

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

**Substantive Hearing  
12-19 January 2022**

**Virtual Hearing**

**Name of registrant:** Dushka Tsekova

**NMC PIN:** 16B0247C

**Part(s) of the register:** Registered Nurse – Adult Nursing

**Area of registered address:** England

**Type of case:** Lack of competence/Lack of knowledge of English

**Panel members:** Caroline Healy (Chair – Registrant member)  
Nicola Dale (Lay member)  
Deborah Hall (Registrant member)

**Legal Assessor:** Nigel Mitchell

**Hearings Coordinator:** Vicky Green

**Nursing and Midwifery Council:** Represented by Alastair Kennedy, Case Presenter

**Miss Tsekova:** Not present and not represented in her absence

**Facts proved:** Charges 2 (Schedule 2 items 1-3); 7; 8)a); 8)d); 10)a); 11)a); 11)c)iii), 11)g); 11)h); 12

**Facts not proved:** Charges 1; 6; 8)b); 8)c); 8)e), 8)f); 9); 10)b); 10)d);

**Facts proved by way of admission:** Charges 2 (item 4, Schedule 2); 3; 4; 5; 10)c); 10)e); 11)b); 11)c)i); 11)c)ii); 11)d); 11)e); 11)f)

**Fitness to practise:** Impaired by reason of lack of competence and lack of knowledge of English

**Sanction:** 12 month Suspension order with a review

**Interim order:** Interim suspension order – 18 months

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

In response to the current COVID-19 crisis, emergency changes were made to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules). The emergency changes allow for the Notice of Hearing (the Notice) to be sent by the Nursing and Midwifery Council (NMC) by email instead of by recorded delivery post. This email must be sent securely to a confirmed email address for the registrant and/or representative.

At the outset of this hearing the panel was informed that Miss Tsekova was not in attendance and that the Notice was emailed to her registered email address on 1 December 2021.

Mr Kennedy, on behalf of the NMC, submitted that it had complied with the requirements of the Rules.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice provided details of the hearing, the time, dates and the nature of the hearing and, amongst other things, information about Miss Tsekova'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 the information available, the panel was satisfied that Miss Tsekova has been served with the Notice in accordance with the requirements of Rules 8 and 34, and in accordance with the emergency changes to the Rules.

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

The panel next considered whether it should proceed in the absence of Miss Tsekova. It had regard to Rule 21 and heard the submissions of Mr Kennedy who invited the panel to continue in the absence of Miss Tsevoka.

Mr Kennedy drew the panel's attention to Miss Tsekova's response to the notice of hearing document, in which she had ticked a box to say that she will not be attending this hearing and that she is happy for the panel to proceed in her absence. Mr Kennedy submitted that Miss Tsekova has not requested an adjournment, and that if this hearing was adjourned, the two witnesses who have been warned to give evidence today and tomorrow would be inconvenienced.

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 Tsekova. In reaching this decision, the panel has considered the submissions of Mr Kennedy, Miss Tsekova's responses to the notice of hearing document and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *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 Tsekova.
- Miss Tsekova 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;
- Two witnesses have made themselves available to give live evidence today and tomorrow.
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- 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.

The panel noted that there may be some disadvantage to Miss Tsekova in proceeding in her absence. Whilst the evidence upon which the NMC relies will have been sent to Miss Tsekova, 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 Tsekova's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

### **Details of charge**

That you, a registered nurse, whilst employed at The Manor Care Home ("the Home") between 1 April 2019 and 13 September 2019 failed to demonstrate the standards of

knowledge, skill, and judgement required to practise without supervision as a band 5 nurse, in that you:

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1. **[Not proved]**

2) On or around 8/9 June 2019 incorrectly duplicated entries into Resident's Handover notes, as listed in schedule 2. **[Proved]**

3) On 9 June 2019 entered an incorrect entry into Resident C's Handover notes stating "16pm she took Zopiclone 1/2tb.." **[Proved by way of admission]**

4) On 8 June 2019 entered an incorrect entry into Resident H's Handover notes stating "NB: Please see diary (Caresys) for weekend management." **[Proved by way of admission]**

5) On 9 June 2019 entered an incorrect entry into Resident H's Handover notes stating "NB: Please see dairy (Caresys) for weekend management." **[Proved by way of admission]**

6) On 6 July 2019 incorrectly escorted a Deprivation of Liberty (DOLs) assessor to assess Resident B instead of Resident I. **[Not proved]**

7) Did not complete your probationary period at the Home. **[Proved]**

8) Between 11 July 2019 and 13 September 2019 were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

a) Verbal & Written English Language. **[Proved]**

- b) Knowledge around the care needs of Residents. **[Not proved]**
- c) Reviewing and updating care plans. **[Not proved]**
- d) Knowledge around safe administration of medication. **[Proved]**
- e) Awareness of the NMC code of conduct. **[Not proved]**
- f) Recognising your level of competencies. **[Not proved]**

9) On or around 13 July 2019 did not understand the purpose of a reflective account. **[Not proved]**

10) On or around 2 September 2019;

- a) Incorrectly recorded a balance of 27 Carbamazepine tablets on Resident A's MAR chart. **[Proved]**
- b) Incorrectly recorded a balance of 27 Rivaroxaban tablets on Resident X's MAR chart. **[Not proved]**
- c) Did not administer Docusate to Resident X. **[Proved by way of admission]**
- d) Did not administer Lansoprazole to Resident X. **[Not Proved]**
- e) Did not administer 2 tablets of Memantine to Resident F. **[Proved by way of admission]**

11) On or around 8 September 2019;

- a) Did not administer 2 tablets of Furosemide to Resident J. **[Proved]**
- b) Did not record how many tablets were administered to Resident J. **[Proved by way of admission]**
- c) Did not administer Resident K;
  - i) Furosemide 1 tablet. **[Proved by way of admission]**
  - ii) Spironolactone 1 tablet. **[Proved by way of admission]**
  - iii) Amlodipine 1 tablet. **[Proved]**
- d) Inaccurately recorded that you had administered Resident K's prescribed medication in Resident K's Handover notes. **[Proved by way of admission]**

