

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

**Substantive Hearing
Tuesday 11 July 2023 to Friday 14 July 2023
Wednesday 19 July to Thursday 20 July 2023**

Virtual Hearing

Name of Registrant:	Razvan Andrei Chibzui
NMC PIN	17H0039C
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – (August 2017)
Relevant Location:	Worcestershire
Type of case:	Misconduct
Panel members:	Philip Sayce (Chair, Registrant member) Dorothy Keates (Registrant member) Stacey Patel (Lay member)
Legal Assessor:	Simon Walsh
Hearings Coordinator:	Petra Bernard
Nursing and Midwifery Council:	Represented by Mr Giedrius Kabasinskas, Case Presenter
Mr Chibzui:	Not present and not represented
Facts proved:	All
Facts not proved:	Not applicable
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 Chibzui was not in attendance and that the Notice of Hearing letter had been sent to Mr Chibzui's registered email address by secure email on 8 June 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Chibzui's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

The panel next considered whether it should proceed in the absence of Mr Chibzui. It had regard to Rule 21 and heard the submissions of Mr Kabasinkas who invited the panel to continue in the absence of Mr Chibzui. He submitted that Mr Chibzui had voluntarily absented himself.

Mr Kabasinkas submitted that there had been no engagement at all by Mr Chibzui with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion. 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 Mr Chibzui. In reaching this decision, the panel has considered the submissions of Mr Kabasinskas 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 Mr Chibzui;
- Mr Chibzui has not engaged with the NMC and has not responded to any communications about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses are due to attend the hearing today to give live evidence and others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Chibzui in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel’s judgement, this can be mitigated. The panel can make allowance for the fact that the NMC’s evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr

Chibzui'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 has decided that it is fair to proceed in the absence of Mr Chibzui. The panel will draw no adverse inference from Mr Chibzui's absence in its findings of fact.

Details of charge (as read)

That you, a registered nurse:

1) On 21 July 2020, at Latimer Court, said to Resident A, "if you don't stop shouting, I will lock you in your room", or words to that effect.

2) On 11 May 2021, at Pirton Grange:

a) Did not administer prescribed medication to one or more resident.

b) did not complete one or more MAR charts to confirm that prescribed medication had been administered to residents.

3) On 22 December 2021, at Pirton Grange:

a) Did not administer prescribed medication to one or more residents referred to in Schedule A.

b) Incorrectly disposed of medication prescribed to one or more residents referred to in Schedule A without justification.

c) Incorrectly completed MAR charts for one or more residents referred to in Schedule A to confirm that the medication had been administered.

4) Your conduct at 3b and/or 3c was dishonest, in that you:

a) Knew you had not administered medication

b) Sought to mislead other that you had administered medication.

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

Background

Referral 1

The charges arose whilst Mr Chibzui was employed as a registered nurse by Latimer Court (the Home) Court between 3 January 2020 and 4 September 2020, after he was dismissed for gross misconduct.

On or around 21 June 2020 Mr Chibzui was at the Home to attend training, as opposed to working a shift. A colleague, [Witness 2], was attempting to calm Resident A who was agitated and shouting. Assistance was sought but was not forthcoming. Mr Chibzui entered Resident A's room and said loudly into his ear, in the presence of Witness 2, words to the effect of *"if you don't stop screaming, I will lock you in your room"*.

Referral 2

The charges arose whilst Mr Chibzui was employed by Pirton Grange Specialist Care Centre (the Centre) between 15 February 2021 and 5 January 2022, when he was dismissed.

It is alleged that on or around 11 May 2021, a nurse colleague, noted that Mr Chibzui had not completed MAR charts to confirm what medication had been administered during his shift; 14 dosages had not been signed for.

On 19 May 2021 it is alleged that Mr Chibzui confirmed in his reflective piece that he had administered medication but had not signed the MAR charts to confirm this. However, on 26 May 2021 at his disciplinary interview, Mr Chibzui accepted that he had not administered or properly disposed of medication, nor had he recorded this on the MAR chart.

On 9 December 2021 Mr Chibzui was re-assessed as competent in medication administration following a period of supervision and further competency training. However, on 22 December 2021 an incident occurred whereby a colleague, [Witness 4],

was administering medication and lost track of their medicine count. As a precaution, to be sure that they had not erroneously disposed of a tablet, [Witness 4] checked the bin to see if any tablets had been inadvertently disposed of. On checking the bin, [Witness 4] noticed 12 to 14 pots of medication. When checking the MAR charts, there were no records to suggest that any of the patients had refused their medication. [Witness 4] also noted that the MAR charts had been signed by Mr Chibzui indicating that they had been administered; there was no record of any medication being thrown away in the drug disposal book.

Decision and reasons on facts

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

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

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

- Witness 1: Clinical development nurse at the Home, at the relevant time

- Witness 2: Carer / Senior carer at the Home, at the relevant time.

- Witness 3: Healthcare assistant at the Home, at the relevant time

- Witness 4: Lead night nurse / registered nurse at the Centre, at the relevant time
- Witness 5: Clinical manager at the Centre, at the relevant time

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor, which included reference to the cases of: *Suddock v NMC* [2015] EWHC 3612 (Admin) in relation to the demeanour and credibility of witnesses; *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 in relation to dishonesty. The panel also considered all of the witness and documentary evidence provided by the NMC.

