

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

**Substantive Hearing  
Monday 2 October 2023 – Friday 6 October 2023  
Monday 9 October 2023 – Tuesday 10 October 2023**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Katie Howles</b>
<b>NMC PIN</b>	15K2120E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing L1 – April 2016
<b>Relevant Location:</b>	Birmingham
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Derek McFaull (Chair, lay member) Melanie Lumbers (Registrant member) Keith Murray (Lay member)
<b>Legal Assessor:</b>	Charles Conway
<b>Hearings Coordinator:</b>	Shela Begum
<b>Nursing and Midwifery Council:</b>	Represented by Anna Leathem, Case Presenter
<b>Miss Howles:</b>	Not present and unrepresented (2 – 4 October 2023 and 6 October 2023) Present and unrepresented (5 October 2023)
<b>Facts proved:</b>	Charges 1, 2, 3, 4a, 4b, 4c, 4d, 4e, 5, 6a, 6b and 7
<b>No case to answer:</b>	Charge 4f
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking off order</b>

**Interim order:**

**Interim suspension order (18 months)**

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

At the outset of the hearing, Ms Leathem made a request that parts of this case be held in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session [PRIVATE] as and when such issues are raised in order to maintain her confidentiality.

## **Decisions and reasons on the adjournment of day one of the hearing**

On day one of the hearing, Ms Leathem informed the panel that Miss Howles, who was expected to attend this hearing emailed the hearing coordinator informing her that she would not be able to attend. The email, dated 2 October 2023 at 09:41am stated:

*“[PRIVATE].”*

Ms Leathem submitted that, given the nature of the information Miss Howles has brought to the attention of the panel, a short period of adjournment would be appropriate in order to ascertain whether or not Miss Howles will be in a position to attend and participate in the hearing later on day one or on the future dates of the hearing.

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

Given the sensitive nature of Miss Howles' current circumstances, the panel decided to grant a short period of adjournment until midday in order to allow Miss Howles an opportunity to get in touch and inform the NMC whether she will be able to attend at a later stage and/or provide further information in relation to her non-attendance.

As there had been no update from Miss Howles by midday of day one of the hearing, the panel decided that, given the circumstances, it would be fair and appropriate to allow an adjournment until the morning of day two of the hearing. The panel directed that the decision to adjourn on day one of the hearing be relayed to Miss Howles by the hearing coordinator with a request for Miss Howles to get in touch to provide an update as to her circumstances.

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

The panel was informed at the start of this hearing that Miss Howles was not in attendance and that the Notice of Hearing letter had been sent to Miss Howles' registered email address by secure email 31 August 2023. She referred the panel to the on-table document in relation to proof of service which evidenced that the final hearing bundles were sent to Miss Howles on 13 September 2023.

Ms Leathem, 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 Miss Howles' right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

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

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

Ms Leathem informed the panel that this is the second time a panel has been convened at a substantive hearing for this case. The previous hearing was scheduled to take place in February 2023. [PRIVATE].

Ms Leathem stated that on day one of this hearing, Miss Howles emailed the hearing coordinator indicating that she wishes to attend this hearing but [PRIVATE]. Miss Howles last emails to the hearing coordinator were on 2 October 2023 at 10:38 and at 11:12 in which she stated:

*“I totally understand if you have to go ahead without me but I could not give you a time [PRIVATE].*

*Please could you keep me informed of what will be happening today and if the hearing goes ahead [sic]”*

Ms Leathem submitted that since these emails, Miss Howles has been contacted by the hearing coordinator explaining what stage the hearing is at and requesting for Miss Howles to confirm what her position is in relation to her attendance. She told the panel that there has been no further update from Miss Howles or any documentary evidence in relation to her visit to A&E.

Ms Leathem referred to an email addressed to Miss Howles from the hearing coordinator on day one of the hearing which stated:

*“The panel has been made aware of your current circumstances and is mindful that you are having to prioritise this at the moment. The panel has decided to allow a further period of adjournment until tomorrow morning at 9:30, at this stage they will be looking to begin the hearing.*

*Please could you get in touch to confirm whether you will be attending the hearing tomorrow morning at 9:30? If you are not going to be present, please could you*

*confirm if you are content for the hearing to proceed in your absence or whether you have any applications you wish to put before the panel. If you decide not to attend the hearing tomorrow, the panel may hear an application from the NMC to proceed with the hearing in your absence and it is open to the panel to proceed with the hearing.”*

A subsequent email on the same date addressed to Miss Howles from the hearing coordinator stated:

*“Further to my previous email, I also should have mentioned that the panel will be assisted by any documentary evidence that you could provide. [PRIVATE].”*

Ms Leathem also referred the panel to the documentation which explained that two unsuccessful phone calls made to Miss Howles at her registered contact number by the hearing coordinator on the morning of day two of the hearing. A voicemail was left asking Miss Howles to get in touch.

In the circumstances, Ms Leathem submitted that, whilst the NMC is sympathetic to Miss Howles circumstances of day one of the hearing, given there has been no information on day two of the hearing as to her future attendance during the hearing, she invited the panel to proceed in Miss Howles’ absence. She submitted that although the reasons for Miss Howles’ non-attendance on day one of this hearing are different from the hearing being adjourned on the first occasion, she highlighted that it is relevant that there have been two occasions where Miss Howles has not been able to attend a hearing and it is relevant for the panels consideration as to Miss Howles likely attendance if the panel was to adjourn for a second time.

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 with upmost care and caution to proceed in the absence of Miss Howles. In reaching this decision, the panel has considered the submissions of Ms Leathem, the representations from Miss Howles, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Howles;
- Miss Howles has not responded to any of the communication attempts since the morning of Day 1 of this hearing;
- Miss Howles has indicated to the NMC that she has received the Notice of Hearing and that she is aware of the hearing taking place;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- This is the second time a panel has been convened at a substantive event in relation to these matters;
- Four witnesses have been warned to attend this hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Howles in proceeding in her absence. Although the evidence upon which the NMC relies was sent to her at her registered contact details, she



will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Howles' decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

## Details of charge

“That you a registered nurse;

1. At your appraisal on the 22 October 2018 incorrectly declared to Colleague 1 that you had passed the Asthma degree.
2. Between 20 February and 21 February 2020 incorrectly declared to Colleague 1 that you had completed your Asthma Degree course.
3. Your declarations in charge 1 and/or charge 2 were dishonest in that you were attempting to mislead Colleague 1 into believing that you had passed the Asthma course when you knew that you had not.
4. On or before the 31 January 2020 made the following incorrect declarations to the Lordswood Medical Group;
  - (a) That you were presently employed by the Birmingham Regional Severe Asthma Service (the “Service”).
  - (b) That you worked independently at the Service.
  - (c) That you completed comprehensive clinical assessments of patients at the Service.
  - (d) That you ensured accurate diagnosis of patients at the Service.
  - (e) That you implemented effective development managerial plans for patients at the Service.
  - (f) That you conducted and/or ran pre-assessment clinics at the Service.
5. Your declarations in charge 4 were dishonest in that you were attempting to mislead Lordswood Medical Group into believing that you were a more experienced nurse knowing that you were not.