- e) On the destroyed or returned medication form, inaccurately recorded that Resident L's Furosemide tablet had been destroyed. **[Proved by way of admission]**
- f) On the destroyed or returned medication form, inaccurately recorded that Resident L's Felodipine tablet had been destroyed. **[Proved by way of admission]**
- g) Did not administer Resident M's prescribed Citalopram 20mg 1 tablet at 8a.m. **[Proved]**
- h) Did not complete the 8a.m. entry in Resident M's MAR chart. **[Proved]**

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

12. That you, a registered nurse, do not have the necessary knowledge of English to practise safely and effectively and in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English. **[Proved]**

#### Schedule 1

- 1) On or around 8 June 2019 incorrectly copied an entry from Resident A's Client Daily Living Record onto Resident A's Handover notes. **[Not proved]**
- 2) On or around 9 June 2019 incorrectly copied an entry from Resident A's Client Daily Living Record onto Resident A's Handover notes. **[Not proved]**
- 3) On 8 June 2019 incorrectly copied an entry from Resident B's Client Daily Living Record onto Resident B's Handover notes **[Not proved]**
- 4) On 9 June 2019 incorrectly copied an entry from Resident B's Client Daily Living onto Resident B's Handover notes **[Not proved]**

5) On around 8 June 2019 incorrectly copied an entry regarding a prescription/Dr Visit from Resident's D Client Daily Living Record onto Resident D's Handover notes. **[Not proved]**

6) On around 9 June 2019 incorrectly copied an entry regarding a prescription/Dr Visit from Resident's D Client Daily Living Record onto Resident D's Handover notes. **[Not proved]**

7) On around 9 June incorrectly copied an entry from Resident H's Client Daily Living Record onto Resident H's Handover notes. **[Not proved]**

#### Schedule 2

1) Incorrectly duplicated an entry from Resident X's 8 June 2019 Handover note, onto Resident X's 9 June 2019 Handover note. **[Proved]**

2) Incorrectly duplicated an entry from Resident E's 8 June 2019 Handover note, onto Resident E's 9 June 2019 Handover note **[Proved]**

3) Incorrectly duplicated an entry from Resident F's 8 June 2019 Handover note, onto Resident F's 9 June 2019 Handover note. **[Proved]**

4) Incorrectly duplicated an entry from Resident G's 8 June 2019 Handover note, onto Resident G's 9 June 2019 Handover note. **[Proved by way of admission]**

## **Decision and reasons on facts**

At the outset of the hearing, the panel had sight of Miss Tsekova's written response to the charges and noted that she had made admissions to charges 2 (item 4, in schedule 2), 3, 4, 5, 10)c), 10)d), 10)e), 11)b), 11)c)i), 11)c)ii), 11)d), 11)e), 11)f).

In her oral evidence Ms 1 told the panel that Miss Tsekova did in fact administer Lansoprazole to Resident X as referred to in charge 10)d). The panel noted that Miss Tsekova had admitted this charge when it was incorrect to do so. The panel therefore did not accept Miss Tsevoka's admission to charge 10)d). In the light of this, and in fairness to Miss Tsekova, the panel decided to examine all of the evidence before it before announcing the rest of the admitted charges as proved by way of her admissions.

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 Mr Kennedy on behalf of the NMC.

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

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:

- Ms 1: Registered Nurse and Clinical Care Manager at the Manor Care Home (the Home).
- Ms 2: Registered Nurse and Registered Manager of the Home.

## Background

When the charges against Miss Tsekova arose she was working as a Registered Nurse at the Home where she started working on 1 April 2019. It is alleged that during her interview Miss Tsekova appeared to have gaps in her knowledge of the English language. The interviewers were of the view that her language difficulties were likely to be attributed to her nerves resulting from the interview. The Home decided to employ Miss Tsekova as it had previous experience of managing employees whose first language was not English. A few weeks after employing Miss Tsekova, it is alleged that a number of concerns were raised about Miss Tsekova's communication and proficiency in English.

It is also alleged that following an audit of documentation at the Home some concerns were raised about Miss Tsekova's ability to make accurate records. It is alleged that Miss Tsekova copied and pasted entries between documents when it was not appropriate to do so. On 21 June 2019 Miss Tsekova attended a meeting at the Home about the alleged documentation issues. During this meeting, it is alleged that Miss Tsekova's lack of knowledge of the English language became apparent when she was using her phone to assist her in translating English into Bulgarian.

At about the same time as it is alleged that Miss Tsekova escorted a Deprivation of Liberty (DOLs) assessor to assess Resident B instead of Resident I, a complaint was received from a family member of a Resident about Miss Tsekova's communication skills in that they had difficulties in understanding her. On 11 July 2019, in response to these issues, Ms 1 and Ms 2 met with Miss Tsekova. At this meeting an Action Plan was put in place to address the alleged concerns about her proficiency in English and the other areas of concern.

In early September 2019 a high number of medication errors were also noted during an audit of Miss Tsekova's work. On 13 September 2019 a probationary review meeting took place between Ms 1, Ms 2 and Miss Tsekova where further concerns about her competence were raised. At this meeting the Home informed Miss Tsekova that she had

not passed her probationary period for the position as a Registered Nurse and was offered alternative employment as a Healthcare Assistant (HCA). Miss Tsekova worked as a HCA for two days then took leave and subsequently resigned from her post on 23 September 2019. As a result of the concerns about Miss Tsekova's lack of competence and lack of knowledge of the English language the Home made a referral to the NMC.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC and the documentation provided by Miss Tsekova entitled 'concern 1 inadequate English, concern 2 medication administration errors and concern 3 inaccurate record keeping'.

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

That you, a registered nurse, whilst employed at The Manor Care Home ("the Home") between 1 April 2019 and 13 September 2019 failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a band 5 nurse, in that you:

#### **Charge 1 Schedule 1 item 1**

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1;

#### Schedule 1

1) On or around 8 June 2019 incorrectly copied an entry from Resident A's Client Daily Living Record onto Resident A's Handover notes.

