Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 8 November 2021 – Thursday 11 November 2021

Virtual Hearing

Name of registrant:	Derek Cameron Stewart
NMC PIN:	88K0326S
Part(s) of the register:	Registered Nurse - Mental Health, Level 1 RN3: Sub part 1(25 November 1992)
Area of registered address:	Angus
Type of case:	Misconduct
Panel members:	John Vellacott (Chair, lay member) Marian Robertson (Registrant Member) Margaret Wolff (Lay member)
Legal Assessor:	Charles Apthorp
Panel Secretary:	Parys Lanlehin-Dobson
Nursing and Midwifery Council:	Represented by Alastair Kennedy, Case Presenter
Mr Stewart:	Not present and unrepresented
Facts proved by admission:	Charges 1a, 4b, 5 and 6
Facts proved:	Charges 1b, 2, 3, 4a, 4c, 7 and 9
Facts not proved:	Charge 8
Fitness to practise:	Impaired
Sanction:	**Striking off order**
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 Mr Stewart was not in attendance and that the Notice of Hearing had been sent to his email address, as recorded on the Nursing and Midwifery Council's (NMC's) Register, on 27 September 2021.

The panel took into account that the Notice of Hearing provided details of the allegations, the date, time, virtual hearing link and, amongst other things, information about Mr Stewart's right to attend virtually, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mr Stewart has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Stewart

The panel next considered whether it should proceed in the absence of Mr Stewart. The panel had regard to Rule 21 of the Rules and heard the submissions of Mr Kennedy who invited the panel to proceed in the absence of Mr Stewart.

Mr Kennedy referred the panel to an email, in response to the notice of this hearing, from Mr Stewart and his wife, dated 29 October 2021 which stated the following:

"…Hello,

Yes we are content for the hearing to proceed in our absence. Thank you for all your help and patience.
Regards,
… and Derek"

Mr Kennedy submitted that Mr Stewart had indicated that he was aware of the hearing and had voluntarily absented himself from these proceedings. He reminded the panel that there was a public interest in proceeding with the hearing today.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Mr Stewart. In reaching this decision, the panel considered the submissions of Mr Kennedy, the email from Mr Stewart, and the advice of the legal assessor. It also had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Mr Stewart has received the Notice of Hearing, is aware that the hearing is taking place today virtually, and has been provided with details of how to attend;
- Mr Stewart has engaged with the NMC and not requested an adjournment;
- Mr Stewart has confirmed in writing that he will not be attending;
- There is no reason to suppose that adjourning would secure his attendance on a future date; and
- Four witnesses have been called to give live evidence at these proceedings
- 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 2018 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.

In these circumstances, the panel decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Stewart.

There is some disadvantage to Mr Stewart in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his 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 Mr Stewart's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented.

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

Details of charge

Whilst working as a registered nurse on Psychiatry Ward 3 at Kingsway Care Centre:

1. On 22 December 2018:

a. *Said to Patient A words to the effect of those listed in Schedule 1.*

b. Pointed your finger in Patient A's face.

2. On 23 December 2018, suggested to Colleague 1 and/or Colleague 2 that in saying words in charge 1a, you were only repeating what Patient A had said.

3. On 23 December 2018, said to Colleague 2 that if anyone asked to tell them that you had not been in the ward that evening.

4. Between 23 and 27 December 2018, in relation to statements for the local investigation:

a. On one or more occasion, asked Colleague 1 and/or Colleague 2 what they were going to put in their statements.

b. Asked Colleague 1 if she had submitted her statement.

c. Provided a copy of your statement to Colleague 1.

5. In a meeting on 16 January 2019 and/or within a statement said that Patient A had nipped or bitten you, and/or that Patient A had said that he would break your arm.

6. In your self-referral to the NMC said that Patient A had physically hurt you.

7. Your actions at charges 2 and/or 5 and/or 6 were dishonest in that you were attempting to suggest that Patient A had threatened and/or bitten/nipped you when this was not the case.

8. Your actions at charge 3 were dishonest in that you were attempting to suggest that you could not have been involved in the incident with Patient A.

9. Your actions at charge 4 demonstrated a lack of integrity as you were trying to influence the contents of the statements of Colleague 1 and/or Colleague 2.

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

Schedule 1 [Private]

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Kennedy, who informed the panel that Mr Stewart made admissions to charges 1a, 4b, 5 and 6.

