she is safe to practice independently despite not completing the relevant observations which put vulnerable patients at a considerable risk of harm.

Ms Khan further submitted that this would bring the profession into disrepute and a well-informed member of the public would view this as a serious departure from the standards expected of a Registered Nurse. She submitted nurses occupy a position of trust and privilege in society and are expected at all times to be professional and to practice kindly, safely and professionally. Ms Khan submitted that Miss Stark was well aware of her role and responsibility to uphold the values of the Code but she intentionally behaved in a fraudulent manner.

Ms Khan submitted that Miss Stark has breached multiple parts of the Code which constitutes a breach of the fundamental tenets of the nursing profession and a finding of impairment is required to maintain public confidence in the profession and uphold professional standards.

Ms Khan submitted that Miss Stark has limited insight and has refused to acknowledge her wrongdoing and in fact sought to blame others throughout these proceedings. There has been no insight demonstrated or consideration given of how her actions may impact on patients, colleagues and the reputation of the nursing profession. She submitted that these are attitudinal concerns that are not easily remedied. There is no information to suggest Miss Stark has addressed any of these issues. Ms Khan submitted that due to this the risk of repetition being high and if placed in a similar situation Miss Stark would behave in a similar manner. Ms Khan also submitted it is relevant that Miss Stark is a newly qualified nurse.

Ms Khan submitted that Miss Stark's actions were fraudulent and intentional and raised fundamental concerns about her attitude, professionalism and trustworthiness as a registered nurse. Miss Stark should have understood that such behaviours are wrong and deceitful. Miss Stark repeatedly made reference to how things were done better in the previous Trust she worked at, highlighting what she thought were the shortcomings of this Trust and how their paper-based processes had impacted her negatively.

Ms Khan submitted that dishonesty is inherently more difficult to remediate through training courses or continued practices.

Ms Khan finally submitted that owing to the high risk of repetition, the lack of insight or any remorse shown together with how Miss Stark has conducted herself throughout these proceedings mean she continues to put patients at a risk of harm in the future if a finding of impairment was not to be made today.

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).

### **Decision and reasons on misconduct**

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that individually and cumulatively, the charges found proved amount to misconduct.

The panel determined that all of the charges arise from the same type of misconduct, and all relate to the same competency booklet falsifications and associated dishonesty and such behaviour falls short of that expected by a Registered Nurse.

The panel identified the following breaches of the Code:

***'8 Work co-operatively***

*To achieve this, you must:*

*8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate;*

*8.2 maintain effective communication with colleagues;*

*8.4 work with colleagues to evaluate the quality of your work and that of the team*

*8.5 work with colleagues to preserve the safety of those receiving care.'*

***10 Keep clear and accurate records relevant to your practice This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.***

*To achieve this, you must:*

*10.1 complete records at the time or as soon as possible after an event, recording if the notes are written sometime after the event;*

*10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements;*

*10.4 attribute any entries you make in any paper or electronic records to yourself, making sure they are clearly written, dated and timed, and do not include unnecessary abbreviations, jargon or speculation.*

***13 Recognise and work within the limits of your competence***

*To achieve this, you must, as appropriate;*

*13.5 complete the necessary training before carrying out a new role;*

## **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.*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people.*

## **22 Fulfil all registration requirements**

*To achieve this, you must:*

*22.3 keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim to maintain and develop your competence and improve your performance.*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the level of the dishonesty by Miss Stark was so serious as to be misconduct. The panel found that Miss Stark's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## **Decision and reasons on impairment**

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

*'The question that will help decide whether a professional's fitness to practise is impaired is:*

*"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*

*If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not 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 and 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/ fitness to practise is impaired in the sense that S/He:*

- 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 all four limbs engaged in this case.

In respect of limb a) the panel finds that vulnerable patients were put at risk of harm. Miss Stark fraudulently signed the competency booklet although the panel accepted no actual harm had been caused in this case, the potential risk of harm to patients was high given that Miss Stark having been signed off in the competency booklet may then have been given tasks to complete without supervision in the future for which she was not qualified to do. The panel also noted that it would be highly unlikely that Miss Stark could have been observed and signed off as competent in all of the elements in the booklet after only four shifts with the Trust.

