

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

Substantive Hearing

Monday 5 December 2022

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Thursday 8 December 2022

Virtual Hearing

Name of registrant:	Mr Matthew James Lippett
NMC PIN:	14D1134E
Part(s) of the register:	Registered Nurse Adult Nursing – 23 September 2014
Relevant Location:	Wiltshire
Type of case:	Misconduct
Panel members:	Lucy Watson (Chair, Registrant member) Sandra Lamb (Registrant member) Sophie Lomas (Lay member)
Legal Assessor:	David Swinstead
Hearings Coordinator:	Monsur Ali
Nursing and Midwifery Council:	Represented by Adam Slack, Case Presenter
Mr Lippett:	Not present and not represented
Facts proved:	Charges 1, 2, 3a, 4a and 4b
Facts not proved:	Charges 3b, 3c, 3d, 3e
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 Mr Lippett was not in attendance and that the Notice of Hearing letter had been sent to his email address on 2 November 2022.

Mr Slack, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and virtual hearing link of the hearing and, amongst other things, information about Mr Lippett's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In light of all of the information available, the panel was satisfied that Mr Lippett had 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 Mr Lippett

The panel next considered whether it should proceed in the absence of Mr Lippett. It had regard to Rule 21 of the Rules and heard the submissions of Mr Slack who invited the panel to continue in the absence of Mr Lippett. Mr Slack submitted that Mr Lippett had voluntarily absented himself, that witnesses on standby to give evidence would be inconvenienced by the case not proceeding and that it would be in the public interest to proceed with the hearing.

Mr Slack referred the panel to the following emails from Mr Lippett dated 29 November 2020 and 27 May 2021:

‘Yes I can confirm that I have accessed the attachments you have sent me. I read a part where it said I could email you information that may help with the decision making in the hearing. I would just like to make it known that I wish to retire from Nursing and do not wish to pursue my career in this field any longer, I wish to look for a job that is less stressful and would be more beneficial to my health and wellbeing.’

‘I have stated before in previous correspondence that I am no longer working as a nurse, I never have any desire to do so in the future and I am happy to voluntarily be removed from the register. I don't have any desire to continue in this profession and for my own personal wellbeing I just want to concentrate on myself and my own wellbeing. I loved my job with all my heart and I know my colleagues would all agree that I was excellent at what I did, but that chapter of my life is over now and I need to concentrate on myself and my own wellbeing, therefore I am happy to be taken off of the register.’

Mr Slack stated that it is clear from Mr Lippett's emails that he wishes not to practise as a registered nurse and that he would not be in attendance.

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 NMC guidance based on principles in the case of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5.

The panel decided to proceed in the absence of Mr Lippett. In reaching this decision, the panel considered the submissions of Mr Slack, copies of emails sent by Mr Lippett dated 29 November 2020 and 27 May 2021, and the advice of the legal assessor.

The panel 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 had been made by Mr Lippett;
- Mr Lippett had voluntarily absented himself;
- Mr Lippett had informed the NMC that he does not intend to return to nursing;
- There was no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses were on standby to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer and, as they are involved in clinical practice, the patients who need their professional services; and
- There was a strong public interest in the expeditious disposal of the case.

The panel noted that there was some disadvantage to Mr Lippett in proceeding in his absence. Although the evidence upon which the NMC relied will have been sent to Mr Lippett at his registered email address, he would not be able to challenge the evidence relied upon by the NMC in person and would not be able to give evidence on his own behalf. However, in the panel's judgement, this could be mitigated. The panel could make allowance for the fact that the NMC's evidence would not be tested by cross examination and, of its own volition, could explore any inconsistencies in the evidence which it identified. Furthermore, the limited disadvantage was the consequence of Mr Lippett's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel decided that it was fair, appropriate and proportionate to proceed in the absence of Mr Lippett. The panel would draw no adverse inference from Mr Lippett's absence in its findings of fact.

