

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

**Substantive Hearing**  
**Friday, 1 December 2023**

Virtual Hearing

<b>Name of Registrant:</b>	Dominika Aleksandra Kuehn Stachurska
<b>NMC PIN</b>	20B0014C
<b>Part(s) of the register:</b>	Registered Midwife Midwifery – 5 February 2020
<b>Relevant Location:</b>	Fife
<b>Type of case:</b>	Lack of competence
<b>Panel members:</b>	Bryan Hume (Chair, lay member) Catherine Askey (Registrant member) David Anderson (Lay member)
<b>Legal Assessor:</b>	Gelaga King
<b>Hearings Coordinator:</b>	Franchesca Nyame
<b>Nursing and Midwifery Council:</b>	Represented by Matthew Cassells, Case Presenter
<b>Mrs Kuehn Strachurska:</b>	Present and represented by Christine Wishart, (Thompsons Solicitors)

**Consensual Panel Determination:** Accepted

**Facts proved by way of admission:** The whole of charges 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12

**Facts not proved:** 1, 13, 14, 15, and 16

**Fitness to practise:** Impaired

**Sanction:** Suspension order (12 months with review)

**Interim order:** Interim suspension order (18 months)

## Details of charge

That you a registered midwife, between March 2020 and May 2023 failed to demonstrate the standards of knowledge, skill, and judgment required to practise without supervision as a band 5 midwife, in that you;

- 1) Between March 2020 and 12 October 2020 worked/remained in a supernumerary capacity at Victoria Hospital (“the Hospital”).
- 2) Around 28 March 2020 were unable to;
  - a) Perform basic Postnatal Examinations.
  - b) Use a CTG;
  - c) Translate a CTG tracing.
- 3) Around 7/8 April 2020;
  - a) Were unable to perform a urinalysis;
  - b) Did not understand the significant of a urinalysis;
  - c) Were unable to palpate a fundus;
  - d) Were unable to recognise the significance of enquiring about lochia.
- 4) On an unknown date, failed to check a baby’s fontanelle.
- 5) Around 10 April 2020 were unable to demonstrate knowledge in areas of;
  - a) Bladder care;
  - b) Lochia;
  - c) Fundus/Uterine Involution;
  - d) Breastfeeding;
  - e) Urinalysis;
  - f) CTG Trace;
  - g) Maternal/Baby observations.

- 6) Were unable to successfully complete a Supported Improvement/Action Plan implemented on 30 April 2020.
- 7) On 21 May 2020, were unable to print policies for further teaching/learning sessions.
- 8) Around 19 June 2020;
  - a) Were unable to communicate adequately with mothers when conducting postnatal checks;
  - b) Would not ask mothers if their body was hurting during postnatal checks;
  - c) Were unable to respond to/escalate abnormal observations;
  - d) Were unable to demonstrate sufficient knowledge around medication management/administration.
- 9) On or around 25 June 2020;
  - a) were unable to demonstrate knowledge of the presenting part after performing an abdominal palpitation;
  - b) calculated an incorrect infusion rate for a 1000ml bag over 8 hours.
- 10) On or around 17 May 2020;
  - a) Inaccurately instructed a bottle-feeding mother to express her breasts to relieve discomfort.
  - b) Failed to adequately examine the legs of an unknown patient;
  - c) Demonstrated poor communication skills in that you;
    - i) Did not introduce yourself to one or more patients;
    - ii) Did not enquire if one or more patient's, required medication.
  - d) Attempted to administer paracetamol to an unknown patient who had already been administered Co-codamol;
  - e) For an unknown patient failed to identify;
    - i) An elevated pulse of 110/122bpm;

- ii) Oxygen saturation of 93%;
  - f) Failed to adequately escalate a baby suffering a fit, in that you;
    - i) Used words to the effect 'the baby is doing that thing again';
    - ii) Did not respond to Colleague A's request for information/assistance;
    - iii) Walked in the opposite direction.
- 11) On an unknown date were unable to explain how you would escalate a mother/patient with low blood pressure
- 12) Around June/July 2020 failed to demonstrate an understanding of;
- a) Palpitations;
  - b) Hyperemesis;
  - c) Antenatal checks.
- 13) On or around 12 October 2020 were demoted to a Band 2 Nursing/Healthcare Assistant role.
- 14) Failed to comply with Undertaking 6 which took effect on 11 October 2021/ 1 August 2022.
- 15) Failed to comply with Undertaking 7 which took effect on 11 October 2021/ 1 August 2022.
- 16) Breached Undertaking 8, which took effect on 11 October 2021/1 August 2022, in that you, following your period of leave;
- a) Did not send your case officer an up-to-date copy of your Personal Development Plan within two weeks of the date on which the undertakings took effect;
  - b) Did not send your case officer a report from your supervisor/line manager every 6 weeks.

