

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

**Substantive Hearing**

**Monday, 7- Friday, 11 August 2023**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Carley Stewart</b>
<b>NMC PIN</b>	10B1987E
<b>Part(s) of the register:</b>	RNA: Adult nurse, level 1 (6 October 2010)
<b>Relevant Location:</b>	England
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Anthony Mole (Chair, lay member) Kim Bezzant (Registrant member) Anne Phillimore (Lay member)
<b>Legal Assessor:</b>	Nigel Ingram
<b>Hearings Coordinator:</b>	Catherine Acevedo
<b>Nursing and Midwifery Council:</b>	Represented by Alex Radley, Case Presenter
<b>Mrs Stewart:</b>	Not present and unrepresented
<b>Facts proved:</b>	All
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim order:</b>	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 Mrs Stewart was not in attendance and that the Notice of Hearing letter had been sent to Mrs Stewart's registered email address by secure email and to her registered address by recorded delivery and by first class post on 6 July 2023.

Mr Radley, 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).

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 Mrs Stewart's 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 Mrs Stewart 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 Mrs Stewart**

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

Mr Radley referred the panel to the email correspondence between Mrs Stewart and the NMC. He submitted that, initially, Mrs Stewart said that she would attend the hearing.

However, in subsequent emails in July and August 2023 she confirmed that she would not be attending. He submitted that the NMC offered Mrs Stewart a change of date and the possibility of financial assistance with childcare in order to secure her attendance. Mrs Stewart did not take up the offer made by the NMC and she responded “*I do not wish to attend the hearing. I wish to spend time with my beautiful children...*”

Mr Radley informed the panel that there had been an adjournment previously at the Mrs Stewart’s request and there was no reason to believe that an adjournment at this hearing 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 Mrs Stewart. In reaching this decision, the panel has considered the submissions of Mr Radley 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:

- Mrs Stewart has stated that she was not attending the hearing;
- No application for an adjournment has been made by Mrs Stewart;
- There is no reason to suppose that adjourning would secure Mrs Stewart’s attendance at some future date;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage Mrs Stewart in proceeding in her absence. Although the evidence upon which the NMC relies have been sent to her at her registered address, 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 Mrs Stewart's decision 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 Mrs Stewart. The panel will draw no adverse inference from Mrs Stewart's absence in its findings of fact.

### **Details of charge**

That you, a registered nurse:

- 1) On one, or more, occasions, in respect of the Covid- 19 pandemic and/or vaccinations:
  - a) posted comments on a social networking site;
  - b) posted a video on a social networking site;
  - c) gave an interview to speak in the subject of Covid-19 and/or vaccinations;
  - d) attended a protest whilst wearing a nurses/former employers uniform;
  
- 2) One, or more, of your comments at any and/or all of charge 1 above were:
  - a) contrary to official health advice and/or the law;
  - b) inflammatory and/or derogatory;
  
- 3) Your conduct at any and/or all of charge 1 above was carried out to:

- a) promote health advice which is/was contrary to official health advice;
- b) encourage members of the public to distrust and/or disregard official health advice;
- c) encourage members of the public to distrust and/or disregard other nurses and/or healthcare professional who hold opposing view to you;
- d) encourage members of the public to act contrary to the law and/or official health advice

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

## **Background**

Mrs Stewart's name was first entered on to the NMC register in October 2010. She began working for Exemplar, a provider of nursing care to adults, in 2020.

Between September and November 2020, the NMC received a number of fitness to practice referrals from members of the public and/or anonymous persons about the Mrs Stewart's conduct. The concerns related to Ms Stewart attending an anti-lockdown protest whilst in nursing uniform, using her status as a nurse to spread misinformation in the media regarding Covid19, as well as her use of social media regarding Covid-19 (YouTube, Facebook and newspaper interviews).

On the 29 August 2020, there was a 'protest' against government restrictions imposed in relation to the Covid-19 pandemic. The protest took place in London and Mrs Stewart attended. She wore her nursing uniform at the protest. Pictures also show Mrs Stewart was holding a placard, which read 'WE HAVE EMPTY BEDS' on one side and, 'NURSE ON CALL WHERE'S THE PANDEMIC' on the other side.

