

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

**Substantive Hearing  
Monday 23 September – Wednesday 2 October 2024**

Virtual Hearing

**Name of Registrant:** Ellen Banks

**NMC PIN** 94A0026E

**Part(s) of the register:** Registered Nurse - Sub Part 1  
Mental Health Nurse, Level 1 (13 January 1997)

**Relevant Location:** County Durham

**Type of case:** Misconduct

**Panel members:** Patricia Richardson (Chair, Lay member)  
Mary Karasu (Registrant member)  
Caroline Taylor (Lay member)

**Legal Assessor:** Ruth Mann

**Hearings Coordinator:** Audrey Chikosha

**Nursing and Midwifery Council:** Represented by Claire Stevenson, Case Presenter

**Miss Banks:** Not present and not represented

**Facts proved:** Charges 1a, 1b, 1c, 1d, 2a, 2b, 3, 4

**Fitness to practise:** Impaired

**Sanction:** Strike-off

**Interim order:** Interim Suspension Order (18 months)

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

The panel was informed at the start of this hearing that Miss Banks was not in attendance and that the Notice of Hearing letter had been sent to Miss Banks' email address by secure email on 21 August 2024.

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

Following panel questions, Ms Stevenson submitted that the NMC had used a different email to Miss Banks' registered email address. She referred the panel to an email dated 22 January 2023 from Miss Banks to the NMC using the email address to which she was served the notice.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Banks' right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

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

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

continue in the absence of Miss Banks. She submitted that Miss Banks had voluntarily absented herself.

Ms Stevenson submitted that there had been no engagement at all by Miss Banks with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. The panel were also referred to an email of 26 August 2022 in which Miss Banks states:

*'I will not be attending the virtual interim hearing as I do not wish to continue with my registration'*

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Miss Banks. In reaching this decision, the panel has considered the submissions of Ms Stevenson, 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 Banks;
- Miss Banks has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A number of witnesses have been warned for today to give live evidence, others are due to attend;

- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

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

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

### **Details of charge**

1. Failure to maintain professional boundaries with Patient A in that you:
  - a. Maintained contact with Patient A during your sickness absence from the Trust, between June 2019 and September 2019;
  - b. Maintained contact with Patient A, when you were no longer Patient A's CPN, between November 2019 and August 2020;

- c. Entered into a transaction with Patient A, to purchase Patient A's car
  - d. Attended a meeting concerning Patient A's husband on 03 August 2020
2. In respect of the meeting referred to at 1 d. above:
- a. Failed to clarify to one or more members of staff attending the meeting that you were not attending in a professional capacity
  - b. Failed to inform your and/or attending staff members' manager that you were going to attend and/or had attended, the meeting.
3. Your failure at 2 a. demonstrated a lack of candour in that you left open the impression that you were attending in a professional capacity.
4. Your failure at 2 b. demonstrated a lack of candour in that you should have alerted managers to your presence in a personal and/or improper capacity

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

### **Decision and reasons on application to admit the hearsay evidence of Patient A**

The panel heard an application made by Ms Stevenson under Rule 31 to allow the hearsay evidence relating to Patient A into evidence. Patient A was not present at this hearing and Ms Stevenson applied to have the hearsay evidence of Patient A into evidence.

Ms Stevenson made both written and oral submissions. She submitted the following:

1. *'The NMC wish to rely on the evidence as set out in Appendix 1 in order to pursue the NMC's statutory objective, balancing the same with the important public interest in progressing hearings as expeditiously as is fairly possible.*
2. *Firstly, it is submitted that the evidence is relevant as it goes towards the Charges in this case.*
3. *Secondly, the NMC submit it would be fair to admit the evidence.*
4. *In relation to the evidence of Patient A, it is arguable that it can be considered in three parts: 1) oral disclosure made by Patient A to the NMC witnesses; 2) Patient A's diary; and 3) case notes/records kept by the Trust.*
5. *First, in relation to the disclosure made by Patient A, whilst she will not be in attendance to answer questions about that disclosure, she was interviewed by [Trust Investigator 1] and she made her disclosure to healthcare professionals. [Dr 1] undertook a cognitive assessment on Patient A and found that Patient A 'did have evidence of impairment with memory and evidence of impairment of visuospatial difficulties on tasks that involved motor coordination. Patient A could learn new information and immediately recall it...She was of sound mind and I had no concerns in relation to capacity or decision making, and Patient A's ability to weigh up and form judgements or opinions.' Patient A was also able to take part in the interview with [Trust Investigator 1] with [Dr 1] present. The documents obtained at the local level are contemporaneous documents. Therefore, Patient A was of sound mind when she made the disclosure to the healthcare professionals, and they then noted and acted on that disclosure.*
6. *Secondly, in relation to Patient A's diary, this was provided to [Dr 1] by Patient A who, as already discussed, had assessed Patient A and found her to be of sound mind. The diary was a contemporaneous document that Patient A relied on to help trigger her memory and she provided this diary to [Dr 1]. Therefore, the provenance*

*as to this document it accounted for. Furthermore, when interviewed by [Trust Investigator 1], Patient A consented to him to take a copy of it for the purpose of the investigation.*

*7. Lastly, in relation to case notes/records kept by the Trust, whilst those documents contain hearsay evidence, they are documents created in the course of business, official records. Therefore, the NMC submit they are admissible.*

