

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

**Substantive Hearing
17-19 October 2022**

Virtual Hearing
Nursing and Midwifery Council

Name of registrant:	Margareth Nyakambangwe
NMC PIN:	00H1466O
Part(s) of the register:	Registered Nurse - Adult Nursing RNA 16 August 2000
Relevant Locations:	Cardiff and Birmingham
Type of case:	Misconduct
Panel members:	Yvonne O'Connor (Chair, registrant member) Richard Weydert-Jacquard (Registrant member) Keith Murray (Lay member)
Legal Assessor:	Jayne Salt
Hearings Coordinator:	Amira Ahmed
Nursing and Midwifery Council:	Represented by Michael Smalley, Case Presenter
Miss Nyakambangwe:	Not present and not represented
Facts proved:	All
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 Miss Nyakambangwe was not in attendance and that the Notice of Hearing letter had been sent to her email address which she has been using to correspond with her case officer. The email was sent on 12 September 2022.

Mr Smalley, 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).

Mr Smalley brought to the panel's attention that the email address used by Miss Nyakambangwe to correspond was not the email address identified on the WISER system, however he provided the panel with email correspondence evidence that Miss Nyakambangwe was using the email address that the notice of service had been sent to.

The panel accepted the advice of the legal assessor. She referred the panel to Rule 34 (1) (c) regarding notification of an address for communication.

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

In light of all of the information available, the panel was satisfied that Miss Nyakambangwe 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 Nyakambangwe

The panel next considered whether it should proceed in the absence of Miss Nyakambangwe. It had regard to Rule 21 and heard the submissions of Mr Smalley who invited the panel to continue in the absence of Miss Nyakambangwe. He submitted that Miss Nyakambangwe had voluntarily absented herself.

Mr Smalley referred the panel to the Case Management Form (CMF) completed by Miss Nyakambangwe on 03 February 2022. He explained that the NMC case officer's last communication with Miss Nyakambangwe was on 10 May 2022. Mr Smalley submitted that since then she had disengaged with the NMC and as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

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 Nyakambangwe. In reaching this decision, the panel has considered the submissions of Mr Smalley 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 Nyakambangwe;
- She has not engaged with the NMC since May 2022 and has not responded to any of the letters sent to her about this hearing since then;
- There is no reason to suppose that adjourning would secure her attendance at some future date;

- The charges relate to events that occurred in 2018;
- The charges are serious and there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Nyakambangwe in proceeding in her absence. However, the evidence upon which the NMC relies will have been sent to her by email, 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. Further, in the panel's judgement, this can be somewhat 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 Nyakambangwe's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge

That you, a registered nurse on an unknown date or dates prior to 28 December 2018:

1. Took to your private residence:
 - a. Confidential information about patients;
 - b. Medication including but not limited to the items listed in Schedule 1;
 - c. Surgical equipment including but not limited to the items listed in Schedule 2.

2. Did not return, in a timely manner or at all, the items listed in charge 1a, 1b and/or 1c.

3. Did not dispose of, safely or at all, the items at charge 1a, 1b and/or 1c.

4. Your actions at one or more of charge 1-3 above were dishonest because you knew, as a registered nurse, you were not entitled to take or retain such items.

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

Schedule 1

- a. Oramorph
- b. Lorazepam
- c. Diazepam
- d. Midazalam
- e. Tramadol
- f. Zopiclone
- g. Co-Codamol
- h. Co-Dydramol
- i. IV antibiotics
- j. IV Lignocaine

- k. IV Hydrocortisone
- l. IV Cyclizine
- m. IV Tranexamic Acid
- n. IV Adrenaline
- o. IV Metoclopramide

Schedule 2

- a. Dressings
- b. Stitches
- c. Blood sample bottles
- d. Syringes
- e. Scalpels
- f. Surgical scissors

Decision and reasons on application to admit written statement

The panel heard an application made by Mr Smalley under Rule 31 to allow the written statement of Ms 1 into evidence. He submitted that the NMC had decided that Ms 1 no longer needed to attend the hearing as Miss Nyakambangwe had admitted all of the charges in her CMF. He submitted that Miss Nyakambangwe had been sent the appropriate correspondence in September 2022 and no objections to it had been received. Mr Smalley explained that this therefore did not cause any unfairness to Miss Nyakambangwe.