The panel therefore finds charges 1a, 4b, 5 and 6 proved in their entirety, by way of Mr Stewart's admissions.

In reaching its decisions on the remaining disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Kennedy on behalf of the NMC.

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

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Colleague 1: Colleague 1 is a registered mental health nurse and a former colleague of Mr Stewart at NHS Tayside. Colleague 1 was present at the time of the incident involving patient A, on December 22 2018. The live and documentary evidence of Colleague 1 also speaks directly to charges 2 and 4.

- Colleague 2: Colleague 2 is a Health care Assistant and also a former colleague of Mr Stewart at NHS Tayside. Colleague 2 was also present at the time of the incident involving patient A, on 22 December 2018. The live and documentary evidence of Colleague 2 also speaks directly to charges 2, 3 and 4a.

- Colleague 3: Colleague 3 is a registered nurse at NHS Tayside. At the time of the incident Colleague 3 was working as a Senior Charge Nurse and Duty Manger. Colleague 3 did not witness the incident that occurred on 22 December 2018.

- Colleague 4: Colleague 4 is also a registered nurse at NHS Tayside. Colleague 4 did not witness the incident that occurred on 22 December 2018. Colleague 4 held the investigative proceedings in relation to the incident that occurred on 22 December 2018.

Background

Whilst working the night shift in Ward 1 Kingsway Care Centre (KCC) Mr Stewart entered Ward 3, on the night of the 22 December 2018 to clarify a medication query with Colleague 1. Mr Stewart asked if he could help with Patient A, who had previously been given medication and was lying on the floor and Colleague 1 informed Mr Stewart

that the patient had been aggressive and distressed, and had hit out at other members of staff and broken a pane of glass in the door. Colleague 1 told Mr Stewart that the situation was now under control and his assistance was not required. It is alleged that Mr Stewart ignored this request and approached Patient A proceeding to ask Patient A to get up from the floor. Mr Stewart continued to ignore the request from staff to leave Patient A alone. Patient A then became increasingly aggressive and distressed, at the presence of Mr Stewart, whose behaviour was making matters worse. During this incident it is alleged that Mr Stewart swore at Patient A and threatened him whilst standing over and pointing his finger at him.

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 disputed charges and made the following findings.

Charge 1b

1. *On 22 December 2018:*
    b. Pointed your finger in Patient A's face.

This charge is found proved.

In reaching this decision, the panel had regard to both the oral and documentary evidence provided by Colleague 1 and the oral evidence provided by Colleague 2. In a statement signed and dated 21 August 2019, Colleague 1 stated "I then witnessed Derek bent over the patient pointing his finger at the patients face, only a few centimetres away." The panel also noted that during his oral evidence, Colleague 2 told the panel that he saw Mr Stewart pointing at Patient A during the altercation.

It also took into account Mr Stewart's internal investigation statement dated 16 January 2019 in which he acknowledged that he had pointed his finger at Patient A. Having considered all the above evidence the panel found charge 1b proved.

Charge 2

2. *On 23 December 2018, suggested to Colleague 1 and/or Colleague 2 that in saying words in charge 1a, you were only repeating what Patient A had said.*

This charge is found proved.

In reaching this decision, the panel had regard to the oral evidence of Colleague 1 and Colleague 2.

Colleague 1 told the panel that although she did not see the entire incident she was certain that she did not hear Patient A saying words to the effect of those listed in schedule 1. The panel had regard to the messages sent by Mr Stewart to Colleague 1 referencing his statement, in which he said: "Then he (Patient A) said *" [PRIVATE]" "[PRIVATE] I repeated what he had said quite loudly, because he was still holding my arm*." Further Colleague 2 noted in his written statement that Mr Stewart had told him that "He was just repeating back what Patient A had said to him, [PRIVATE]".

However the panel heard from Colleague 2 during live evidence, that Patient A had categorically not said this and in any event it would have been near impossible for Patient A to say the listed words, as Patient A was incoherent at the time and could *"barely string a sentence together".*

In its consideration of the evidence relating to this charge, the panel assessed the credibility of Colleague 1 and Colleague 2. It was of the view that both Colleague 1 and Colleague 2 provided clear and credible oral evidence. It considered that Colleague 1 and Colleague 2's oral evidence was consistent with their witness statements. The panel found that it could place substantial weight on this evidence and found that it was helpful in determining the facts of this case.

The panel was therefore of the view, that on the balance of probabilities, it was more likely than not that Mr Stewart had suggested to Colleague 1 and Colleague 2, that in saying the words in charge 1a, he was only repeating what Patient A was saying.