In respect of limbs b), c) and d), the panel determined that honesty, integrity and adherence to local policy and procedure are fundamental tenets of the profession by acting dishonestly and with disregard for the Trust's policies, Miss Stark brought the

profession into disrepute. The panel found that Miss Stark had brought the profession into disrepute, breached fundamental tenets of the profession and acted dishonestly.

Before considering future risk, the panel gave consideration to the test as set out in the case of *Cohen* in respect of whether the misconduct in this case is easily remediable. The panel was mindful that dishonesty is attitudinal in nature and is inherently difficult to remediate.

In determining future risk, the panel had regard to all the evidence in this case including Miss Stark's bundle of documents, live witness evidence and the competency booklet. The panel was of the view that she has not reflected on the potential impact her actions may have caused on patients, colleagues, the profession, and the public perception. The panel therefore found that Miss Stark has shown no insight into the consequences of her actions.

The panel determined that there is a risk of repetition based on the fact Miss Stark has shown no remorse or acknowledged any wrongdoing with regard to the potential harm her actions could have had on vulnerable patients or any impact on her colleagues. Miss Stark was a newly qualified nurse who should have accepted more senior nurses' instructions and should have followed the procedures set out by the Trust. It noted she has sought to shift the blame onto others and has taken no responsibility for her actions. The panel had no evidence to suggest that anyone else signed her competency booklet. Miss Stark has not provided any evidence of remediation or reflection or strengthening her practice. The panel found Miss Stark had shown no insight. In light of this, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel was of the view that the public interest is also engaged in this case. The public expect nurses to be honest and trustworthy and adhere to local policies and procedures to ensure patient safety. In the circumstances of this case, the panel determined that public confidence in the profession would be undermined if a finding of impairment was not made. Furthermore, the panel concluded that a finding of impairment was required on

public interest grounds to uphold and maintain proper professional standards and confidence in the profession and the NMC as its regulator.

Having regard to all of the above, the panel determined that Miss Stark's fitness to practise is currently impaired on both public protection and public interest grounds.

### **Decision and reasons on an application for adjournment**

On day two of the hearing resuming, before the panel had handed down its decision on current impairment, it was made aware that Ms 5, on Miss Stark's behalf, had made contact with the Hearings Coordinator to request an adjournment.

Ms 5 appeared before the panel and told the panel [PRIVATE]. Ms 5 stated Miss Stark [PRIVATE] as she has not wanted to do anything in her life other than nursing.

Ms 5 attended the hearing to request an adjournment on behalf of Miss Stark. She told the panel that [PRIVATE] so Miss Stark would have preferred to get that done before reattending the hearing.

Ms 5 told the panel that [PRIVATE]. Ms 5 told the panel she is going to try and get in touch with [PRIVATE].

Finally, Ms 5 asked the panel to adjourn the rest of the hearing until a later date to give Miss Stark sufficient time [PRIVATE] to be able to attend the hearing and put forward her case with regards to what, if any, sanction will be.

In response to panel questions Ms 5 told the panel that the proceedings thus far have been [PRIVATE]. Ms 5 also said that Miss Stark had agreed that a further adjournment of 28 days might assist her but was unwilling to accept it could take up to six months.

Ms Khan submitted that the NMC is sympathetic to Miss Stark's circumstances. She submitted that Miss Stark has a history of disengagement at times and during these proceedings. She submitted it is a matter for the panel to carefully consider the application to adjourn.

Ms Khan acknowledged that the information is coming from Ms 5 instead of Miss Stark and that Ms 5 is going to [PRIVATE]. However, unless Miss Stark consents then it may be unlikely [PRIVATE] and even if it is possible, it will be unlikely to be available overnight, particularly as there is very little contact between Miss Stark and Ms 5 at the moment.