6. On or before the 31 January 2020 incorrectly declared on your CV to Lordswood Medical Group that you had attained the following qualifications;
  - (a) BSc (Hons) In Long Term Conditions (Respiratory Pathway).
  - (b) Mentorship in Practice (Level 7).
  
7. Your declarations in charge 6 were dishonest in that you were attempting to mislead Lordswood Medical Group that you had attained the qualifications when you knew that you had not.

In light of the above your fitness to practise is impaired by reason of your misconduct.”

## **Background**

The charges relate to Miss Howles whilst employed at the Birmingham Regional Severe asthma service (the Service) at the University Hospital Birmingham NHS Foundation Trust (the Trust) and to alleged incorrect declarations Miss Howles made to Lordswood Medical Group (the Group) as part of a job application for a role as a Lead Respiratory Nurse.

In October 2018, whilst Miss Howles was employed at the Service as an asthma nurse, it is alleged that during an appraisal meeting with Colleague 1 / Witness 1, Miss Howles told Colleague 1 that she had successfully completed her asthma degree course. Colleague 1 requested copies of the certificates of completion of the course and Miss Howles allegedly subsequently admitted to having failed the asthma course. Colleague 1 informed her manager of this but as Miss Howles had handed in her notice of resignation in January 2019 and her next role did not involve respiratory care, it was agreed that no action would be taken at that time.

On 20 February 2020, Miss Howles allegedly contacted Colleague 1 over text messages asking if Colleague 1 would provide her with a reference in support of her application for a Respiratory Lead Practice Nurse role at the Lordswood Medical Group (Lordswood) which she had applied for in January 2020. Colleague 1, upon reviewing the job description of the new role, asked Miss Howles to confirm the status of her asthma degree course. It is alleged that Miss Howles falsely informed Colleague 1 that she had retaken the course after leaving the Service and that she had passed the course.

It is alleged that in her application to Lordswood, Miss Howles made false declarations as to her current employment status, and her responsibilities and duties whilst employed as an asthma nurse at the Service.

It is also alleged that within her applications for the role at Lordswood Miss Howles incorrectly declared she had attained a BSc (Hons) degree in Long Term Conditions (Respiratory Pathway) and a Mentorship in Practice (Level 7) qualifications.

It is alleged that, during her interview for the job role at Lordswood, Miss Howles did not make any express amendments to the contents of her Curriculum Vitae (CV) and on the basis of the information Lordswood had received from her, Miss Howles was offered the role subject to reference checks from her previous employer. Miss Howles commenced employment at Lordswood on 24 February 2020.

Lordswood received a reference from Colleague 1 at the Service giving employment dates as up to 2019 rather than 2020 as indicated on Miss Howles' CV. The reference also informed the Group that Miss Howles had failed the asthma course whilst she was employed at the Service and cast doubt as to the authenticity of the skills she had listed. Following receipt of this information, the decision was made to terminate Miss Howles' employment at Lordswood with immediate effect.

## **No case to answer in respect of charge 4f**

Following conclusion of the NMC's live witness evidence, Ms Leathem submitted to the panel that if Miss Howles had been represented at these proceedings, her representative based on the evidence the panel has heard would have made a submission of no case to answer in relation to charge 4f.

Ms Leathem conceded that the evidence the panel has heard from Witness 1 in respect of charge 4f positively affirms that Miss Howles did conduct or undertake pre-assessment clinics at the Service. She therefore submitted that there is no evidence before the panel in support of this charge and that the NMC have not discharged the burden of proof in relation to this allegation.

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

Based on the submissions from Ms Leathem, and the evidence it has heard, the panel concluded that there is not a case for Miss Howles to answer in relation to charge 4f and that there would be no realistic prospect of finding this charge proved.

## Decision and reasons on facts

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

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

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

- Witness 1 / Colleague 1:      Lead Asthma Clinical Nurse  
Specialist, the University Hospital  
Birmingham NHS Foundation Trust
- Witness 2:                      Director of Learning Design &  
Quality, Warwick Education for  
Health
- Witness 3:                      Associate Head of School for  
Nursing and Midwifery, Faculty of  
health, Education and Life Sciences,  
Birmingham City University (at the  
time of the incidents)
- Witness 4:                      Lead Nurse, Lordswood Medical  
Group

On day three of the hearing at the end of the NMC's case, Miss Howles attended the hearing and was given the opportunity to give evidence under oath or affirmation. Miss Howles made the decision to provide a statement to the panel which was not delivered under oath or affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the evidence of the witnesses called by the NMC and all of documentary evidence which included a written response to the charges from Miss Howles.

The panel considered submissions from the NMC, but it did not hear any submissions from Miss Howles as she did not attend the hearing after providing her statement to the panel on day three of the hearing.

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

### **Charge 1**

1. At your appraisal on the 22 October 2018 incorrectly declared to Colleague 1 that you had passed the Asthma degree.

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

In reaching this decision, the panel took into account the evidence of Witness 1 and Witness 3 as well as the documentary evidence before it and Miss Howles' statement to the panel.

The panel had regard to the Trust's appraisal form which was signed by both Witness 1 on 25 October 2018 and by Miss Howles on 26 November 2018.

The panel noted that under "*what did you agree to do to achieve this objective?*" it stated:



*“Undertake asthma degree  
Attend study days and self-study”*

It also noted that under “*Status – has this objective been achieved?*” there was a tick on the form indicating that the asthma degree had been undertaken and achieved.

The panel noted the appraisal form is also stated:

*“Katie should be proud of what she has achieved including completing her asthma degree, SLAIP and spirometry course.”*

The panel had regard to the written statement of Witness 1 in which she stated:

*“During this appraisal, [...] The Registrant informed me during this meeting that she had passed her asthma degree and I asked her to provide me with copies of the certificates.”*

This was supported by the documentary evidence which included an email from Witness 1 to Miss Howles dated 29 November 2018 which stated:

*“You may recall from you[sic] appraisal I asked if you could provide certificates / confirmation of passing the courses you have completed since starting here. If I could have them as soon as possible so I can place them in your file and update your competencies.”*

The panel found that the documentary evidence before it was consistent with Witness 1’s oral evidence and also supported by Witness 3’s evidence.

