

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

**Substantive Hearing
Monday 8 August 2022 – Wednesday 10 August 2022**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant:	Catherine Mary Demaris Smith	
NMC PIN:	83H1357E	
Part(s) of the register:	Nursing – Sub Part 1 Adult Nursing – November 1986	
Relevant Location:	North East Lincolnshire	
Type of case:	Misconduct	
Panel members:	Adrian Smith Tracey Chamberlain Michael Glickman	(Chair, Lay member) (Registrant member) (Lay member)
Legal Assessor:	Attracta Wilson	
Hearings Coordinator:	Elena Nicolaou	
Nursing and Midwifery Council:	Represented by Suzanne Fewins, Case Presenter	
Mrs Smith:	Not present and unrepresented	
Facts proved by admission:	All	
Facts not proved:	None	
Fitness to practise:	Impaired	
Sanction:	Striking-off order	
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 Mrs Smith was not in attendance and that the Notice of Hearing letter had been sent to Mrs Smith's email address on 20 June 2022.

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 Mrs Smith's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Fewins, 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.

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

Decision and reasons on proceeding in the absence of Mrs Smith

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

Ms Fewins submitted that it is a discretionary matter for the panel to decide whether to proceed in Ms Smith's absence. She referred the panel to Mrs Smith's responses to the

NMC, including an email dated 8 August 2022. She submitted that Ms Smith is aware that the hearing is due to take place today.

Ms Fewins submitted that there is a public interest for this matter to proceed as the incidents are from 2018 and that Mrs Smith has admitted the facts alleged by the NMC. Ms Fewins noted that a witness is due to attend the hearing today, should the panel not accept Mrs Smith's admissions. Further, Ms Fewins submitted that Mrs Smith is content for the hearing to proceed in her absence and that she has previously indicated an interest in voluntary removal from the NMC register. Finally, Ms Fewins submitted that there would be no unfairness to Mrs Smith and that it is fair, appropriate and proportionate to proceed today.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mrs Smith. In reaching this decision, the panel has considered the submissions of Ms Fewins, the communications received from Mrs Smith, 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 Mrs Smith;
- Mrs Smith 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 Mrs Smith's attendance at some future date;
- A witness is due to attend today's hearing to give live evidence and not proceeding may inconvenience the witness, their employer and any clients who may need their professional services;
- The charges relate to events that occurred in 2018;
- Further delay may have an adverse effect on the ability of the witness to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Smith in proceeding in her absence. The evidence upon which the NMC relies has been sent to Mrs Smith's email address that is registered with the NMC and her response to the NMC includes her admissions but the panel noted that Mrs Smith has expressed an interest in voluntary removal from the NMC register. The panel took into account that Mrs Smith has not submitted an application to remove herself from the NMC register and it bore in mind that she did not make a request for an adjournment to facilitate her voluntary removal from the NMC register. The panel further noted that it had no information as to how long an application for removal from the NMC register would take if it were submitted. Further, as removal is a matter for the Registrar, the panel has no information relative to the likely outcome. The panel was of the view that in these circumstances, any adjournment would be for a considerable period of time, which would not be in the public interest. Further, the panel noted that Mrs Smith in her most recent communication with the NMC indicated that she was content for the hearing to proceed in her absence.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Smith. The panel will draw no adverse inference from Mrs Smith's absence in its decision making.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Fewins, on behalf of the NMC, to amend the wording of charge 2.

The proposed amendment was to amend a typographical error to the date. It was submitted by Ms Fewins that the proposed amendment would provide clarity and more accurately reflect the evidence.

The original wording of the charge:

“That you, whilst employed as a registered nurse at St Margaret’s Nursing Home,

2. On 09 March 2021, did not document in medical notes any or sufficient detail about care you provided in respect of Resident B’s necrotic heel.”