In response to these posts, comments were made by other social media users expressing concern that an Exemplar employee should appear at a large public gathering and in her work uniform expressing such views.

At 16:32 on 29 August 2020, Exemplar responded by social media as follows:

(Twitter) 'We are aware of a photo circulating on Twitter of someone in an Exemplar Health Care uniform attending a march in London. We are currently investigating the situation. This person does not represent the company'

Following a disciplinary hearing, Exemplar subsequently terminated Mrs Stewart's employment, which was confirmed in a letter dated 3 September 2020.

Mrs Stewart then tweeted:

*'So yesterday I got fired for standing up for the Human Rights of people within care homes that have been restricted valuable access to their loved ones.*

*#HumanRightsViolations #nurse #whistleblowing #carehomes #pandemic #Covid\_19 #covidbill #SCAM #rights'*

That tweet also included a link to a YouTube video. The video was self-described as an 'announcement' from Mrs Stewart, posted on 3 September 2020, lasting just over eight minutes. The video/post is entitled 'Nurse fired for promoting human rights.' At the start of the video, Mrs Stewart accepts attending the London protests on the 29th' in her nurse's uniform stating that she was fighting for human rights. She then set out her reasons for attending the protest.

During the video, Ms Stewart appeared to express views including the following:

- That "as I am aware from my training as a nurse...the guidelines in place currently for the Covid-19, are destroying the very basics of care..."
- That they are "whistleblowing on the government's stance"

- That “medical staff, nurses, anyone in the healthcare system” should be careful because the rules in place meant they “are not working in the best interests of [their] patients”
- That the rules in place were “tyranny”
- That people, “need to come forward and act now”.

On 25 September 2020, Mrs Stewart posted a further video on YouTube, entitled ‘I’M BACK’. In that post/video, she referenced that cases of Covid-19 are “through the roof” but refers to those as “false positives”. Ms Stewart also says, “For those that don’t know yet, the PCR tests cannot isolate covid”. Mrs Stewart also referred to other healthcare professionals “not knowing what they are talking about” and says that this “genuinely worries me”.

There was then a further video posted by Ms Stewart in which she expresses views in the course of an interview with Person 1, commenting as a Nurse/ former Nurse.

An article was published in the Mail Online which features comments from Mrs Stewart on 30 September 2020 and, as at 3 March 2021, it had been shared online 23000 times. It carried the headline, ‘Care home nurse who claimed the pandemic is a hoax while protesting in her uniform against lockdown reveals she’s been FIRED from her job but still insists she’s seen ‘no evidence’ of a killer virus!’.

The article shows numerous pictures of Mrs Stewart including pictures of her at the protest march, in her Nursing uniform and includes the following extracts:

- “She told ‘FEMAIL’ that she was moved to take action after seeing ‘absolutely no evidence of a killer virus, let alone a pandemic’.”
- [Mrs Stewart] said; “she doesn’t believe viruses are spread in the way we are led to believe.”
- “‘Personally, I know through my studies, that viruses are not even contagious – they’re the body’s reaction to being generally unhealthy or run down,’ [Mrs Stewart] argued.”

Mrs Stewart made further posts on Facebook and twitter. One post appears to promote the idea of using a '*false identity*' for NHS Test and Trace. Another suggests that people complying with social distancing guidelines in place at the time are, "conducting satanic rituals and evil by complying".

In addition, there is material relating to Mrs Stewart's loss of employment. This is relevant in two ways;

- a. Firstly it provides a helpful background narrative..
- b. Secondly, Mrs. Stewart submitted a written document to Exemplar setting out her position.

### **Decision and reasons on application to admit video evidence**

Before the NMC's closing submissions on the facts, the panel heard an application made by Mr Radley under Rule 31 to allow a further YouTube video (exhibit 8) of Mrs Stewart into evidence. He submitted that the evidence is fair and is highly relevant.

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 determined that it would be fair and relevant to accept into evidence the YouTube video, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

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



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

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

The panel has drawn no adverse inference from the non-attendance of Mrs 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 had the written statement from the following witness on behalf of the NMC:

- Witness 1: NMC Investigator.