*8. At paragraph 56 of Thorneycroft, there are a number of factors for the Panel to take into account when deciding on admitting evidence:*

*In my judgment, it was essential in the context of the present case for the Panel to take the following matters into account:*

- i. whether the statements were the sole or decisive evidence in support of the charges;*
- ii. the nature and extent of the challenge to the contents of the statements;*
- iii. whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
- iv. the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;*
- v. whether there was a good reason for the non-attendance of the witnesses;*
- vi. whether the Respondent had taken reasonable steps to secure their attendance; and*
- vii. the fact that the Appellant did not have prior notice that the witness statements were to be read.*

*9. Dealing with each of those factors in turn:*

- i. Some of the evidence is sole or decisive evidence in support of the charges;*
- ii. The Panel have the benefit of [Miss Banks'] statements and responses in interview from the Trust's investigation to understand the nature and extent of the challenge to disclosure made by Patient A. There is a degree of acceptance on the part of [Miss Banks] that there was contact outside work,*

*but the extent and dynamic of that relationship (who was initiating contact) appears to be in dispute. That also extends to the alleged improper meeting attendance and lack of candour. The matters which appear to be in dispute goes to the character of the relationship and therefore to the degree of culpability of [Miss Banks], charges and in turn going to misconduct and impairment. However, the calling of the NMC's live witnesses who can be questioned by the Panel may alleviate some of the concerns about admitting the hearsay evidence;*

- iii. It has not been clearly articulated that there is a suggestion that Patient A has a reason to fabricate their allegations, as set out above, there is a level of acceptance on the part of the Registrant;*
- iv. The charges are serious and so there could be a greater impact of adverse findings on the Appellant's career, equally, the NMC have an overarching objective to protect the public;*
- v. The NMC investigations team approached the Trust to establish whether there was a possibility to obtain a witness statement from Patient A. The Trust advised that Patient A was unwell, and they were concerned about revisiting the issues with them. A further update was sought in July 2022 and the Trust once again advised that Patient A remains unwell. Therefore, the NMC submit that by not obtaining evidence from Patient A to ensure their health and wellbeing was maintained is a good reason as to why Patient A has not given evidence in this case (please see pages 263-264 of the exhibit bundle);*
- vi. Again, the NMC submit that it had taken reasonable steps by liaising with the Trust to obtain evidence from Patient A. Furthermore, the NMC, by not taking additional steps to obtain evidence from Patient A, to ensure their health and wellbeing was maintained, acted reasonably;*
- vii. [Miss Banks] has not fully engaged with the NMC, in any event a case management form was sent to her which referred to the charges and the evidence the NMC would rely on. ‘*



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 legal assessor referred the panel to the relevant cases which included: *Thorneycroft, El Karout, Ogbonna and Mansaray v Nursing and Midwifery Council* [2023] EWHC 730 (Admin).

The panel gave the application in regard to Patient A serious consideration. It reviewed the appendix prepared by Ms Stevenson and considered the admissibility of each exhibit in turn.

### **Oral Disclosures of Patient A**

The panel first considered the oral disclosures of Patient A as referenced in the witness statements of Line Manager 1, Trust Investigator 1, Dr 1 and Colleague 3. It took account of Dr 1's assessment of Patient A who, as part of a clinical assessment at the time the concerns were disclosed by Patient A, determined that she had cognition and therefore the panel were satisfied that her oral disclosure is demonstrably reliable. The panel also noted that Patient A's oral disclosures are not the sole and decisive evidence for any one of the charges. Furthermore, the relevant witnesses, to whom the oral disclosures were made, will be attending the hearing and therefore the panel are of the view that this evidence can be challenged. The panel noted that Patient A was aware when disclosing information to Trust Investigator 1, that her disclosures were to be used as evidence for a formal investigation at the Trust.

The panel considered that as Miss Banks had been provided with a copy of all the witness statements to be presented before the panel and, as the panel had already determined that Miss Banks had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings

The panel therefore concluded that the oral disclosures of Patient A can be admitted into evidence as hearsay so far as they are relevant to the charges. It determined that paragraph 8 of Trust Investigator 1's witness statement is not relevant to the charges and therefore inadmissible as hearsay.

### **Exhibit MFH/2**

The panel considered the evidence in this exhibit to be relevant evidence as it included contemporaneous clinical case notes regarding Patient A and the relationship she had with Miss Banks. The panel noted that some entries in the case notes are written by colleagues who are not due to attend the hearing. The panel note that whilst their evidence will not have an opportunity to be challenged, Line Manager 1 who was present during the relevant meetings, will be attending the hearing. As such he can speak to the events recorded which can also be challenged.

The panel also bore in mind that this exhibit is not the sole and decisive evidence in relation to the charges. It determined that this evidence provides helpful context and information regarding the relationship between Patient A and Miss Banks at the time of the incidents. The panel noted that the case notes are electronic entries which have dates, times and the names of those who made the entries and therefore concluded that this evidence is demonstrably reliable.

Furthermore, the panel considered that as Miss Banks had been provided with a copy of all the exhibits to be presented before the panel and, as the panel had already determined that Miss Banks had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this evidence in any case. The panel was satisfied that it was fair to admit this evidence. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings

The panel therefore determined that this exhibit is admissible as hearsay.