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

The panel gave the application in regard to Ms 1 serious consideration. The panel noted that Ms 1's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement ... is true to the best of my information, knowledge and belief' and was signed by her.

The panel considered whether Miss Nyakambangwe would be disadvantaged by the change in the NMC's position of moving from reliance upon the oral testimony of Ms 1 to that of a written statement. The panel noted that Ms 1's statement was not the sole and decisive evidence in this case. It also noted that the NMC had told Miss Nyakambangwe and Ms 1 in advance that she was no longer needed to attend this hearing.

The panel considered that as Miss Nyakambangwe had been provided with a copy of Ms 1's statement and, as the panel had already determined that Miss Nyakambangwe had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Ms1 accept into evidence but would give what it deemed appropriate weight to the statement once it had heard and evaluated all the evidence before it.

Background

The charges arose on an unknown date or dates prior to 28 December 2018. It is alleged that Miss Nyakambangwe's took to her private residence confidential information about patients; medication including controlled drugs and surgical equipment.

It is alleged that these items and medications were taken from Queen Elizabeth Hospital in Birmingham and Cardiff and Vale Hospital. It is alleged that Miss Nyakambangwe did not return, in a timely manner or at all, the items that were found. It is also alleged that she did not dispose of, safely or at all, the items that were found.

It is alleged that Miss Nyakambangwe's actions were dishonest because she knew, as a registered nurse, that she was not entitled to take or retain such items.

At this point the Chair brought to the attention of Mr Smalley and the panel, that she had a potential conflict of interest issue, that she needed to raise. She confirmed that up until February 2019 she had worked at Russells Hall Hospital which was the hospital that had been alerted to the incidents being investigated. However, she confirmed that she did not know Miss Nyakambangwe, had no knowledge of the incident and had no involvement in the investigation.

The legal assessor provided advice.

Panel members and Mr Smalley on behalf of the NMC confirmed that they did not perceive any conflict of interest.

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 Mr Smalley and Miss Nyakambangwe's written admissions in her CMF.

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.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1 a)

1. Took to your private residence:
 - a. Confidential information about patients;

This charge is found proved.

In reaching this decision, the panel took into account Ms 1's witness statement and her exhibits. It noted that she explained that there was a significant amount of confidential information relating to 506 patients found in Miss Nyakambangwe's home. In exhibit DE/02 the panel noted the inventory of information found which included patient's names, ages, hospital numbers, dates of admission to hospital and reasons for admission. There were also handover notes from various different wards.

The panel took account of Miss Nyakambangwe's own admission to having confidential information in her private residence. In her CMF she states:

"Yes, I had handover sheets in my possession...I had some of the handover sheets in my house, I could have forgotten them in my pocket after a shift and taken them home"

She also accepts the regulatory concern in this charge in her CMF.

The panel was of the view that Miss Nyakambangwe had taken confidential information about patients to her private residence and therefore found this charge proved.

Charge 1 b)

b. Medication including but not limited to the items listed in Schedule 1;

This charge is found proved.

In reaching this decision, the panel took into account the photographic evidence that was provided by Ms 1 in her exhibits of the medication that was found in Miss Nyakambangwe's private residence.

The panel noted Ms 1's witness statement in which she stated:

"When I returned from collecting the items and inspected them I was shocked by the vast quantity of medication, medicine equipment and documentation"

The panel also noted that Ms 1 had identified specific medication that was found including Lorazepam, Oramorph and numerous oral analgesia and antibiotics.

The panel took into account Miss Nyakambangwe's statement in her CMF which she admitted that she had medication in her private residence. The panel noted the NMC Interim Order hearing in March 2019 which Miss Nyakambangwe attended and had in response to the allegations admitted that she had been in possession of controlled drugs and stated:

"The one which was in a box which had the oramorph in, it belonged to one patient. Then there was another one which was all expired and the patient say you can just drop this to the pharmacy when I was doing community. Then I put in my car and I just forgot about it and when they cleared my car I just put everything in the house including everything I had and then just forgot about it and I was not doing community anymore."

The panel was of the view that Miss Nyakambangwe had medication including controlled drugs in her private residence. It therefore found this charge proved.