**This charge is found not proved.**

In reaching this decision, the panel had regard to Resident A's Client Daily Living Record (CDLR) and handover notes. In examining Resident A's CDLR and handover notes the panel found that an incorrect entry had been made concerning a GP visit on 8 June 2019 but that it was not copied from Resident A's CDLR as charged. The panel therefore found this charge not proved.

### **Charge 1 Schedule 1 item 2**

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1;

#### Schedule 1

2) On or around 9 June 2019 incorrectly copied an entry from Resident A's Client Daily Living Record onto Resident A's Handover notes.

**This charge is found not proved.**

In reaching this decision, the panel had regard to Resident A's CDLR and handover notes. The panel carefully examined Resident A's CDLR and handover notes and found while Miss Tsekova had copied and pasted an entry, it was from one handover note to another which is not what has been charged. The panel found that Miss Tsekova had not copied an entry from Resident A's CDLR into Resident A's handover notes. Accordingly, the panel found this charge not proved.

### **Charge 1 Schedule 1 item 3**

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1;

#### Schedule 1

3) On 8 June 2019 incorrectly copied an entry from Resident B's Client Daily Living Record onto Resident B's Handover notes

**This charge is found not proved.**

In reaching this decision, the panel had regard to Resident B's CDLR, handover notes and the evidence of Ms 1.

After having carefully examined Resident B's CDLR and handover notes the panel determined that whilst there may be an incorrect entry, as confirmed by Ms 1 in her evidence, Miss Tsekova had not copied an entry from Resident B's CDLR onto their handover notes. The panel therefore found this charge not proved.

#### **Charge 1 Schedule 1 item 4**

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1;

#### Schedule 1

4) On 9 June 2019 incorrectly copied an entry from Resident B's Client Daily Living onto Resident B's Handover notes

**The panel found this charge not proved.**

In reaching this decision the panel had regard to Resident B's CDLR and handover notes.

The panel had sight of Resident B's CDLR and handover notes, it found that Miss Tsekova appears to have copied and pasted information within the handover notes but she has not copied an entry from Resident B's CDLR to their handover notes. The panel therefore found this charge not proved.

### **Charge 1 Schedule 1 item 5**

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1;

#### Schedule 1

5) On around 8 June 2019 incorrectly copied an entry regarding a prescription/Dr Visit from Resident's D Client Daily Living Record onto Resident D's Handover notes.

**The panel found this charge not proved.**

In reaching this decision, the panel had regard to Resident D's CDLR, Resident D's handover notes and the evidence of Ms 1.

The panel had sight of Resident D's CDLR and handover notes and it found that Miss Tsekova appears to have made an incorrect entry in the resident notes on 8 June 2019 and appears to have copied her own incorrect entry from 8 June 2019 to her own handover notes on 9 June 2019. Nevertheless, the panel determined that there was no evidence that Miss Tsekova copied an entry regarding a prescription/Dr visit from Resident D's CDLR to their handover notes. Accordingly, the panel found this charge not proved.

### **Charge 1 Schedule 1 item 6**

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1;

#### Schedule 1

6) On around 9 June 2019 incorrectly copied an entry regarding a prescription/Dr Visit from Resident's D Client Daily Living Record onto Resident D's Handover notes.

**The panel found this charge not proved.**

In reaching this decision the panel had regard to Resident D's CDLR and Resident D's handover notes.

After carefully examining Resident D's CDLR and handover notes the panel found that Miss Tsekova appears to have copied information within Resident D's handover notes but not from the CDLR to the handover notes. The panel therefore found this charge not proved.

#### **Charge 1 Schedule 1 item 7**

1) Between 4 June 2019 & 21 June 2019, incorrectly copied information from one or more Residents' Client Daily Living records on to Handover notes, as set out in schedule 1;

#### Schedule 1

7) On around 9 June incorrectly copied an entry from Resident H's Client Daily Living Record onto Resident H's Handover notes.

**The panel found this charge not proved.**

In reaching this decision the panel had regard to Resident H's CDLR and Resident H's handover notes.

After having carefully examined Resident H's CDLR and handover notes. The panel had sight of the following entry into Resident H's CDLR by Miss Tsekova on 8 June 2019:

*'[Resident H] was assisted with all personal care. She remained in her bed this morning , Complaint [sic] with medication. [Resident H] was visit-ed from CPN this morning. She spend time in the lounge this afternoon. [Resident H] was visited from her [family member]. She was calm and settled today.'*

The panel also has sight of Resident H's handover notes on 8 June in which Miss Tsekova had copied and pasted the above note from their CDLR. The panel determined that as the entry was made on the same date, it was appropriate for Miss Tsekova to use the same information from the CDLR in the handover notes. The panel found that was not an incorrect entry in the circumstances and therefore found this charge not proved.

#### **Charge 2 Schedule 2 item 1**

2) On or around 8/9 June 2019 incorrectly duplicated entries into Resident's Handover notes, as listed in schedule 2.

#### Schedule 2

1) Incorrectly duplicated an entry from Resident X's 8 June 2019 Handover note, onto Resident X's 9 June 2019 Handover note.

#### **The panel found this charge proved.**

In reaching this decision the panel had regard to Resident X's handover notes on 8 and 9 June 2019.

The panel had sight of Resident X's handover notes for 8 June 2019 noted the following entry made by Miss Tsekova:

*'[Resident X] was assisted with all personal care, she took due prescribe medication. [Resident X] remained in her room for lunch. She had good appetite. She spend time in the lounge this afternoon , toking [sic] with staff.'*

The panel also had sight of Resident X's handover notes on 9 June 2019 in which Miss Tsevoka appears to have copied and pasted the entry from 8 June 2019. The panel determined that it is unlikely that on 8 and 9 June 2019 circumstances in relation to Resident X would have been exactly the same and warranted an identical entry for both dates. The panel therefore found that Miss Tsekova incorrectly duplicated the entry from Resident X's handover note on 8 June 2019 on to the 9 June 2019 handover notes. Accordingly, the panel found this charge proved.