The panel heard from Miss Howles during the hearing. Miss Howles told the panel that during her appraisal she did not declare to Colleague 1 that she had passed the Asthma

degree. She explained that a third-party present at the appraisal made comments about Miss Howles having passed the asthma degree and Miss Howles explained that she had not corrected this during the appraisal. She told the panel that a few days later she approached Colleague 1 to correct this.

The panel considered the evidence before it and noted Miss Howles' account of events. The panel preferred the evidence of the NMC's witnesses which were backed up by contemporaneous notes.

The panel determined that, based on the evidence before it, it is more likely than not, on the balance of probabilities that Miss Howles did incorrectly declare to Colleague 1 that she had passed the Asthma degree during her appraisal in October 2018. It therefore finds this charge proved.

## **Charge 2**

2. Between 20 February and 21 February 2020 incorrectly declared to Colleague 1 that you had completed your Asthma Degree course.

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

In reaching this decision, the panel took into account the evidence of Witness 1 and the statement made by Miss Howles.

It had regard to the written statement of Witness 1 which stated:

*“The registrant texted me on 21<sup>st</sup> February 2020, and explained that she retook the course. The same day I responded by text and asked the Registrant if she passed the course that she retook. The Registrant’s response was that I did not need to put this on the reference as she completed it when she left the Service so the dates would not add up.”*

The panel had regard to the documentary evidence which included screen captures of the text message conversation exchanged between Witness 1 and Miss Howles. This supported the account given by Witness 1. The panel noted that when Witness 1 asked Miss Howles if she could confirm whether she passed the course, Miss Howles stated:

*“You don’t need to put it on the reference as I completed it once I had left so the dates wont add up if that makes sense.[sic]”*

The panel also took into account the email from Witness 1 to Miss Howles dated 21 February 2020 which stated:

*“Hi Katie*

*I have received the reference request but just need to check something with you as I need to comment on your ability and knowledge base / qualifications. Have you been upfront with them to say you failed your asthma course? Can you let me know asap before I complete the reference and send it back.”*

The panel noted that Miss Howles admitted to having lied to Colleague 1 about completing the Asthma Degree course. She confirmed during the hearing that she falsely informed Colleague 1 that she had passed the course and she explained that she did not feel that she owed it to Colleague 1 to state the truth as Colleague 1 was no longer her manager.

The panel also heard evidence from Witness 2 who informed the panel during evidence that Miss Howles enrolled for the ‘Enhancing in Asthma Care in Professional Practice course’ and that she did not complete the required modules or submit her assignments. She was therefore withdrawn in February 2020.

The panel determined that, based on the evidence before it, Miss Howles did incorrectly declare to Colleague 1 that she had completed the Asthma Degree course between 20 February and 21 February 2020. It therefore finds this charge proved.

### Charge 3

3. Your declarations in charge 1 and/or charge 2 were dishonest in that you were attempting to mislead Colleague 1 into believing that you had passed the Asthma course when you knew that you had not.

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

In its consideration of this charge, the panel gave regard to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 which sets out:

*“[74]. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to the facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate what he has done is, by those standards, dishonest.”*

The panel considered the state of Miss Howles knowledge as to the facts during the time of the appraisal. It found that Miss Howles was aware that she had not passed the asthma course and intentionally led Colleague 1 to believe that she had passed during the appraisal. The panel therefore found that Miss Howles’ actions as set out in charges 1 were dishonest in that she was attempting to mislead Colleague 1.

The panel considered Miss Howles’ actions as set out in charge 2. It noted that after leaving the Service, Miss Howles requested a reference from Colleague 1 for another role.

The panel noted that before providing the reference Colleague 1 asked Miss Howles to confirm whether she had passed the course. Miss Howles indicated that she had passed the course in response and the panel found that Miss Howles' knowledge at the time of declaring she had passed was that she knew she had not. She was aware that she had not passed the asthma course and misled Colleague 1 to believe that she had with the intent of obtaining a reference from her for the purposes of securing future employment with another company.

The panel found that Miss Howles was dishonest during the appraisal in October 2018 in relation to having passed the Asthma Degree course. It noted that after making admissions to Colleague 1 in relation to charge 1, retracting her incorrect declaration that she had passed, went on to repeating the attempts to mislead Colleague 1 about having passed the Asthma Degree course with the intention of obtaining a reference from her.

The panel therefore concluded that Miss Howles' declarations in charge 1 and in charge 2 were dishonest in that she was deliberately attempting to mislead Colleague 1 into believing that she had passed the Asthma course when she knew that she had not and therefore finds this charge proved.

#### **Charge 4a**

4. On or before the 31 January 2020 made the following incorrect declarations to the Lordswood Medical Group;
  - (a) That you were presently employed by the Birmingham Regional Severe Asthma Service (the "Service").

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witnesses 1 and 4, as well as the documentary evidence before it which included Miss Howles' NHS job

application to Lordswood and the supporting CV which she uploaded and attached to the online job application.

The panel had regard to Miss Howles' CV. It heard from both Miss Howles and from Witness 4 that this was the CV that was submitted by Miss Howles in support of her job application to Lordswood in 2020. The panel noted that on the CV, under work history it indicated that Miss Howles was presently employed as an Asthma Nurse at University Hospital Birmingham in that it stated: "04/2017 to Current".

The panel noted Witness 1's written statement in which she states:

*"Although no date is attached to the CV that I have seen, the Registrant stated she was still in current employment as an asthma nurse. I believe this to be incorrect because she left the Hospital in February 2019."*

The panel noted that Witness 1's evidence was supported by Miss Howles' resignation notice letter dated 3 January 2019 in which she indicated that she would serve her 8-week notice period which would have meant that her employment at the Service would have finished by the end of February 2019.

The panel explored during evidence with Witness 1 whether there was the possibility that Miss Howles could have been continuing work at the Service as a bank nurse. Witness 1 informed the panel that the Service did not employ bank nurses and therefore Miss Howles would not have been working as an Asthma Nurse at the Service at the time that she had submitted the job application. Further, the panel heard from Witness 4 that she understood from Miss Howles that her work at the Service was under a permanent contract.

The panel also heard from Miss Howles during the hearing who stated:

*"I wrote loads on my CV, I just wanted a job"*

She also stated:

*“My CV is not worth the paper it is written on”*

On the basis of all the evidence it has heard and the documentary evidence before it, the panel determined that Miss Howles did incorrectly declare that she was presently employed by the Service. It therefore finds this charge proved.