And in light of the above your fitness to practise is impaired by reason of your lack of competence.

### **Consensual Panel Determination**

At the outset of this hearing, Mr Cassells informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and you.

The agreement, which was put before the panel, sets out your full admissions to the facts alleged in the charges, that your actions amounted to lack of competence, and that your fitness to practise is currently impaired by reason of that lack of competence. It is further stated in the agreement that an appropriate sanction in this case would be a suspension order for a period of 12 months.

The panel considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

*'The Nursing & Midwifery Council ('the NMC') and Dominika Aleksandra Kuehn Stachurska ('Mrs Kuehn Stachurska'), PIN 20B0014C ('the Parties') agree as follows:*

*1. Mrs Kuehn Stachurska is aware of the CPD hearing. Mrs Kuehn Stachurska does not intend on attending the hearing and is content for it to proceed in her and her representative's absence. Mrs Kuehn Stachurska will endeavour to be available by telephone should clarification on any point be required, or should the panel wish to make other amendments to the provisional agreement that are not agreed by Mrs Kuehn Stachurska.*

2. *Mrs Kuehn Stachurska understands that if the panel proposes amendments to the provisional agreement that are not agreed by Mrs Kuehn Stachurska, the panel will refer the matter to a substantive hearing.*

3. *The charges faced by Mrs Kuehn Stachurska are as follows:*

*“That you a registered midwife, between March 2020 and May 2023 failed to demonstrate the standards of knowledge, skill, and judgment required to practise without supervision as a band 6 midwife, in that you;*

- 1) *Between March 2020 and 12 October 2020 worked/remained in a supernumerary capacity at Victoria Hospital (“the Hospital”).*
- 2) *Around 28 March 2020 were unable to;*
  - a) *Perform basic Postnatal Examinations.*
  - b) *Use a CTG;*
  - c) *Translate a CTG tracing.*
- 3) *Around 7/8 April 2020;*
  - a) *Were unable to perform a urinalysis;*
  - b) *Did not understand the significant of a urinalysis;*
  - c) *Were unable to palpate a fundus;*
  - d) *Were unable to recognise the significance of enquiring about lochia.*
- 4) *On an unknown date, failed to check a baby’s fontanelle.*
- 5) *Around 10 April 2020 were unable to demonstrate knowledge in areas of;*
  - a) *Bladder care;*
  - b) *Lochia;*
  - c) *Fundus/Uterine Involution;*
  - d) *Breastfeeding;*

- e) *Urinalysis;*
  - f) *CTG Trace;*
  - g) *Maternal/Baby observations.*
- 6) *Were unable to successfully complete a Supported Improvement/Action Plan implemented on 30 April 2020.*
- 7) *On 21 May 2020, were unable to print policies for further teaching/learning sessions.*
- 8) *Around 19 June 2020;*
- a) *Were unable to communicate adequately with mothers when conducting postnatal checks;*
  - b) *Would not ask mothers if their body was hurting during postnatal checks;*
  - c) *Were unable to respond to/escalate abnormal observations;*
  - d) *Were unable to demonstrate sufficient knowledge around medication management/administration.*
- 9) *On or around 25 June 2020;*
- a) *were unable to demonstrate knowledge of the presenting part after performing an abdominal palpitation;*
  - b) *calculated an incorrect infusion rate for a 1000ml bag over 8 hours.*
- 10) *On or around 17 May 2020;*
- a) *Inaccurately instructed a bottle-feeding mother to express her breasts to relieve discomfort;*
  - b) *Failed to adequately examine the legs of an unknown patient;*
  - c) *Demonstrated poor communication skills in that you;*
    - i) *Did not introduce yourself to one or more patients;*
    - ii) *Did not enquire if one or more patient's, required medication.*



- d) *Attempted to administer paracetamol to an unknown patient who had already been administered Co-codamol;*
  - e) *For an unknown patient failed to identify;*
    - i) *An elevated pulse of 110/122bpm;*
    - ii) *Oxygen saturation of 93%;*
  - f) *Failed to adequately escalate a baby suffering a fit, in that you;*
    - i) *Used words to the effect 'the baby is doing that thing again';*
    - ii) *Did not respond to Colleague A's request for information/assistance;*
    - iii) *Walked in the opposite direction.*
- 11) *On an unknown date were unable to explain how you would escalate a mother/patient with low blood pressure.*
- 12) *Around June/July 2020 failed to demonstrate an understanding of;*
  - a) *Palpitations;*
  - b) *Hyperemesis;*
  - c) *Antenatal checks.*
- 13) *On or around 12 October 2020 were demoted to a Band 2 Nursing/Healthcare Assistant role.*
- 14) *Failed to comply with Undertaking 6 which took effect on 11 October 2021/ 1 August 2022.*
- 15) *Failed to comply with Undertaking 7 which took effect on 11 October 2021/ 1 August 2022.*
- 16) *Breached Undertaking 8, which took effect on 11 October 2021/1 August 2022, in that you, following your period of leave;*