### **Charge 2 Schedule 2 item 2**

2) On or around 8/9 June 2019 incorrectly duplicated entries into Resident's Handover notes, as listed in schedule 2.

#### Schedule 2

2) Incorrectly duplicated an entry from Resident E's 8 June 2019 Handover note, onto Resident E's 9 June 2019 Handover note

### **The panel found this charge proved.**

In reaching this decision the panel had regard to Resident E's handover notes on June 8 and 9 2019.

The panel had sight of Resident E's handover notes on 8 June 2019 which contained an entry made by Miss Tsekova. The panel compared this lengthy note with a note that Miss Tsekova made into Resident E's handover notes on 9 June 2019. The panel found that

both notes were identical and the notes on 9 June 2019 appear to have been copied and pasted from the notes made on 8 June 2019. The panel was of the view that the note made by Miss Tsekova on 8 June 2019 was unlikely to be applicable to 9 June 2019. The panel therefore determined that the note on 9 June 2019 was likely to be inaccurate and, as a consequence, incorrect. Accordingly, the panel found this charge proved.

### **Charge 2 Schedule 2 item 3**

2) On or around 8/9 June 2019 incorrectly duplicated entries into Resident's Handover notes, as listed in schedule 2.

#### Schedule 2

3) Incorrectly duplicated an entry from Resident F's 8 June 2019 Handover note, onto Resident F's 9 June 2019 Handover note.

### **The panel found this charge proved.**

In reaching this decision the panel had regard to Resident F's handover notes for 8 and 9 June 2019.

The panel had sight of an entry made by Miss Tsekova in Resident F's notes on 8 June 2019 in which the following was recorded:

*'[Resident F] was assisted with his personal care by the day staff, he was compliant with his morning medication and assisted with his breakfast, he ate well. [Resident F] was assisted with his lunch in the dining room. He has slept for periods throughout the day. [Resident F] has been assisted to come to the dining room for his meals using for transfers full body hoist. After supper [Resident F] was assisted to bed.'*

The panel also had sight Resident F's handover notes on 9 June 2019 which contains the entry set out above. The panel determined that the note made by Miss Tsekova on 9 June 2019 was a duplication of the note she made on 8 June 2019. It was of the view that Miss Tsevoka should have entered notes relating specifically to 9 June 2019 and in duplicating the information from the previous day this was incorrect. Accordingly, the panel found this charge proved.

#### **Charge 2 Schedule 2 item 4**

2) On or around 8/9 June 2019 incorrectly duplicated entries into Resident's Handover notes, as listed in schedule 2.

#### Schedule 2

4) Incorrectly duplicated an entry from Resident G's 8 June 2019 Handover note, onto Resident G's 9 June 2019 Handover note.

#### **Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

#### **Charge 3**

3) On 9 June 2019 entered an incorrect entry into Resident C's Handover notes stating "*16pm she took Zopiclone 1/2tb..*"

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 4**

4) On 8 June 2019 entered an incorrect entry into Resident H's Handover notes stating "NB: Please see diary (Caresys) for weekend management."

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 5**

5) On 9 June 2019 entered an incorrect entry into Resident H's Handover notes stating "NB: Please see dairy (Caresys) for weekend management."

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

### **Charge 6**

6) On 6 July 2019 incorrectly escorted a Deprivation of Liberty (DOLs) assessor to assess Resident B instead of Resident I.

### **The panel found this charge not proved.**

In reaching this decision the panel had regard to the oral and documentary evidence of Ms 1 and Ms 2 and Miss Tsekova's written response to this charge.

The panel noted that as the Home is set over a number of different floors, when a visitor arrives at the Home, they are directed to the relevant floor as deemed appropriate by their first point of contact. Ms 2, in her oral evidence, confirmed that there would have been other members of staff involved in the chain of events which led the DOLs assessor to arrive on Miss Tsekova's floor.

The panel noted Miss Tsekova's response to this charge, that the name of the Resident I sounded very similar to the name of Resident B, and she was unaware of Resident I and their similar name to Resident B.

Having regard to all of the evidence before it the panel determined that the facts of this charge have not been established. It considered that there was no direct evidence from the DOLs assessor about what had happened leading up to his interaction with Miss Tsekova or what he had said to her. The panel therefore found this charge not proved.

## **Charge 7**

7) Did not complete your probationary period at the Home.

**The panel found this charge proved.**

In reaching this decision the panel had regard to minutes from Miss Tsekova's probationary review that took place on 13 September 2019 and the evidence of Ms 2.

Ms 2 was present at the probationary review and the panel noted that in this review Ms 2 said to Miss Tsekova that she is '*failing [her] probationary review*'. The panel therefore found this charge proved.

## **Charge 8)a)**

8) Between 11 July 2019 and 13 September 2019 were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

a) Verbal & Written English Language

**The panel found this charge proved.**

In reaching this decision the panel had regard to the minutes from the probationary review meeting that took place at the Home on 13 September 2019 and the evidence of Ms 1 and Ms 2.

The panel noted that in the probationary review meeting there were still concerns about Miss Tsekova's abilities in verbal and written English.

The panel noted Miss Tsekova's response at the meeting in which it is recorded that she had said that she accepted that she needed to book a place on to a course to improve her level of proficiency in English. The panel therefore determined that Miss Tsekova did not comply with the support plan in that she did not demonstrate proficiency in verbal and written English. Accordingly, the panel found this charge proved.

**Charge 8)b)**

8) Between 11 July 2019 and 13 September 2019 were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

b) Knowledge around the care needs of Residents

**The panel found this charge not proved.**

In reaching this decision the panel had regard to the evidence of Ms 2.

In her evidence to the panel Ms 2, upon questioning, stated that Miss Tsekova received some good feedback about her knowledge around the care needs of Residents. The panel also noted that Ms 2 stated that Miss Tsekova had the level of detail expected of a Registered Nurse and that there were no issues about the general care she provided to residents. The panel therefore found this charge not proved.