#### **Charges 4b, 4c, 4d and 4e**

4. On or before the 31 January 2020 made the following incorrect declarations to the Lordswood Medical Group;
  - (b) That you worked independently at the Service.
  - (c) That you completed comprehensive clinical assessments of patients at the Service.
  - (d) That you ensured accurate diagnosis of patients at the Service
  - (e) That you implemented effective development managerial plans for patients at the Service.

#### **These charges are found proved.**

In reaching this decision, the panel considered the evidence of Witness 1 as well as the documentary evidence which included the application form Miss Howles submitted to the Group, her supporting CV and the Asthma Nurse job description. It also considered Miss Howles' statement to the panel during the hearing.

The panel had regard to Miss Howles CV. It noted that under work history it stated:

*“Asthma Nurse, 04/2017 to Current  
University Hospital Birmingham, Heartlands Hospital [...]*

*Part of my main role is ensuring that all our patients' individual needs are fulfilled. This is done by liaising daily with all other members of the MDT by communicating with each other so that each individual patient's social, emotional, physical and spiritual needs are all upheld. [...] I complete comprehensive clinical assessments of patients by reviewing their complex needs ensuring accurate diagnosis, implementation of effective treatment and developing management plans [...] I run my own clinic and manage trials for chest clearance, compliance and biological treatments [...] I manage my own patient workload [...]"*

The panel also had regard to Miss Howles statement which was attached to an email dated 11 February 2022 in which she stated:

*"I completed all the above duties independently but would gain advise if needed. I feel that I had to be a quick learner when I started as due to the shortness of staff I had no choice but to provide the above care as not to delay patient treatments they required. I feel that all the above information is very relevant to my defence as having a two-person unit put a lot of pressure on myself; therefore, I felt I had no choice but to act out of my scope of practice.[sic]"*

The panel had regard to the documentary evidence which set out that Miss Howles did declare what is set out in charges 4a, 4b, 4c and 4d. It next went on to consider whether her declarations were incorrect.

The panel had regard to the Band 5 Asthma Nurse job description which summarised the role as:

*"To participate in the development of an asthma service for outpatients, in-patients and community therapy patients, under the leadership of the Consultant Physician and Respiratory Nurse Specialist. To help facilitate an improvement in the quality of health care and the outcome of patient care. To participate in educational programmes for all staff within the Respiratory Department!"*



In relation to charge 4a, the panel heard evidence from Witness 1 who told the panel that Miss Howles had never worked independently at the Service. She agreed that there were times when staffing levels were low but that this would not result in a band 5 nurse carrying out duties independently or carrying out duties that were beyond the scope of their practice. Witness 1 also told the panel that if there was only a band 5 nurse available on any given day, the clinic sessions for that day would have been cancelled as the work could not be carried out independently.

Witness 1 clarified that working independently would involve organising clinic sessions and undertaking clinical assessments including investigations and diagnosis of patients. She told the panel that, as a band 5 nurse, Miss Howles would not have been required or expected or allowed to have carried out such tasks and that the Service was comprised of a multidisciplinary team who all worked together to perform their own necessary tasks.

In respect of charges 4b and 4c, the panel heard from Witness 1 that tasks such as comprehensive clinical assessments of patients and diagnosis of patients were tasks that were beyond the scope of a band 5 nurse. She told the panel that a band 5 nurse would never be expected or allowed to carry out those tasks as more senior members of staff within the multidisciplinary team would undertake such tasks. She told the panel that a band 5 nurse would potentially assist investigations in that they would obtain relevant patient information for a diagnosis to be made by a more senior staff member but not to make the diagnosis itself.

In respect of charge 4e, Witness 1 informed the panel that whilst Miss Howles may have created action plan for patients at a lower level, these did not equate to the implementation of effective development managerial plans. She informed the panel a task such as this would have been carried out by a Doctor or a member of staff with similar seniority.

The panel found the evidence of Witness 1, both oral and documentary, to be clear, concise and consistent in relation to what duties Miss Howles was expected and allowed to carry out.

The panel had regard to the job description of the Asthma Nurse and it noted that it does not indicate that Miss Howles would have been expected to carry out these duties.

The panel heard from Miss Howles' statement to it that she believed she had obtained these skills. She explained she had completed these skills during a time when the Service was short staffed. The panel had no supporting evidence confirming this.

The panel determined that on the basis of the evidence before it, it is more likely than not that Mrs Howles did not work independently, did not complete comprehensive clinical assessments of patients, did not carry out any diagnosis of patients and did not implement effective development managerial plans for patients at the Service. It therefore determined that she did incorrectly declare that she carried out these duties to Lordswood Medical Group and therefore finds these charges proved.

### **Charge 5**

5. Your declarations in charge 4 were dishonest in that you were attempting to mislead Lordswood Medical Group into believing that you were a more experienced nurse knowing that you were not.

**This charge is found proved.**

In reaching this decision, the panel took into account the case of *Ivey*.

The panel considered the state of Miss Howles knowledge as to the facts during the time that she made the incorrect declarations as set out in charges 4a, 4b, 4c, 4d and 4d.

The panel heard from Miss Howles during the hearing that she believed she had the skills set out in her CV and that she did not lie about her skillset. However, she also stated that her CV "*is not worth the paper it is written on*". The panel found that Miss Howles made conflicting statements during the hearing as to her belief around her skill set and what was set out on her CV. Further, it noted that she had also stated during the hearing she wrote a lot on her CV as she just wanted a job.

The panel concluded, that based on the evidence before it, Miss Howles was aware that she was not presently employed by the Service at the time of her application to Lordswood, did not work independently, did not complete comprehensive clinical assessments and did not diagnose patients or implement effective development managerial plans.

The panel noted that the job role Miss Howles had applied for was a Respiratory Lead Nurse and that by declaring she had carried out the duties as set out in charge 4 she was creating the impression that she was a nurse who attained the required skillset and was experienced enough for that role.

The panel also heard from Witness 4 who told the panel that based on the information she was given by Miss Howles, she was led to believe that Miss Howles was working independently, and that she had some managerial responsibility in her role at the Service and that she was experienced in working autonomously and had the responsibilities of a lead nurse.

Witness 4 explained that Lordswood already had respiratory nurses and that they needed a lead respiratory nurse for spirometry and clinic sessions. It was usual to have 5 – 10 applications per post. Witness 4 added that to see patients individually both practical and theoretical knowledge was required with relevant qualifications.