Details of charge

That you, a registered nurse, whilst working at Salisbury District Hospital:

1. Ordered medication without clinical justification;
2. Accessed the controlled drugs cupboard without clinical justification;
3. Stole the following medication from Salisbury NHS Foundation Trust;
 - a. Midazolam;
 - b. Tramadol;
 - c. Lorazepam;
 - d. Gabapentin;
 - e. Morphine Sulphate;
4. On 28 September 2020, stole the following medication from Salisbury NHS Foundation Trust;
 - a. Loperamide;
 - b. Flucloxacillin;

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

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

Mr Slack made an application that parts of this case may need to be held in private on the basis that proper exploration of Mr Lippett's case may involve reference to his health. The application was made pursuant to Rule 19 of the Rules.

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

The panel decided to hold parts of the hearing which refer to Mr Lippett's health in private because it concluded that this was justified by the need to protect his private health matters and that this outweighed any prejudice to the public interest in holding

those parts of the hearing in public. However, where there is no reference to Mr Lippett's health matters, the hearing would be held in public.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the live and documentary evidence in this case, including the two emails dated 29 November 2020 and 27 May 2021 received by the NMC from Mr Lippett and Mr Lippett's account in the notes taken of an interview under caution as part of the local investigation together with the submissions made by Mr Slack.

The panel has drawn no adverse inference from the non-attendance of Mr Lippett.

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 oral evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Currently employed by Salisbury NHS Foundation Trust (the Trust) as a Divisional Matron in Medicine at Salisbury District Hospital (the Hospital). At the time of the incidents employed by the Trust as a Senior Sister.
- Witness 2: Employed by the Trust as a Band 6 Sister at the Hospital.

Background

The charges arose whilst Mr Lippett was employed as a registered nurse by Salisbury NHS Foundation Trust. At the time of the incidents Mr Lippett was the Charge Nurse on Farley Stroke Unit (the Unit) at Salisbury District Hospital and was undertaking a non-medical prescriber course. He began studying from April 2020 to September 2020.

The allegations are that on 28 September 2020, the Unit Senior Sister (Witness 1) was approached by a number of staff members raising concerns regarding Mr Lippett's behaviour and his physical and mental wellbeing. The concerns were that he was frequently attending the Unit when he was off duty, asking junior staff members for the keys to the controlled drugs cupboard and entering the clinical treatment room without any clinical justification. Mr Lippett justified this, at the time, by suggesting that he needed to check the details of medication for his prescribing course. Due to the concerns, Witness 1 conducted a check of the stock levels of intravenous medication and controlled drugs in the cupboard and the fridge on 29 September 2020.

A rough check had been carried out by Witness 2 and another Ward Sister at 17:00 on 28 September 2020. Despite being told to take the night off, Mr Lippett had attended the Unit that evening, stating that he needed dressings for an injury to his arm. Mr Lippett obtained the key to the drugs cupboard and entered the clinical treatment room, although it is not known what he did when he was there.

Mr Lippett stayed in the Unit and Witness 2 drove him home at the end of that shift. Mr Lippett told Witness 2 that he had taken dressings and Loperamide, for his own use due to an injury to his arm. The next morning, a further stock check of drugs was carried out at around 09:00 and four vials of Midazolam were unaccounted for. An empty box of intravenous Lorazepam had been discovered by a Band 6 Sister on 28 September 2020.

An audit of Midazolam was carried out and it was discovered that since May 2020 some 100 vials of Midazolam were unaccounted for and Mr Lippett was found to have ordered a significant amount of Midazolam in comparison to other registered nurses on the Unit

as well as the other medications set out in the charges. Mr Lippett ordered a considerable amount of medication when he was not rostered on clinical shifts and, it is alleged, that at that time the medication was not clinically required for patients in the Unit.

Mr Lippett was questioned about these concerns and he admitted to taking Flucloxacillin, Loperamide and dressings for his personal use. He either denied or did not address the taking of other medications set out in the charges.