- a) *Did not send your case officer an up-to-date copy of your Personal Development Plan within two weeks of the date on which the undertakings took effect;*
- b) *Did not send your case officer a report from your supervisor/line manager every 6 weeks.*

*And in light of the above your fitness to practise is impaired by reason of your lack of competence.'*

### **The facts**

4. *Mrs Kuehn Stachurska's name appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered midwife and has been on the NMC register since 5 February 2020.*
5. *On 23 March 2020, Mrs Kuehn Stachurska began work as a newly qualified band 5 midwife at the Victoria Hospital ('the Hospital'), which formed part of NHS Fife ('the Trust').*
6. *On 21 September 2020, the NMC received an anonymous referral in respect of Mrs Kuehn Stachurska. The anonymous referral outlined that Mrs Kuehn Stachurska lacked basic knowledge and skills required for practice as a midwife.*
7. *Following contact by the NMC, it was confirmed on behalf of the Trust that there had been significant concerns raised from the outset of Mrs Kuehn Stachurska's employment. The Trust provided a timeline of their concerns which is summarised below.*
8. *Following an initial assessment of her competency on joining the Trust, Mrs Kuehn Starchurska was assigned to work in a supernumerary capacity meaning she was always shadowing another midwife while on shift. Mrs Kuehn Stachurska*

*was also assigned two mentors to observe and support her practice, Colleague B and Colleague C.*

*9. The primary areas of concern were that Mrs Kuehn Stachurska lacked knowledge and clinical skills in the following areas:*

- 9.1. Bladder care;*
- 9.2. Lochia;*
- 9.3. Fundus/Uterine Involution;*
- 9.4. Breastfeeding;*
- 9.5. Urinalysis;*
- 9.6. CTG Trace; and*
- 9.7. Maternal/Baby observations.*

*10. On 30 April 2020, Mrs Kuehn Stachurska was placed by the Trust on a supported improvement plan to assist with her development.*

*11. On 8 July 2020, Mrs Kuehn Stachurska had a meeting to discuss progress with her development plan. At this meeting it was outlined that significant concerns remained in respect of the same areas of Mrs Kuehn Stachurska's practice.*

*12. On 30 July 2020, a second meeting was arranged with Mrs Kuehn Stachurska to discuss further steps necessary to escalate concerns given Mrs Kuehn Stachurska's lack of progress in line with her development plan. The Trust were concerned that despite the length of time which Mrs Kuehn Stachurska had been subject to a development plan, she was still not at the stage where she could work independently in a safe and effective manner.*

*13. On 21 August 2020, Mrs Kuehn Stachurska was invited to a stage one capability meeting, which marked the formal progression by the Trust in relation to the concerns about Mrs Kuehn Stachurska's competence identified above.*

14. On 1 October 2020, the stage one meeting was reconvened to discuss further steps for Mrs Kuehn Stachurska's development. At this meeting it was agreed that Mrs Kuehn Stachurska would begin work as a band 2 professional in order to allow her to learn in a more appropriate environment. A personal development plan was also created to assist in development. Mrs Kuehn Stachurska started work as a band 2 worker on 12 October 2020.

15. During the course of the NMC's investigation, as well as generalised concerns regarding Mrs Kuehn Stachurska's competence, evidence was provided of specific incidents of concern from:

15.1. 28 March 2020;

15.2. 7/8 April 2020;

15.3. 21 May 2020;

15.4. 19 June 2020;

15.5. 25 June 2020; and

15.6. 17 May 2020.

16. The specifics of these concerns are reflected in the charges outlined above at paragraph 3.

17. The concerns raised in respect of Mrs Kuehn Stachurska's competence were initially considered by the NMC's Case Examiners ('CEs') on 10 June 2021. At this time Mrs Kuehn Stachurska remained employed by the Trust in a band 2 capacity, and was still working through a personal development plan.

18. The CEs found a case to answer in respect of the concerns raised. As Mrs Kuehn Stachurska accepted there remained issues to be addressed in respect of her competence, the CEs felt that undertakings would be appropriate to address the concerns raised.

19. On 28 July 2021, Mrs Kuehn Stachurska's representative emailed to confirm that she would accept undertakings, but requested that they be drafted to account for the fact that Mrs Kuehn Stachurska was currently on maternity leave.