The charge with the proposed amendment:

“That you, whilst employed as a registered nurse at St Margaret’s Nursing Home,

*2. On 09 March ~~2021~~ **2018**, did not document in medical notes any or sufficient detail about care you provided in respect of Resident B’s necrotic heel.”*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Mrs Smith and no injustice would be caused to either party by the proposed amendment being allowed. It

was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Background

The charges arose whilst Mrs Smith was employed as a registered nurse by St Margaret's Care Home (the Home). The NMC received a referral on 1 May 2018 from the Home relating to Mrs Smith's clinical practice.

The concerns relate to Mrs Smith's practice between March – April 2018. There were several alleged incidents within this period, involving a number of different residents in the Home, relating to multiple drug administration errors, a clinical error and failures in record keeping, some of which amounted to dishonesty.

Mrs Smith had attended a meeting with the Manager, Deputy Manager/Clinical Lead at the Home and an HR Manager on 19 April 2018. Mrs Smith's employment at the Home was terminated during this meeting.

Details of charge (as amended)

That you, whilst employed as a registered nurse at St Margaret's Nursing Home,

1. On 06 March 2018, in respect of Resident A's 'Madopar' medication;
 - a. Did not ensure that you correctly understood the change in medication and/or
 - b. Did not document a change in medication in Resident A's notes.
2. On 09 March 2018, did not document in medical notes any or sufficient detail about care you provided in respect of Resident B's necrotic heel.
3. Did not change Resident C's wound dressing on the following date/s
 - a. 07 March 2018 and/or

- b. 09 March 2018.
4. Did not administer the correct dose of 'Levothyroxine' medication to Resident D on the following date/s
 - a. 18 March 2018 and/or
 - b. 19 March 2018.
 5. On a date before 03 April 2018, signed to say that one or more of the following medications had been administered to Resident E on 03 April 2018 when those medications had not yet been administered;
 - a. Digoxin;
 - b. Salmeterol;
 - c. Tiotropium
 6. Your conduct at Charge 5 above was dishonest because you created a false medical record indicating medication had been administered to Resident E, when you knew that it had not been.
 7. At a time before 1100 on 09 April 2018, signed to say Resident A's 'Madopar' medication had been administered at 1100, when that medication had not yet been administered.
 8. Your conduct at Charge 7 above was dishonest because you created a false medical record indicating medication had been administered to Resident A, when you knew that it had not been.
 9. At a time before 1800 on 09 April 2018, signed to say Resident F had refused his 'Glicazide' medication at 1800, when that attempt to administer medication had not occurred.

10. Your conduct at Charge 9 above was dishonest because you created a false medical record indicating medication had been refused by Resident F, when you knew that it had not been.

11. On 09 April 2018, did not administer Resident G with 'Sodium Valproate' medication at 0800.

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

Decision and reasons on facts

The panel had regard to the NMC's bundles which included a witness statement and exhibits from the following witness:

- Witness 1: Deputy Manager and Clinical Lead; the Home

The panel also had regard to Mrs Smith's response bundle.

At the outset of the hearing, the panel heard from Ms Fewins, who informed the panel that Mrs Smith had made full admissions in writing to all of the charges, in response to the Notice of Hearing document.

The panel therefore finds all of the charges proved in their entirety, by way of Mrs Smith's admissions.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs Smith's fitness to practise is currently impaired. There is no statutory definition of fitness to

practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

Submissions on misconduct

Ms Fewins invited the panel to take the view that the facts found proved amount to misconduct. She drew the panel's attention to the terms of 'The Code: *Professional standards of practice and behaviour for nurses and midwives (2015)*' (the Code). Ms Fewins identified the specific, relevant standards where Mrs Smith's actions amounted to misconduct. She provided written submissions on misconduct, which are as follows:

Misconduct

1. *Misconduct is a matter for the Panel's professional judgment. The leading case is *Roylance v GMC [2000] 1 AC 311* which says:*

"misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards

ordinarily required to be followed by a medical practitioner in the particular circumstances.”

2. *In Calhaem v GMC [2007] EWHC 2006 (Admin) Mr Justice Jackson commented on the definition of misconduct and he stated:*

‘it connotes a serious breach which indicates that the doctor’s fitness to practise is impaired.’