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

### **Charge 1a**

On one, or more, occasions, in respect of the Covid- 19 pandemic and/or vaccinations:

posted comments on a social networking site;

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

The panel had sight of the screen shots made by an NMC investigator of Mrs Stewart's public Facebook account. Mrs Stewart stated in one post:

*"Right then UK government, jokes on you. I'm not allowed to have my family around for Christmas.*

*I AM however allowed to have employee's around*

*£6quid later, Fenn Settle Ltd. is now a legally registered company, registered with companies house.*

*And I can now 'hire' my family and friends on a 0 hour contract, and invite them for an 'unpaid works event' at my house (registered premises) regardless of any tier system and totally irrespective of the rule of 6."*

The panel also considered posts from Mrs Stewart's twitter account which stated:

*"So yesterday I got fired for standing up for the Human Rights of people within care homes that have been restricted valuable access to their loved ones" and "I am personally witnessing the stripping of Human rights and Cruelty taking place upon out vulnerable people".*

The panel also took into consideration that Mrs Stewart does not deny posting these comments on to her Facebook account. It noted in the interview notes with Exemplar that when Mrs Stewart was asked about these social media posts appear to accept that she did post them and gave reasons for her comments.

The panel determined on one, or more, occasions, in respect of the Covid- 19 pandemic that Mrs Stewart posted comments on a social networking site. The panel therefore found charge 1a proved.

## **Charge 1b**

On one, or more, occasions, in respect of the Covid- 19 pandemic and/or vaccinations:

posted a video on a social networking site;

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

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

The panel had sight of the videos of Mrs Stewart which had been posted on her social media account.

Mrs Stewart uploaded a YouTube video (Exhibit 5) to Facebook. In this video she admitted to being at the Covid-19 protest 'Resist and act for freedom' and comment on the treatment of residents in your care and expressed concern at the lack of visiting rights. You make a comment in this video explaining your concern about inhumane treatment as follows:

*"So yesterday I got fired for standing up for the Human Rights of people within care homes that have been restricted valuable access to their loved ones".*

In the video Mrs Stewart states that her employment has been terminated and that she disagrees with the governments Covid-19 guidelines on visitation in care homes and that this goes against human rights legislation.

The panel noted that Mrs Stewart posted another video (exhibit 8) where she makes similar comments.

The panel determined on one, or more, occasions, in respect of the Covid- 19 pandemic that you posted a video on a social networking site. The panel therefore found charge 1b proved.

### **Charge 1c**

On one, or more, occasions, in respect of the Covid- 19 pandemic and/or vaccinations:

gave an interview to speak in the subject of Covid-19 and/or vaccinations;

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

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

The panel viewed a video of Mrs Stewart giving an interview which was posted to Person 1's website. In the interview Mrs Stewart speaks of care home staff being under considerable pressure to take mandatory Covid-19 vaccinations in order to be permitted to work and the threat of such staff losing their employment if they do not take the vaccine within 16 weeks, including the incentive of awards and therefore more residents if you work in a home that has a positive record of the uptake of the vaccine.

The panel also saw a Mail Online article in which Mrs Stewart is interviewed which is headlined:

*"Care home nurse who claimed the pandemic is hoax while protesting in her uniform against lockdown reveals she's been FIRED from her job but still insists she's seen 'no evidence' of a killer virus".*

The panel determined on one, or more, occasions, in respect of the Covid- 19 pandemic that you gave an interview to speak in the subject of Covid-19 and/or vaccinations. The panel therefore found charge 1c proved.