20. Following slight amendments, agreed undertakings were confirmed in a letter of 11 October 2021. These agreed undertakings were as follows:

*“Undertaking 1a: You will keep us informed about anywhere you are working by: Telling your case officer within seven days of accepting or leaving any employment.*

*Undertaking 1b: Giving your case officer your employer's contact details.*

*Undertaking 2a: You will keep us informed about anywhere you are studying by: Telling your case officer within seven days of accepting any course of study.*

*Undertaking 2b: Giving your case officer the name and contact details of the organisation offering that course of study.*

*Undertaking 3a: You will immediately give a copy of these undertakings to: Any organisation or person you work for.*

*Undertaking 3b: Any agency you apply to or are registered with for work.*

*Undertaking 3c: Any employers you apply to for work (at the time of application).*

*Undertaking 3d: Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*

*Undertaking 4: You will tell your case officer, within seven days of your becoming aware of:*

- *Any clinical incident you are involved in.*
- *Any investigation started against you.*
- *Any disciplinary proceedings taken against you.*

*Undertaking 5: You will allow your case officer to share, as necessary, details about your performance, your compliance with and progress towards completing these undertakings with:*

- *Your current employing Trust.*
- *Any educational establishment.*
- *Any other person(s) involved in your retraining and/or supervision required by these undertakings*

*Undertaking 6: You will limit your midwifery practice to working within your current employer.*

*Undertaking 7: You will ensure that you are supervised any time you are working. Your supervision will consist of:*

- *Working at all times while being directly observed by a registered nurse or midwife of band 6 or above*

*Undertaking 8: You will work with your supervisor/line manager/mentor to achieve the personal development plan that has been created for you. You will:*

- *Send your case officer an up-to-date copy of your PDP within two weeks of the date on which you return to work following your agreed period of leave.*
- *Following your agreed period of leave, meet with your supervisor/line manager/mentor at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.*
- *Following your agreed period of leave send your case officer a report from your supervisor/line manager/mentor every six weeks. This report will show*

*your progress towards achieving the aims set out in your PDP” 21. Mrs Kuehn Stachurska returned to work with the Trust following maternity leave on 1 August 2022.*

*22. Following Mrs Kuehn Stachurska return from leave, the NMC’s monitoring, and compliance team emailed Mrs Kuehn Stachurska and her representative to request a copy of her personal development plan in line with the undertakings above. Mrs Kuehn Stachurska did not provide her personal development plan until 21 November 2022.*

*23. On 31 January 2023, the Trust sent a report from Mrs Kuehn Stachurska’s clinical supervisor. In this report it was set out that Mrs Kuehn Stachurska had been committed to completion of her action plan, however feedback from Mrs Kuehn Stachurska’s other supervisors advised that she still had gaps in her knowledge and competencies, and that she still required additional support particularly in the intrapartum area.*

*24. On 8 March 2023, the Trust confirmed that at a capability review on 3 March 2023 it was decided that Mrs Kuehn Stachurska had failed to meet the required standard of improvements despite significant support. Mrs Kuehn Stachurska was therefore offered permanent redeployment as a band 2 healthcare support worker.*

*25. Following this decision, the Registrar for the NMC referred this matter back to the CEs for consideration. The CEs revoked the undertakings and referred this case for consideration by a Fitness to Practise Committee.*

### ***Preliminary issues***

*26. The NMC applies to amend the wording “band 6 midwife” in the opening of the charges to “band 5 midwife” under rule 28 of the fitness to practise rules 2004. This is as the opening includes a typographical error.*

27. *Currently the opening reads as “That you a registered midwife, between March 2020 and May 2023 failed to demonstrate the standards of knowledge, skill, and judgment required to practise without supervision as a band 6 midwife, in that you;”*

28. *The NMC applies to amend the opening of the charges to read “That you a registered midwife, between March 2020 and May 2023 failed to demonstrate the standards of knowledge, skill, and judgment required to practise without supervision as a band 5 midwife, in that you”;*

29. *Mrs Kuehn Stachurska was employed at the Trust as a band 5 midwife, the reference to a band 6 midwife was drafted in error. The parties agree to the amendment, having regards to the merits of the case and the fairness of the proceedings.*

30. *The NMC offers no evidence in respect of charges 1, 13, 14, 15 and 16 of the charges.*

31. *As set out in the case of PSA v NMC & X1 by Laing J at paragraph 55, “even though this is not expressly provided for in the Rules<sup>2</sup>, it must be open to the NMC, in an appropriate case, to offer no evidence.”*

32. *The guidance published by the NMC in relation to offering no evidence<sup>3</sup> states:*

*“We will only offer no evidence in a particular case if it fits with our overarching objective. We’ll only apply to offer no evidence against a nurse, midwife or nursing associate in the following circumstances:*

- When a particular part of the charge adds nothing to the overall seriousness of the case.*
- When there is no longer a realistic prospect of some, or all of the factual allegations being proved.*



- *When there is no longer a realistic prospect of a panel finding that the nurse, midwife or nursing associate’s fitness to practise is currently impaired.”*

