

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

**Substantive Hearing  
Monday 28 March – Friday 1 April 2022**

Virtual Hearing

**Name of registrant:** Miss Samantha Michelle Geary

**NMC PIN:** 99B0041E

**Part(s) of the register:** Nursing, Sub Part 1  
RNA, Adult Nurse (04 February 2002)

**Area of registered address:** Salop

**Type of case:** Misconduct

**Panel members:** Sue Heads (Chair, lay member)  
Claire Matthews (Registrant member)  
Tom Ayers (Lay member)

**Legal Assessor:** Dr Marian Gilmore QC

**Hearings Coordinator:** Parys Lanlehin-Dobson

**Nursing and Midwifery Council:** Represented by Ruth-Ann Cathcart, Case  
Presenter

**Miss Geary:** Not present and not represented in absence

**Facts proved:** Charges 1 (a) (b) (c) (d),(f), (g), (h), (i), (j), (k),  
(l), (m), (n) 2, 3, 4 and 5

**Facts not proved:** Charges 1 (e) and 6

**Fitness to practise:** impaired

**Sanction:** **Suspension order (12 Months)**

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

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

The panel was informed at the start of this hearing that Miss Geary was not in attendance and that the Notice of Hearing had been sent to Miss Geary's registered email address on 23 February 2022.

Ms Cathcart, 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 allegations, the time, dates and venue of the hearing and, amongst other things, information about Miss Geary's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

The panel next considered whether it should proceed in the absence of Miss Geary. It had regard to Rule 21 and heard the submissions of Ms Cathcart who invited the panel to continue in the absence of Miss Geary. She submitted that Miss Geary had voluntarily absented herself.

Ms Cathcart referred the panel to the emails from Miss Geary dated 1 October 2021 and 23 February 2022, which stated:

*“I will not be attending a hearing for the above,  
Regards,  
Sam Geary.”*

*“To confirm I will not be attending the hearing & am happy for the panel to  
proceed.*

...

*Regards,  
Sam Geary.”*

Ms Cathcart submitted that Miss Geary is aware of these proceedings, has not requested an adjournment and has indicated that she is content for the hearing to proceed in her absence. She submitted it is in the public interest to proceed with this hearing and invited the panel to proceed in the absence of Miss Geary.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *‘with the utmost care and caution’* as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Geary. In reaching this decision, the panel has considered the submissions of Ms Cathcart, the representations from Miss Geary including the emails sent on 1 October 2021 and 23 February 2022, 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 Geary;

- Miss Geary has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Witnesses are attending 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 to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Geary in proceeding in her absence. The evidence upon which the NMC relies has been sent to her and she has made responses to some of the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give live 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 Geary's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide live evidence.

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

### **Details of charges**

*That you, a registered nurse, whilst working as a disability assessor:*

1. Completed a report form in respect of Patient A by inaccurately recording the following aspects of the Work Capability Assessment you conducted on 8 October 2018:
  - a. that Patient A can wash and clean his teeth by using something to lean on despite pain and that they will lean for 5-10 minutes;
  - b. that Patient A could sit in the kitchen for 5 minutes;
  - c. that Patient A said he will move for 5 minutes at a normal pace;
  - d. that Patient A will sit in pain for about an hour;
  - e. that you discussed Patient A's pace when mobilised;
  - f. that Patient A will 'stop every now and again due to pains, but will carry on until he gets there';
  - g. that Patient A will be "ok" if appointments are cancelled;
  - h. that Patient A will sit and do a jigsaw and/or puzzles for over an hour;
  - i. that Patient A can deal with bills, letters, finances and correspondence;
  - j. that you observed Patient A sitting for 53 minutes;
  - k. that the assessment took 58 minutes;
  - l. you did not record that Patient A indicated on some days they cannot get out of bed;
  - m. you did not record Patient A's Asperger's syndrome diagnosis;
  - n. that Patient A had a personality disorder diagnosis;
2. During the assessment on 8 October 2018, Patient A reported that he had been sectioned under the Mental Health Act and you:
  - a. Did not obtain further details from Patient A in relation to this;
  - b. Did not document this in the Work Capability Assessment report;
3. Your actions in charge 1 above were dishonest in that you knew the information documented in the report was inaccurate and intended to mislead any reader of the report;
4. Your actions in charge 2(b) above were dishonest in that you knew information was omitted from the report and intended to mislead any reader of the report;