### **Charge 1d**

On one, or more, occasions, in respect of the Covid- 19 pandemic and/or vaccinations:

attended a protest whilst wearing a nurses/former employers uniform;

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

The panel also saw a MailOnline article in which Mrs Stewart is interviewed which is headlined:

*“Care home nurse who claimed the pandemic is hoax while protesting in her uniform against lockdown reveals she’s been FIRED from her job but still insists she’s seen ‘no evidence’ of a killer virus.”*

The article included a photo of Mrs Stewart in her uniform holding a placard which read

*“NURSE ON CALL WHERE’S THE PANDEMIC”.*

The panel also saw multiple photos on Twitter of Mrs Stewart in her uniform at a protest with a placard which read:

*“WE HAVE EMPTY BEDS”.*

The panel also saw a response from Mrs Stewart’s employee Exemplar Health Care on Twitter which stated:

*“We are aware of a photo circulating on Twitter of someone in an Exemplar Health care uniform attending a march in London. We are currently investigating the situation”.*

The panel took into consideration the video of Mrs Stewart (Exhibit 5) where she accepts that she was at the protest in London. The panel saw Mrs Stewart’s note for the zoom meeting 02 September 2020 she stated:

*“I attended a Human Rights protest on the 29th of August wearing the exemplar uniform. I was there to promote and stand by the human rights act (article 8, everyone has right to family life, without interference from the government) to represent the residents within care homes who through “government guidelines”, have had valuable access to their loved ones and lives restricted”.*

The panel determined in respect of the Covid- 19 pandemic that Mrs Stewart attended a protest whilst wearing a nurses/former employers uniform. The panel therefore found charge 1d proved.

### **Charge 2a**

One, or more, of your comments at any and/or all of charge 1 above were:

contrary to official health advice and/or the law;

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

The panel took into consideration that it is common knowledge to a well-informed member of the public that, at the time of these events relating to Mrs Stewart, an official pandemic had been declared (March 2020 and December 2021). The restrictions in place changed regularly throughout this period and there were daily updates about current health advice, restrictions and the law. It noted that restrictions and rules within care homes remained

more stringent throughout this period in order to reduce the risk of contracting and spreading covid-19 within this vulnerable population.

In reaching this decision, the panel took into consideration the videos of Mrs Stewart posted on social media. In the video (exhibit 8) The panel noted Mrs Stewart's comments cast doubt on the accuracy of the PCR testing scheme and its ability to identify Covid-19. The panel was aware of the PCR testing requirements, health advice and laws at the time at the pandemic and determined that your comments were contrary to official health advice and the law. It noted at the time of the pandemic that a well-informed member of the public would understand there was a requirement upon a positive PCR test to self-isolate to prevent the spread of infection.

The panel noted the video of Mrs Stewart (Exhibit 5) posted on social media. The panel considered in this video that Mrs Stewart acknowledged that there were rules and regulations in place in relation to the care home that she disagreed with stating:

*"I refuse to work against the tyranny laws..."*

The panel determined there were guidelines in place to reduce contact within care homes and Mrs Stewart was speaking out against the official health advice and the panel's general understanding of the pandemic laws that applied at the time. The panel therefore found charge 2a proved.

### **Charge 2b**

One, or more, of your comments at any and/or all of charge 1 above were:

inflammatory and/or derogatory;

**This charge is found proved.**

The panel first considered the definitions of 'inflammatory' and 'derogatory'.

The panel adopted a common understanding of 'derogatory' and defined 'derogatory' as showing strong disapproval and not showing respect. The panel then went on to consider the comments which it could be defined as derogatory.

In the video of Mrs Stewart (exhibit 8), she states that she is seeing "*neglect beyond belief*" in care homes. She also stated that the lack of knowledge of some health care professionals was worrying to her.

The panel also saw a MailOnline article in which Mrs Stewart is interviewed which is headlined "*Care home nurse who claimed the pandemic is hoax while protesting in her uniform against lockdown reveals she's been FIRED from her job but still insists she's seen 'no evidence' of a killer virus.*" Mrs Stewart is quoted in the article saying "*At the start of the pandemic, I was worried but as time went on, I saw absolutely no evidence of a killer virus, let alone a pandemic*". She also stated "*I tried to get [other nurses and doctors] on board but they were too scared of losing their jobs. Although many of them agreed with my views on the situation.. they didn't feel they were in a position to speak out.*"

The panel determined that these comments could be considered derogatory as they demonstrated Mrs Stewart's strong disapproval of the Covid-19 precautions at the time and were disrespectful and dismissive of the science-based evidence of Covid-19 and of her colleagues' efforts to manage the situation. The panel noted that the World Health Organisation and the UK government had declared a global and national pandemic.