3. *Mr Justice Collins in Nandi v GMC [2004] EWHC 2317 (Admin) stated that:*

“the adjective ‘serious’ must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners.”

4. *[Charges set out] ...*

5. *The NMC Code sets the professional standards of practise and behaviour for nurses, midwives and nursing associates and the standards that patients and the public tell us they expect. The values and principles within the Code are not negotiable.*

6. *The NMC submits that Registrant’s actions, in respect of each charge, fall far short of what would be proper in the circumstances and of the standards expected of a registered nurse. The Panel will be familiar with what the The Code: Professional Standards of Practice and Behaviour for Nurses and Midwives (2015) (“the Code”) stipulates and it is submitted that the Registrant has breached the Code.*

7. *The NMC submits that such actions would undermine the faith and trust that the public places in the nursing profession if they were to become aware that the professional standards of practise were not being met.*
8. *The NMC draws the Panels attention to the Code:*

Promote Professionalism and Trust 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, treating people fairly and without discrimination, bullying or harassment

9. *All of the charges laid were found proven by admission. It is submitted by the NMC that each of these charges and actions fall far short of what would be proper in the circumstances.*
10. *In respect of charges 5-10 which relate to dishonesty, it is submitted that these incidents were serious attempts by the Registrant to create a misleading impression that the medications concerned had been administered when, in fact, they had not been (Charges 5-8) as well as a misleading impression that medication had been refused when, in fact, it had not been at the point of making the record (Charges 9-10).*
11. *It is submitted by the NMC that the Registrant's dishonesty falls far short of what would be proper and further represents a serious breach of the Code.*
12. *It is submitted that honesty, integrity and trustworthiness are the bedrock of the nursing profession, and that the Registrant has breached a fundamental tenet of the profession by creating records which are incorrect. These charges in*

particular raise fundamental questions about the Registrant's trustworthiness as a nurse.

13. The charges, on a whole, represent medication errors and/ or omissions and poor record keeping which are repetitive and escalated in seriousness over a short space of time, giving specific consideration to the element of dishonesty that is present in this case.

14. It is submitted that these concerns fall within each of the three categories of seriousness as they have placed patients at risk of unwarranted harm and raise questions about the Registrant's trustworthiness as a nurse.

15. It is submitted that, in light of the charges found proven by admission, the Registrants fitness to practise is impaired by reason of their misconduct.'

Submissions on impairment

Ms Fewins 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)*, *Nandi V GMC*, *Calhaem v GMC [2007] EWHC 2006 (Admin)* and *Roylance v GMC [2000] 1 AC 311*.

Ms Fewins provided written submissions on impairment, which are as follows:

'Impairment

16. There is no definition of "impairment" provided by the NMC's legislative framework. The NMC does, however, define "fitness to practise" as the

suitability to remain on the register without restriction. The panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC 2 (Grant) [2011] EWHC 927 (Admin):

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

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

17. This case also makes it clear that the public interest must be considered paramount and states:

“It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations ... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.”

18. *In applying these principles in this case, the NMC submits that the Registrant's fitness to practise is impaired as she has, in the past, acted so as to put patients at unwarranted risk of harm. In doing so, the Registrant has brought and it is submitted that she is liable in the future to bring the profession into disrepute. Furthermore, it is submitted that the Registrant has acted dishonestly, over a period of time and repeatedly. In doing so, the Registrant has breached one of the fundamental tenets of the medical profession.*
19. *The Panel must consider the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence.*
20. *With regard to future risk, regard should be had to the comments of Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin) namely, whether the concerns are easily remediable, whether they have in fact been remedied and whether they are highly unlikely to be repeated.*
21. *In determining current impairment, the Panel should consider whether the Registrant has demonstrated safe practice since these allegations, whether there has been any reflection or insight, and whether the Registrant has undertaken any further training to remediate her errors.*
22. *To date, the Registrant has not provided any supporting material to demonstrate that she has adequately reflected on her actions and no evidence of further training or insight has been produced. The Registrant has suggested in the past that she would like to remove herself from the Register voluntarily, however an application has not been forthcoming. It is also noted that the Registrant has not practiced as a nurse since she was dismissed from the home.*
23. *It is submitted that the Registrant's fitness to practise is impaired.'*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included those referenced by Ms Fewins within her submissions. She also referred to *Mallon v General Medical Council [2007] ScotCS CSIH_17*.