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.

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

Charge 1)

That you, a registered nurse, whilst working at Salisbury District Hospital:

Ordered medication without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, including the oral evidence of the witnesses and the submissions made by Mr Slack.

The panel first considered whether there was any clinical justification for the medication ordered by Mr Lippett.

The panel heard evidence from Witness 1, who had carried out an audit of end of life care patients in the Unit, which indicated that from 4 May 2020 to 28 September 2020, 29 vials of Midazolam were used for end of life care.

The panel saw documentary evidence detailing the stock check and order review carried out by Witness 1 and this indicated that between 27 May 2020 and 15 September 2020, Mr Lippett had ordered a total of 100 vials of Midazolam. The evidence from the review demonstrated that the other nursing staff on the ward had ordered 50 vials of the same medication in total across the same timeframe. Based on this evidence the panel concluded that there was no clinical justification for ordering Midazolam in such quantities and therefore Mr Lippett was ordering more medication than was clinically justified by the patients requiring end of life care on the Unit during that period.

The panel heard from Witness 1 and Witness 2 that it was the responsibility of the nurse who was caring for a particular patient, to order the medication based on what the patient needed on that day and for the next ensuing period. Any general ward stock would be ordered by a pharmacist rather than the ward nursing staff. The panel considered the documentary evidence which showed that on a number of occasions when Mr Lippett placed orders for medication, he was working either in an administrative role, in his new trial role, or he was on study leave. On those days Witness 1 confirmed that Mr Lippett would have no patient care responsibilities and therefore no clinical need to order medication.

Having considered all the evidence, the panel determined that Mr Lippett did order medication, in the form of Midazolam without clinical justification. The panel therefore found charge 1 proved.

Charge 2)

Accessed the controlled drugs cupboard without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, including the oral evidence of the witnesses and the submissions made by Mr Slack.

The panel noted that Witness 1 stated in her written statement to the NMC dated, 26 October 2021, that on 28 September 2020 Mr Lippett had been contacted by Witness 1 and told to stay at home and not return from sick leave that night. Mr Lippett had then come into the Unit on 28 September 2020, in the early evening. He told Witness 2 that he was coming in for dressings for the injury to his arm and for Loperamide. He asked Witness 2 for the keys to the controlled drugs cupboard. Witness 2 did not have the keys but she directed him to a staff nurse who gave him the keys. In addition, Witness 2 stated in her written statement to the NMC dated, 9 February 2022, that on another date in September 2020, she could not remember the exact date, Mr Lippett had visited the Unit and asked for the keys to the controlled drugs cupboard. He was not in uniform and was off duty. However, she stated that this was not unusual as Mr Lippett often came in, particularly at night time, to the Unit and asked for the keys to the controlled drugs cupboard, and went into the treatment room.

The panel had sight of controlled drugs ordering sheets, correlated with roster sheets, which indicated that there were four occasions when Mr Lippett had ordered controlled drugs when he was on non-clinical duty or on study days, when he did not have clinical responsibilities for patient care and therefore there was no justification for accessing the controlled drugs cupboard.

The panel also noted that in the internal investigation, it was raised that Mr Lippett was shown to have swiped into the treatment room, where the controlled drugs cupboard is kept, on occasions when he was not on clinical duties.

The panel further noted that in order to have access to the controlled drugs order sheets, Mr Lippett would have needed access to the controlled drugs cupboard, where this controlled stationery was kept in accordance with the Trust's medicines policy.

Having considered all the evidence, the panel determined that Mr Lippett had accessed the controlled drugs cupboard when there was not a clinical justification to do so. The panel therefore found charge 2 proved.

Charge 3)

Stole the following medication from Salisbury NHS Foundation Trust;

- a. Midazolam;

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, including the oral evidence of the witnesses and the submissions made by Mr Slack.