The panel determined that Miss Howles deliberately made incorrect declarations as set out in charge 4 and did attempt to mislead Lordswood into believing that she was a more

experienced nurse knowing that she was not, with the intention of securing future employment with them. The panel therefore found that Miss Howles' actions as set out in charge 4 were dishonest and finds this charge proved.

### **Charges 6a and 6b**

6. On or before the 31 January 2020 incorrectly declared on your CV to Lordswood Medical Group that you had attained the following qualifications;
  - a. BSc (Hons) In Long Term Conditions (Respiratory Pathway).
  - b. Mentorship in Practice (Level 7).

### **These charges are found proved.**

In reaching this decision, the panel had regard to Miss Howles CV. The CV stated:

*“Education*

*Bsc (Hons) In Long Term Conditions (Respiratory Pathway): Nursing, 2019  
Education for Health – Warwick*

*Mentorship in Practice (Level 7): Nursing, 2019  
Birmingham City University”*

The panel found that by listing these qualifications on her CV, Miss Howles was declaring that these are qualifications that she had obtained. It went onto consider whether this declaration was false.

In relation to charge 6a, the panel also had regard to the evidence of Witness 2. In her written statement she stated:

*“The registrant was enrolled at Warwick Education for Health on the course ‘Bsc (Hons) Long- Term Conditions (Respiratory) 2018-2021’. The Course as previously*

*known as 'BSc (Hons) Respiratory Practice'. the courses were accredited with the Open University in 2018 and were delivered by distant learning, a blend of online tutorials with attendance at optional study dates. In February 2020, the University's accredited partner changed from Open University to University of Hertfordshire.*

*In September 2020, the registrant signed up for two courses – 'Enhancing in Asthma Care in Professional Practice' and 'Enhancing in Professional Practice' ("COPD") Level 6 which are worth 30 credits. The registrant did not complete any of the required modules or submit her assignments and was withdrawn from the courses in 2020. I produce a copy of the transcript [...] dated 30 May 2022"*

In support of this, the panel had regard to the transcript which showed that Miss Howles was withdrawn from the programme in 2020. The panel noted that the transcript indicated that Miss Howles 'Did not submit' for the 'Asthma CWK2' module and therefore would not have passed this module.

During her evidence Witness 2 informed the panel that in order to obtain her degree qualifications 120 credits from numerous modules must be achieved. She told the panel that Miss Howles did not achieve 120 credits. Further, she informed the panel that Miss Howles activity report showed a majority of her lessons in relation to the Asthma modules as 'incomplete'.

In relation to charge 6b, the panel had regard to the evidence of Witness 3. In her written statement she stated:

*"I can confirm that the registrant was enrolled on the 'Mentorship in Practice (Level 7) course at Birmingham City University from June 2018 to August 2018, however the registrant did not pass nor attempt any element of the course. [...] In relation to the course 'Mentorship in Practice (Level 7)', I am unable to provide with any documentary evidence as the registrant did not pass the course."*

The panel heard live evidence from both Witnesses 2 and 3 which was consistent with their documentary evidence.

The panel also heard from Miss Howles during the hearing who stated:

*“I wrote loads on my CV, I just wanted a job”*

She also stated:

*“My CV is not worth the paper it is written on”*

It determined that, based on all of the evidence before it, Miss Howles did incorrectly declare on her CV to Lordswood that she had attained the qualifications as set out in charges 6a and 6b. It therefore finds these charges proved.

### **Charge 7**

7. Your declarations in charge 6 were dishonest in that you were attempting to mislead Lordswood Medical Group that you had attained the qualifications when you knew that you had not.

**This charge is found proved.**

In reaching this decision, the panel gave regard to the case of *Ivey*.

It considered what the state of Miss Howles' knowledge was when she made the declarations on her CV. It noted that she stated that she when she submitted the CV as part of her application, she was undertaking the degree. Further, she stated that she was not familiar with creating CV's.

However, the panel did not find that this was a plausible explanation. The panel concluded that Miss Howles was aware she had not attained the qualifications as set out in the charges and misrepresented this on her CV and that in the standards of ordinary decent people this would be considered as dishonest.

The panel noted that Witness 4 explained that Miss Howles would not have been interviewed for the position if she did not have the qualifications and that it was her understanding that Miss Howles had achieved these qualifications and attained the relevant skills.

The panel therefore determined that Miss Howles declarations in charge 6 were dishonest in that she was deliberately attempting to mislead Lordswood Medical Group that she had attained the qualifications when she knew that she had not.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Howles' fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the

circumstances, Miss Howles' fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

Ms Leathem provided written submissions to the panel which stated:

*"2. The panel will be aware of the various case law on misconduct. It is suggested that Roylance v GMC (No.2) [2000] 1 AC 311 and Nandi v General Medical Council [2004] EWHC 2317 (Admin), are a useful starting point.*

*3. In Roylance v GMC [2000] 1 AC 311 it was stated that: Misconduct is 'a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances'.*

*4. In Nandi v GMC [2004] EWHC 2317 (Admin), Collins J indicated that the test of seriousness must be given its proper weight:*

*'...in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners. It is of course possible for negligent conduct to amount to serious professional misconduct, but the negligence must be to a high degree.'*

*It is submitted that ultimately the question of misconduct is a matter for the judgment of the panel. Lord Justice Clark in Mallon v General Medical Council [2007] ScotCS CSIH17 at [18] emphasised the element of judgment that was central to a finding of professional misconduct:*

*'The statute does not lay down any criterion of seriousness; nor does the case-law. Descriptions of serious professional misconduct such as "conduct which would be regarded as deplorable by fellow practitioners" ... tend, we think, to obscure rather*



*than assist our understanding. In view of the infinite varieties of professional misconduct, and the infinite range of circumstances in which it can occur, it is better, in our opinion, not to pursue a definitional chimera. The decision in every case as to whether the misconduct is serious has to be made by the Panel in the exercise of its own skilled judgment on the facts and circumstances and in the light of the evidence...'*

6. *In R (on the application of Remedy UK Ltd) v General Medical Council [2010] DWHC 1245 (Admin) at 37, after a review of the authorities, ten principles were identified to assist in determining whether the conduct in question constituted misconduct. It is submitted that the relevant principles are as follows:*

*'(1) Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur out with the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.*

*(2) Misconduct falling within the first limb need not arise in the context of a doctor exercising his clinical practice, but it must be in the exercise of the doctor's medical calling. There is no single or simple test for defining when that condition is satisfied.*