## **Exhibit MFH/6**

The panel noted that this exhibit relates to notes from the local investigatory interview between Line Manager 1 and Trust Investigator 1. The panel considered that while it contains hearsay information, both Line Manager 1 and Trust Investigator 1 will be attending the hearing to give evidence. As such, the evidence can be challenged at the hearing. Furthermore, as the notes have been made in the course of an official investigation, the panel determined this evidence to be demonstrably reliable. It is also not the sole and decisive evidence in support of the charges. The panel noted that a determination as to the truth or otherwise of what was told to Line Manager 1 by Patient A will be considered at a later stage.

Furthermore, the panel noted that as Miss Banks had been provided with a copy of all the exhibits to be presented before the panel and, as the panel had already determined that Miss Banks had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this evidence in any case. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings

## **Exhibit PH/6**

The panel, in considering the admissibility of the diary of Patient A into evidence, took into account the test in *Thornycroft*. The panel determined that the evidence within the diary is not sole and decisive in respect of the charges. It noted that this was a diary used by Patient A on a daily basis as an aid memoir, containing contemporaneous notes of her daily activity. The panel considered the statement of Dr 1 who states that Patient A, who had long-term memory difficulties, relied heavily on her diary to “*help to trigger her memory*”. The panel was therefore satisfied that there is no apparent reason for this evidence to have been fabricated.

The panel noted that the evidence, while unable to be challenged, is partially supported by other evidence, namely the local investigation interview notes with Miss Banks and the telephone records provided by Trust Investigator 1.

The panel bore in mind the seriousness of the charges and allegations made within the diary of Patient A. It determined that the NMC had taken all reasonable steps to try and secure Patient A's attendance at the hearing, but she was unable to attend due to her health. The panel was of the view that in these circumstances, the diary of Patient A is relevant to the charges, demonstrably reliable and the evidence is able to be challenged through the other witnesses present.

Furthermore, the panel considered that as Miss Banks had been provided with a copy of all the exhibits to be presented before the panel and, as the panel had already determined that Miss Banks had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this evidence in any case. The panel was satisfied that it is fair to admit this into evidence. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings

#### **Exhibit MFH/7**

The panel noted that this exhibit contains dates taken from Patient A's diary. Having found Exhibit PH6 admissible as hearsay, the panel found this evidence admissible for the same reasons.

#### **Exhibit MFH/8**

The panel considered Ms Stevenson's submissions to admit this exhibit as hearsay evidence. This exhibit contains an email from Line Manager 1 to Trust Investigator 1. The panel noted that both witnesses will be attending the hearing to give oral evidence before

the panel. As such, it did not consider this exhibit to be hearsay evidence and therefore is admissible as NMC evidence in this case.

#### **Exhibit PH/4**

The panel noted that this exhibit is a summary of disclosures made by Patient A to Dr 1. Having found the oral disclosures made by Patient A to the witnesses who will be attending the hearing to be admissible as hearsay, the panel found this evidence to be admissible for the same reasons.

#### **Exhibit PH/5**

The panel carefully considered the admissibility of the notes from the local investigation meeting with Patient A. It noted that some of the information in the interview notes relate to Charge 1(d). The panel considered that while it will not have an opportunity to challenge this evidence with Patient A, Dr 1, who was also in attendance during the interview will be present at the hearing. Furthermore, the evidence is supported by responses given by Miss Banks in her local investigation interview and therefore the panel determined that there is no unfairness to Miss Banks.

The panel took into account the reason for the non-attendance of Patient A and the attempts made by the NMC to secure her attendance. It determined that all reasonable steps had been taken by the NMC and that Patient A's attendance today may have a negative impact on her health therefore it is fair and compassionate to admit her evidence as hearsay.

However, the panel also noted that the exhibit in its entirety is not relevant to the charges. It therefore determined, in fairness to Miss Banks, that only the relevant information that speak to the charges will be admitted as hearsay.

The panel was satisfied that the relevant evidence is demonstrably reliable, it is consistent and supported by other witnesses including Miss Banks and therefore determined that it would be fair to admit this evidence as hearsay.

### **Exhibit PH/9**

This evidence contains notes from the local investigation interview with Miss Banks. The panel noted that this is Trust Investigator 1's account and notes of the local investigation interview. The panel noted that this has not been signed or dated by Miss Banks to confirm she agrees it is an accurate account of the interview.

However, the panel bore in mind that Miss Banks has disengaged from these proceedings and with the NMC. She has voluntarily absented herself and therefore this evidence contains her only account of the incidents. The panel considered that there may be some disadvantage to Miss Banks that she has not had an opportunity to challenge this evidence, neither does the NMC nor the panel. Furthermore, the panel was of the view that it is in fairness to Miss Banks to have an account from her of the incidents. In addition, Trust Investigator 1 will be in attendance at the hearing and the panel will have an opportunity to challenge the evidence.

### **Exhibit GM/3**

The panel noted that his exhibit contains notes made in Patient A's patient records by Dr 1. The panel noted that these entries were made in a professional capacity in the duration of providing care to Patient A. The panel noted that the entries are based on hearsay evidence from Patient A. After having accepted the application to have Patient A's oral disclosures admitted as hearsay evidence the panel found no unfairness in admitting the patient notes. It noted that the care notes are contemporaneous evidence, recorded as part of Patient A's care on an electronic system used by the Trust with date and time stamps. The panel found this to enhance the reliability of the evidence and therefore decided to admit this evidence as hearsay.