**Charge 8)c)**

8) Between 11 July 2019 and 13 September 2019 were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

c) Reviewing and updating care plans

**The panel found this charge not proved.**

In reaching this decision the panel had regard to all of the evidence before it.

Having reviewed all of the evidence before it, the panel determined that there was no evidence to support this charge and that the NMC had not discharged its evidential burden. The panel therefore found this charge not proved.

**Charge 8)d)**

8) Between 11 July 2019 and 13 September 2019 were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

d) Knowledge around safe administration of medication.

**The panel found this charge proved.**

In reaching this decision the panel had regard to the evidence of Ms 1, the support plan implemented at the home and Miss Tsekova's responses to the charges against her.

The panel noted that Ms 1 in her evidence said that Miss Tsekova was able to understand some of the ordinary disposal of medication. Nevertheless the panel had regard to the charges admitted by Miss Tsekova and noted that these establish that she was unable to demonstrate proficiency in knowledge around safe administration of medication. The panel therefore found this charge proved.

### **Charge 8)e)**

8) Between 11 July 2019 and 13 September 2019 were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

e) Awareness of the NMC code of conduct

**The panel found this charge not proved.**

In reaching this decision the panel had regard to the minutes of the probationary review meeting which took place on 13 September 2019.

The panel had particular regard to Miss Tsekova's responses in that she stated that she had obtained a copy of the NMC code of conduct and that she understood it. The panel found no evidence to contradict Miss Tsekova's statement. The panel therefore found this charge not proved.

### **Charge 8)f)**

8) Between 11 July 2019 and 13 September 2019 were unable to comply with an informal support plan put in place by your employers, in that you were unable to demonstrate proficiency in areas of;

f) Recognising your level of competencies

**The panel found this charge not proved.**

In reaching this decision the panel had regard to all of the evidence before it.

The panel noted that Miss Tsekova appeared to have an understanding of her level of competence and there is no evidence to demonstrate that she acted outside of the scope of her competence. Within the employment interview notes of 25 March 2019, exhibited by both witnesses, the areas in which Miss Tsekova herself identified that she lacked competence are clearly noted. The panel considered that this showed that Miss Tsekova had an awareness of her own level of competence. The panel therefore determined that the NMC had not discharged its evidential burden. Accordingly, the panel found this charge not proved.

### **Charge 9**

9) On or around 13 July 2019 did not understand the purpose of a reflective account.

**The panel found this charge not proved.**

In reaching this decision the panel had regard to the evidence of the probationary review meeting notes which took place on 13 September 2019 and the evidence of Ms 1.

Before making its findings, the panel had particular regard to the wording of the charge and gave consideration to the meaning of the word 'purpose'. It determined that for the purposes of this charge, the NMC had to prove that Miss Tsekova did not have an understanding of why a reflective account was necessary. Having regard to all of the evidence before it, the panel was of the view that whilst according to the evidence of Ms 1, Miss Tsekova's reflective account was below the standard required, this did not demonstrate that Miss Tsekova did not understand what the reflective account was intended for. Accordingly, the panel found this charge not proved.

### **Charge 10)a)**

10) On or around 2 September 2019;

a) Incorrectly recorded a balance of 27 Carbizamole tablets on Resident A's MAR chart.

**The panel found this charge proved.**

In reaching this decision the panel had regard to Resident A's MAR chart and the evidence of Ms 1.

The panel had sight of Resident A's MAR chart on 2 September 2019 in which Miss Tsekova appears to have recorded a balance of 27 Carbizamole tablets when she had administered a tablet as prescribed, and indicated by her signature, it should have balanced at 26. Ms 1, in her evidence stated that Miss Tsekova admitted to having made the incorrect entry on 2 September 2019. The panel therefore determined that it is more likely than not that Miss Tsekova made the incorrect entry. Accordingly, the panel found this charge proved.

**Charge 10)b)**

10) On or around 2 September 2019;

b) Incorrectly recorded a balance of 27 Rivaroxabam tablets on Resident X's MAR chart.

**The panel found this charge not proved.**

In reaching this decision the panel had regard to Resident X's MAR chart which covered the dates in question. It found that the space for Miss Tsekova to enter the stock balance was blank on the MAR chart. Ms 1, in her evidence, pointed to the number 27 drawn in a circle elsewhere on the chart and being the incorrect entry. However, the panel noted that this was not within the box that Miss Tsekova should have written the stock balance. Ms 1 could not identify any reason why Miss Tsekova would have logically written her stock balance in this place on the form. Therefore, the panel found that whilst Miss Tsekova had failed to complete the stock balance section of the MAR chart, she did not enter an

incorrect stock balance of 27 as charged. Accordingly, the panel found this charge not proved.

**Charge 10)c)**

10) On or around 2 September 2019;

c) Did not administer Docusate to Resident X

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 10)d)**

10) On or around 2 September 2019;

d) Did not administer Lansoprazole to Resident X

**The panel found this charge not proved.**

In reaching this decision the panel had regard to the oral and documentary evidence of Ms 1.

In her oral evidence Ms 1 told the panel that Miss Tsekova did in fact administer Lansoprazole to Resident X as referred to in charge 10)d). The panel noted that Miss

Tsekova had admitted this charge when it was incorrect to do so. The panel therefore did not accept Miss Tsevoka's admission to charge 10)d). Accordingly, the panel found this charge not proved.

**Charge 10)e)**

10) On or around 2 September 2019;

e) Did not administer 2 tablets of Memantine to Resident F

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 11)a)**

11) On or around 8 September 2019;

a) Did not administer 2 tablets of Furosemide to Resident J

**The panel found this charge proved.**

In reaching this decision the panel had regard to Resident J's MAR chart and the handwritten rationale in respect of the amount of Furosemide prescribed to Resident J.

The panel found that two tablets of Furosemide was to be administered to Resident J. It had sight of Resident J's MAR chart. The number showing as balance on the MAR chart

on 8 September 2019 suggests that only one tablet was given instead of two. The panel therefore found that it was more likely than not that Miss Tsekova had not administered the prescribed amount of Furosemide to Resident J. Accordingly, the panel found this charge proved.