The panel then went on to consider the comments which it could be defined as inflammatory. The panel adopted a common understanding of 'inflammatory' and defined 'inflammatory' as tending to stir up trouble/intended or likely to provoke anger.

The panel saw the YouTube video of Mrs Stewart posted on social media (exhibit 8). The panel noted Mrs Stewart's comments in this video cast doubt on the accuracy of the PCR testing scheme and its ability to identify Covid-19.



In the MailOnline article Mrs Stewart stated:

*“By then, I could see the harm the lock down was doing – not just to the elderly in care homes, many of whom had become depressed and suicidal due to being distanced from their loved ones, but to everyone...*

*I was hearing about suicides. Murders, domestic violence and child abuse. Mental health problems soared as restriction after restriction was put in place.*

*I saw no virus no deaths but I could see that the lockdown was killing people”.*

The panel also saw the YouTube video of Mrs Stewart (exhibit 8) where she states

*“Those on the fence you really need pushing off now, because we’re running out of time they are really upping the game so it’s time to stop conforming to the madness”.*

The panel determined that these comments could be considered inflammatory as they demonstrated Mrs Stewart’s strong disapproval of the Covid-19 precautions and appear to move towards a call for action. The panel considered the comments were made with the intention to be provocative and engender anger at the time of a globally and nationally declared pandemic.

The panel therefore found charge 2b proved.

### **Charge 3a**

Your conduct at any and/or all of charge 1 above was carried out to:

promote health advice which is/was contrary to official health advice;

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

In the MailOnline article stated:

*“The World Health Organisation [WHO] states Covid-19 is transmitted through direct contact with respiratory droplets of an infected person generated through coughing and sneezing, as well as people touching surfaces contaminated with the virus then touching their eyes, nose or mouth”.*

Mrs Stewart states in the article that:

*“Personally, I know through my studies that viruses are not even contagious – they’re the body’s reaction to being generally unhealthy or run down... Colds and flu – coronaviruses – are outward symptoms of your body having a clear- out and fixing itself. The best way of not getting ill is by eating healthily, exercising regularly, avoiding toxins, drinking lots of water and getting enough sleep... Vaccines and prescribed drugs are not about health – they’re about the big pharmaceutical companies making money. They make money by keeping us ill: most people know that.”*

The panel determined that by making such comments Mrs Stewart was promoting health advice which is/was contrary to official health advice in the context of her disagreeing with the lockdown restrictions and giving her opinion on the governments vaccination programmes whilst representing herself as a member of the medical/care community in her position as a registered nurse. The panel therefore found charge 3a proved.

**Charge 3b**

Your conduct at any and/or all of charge 1 above was carried out to:

encourage members of the public to distrust and/or disregard official health advice;

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

The panel noted a post made on Mrs Stewart's social media account showing a chart titled "Communist coercive methods for eliciting individual compliance, The Biderman Report of 1956 and Covid- 19" which compared coercive control to covid-19 for example:

*"Chart for coercion*

*Isolation*

- *Deprives individuals of social support of his ability to resist*
- *Makes individual dependent upon the captor*
- *Individual develops an intense concern with self*

*Covid – 19*

*Isolation*

- *Social distancing*
- *Isolation from loved ones, massive job loss*
- *Solitary confinement, semi-isolation*
- *Quarantines, containment camps"*

Mrs Stewart states in the MailOnline article that:

*"Personally, I know through my studies that viruses are not even contagious – they're the body's reaction to being generally unhealthy or run down... Colds and flu – coronaviruses – are outward symptoms of your body having a clear- out and*

*fixing itself. The best way of not getting ill is by eating healthily, exercising regularly, avoiding toxins, drinking lots of water and getting enough sleep... Vaccines and prescribed drugs are not about health – they're about the big pharmaceutical companies making money. They make money by keeping us ill: most people know that."*

The panel also noted the post on Mrs Stewart's Facebook on 16 September which stated:

*"6 FEET*

*6 PEOPLE*

*6 MONTHS*

*666*

*If your unaware, you are conducting satanic rituals and evil by complying"*

The panel determined that these types of statements on your social media accounts were designed to encourage members of the public to distrust and/or disregard official health advice. The panel therefore found charge 3b proved.