The panel found this charge proved.

Charge 3

3. *On 23 December 2018, said to Colleague 2 that if anyone asked to tell them that you had not been in the ward that evening.*

This charge is found proved.

In reaching this decision the panel took into account the oral and documentary evidence provided by Colleague 2. The panel had regard to Colleagues 2's witness statement, dated 21 August 2019, which stated the following: "*A short time later the phone rang on the ward and I answered. It was Derek asking that if anyone asked, he had not been in Ward 3 that evening."*

The panel considered the evidence of Colleague 2 to be credible and reliable, and it was of the view that it was more likely than not, that Mr Stewart had said to Colleague 2, that if anyone asked, to tell them he had not been in the ward that evening. The record of the internal investigation shows that when Mr Stewart was asked about this matter he replied with words to the effect that while he did not remember making the call, he accepted that he must have done so.

The panel therefore found this charge proved.

Charge 4a and 4c

4. *Between 23 and 27 December 2018, in relation to statements for the local investigation:*

   a. *On one or more occasion, asked Colleague 1 and/or Colleague 2 what they were going to put in their statements.*
   c. *Provided a copy of your statement to Colleague 1.*

This charge is found proved.

In reaching this decision the panel had regard to the evidence provided by Colleague 1 and Colleague 2. In her witness statement dated 21 August 2019, Colleague 1 stated: "*Derek must have heard that I had went home, so he attempted to call me on two occasions and he sent me private messages asking if I had submitted my statement".*

Further the panel considered the oral evidence provided by Colleague 2, he stated that he had been asked by Mr Stewart about the statement and what he was going to say had occurred on 22 December 2018.

In reaching its decision on both charge 4a and 4c the panel had regard to Exhibit JF2, which is a screenshot image of an instant message conversation between Mr Stewart and Colleague 2. The dialogue in the image is as follows:

> C1: *Derek Im soo bloody stressed out I cant even deal I cant even see my phone properly coz I'm been crying all night*
>
> Mr Stewart: *Have you done your statement*
>
> C1: *No not yet Im away to bed*
>
> Mr Stewart: *What did doctor say .. I will send you a copy of my statement*
>
> C1: *Derek don't we aren't even supposed to talk about it to each other we will just get into more bother*
>
> Mr Stewart: *Ok take care .. This is my statement…*

At that point Mr Stewart sent Colleague 1 what appears to be a draft copy of his statement.

The panel also noted that during the investigative interview held on 16 January 2019, Mr Stewart appears to accept that he had sent his statement to Colleague 1. Having considered all the evidence before it the panel determined that, Mr Stewart had asked both Colleague 1 and 2 what they were going to put in their statements and that he provided a copy of his statement to Colleague 1. The panel therefore found charge 4 proved in its entirety.

Charge 7

7. *Your actions at charges 2 and/or 5 and/or 6 were dishonest in that you were attempting to suggest that Patient A had threatened and/or bitten/nipped you when this was not the case.*

This charge is found proved.

In reaching this decision the panel had regard to the comment made by Colleague 2 during his oral evidence. Colleague 2 told the panel that Patient A was incoherent and could barely construct a sentence during the altercation on 22 December 2018. He also said that he had been watching the patient and Mr Stewart closely and had an uninterrupted view throughout the incident. Colleague 2 told the panel that the patient had not bitten or nipped Mr Stewart and that Mr Stewart had not behaved afterwards as though he had a painful arm and he did not say he had a painful arm.

The panel placed substantial weight on the evidence provided by Colleague 2 and found his recollection of events to be credible. The panel determined that it is unlikely that Patient A was cognisant enough to have threatened, bitten/nipped Mr Stewart.

The panel also had regard to the oral evidence of Colleague 1 and Colleague 4, who told the panel that it was standard procedure and policy for a nurse involved in an incident that has sustained an injury, to complete a Datix form. The panel considered that Colleague 4 is a clinical nurse manager and as such would have extensive knowledge regarding the policies and procedures that staff on the ward should carry out. The panel did not see any evidence of a ‘Datix’ form completed by Mr Stewart after

the incident and it noted that in the draft copy of his witness statement, there is no mention of him being nipped or bitten. It considered that there was no evidence to substantiate his claim that he had been bitten by Patient A.