Charge 1 c)

c. Surgical equipment including but not limited to the items listed in Schedule 2.

This charge is found proved.

The panel took account of Ms 1's witness statement which she had explained that she had 'collected and inspected items including medical equipment'. The panel also noted that in the photographs exhibited by Ms 1 there was a large amount of surgical equipment found in Miss Nyakambangwe's home

The panel noted that Miss Nyakambangwe had mentioned in her CMF that she had been in possession of surgical equipment to carry out her role as a community nurse. It also noted that in the Interim Order hearing in March 2019 she stated:

“During my course of work I also did community work, that is why I had the dressings and everything in the house.”

The panel determined that Miss Nyakambangwe had surgical equipment as listed in Schedule 2 in her private residence and therefore found this charge proved.

Charge 2)

2. Did not return, in a timely manner or at all, the items listed in charge 1a, 1b and/or 1c.

This charge is found proved.

In reaching this decision, the panel took into account Miss Nyakambangwe’s explanations in the Interim Order hearing which she stated:

“During my course of work I also did community work, that is why I had the dressings and everything in the house. I should have disposed of them after using them but because I did not have a bigger yellow bin to put them that is why I had them.”

...

For the medication when I was doing the community some of them was given to get back to the pharmacy when I get back to the GP but simply I forgot. The one from Cardiff and Vale I discharged a patient and the patient when home, we give the TTOs but the patient brought his own box of used medication from home and when the patient had gone back I was just finishing handover and I was about to go home and I said you can rush down with the box and give it to the ambulance crew, they should still be in the podium. When I went they had gone and I was on my way home, I was staying in the nurses’ home, so when I did not find the ambulance I just took it to the nurses’ home and said I would take it back when I was going for

my next night, which I forgot. When I left I just took everything with me to my house. That is why I had that medication..." [sic]

In relation to patient documentation Miss Nyakambangwe stated:

"The reason for having those probably I might have forgotten them when I am going home and there was the particular one I kept because of the drugs which I could not manage to give the patient. I put it inside so I can remember when I have taken back who it belonged to, that was also there. Then with the ones in the community we usually have some worksheets, it was in the community bag that I use." [sic]

The panel also noted Ms 1's exhibit DE/01 which listed the amount of medication that had been found some of which had been expired many years prior to being found. The panel also considered exhibit DE/02 from Ms 1 which was an inventory list of the information found which included patient's names, ages, hospital numbers, dates of admission to hospital and reasons for admission.

The panel determined that in light of all this information Miss Nyakambangwe did not return in a timely manner the items listed in 1 a) and 1 b). The panel therefore found this charge proved in its entirety.

Charge 3)

3. Did not dispose of, safely or at all, the items at charge 1a, 1b and/or 1c.

This charge is found proved.

The panel noted Ms 1's witness statement in which she explained the correct procedure for safely disposing of items. She stated:

"All of the medication listed in the Exhibit DE/01 are prescription only.

...

There are significant concerns surrounding safe and secure handling and storing of medication, particularly around controlled drugs. The Registrant would have no reason to be in receipt of these drugs. They were predominantly prescription medications and would be the property of the patients.

Surgical equipment, for single use, should be disposed of in the yellow sharps bin to prevent risk to others. This is then collected safely and disposed of correctly.

Patient records and handover sheets should have been disposed of in confidential waste stream.”

The panel noted that there were also intravenous drugs and it could not find a logical explanation for why Miss Nyakambangwe would have possession of those at her home. It took account of Miss Nyakambangwe’s explanation in the Interim Order hearing where she stated:

“During my course of work I also did community work, that is why I had the dressings and everything in the house. I should have disposed of them after using them but because I did not have a bigger yellow bin to put them that is why I had them.”

The panel did not accept Ms Nyakambangwe’s explanation as being plausible and found that she had not safely disposed of the items listed in 1 a), 1 b) and 1 c). There was a large amount of medication that she had kept in her possession for a long period of time, there was evidence that surgical equipment had been used and not disposed of safely and the presence of patient identifiable information in Miss Nyakambangwe’s private residence and in view of this evidence the panel found this charge proved.

Charge 4)

4. Your actions at one or more of charge 1-3 above were dishonest because you knew, as a registered nurse, you were not entitled to take or retain such items.