5. *During the assessment on 8 October 2018, were presented with documentation indicating a diagnosis of Asperger's syndrome and did not discuss this with Patient A and/or ask any questions about this;*
6. *During the assessment on 8 October 2018, were presented with documentation in relation to Patient A's physical health and did not discuss this with the patient and/or refer to this in the assessment report;*

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

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

The panel heard an application made by Ms Cathcart under Rule 31 to allow the written statement of Patient A into evidence. Ms Cathcart informed the panel that Patient A was the referrer and main witness in this case and the patient who was the subject of the assessment. She informed the panel that Patient A was due to give live evidence at this hearing but unfortunately due to health reasons will no longer be in a position to do so. She submitted that the panel may be assisted by Patient A's documentary evidence, when it comes to making its findings on the facts of this case.

In the preparation of this hearing, the NMC had indicated to Miss Geary in the Case Management Form (CMF), dated 18 February 2020, that it was the NMC's intention for Patient A to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Patient A, Miss Geary made the decision not to attend this hearing. On this basis Ms Cathcart submitted that there was no lack of fairness or injustice to Miss Geary in allowing Patient A's hearsay evidence.

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

regard to the guidance set out in the cases of *Thorneycroft V NMC* [2014] EWHC 1565 (Admin) and *El Karout vs NMC* 2019 EWHC 28 (admin) and the importance of looking firstly at admissibility and then the appropriate weight to be attached to the evidence.

The panel gave the application in regard to Patient A due consideration. It considered that Patient A was unable to attend the hearing for health reasons and the panel was satisfied that these were good reasons for non-attendance. The panel bore in mind that Patient A's statement had been prepared in anticipation of being used in these proceedings and was not the sole or determinative evidence in relation to the charges. The panel determined that as Miss Geary had chosen not to attend and was aware of the position in respect of the witness's statement, there was no unfairness in allowing the evidence to be adduced, but it would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

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

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Cathcart on behalf of the NMC and by Miss Geary in her Registrant Response Bundle, dated 3 December 2019.

The panel has drawn no adverse inference from the non-attendance of Miss Geary.

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:

- Dr 1: Dr 1 qualified as a doctor in 1984. Up until his retirement 2020, he

was employed the Centre for health and Disability Assessments (CHDA) as a National customer Relations Medical Adviser. Dr 1's role involved reviewing medical reports including ESA and UC reports written by medicals employed by CHDA, which are produced for Department for Work and Pensions.

## **Background**

The charges arose whilst Miss Geary was employed as a disability assessor by CDHA from 2016 until her dismissal in January 2019.

Patient A attended an appointment at the Assessment Centre on 8 October 2018. This appointment was for a Work Capability Assessment.

Patient A raised concerns about the assessment and the report Miss Geary completed. The assessment report and audio recording were reviewed and it was found that there were important inaccuracies in the report. It was alleged that the content of the report did not reflect the information provided at the assessment.

Miss Geary was dismissed on 14 January 2019.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. The panel's attention was also drawn to the various guidance documents from the NMC in relation to fact finding. It considered the witness and documentary evidence provided by both the NMC and Miss Geary in her Registrant Response Bundle.

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

**Charge 1 (a), (b), (c), (d), (f), (g), (h), (i), (j), (k), (l), (m), and (n)**

*“That you, a registered nurse, whilst working as a disability assessor:*

*1. Completed a report form in respect of Patient A by inaccurately recording the following aspects of the Work Capability Assessment you conducted on 8 October 2018:*

- a. that Patient A can wash and clean his teeth by using something to lean on despite pain and that they will lean for 5-10 minutes;*
- b. that Patient A could sit in the kitchen for 5 minutes;*
- c. that Patient A said he will move for 5 minutes at a normal pace;*
- d. that Patient A will sit in pain for about an hour;*
- e. ...*
- f. that Patient A will ‘stop every now and again due to pains, but will carry on until he gets there’;*
- g. that Patient A will be “ok” if appointments are cancelled;*
- h. that Patient A will sit and do a jigsaw and/or puzzles for over an hour;*
- i. that Patient A can deal with bills, letters, finances and correspondence;*
- j. that you observed Patient A sitting for 53 minutes;*
- k. that the assessment took 58 minutes;*
- l. you did not record that Patient A indicated on some days they cannot get out of bed;*
- m. you did not record Patient A’s Asperger’s syndrome diagnosis;*
- n. that Patient A had a personality disorder diagnosis;*

***These charges are found PROVED.***

In reaching this decision, the panel had regard to Universal Credit Medical Report Form (UC85) completed by Miss Geary on 8 October 2018. It also had regard to the transcript

of the assessment conducted by Miss Geary on 8 October 2018 and the oral evidence and the memorandum produced by Dr 1.