## **Decision and reasons on application to admit the evidence of Colleague 5 and Colleague 6 as hearsay evidence**

The panel heard an application made by Ms Stevenson under Rule 31 to allow the witness statements and evidence of Colleague 5 and the witness statement of Colleague 6 into evidence. Colleague 5 and Colleague 6 were not present at this hearing, and the NMC did not intend to call them to give oral evidence. It is the NMC's position that the case can proceed with only their written statements and evidence.

Ms Stevenson made both written and oral submissions. She submitted the following:

1. *'The NMC wish to rely on the evidence contained within exhibits PH/10, PH/13, and PH/19, as set out in Appendix 1, in order to pursue the NMC's statutory objective, balancing the same with the important public interest in progressing hearings as expeditiously as is fairly possible.*
2. *Firstly, it is submitted that the evidence is relevant as it goes towards the Charges in this case.*
3. *Secondly, the NMC submit it would be fair to admit the evidence.*
4. *The Panel may form the view that the evidence of [Colleague 5] and [Colleague 6] is evidence which in some ways supports the Registrant's case and therefore it would not be prejudicial to admit such evidence.*
5. *Dealing again with the factors of Thorneycroft in turn:*
  - i. *The evidence is no sole or decisive;*
  - ii. *See paragraph 20(ii) above;*
  - iii. *See paragraph 20(iii) above;*
  - iv. *See paragraph 20(iv) above;*

- v. *The NMC contacted the Trust asking for information and contact details for [Colleague 5] and [Colleague 6]. The Trust responded stating that 'Workforce were unable to find a record of [Colleague 5] being employed by the Trust... [Colleague 6] – cannot find record of employment... The ones we do not have records for may be locum/agency if they were involved in the patients care but we would not be able to find them without more knowledge of timeframe/ward area.' The NMC did have an email address for [Colleague 5] however they did not rely to the NMC. The NMC were unable to obtain any further contact details for them;*
- vi. *Again, the NMC submit that it had taken reasonable steps by liaising with the Trust to obtain the contact details. Whilst the NMC could have asked for a trace to be undertaken, the NMC did not consider that that was a proportionate step to take;*
- vii. *The Registrant has not fully engaged with the NMC, in any event a case management form was sent to her which referred to the charges and the evidence the NMC would rely on. '*

## **Exhibit PH/10**

The panel noted that this exhibit contains the witness statement of Colleague 5. Colleague 5 was Patient A's Community Psychiatric Nurse (CPN) at the time of the incidents to which the charges relate. The witness statement speaks to Charges 1(d) and 2(a).

The panel considered the submissions of Ms Stevenson who submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations and is signed and dated by Colleague 5. The panel considered the NMC's submissions as to the reason of the non-attendance of this witness namely that the Trust had contacted Colleague 5, they had received no response from her. The panel was not satisfied that the NMC had taken all reasonable steps to secure Colleague 5's attendance. However, the panel noted that the



evidence contained within her statement appears to support Miss Banks and in fairness to Miss Banks this evidence should be admitted. The panel determined that the evidence is demonstrably reliable.

The panel considered that this is not the sole and decisive evidence in support of the charges. Further, it noted that while the evidence cannot be challenged, it does assist Miss Banks. The panel determined that in fairness to Miss Banks, the statement of Colleague 5 should be admitted into evidence.

### **Exhibit PH/19**

The panel considered the admissibility of the local investigation interview notes between Trust Investigator 1 and Colleague 5. The panel noted that this evidence is relevant to Charge 2 although it is not the sole and decisive evidence. Furthermore, the panel will be hearing oral evidence from others present at the meeting of 3 August 2020 referred to in the interview notes.

In light of admitting her witness statement and the seriousness of the charges, the panel determined that it would be fair to admit this evidence for the same reasons. The panel noted it will have an opportunity to challenge the evidence of those who were also present at the meeting described by Colleague 5. In addition, this evidence supports Miss Banks.

The panel therefore admitted this exhibit as hearsay evidence.

### **Exhibit PH/13**

The panel considered the admissibility of the witness statement of Colleague 6 who is not in attendance. The panel noted that the statement was not signed, dated nor contained a statement of truth. Furthermore, the panel considered the submissions made by the NMC namely that the Trust were unable to contact the witness who may have been a locum or agency staff member. Whilst the panel was not satisfied that NMC had taken sufficient

steps to secure the attendance of Colleague 6, it noted that the evidence produced in the statement appeared to support Miss Banks.

The panel considered that this statement is not the sole and decisive evidence for Charge 2a. In addition, this recount supports Miss Banks and assists her at this hearing. The panel therefore determined that in fairness to Miss Banks this exhibit should be admitted as hearsay evidence.

The panel determined that its decision to admit the above evidence as hearsay has been made prior to confirmation that the witnesses warned to attend the hearing will be in attendance. The panel reserves the right to reconsider the admissibility of hearsay evidence in the event that any of the NMC witnesses warned subsequently fail to attend and are therefore not able to be cross-examined.

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

During the course of hearing witness evidence, the panel noted that proper exploration of Miss Banks' case will require reference to private information. As such, the panel used its power under Rule 19 (3) of the Rules to go into private sessions as and when reference to the health condition of Patient A, Miss Banks or her colleagues is made.