The panel had sight of the evidence of an audit for Midazolam which was used for end of life care patients in the Unit, and this showed that Mr Lippett had ordered 100 vials of this drug during a five-month period which were unaccounted for and this amount far outweighed the clinical use for this medication. The audit found that only 29 vials had been used for end of life care out of the total of 150 vials ordered during this period. The panel concluded that Mr Lippett was ordering far more Midazolam than was necessary for patient care in the Unit.

On the night of 28 September 2020 Mr Lippett was asked not to come into the Unit as he was off sick, but he did come in, saying that he needed Loperamide and dressings. The panel was told by Witness 2 that Mr Lippett had taken the bus to the hospital, which was a three-mile journey, and on that journey there were a number of supermarkets and pharmacies which would have sold the Loperamide and dressings. The panel considered this, together with the fact that the Unit had undertaken a stock levels check of the Midazolam on the evening of 28 September 2020 and on the morning of 29 September 2020, which found that four vials had gone missing during that time period.

The panel heard evidence that Mr Lippett had been in the treatment room with the key to the controlled drugs cupboard on 28 September 2020, no patients had required Midazolam that night and no stocks of Midazolam were signed out to any other wards or departments. The panel drew the inference that Mr Lippett came into the Unit not only to obtain the Loperamide and dressings but also to steal Midazolam.

Based on all the evidence before it, the panel was satisfied that Mr Lippett had stolen Midazolam and consequently concluded that charge 3a was proved.

Charge 3)

Stole the following medication from Salisbury NHS Foundation Trust;

- b. Tramadol
- c. Lorazepam.
- d. Gabapentin;
- e. Morphine Sulphate.

These charges are NOT found proved.

The panel determined that there was insufficient evidence to find charge 3b proved. It noted that there was evidence that Mr Lippett had ordered 50mg of Tramadol on two occasions during the stock check timeframe but there is also evidence that two other registered nurses had ordered the medication on 29 August 2020 and 21 September 2020. The panel heard evidence from Witness 1 that there was no stock of Tramadol when she did the stock checks and there was no stock found on 28 September 2020. From the roster, it was clear that Mr Lippett had been off sick from 21 to 28 September 2020. Although Witness 2 had stated that Mr Lippett had come into the Unit on a date in September 2020, she was unable to recall that date. The panel had no evidence that a review had been carried out of the patient records to see whether this drug had been administered to a patient. It could not be satisfied therefore that this medication was missing. Therefore, on this basis, the panel determined that there was insufficient evidence to find this charge proved.

The panel determined that there is insufficient evidence that Mr Lippett stole Lorazepam. The panel considered the written statement of Witness 1, where she provided the pharmacy order sheets as exhibits to her statement which showed a box of 10 vials of Lorazepam had been ordered on 15 September 2020 by Mr Lippett. It also showed that he had ordered a further box of 10 vials of Lorazepam on 28 July 2020. Witness 2 also stated in her written statement that she and another Ward Sister had

done the rough stock check on 28 September 2020 and discovered an empty box of Lorazepam which they found odd. However, Mr Lippett had not been on duty in the period preceding 28 September 2020 and did not come into the Unit until later that day.

The panel determined that there were 10 vials of Lorazepam unaccounted for but there was insufficient evidence to indicate that they were taken by Mr Lippett. It therefore found charge 3c not proved.

The panel noted that there was documentary evidence that Mr Lippett had ordered Gabapentin on one occasion when he was on clinical duty and there was also evidence that showed that he had ordered Morphine Sulphate on two occasions on non-clinical days. The panel had received no evidence of an audit based on patient records to show that either of these drugs had been administered to patients. Witness 1 stated in her oral evidence, in response to the panel's questions, that when she checked the stock levels of these drugs she "*found nothing untoward around Gabapentin and Morphine*".

Further, the panel noted that both witnesses had stated that Gabapentin was a drug that was used for individual patients on the Unit. Therefore the panel determined there was no evidence to show that these two drugs were missing. Consequently, the panel concluded that there was insufficient evidence to find charges 3d and 3e proved.