*(3) Conduct can properly be described as linked to the practice of medicine, even though it involves the exercise of administrative or managerial functions, where they are part of the day to day practice of a professional doctor. These functions include the matters identified in Sadler, such as proper record-keeping, adequate patient communication, proper courtesy shown to patients and so forth. Usually a failure adequately to perform these functions will fall within the scope of deficient performance rather than misconduct, but in a sufficiently grave case, where the negligence is gross, there is no reason in principle why a misconduct charge should not be sustained. (4) Misconduct may also fall within the scope of a medical calling where it has no direct link with clinical practice at all. Meadow provides an example, where the activity in question was acting as an expert witness. It was an unusual case in the sense that Professor Meadow's error was to fail to recognise the limit of*

*his skill and expertise. But he failed to do so in a context where he was being asked for his professional opinion as an expert paediatrician. Other examples may be someone who is involved in medical education or research when their medical skills are directly engaged.*

*(5) Roylance demonstrates that the obligation to take responsibility for the care of patients does not cease simply because a doctor is exercising managerial or administrative functions one step removed from direct patient care. Depending upon the nature of the duties being exercised, a continuing obligation to focus on patient care may co-exist with a range of distinct administrative duties, even where other doctors with a different specialty have primary responsibility for the patients concerned.*

*(6) Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills.*

*(7) Deficient performance or incompetence, like misconduct falling within the first limb, may in principle arise from the inadequate performance of any function which is part of a medical calling. Which charge is appropriate depends on the gravity of the alleged incompetence. Incompetence falling short of gross negligence but which is still seriously deficient will fall under section 35C(2)(b) rather than (a).*

*(8) Poor judgment could not of itself constitute gross negligence or negligence of a high degree but it may in an appropriate case, and particularly if exercised over a period of time, constitute seriously deficient performance.*

*(9) Unlike the concept of misconduct, conduct unrelated to the profession of medicine could not amount to deficient performance putting fitness to practise in question. Even where deficient performance leads to a lack of confidence and trust in the medical profession, as it well might - not least in the eyes of those patients adversely affected by the incompetent doctor's treatment - this will not of itself suffice to justify a finding of gross misconduct. The conduct must be at least disreputable before it can fall into the second misconduct limb.*

*(10) Accordingly, action taken in good faith and for legitimate reasons, however*

*inefficient or ill-judged, is not capable of constituting misconduct within the meaning of section 35C(2)(a) merely because it might damage the reputation of the profession.'*

*7. The professional lapse in question must be capable of being described as misconduct. In Spencer v General Osteopathic Council [2013] 1 WLR 1307, an osteopath had failed to keep notes as required by the code of conduct for osteopaths. The Court held that although this was a breach of the code, it did not amount to 'unacceptable professional conduct' under s.20 of the Osteopaths Act 1993 because it was not serious enough to amount to misconduct.*

*8. It is a matter for the judgment of the panel as to whether the various matters which have been established amount to misconduct. To assist in this consideration, the standards of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a registrant.*

*9. It is submitted that the following sections of 'The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates (2015)' have been breached by virtue of Ms Howles' conduct in respect of each of the charges:*

*'20 Uphold the reputation of your profession at all times*

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with honesty and integrity at all times...'*

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

*21.4 make sure that any ...material you produce or have produced for your professional services are accurate...do not mislead ...and accurately reflect your relevant skills, experience and qualifications'*

*10. In its finding of facts, the panel found that the Registrant had intentionally led Colleague 1 into believing that she had passed the asthma degree course during her appraisal and that she went on to repeat the attempts to mislead Colleague 1 about having completed the asthma degree course with the intention of obtaining a reference. Despite having accepted that she had lied following her appraisal, the Registrant went on to create a false impression that she had acquired both the skills and qualifications required for a new role in attempting to secure that position. It is submitted that these actions would be considered deplorable by fellow*

*practitioners and fell short of the standards required of a nurse, amounting to misconduct.”*

## **Submissions on impairment**

Ms Leathem 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).

Ms Leathem provided written submissions which stated:

*“11. Impairment needs to be considered as at today’s date, that is whether Ms Howles’ fitness to practice is currently impaired. The NMC defines impairment as a registered professional’s suitability to remain on the register without restriction. The NMC Guidance on impairment (reference DMA-1) poses the question ‘can the nurse, midwife or nursing associate practise kindly, safely and professionally’. This reflects the remarks of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) whereby it was considered whether the concern is easily remediable, whether it has in fact been remediated and whether it is highly unlikely to be repeated. Whilst impairment is a forward thinking exercise looking at the risk the Registrant’s practice poses in the future, how the Registrant has acted in the past is relevant to this consideration.*

*12. It is submitted that the Registrant’s fitness to practise is currently impaired on public protection and public interest grounds. Whilst there was no evidence of patients being harmed as a result of Ms Howles’ conduct as her contract with Lordswood was terminated before she saw any patients, it is submitted that there was a high potential for harm if she had worked as the service lead without the relevant skills and experience.*

*As regards public interest, it is submitted that dishonesty concerns are inherently serious and engage public interest considerations in so far as ensuring confidence in the profession and regulator is maintained and to ensure proper standards of conduct are upheld.*

*13. Matters which can properly be taken into account in making a determination on fitness to practise were set out in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 which adopted the well known formulation of Dame Janet Smith in the Fifth Shipman report:*

*'Do our findings of fact in respect of the doctor's ... (misconduct) ... show that his/her FTP is impaired in the sense that he/she:*

*a. has 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*

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

*c. has 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*

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

*14. It is submitted that all four limbs are engaged.*

*15. The panel accepted the evidence that the Registrant would not have been interviewed for the position at Lordswood if she did not have the qualifications attained and the relevant skills. It is submitted that by holding herself out as having attained the required qualifications and skills necessary for the role of lead nurse, and in securing the role, she would have been required to carry out and perform those skills. The evidence before the panel was that the Registrant knowingly provided misleading information regarding her qualifications and level of competence, which presented a significant risk of harm to patients. Whilst patients were not harmed as a result of the Registrant's actions, her contract was terminated before she carried out clinical duties.*

16. *In respect of the Registrant's future risk, it is submitted that the conduct has not been sufficiently addressed by the Registrant. It is submitted that there has been very limited insight about the risks associated with portraying oneself as more experienced than they are and the effect that this would have on the public, patients and colleagues.*