The panel had regard to the section of the report completed by Miss Geary that stated the following:

***Description of a typical day***

*Is stated that*

*Always sleeps poorly due to pain.*

*Gets out of bed despite his pain.*

*He will use his crutches to help him stand up out of bed. He demonstrated today standing up from the chair using full strength to stand with his crutches.*

*Can wash and clean teeth by using something to lean on despite pain and he will lean for 5 to 10 minutes.*

*Can dress, undress, dress top half and dress bottom half by sitting down despite pain and he will sit for 10 minutes.*

*He will have help with his lower half closer to dress and address at times due to hip pains. He has no dressing ...*

*No problems eating and drinking.*

*Makes snacks, sandwiches and cold drinks despite pain and he will sit in the kitchen for five minutes.*

*He will use a Bag to carry items from the kitchen to the lounge due to his crutches.*

*Moves around indoors on one level using crutches and he will move for five minutes normal pace. He will go upstairs using his crutches or on his bottom at times due to hip pains.*

*He will sit and order shopping online, he will sit in pain for about one hour.*

*He's able to talk to the new delivery man and will have helped unpack the shopping due to hip pains. He will have everything work level high for ease due to pain. He will walk*

*alone with his crutches to see GP, this will take him 45 minutes normal to slow pace, he will stop every now and again due to pains, but will carry on until he gets there.*

*He can talk to a new GP.*

*He will have a live to attend a place due to hip pains only, he would have too much pain if he sat on the bus for a long time. He is able to talk to a stranger in the waiting room.*

### **Description of functional ability**

*He will have hip pain and will be anxious if appointments are delayed, he was able to wait today for over one hour.*

*If appointments are cancelled he will be okay.*

*He will sit and do a jigsaw he will sit for over one hour.*

*He will sit and do some puzzles for about one hour, he will maybe watch some TV.*

*Can communicate with others face-to-face and by phone despite feeling low and feeling anxious.*

*Can use a phone for making arrangements, communicating with others, keeping in touch with others and emergencies despite feeling low and feeling anxious. Makes appointments with GP and the hospital despite feeling low and feeling anxious.*

*Can deal with bills letters finances and correspondence despite feeling low and feeling anxious.*

...

### **Behaviour observed during assessment**

*Client was able to sit on a chair with a back for 53 minutes.*

*The client rose three times from sitting in an upright chair (no chair arms) without physical assistance from another person.*

*Used to crutches to stand for one minute.*

*Used to crutches to walk 15 m to the examination room.*

In reaching its decision the panel compared the UC85 completed by Miss Geary and the transcript of the assessment of Patient A. The panel considered that the information noted in the UC85 report was a significant deviation from what had been stated by Patient A during the assessment.

In the case of charges 1(a), (b), (c), (d) and (f), the panel considered that the content of UC85 did not relate to anything said by Patient A during the assessment, and so was fabricated by Miss Geary. In the case of charges 1(g), (h) and (i), the panel considered that the content of UC85 is directly opposed to what was said by Patient A during the assessment.

In the cases of charges 1(j) and (k), the panel relied on the evidence provided by Dr 1 in his report on the taped interview, which stated that the length of the interview was 33 minutes, and therefore the Miss Geary cannot have observed Patient A sitting for 53 minutes, and the assessment cannot have taken 58 minutes.

In the case of charges 1 (l), (m) and (n), the panel considered that these were key facts stated by Patient A during the assessment which Miss Geary had omitted from her report, UC85.

Based on the documentary evidence before it, the panel determined that Miss Geary inaccurately recorded the aspects as set out in the charge, of the Work Capability Assessment, she conducted on 8 October 2018. The panel therefore found this charge proved.

### **Charge 1 (e)**

- 1. Completed a report form in respect of Patient A by inaccurately recording the following aspects of the Work Capability Assessment you conducted on 8 October 2018:*

*e. that you discussed Patient A's pace when mobilised;*

**This charge is found NOT proved.**

The panel noted that while Miss Geary did not discuss Patient A's pace during the assessment, she did not claim to do so in her report UC85. Miss Geary did refer to Patient A's pace in relation to how long his journey to the GP surgery takes him. The panel considered that this was a reasonable paraphrasing of his statement about his journey.