### **Background**

Miss Banks was referred to the NMC by her employer Tees, Esk and Wear Valleys NHS Foundation Trust (the Trust) in relation to a number of allegations including a breach of professional boundaries from June 2019 to August 2020 with a vulnerable service user (Patient A) who had previously been in her care. At this time, Miss Banks was working as a Community Psychiatrist Nurse (CPN).

It is alleged that Miss Banks continued contact with Patient A after she had been moved to a different team and had no reason to contact them.

Patient A is said to have kept a diary which they shared with the Trust. The diary included alleged evidence of:

- Extensive accounts of contacts covering the period of June 2019 to August 2020 and before.
- Frequent telephone calls between Miss Banks and Patient A.
- Visits by Miss Banks to Patient A's home.
- Miss Banks purchasing a car from Patient A.

The Trust conducted an internal investigation in which Miss Banks made some partial admissions to breaching professional boundaries with Patient A.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Stevenson on behalf of the NMC. The panel has drawn no adverse inference from the non-attendance of Miss Banks.

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: Trust Investigator 1.
- Witness 2: Dr 1.
- Witness 3: Line Manager 1.

- Witness 4: Colleague 1
- Witness 5: Line Manager 2
- Witness 6: Colleague 2
- Witness 7: Colleague 3
- Witness 8: Colleague 4

The panel also heard and had sight of the hearsay evidence of Patient A, as well as witness statements from Patient A's CPN (Colleague 5) and Colleague 6 who was a nurse for Liaison Mental Health on shift on 16 August 2020.

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 the NMC.

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

### **Charge 1a**

- "1. Failure to maintain professional boundaries with Patient A in that you:
- a. Maintained contact with Patient A during your sickness absence from the Trust, between June 2019 and September 2019;"

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

In reaching this decision, the panel first considered the stem of the charge in which it makes reference specifically to a 'failure' to maintain professional boundaries. The panel

noted that in order for Charges 1a and 1b to be found proved, it must first be established that there was a duty to maintain professional boundaries in the first instance.

The panel had sight of the job description of Miss Banks' role at the Trust in which it states under the heading '*Main Duties and Responsibilities*':

*'5.6 Responsible for maintaining appropriate boundaries with patients.'*

The panel also noted that during the internal investigation, Miss Banks stated that it is important to maintain professional boundaries. Furthermore, Line Manager 1 in his oral evidence explained to the panel that as a registered nurse, maintaining professional boundaries is part of the Trust's Values and Behaviours, Code of Conduct and should be "*imprinted*" into your nursing practice. He also gave evidence that training was provided to all employees regarding the importance of maintaining professional boundaries upon commencing with the Trust.

The panel was therefore satisfied that there was a duty to maintain professional boundaries.

The panel then considered subsection (a) of the charge. It had before it case notes of a meeting held on 10 July 2019 between Patient A, Line Manager 1 and other staff members. In this meeting, Patient A disclosed that she knew Miss Banks was off sick and relayed information which she otherwise ought not have known unless she was part of the staff team.

The panel also had sight of Patient A's diary which Dr 1 informed the panel was used by Patient A as an aid memoir due to her long-term memory difficulties. The panel noted and was satisfied, having heard evidence from Dr 1, that it was common practice for Patient A to utilise this diary by writing contemporaneous notes of her daily activity. Dr 1 also gave evidence that this was a long-standing practice of Patient A both prior to the period in question and continuing after. The panel was therefore satisfied that it was credible

evidence in support of this charge. The panel noted that the diary contained notes during the relevant period that suggested there was contact between Miss Banks and Patient A.

In light of the documentary evidence of Patient A's diary as well as the oral and written evidence of Line Manager 1, the panel determined that on the balance of probabilities this charge is found proved.

**Charge 1b)**

“1. Failure to maintain professional boundaries with Patient A in that you:

- b. Maintained contact with Patient A, when you were no longer Patient A's CPN, between November 2019 and August 2020;”

**This charge is found proved.**

In reaching this decision, the panel took into account the witness statements and oral evidence of Line Manager 1 and 2. The panel noted they both stated that it was not appropriate for Miss Banks to maintain contact with Patient A when she was no longer her CPN. The panel heard evidence that Miss Banks had moved to her new role in the Intensive Community Liaison Service (ICLS) team in November 2019 and at that point was no longer Patient A's CPN and should have had no further contact with her.

The panel had sight of the evidence of Trust Investigator 1 who stated in oral evidence that the part-redacted telephone number within the phone records provided to the panel was that of Patient A. The records showed 75 outgoing calls from Miss Banks' work phone to Patient A within the relevant period. The panel noted that the phone records were taken directly from the service provider and contained the dates, times, and duration of the calls.

The panel also considered the diary entries made by Patient A during this period which made reference to contact between Patient A and Miss Banks, in particular a transaction concerning the purchase of a car that occurred between the two of them.

The panel further considered the local investigation interview notes with Miss Banks in which she stated:

*“yes I didn’t maintain professional boundaries, I admit to that...”*

The panel therefore found this charge proved.

### **Charge 1c)**

“1. Failure to maintain professional boundaries with Patient A in that you:

c. Entered into a transaction with Patient A, to purchase Patient A’s car”

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

In reaching this decision, the panel took into account the notes from the local investigation interview, the written evidence of Colleague 2 and Miss Banks’ own witness statement in which she makes some admissions.

The panel noted that Miss Banks admitted that she entered the transaction with Patient A to purchase her car. Miss Banks also accepted in the same interview that she should not have done so.