Charge 4)

On 28 September 2020, stole the following medication from Salisbury NHS Foundation Trust;

- a. Loperamide;
- b. Flucloxacillin.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it, including the oral evidence of the witnesses and the submissions made by Mr Slack.

The panel considered the evidence of Witness 1 and noted that she interviewed Mr Lippett on 29 September 2020. Witness 1 also stated in her written statement that Mr Lippett admitted coming to the Unit the night before to take Loperamide and Flucloxacillin from the Unit. Witness 2 stated during her oral evidence that Mr Lippett regularly came to the Unit and in her local interview notes, she said that he often came to the Unit when he was living on site to take Loperamide.

The panel had regard to the account given by Mr Lippett as part of the local investigation. In particular, the panel noted that Mr Lippett made the following admission:

'...he came in on 28th September to get some dressings for his arm and a box of Flucloxacillin. He knew he should not have taken the Flucloxacillin and he has been thinking about that ever since and it was a stupid mistake.'

Witness 1 in her written statement to the NMC stated that when she interviewed Mr Lippett on 29 September 2020 about the events of the previous evening she discussed with him the legalities of taking medications. Witness 1 said that it was acceptable for staff to take paracetamol if that enabled them to remain on duty. Witness 2 in her oral evidence said that the Trust policy stated that staff should not take medicines for their own use. In the local interview notes Witness 2 stated that Mr Lippett knew that it was wrong to take medicines for personal use. On the basis of the evidence, the panel found this charge proved in its entirety.

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 Mr Lippett'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, Mr Lippett's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

Mr Slack invited the panel to take the view that the facts found proved amount to misconduct. 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 Slack identified the specific and relevant standards where the NMC contends that Mr Lippett's actions amounted to misconduct. He referred to the following comments of Lord Clyde in *Roylance v General Medical Council* [1999] UKPC 16 in relation to the definition of misconduct:

'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 rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances.'

The comments of Jackson J in *Calheam v GMC* [2007] EWHC 2606 (Admin) and Collins J in *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), respectively

'[Misconduct] connotes a serious breach which indicates that the [nurse's] fitness to practise is impaired'.

And

'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 practitioner'.

Mr Slack submitted that where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances can be determined by reference to the Nursing and Midwifery Council's Code of Conduct.

Mr Slack invited the panel to consider the following provisions of the Code as being relevant in this case: provisions 10, 18 and 20.

Mr Slack submitted that ordering and accessing Midazolam without clinical reason, followed by theft of a considerable amount of that medication clearly falls short of what would be expected from a registered nurse and would no doubt be deemed deplorable by another nurse. It is a serious breach of professional conduct, amounting to an abuse of his role and access to medication afforded to a nurse. As such, it must amount to misconduct.

Submissions on impairment

Mr Slack 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 case of

Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin).

Mr Slack submitted that impairment needs to be considered as at today's date, i.e. whether Mr Lippett's fitness to practice is currently impaired. The NMC defines impairment as a Registrant's suitability to remain on the register without restriction.

Mr Slack submitted that the questions outlined by Dame Janet Smith in the fifth Shipman Report are instructive. Those questions were:

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

Mr Slack submitted that all four of the limbs apply in this case as Mr Lippett acted unprofessionally and dishonestly in stealing a considerable amount of medication from the Trust. Theft is necessarily a dishonest act. Further, it deprived others of medication that may have needed it, and brought the profession into disrepute by abusing his position of trust as a nurse to steal significant quantities of medication.

Mr Slack further submitted that Mr Lippett provided no excuse or reasons for his misconduct and has not fully engaged with the proceedings. He also submitted that Mr Lippett provided no insight or remorse in respect of stealing considerable quantities of medication.