**Charge 2)**

*2. During the assessment on 8 October 2018, Patient A reported that he had been sectioned under the Mental Health Act and you:*

- a. Did not obtain further details from Patient A in relation to this;*
- b. Did not document this in the Work Capability Assessment report;*

**This charge is found PROVED.**

In reaching this decision the panel had regard to the following statement in the UC85 report:

***Mental health problem***

*Onset was many years ago.*

*... He will have attempts of self -harming suicidal thoughts, he has comes off and take an overdose in the past, he has had a previous Hospital admission due to this, this was a few years ago now.*

The panel noted that there was a mention of hospitalisation in relation to mental health, however it had regard to the specific wording of this charge and it considered that based on the UC85 report and the transcript, Miss Geary did not discuss or make further

enquiries regarding Patient A having been sectioned, despite being made aware. The panel also took into consideration the evidence of Dr 1, who referred to this as significant information, which he would have expected to have been recorded. The panel therefore found this charge proved.

### **Charge 3)**

*Your actions in charge 1 above were dishonest in that you knew the information documented in the report was inaccurate and intended to mislead any reader of the report;*

**This charge is found PROVED.**

In reaching its decision the panel considered the same evidence and made its decision for the same reasons as set out in charge 1. The panel considered whether or not there was an alternative explanation as to why Miss Geary recorded inaccurate information. The panel could find any acceptable reason for Miss Geary's actions as set out in charge 1. The panel had regard to the responses made by Miss Geary and rejected her evidence that her errors were caused by time pressures and targets.

The panel determined that it was Miss Geary's obligation as a registered nurse to act with care and diligence in observing and assessing Patient A, to ensure an accurate report of his health conditions was recorded. It considered the cumulative effect of the number of occasions Miss Geary failed to provide accurate information and the significant deviations from the truth drove the panel to the conclusion that there was no viable alternative explanation, other than that Miss Geary acted dishonestly.

Whilst the panel could not find a clear motive behind Miss Geary's actions, it did not accept that she genuinely believed that the information she included in the report was true and the panel therefore determined that it was more likely than not that Miss Geary acted with dishonest intent. The panel therefore found this charge proved.

#### **Charge 4)**

*4. Your actions in charge 2(b) above were dishonest in that you knew information was omitted from the report and intended to mislead any reader of the report;*

**This charge is found PROVED.**

In reaching its decision the panel considered the same evidence as set out in charge 2 (b) and applied the same principles as set out above in charge 3 and decided for the same reasons that this charge is found proved.

#### **Charge 5)**

*5. During the assessment on 8 October 2018, were presented with documentation indicating a diagnosis of Asperger's syndrome and did not discuss this with Patient A and/or ask any questions about this;*

**This charge is found PROVED.**

The panel had regard to the UC85 report and the transcript of the assessment. There was no evidence before it that Miss Geary, after being presented with documentation indicating a diagnosis of Asperger's syndrome, discussed the diagnosis or made any enquires about it. The panel noted that the diagnosis was in the papers provided by Patient A prior to the assessment and the transcript and report show that this was not discussed. Taking all the evidence available into account and in the absence of any evidence to the contrary the panel found this charge proved on the balance of probabilities.

#### **Charge 6)**

*6. During the assessment on 8 October 2018, were presented with documentation in relation to Patient A's physical health and did not discuss this with the patient and/or refer to this in the assessment report;*

## **This charge is found NOT PROVED.**

In reaching this decision the panel had regard to the specific wording of the charge and the transcript from the assessment. It considered that the bulk of the assessment was a discussion of Patient A's general health and physical health. Whilst the information recorded may have been inaccurate, the panel considered that Patient A's physical health had been discussed and documented in the assessment report. On this occasion the panel considered that there is no evidence in support of this charge and the NMC has not discharged its burden of proof. The panel therefore did not find this charge proved.

## **Fitness to practise**

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

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

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

## **Submissions on misconduct and impairment**

Ms Cathcart invited the panel to take the view that the facts found proved amount to serious misconduct. She directed the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (The Code) in making its decision.

Ms Cathcart referred to the specific points of The Code where Miss Geary's actions amounted to misconduct.

Ms Cathcart 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 and (2) Grant* [2011] EWHC 927 (Admin) and *R (on the application of Calhaem) v General Medical Council* [2007] EWHC 2606.