The panel therefore determined that Mr Stewart had claimed he had been bitten/ nipped by Patient A, when he had not. The panel considered that his conduct, by the standard of ordinary people, was dishonest and it therefore found the charge proved.

Charge 8

8. *Your actions at charge 3 were dishonest in that you were attempting to suggest that you could not have been involved in the incident with Patient A.*

This charge is found NOT proved.

The panel determined that although charge 3 had already been found proved, it had regard to the specific wording of charge 8, in particular "*to suggest that you could not have been involved in the incident with Patient A".* Further the panel noted that the date in charge 3 relates to 23 December and not 22 December 2018, when the incident involving Patient A occurred. The panel considered that it has already been established by all the parties involved, including Mr Stewart himself, that he was present and directly involved with the incident. It therefore determined that it was highly unlikely that Mr Stewart would suggest that he was not involved. The panel found it more probable that Mr Stewart said this as he feared getting into more trouble or was attempting to influence Colleague 1 and Colleague 2, in what they put in their statement about the incident, on the previous night, rather than that he had not been at the incident at all.

The panel was therefore of the view that there was insufficient evidence before it to support the notion that Mr Stewart was attempting to suggest that he was not involved in the incident that occurred with Patient A on 22 December 2018. It considered that on this occasion the NMC had not discharged its burden of proof and it found this charge not proved.

Charge 9

9. *Your actions at charge 4 demonstrated a lack of integrity as you were trying to influence the contents of the statements of Colleague 1 and/or Colleague 2.*

This charge is found proved.

Having found charge 4 proved in its entirety the panel was of the view that the behaviour of Mr Stewart was inappropriate. It had serious concerns that Mr Stewart was appearing to attempt to manufacture an alternative account of what had happened during the incident on 22 December 2018, involving patient A.

The panel had regard to the NMC code of conduct and considered that nurses should be a "model of integrity and leadership for others to aspire to" and to achieve this nurses should "act with honesty and integrity at all time, treating people fairly without … bullying and harassment". The panel was of the view that Mr Stewart put undue pressure and stress on his colleagues to assist him in fabricating an alternative version of events. It had regard to the impact this had on Colleague 1, who informed the panel that at the time she had suffered mental health issues as a consequence.

The panel determined that Mr Stewart had demonstrated a lack of integrity in his attempt to influence the contents of the statements of Colleague 1 and Colleague 2. It therefore found this charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel considered whether its findings on the charges amount to misconduct and, if so, whether Mr Stewart's fitness to practise as a registered nurse is currently impaired by reason of this misconduct.

The panel noted that there is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

In considering misconduct, the panel adopted a two-stage process in its consideration. Firstly, 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 then decide whether, in all the circumstances, Mr Stewart's fitness to practise as a registered nurse is currently impaired as a result of that misconduct.

Submissions on misconduct

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

Mr Kennedy invited the panel to take the view that Mr Stewart's conduct amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"). He then directed the panel to specific paragraphs and identified where, in the NMC's view, Mr Stewart's actions amounted to misconduct.

Mr Kennedy submitted that Mr Stewart's behaviour fell far below the standards expected of a registered nurse, in that he interfered in a situation that was already under control and made matters worse. Mr Kennedy reminded the panel that Mr Stewart then lost his temper with a vulnerable patient and swore at him. Mr Kennedy submitted that Mr Stewart was aware that his behaviour was unacceptable and tried to persuade colleagues to back up his version of events. Further he submitted that Mr Stewart

harassed a younger colleague causing her distress. Mr Kennedy told the panel that Mr Stewart was dishonest and his behaviour in contacting colleagues showed a lack of integrity.

To conclude, Mr Kennedy submitted that Mr Stewart's behaviour amounts to misconduct.

Submissions on impairment

In respect of misconduct, Mr Kennedy 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)*.

A summary is set out in Grant at paragraph 76 in the following terms:

"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:

- *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*

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

- *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*

- *has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

Mr Kennedy submitted that all of the limbs referred to above are engaged in this matter.

Mr Kennedy submitted that it is for the panel to decide whether Mr Stewart is currently impaired. He reminded the panel that Mr Stewart has accepted that his own fitness to practise is impaired, but despite that the panel must come to its own independent decision on the matter.