This charge is found proved.

The panel in reaching this decision, took into account the clear evidence that Miss Nyakambangwe was aware that she should not have kept the handover sheets, charts and medication. It noted that she may have needed some of the surgical equipment as a community nurse, but this did not account for the large amount or wide range of surgical instruments found in her private residence. In addition the used medical equipment should have disposed of safely by Miss Nyakambangwe and she had failed to do this.

The panel noted that Miss Nyakambangwe had been working for ten different nursing agencies and as an experienced nurse should have known that she was not entitled to keep medication prescribed to patients or to keep confidential patient information in her private residence. She should have disposed of it all correctly and in a timely manner in line with policy and guidelines. The panel noted that the range of surgical equipment, medication and patient information relating to over 500 patients found in her private residence shows that she had been collecting the items over a long period of time.

The panel took account of Miss Nyakambangwe's knowledge and belief at the time. It noted that she was aware that she was in possession of the items but had explained that she had just 'forgotten' to dispose of them. The panel did not accept this explanation from Miss Nyakambangwe that she could have just 'forgotten' to dispose of the vast amount of confidential information, medication and surgical equipment that had been found in her private residence. The panel noted that one of the examples of the medication she had was at least six years old. The panel found that it was not plausible that she had 'forgotten' to dispose of it.

In light of this information the panel found that Miss Nyakambangwe was dishonest in accordance with *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67 and the ordinary, decent person test. The panel could not identify the reason for her retaining the large amount of medication, surgical equipment and patient records as there was no evidence shown to suggest why this was done. In the absence of any good reason for having these items the ordinary decent person would believe that Miss Nyakambangwe's actions were dishonest. Therefore, the panel found this charge to be 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 Nyakambangwe's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

Submissions on misconduct

Mr Smalley referred the panel 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.*’

Mr Smalley invited the panel to take the view that the facts found proved amount to misconduct. He drew the panel’s attention to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives 2015’ (the Code) in making its decision.

Mr Smalley identified the specific, relevant standards where Miss Nyakambangwe’s actions amounted to misconduct. He submitted that her actions did fall significantly short of the standards expected of a registered nurse and the charges found proved amounted to serious misconduct.

Submissions on impairment

Mr Smalley moved onto 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).

Mr Smalley submitted that all four limbs of Grant are engaged. He submitted that Miss Nyakambangwe’s misconduct breached fundamental tenets of the nursing profession. He submitted that there was a clear risk of harm arising from the patient medication, the used surgical equipment and the confidential patient information found in her private residence. Mr Smalley referred the panel to Ms 1’s witness statement. He told the panel that patients in the past had been put at unwarranted risk of harm by Miss Nyakambangwe’s actions.

He further explained that she had acted dishonestly over a long period of time and had brought the nursing profession into disrepute.

Mr Smalley explained to the panel that Miss Nyakambangwe had disengaged with the NMC in May 2022 and has not provided any insight into her actions or shown any evidence of strengthening her practice. He submitted that a finding of impairment was necessary on public protection and public interest grounds.

The panel accepted the advice of the legal assessor.

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 considered the charges found proved and determined that each of the charges separately amounted to misconduct. The panel concluded that the retaining of confidential information relating to patients was completely unnecessary and the fact that Miss Nyakambangwe had in her possession information relating to over 500 patients was a significant breach of nursing standards.

The panel further concluded that Miss Nyakambangwe had no reason to retain the medication that she had in her possession, and this was a further breach of acceptable standards of nursing practice. In relation to the retention of surgical equipment, the panel were particularly concerned that some of this equipment had been used and not disposed of safely and had resulted in the public being unnecessarily exposed to a real and significant risk of harm.

Overall, the panel determined that the range and quantity of patient documentation, medication and surgical equipment retained in Miss Nyakambangwe's private residence amounted to serious misconduct and identified the following breaches of the Code:

5.1 respect a person's right to privacy in all aspects of their care

10.5 take all steps to make sure that records are kept securely

18.4 take all steps to keep medicines stored securely

19.3 keep to and promote recommended practice in relation to controlling and preventing infection

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

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...