Decision and reasons on misconduct

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

It considered all information provided by the NMC and all correspondence received from Mrs Smith. It noted the NMC guidance on Misconduct and Impairment and took account of the terms of the Code. It considered the submissions received from Ms Fewins. It was mindful that Mrs Smith was not present or represented and drew no adverse inference from this. It took into account the need to proceed with fairness to both parties.

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 Mrs Smith’s actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Smith’s actions amounted to a breach of the Code. Specifically:

‘1 Treat people as individuals and uphold their dignity

To achieve this, you must:

- 1.2 make sure you deliver the fundamentals of care effectively
- 1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

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

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

To achieve this, you must:

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

8 Work cooperatively

To achieve this, you must:

- 8.2 maintain effective communication with colleagues
- 8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff
- 8.5 work with colleagues to preserve the safety of those receiving care
- 8.6 share information to identify and reduce risk

10 Keep clear and accurate records relevant to your practice

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

To achieve this, you must:

- 10.1 complete all 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 all records accurately and without any falsification...

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

- 13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care
- 13.2 make a timely referral to another practitioner when any action, care or treatment is required

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...'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel considered each of the charges individually in respect of misconduct.

Charge 1

The panel considered that, in not understanding the change in medication for Resident A and subsequently not documenting the changes to the medication dose in their notes, Mrs Smith's actions could have caused serious harm to Resident A and were serious failures. Therefore, the panel considered that this amounts to misconduct.

Charge 2

The panel considered that Mrs Smith had applied the bandage to Resident B's necrotic heel, but she subsequently failed to inform anyone about this within the medical notes. There is no suggestion that the treatment Mrs Smith provided was anything other than appropriate, so the panel considered this purely a failure in respect of documentation. However, as Mrs Smith did not document her treatment in Resident B's notes or hand over the information to another member of staff, there was potential for it to have been missed by other staff in the future, and therefore placed the patient at risk of serious harm as the wound could have deteriorated further. Therefore, the panel considered that this amounts to misconduct.

Charge 3

The panel considered that Mrs Smith was on duty on the dates in question, and it was her responsibility on those shifts to provide the care that was required for Resident C. It noted that at least one other member of staff had also failed to change the dressing during their shift, however, this did not excuse Mrs Smith's omissions. As a result of the wound dressing being left on Resident C for an extended period of time, the wound became

contaminated and actual harm was caused to the resident. Witness 1 in her statement said:

'This incident is very serious in my view. Although the patient was not seriously harmed, further deterioration of the wound actually occurred. The wound was infected but not majorly. The risk of contamination occurs when wound dressings are not changed and in this case, the wound was a very large one... Therefore, this was a very high risk wound for serious infection and the patient could easily have contracted sepsis.'

Mrs Smith's actions fell below the standards expected of a registered nurse, and therefore this amounted to misconduct.

Charge 4

The panel considered that the dosage of Levothyroxine needs to be closely monitored. Mrs Smith gave 25mcg to Resident D, when she should have administered 75mcg. This medication was to be given as three tablets at the same time, once a day. Witness 1 stated that:

'The medication box clearly states "three tablets to be taken daily" and the MAR sheet for this resident also stated "Levothyroxine 25mcg tablets, take three tablets daily".'

Mrs Smith admitted that she did not give the correct dose, and although no harm was caused to Resident D, there was potential for serious harm. The panel therefore considered that this was a serious error and amounted to misconduct.