Mr Slack submitted that Mr Lippett remains a clear risk to the public and that there is a need to maintain public confidence through a finding of impairment, particularly in the

complete absence of any insight or remorse into the seriousness of the misconduct, and the concerns with abuse of a position of trust.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

Promote professionalism and trust

20 Uphold the reputation of your profession at all times'

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

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

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

20.4 keep to the laws of the country in which you are practising

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel did not consider that provisions 10 and 18 of the Code were applicable to the facts in this case.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the charges found proved in this

case amounted to misconduct and significant breaches of the standards expected of proper nursing practice.

When considering the misconduct, the panel took all of the charges together on the basis that they were a continuing chain of events involving the theft of medications. The panel considered that this was a breach of trust afforded to a senior experienced nurse in that he accessed the controlled drugs cupboard and ordered drugs which he then stole. The panel considered that in order to carry out the theft of the medications, there was a degree of planning in ordering the drugs. Further, his conduct abused his position of authority as a senior nurse. He put his junior colleagues, particularly those working at night, in a very difficult position to challenge a senior member of the nursing team coming into the Unit when off duty, and by requesting the controlled drugs keys.

The panel also noted the evidence of Witness 1, a senior nurse responsible for the Unit, who told the panel that Mr Lippett never approached her when he was off duty or not on clinical duty for the keys to access the treatment room. He only approached the Band 6 ward sisters and the staff junior to him. The panel noted that Midazolam is a controlled drug with a powerful sedative effect, and therefore it is dangerous to steal a drug of that nature in terms of the risks of how it may be used outside of the controlled clinical setting. The panel determined that the behaviour of Mr Lippett, the degree of planning, the abuse of power, and the theft of these medications would be considered deplorable by any other nursing professional. The panel also considered the reputational damage this would have caused to the nursing profession.

The panel determined that although the drugs referred to in charge 4 are not controlled drugs, the theft of any drugs for personal use from the workplace is behaviour that is not consistent with that expected of a registered nurse.

The panel found that Mr Lippett's actions did fall seriously short of the standards expected of a registered nurse and was satisfied that this amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Lippett'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 determined that limbs b, c and d were engaged in this case. Stealing medication is clearly dishonest. It is a serious breach of both trust and the fundamental tenets of the nursing profession and, further, brings the profession into disrepute. The panel considered that issues of patient safety were not raised in this case as there was no evidence of harm to patients.

The panel noted that certain types of misconduct, including dishonesty are difficult to address. In this particular case the panel was unable to assess whether the misconduct was capable of remediation due to a lack of an explanation as to Mr Lippett's motive. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Lippett has taken steps to address his misconduct.

The panel determined that there is no evidence before it which demonstrates Mr Lippett had taken steps to remediate the concerns or to address his behaviour. It further noted that Mr Lippett had limited engagement with the proceedings. The panel determined that Mr Lippett had been stealing medication for a considerable amount of time which demonstrates dishonesty which is very difficult to remediate. Mr Lippett has not provided any explanation or demonstrated insight or remorse regarding his misconduct.

The panel is of the view that there is a risk of repetition for the reasons described above and there is no evidence before the panel of how Mr Lippett would address the concerns and behave differently in the future. 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 the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined in a case involving a nurse who had been found to have stolen medication, if a finding of impairment were not made. Therefore the panel also finds Mr Lippett's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Lippett'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 Mr Lippett off the register. The effect of this order is that the NMC register will show that Mr Lippett has been struck-off the NMC 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

Mr Slack informed the panel that in the Notice of Hearing, dated 2 November 2022, the NMC had advised Mr Lippett that it would seek the imposition of a Striking-off order if the panel found his fitness to practise currently impaired.

Mr Slack submitted that Mr Lippett had been stealing medication for a considerable amount of time which demonstrates dishonesty that is very difficult to remediate. Mr Lippett has not provided any explanation or demonstrated insight or remorse into his misconduct. Mr Slack reminded the panel that it must consider each sanction, starting with the least serious one.