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 Miss Nyakambangwe's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act

with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

Patients were placed at risk of harm from their confidential information not being appropriately stored or disposed of. The panel finds that the public were put at risk of harm as a result of used surgical equipment not being disposed of. In addition, there was a further risk to the public from such large quantities of medication being unsafely stored by Miss Nyakambangwe. The finding of dishonesty breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that Miss Nyakambangwe disengaged with the NMC in May 2022 and has not shown any insight into her actions. It noted that she had the opportunity to express some insight at the Interim Order hearing but there was no evidence of this. It also noted that Miss Nyakambangwe also could have shown insight into her actions on the CMF or attended this hearing and given oral evidence but chose not to.

The panel noted that Miss Nyakambangwe has not shown evidence of understanding the impact that her actions could have had on patients, the public and the nursing profession nor has she provided any evidence of strengthening her practice. The panel is of the view that there is a risk of repetition because she has no insight or understanding of the implications of her actions. 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 member of the public would be horrified at the range and amount of medication, surgical equipment and patient confidential information retained by Miss Nyakambangwe at her private residence. The panel therefore found a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Nyakambangwe off the register. The effect of this order is that the NMC register will show that Miss Nyakambangwe 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 who referred to the legal framework, case law and the SG. The case law included: *Giele v GMC* 2005 EWHC 2143 (Admin), *Watters v NMC* 2017 EWHC 1888 (Admin), *Parkinson v NMC* 2010 EWHC 1898 (Admin) and *Raschid and Fatnani v GMC* 2007 1WLR 1460.

Submissions on sanction

Mr Smalley informed the panel that the NMC would be seeking a striking off order. He referred the panel to specific areas of the SG. He submitted that there is a clear risk of

repetition of the behaviour found proved. He submitted that a finding of serious dishonesty in this case would be incompatible with Miss Nyakambangwe remaining on the register.

Mr Smalley explained that a striking off order is the most appropriate and proportionate sanction in this case.

Decision and reasons on sanction

Having found Miss Nyakambangwe's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel bore 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:

- Miss Nyakambangwe's abuse of a position of trust particularly around her access to medication and surgical equipment
- Miss Nyakambangwe's lack of insight into her failings
- A pattern of misconduct over a significant period of time
- There was a large quantity of patient medication, surgical equipment and confidential patient information retained in Miss Nyakambangwe's private residence
- Hundreds of patients and the public were placed at a real risk of harm by Miss Nyakambangwe's actions
- There was a significant risk of repetition

The panel also took into account the following mitigating features:

- Miss Nyakambangwe admitted all charges in the CMF prior to this hearing.

The panel found that Miss Nyakambangwe's dishonesty was at the higher end of the spectrum. It noted that she put patients and the public at direct risk of harm. It also noted that her actions were long-standing, occurring over a significant period of time. Finally, the panel found Miss Nyakambangwe misused her position as a registered nurse to retain patient medication that included controlled drugs.

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 Nyakambangwe's practice would not be appropriate in the circumstances. The panel considered that Miss Nyakambangwe'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 next considered whether placing conditions of practice on Miss Nyakambangwe's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the concerns regarding Miss Nyakambangwe's behaviour. The serious misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Nyakambangwe's registration would not adequately address the seriousness of this case and would not sufficiently address the public interest, namely the reputation of the profession, public confidence in the profession and the upholding of proper standards of behaviour.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel took into consideration the SG in relation to a suspension order. It determined that this was not a single instance of misconduct, that there was evidence of

harmful deep seated attitudinal problems and the panel had seen no evidence of any meaningful insight from Miss Nyakambangwe. It therefore concluded that a suspension order would not be a sufficient, appropriate or proportionate sanction in this case.

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

The level of dishonesty in this case and the implausible explanation from Miss Nyakambangwe as to the reasons why she had such significant amounts of medication, surgical equipment and patient confidential information in her private residence led the panel to conclude that the only appropriate and proportionate sanction was a striking off order.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the justified sanction is that of a striking-off order. Having regard to the effect of Miss Nyakambangwe's actions in placing patients and the public at risk of harm and 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 standards of behaviour required of a registered nurse.

This will be confirmed to Miss Nyakambangwe 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 Nyakambangwe's own interest until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Smalley. He submitted that an interim suspension order for a period of 18 months would be appropriate in this case and would be in line with the findings made by the panel.

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.

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

That concludes this determination.