*Offering no evidence in relation to charges 1 and 13*

*33. The Parties agree that charges 1 and 13 of the charge add nothing to the overall seriousness of the case. These charges are:*

*1) “Between March 2020 and 12 October 2020 worked/remained in a Supernumerary capacity at Victoria Hospital (“the Hospital”).*

*...*

*17) On or around 12 October 2020 were demoted to a Band 2 Nursing/Healthcare Assistant role.”*

*34. The NMC further reviewed the charges and the evidence in this case in preparation for the final hearing and considers that charges 1 and 13 do not assist the panel in determining the seriousness of the case. While the facts set out in these charges are accepted by Mrs Kuehn Stachurska, the Parties agree that these charges do not speak specifically to a lack of competence. Charges 1 and 13 speak to decisions made by Mrs Kuehn Stachurska’s employer; they are therefore facts which are relevant to the background of the case, and are included in the agreed facts set out above, but they do not amount to allegations which require an answer by Mrs Kuehn Stachurska, nor a separate finding by the panel.*

*35. The Parties invite the panel to accept the NMC’s offer of no evidence in respect of these charges. Before doing so the panel is invited to consider carefully the NMC’s Guidance on Offering No Evidence (DMA-3)*

*Offering no evidence in relation to charges 14, 15 and 16*

*36. The Parties agree that it would be unfair to proceed with charges 14, 15 and 16 as:*

*36.1. Charges 14 and 15 do not relate to a breach of undertakings, and are not factually correct; there is therefore no realistic prospect that they can be found proved;*

*36.2. The breach of undertakings outlined in charge 16 is not so sufficiently serious to merit charging the breach separately; and*

*36.3. The CEs never found a case to answer in respect of a breach of undertakings as a separate regulatory concern and, upon further review, the NMC considers that a charge of this nature does not follow the relevant guidance. As such there is no realistic prospect that this charge can be found proved.*

*37. The charges in question are:*

*14) “Failed to comply with Undertaking 6 which took effect on 11 October 2021/1 August 2022.*

*15) Failed to comply with Undertaking 7 which took effect on 11 October 2021/1 August 2022.*

*16) Breached Undertaking 8, which took effect on 11 October 2021/1 August 2022, in that you, following your period of leave;*

*a) Did not send your case officer an up-to-date copy of your Personal Development Plan within two weeks of the date on which the undertakings took effect;*

*b) Did not send your case officer a report from your supervisor/line manager every 6 weeks”*

*38. Undertakings 6,7 and 8 required that:*

*“Undertaking 6: You will limit your midwifery practice to working within your current employer.*

*Undertaking 7: You will ensure that you are supervised any time you are working. Your supervision will consist of:*

*• Working at all times while being directly observed by a registered nurse or midwife of band 6 or above*

*Undertaking 8: You will work with your supervisor/line manager/mentor to achieve the personal development plan that has been created for you. You will:*

- Send your case officer an up-to-date copy of your PDP within two weeks of the date on which you return to work following your agreed period of leave.*
- Following your agreed period of leave, meet with your supervisor/line manager/mentor at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.*
- Following your agreed period of leave send your case officer a report from your supervisor/line manager/mentor every six weeks. This report will show your progress towards achieving the aims set out in your PDP”*

*39. Since the undertakings were imposed, Mrs Kuehn Stachurska has remained employed by the Trust. The Trust have also confirmed that while working as a midwife Mrs Kuehn Stachurska was directly observed by a registered nurse or midwife of band 6 or above at all times. Upon further review the NMC considers that these charges were drafted due to a misunderstanding of the evidence presented by the Head of Midwifery and Nursing at Victoria Hospital in an email sent on 8 March 2023 confirming that the Mrs Kuehn Stachurska had failed to reach the required standards of improvements. In light of this evidence the NMC accepts that the charges are not capable of being proved, and so should not require an answer by Mrs Kuehn Stachurska nor a finding by the panel. This is as charges 14 and 15 are factually incorrect in that Mrs Kuehn Stachurska was in compliance with undertakings 6 and 7.*

*40. Considering charge 16 as it relates to undertaking 8, the NMC’s guidance on revoking undertakings and referring a case to a Fitness to Practise Committee sets out that:*

*“In rare cases, there may be evidence that an alleged failure to comply with undertakings was deliberate or particularly serious, for example if the nurse,*

*midwife or nursing associate knowingly breaches a restriction placed on their practice putting patients at risk of harm. In such cases, we will notify the nurse, midwife or nursing associate that we will recommend referral to the Fitness to Practise committee to consider the original regulatory concern as well as the non-compliance with the undertakings and give them the chance to respond. Case examiners should make it clear whether or not there is a case to answer in respect of the non-compliance with undertakings concern so that an additional misconduct charge relating to the breach can be added and determined by the Fitness to Practise Committee. Our sanctions guidance explains how the Panel should approach such a concern.”*