Ms Khan submitted that the panel also has to take into consideration the public interest argument in this case about dealing with matters expeditiously and efficiently whilst balancing Miss Stark's best interests too. Ms Khan submitted that there must be a compelling reason why these proceedings should not continue. She submitted that the finding of facts had [PRIVATE]. The panel has already made a decision on impairment and there are only another two potential stages. She submitted if Miss Stark were to engage it would only be with regard to sanction, should an impairment decision be made. The facts have already been found proved. She submitted there is nothing before the panel to suggest Miss Stark would engage with the proceedings at a later date.

Ms Khan submitted that any future decisions are likely to have the same impact upon Miss Stark and she may decide she does not want to participate with any further stages. She reminded the panel that the conclusion of the proceedings was already delayed by Miss Stark's disengaging before facts could be handed down and she submitted that any further delay would be counterproductive and may well result in the same reactions and responses from Miss Stark.

Ms Khan acknowledged what Ms 5 stated that Miss Stark would like the hearing to commence within 28 days but submitted there are no guarantees that all parties can be available and it may be as long as six months.

In response to the submissions the panel requested further information from Ms 5 to contact [PRIVATE] to be available for the panel by 12.30 the next day.

At the conclusion of day eight the panel handed down its decision on impairment and provided its full written reasons.

On day nine the panel resumed and received an update from Ms 5 in terms of [PRIVATE].

Ms 5 attended the hearing and told the panel she had managed to get in touch with [PRIVATE], however, they were not prepared to [PRIVATE].

Ms Khan reiterated her submissions from the previous day.

The panel heard and accepted advice from the legal assessor. It had specific regard to guidance on applications made by litigants in person was provided by Warby J in the case of Decker v Hopcraft [2015] EWHC 1170 QB in which he stated.

*“the question whether effective participation is possible depends not only on the medical condition of an applicant for an adjournment, but also, and perhaps critically, on the nature of the hearing, the nature of the issues before the court and what role the party concerned is called to undertake.... All depends on the circumstances as assessed by the Court on the evidence put before it.”*

### **Decisions and reasons to adjourn on [PRIVATE]**

The panel carefully considered all of the submissions by Ms Khan and Ms 5 and decided to adjourn. It also had regard to the NMC guidance on ‘When we postpone or adjourn hearings’ (Reference: CMT-11. Last Updated: 13/01/2023).

The panel noted that Ms 5 has made efforts to [PRIVATE], however she was unable to at short notice. The panel also noted that Miss Stark [PRIVATE] should be available after.

The panel heard that Miss Stark was [PRIVATE] and that these had first come to the panel's attention during this hearing. The panel acknowledged that these proceeding can be [PRIVATE] and was mindful that even if this hearing adjourned, [PRIVATE] of these proceedings would not change at a later date. However, as the panel did not have any independent evidence about [PRIVATE], it could not conclude that [PRIVATE] were as a direct result of these proceedings.

The panel also noted that Miss Stark is currently [PRIVATE]. Ms 5 informed the panel that [PRIVATE]. The panel considered that if this hearing was adjourned to a later date, then Miss Stark would have had time to [PRIVATE].

Ms 5 assured the panel that if this hearing was adjourned, then Miss Stark should be in a better position to attend at a future date. The panel noted that having handed down it's decision on current impairment, the next stage of the proceedings is the sanction stage. It was mindful of the potentially serious consequences on Miss Stark's career as a registered nurse.

Having regard to all of the above, the panel decided that it was fair to Miss Stark to give her the opportunity to [PRIVATE], as well as being able to attend and properly prepare for the sanction stage. The panel considered the public interest in the efficient disposal of cases, however, it was of the view that this was outweighed by Miss Stark's interests in this regard. The panel also had regard to the potential inconvenience, it noted that all witnesses in this case have already been called and there would be no inconvenience to any third parties in granting the adjournment.

The panel considered that it would be assisted by Miss Stark's attendance at the resuming hearing and the following information in advance of that:

- [PRIVATE].
- A reflective statement from Miss Stark.
- Testimonials from any paid or unpaid work.