Ms Cathcart submitted that if the panel is satisfied that the matters found proved do amount to misconduct, the next matter the panel must consider is whether Miss Geary's fitness to practise is currently impaired by reason of that misconduct.

Ms Cathcart referred the panel to the judgment of Mrs Justice Cox in the case of *Grant* and the test when considering impairment. She submitted that the panel is likely to find the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of *Grant* instructive. Those questions as are relevant in this case are:

- a) Has in the past, and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;
- b) Has in the past and/or is liable in the future to bring the profession into disrepute;
- c) Has in the past, and/or is liable in the future to breach one of the fundamental tenets of the professions;

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

Ms Cathcart submitted that limbs a, b, c and d of the test are engaged in this case. She submitted that current impairment can be found both on the basis that there is a continuing risk and that the public confidence in the nursing profession and the NMC as regulator would be undermined if such a finding were not made.

Ms Cathcart submitted that the clinical errors in respect of record keeping are remediable and although difficult, Miss Geary's dishonesty is also remediable. She submitted that Miss Geary has shown some, but not full insight into the concerns. Although Miss Geary has shown that she recognises the potential for harm and how she has changed her practice in relation to inaccurate record keeping there has been no evidence of insight into the allegation of dishonesty. Ms Cathcart submitted that Miss Geary has not shown remorse or indicated that she realises she acted in a dishonest way. She further submitted that Miss Geary has not taken sufficient steps to reassure the panel that her conduct is unlikely to be repeated in the future.

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 Geary's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Geary's actions amounted to a breach of The Code. It was of the view that Miss Geary's actions breached the following tenets of The Code:

*‘1 Treat people as individuals and uphold their dignity*

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

*10 Keep clear and accurate records relevant to your practice*

*This includes but is not limited to patient records. It includes all records that are relevant to your scope of practice.*

*To achieve this, you must:*

*...*

*10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

*19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice*

*19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

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

*To achieve this, you must:*

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

*20.2 act with honesty and integrity at all times*

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

The panel appreciated that breaches of The Code do not automatically result in a finding of misconduct. It took account of all the evidence before it and the circumstances

of the case as a whole and determined that Miss Geary's actions did amount to misconduct.

The panel determined that Miss Geary's actions fell significantly short of the standards expected of a registered nurse. It was of the view that Miss Geary's misconduct was serious and would be considered so by members of the profession and the public. It noted that Miss Geary felt that there were time pressures and targets to meet which she felt led her to report inaccurate information. The panel was of the view that it is inexcusable to falsify patient information with the intention to mislead and the panel considered that this showed a disregard for the patient's safety and well-being. The panel took into account the adverse financial and psychological impact caused to the patient as a result of Miss Geary's actions.

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *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;'*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future*

The panel found that all of the limbs were engaged in this case.

The panel found that Miss Geary placed the patient at a risk of serious harm, caused actual harm to the patient and was of the view that Miss Geary may act in a similar way in the future.

The panel considered that Miss Geary did not adhere to the standards expected of a nurse and Miss Geary's behaviour brought the profession into disrepute and breached the fundamental tenets of the profession. In relation to the charges found proved regarding dishonesty, the panel determined that Miss Geary did not acknowledge or address her misconduct in this respect. To date Miss Geary has not given any reasons to account for her dishonest actions, expressed any remorse or shown any insight, the panel therefore considered that there is a risk Miss Geary may act dishonestly in the future.

The panel considered whether Miss Geary's misconduct is capable of remediation. It determined that Miss Geary's clinical misconduct in respect of record keeping can be addressed through sufficient insight and retraining. The panel determined that although a difficult process, Miss Geary's misconduct in relation to dishonesty is such that it is also capable of remediation, given that it was a single isolated incident in an otherwise unblemished career.

In Miss Geary's reflective statement, the panel considered that she showed some remorse towards the patient:

*"I am unable to express my sadness that my inaccuracies have caused the client to make the complaint, and that this has caused distress to them. After many years of exemplary service as a nurse, I have not only let myself down but also the NMC. I was unprofessional and my work lacked the quality that I pride in my work. I am truly sorry and will never compromise my professionalism and integrity again"*

However, it noted that Miss Geary sought to justify her actions by placing blame on her employer for the alleged targets that were put in place, rather than on the impact of her actions.