**Charge 11)b)**

11) On or around 8 September 2019;

b) Did not record how many tablets were administered to Resident J.

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 11)c)i)**

11) On or around 8 September 2019;

c) Did not administer Resident K;

i) Furosemide 1 tablet

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 11)c)ii)**

- 11) On or around 8 September 2019;
- c) Did not administer Resident K;
- ii) Spironolactone 1 tablet

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 11)c)iii)**

- 11) On or around 8 September 2019;
- c) Did not administer Resident K;
- iii) Amlodipine 1 tablet.

**The panel found this charge proved.**

In reaching this decision the panel had regard to Resident K's MAR chart.

Having had sight of Resident K's MAR chart the panel found that Miss Tsekova had not recorded that she had administered one tablet of Amlodipine to Resident K. There was no

entry in Resident K's MAR chart to record that Amlodipine had been administered and the note on the MAR chart showed the starting balance on 9 September 2019 to be the same as the balance on 7 September 2019. The panel therefore determined that it was more likely than not that Miss Tsekova did not administer this medication. Accordingly, the panel found this charge proved.

**Charge 11)d)**

11) On or around 8 September 2019;

d) Inaccurately recorded that you had administered Resident K's prescribed medication in Resident K's Handover notes.

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 11)e)**

11) On or around 8 September 2019;

e) On the destroyed or returned medication form, inaccurately recorded that Resident L's Furosemide tablet had been destroyed

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 11)f)**

11) On or around 8 September 2019;

f) On the destroyed or returned medication form, inaccurately recorded that Resident L's Felodipine tablet had been destroyed

**Proved by way of admission.**

Having found that Miss Tsekova made an incorrect admission to charge 10)d), the panel decided to assess all of the evidence in relation to the other admitted charges to ensure fairness to her.

After assessing all of the evidence before it, the panel accepted Miss Tsekova's admission in respect of this charge as correct.

**Charge 11)g)**

11) On or around 8 September 2019;

g) Did not administer Resident M's prescribed Citalopram 20mg 1 tablet at 8a.m.

**The panel found this charge proved.**

In reaching this decision the panel had regard to Resident M's MAR chart.

The panel had sight of Resident M's MAR chart and it noted that on or around 8 September 2019 Miss Tsekova did not record that she had administered Citalopram 20mg to Resident M at 8am. Having found that there was no record of the medication being administered, and the medication count on 9 September 2019 being the same as 7 September 2019, the panel was of the view that it is more likely than not that Miss Tsekova did not administer the prescribed medication. The panel therefore found this charge proved.

### **Charge 11)h)**

11) On or around 8 September 2019;

h) Did not complete the 8a.m. entry in Resident M's MAR chart.

**The panel found this charge proved.**

In reaching this decision the panel had regard to Resident M's MAR chart.

The panel had sight of Resident M's MAR chart that covered the dates in question. It found that Miss Tsekova had not made an entry at 8am. The panel therefore found this charge proved.

### **Charge 12**

12) That you, a registered nurse, do not have the necessary knowledge of English to practise safely and effectively and in light of the above, your fitness to practise is impaired by reason of your lack of knowledge of English.

**The panel found this charge proved.**

In reaching this decision the panel had regard to a letter from Sunnyside Private Nursing Home Ltd. dated 16 January 2020, a letter from Foxleigh Grove Nursing Home dated 26

February 2020, an email from a Group Delivery Manager dated 14 May 2020 and the evidence of Ms 1 and Ms 2. The panel also had regard to Miss Tsekova's written response to this charge.

The panel had sight of a letter from Sunnyside Private Nursing Home Ltd where Miss Tsekova was employed as a HCA from 22 November 2018 until 4 March 2019. The panel noted the following in respect of Miss Tsekova's knowledge of English language:

*'her level of English and clinical skills required improvement. Both the Home Manager at the time and the owner of the nursing home told [Miss Tsekova] that it would take at least 18 months to develop her English and clinical skills...*

*... [Miss Tsekova] did not perform any clinical duties, but upon questioning she struggled to clearly communicate her understanding of medical issues...*

*... Ultimately [Miss Tsekova decided to resign because she wanted to work as a nurse. By that time I had become the Home Manager. She spoke to the owner and me but we told her that unfortunately we did not consider her capable to work as a nurse yet and advised her that she still needed a lot more time to improve her English skills.'*

The panel also had sight of a letter from Foxleigh Grove Nursing Home dated 12 February 2020 in which the following was written:

*'[Miss Tsekova] was employed by us from 8/18 to 11/18*

*She was employed and paid as an RGN.*

*Early into her induction we decided that her competency level was not high enough for us, so she worked as a HCA whilst being paid as an RGN.*

*As an HCA she worked with another individual providing personal care to the residents, ie washing, getting them dressed etc. She fulfilled this role very well.*

*Her spoken english was not the best but adequate. However we were not always sure she understood when spoken to however she gave the appearance that she did.*

*Working as an HCA her english was good enough.*

The panel had regard to an email from a Group Delivery Manager dated 14 May 2020 in which the following was stated about Mis Tsekova's results from an English course:

*'I can now confirm the following for this individual:*

*ESOL City and Guilds Entry 2 Reading exam – passed*

*ESOL City and Guilds Entry 2 Writing exam – did not pass*

*With regard to the Writing Exam, [Miss Tsekova] will be able to re-sit this exam once the college reopens. I can also confirm that she is continuing her studies with us this term.'*

Taking all of the above into account, together with the evidence of Ms 1 and Ms 2 who told the panel that Miss Tsekova had to use mobile phone and other translation tools whilst she was at work, the panel determined that she does not have the necessary knowledge of English to practise safely and effectively as a registered nurse.

The question of whether Miss Tsekova's fitness to practise is impaired by reason of her lack of knowledge of English will be determined at the impairment stage of these proceedings.

## **Fitness to practise – Lack of competence**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether those facts it found proved amount to a lack of competence and, if so, whether Miss Tsekova's fitness to practise is currently impaired as a result of lack of competence. 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 a lack of competence. Secondly, only if the facts found proved amount to a lack of competence, the panel must decide whether, in all the circumstances, Miss Tsekova's fitness to practise is currently impaired as a result of that lack of competence.