## Decision and reasons on interim order

After the panel had handed down its decision on the application to adjourn, pursuant to Rule 32(5) of the Rules, the panel invited submissions on whether an interim order is necessary for the protection of the public, is otherwise in the public interest or in Miss Stark's own interests.

Ms Khan informed the panel that there is currently an interim conditions of practice order in place until 4pm on 22 November 2024. She set out the terms of the interim conditions of practice order which are as follows:

*'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'*

1. You must only work for single substantive employer, which must not be an agency or nursing bank. You may work extra shifts within the ward or department where you are employed.
2. You must not be the sole nurse on duty or the nurse in charge any time you are working.
3. You must ensure that you are indirectly supervised by another registered nurse any time you are working. Your supervision must consist of working at all times on the same shifts as, but not always directly observed by another registered nurse.
4. You must meet with your line manager, mentor or supervisor, at least every month to discuss your progress with clinical competencies and your general clinical practice. You must send a report from your line manager, mentor or supervisor to

the NMC commenting on your progress with clinical competencies and your general clinical practice before any NMC hearing.

5. You must keep the NMC informed about anywhere you are working by:

- a) Telling your case officer within seven days of accepting or leaving any employment.
- b) Giving your case officer your employer's contact details.

6. You must keep the NMC informed about anywhere you are studying by:

- a) Telling your case officer within seven days of accepting any course of study.
- b) Giving your case officer the name and contact details of the organisation offering that course of study.

7. You must immediately give a copy of these conditions to:

- a) Any organisation or person you work for.
- b) Any employers you apply to for work (at the time of application).
- c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

8. You must tell your case officer, within seven days of your becoming aware of:

- a) Any clinical incident you are involved in.
- b) Any investigation started against you.
- c) Any disciplinary proceedings taken against you.

9. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- a) Any current or future employer.
- b) Any educational establishment.
- c) Any other person(s) involved in your retraining and/or supervision required by these conditions.



Ms Khan submitted that whether the interim order remains the most appropriate and proportionate order is ultimately a matter for the panel. She submitted that this is a live decision and that as there have been findings made in respect of the charges and current impairment, there has been a change in circumstances since the interim order was first imposed and an interim suspension order can be considered.

Ms 5, on behalf of Miss Stark, submitted that Miss Stark is not currently working as a registered nurse and has been unable to secure employment whilst she has been subject to the interim conditions of practice order. She submitted that Miss Stark has no intention of seeking employment between now and the dates proposed for the resuming hearing.

The panel accepted the advice of the legal assessor.

In determining whether an interim order is necessary, the panel was mindful of its findings so far, namely that all of the charges have been found proved, that Miss Stark's actions amounted to serious misconduct and that her fitness to practise is currently impaired on both public protection and public interest grounds. The panel considered the nature and seriousness of the charges found proved, and as set out in its determination on current impairment, it found that Miss Stark's misconduct was serious and involved dishonesty.

The panel determined that in the light of its findings so far, an interim order remained necessary for the protection of the public, otherwise in the public interest and in Miss Stark's own interests. The panel also determined that an interim conditions of practice order was no longer workable or proportionate given the nature and seriousness of the facts found proved and its findings on current impairment. The panel therefore decided to replace the interim conditions of practice order with an interim suspension order which will take effect immediately and run for the remainder of the order (which is due to expire on 22 November 2024).

### **Decision and reasons on service of notice of the resuming hearing**

The hearing resumed on 31 October 2024, where Miss Stark was not present but was represented by Ms 5.

Ms Khan submitted that Notice of this resuming hearing had been sent to Miss Stark's registered email address on 1 October 2024 and that this was reasonable in the circumstances.

Ms Khan told the panel that she had received documentation from a staff member at the NMC containing correspondence from Miss Stark via email on 29 October 2024 in which she asked for the time that she needs to log in for the resuming hearing. She also said that Miss Stark has communicated with the hearings coordinator this morning about the resuming hearing and that Ms 5 has also notified the panel that she knows that Miss Stark is aware of today's hearing.