In relation to the risk of repetition, Mr Kennedy submitted that Mr Stewart has some insight into his misconduct. He submitted that it is acknowledged that Mr Stewart admitted some of the charges at an early stage, recognised that his behaviour to Patient A was unacceptable and admits that his fitness to practise is impaired. Mr Kennedy submitted that, however Mr Stewart has not shown full insight. Further that Mr Stewart has not demonstrated that he understands the effect his behaviour has had on Patient A, his colleagues and the reputation of the nursing profession. Mr Kennedy submitted that as Mr Stewart does not fully recognise his own shortcomings there is a risk of repetition.

Mr Kennedy submitted that dishonesty and a lack of integrity are difficult to remediate, but can still be. He submitted that Mr Stewart has not worked as a nurse since the incident occurred in 2018. He submitted that as Mr Stewart has pursued a different career outside of nursing and has indicated that he does not wish to return to practice, the panel does not have evidence of a period of safe and effective practice, for reassurance that the misconduct will not be repeated.

To conclude his submissions Mr Kennedy told the panel that given the lack of evidence of full insight and remediation, there are still public protection issues that need to be addressed. He further submitted that there are also wider public interest issues which include the need to protect the reputation of the profession and maintain the integrity of the register. Mr Kennedy submitted that taking all this into account, a finding of current impairment is necessary.

Decision and reasons on misconduct

The panel heard and accepted the advice of the legal assessor on misconduct. He referred the panel to a number of relevant judgments, including:

- Cohen v GMC [2008] EWHC 581 (Admin) *(Cohen)*
- CHRE v (1) NMC (2) Grant [2011] EWHC 927 (Admin)

In respect of the proven charges relating to the incident involving on 22 December 2018, the panel had regard to the comment made by Colleague 1, who had been asked by Mr Stewart, whether he had behaved out of line towards patient A. Colleague 1 described his behaviour as "*brutal".* The panel determined that Mr Stewart's conduct in this regard, does not in any way align with the standards and behaviour expected of a registered nurse.

The panel considered that the charges found proved in respect of dishonesty and a lack of integrity would be considered inappropriate and deplorable. Mr Stewart brought the profession into disrepute by interfering with a situation after being told his involvement was not required, he then made matters worse by swearing and pointing his fingers at an already distressed and aggressive patient. Upon realising his behaviour was unacceptable, he attempted to influence and manufacture a version of events that was untrue, by harassing and distressing his colleagues.

The panel determined that Mr Stewart's actions amounted to several breaches of the Code. Specifically:

> ***Prioritise people***
>
> *You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.*

1. Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

2. Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.6 recognise when people are anxious or in distress and respond compassionately and politely

4. Act in the best interests of people at all times

To achieve this, you must:

4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment

Practise effectively

You assess need and deliver or advise on treatment, or give help (including preventative or rehabilitative care) without too much delay, to the best of your abilities, on the basis of best available evidence. You communicate effectively, keeping clear and accurate records and sharing skills, knowledge and experience where appropriate. You reflect and act on any feedback you receive to improve your practice.

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

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

Preserve safety

You make sure that patient and public safety is not affected. You work within the limits of your competence, exercising your professional 'duty of candour' and raising concerns immediately whenever you come across situations that put patients or public safety at risk. You take necessary action to deal with any concerns where appropriate.

15.3 take account of your own safety, the safety of others and the availability of other options for providing care

16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.

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*

The panel recognised that breaches of the Code do not automatically result in a finding of misconduct. However the panel determined that the proven charges relating to the incident involving Patient A, were sufficiently serious that the panel found that Mr Stewart's actions did amount to misconduct.

The panel then went on to consider the proven charges relating to dishonesty; these encompassed the attempt to influence and manufacture a version of events that was untrue by harassing his colleagues about the contents of their witness accounts. The panel determined Mr Stewart's conduct in this regard fell significantly below what is expected of a registered nurse. It determined that Mr Stewart behaved in a way that showed a lack of candour and integrity, and that his actions in this regard also amounted to misconduct.

Decision and reasons on impairment

In deciding the issue of current impairment, the panel considered Dame Janet Smith's "test" set out in the case of *Grant* at paragraph 76:

'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 considered limbs (a), (b), (c) and (d) to be engaged, both as to the past and to the future.

The panel determined that Mr Stewart caused harm to a patient by intervening in a situation and aggravating it. It also considered that his subsequent actions caused psychological harm and distress to the colleagues that he harassed. The panel found on several instances that Mr Stewart breached fundamental tenets of the nursing profession and brought its reputation into disrepute by virtue of his actions.