### **Charge 3c**

Your conduct at any and/or all of charge 1 above was carried out to:

encourage members of the public to distrust and/or disregard other nurses and/or healthcare professional who hold opposing view to you;

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

The panel also saw the Video of Mrs Stewart (exhibit 8) where she states:

*“Those on the fence you really need pushing off now, because we’re running out of time they are really upping the game so it’s time to stop conforming to the madness”.*

In the video of Mrs Stewart (exhibit 8), she states that she is seeing *“neglect beyond belief”* in care homes. She also stated that the lack of knowledge of some health care professionals was worrying to her.

The panel considered Mrs Stewart’s comments to be openly critical of any of her nursing colleagues who disagreed with her views and she accused health professionals of not properly looking after the residents in their care and of having a lack of knowledge. The panel was of the view that Mrs Stewart’s conduct would undermine the public’s trust in health professionals and would have the impact of some members of the public of disregarding the views of those professionals. The panel therefore found charge 3c proved.

### **Charge 3d**

Your conduct at any and/or all of charge 1 above was carried out to:

encourage members of the public to act contrary to the law and/or official health advice

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence exhibited by Witness 1.

The panel had sight of screen shot of Mrs Stewart’s Facebook account. Mrs Stewart stated in one post:

*“Right then UK government, jokes on you. I’m not allowed to have my family around for Christmas.*

*I AM however allowed to have employee’s around*

*£6quid later, Fenn Settle Ltd. is now a legally registered company, registered with companies house.*

*And I can now ‘hire’ my family and friends on a 0 hour contract, and invite them for an ‘unpaid works event’ at my house (registered premises) regardless of any tier system and totally irrespective of the rule of 6.”*

In another post on Facebook on Mrs Stewart stated *“Is anyone else giving fake name and fake number for the track and trace like me??? Need some funky name ideas”.*

The panel considered that Mrs Stewart’s comments were encouraging members of the public to act contrary to the law and/or official health advice. The panel therefore found charge 3d 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 Mrs Stewart’s fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

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

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

### **Submissions on misconduct**

Mr Radley 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.*'

Further assistance may be found in the comments of Jackson J in *Calhaem v GMC* [2007] EWHC 2606 (Admin) and Collins J in *Nandi v GMC* [2004] EWHC2317 (Admin);

*[Misconduct]* connotes a serious breach which indicates that the *[Nurse's]* fitness to practice is impaired.

*And*

'The adjective '**serious**' must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners.

Mr Radley invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' as amended (the Code) and identified the specific, relevant standards where the NMC say Mrs Stewart's actions amounted to misconduct.

Mr Radley submitted that Mrs Stewart's actions found proven are failings directly related to clinical practice with potential harm to vulnerable Residents at care homes. He submitted that these acts or omissions were not simply breaches of a local disciplinary policy or minor concerns, they are matters at the heart of and fundamental to the professional's practice, at a time of an international crisis.

Mr Radley further submitted that Mrs Stewart's behaviour is serious professional misconduct because these issues relate to her role as a registered nurse and the potential impact on her area of practice. This includes her view on allowing visitors into the home setting, sharing contradictory advice to the medical leads and encouraging others to go against government/medical guidance.

Mr Radley submitted that the public's trust and confidence were affected resulting in Mrs Stewart's YouTube videos being sent to the NMC, and large numbers of complaints being delivered to 'Exemplar' the health care provider by concerned citizens.

Mr Radley therefore invited the panel to find Mrs Stewart's behaviour amounted to misconduct.

### **Submissions on impairment**

Mr Radley 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).



Mr Radley submitted that Mrs Stewart's fitness to practise is impaired. He submitted that these events took place during a public emergency, and a global pandemic situation where a health professionals have a greater level of responsibility. He submitted that it cannot be said that this was a one-off incident as there are repeated YouTube videos and online content, news article and social media posts.