The panel accepted the advice of the legal assessor.

The panel was satisfied that reasonable notice of this resuming hearing had been given.

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

The panel next considered whether it should proceed in the absence of Miss Stark. It had regard to Rule 21 and heard the submissions of Ms Khan who invited the panel to continue in the absence of Ms Khan.

Ms Khan referred the panel to the email Miss Stark sent to the hearings coordinator on 31 October 2024 which said:

*'Please can [PRIVATE] [Ms 5] attend on my behalf? [PRIVATE]!*

*I prepared my statement bundle which is ready to send incase [sic] this happened.'*

Ms Khan submitted that as there has been no application to adjourn or any objection from Miss Stark to proceed in her absence, there was nothing before the panel today that would suggest that it ought not to proceed with the hearing.

Ms 5, on your behalf, said that the panel should proceed in Miss Stark's absence as there is no reason to adjourn the hearing.

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*'.

The panel has decided to proceed in the absence of Miss Stark. In reaching this decision, the panel has considered the submissions of Ms Khan, Ms 5, the recent statement from Miss Stark, [PRIVATE], screenshots which captured positive feedback of Miss Stark's placement as a student nurse and the advice of the legal assessor. It has had particular regard to relevant case law and to the overall interests of justice and fairness to all parties. It had in mind that:

- No application for an adjournment has been made by Miss Stark;
- Miss Stark has informed the NMC that she will not be attending the hearing and that Ms 5 will be attending the hearing on her behalf;
- There has been no objection from both parties to proceeding.
- There is no reason to suppose that adjourning would secure her attendance at some future date.

The panel took into account that Ms 5 had attended the hearing and confirmed Miss Stark had no objection to matters proceeding in her absence. The panel appreciated the efforts Ms 5 had made to attend the hearing and answer any questions the panel may have. In

these circumstances, the panel determined that it was fair to proceed in Miss Stark's absence and no injustice would be caused to her.

## **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 Stark off the register. The effect of this order is that the NMC register will show that Miss Stark 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.

## **Submissions on sanction**

Ms Khan submitted that in terms of the aggravating factors, the panel should consider:

- Miss Stark's conduct placed patients and colleagues at risk of harm,
- She has shown no remorse or insight into her actions.
- Miss Stark has been dishonest prior to and throughout proceedings
- The misconduct suggests there are deep-seated attitudinal concerns.

Ms Khan submitted that, given the circumstances of this case, the most appropriate and proportionate sanction in this instance is a strike-off. She submitted that the misconduct in this case raises fundamental questions about the Miss Stark's professionalism. She further submitted that Miss Stark put vulnerable patients at a risk of harm and that public confidence in the profession would be undermined if she was not removed from the register.

In response to Miss Stark's dishonesty, Ms 5 submitted that there was only one instance of dishonesty by Miss Stark and that was in stating that a relative needed assistance so that she could leave work.

Ms 5 submitted that the NMC has been unable to prove Miss Stark did anything wrong. There was before the panel no CCTV footage or handwriting analysis.

Ms 5 told the panel that Miss Stark has never had a complaint about her nursing, both as a student nurse and qualified nurse. She also said there was never any feedback given to Miss Stark by colleagues to say if they felt she had been acting overconfidently or otherwise.

Ms 5 told the panel that Miss Stark has always loved nursing but has not been able to show this as she has been suspended in effect by the NMC and its proceedings.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on sanction**

Having found Miss Stark'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.

The panel took into account the following aggravating features:

- Given the nature of the work Miss Stark was conducting, her misconduct put vulnerable patients at risk of harm.
- In falsifying colleague signatures, Miss Stark also placed them at risk of harm.
- Miss Stark has shown a pattern of dishonesty.
- Repeated notable inconsistencies in Miss Stark's evidence.