17. *In relation to bringing the profession into disrepute and breaching one of the fundamental tenets of the nursing profession, it is submitted that Registrant has not preserved safety and failed to promote professionalism and trust. Whilst it is acknowledged that not all breaches of the Code require a finding of impairment, where a breach of the Code involves breaching a fundamental tenet of the profession, the Committee are entitled to conclude that a finding of impairment is required. The finding of impairment would be required to mark the profound unacceptability of the behaviour, emphasise the importance of the fundamental tenet breached, and to reaffirm proper standards or behaviour.*

18. *As regards dishonesty, the Code states that professionals must act with honesty and integrity. The NMC Guidance on 'Serious concerns which are more difficult to put right' (reference FTP-3a) outlines, 'a small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening'. Examples of serious concerns are provided within the guidance with dishonesty specifically included.*

19. *In addition to the four limbs outlined in the case of Grant, the panel should consider the context of the conduct involved in the concern and whether it is highly unlikely that the conduct will be repeated.*

20. *In respect of the context in which the conduct occurred, the panel should consider personal factors relating to the professional and the professional's working environment and culture. [PRIVATE].*

21. *The NMC Guidance outlines that, 'By the time the Fitness to Practise Committee considers impairment, where these contextual factors no longer exist or they have been appropriately managed, the professional might be able to demonstrate that they are currently able to practise kindly, safely and*

*professionally'. Whilst it is a matter for the panel whether these factors adversely affected the Registrant's ability to practise safely and professionally, it is submitted that there has not been enough information presented by the Registrant for the panel to be able to determine whether these factors still exist such that she is unable to practise kindly, safely and professionally. [PRIVATE].*

*22. In respect of the question of whether the conduct is highly unlikely to be repeated, the NMC have published guidance on 'Insight and strengthened practice' (reference FTP-13). The panel should consider the following questions:*

- Can the concern be addressed?*
- Has the concern been addressed?*
- Is it highly unlikely that the conduct will be repeated?*

*23. In respect of whether the concern can be addressed, it is submitted that dishonesty is often much harder to remediate as it engages trustworthiness and attitude which training, courses or supervision at work is unlikely to address (this is more applicable to clinical concerns). In this case, it is submitted that there has been no information or evidence before the panel as to the steps taken to address the concerns. For example, the panel have not seen any evidence of insight into the seriousness of the conduct and the potential impact this had upon patients and their future confidence in healthcare professionals. Similarly, there has been no information about the Registrant's current practice (she alluded to working in a nursing role but there has been no information from her current employer despite being given the opportunity by the panel to provide this information in the form of a reference).*

*24. Finally, in considering whether the conduct will be repeated, it is submitted this is not a case where it is a one-off instance of dishonesty. The Registrant misrepresented the position on a number of occasions and to two different employers. On the basis that the Registrant misled her first employer once in 2018 and again in 2020, it is also submitted there has been dishonesty over a sustained period. Finally, it is submitted that the dishonesty is directly linked to the Registrant's practice, the panel having found that the Registrant was dishonest for the purposes of securing future employment as a nurse.*

*25. Consideration of the public interest requires the panel to decide whether a finding of impairment is needed to uphold proper professional standards of conduct and maintain public confidence in the profession.*

*26. If the panel does not find that there is current impairment on public protection grounds, it is nevertheless submitted that the seriousness of the conduct found proved is enough to find current impairment purely on the grounds of public interest. It is submitted that a finding of impairment is required to uphold proper professional standards and conduct as well as to maintain public confidence in the profession. The conduct in this case raises fundamental questions about the Registrant's trustworthiness as a registered professional and there has been no insight demonstrated that recognises the impact of dishonest behaviour on the profession, patients and the public. Without a finding of current impairment on public interest grounds, it is submitted that the public's confidence in the profession would be damaged."*

Miss Howles only attended the hearing on day four, prior to closing submissions from the NMC on facts, and as such she was not present to make any submissions to the panel in respect of misconduct or impairment. She also did not provide any written submissions for the panel's consideration.

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 *General Medical Council v Meadow* [2007] QB 462 (Admin).

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

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.



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

***'20 Uphold the reputation of your profession at all times***

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with honesty and integrity at all times...'*

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

*21.4 make sure that any ...material you produce or have produced for your professional services are accurate...do not mislead ...and accurately reflect your relevant skills, experience and qualifications'*

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

The panel considered charges 1, 2, 4a, 4b, 4c, 4d, 4e, 6a and 6b individually. The panel found that whilst individually charge 1 may not be considered as sufficiently serious to amount to misconduct alone, the panel determined that taken cumulatively, the charges are so serious and do amount to misconduct. The panel found that there has been a continuous pattern of deliberate attempts to mislead and deceive her former employer and a prospective employer. The panel determined that Miss Howles, in making incorrect declarations continuously over a significant period of time, failed to act with honesty and integrity.

In respect of charges 3, 5 and 7, the panel determined that conduct which relates to dishonesty is sufficiently serious and demonstrates a serious departure of the standards that are expected of a registered nurse. This dishonesty occurred over a long period of time and involved various professionals at two different places of work. It concluded that dishonest actions bring the integrity of the nurse into question and brings the profession into disrepute.

The panel found that Miss Howles' actions did fall 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, Miss Howles' 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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*

*determination show that his/her/ fitness to practise is impaired in the sense that S/He:*

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

The panel found that limbs a – d of the “test” are engaged in this case.

The panel determined that, whilst no patients came to actual harm as a result of Miss Howles’ misconduct, there was a risk of harm to patients. The panel found that by deliberately misleading an employer into believing that Miss Howles’ had achieved qualifications that she had not and attained a more experienced skill set than what she had, she was placing patients at a risk of harm. The panel heard evidence at the facts stage from Witness 4 that given Miss Howles did not have the relevant qualifications and required skill set for the role Lordswood were hiring for, she would not have been able to properly carry out the duties of that role in both practical and theoretical aspects. The panel determined that this gave rise to a risk of unwarranted harm to patients in that if Miss Howles was to continue working as a lead nurse at Lordswood, she would not have been able to deliver the level of required care to those patients without the relevant skillset and qualifications.

The panel found that Miss Howles' misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that Miss Howles has not demonstrated an understanding of how her actions were liable to put patients in her care at a risk of harm. Whilst Miss Howles had appeared before the panel, she did not present any evidence to it of remorse, remediation or insight into her actions. No character reference had been produced nor any training undertaken since these incidents had occurred. Miss Howles did accept she had made mistakes. However, the panel did not have any evidence before it that Miss Howles has demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession or the potential impact her actions could have had on her colleagues. The panel found that Miss Howles insight into her misconduct was negligible and therefore determined that she was liable in the future to breach the fundamental tenets of the profession and therefore bring its reputation into disrepute. The panel was not satisfied that Miss Howles has demonstrated that she understands the importance or the expectation of nurses to act with upmost integrity and being honest at all times.