Mr Radley submitted that Mrs Stewart has not engaged in the process by attending the hearing, has not presented references, no reflective text has been provided and there is no evidence that she has taken steps to address concerns or risks identified in the case.

Mr Radley submitted that the likelihood of repetition is also a concern for the NMC. This will impact on the professional's ability to practise kindly, safely and professionally, resulting in the NMC suggesting a finding of impairment to be appropriate. He submitted that Mrs Stewart's conduct affected patient care and could have been very serious, resulting in potential infections and possible loss of life or long-term rehabilitation and family distress. The behaviour found could impact the long-term atmosphere and care being provided at a home.

For these reasons the NMC say that Mrs Stewart's practice is impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and also to. The legal assessor also made reference to *Adil v GMC* [2023] EWHC 797 (Admin) and the relevance of Article 10 of the European Convention on Human Rights (ECHR) in respect of Mrs Stewart's conduct.

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

The panel first considered, as a preliminary to this stage, the issue of ECHR and the extent to which Mrs Stewart's rights are infringed and challenged by these proceedings in

the context of both misconduct and impairment. The panel noted that Mrs Stewart makes reference to both Article 8 and Article 10 within material placed before it.

Mrs Stewart has made a robust claim in her online videos and replies to her employer highlighting the denial of her human rights and freedom of expression. The panel considered that her comments and reliance on the Human Rights Act when acting in her professional role as a regulated nurse allowed her to advance her claim that she had particular expertise, and this enabled her to promote her opinion. The panel determined the comments were not made in her capacity as a private individual as she had made it clear throughout her social media posts and interviews that she was in fact a registered nurse.

The panel first looked at Mrs Stewart's assertions based on her rights under Freedom of expression (Article 10)

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The panel considered Mrs Stewart's position with some care. It took into consideration and found support in its determination from paragraph 30 from the case of *Adil*:

*“The Article 10 right is a qualified right. Exercise of the right to freedom of expression may be restricted when necessary in the interests of public safety , and for the protection of public health, and for the protection of the rights of other”*

The panel considered that consequent to the judgment in the case of *Adil*, Mrs Stewart’s freedom of speech was clearly overridden by the interests of public safety and protection of the public.

The panel also considered Mrs Stewart’s assertions in respect of rights under Article 8 but did not consider them relevant as in its view Article 10 was the appropriate test in the particular facts of this case.

The panel then went on to consider whether the facts found proved amount to misconduct. The panel had regard to the terms of the Code and to the NMC’s Guidance on using social media responsibly.

The panel was of the view that Mrs Stewart’s actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Stewart’s actions amounted to breaches of the Code. Specifically:

*“6 Always practise in line with the best available evidence*

*To achieve this, you must:*

*6.1 make sure that any information or advice given is evidence-based including information relating to using any health and care products or services*

*8 Work co-operatively*

*To achieve this, you must:*

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

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

*9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues*

*To achieve this, you must:*

*9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

*16 Act without delay if you believe that there is a risk to patient safety or public protection*

*To achieve this, you must:*

*16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices*

*19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice To achieve this, you must:*

*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 Uphold the reputation of your profession at all times*

*To achieve this, you must:*

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

*20.4 keep to the laws of the country in which you are practising*

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

*20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times”*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel identified a course of conduct throughout the facts found proved and noted there was an overlap in many of the charges. The panel therefore decided to consider the charges together.

The panel was of the view that Mrs Stewart’s behaviour was serious, presenting misleading information to the public as a registered health professional that might encourage them to disregard official health advice, potentially putting members of the public at risk of harm.

The panel determined that these breaches of the Code by Mrs Stewart were in direct conflict with her fundamental obligations to her professional practice and most seriously took place during a time of a global pandemic. The panel determined therefore, that Mrs Stewart’s conduct amounts to serious professional misconduct because these issues relate to her role as a registered professional and the potential impact on Mrs Stewart’s practice and that of her colleagues. Mrs Stewart’s remarks in respect of her fellow health professionals were derogatory and sought to undermine public trust in them and the work that they were doing. The panel determined that the public’s trust and confidence in Mrs Stewart and the wider nursing and medical professions would have been adversely impacted by Mrs Stewart’s comments made via social media.