## **Submissions on lack of competence**

The NMC has defined a lack of competence as:

*'A lack of knowledge, skill or judgment of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified or seeks to practice.'*

Mr Kennedy invited the panel to take the view that the facts found proved amount to lack of competence. The panel had regard to the terms of 'The Code: Professional standards

of practice and behaviour for nurses and midwives 2015' ("the Code") in making its decision.

Mr Kennedy identified the specific, relevant standards where Miss Tsekova's actions amounted to a lack of competence. Mr Kennedy submitted that in determining lack of competency you must be satisfied that:

1. Miss Tsekova's competence fell below the appropriate standard required for her role (as set out in the Job Description).
2. The charges do not relate to an isolated incident.
3. There is a representative sample of her work.

Mr Kennedy submitted that the facts found proved show that Miss Tsekova's competence at the time was below the standard expected of a band 5 registered nurse. He submitted that the charges found proved relate to basic nursing skills such as medication administration and recording, record keeping and communication. Mr Kennedy submitted that the lack of competence was not an isolated incident and that the errors occurred between April and September 2019. He submitted that the errors continued despite the support provided by Miss Tsekova's employer.

### **Submissions on impairment**

Mr Kennedy moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Kennedy submitted that Miss Tsekova hasn't worked as a nurse in the UK since these charges arose and, as a consequence, she has been unable to demonstrate a period of

trouble-free practise. Mr Kennedy submitted that in the light of no remediation a risk of repetition of the lack of competence remains.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on lack of competence**

When determining whether the facts found proved amount to a lack of competence, the panel had regard to the terms of the Code. In particular, the following standards:

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

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

**8.6** share information to identify and reduce risk

**10.1** complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event

**10.2** identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

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

**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

The panel bore in mind, when reaching its decision, that Miss Tsekova should be judged by the standards of the reasonable average band 5 registered nurse and not by any higher or more demanding standard. The panel had sight of the job description which was applicable to Miss Tsekova when the charges arose. It considered that the facts found proved relate to fundamental nursing skills such as medication administration and record keeping. The panel found that the charges proved did not relate to an isolated incident, but that they occurred over a significant and sustained period of time. The panel also found that Miss Tsekova's employer raised concerns as to her competency with her and she was provided with some support and given the opportunity, between April and September 2019, to improve.

Taking into account the reasons given by the panel in its determination on the facts, the panel has concluded that Miss Tsekova's practice fell below the standard to be expected of a registered nurse of her experience.

In all the circumstances, the panel determined that Miss Tsekova's practise demonstrated a lack of competence.

### **Decision and reasons on impairment in respect of lack of competence**

The panel next went on to decide if, as a result of the lack of competence, Miss Tsekova's fitness to practise is currently impaired by reason of lack of competence.

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

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

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

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

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

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

The panel found that whilst no actual patient harm was caused, patients were put at risk as a result of Miss Tsekova's lack of competence. Miss Tsekova's lack of competence breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

In determining insight, the panel had regard to Miss Tsekova's responses at the meetings she attended at the Home and her response bundle. The panel was of the view that Miss Tsekova's insight into her lack of competence was limited, but she appeared to demonstrate some remorse for her actions.

In its consideration of whether Miss Tsekova has taken steps to strengthen her practice, the panel noted that she has not practised as a registered nurse in the United Kingdom since September 2019. Whilst she was working as a carer at the time of her undated submission to the NMC, it would appear from the proof of posting bundle that she has returned to Bulgaria, but she has not supplied any information as to what she is currently doing (save that she is currently signed off).

The panel found that her lack of competence is remediable but Miss Tsekova has not provided any evidence of remediation or any evidence of how she has strengthened her practise since the charges arose. The panel therefore determined that there is a risk of repetition of the lack of competence and a consequent risk of harm. Accordingly, the panel 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 are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 was of the view that a member of the public who was aware of the charges found proved would be concerned. The panel therefore determined that, in this case, a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that Miss Tsekova's fitness to practise is currently impaired as a result of her lack of competence.

## **Fitness to practise – Lack of knowledge of English**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether its findings as to a lack of knowledge of English indicate that Miss Tsekova'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.

Mr Kennedy reminded the panel that Miss Tsekova's employer offered extensive support to assist her with her English in that they allowed her to use her phone to translate and provided an adapted keyboard. He submitted that throughout Miss Tsekova's employment she was unable to demonstrate that she possessed a good command of English and concerns were raised about her ability to communicate as a result of her lack of knowledge of English.

## **Submissions on impairment in respect of lack of knowledge of English**

Mr Kennedy addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Grant*.

Mr Kennedy submitted that despite being directed by the NMC to take the International English Language Testing System (IELTS) exam, Miss Tsekova stated that she was not ready to take the test but that she would notify the NMC when she was ready to do so. Mr

Kennedy submitted that there is no evidence to suggest that Miss Tsekova's knowledge of English has improved since the charges arose in 2019 and, as a consequence, a risk remains.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on impairment in respect of lack of knowledge of English**

The panel bore in mind that adequate knowledge of the English language is an essential part of safe nursing practice and that the public expect registered nurses to be able to communicate safely and effectively.

In this case there were examples of poor handover in respect of the provision of care, a pattern of poor record keeping and evidence of drug errors.

The panel determined that Miss Tsekova had breached standard 7 of the Code, in particular:

#### **7 Communicate clearly**

To achieve this, you must:

7.5 be able to communicate clearly and effectively in English.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be a professional, safe, and effective practitioner. 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 ensure that they have the requisite knowledge of English.

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...*

The panel found that patients were put at risk of harm as a result of Miss Tsekova's lack of knowledge of English. Miss Tsekova's lack of knowledge of English had breached the fundamental tenets of the nursing profession by failing to be able to communicate safely and effectively and therefore brought its reputation into disrepute.