Charge 5

The panel took into account that Mrs Smith had admitted to completing the MAR chart for Resident E in advance of administering the medication. It considered that this is clearly dishonest, as Mrs Smith had completed the MAR chart despite not having given the medications in question to Resident E. She has given no explanation for doing so and, given the vital importance of accurate record keeping to patient safety, the panel considered that Mrs Smith's actions fell below the standards expected of a registered nurse, and therefore this amounted to misconduct.

Charge 6

The panel took into account that Mrs Smith had admitted to her dishonesty within this charge. For the reasons stated above in charge 5, the panel considered that this action amounted to misconduct.

Charge 7

The panel considered that Madopar is a medication used for patients with Parkinson's disease. Resident A needed to have taken this medication outside of the normal drug round times, in order to keep their condition stable. Mrs Smith had admitted to signing for this medication for Resident A, prior to actually administering it. The panel considered that this is clearly dishonesty, and due to the importance of the nature of this particular medication, and the vital importance of accurate record keeping, Mrs Smith's actions could have caused serious patient harm. Therefore, the panel considered that Mrs Smith's actions amounted to misconduct.

Charge 8

The panel considered that Mrs Smith had falsified records in respect of Resident A's medication and had made an admission to her dishonesty. For the reasons stated in charge 7, the panel considered that this amounted to misconduct.

Charge 9

The panel considered that it appears Mrs Smith had anticipated Resident F's refusal to take the Glicazide medication by recording it in advance. Mrs Smith had admitted to this charge, and it is clearly dishonesty. Mrs Smith appears to have assumed that Resident F was going to refuse the medication, as is alleged to have been the resident's normal practice. This suggests that Mrs Smith was prepared to accept Resident F's refusal without taking any steps to encourage compliance. However, this put the resident at risk of serious harm. Therefore, the panel found that this amounted to misconduct.

Charge 10

The panel considered that Mrs Smith has admitted to her dishonesty in charge 9, and she had created a false medical record in respect of Resident F. For the reasons outlined in charge 9, the panel found that this amounted to misconduct.

Charge 11

The panel considered that Sodium Valproate is a medication used for patients with epilepsy. It considered that Mrs Smith did not give the medication at the required time, as Resident G was sleeping. The panel noted that Witness 1 viewed this action very seriously, and in her statement she highlighted:

'The registrant had written on the MAR chart that the resident in question was sleeping at the time she has tried to give him the medication but leaving him asleep was dangerous. The registrant should have woken him up to give him this medication. The registrant had even put an 'S' on the MAR chart indicating that she was not going to go back to even try to give the resident the medication again. Although no patient harm occurred, not giving this medication could have resulted in the resident having an epileptic fit.'

The panel considered that not administering this medication could have resulted in serious patient harm, and therefore this amounted to misconduct.

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

Decision and reasons on impairment

The panel next went on to decide if as a result of her misconduct, Mrs Smith'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 *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

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

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

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

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

The panel finds that residents were put at risk of serious harm as a result of Mrs Smith’s misconduct. Mrs Smith’s misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be seriously undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that all four limbs of *Grant* are engaged in this case. It noted that Mrs Smith had admitted her failings. However, there is no evidence of any efforts to strengthen her practice. The panel considered this in the context that Mrs Smith has not been practising as a registered nurse for some time. However, there is no evidence that she has demonstrated insight into her actions and the impact they could have had on patients, colleagues, the public and the wider profession, and no evidence of remorse. The panel has also not received any reflective pieces from Mrs Smith. The panel took into account testimonials provided by Mrs Smith but noted that they date back to the time of

the incidents giving rise to the charges, and so do not assist with the issue of current impairment. The panel considered that there has been no change in circumstances since the incidents occurred and the issues have not yet been addressed by Mrs Smith. It concluded that Mrs Smith still presents a risk of harm to patients, and a risk of repetition.

The panel took into account that the misconduct found proved in this case included findings of dishonesty. It considered Mrs Smith's admissions to the charges, in that she knew she was falsifying records and documenting medication administration that had not yet taken place on the shifts in question. Any reasonable member of the public and fellow practitioner would consider these actions to be dishonest. It noted that dishonesty is difficult to remedy, but there has been no evidence from Mrs Smith that she has made any efforts or attempts to do so.