The panel considered the case of Nandi and determined that Mrs Stewart’s behaviour was *“conduct that which would be regarded as deplorable by fellow professionals”*

The panel therefore found that Mrs Stewart's actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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) *...'*

The panel found limbs a, b and c engaged in the *Grant* test. The panel finds that the public in general and residents in care homes were put at risk of harm as a result of Mrs Stewart's misconduct. Mrs Stewart's actions were deliberately directed to undermine and contradict the public health advice and guidance issued by the UK government at the time of a pandemic and as such undermine public confidence in that advice. Mrs Stewart's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mrs Stewart has not engaged in the process by attending the hearing, has not provided a reflective statement to demonstrate an understanding of how her actions put the patients and the public at a risk of harm and how her misconduct impacted negatively on the reputation of the nursing profession and public confidence. The panel had no evidence that Mrs Stewart would manage a similar situation differently in the future.

Although the facts found proved relate specifically to the circumstances of the pandemic, the panel went on to consider Mrs Stewart's position to disregard the medical evidence base related to issues such as virus transmission and her consequent willingness to

breach her obligations under the Code to promote a personal view presents a current ongoing risk.

The panel was satisfied that the misconduct in this case is capable of being addressed if Mrs Stewart is prepared to acknowledge her responsibilities as a registered nurse in the future.

The panel carefully considered the evidence before it in determining whether or not Mrs Stewart has taken steps to strengthen her practice. The panel noted there were no work references provided by Mrs Stewart nor did the panel see any evidence that she has taken any steps to address the concerns, or the risks identified by her misconduct. The panel is of the view that there remains a risk of repetition based on the lack of insight and lack of evidence that Mrs Stewart has addressed any of the concerns. 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 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 Mrs Stewart's fitness to practise impaired on the grounds of public interest.

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

## **Sanction**



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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

### **Submissions on sanction**

Mr Radley informed the panel that the NMC's sanction bid is that of a striking-off order. He submitted that these are serious regulatory concerns which were repeated and received wide-spread media coverage. He submitted that the concerns are serious due to the health crisis at the time and Mrs Stewart's behaviour attracted 23000 hits on social media at an extremely difficult and challenging time for the employer. Mr Radley submitted that Mrs Stewart has a lack of insight and a continued apparent belief in her views. He submitted that a striking-off order is the only sanction that would protect patients, members of the public and maintain professional standards.

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

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

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

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Lack of any insight and/or understanding into her conduct
- A pattern of misconduct over a period of time
- Conduct which put patients at risk of suffering harm
- The conduct received such widespread media publicity/ media attention, so as to bring the profession into disrepute
- The conduct concerned was undertaken at a time of unprecedented National Health emergency. This is considered by the NMC to be a serious aggravating factor.
- The conduct directly undermined the actions of other health professionals and of public trust in the profession

The panel also took into account the following mitigating features:

- No evidence of direct patient harm

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 Mrs 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 Mrs 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 Mrs Stewart's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Stewart's 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 panel considered that this was not a single instance of misconduct but a course of conduct which took place over a period of time. The panel saw evidence of attitudinal problems due to Mrs Stewart's lack of any insight into her behaviour and her dismissive views and comments towards fellow colleagues and the NMC. The panel considered that Mrs Stewart appears to maintain her position to the current day and has expressed such views to the NMC in an email as recently as August 2023.

The panel determined that 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 Mrs

Stewart's actions is fundamentally incompatible with Mrs Stewart remaining on the register.

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

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

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

Mrs Stewart's actions were significant departures from the standards expected of a registered nurse, and together with her complete lack of insight concerning the potential impact of her actions on colleagues and members of the public, are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Stewart's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

This decision will be confirmed to Mrs 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 Mrs Stewart's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

Mr Radley submitted that an interim order is necessary for the protection of the public and in is the wider public interest. He invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's

determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to cover the appeal period.

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

That concludes this determination.