When asked whether it was appropriate to have entered into the transaction with Patient A to purchase the car Miss Banks responded:

*'...no I should not have bought it...'*

This is corroborated by the diary entries of Patient A which indicate that a transaction did occur between the parties. Dr 1 also gave evidence that Patient A informed her of the transaction after the fact.

The panel determined that this charge is found proved.

### **Charge 1d)**

"1. Failure to maintain professional boundaries with Patient A in that you:

d. Attended a meeting concerning Patient A's husband on 03 August 2020"

**This charge is found proved.**

In reaching this decision, the panel took into account the local investigation meeting notes, the oral evidence of Colleague 1 and Line Manager 2 as well as the witness statement of Colleague 5.

The panel noted that at the local interview, Miss Banks admitted that she attended the meeting. Furthermore, a number of witnesses provided evidence that they saw Miss Banks at the meeting. The panel considered the evidence of Colleague 1 who stated that Miss Banks was in attendance and that she was under the impression throughout the meeting that Miss Banks was Patient A's niece. Patient A's CPN at the time (Colleague 5), who had previously worked with Miss Banks, also provided a witness statement which stated that Miss Banks was in attendance at the meeting.

The panel then heard from Line Manager 2 who confirmed to the panel that attending this meeting would not have been part of Miss Banks' job role.



The panel had no information to contradict the evidence it had before it. It determined that the evidence was credible and reliable as multiple individuals corroborated the recount. Furthermore, Miss Banks also admitted that she was in attendance.

The panel therefore found this charge to be proved.

### **Charge 2a)**

“2. In respect of the meeting referred to at 1 d. above:

a. Failed to clarify to one or more members of staff attending the meeting that you were not attending in a professional capacity.”

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

In reaching this decision, the panel considered the evidence of Colleague 1 and 5.

The panel noted that there is a conflict in the evidence as Colleague 1 told the panel she believed Miss Banks was Patient A’s niece and was therefore at the meeting in a non-professional capacity. Colleague 1 further stated that it was her role as the senior nurse to ensure that Patient A was supported by someone who could advocate for her and that had she been aware that Miss Banks was not attending in that capacity, she would have made enquiries to contact a relative to help her with decision making.

The panel considered the hearsay statement of Colleague 5’s in which she states that she heard Miss Banks make reference to her professional status during the introductions in the meeting.

Furthermore, the panel noted that Colleague 5 stated that:

*'...throughout the meeting I was unsure whether [Miss Banks] was there in a professional capacity...'*

During the course of Line Manager 2's evidence, she echoed a similar sentiment in that it was unclear why Miss Banks was in attendance at the meeting.

In light of the evidence, the panel determined that at least one member of staff was not clear that Miss Banks was not attending in a professional capacity and therefore found this charge proved.

### **Charge 2b)**

"2. In respect of the meeting referred to at 1 d. above:

b. Failed to inform your and/or attending staff members' manager that you were going to attend and/or had attended, the meeting."

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

In reaching this decision, the panel first considered whether or not there was a duty for Miss Banks to inform staff members/ her manager that she would be attending the meeting.

The panel heard oral evidence from Line Manager 2 that it was not part of Miss Banks' role in ICLS to attend this meeting as she was no longer Patient A's CPN nor was she part of the team responsible for Patient A's care at that time. Furthermore, in her witness statement, Line Manager 2 states:

*'[Miss Banks] should have informed myself or a member of the leadership team about her relationship with Patient A and about attending a meeting on 3 August 2020 concerning Patient A's husband. However, this did not happen'*

The panel also noted that having found Charge 2a proved, staff members were unclear of Miss Banks' role at the meeting and therefore indicates that she had not informed them she would be in attendance.

The panel therefore found this charge to be proved on the balance of probabilities.

### **Charge 3)**

“Your failure at 2 a. demonstrated a lack of candour in that you left open the impression that you were attending in a professional capacity.”

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

In reaching this decision, the panel took into account the ordinary meaning of ‘candour’ which means to be open and honest. The panel noted that registered nurses, under the Code of Conduct are bound by a duty of candour.

The panel also bore in mind the submissions of Ms Stevenson who referred the panel to the NMC guidance on the professional duty of candour.

Having found charge 2a proved, the panel was satisfied that Miss Banks demonstrated a lack of candour as members of staff were left with the impression that she was attending the meeting in a professional capacity.

The panel therefore found this charge to be proved.

### **Charge 4)**

“Your failure at 2 b. demonstrated a lack of candour in that you should have alerted managers to your presence in a personal and/or improper capacity”

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

Having found charge 2b proved, the panel was satisfied that Miss Banks demonstrated a lack of candour by not being open and honest with the managers that she would be attending the meeting in a personal capacity.

The panel therefore found this charge proved.

### **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 Banks' 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 Banks' 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.'*

Ms Stevenson invited the panel to take the view that the facts found proved amount to misconduct. 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.

Ms Stevenson submitted that the facts found proven are serious as they relate to breaching professional boundaries and demonstrating a lack of candour. She submitted that as a result of Miss Banks' conduct, a vulnerable patient, Patient A, suffered harm. Ms Stevenson then referred the panel to the evidence of Dr 1. She submitted that according to Dr 1, Miss Banks' actions have had a lasting impact on Patient A.