Further, the panel considered that Miss Geary's reflective statement did not demonstrate that she fully understood the significance and magnitude of her conduct, describing her report UC85 as "...unfortunately not verbatim to what the client had told me." In fact, her report included a number of statements that were never said or

discussed, stated things that were directly opposite to what Patient A had said in the assessment, and omitted key facts about his health.

The panel acknowledge that Miss Geary showed some remorse for her actions and had regard to the following statement: “...*would never compromise my practice like this again.*”

The panel noted that Miss Geary began work as a staff nurse in Trauma and Orthopaedics in April 2019. The panel had regard to the reference provided on Miss Geary’s behalf, dated 17 June 2019 and considered that although it was positive, it does not address the clinical concerns regarding Miss Geary’s record keeping and her ability to accurately assess patients in her care. It also considered that the reference had been provided six weeks after Miss Geary began her role, which the panel considered to be a relatively short period of time.

The panel noted Miss Geary was due to start a non-nursing role as a care practitioner in April 2020. It had no further up to date information regarding her current employment.

The panel was not satisfied that Miss Geary has sufficient insight into her actions as a whole. It considered that Miss Geary is yet to remedy her misconduct, and as such there remains a risk of repetition of her actions. The panel considered that well informed members of the public would be concerned if a finding of impairment were not made in the light of the matters found proved.

The panel therefore concluded that a finding of current impairment is necessary on the grounds of public protection and in the public interest.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months, with a review before the end of the order.

The effect of this order is that the NMC register will show that Miss Geary's registration has been suspended.

### **Submissions on sanction**

Ms Cathcart submitted that given the seriousness of the regulatory concerns, together with Miss Geary's insufficient insight, the appropriate sanction is to impose a strike off order

Ms Cathcart provided the panel with a list of aggravating factors which included Miss Geary's lack of acknowledgement, insight and remorse into her dishonesty and her attempt to place blame for her actions on her employer.

Ms Cathcart told the panel that in respect of mitigating factors Miss Geary has shown some insight and her remorse for her actions in relation to her inaccurate record keeping. Ms Cathcart also submitted that Miss Geary has had no previous referrals to the NMC.

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

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

The panel took into account the following aggravating features:

- Actual psychological harm caused to a particularly vulnerable patient
- Lack of acknowledgement and insight into dishonesty

- Misuse of position of trust and power as a disability assessor

The panel also took into account the following mitigating features:

- Single isolated incident
- No evidence of financial gain from her dishonesty
- Miss Geary apologised and expressed remorse for the inadequate standard of her record keeping
- previously unblemished career in nursing

Further the panel had regard to the NMC sanctions guidance 'Considering sanctions for serious cases. The panel determined that Miss Geary's misconduct was serious in that it involved a vulnerable patient and a deliberate breach of Miss Geary's professional duty of candour by falsifying patient information in a report.

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 Geary's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Miss Geary's 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 Miss Geary's 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:

- *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;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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 nature of the charges in this case and Miss Geary's lack of engagement with these proceedings. The panel determined that the misconduct identified in this case was not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on Miss Geary's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

The panel was satisfied that in this case, the misconduct whilst serious, was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Geary's case to impose a striking-off order at this stage.

The panel was of the view that Miss Geary's misconduct was a single isolated incident and there was no evidence that she received any financial gain from her dishonesty. It considered that Miss Geary has been on the register for 20 years and has had no previous referrals to the NMC. The panel has previously decided that Miss Geary's misconduct in respect of her dishonesty, though a difficult process, was capable of remediation. Balancing all of these factors the panel has concluded that a suspension order with a review would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Miss Geary, 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 nurse.

In making this decision, the panel carefully considered the submissions of Ms Cathcart in relation to the sanction that the NMC was seeking in this case. However, the panel considered that it would be disproportionate to impose a striking off order at this stage.

The panel determined that a suspension order for 12 months was appropriate in this case to mark the seriousness of the misconduct and would enable Miss Geary the opportunity to engage with these proceedings and demonstrate whether she has insight into the dishonesty found 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:

- Miss Geary's engagement with the NMC and these proceedings
- Miss Geary's attendance at any review hearing
- An updated reflective piece (demonstrating insight into dishonesty)
- References and or/ testimonials from her current place of employment

This will be confirmed to Miss Geary 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 Geary's interest until the suspension order 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 Cathcart. She submitted that an interim suspension order is necessary for a period of 18 months.

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

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

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

This decision will be confirmed to Miss Geary in writing.

That concludes this determination.