*41. The NMC’s guidance, as set out above, specifies that it is only in “rare cases” concerning a “deliberate or particularly serious” breach of undertakings where a breach should be considered as a separate regulatory concern. Furthermore, the guidance sets out that “Case examiners should make it clear whether or not there is a case to answer in respect of the non-compliance with undertakings”, and it is only where they have done so that an additional charge relating to a breach will be added and determined by a Fitness to Practise Committee.*

*42. The Parties agree that the breaches of undertaking 8 are not so serious that they should be considered as a separate charge. Although Mrs Kuehn Stachurska was delayed in sending her personal development plan and case officer report, these were sent to the NMC on 21 November 2023 and 31 January 2023 respectively. There is no evidence to suggest Mrs Kuehn Stachurska’s actions were in deliberate breach of the undertakings and, given these documents were sent through to the NMC at a later date, the NMC do not consider these breaches to be serious.*

*43. Furthermore, as the CEs did not specifically refer a breach of undertakings as a separate matter for a Fitness to Practise Committee to consider, it would be unfair*

*in any event for a Fitness to Practise Committee to consider these matters as a separate charge.*

*44. On 10 May 2023 the CEs revoked the undertakings and referred the initial regulatory concerns regarding Mrs Kuehn Stachurska's competence for consideration by a Fitness to Practise Committee. They did not specifically find that there was a case to answer that Mrs Kuehn Stachurska may be impaired by reason of breaches/non-compliance with undertakings.*

### **Admissions**

*45. Mrs Kuehn Stachurska admits charges 2-12 of the charges as set out at Schedule A.*

### **Lack of competence**

*46. Mrs Kuehn Stachurska admits that the matters as particularised in charges 2-12 amount to a lack of competence.*

*47. Although not defined in statute, Jackson J in the case of Calhaem v General Medical Council 5 sets out that when considering whether allegations represent deficient professional performance so as to impair a practitioner's fitness to practise, their standard of performance must be "unacceptably low" and represent a "fair sample" of the practitioners work.*

*48. The NMC's guidance on cases concerning a lack of competence<sup>6</sup> reinforces, in line with the case of Calhaem, that a lack of competence case will usually involve an unacceptably low standard of professional performance judged on a fair sample of a Registrant's work. It further sets out that, unless it is exceptionally serious, a single incident will not indicate a general lack of competence.*

49. The Parties agree that charges 2 -12 of the charges have been drafted following consideration of a fair sample of Mrs Kuehn Stachurska's work for the Trust between March 2020 and May 2023. These charges were drafted following careful consideration of documents including:

49.1. Evidence from individuals who had worked at the Trust during Mrs Kuehn Stachurska's employment and were able to speak directly to her performance as a whole;

49.2. Probation and other meeting notes from throughout Mrs Kuehn Stachurska's employment with the Trust; and

49.3. Evidence relating to capability proceedings undertaken by the Trust which addressed Mrs Kuehn Stachurska's overall performance during her time at the Trust.

50. The charges relate to concerns spanning the entirety of Mrs Kuehn Stachurska's employment as a band 5 midwife with the Trust, and collectively demonstrate fundamental deficiencies across Mrs Kuehn Stachurska's practise.

51. The Parties agree that the charges, as admitted by Mrs Kuehn Stachurska, are in breach of the provisions of the Code outlined below:

**“1. Treat people as individuals and uphold their dignity**

1.2. make sure you deliver the fundamentals of care effectively

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

2.1. work in partnership with people to make sure you deliver care effectively

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

**3. Make sure that people's physical, social and psychological needs are assessed and responded to**

3.1. pay special attention to promoting wellbeing, preventing ill health and meeting the changes health and care needs of people during all life stages

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

6.2. *maintain the knowledge and skills you need for safe and effective practice*

**8. Work co-operatively**

8.2. *maintain effective communication with colleagues*

8.3. *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*

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

8.6. *share information to identify and reduce risk*

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

9.1. *gather and reflect on feedback from a variety of sources, using it to improve your practice and performance*

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

13.1. *accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*

13.2. *make a timely referral to another practitioner when any action, care or treatment is required*

52. *The Parties therefore agree that these charges represent a fair sample of Mrs Kuehn Stachurska's work, and that this fair sample represents an unacceptably low standard of professional performance.*

***Impairment***

53. *The Parties agree that Kuehn Stachurska's fitness to practise is currently impaired by reason of a lack of competence.*

54. *The NMC's guidance on impairment<sup>8</sup> explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. Although there is no statutory definition of impairment, the questions outlined by Dame Janet*

*Smith in the 5th Shipman Report ('the Shipman report') provide a good starting point for consideration. Those questions were:*

*54.1. "has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*

*54.2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*

*54.3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future; and/or*

*54.4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future."*

*55. The Parties agree that the first three questions can be answered in the affirmative when considering Kuehn Stachurska's actions in this case. Dishonesty is not engaged in this case.*