Mr Slack submitted that in this case, the seriousness of the misconduct means that taking no action would not be appropriate and that a caution order is the least restrictive sanction which will only be suitable where the nurse presents no risk to the public. Given the seriousness of the concerns, a caution order would not be an appropriate outcome.

Mr Slack submitted that a conditions of practice order would be insufficient in this case given the severity of the charges found proved and the public interest present in this case. Whilst a conditions of practice order could address the issues of ordering and the handling of medication, these charges are inextricably linked to the charges of theft, which are too serious for conditions alone. This is further aggravated by his abuse of his position as a charge nurse to obtain keys to the controlled drugs cupboard when not on duty from junior colleagues to facilitate his theft of the medication. Mr Lippett has shown some insight into his health, but has not made significant admissions or shown adequate insight to allay fears of repetition.

Mr Slack submitted that a suspension order could have been an appropriate sanction in this case if Mr Lippett's [PRIVATE]. However, he did not fully engage with the process and there is complete lack of insight into the seriousness of the charges which demonstrate attitudinal concerns.

Mr Slack referred the panel to the SG and submitted that a striking-off order is the only adequate sanction in this case as the charges found proved demonstrate a prolonged period of stealing, repeated dishonesty, and a significant level of premeditated longstanding deception which went into carrying out the misconduct

Decision and reasons on sanction

Having found Mr Lippett'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:

- Abuse of position of trust by Mr Lippett;
- There is a lack of insight into his misconduct;
- A pattern of misconduct over a prolonged period of time;
- Misuse of power; and
- Premeditated and longstanding deception.

The panel also took into account the following mitigating features:

- There was no risk to patients;
- Mr Lippett expressed in his emails to the NMC dated 29 November 2020 and 27 May 2021 November, that nursing had an impact on [PRIVATE];
- Mr Lippett's colleagues were concerned about [PRIVATE];
- Mr Lippett admitted in the local interview that it was a mistake to take the flucloxacillin; and
- Both witnesses in the case testified that Mr Lippett was a very good nurse and there were never any concerns about his clinical practice.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of its findings on facts and impairment, an order that does not restrict Mr Lippett'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 Mr Lippett'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 its findings on the facts and impairment. 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 Mr Lippett's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case is not something that can be addressed through retraining as Mr Lippett had not fully engaged with the process and there is no evidence to demonstrate that he has developed insight into his misconduct. Furthermore, the panel concluded that the placing of conditions on Mr Lippett's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.'*

This case involved dishonesty which is difficult to address and is indicative of an attitudinal issue. The misconduct was repeated over a period of time and due to the lack of insight demonstrated, there is a risk of repetition.

The panel noted the NMC SG on cases involving dishonesty and in particular:

'Nurses, midwives and nursing associates who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register.'

Overarchingly, this was a case of dishonesty and Mr Lippett has not engaged with the process, has not shown remorse and has not demonstrated how he would prevent such behaviour occurring in the future. Therefore the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel concluded that all of these considerations were met in this case.

The panel noted that Mr Lippett's serious breaches of the fundamental tenets of the nursing profession evidenced by his misconduct are fundamentally incompatible with him remaining on the NMC register. The panel was of the view that the findings in this particular case demonstrate that Mr Lippett's actions were serious with dishonesty over a long period of time, and to allow him to continue practising would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

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

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

This decision will be confirmed to Mr Lippett 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 is in Mr Lippett's own interests until the striking-off sanction takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Mr Slack. He submitted that an interim suspension order is necessary to cover the period until the striking-off order comes into effect having regard to the panel's findings. Mr Slack submitted that if Mr Lippett appeals the decision of the panel, then he would be able to practice without restrictions until the appeal process is finished and this can take up to 18 months. Mr Slack invited the panel to impose an order for a period of 18 months to cover the whole of the appeal period.

Decision and reasons on interim order

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

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

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

That concludes this determination.