Ms Stevenson submitted that Miss Banks was required to treat patients with kindness, respect and compassion, however her actions found proven amount to a serious departure from those expected standards in her role as a nurse. Ms Stevenson submitted that Miss Banks' conduct also fell far short of what her colleagues would expect. She reminded the panel it heard evidence from Miss Banks' former colleagues and managers who spoke about Miss Banks' lack of professionalism and her inappropriate behaviour. Ms Stevenson also referred the panel to the witness statement of Dr 1 which reads:

*'...I was so disappointed when Patient A detailed what had happened. I had worked with [Miss Banks] with a number of different patients and I was shocked that this had happened. I was also concerned of potential harm to other patients...'*

and

*'...I have never seen a case like this. It was very disappointing...'*

Ms Stevenson submitted that the public would expect that the profession would be dependable and provide effective care. She submitted that members of the public would expect nurses to uphold a professional reputation.

Ms Stevenson then identified the specific, relevant standards where Miss Banks' actions amounted to misconduct which were as follows: 1.1, 1.2, 7.1,7.4, 8.2,8.5, 20.1, 20.3, 20.5 20.6

Ms Stevenson therefore invited the panel to make a finding of misconduct in this case.

### **Submissions on impairment**

Ms Stevenson 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 maintain 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) and *Cohen v GMC* [2008] EWHC 581 (Admin).

Ms Stevenson referred the panel to the test in the *Grant* case which is 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...*

Ms Stevenson invited the panel to find Miss Banks' fitness to practise impaired and submitted that the first three limbs of the Grant test are engaged.

Ms Stevenson submitted that Miss Banks repeated her misconduct over a period of time and even after changing teams at the Trust when she was no longer the CPN for Patient A, the misconduct continued.

Ms Stevenson submitted that the concerns in this case are serious. She then took the panel through the NMC Guidance '*Serious concerns which are more difficult to put right*' (reference FTP-3a).

Ms Stevenson submitted that the charges found proved indicate serious attitudinal concerns and that Miss Banks' conduct was an abuse of her position of trust for personal financial gain. She submitted that Miss Banks has in the past and is liable in the future to put patients at unwarranted risk of harm. Ms Stevenson further submitted that the behaviour of Miss Banks found proven brings the profession into disrepute and Miss Banks has breached fundamental tenets of the nursing profession.

Ms Stevenson then took the panel through the NMC Guidance '*Insight and Strengthened Practise*' (reference FTP-15). In particular, Ms Stevenson referred the panel to the following:

*'when assessing evidence of the nurse at nurses insight and the steps they have taken to strengthen their practise, decision makers will need to take into account the following questions. Can the concerns be addressed? Has the concern been addressed and is it highly unlikely that the conduct will be repeated?'*

Ms Stevenson submitted that there is very little evidence of insight from Miss Banks. She submitted that the only evidence before the panel today regarding Miss Banks' position is from the local investigation statements and interview notes. Ms Stevenson submitted that aside from this, the panel has no evidence before it that demonstrates any remorse or reflection. Ms Stevenson also submitted that there is no evidence of further training, no evidence of a period of employment or a successfully completed action plan. Ms Stevenson informed the panel that Miss Banks has been subject to an interim conditions of practise order since 26 October 2020 and that since it was imposed, there has been no evidence of strengthened practise or developing insight.

Ms Stevenson submitted that Miss Banks is at a risk of repeating the misconduct if she were permitted to practise unrestricted. As such Ms Stevenson invited the panel to find that Miss Banks is currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance*, *General Medical Council v Meadow* [2007] QB 462 (Admin), *Cohen* and *Cheatle v GMC* [2009] EWHC 645 (Admin).

## **Decision and reasons on misconduct**

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 Banks' actions did fall significantly short of the standards expected of a registered nurse, and that Miss Banks' actions amounted to a breach of the Code. Specifically:

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

To achieve this, you must:



*8.2 maintain effective communication with colleagues*

*8.6 share information to identify and reduce risk*

**19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice**

*To achieve this, you must:*

*19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

**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*

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

*20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

*20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers*

**21 Uphold your position as a registered nurse, midwife or nursing associate**

*To achieve this, you must:*

*21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care'*

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 all of the charges amount to misconduct. It noted that in particular Charges 1a, 1b, 1c and 1d amount to serious misconduct as they relate to multiple serious breaches of professional boundaries over a prolonged period of time. Furthermore, the panel was of the view that collectively, the charges demonstrate that Miss Banks' actions did fall seriously short of the conduct and standards expected of a nurse and therefore amounted to serious misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Miss Banks' 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 and to maintain professional boundaries. 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:*

- d) 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*
- e) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- f) 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*

The panel finds that Patient A was put at risk and was caused harm as a result of Miss Banks' misconduct. The panel noted that Patient A said she felt she was being 'groomed' by Miss Banks, and it determined that the concerns suggest serious attitudinal concerns. Miss Banks' misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel next considered whether the misconduct in this case is capable of being addressed. It noted that while the concerns in this case are potentially remediable, the repetition, prolonged period of time and wide-ranging nature of the misconduct makes it more difficult to address.

The panel considered the oral evidence from Line Manager 1, who told the panel that while Miss Banks was working as Patient A's CPN a number of concerns had been raised regarding their relationship. The panel noted that after these concerns were raised and Miss Banks stopped being Patient A's CPN and moved to another team, the behaviour continued. The panel was of the view that this suggests a high likelihood of repetition.