In considering the case of *Cohen*, the panel was of the view that Mr Stewart's misconduct regarding his treatment towards Patient A is remediable. In relation to the misconduct involving dishonesty and a lack of integrity, the panel determined that it would be difficult to remediate as dishonesty is considered an attitudinal issue. However the panel was of the view that, it is not impossible to remediate.

The panel acknowledge that Mr Stewart has shown that he has some insight, through his partial admissions of the charges at an early stage and through his acceptance of impairment. However it considered that Mr Stewart has not demonstrated that he understands the impact his actions had on Patient A, his colleagues and the reputation of the profession. In any event the panel could not determine whether Mr Stewart has any further insight into his actions as he has disengaged from the NMC and these proceedings and has pursued a different career path. Therefore there is no information to indicate that Mr Stewart even wishes to remediate.

In light of all the above, the panel had insufficient evidence before it to allay its concerns that Mr Stewart currently poses a risk to patient safety. It considered there to be a risk of repetition of the incidents found proved and a risk of unwarranted harm to patients in his care, should he ever decide to return to nursing practice without some form of restriction. Therefore, the panel 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 was of the view that a fully informed member of the public would be very concerned by the panel's findings on the facts found proved and Mr Stewart's misconduct. It concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mr Stewart's fitness to practise as a registered nurse is currently impaired.

Decision and reasons on sanction

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

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

The panel first considered the seriousness of the aggressive treatment towards Patient A and the dishonesty. The panel considered that as a registered nurse, Mr Stewart was in a position of responsibility and was trusted to uphold the standards and values expected of a nurse. The panel determined that Mr Stewart abused the trust placed in him by patients and his colleagues. It considered that he deliberately breached his duty of candour as registered nurse and that his actions amounted to a lack of integrity.

In this regard the panel took into account the following aggravating features:

- The misconduct involved a vulnerable patient
- Mr Stewart was in a position of trust and responsibility and he abused this position
- Mr Stewart's limited insight into the effect of his actions to those involved and the reputation of the profession
- distress was caused to the colleagues involved

The panel found no mitigating factors in this matter. It is acknowledged that Mr Stewart made partial admissions at an early stage and that he accepted that he is impaired. The panel took into account Mr Stewart's lengthy nursing career with no regulatory concerns raised. However, the panel considered that there is no evidence of full insight or understanding regarding the concerns raised and the impact of Mr Stewart's actions. It also considered that there has been no evidence of clinical practice since the incident. Neither has Mr Stewart provided evidence of any personal mitigation for the panel's consideration.

The panel then considered the dishonesty in this case. It had regard to the NMC guidance on dishonesty and took into account that Mr Stewart's misconduct encompassed a deliberate breach of his professional duty of candour by attempting to cover up, when things went wrong. The panel determined that Mr Stewart, as a registered nurse, at the time was in a position of responsibility and was trusted to act with honesty and integrity. He abused the trust placed in him by, patients, his employer and his colleagues.

The panel took into account the following aggravating features:

- Mr Stewart held a position of trust as a senior nurse, which he abused
- There was a pattern of dishonest behaviour which was premeditated and occurred more than once
- Mr Stewart's willingness to act dishonestly, to abuse the trust placed in him and to fabricate a version of events to conceal his misconduct, give rise to a risk of repetition with potential risk of very serious harm to patients.

Again the panel found no mitigating factors in this matter. There is no evidence of insight or understanding regarding these concerns or evidence of good practice since then. Neither has Mr Stewart provided evidence of any personal mitigation for the panel's consideration.

The panel first considered whether to take no action but concluded that it 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.

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

The panel next considered whether placing conditions of practice on Mr Stewart's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature

of the findings, being dishonesty, in this case. The misconduct identified in this case was not solely related to clinical practice and as such is not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Stewart's registration would not adequately address the seriousness of this case and would not otherwise 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 a 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;*
- *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 sustained dishonesty and deception are indicative of a deep seated attitudinal problem into which Mr Stewart has not evidenced any insight. The panel considered that, given the nature and scale of the misconduct, a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel considered that the misconduct met all the above criteria and that the appropriate and proportionate sanction is a striking-off order. Having regard to the effect

of Mr Stewart's actions in bringing the profession into disrepute, the panel has concluded that nothing short of a striking-off order 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 Mr Stewart in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Stewart's own interest 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 Mr Kennedy. He submitted that, due to the panel making a strike-off order, an interim order was required to protect the public and the public interest. Mr Kennedy invited the panel to make an interim suspension order for a period of 18 months.

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 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.