Whilst the panel was mindful that concerns relating to dishonesty are more difficult to demonstrate evidence of remediation, it was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Howles has taken steps to address the areas of concern. The panel found that it did not have any evidence before it which demonstrates that Miss Howles has taken steps to reflect on her actions and address her failures so as not to make her liable in future to repeat the misconduct.

In light of all of the above, the panel is of the view that there is a risk of repetition.

The panel has borne in mind the guidance from the NMC. It found that Miss Howles' misconduct, lack of insight and lack of steps taken to remediate her failures demonstrate that she is not able to practise kindly, safely and professionally without restriction.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Howles' fitness to practise impaired on the grounds of public interest.

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Howles' name off the register. The effect of this order is that the NMC register will show that Miss Howles' 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**

Ms Leathem informed the panel that in the Notice of Hearing, the NMC had advised Miss Howles' that it would seek the imposition of a striking off order if it found Miss Howles' fitness to practise currently impaired. Ms Leathem informed the panel that this position has not changed during the course of the hearing.

Ms Leathem submitted that any sanction should be proportionate, and there should be a fair balance between the nurse and the overriding objective of protecting the public. She submitted that sanctions are not designed to punish the registrant but to protect the public, maintain public trust and confidence in the profession and the NMC, and declare and uphold proper standards of conduct and performance.

Ms Leathem referred to the NMC's guidance on factors to consider before deciding on sanctions. That guidance sets out that panel should consider both aggravating and mitigating features. She highlighted what she considered are aggravating features and mitigating features in this case.

Ms Leathem submitted that it is only in limited circumstances where a previous unblemished career will be relevant. She stated that this is usually relevant in cases which relate to a nurse's clinical failings, and no evidence of deep seated or attitudinal concerns, where they have had a long-standing career where there's been no previous findings. She submitted that the guidance also states that sometimes the conduct is simply so serious that it is fundamentally incompatible with them continuing to be on the register and their past fitness to practise history cannot change that fact.

Ms Leathem submitted that the panel must consider the available sanctions in ascending order starting with the least serious and least restrictive.

Ms Leathem submitted that taking no further action or a caution order would be insufficient to achieve the overarching objective of protecting the public and promoting public

confidence in the profession given the seriousness of the misconduct and that the conduct had the potential to put patients at risk of harm.

Ms Leathem submitted that the panel has found there has been no insight, remorse or remediation and in those circumstances, she submitted that this is conduct that is not at the lower end of the spectrum of impaired fitness to practice.

Ms Leathem submitted that a conditions of practice order is not the appropriate sanction in this case given that these are concerns which relate to dishonesty and are attitudinal in nature. She submitted that there are no conditions which could be imposed that are measurable or workable to deal with the dishonest conduct. She stated that conditions of practice orders are usually more appropriate the concerns relate to clinical failings which can be addressed with training and supervision.

Ms Leathem submitted that the panel may find that the misconduct is serious enough to warrant a suspension order. However, she highlighted that this case does not relate to a single instance of misconduct, as there were multiple acts of dishonesty and concerns of an attitudinal nature. She stated that this was misconduct which was linked to Miss Howles' practice and conduct which had the potential to put patients at a risk of harm. She reminded the panel that it has found that there was no remorse, remediation or insight from Miss Howles', and that she has breached a fundamental tenet of the profession. She submitted that a suspension order does not go far enough to address those factors.

Ms Leathem submitted that the misconduct in this case was so serious to warrant the imposition of a striking off order. Miss Howles attempted to secure employment using incorrect and false information, and it did have the potential of placing patients and members of the public at risk of harm. She submitted that Miss Howles failed in her duty of candour and so she has breached a fundamental tenet of the profession. She stated that it does raise concerns about her professionalism and that her actions did damage the confidence in the profession. She submitted that Miss Howles' actions demonstrate a failure to maintain the necessary standards required of a professional nurse. In those

circumstances, she submitted that striking Miss Howles's off from the register would be sufficient to protect the public and maintain confidence and standards required of the profession. She submitted that temporary removal from the register would not be proportionate or appropriate in the circumstances of this case, especially where the registrant has failed to demonstrate her thinking behind the impact that the conduct has had on the profession as a whole.

In closing, Ms Leathem referred the panel to the NMC guidance on considering sanctions for serious cases which specifically addresses dishonesty. It recognises that not all dishonesty is equally serious, but it does highlight a number of factors for the panel's consideration.

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

Having found Miss Howles' 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:

- Lack of remorse and insight into failings
- A pattern of misconduct over a period of time embracing two different employers
- Conduct which put patients at potential risk of suffering harm.
- Conduct which had the potential for financial gain for Miss Howles' in that she was attempting to secure employment at a higher grade

The panel also took into account the following mitigating features:



- [PRIVATE].

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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

The panel next considered whether placing conditions of practice on Miss Howles' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel heard during the hearing that so far as her clinical practice was concerned, Miss Howles performed well. However, the panel determined that this was outweighed by the seriousness of the misconduct in this case. The misconduct identified in this case was not something that can be addressed through retraining alone. Furthermore, the panel concluded that the placing of conditions on Miss Howles 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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel noted that none of the factors above apply to this case.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Howles' actions is fundamentally incompatible with Miss Howles' 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?*

The panel found that the factors above do apply in this case. It found that Miss Howles deliberately breached the professional duty of candour and her actions led to a potential for direct risk to patients. The panel found that her actions were premeditated in that she falsified the contents on her CV for her own personal and professional gain. The panel found that there was evidence of longstanding and ongoing deception.

Miss Howles' actions were significant departures from the standards expected of a registered nurse and is fundamentally incompatible with her remaining on the register. The panel found that Miss Howles' has not displayed an understanding of the roles, responsibilities and standards expected of a registered nurse. The panel was of the view that the findings in this particular case demonstrate that Miss Howles' actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

This will be confirmed to Miss Howles in writing.

### **Interim order**

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Howles' own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Leathem. She submitted that an interim suspension order for a period of 18 months is necessary given the panel's findings in order to protect the public and meet the wider public interest. She submitted that this was required to cover the 28-day appeal period and, if Miss Howles does appeal the decision, the period for which it may take for that appeal to be heard. She submitted that the reputation of the profession would be significantly undermined if, despite the panel's findings, an interim suspension order was not in place and Miss Howles were allowed during the appeal period to practise unrestricted.

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

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period and any period which an appeal may be heard.

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

That concludes this determination.