- A lack of insight from Miss Stark in regard to the impact her actions had on colleagues and the public perception. Even if, as she did, Miss Stark continued to maintain that she had not forged signatures, there was no evidence that even in the abstract she was able to identify why these were serious matters.
- Furthermore, even in Miss Stark's most recent statement her focus has remained on the impact of these proceedings on her and has continued to seek to place blame on others.

The panel took into account all the documentation before it, including feedback Miss Stark received when she was on placement as a student nurse. Notwithstanding those, the panel did not see them being directly relevant matters in this case. The panel did acknowledge there may have been some failure in the Trust's system. However, the panel found deliberate dishonesty on Miss Stark's part and in the light of this it found that there were no mitigating features.

The panel noted Ms 5's submission on the NMC's failure to rely on certain evidential criteria when considering the facts. The panel had in mind that the standard of proof is the civil standard, namely the balance of probabilities and not the standard applicable to criminal proceedings.

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 be neither proportionate nor in the public interest to take no further action. Misconduct of this nature demands a sanction.

The panel 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 Stark's practice would not be appropriate. 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 determined that Miss Stark'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 Stark's registration would be a sufficient and appropriate response. In the panel's judgement Miss Stark's misconduct and lack of insight were too serious for conditions of practice to be an adequate or appropriate order. Also, the panel found that the misconduct identified in this case could not be addressed through retraining and was extremely difficult to remediate. In the panel's view Miss Stark's misconduct revealed deep-seated attitudinal problems including dishonesty. It determined that, given the seriousness of the concerns, the deep-seated attitudinal problems and Miss Stark's lack of remorse or insight into how her actions could affect patients, colleagues and public confidence in the profession, there were no proportionate and workable conditions that could be formulated. Consequently, the panel decided that a conditions of practice order would not protect the public nor be in 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 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 found that Miss Stark's misconduct was deliberate dishonesty. There was no information before the panel to indicate whether Miss Stark had taken any steps to remediate her misconduct. The panel determined that the misconduct was a significant

departure from the standards expected of a registered nurse. The panel found that the serious breach of the fundamental tenets of the profession evidenced by Miss Stark's actions were incompatible with her 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 considered the NMC's guidance on 'Considering sanctions for serious cases; Cases involving dishonesty':

*'Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register.*

*...panels will need to consider carefully the following factors:*

- there is a distinction to be drawn between an allegation of conduct which is intrinsically dishonest, like fraud or forgery, as opposed to an allegation which relates to conduct (record-keeping, for example) which is capable of being performed either honestly or dishonestly...*

The panel determined that Miss Stark's actions put vulnerable patients at risk of harm. Miss Stark had shown very little insight or remorse for her actions and there remained a high risk of repetition of her misconduct. She placed her own personal interests above the potential risk of harm to patients and colleagues. Miss Stark is therefore still a risk to public safety should she practise as a registered nurse.

The panel determined that Miss Stark'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's findings in this case demonstrate that Miss Stark'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 these factors and after taking into account all the evidence before it, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order.

The panel concluded that this order was necessary to protect the public, 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 Stark 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 Stark's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel was made aware of an email sent to the hearings coordinator from Ms 5 shortly after the panel's decision on sanction was handed down. The email said:

*'[private]*

*I'm removing myself from the hearing as now there seems no point in being present. Being present hasn't made any difference to the outcome throughout the 2 years this so called trial has gone on! We will be appealing on the grounds of a corrupt trial process with so many adjournments, mistakes, withheld evidence and*

*ms khans own open complaints against her has not stopped her being on this case. Please send all transcripts and recordings while all meetings including this one took place.*

*Thank you for your time and whatever interim order is made yet again makes no difference as nothing has changed since the very start of this. Please just inform via email or post.'*

The panel decided that there would be no injustice to continue with proceedings.

The panel took account of the submissions made by Ms Khan. She submitted that an interim suspension order for a period of 18 months is necessary on the grounds of public protection and is otherwise in the public interest. She also submitted that the length of the interim suspension order should cover any potential period of appeal.

### **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 due to the reasons already identified in the panel's determination for imposing the substantive order and to cover any potential period of appeal.

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

That concludes this determination.