*56. In respect of the first question, while there is no evidence that actual harm was caused to patients as a result of Mrs Kuehn Stachurska's actions, this is because she was heavily supervised and acting at all times in a supernumerary capacity. The Parties agree that, if allowed to practise without supervision, based on the current deficiencies in her practise as outlined in the charges there is a real risk that Mrs Kuehn Stachurska could cause harm to patients.*

*57. In respect of the second question, if Mrs Kuehn Stachurska were allowed to practise while her knowledge and skills were at an unacceptably low level, the Parties agree that there would be a real risk of Mrs Kuehn Stachurska undermining confidence in the profession.*

*58. In respect of the third question, the Parties agree that the breaches of the code outlined as Schedule B relate to fundamental tenets of the nursing profession.*



59. In addition to the guidance for impairment set out in the Shipman report, the Parties also refer to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011]9 . At paragraph 74 of this case Cox J commented that:

*“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.”*

60. The consideration of impairment as outlined in this case can be broadly split into two distinct questions:

60.1. Whether Mrs Kuehn Stachurska poses a current risk to the public through her practice; and

60.2. Whether a finding of impairment is needed to maintain public confidence in the profession and uphold professional standards.

#### Current risk

61. Impairment is a forward-thinking exercise that looks at the risk a registrant’s practice poses in the future. The NMC’s guidance on impairment adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council<sup>11</sup> by asking the questions whether the concern is easily remediable, whether it has in fact been remedied, and whether it is highly unlikely to be repeated.

62. The Parties agree that Mrs Kuehn Stachurska’s practise while at the Trust, as reflected in the charges, demonstrates that she poses a current risk to patients if

*allowed to practise unrestricted. The charges demonstrate consistent concerns with fundamental skills and areas of knowledge required for safe and effective practise.*

*63. Given that Mrs Kuehn Stachurska has not yet been able to fully address these concerns, as demonstrated by the most recent report of her clinical supervisor, the Parties agree that Mrs Kuehn Stachurska poses a current risk to patients if no measures were imposed by a Fitness to Practise Committee.*

#### **Public interest**

*64. The Parties agree that Mrs Kuehn Stachurska's lack of knowledge and skills, as outlined in the charges, are so serious that a finding of impairment is needed to uphold professional standards, and avoid undermining public confidence and trust in the profession, the regulatory process, and the NMC as a regulator.*

#### **Sanction**

*65. Whilst sanction is a matter for the Fitness to Practise Committee's independent professional judgement, the Parties agree that the appropriate sanction in this case is a suspension order for a period of twelve months with a review before expiry.*

*66. The aggravating factors in this case are agreed by the parties to be that:*

*66.1. The deficiencies in knowledge and skills demonstrated by Mrs Kuehn Stachurska relate to fundamental areas of practise;*

*66.2. The deficiencies in knowledge and skills were shown continuously over the course of a three-year period;*

*66.3. The deficiencies in knowledge and skills have not yet been addressed by Mrs Kuehn Stachurska despite significant support and training; and*

*67. The mitigating factors of this are agreed to be that:*

*67.1. Mrs Kuehn Stachurska has fully engaged with the Trust and the NMC through investigation into these concerns;*

67.2. Mrs Kuehn Stachurska has made admissions in relation to her lack of competence;

68. Considering the facts of this case in line with the available sanctions in ascending order of seriousness:

Taking no further action

69. The NMC's guidance on taking no further action indicates that a panel has a discretion to take no further action after a finding of impairment, but will only use that discretion rarely. The Parties are agreed the nature of this case is not exceptional and that taking no action would not be sufficient to protect the public, maintain standards, or maintain confidence in the profession and the NMC as a regulator

Caution Order

70. The NMC's guidance on caution orders<sup>13</sup> indicates that a caution order is only appropriate if there's no risk to the public or patients, and the case is at the lower end of the spectrum of impaired fitness to practise. As set out above the lack of competence relates to serious and fundamental deficiencies which, if not addressed, would result in a serious risk to patient harm. A caution order would therefore provide inadequate protection to the public and would fail to address wider public interest concerns.

Conditions of Practice Order

71. The NMC's guidance on conditions of practice orders<sup>14</sup> outlines that the key consideration when looking at whether conditions of practice may be appropriate is whether conditions can be put in place that would be sufficient to protect patients and address public confidence in the profession and the NMC.