The panel considered that Mrs Smith had admitted to the concerns at the time of the incidents, during the local investigation. The panel also noted documentation provided by Mrs Smith, including testimonials, training records and a copy of her CV. However, it was unable to identify anything before it that shows Mrs Smith has strengthened her practice or addressed the issues.

The panel was of the view that there remains a risk of harm and repetition as it has no information or evidence before it from Mrs Smith that indicates otherwise. Mrs Smith's actions were serious and brought the profession into disrepute, and also involve elements of dishonesty. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required as the concerns have not yet been addressed by Mrs Smith, and it is important to uphold professional standards within the profession. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Smith's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

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

Submissions on sanction

Ms Fewins provided written submissions on sanction, which are as follows:

1. *'The NMC invites the panel to impose a Striking-Off Order as the appropriate response in this case for the protection of the public and for the reason that it is in the public interest.'*

Proportionality

2. *The Panel will be very familiar with the guidance and factors to consider before deciding on sanctions and the need to be proportionate to find a fair balance between the Registrant and the NMC's overarching principle of public protection.*
3. *To be proportionate, the panel should consider what action it needs to take to tackle the reasons why the Registrant is not currently fit for practise and seek the sanction that is enough to achieve public protection. The purpose of sanctions is to protect the public as opposed to punishing the Registrant.*

Aggravating Features

4. *Aggravating features are aspects of the case that make it more serious. They may mean that the panel needs to order a sanction that has a greater impact on the Registrant's practise.*
5. *The NMC submits that the following aggravating features are present in this case:*
 - a) *Dishonesty which is linked directly to clinical practice and is repeated;*
 - b) *Lack of remediation and insight into failings;*
 - c) *Failures of clinical practice linked to fundamental areas of nursing taking place over a period of time;*
 - d) *Conduct which put patients at risk of suffering harm.*

Seriousness

6. *It is submitted that all three categories of 'seriousness' are engaged in this case:*
 - a) ***Serious concerns which are more difficult to put right:***

- *It is submitted that the Registrant breached the professional duty of candour to be open and honest when she created false medical records either indicating that medication had been given to a Resident or indicating that medication had been refused when neither were correct (charges 5-10).*
- *This included a falsification of records and documenting medication administration that had not yet taken place during the relevant shifts in question. It is submitted that dishonesty is difficult to remedy and there have been no efforts from the Registrant to remedy this concern.*
- *The Registrants misconduct amounts to various breaches of the Code as has already been considered by the panel.*

b) Serious concerns which could result in harm to patients if not put right:

- *It is submitted that the Registrant's misconduct against all charges laid placed Residents at risk of harm.*
- *It is submitted that the evidence shows that the Registrant is not able to keep clear and accurate records (charges 1b, 2, 5, 6, 7, 8, 9 and 10) and in some instances, without falsification (charges 5-10).*
- *The Registrant has not maintained effective communication with colleagues by keeping them informed of care provided to Residents.*
- *It is submitted by the NMC that the Registrant has failed to uphold the reputation of the profession, by not acting with honesty and integrity.*

c) Serious concerns based on the need to promote public confidence in nurses, midwives and nursing associates:

- *It is submitted that the Registrants conduct is so serious that it could affect the public's trust in the profession.*
- *The Registrant's conduct breached the fundamental tenets of the nursing profession and therefore brought the profession's reputation into disrepute.*

Dishonesty

7. *It is submitted that honesty, integrity and trustworthiness are the bedrock of the nursing profession, and that the Registrant has breached a fundamental tenet of the profession in falsifying records. These charges raises fundamental questions about the Registrant's trustworthiness as a nurse.*
8. *It is submitted that the incidents contained within charges 5-10 created the misleading impression that medication had either already been administered or it had been refused entirely. Such records were not accurate and could have caused the Residents' concerned serious harm. This represents the most serious kind of dishonesty.*
9. *It is submitted that this form of dishonesty calls into question whether the Registrant should be allowed to remain on the register. It is the NMC's submission that the Registrant's actions are incompatible with continued registration.*
10. *The Registrant has had a long nursing career – however, it is submitted that the Registrant's conduct is so serious that a 'previously unblemished career' can be given limited relevance (Judge v NMC [2017] EWHC 817 Admin).*

11. It is submitted that the Registrant has not addressed the risks in her practice. There has been no evidence of further training or attempts to remediate the concerns and so the level of insight shown is limited. The Registrant has demonstrated no insight into the impact of her misconduct on her colleagues, the Resident's and their families. A reflective piece has not been provided.