The panel went on to consider insight. The panel took into account Miss Banks' responses at the local interview in which she appears to acknowledge that she may have caused harm and accepts that she should not have bought the car from Patient A. However, the panel had no other information before it to evidence developed insight from Miss Banks regarding her actions. The panel also had no evidence of remorse and in fact, noted that during the local investigation interview, Miss Banks appeared to deflect blame for the incidents on to Patient A referring to her as '*manipulative*' and saying that she '*.. was sorry for her*' and '*...I shouldn't have been so soft, I really did fall for the woman*'.

In addition, the panel noted that it had no evidence before it to demonstrate that Miss Banks has taken steps to strengthen her practice.

In conclusion the panel determined that because of the attitudinal nature of the misconduct, the lack of insight and strengthened practice, there is a high risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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 determined that a finding of impairment on public interest grounds is required because members of the public would be shocked to find that a registered nurse who has breached fundamental tenets of the profession in particular, breached professional boundaries and demonstrated a lack of candour with regards to a vulnerable patient is permitted to practise without restriction.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Banks' fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Banks' 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 Banks off the register. The effect of this order is that the NMC register will show that Miss Banks 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 *PSA v NMC and Jalloh* [2023] EWHC 331 (Admin).

## **Submissions on sanction**

Ms Stevenson first took the panel through the relevant NMC guidance namely, SAN-1 in relation to imposing sanctions, FTP-3A in relation to serious concerns and FTP-3C in relation to serious concerns based on the public confidence or professional standards.

Ms Stevenson submitted that the following aggravating features apply in this case:

- Abuse of a position of trust.
- Lack of insight into failings.
- Pattern of misconduct over a period of time.
- Harm caused to Patient A, who was vulnerable.
- Obtaining a benefit through the financial arrangement of the purchase of a car.
- Attendance at a clinical meeting in relation to Patient A's husband, who was also a vulnerable patient.

Ms Stevenson then submitted that mitigating factors in this case may include the fact that Miss Banks acknowledged some of her actions during her local investigation interview and there is some evidence of reflection in the same interview notes as well as her statement.

Ms Stevenson submitted that the charges found proven are serious and that Miss Banks' actions have fallen significantly short of the standards expected of a registered nurse. She submitted that Miss Banks has breached fundamental tenets of the nursing profession and has therefore brought the profession's reputation into disrepute. Ms Stevenson reminded the panel of its findings at the impairment stage and invited it to take them into account as it considers the appropriate sanction in these circumstances.

Ms Stevenson then made submissions regarding the type of order the panel should impose. She invited the panel to consider the NMC guidance on suspension orders. Ms Stevenson submitted that Miss Banks' conduct is of the utmost seriousness and raises fundamental questions about her professionalism and attitude. She submitted that there is high risk of repetition and therefore the NMC finds that the misconduct in this case is serious enough to suspend Miss Banks' registration.

Ms Stevenson further submitted that in light of the submissions and the panel's findings, a striking off order is the most appropriate sanction in this case. She submitted that Miss Banks' conduct raises fundamental concerns about her professionalism and attitude. Furthermore, she submitted that a striking-off order is the appropriate sanction that could maintain public confidence in the nursing profession.

Ms Stevenson therefore invited the panel to impose a striking-off order.

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

Having found Miss Banks' 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:

- Abuse of a position of trust
- Lack of insight into conduct failings
- A pattern of misconduct over a period of time
- Conduct which resulted in Patient A suffering harm.
- The conduct involved breaches of professional boundaries with a vulnerable patient

The panel also took into account the following mitigating features:

- Miss Banks made some acknowledgements of her actions

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.

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 Banks' 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 Banks' 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 Banks' 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 panel noted that while it had determined that the misconduct is remediable, it also determined that the nature of the misconduct is a serious concern and would be difficult to remediate. The panel noted that the misconduct did not occur during the course of Miss Banks' daily working practice and instead arose from actions Miss Banks took outside of her nursing role and working hours. The panel determined that it could not formulate conditions that would be practical, workable or measurable to protect patients from the risk of harm. The panel therefore concluded that the placing of conditions on Miss Banks' registration would not adequately address the seriousness of this case and would not protect the public.

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 conduct, 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 Banks' actions is fundamentally incompatible with Miss Banks remaining on the register. The panel noted the charges found proved relate to multiple breaches of professional boundaries over a period of 14 months as well as a failure to adhere to the duty of candour. The panel noted that Miss Banks has had opportunities to attempt to remediate and persuade the panel that she is fit to remain on the register but has failed to do so and has requested to be removed from the register.

The panel further considered the evident lack of insight from Miss Banks. It bore in mind that Miss Banks' role involved working with extremely vulnerable patients in an environment where maintaining professional boundaries was critical. The panel determined that not only did Miss Banks fail to recognise that, but she also failed to reflect, show remorse or demonstrate insight into her actions after the fact. The panel was particularly concerned that Miss Banks' rationale for her behaviour was fundamentally flawed as she believed that she was helping Patient A.

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?*

Miss Banks' 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 Banks' 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 effect of Miss Banks' 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 Banks 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 Banks' 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 took account of the submissions made by Ms Stevenson. She invited the panel to impose an interim suspension order for a period of 18 months. Ms Stevenson submitted that this would cover the appeal period. She further submitted that it would be in the public interest and otherwise in the public interest.

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

### **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.

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

That concludes this determination.