72. In this instance, the Parties are agreed conditions could not be drafted that would be workable and proportionate.

*73. Mrs Kuehn Stachurska has been provided continuous training, support, and supervision since the beginning of her employment with the Trust in March 2020. Despite the level of support provided, the Trust concluded in March 2023 that there remained significant gaps in Mrs Kuehn Stachurska's clinical knowledge and midwifery skills which made it impractical to allow her to continue to be employed as a band 5 registered midwife. As a result of these conclusions by the Trust, Mrs Kuehn Stachurska was redeployed at a band 2 healthcare support worker. Following her redeployment, Mrs Kuehn Stachurska was unable to work towards a return to practise in line with the undertakings previously in place outlined at Schedule B.*

*74. The Parties are therefore agreed that conditions would be ineffective as Mrs Kuehn Stachurska's competency is not currently at a level where, even subject to direct supervision and other conditions, she would be able to return to safe and effective practise as a midwife.*

#### *Suspension Order*

*75. The NMC's guidance on suspension orders outlines that a suspension order may be appropriate in cases "where the misconduct isn't fundamentally incompatible with the nurse, midwife or nursing associate continuing to be a registered professional, and [the NMC's] overarching objective may be satisfied by a less severe outcome than permanent removal from the register."*

*76. The Parties agree that, if the Fitness to Practise Committee impose a suspension order for a period of twelve months, this would allow Mrs Kuehn Stachurska further time to develop her clinical skills and knowledge while working as a band 2 healthcare support worker, and potentially undertaking further studies.*

*77. Before the expiry of the suspension order, a Fitness to Practise Committee will be in a position to review whether Mrs Kuehn Stachurska is in a position to return to*

*practise subject to conditions, or whether a further period of suspension is necessary.*

#### *Striking-Off Order*

*78. As this case relates wholly to charges of impairment by reason of a lack of competency, article 29(6) of the Order prohibits the Fitness to Practise Committee from making a striking off order at this stage as Mrs Kuehn Stachurska has not been continuously suspended or subject to a conditions of practice order for a period in excess of two years.*

#### ***Interim order***

*79. The Parties are agreed an interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest for the reasons given above. The interim order should be for a period of 18 months in the event that the panel's decision is appealed. The interim order should take the form of an interim suspension order.*

*The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'*

Here ends the provisional CPD agreement between yourself and the NMC. The provisional CPD agreement was signed by the NMC and you on 30 November 2023.

#### **Decision and reasons on the CPD**

The panel approved the amendments requested and agreed by Mr Cassells and Ms Wishart. The panel also agreed with Mr Cassells' decision to offer no evidence in relation to Charges 1, 13, 14, 15 and 16.

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice.

Mr Cassells referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that you admitted the facts of the charges. Accordingly, the panel was satisfied that the whole of charges 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 are found proved by way of your admissions, as set out in the signed provisional CPD agreement.

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

The panel then went on to consider whether your fitness to practise is currently impaired. Whilst acknowledging the agreement between yourself and the NMC, the panel exercised its own independent judgement in reaching its decision on impairment.

In respect of lack of competence, the panel determined that your clinical skill levels are unacceptable and would put patients at risk of harm if you were allowed to practise without restriction which you demonstrated with your actions in respect of the charges.

In this respect, the panel endorsed paragraphs 46 to 52 of the provisional CPD agreement in respect of lack of competence.

The panel then considered whether your fitness to practise is currently impaired by reason of lack of competence.

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

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

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

*If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

The panel determined that your fitness to practise is currently impaired as your actions breached fundamental tenets of the profession, pose an ongoing risk to patient safety and would be deemed deplorable by the public. In this respect the panel endorsed paragraphs 53 to 64 of the provisional CPD agreement.

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

Having found your 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:

- The deficiencies in knowledge and skills demonstrated by you relate to fundamental areas of practice
- The deficiencies in knowledge and skills were shown continuously over the course of a three-year period
- The deficiencies in knowledge and skills have not yet been addressed by you despite significant support and training

The panel also took into account the following mitigating features:

- You have fully engaged with the Trust and the NMC throughout the investigation into these concerns;
- You have made admissions in relation to your lack of competence

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 your 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions



imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed*

The panel is of the view that there are no practical or workable conditions that could be formulated given the wide-ranging clinical concerns in this case and the panel's finding that you are currently impaired by reason of your lack of competence. The panel also took into consideration that you placed patients at risk of harm over the course of three years which, despite support and mentoring, was not addressed and has not been remediated.

Furthermore, the panel concluded that the placing of conditions on your 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:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

Considering these factors, the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction to protect the public, meet the public interest, and give you the chance to decide how you would like to move forward with your career.

The panel was mindful the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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 midwife.

The panel determined that a suspension order for a period of 12 months was appropriate in this case.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of professional development in the form of training certificates,
- Referenced from any employers
- A reflective piece

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

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel 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 your own interests until the suspension sanction takes effect.

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

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 you admitted, and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel agreed with the CPD that an interim suspension order would 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 suspension order 28 days after you are sent the decision of this hearing in writing.

This will be confirmed to you in writing.

That concludes this determination.