Sanction

12. The NMC would, therefore, invite the panel to impose a Striking-Off Order as the appropriate response in this case for the protection of the public and for the reason that it is in the public interest.

13. It is submitted that a Suspension Order may not adequately address the concerns when considering the lack of remediation or insight and dishonesty.

14. It is submitted that public confidence in the profession cannot be maintained if the Registrant is not removed from the register due to the severity of their misconduct.'

Decision and reasons on sanction

Having found Mrs Smith'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 gave Mrs Smith a further opportunity, via email on 9 August 2022, to attend the hearing and/or make representations at the sanction stage, however no response was received.

The panel took into account the following aggravating features:

- Mrs Smith's actions took place over a period of time and involved a number of concerns;
- There was a range of different failings, namely: clinical failings, documentation and medication errors;
- Mrs Smith's actions could have resulted in patient harm, and actual harm was in fact caused to one resident;
- There are multiple incidents of dishonesty;
- There is no evidence of any attempt by Mrs Smith to strengthen her practice, and demonstrate insight, reflection and remorse;
- There has been a failure to meaningfully engage with the regulatory proceedings; and
- Mrs Smith's failings related to fundamental nursing skills.

The panel also took into account the following mitigating feature:

- Mrs Smith admitted to her failings during the local investigation and admitted them to the NMC.

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

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Smith's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end*

of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'

The panel considered that Mrs Smith's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Smith's registration would be a sufficient and appropriate response. The panel noted that, if not for the dishonesty elements of the case, conditions of practice could have been formulated to address the concerns. However, considering the multiple incidents of dishonesty and the seriousness of the case, the panel considered that conditions of practice would be inappropriate. It also considered that Mrs Smith has stated that she is not currently working and that she does not intend to work as a nurse in the future, so it would be unlikely that she would be able to comply with any conditions imposed. Mrs Smith has also not meaningfully engaged with the NMC, and so the panel concluded that conditions of practice would not be appropriate in this case.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel considered that Mrs Smith's actions were not a single incident of misconduct or a one-off incident, and that there is evidence suggesting deep-seated attitudinal concerns considering the multiple incidents of dishonesty. Although there is no evidence of repetition since the incidents occurred, Mrs Smith has not been working as a registered nurse. It considered that Mrs Smith has not provided any information or evidence that indicated she has insight into her actions or the impact that they could have had on colleagues, patients, the public and the wider profession. There is nothing before the panel that demonstrates that Mrs Smith has addressed the concerns, and it has received no reflective pieces from her.

The panel considered that dishonesty is difficult to remedy, however it also noted that there has been no evidence that Mrs Smith has made any efforts to do so.

The panel therefore determined that in this particular case, a suspension order would not be a sufficient, appropriate or proportionate sanction, nor would it address the wider public interest.

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

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

The panel considered that a striking-off order was the only appropriate sanction that would protect the public and maintain public confidence in the profession, in this case. For the reasons outlined above, a suspension order would not be sufficient to address the

concerns. The panel considered that Mrs Smith's actions do raise fundamental questions about her professionalism.

Mrs Smith's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Smith's failings were serious and to allow her to continue practising would put patients at risk of harm and undermine public confidence in the profession, and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. The panel considered that this order was necessary both to protect the public and to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Mrs Smith in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Fewins. She invited the panel to impose an interim order for up to 18 months to cover the 28-day appeal period, on the same grounds.

Decision and reasons on interim order

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

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

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

That concludes this determination.