The panel was satisfied that a lack of knowledge of English is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Tsekova has done so. The panel took into account of Miss Tsekova's responses, in particular an email from her to the NMC dated 12 November 2020 in which she stated the following:

*'Thank you for sending me the email, But at the moment I am not able to pass IELTS Exam. [PRIVATE]. You know this exam is very difficult not only for me but for all the Nurses from abroad. I am a good Nurse I work very hard in this care home unfortunately I found myself in the wrong place and with the wrong people , They didn't support me , I want to ask you if I can work as a nurse under supervision because I love my job . In this difficult time the whole world need nurses, I want to help people.*

*When I feel ready I will try to pass IELTS exam.'*

Regarding insight, the panel considered that Miss Tsekova's insight into her lack of knowledge of English was developing in that she appears to acknowledge that she needs to take the IELTS test but that she is not in a position to at the moment.

However, the panel is of the view that there remains an insufficient knowledge of English to demonstrate safe and effective practice. 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 a member of the public would expect a registered nurse to have the necessary knowledge of English to practise safely and effectively.

Having regard to all of the above, the panel was satisfied that Miss Tsekova's fitness to practise is currently impaired by reason of her lack of knowledge of English.

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

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

## **Submissions on sanction**

Mr Kennedy informed the panel that the NMC sanction bid is a suspension order for a period of 12 months with a review.

Mr Kennedy's drew the panel's attention to the SG and identified some possible aggravating and mitigating features of this case. Mr Kennedy submitted that whilst lack of competence is remediable, given the finding that Miss Tsekova does not possess the necessary knowledge of English to practise safely and effectively and that she is not currently residing in the UK, a conditions of practice order is unworkable. He therefore invited the panel to impose a suspension order for a period of 12 months.

## **Decision and reasons on sanction**

Having found Miss Tsekova'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:

- Miss Tsekova does not have full insight into both her lack of competence and her lack of knowledge of English and the impact these will have had on her practice.
- There is no evidence of Miss Tsekova taking steps to strengthen her practice in respect of her lack of competence.
- Miss Tsekova has not complied with a direction made by the NMC on 3 September 2020 for an English language test to be taken.
- Miss Tsekova's lack of competence and practising as a registered nurse without having the necessary knowledge of English put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- Miss Tsekova made admissions to some of the charges.
- She has demonstrated some remorse for her actions.

The panel acknowledged that Miss Tsekova stated that she was working in a high pressure environment and did not receive adequate support during the period that the charges arose. Whilst the panel acknowledged Miss Tsekova's assertion, it heard no evidence to suggest that this was the case. Furthermore, the panel acknowledged that Miss Tsekova's lack of competence may have been exacerbated by her lack of knowledge of English.

The panel first considered whether to take no action, but concluded that this would be inappropriate in view of the risk of repetition of the lack of competence, Miss Tsekova's

lack of knowledge of English and the consequent risk of harm to patients. 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 risk of repetition of the lack of competence, Miss Tsekova's lack of knowledge of English and the consequent risk of harm to patients, an order that does not restrict her practice would not be appropriate in the circumstances. The panel decided that it would be contrary to its earlier findings and 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 Tsekova'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 was of the view that the lack of competence in this case is capable of remediation and that the clinical concerns identified can be addressed through retraining. The panel considered whether Miss Tsekova should be given the opportunity to demonstrate that she is capable of safe and effective practice whilst working under a conditions of practice order. The panel had regard to an email from Miss Tsekova to the NMC dated 12 November 2020 in which she stated the following:

*'I am a good Nurse I work very hard in this care home unfortunately I found myself in the wrong place and with the wrong people, They didn't support me , I want to ask you if I can work as a nurse under supervision because I love my job .  
In this difficult time the whole world need nurses, I want to help people.'*

The panel found that Miss Tsekova appears to be dedicated to the nursing profession and she has indicated that she would be willing to work under supervision. Whilst the panel is encouraged by Miss Tsekova's commitment to, and apparent desire to continue to work in

the nursing profession, she has been unable to demonstrate that she has the necessary knowledge of English to practise safely and effectively.

The panel noted that on 3 September 2020 the NMC directed Miss Tsekova to take an English language test. Miss Tsekova has not complied with the NMC direction and, as a consequence, she has not demonstrated that she has the required knowledge of English to be able to practise safely and effectively as a registered nurse. The panel therefore determined that until Miss Tsevoka has satisfied the NMC that she has the required knowledge of English any conditions imposed would be tantamount to a suspension.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel was of the view that if there were no concerns about Miss Tsekova's lack of knowledge of English then the lack of competence identified in this case could be addressed with a conditions of practice order. However, given that the panel has found that Miss Tsekova does not have the necessary knowledge of English to practise safely and effectively as a registered nurse, it determined that a suspension order is the most appropriate and proportionate sanction. The panel was of the view that a suspension order will protect the public and address the public interest until Miss Tsekova is able to demonstrate that she has the necessary knowledge of English.

The panel noted the hardship such an order may cause Miss Tsekova. However, it determined that this is outweighed by the public interest in this case.

The panel determined that a suspension order for a period of 12 months was appropriate and would allow Miss Tsekova time to achieve the required score in the IELTS test or in any other English language tests accepted by the NMC. The panel invites Miss Tsekova to request an early review of the suspension order should she be able to demonstrate proficiency in the English language before the order is completed.

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 Tsekova's attendance at the review hearing.
- Evidence that she has kept her nursing knowledge and skills up to date.
- Evidence of any professional development, including documentary evidence of completion of any courses
- References or testimonials from a line manager or supervisor.
- Confirmation of successful completion of or progression towards, an appropriate English language course.

### **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 Tsekova's own interest until the suspension sanction takes effect.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Kennedy. He submitted an interim order is necessary on the grounds of public protection and it is otherwise in the public interest. Mr Kennedy invited the panel to impose an interim suspension order for a period of 18 months, she submitted that if no appeal is made then the interim order will lapse and the suspension order will take effect.

The panel accepted the advice of the legal assessor.

## **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 reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

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

That concludes this determination.

This will be confirmed to Miss Tsekova in writing.