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

Charge 1

That you, a registered nurse:

- 1) On 21 July 2020, at Latimer Court, said to Resident A, “if you don’t stop shouting, I will lock you in your room”, or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the respective Witness statements and oral evidence of Witness 1, Witness 2 and Witness 3.

There was some confusion whether the alleged incident occurred on 21 June 2020 or 21 July 2020. Witness 1 could not be sure, Witness 2 was of the view that it was 21 June 2020 and Witness 3’s position was that it took place on 21 July 2020. The NMC’s position is that the incident occurred on 21 July 2020 and that the witnesses are confused on account that the incident occurred three years ago and they are no longer working at the Home.

The panel had regard to: Witness 1's Investigation Meeting Minutes dated 30 July 2020, and 10 August 2020; Witness 1's Investigatory Report dated 11 August 2020; Resident A's Care Plan (undated); as well as Mr Chibzui own reflective account form (undated). The panel noted that they all refer to the incident as having taken place on 21 July 2020.

The panel took account that Resident A was partially deaf and with reduced sight, was in the wheelchair and had a care plan. The panel was of the view that Resident A was a vulnerable patient. The panel took account of Witness 1's written statement in which she describes the alleged incident with Resident A. It noted that whilst Witness 1 did not witness the alleged incident directly, she was approached by Witness 2 and Witness 3 about Mr Chibzui's behaviour with Resident A:

'It was alleged by both carers [Witness 2] and [Witness 3] that were both present at the time...that Mr Chibzui went in and shouted at Resident A saying something along the lines of "shut up or I'll lock you in".

Resident A is stated to have responded saying "no" at which point Mr Chibzui is alleged to have repeated his comment and Resident A continued to say "no" in response. The panel noted in Witness 3's written statement that she states Mr Chibzui came into Resident A's room and *"bent down to the level of Resident A's face and ear and told them that if they did not stop shouting, they will lock Resident A in their room"*.

The panel noted that in the local Investigation Meeting minutes dated 30 July 2020, Mr Chibzui did not deny speaking to the Resident A on the day in question and accepted that he raised his voice, however he denied that there were other nurses/people in the room.

The panel considered the evidence of both Witness 2 and Witness 3 and determined that, although confused on the question of dates, they were reliable and credible in respect of what was said to Resident A. The panel therefore decided that on the balance of probabilities, this charge is found proved.

Charge 2a

That you, a registered nurse:

2) On 11 May 2021, at Pirton Grange:

a) Did not administer prescribed medication to one or more resident.

This charge is found proved.

In reaching this decision, the panel took into account of the written statement and oral evidence of Witness 5. It also had regard to Witness 1's local investigation interview notes dated 26 May 2021.

The panel took account of the local investigation interview of 26 May 2021, Mr Chibzui stated that he '*...totally forgot to administer the medication and forgot to destroy them afterward. I take full responsibility for my actions and apologise*'. The panel also noted that during the same interview when these alleged issues were put to him by Witness 1, he stated:

'I really apologise for the mistakes I have felt terrible about the mistakes I have made, I have had sleepless nights going over everything in my head...I take total responsibility'

The panel considered that on basis of the evidence before it and on Mr Chizbui's own admissions this charge is proved.

Charge 2b

That you, a registered nurse:

2) On 11 May 2021, at Pirton Grange:

b) did not complete one or more MAR charts to confirm that prescribed medication had been administered to residents.

The facts alleged in this charge are found proved.

As the panel has determined at 2a above that prescribed medication was not administered, the panel must necessarily conclude on the balance of probabilities that Mr Chibzui did not complete MAR charts to show that it was.

The panel determined that on basis of the evidence before it and on Mr Chizbui's own admissions, this charge is proved.

Charge 3a

That you, a registered nurse:

3) On 22 December 2021, at Pirton Grange:

a) Did not administer prescribed medication to one or more residents referred to in Schedule A.

This charge is found proved.

In reaching this decision, the panel took into account the written statement together with corresponding exhibits of Witness 4 and her oral evidence.

The panel noted that on 22 December 2021 Witness 4 discovered fourteen pots containing medication with another pot on top concealing tablets. The only conclusion that she came to was that the medication was not given to the residents.

Witness 4's written statement states:

'I was shocked by the discovery and concerned that these were not given to the residents. If there is a need to destroy medication, for instance if a resident is refusing to take it, we follow a protocol by taking the medication to the clinical room and destroying them in the drug disposal bin. An entry is then made in the drug disposal register to confirm why it has been destroyed. This is why I was shocked to find so many tablets in the medication trolley bin.'

Her witness statement goes on to say:

'I checked the MAR Chart for the day's entries and could see that every single

MAR chart was signed by Mr Chibzui to say that they had given medication for all residents. When I saw that the MAR chart was signed my concern was that the medication had not been given and the records had been falsified. Mr Chibzui would have been responsible for providing medication to eight residents on one unit and another eight residents on another unit. There were 14 individual pots altogether which meant that most of the residents had not been given their medication;

The panel also had sight of the images of the pots with medication as exhibited with Witness 4's statement.

At a local meeting on 24 December 2021 with Witness 5, Ms 2 and Mr Chibzui, questions were put to Mr Chibzui in relation to this alleged incident. The panel noted that he admitted that he had thrown away the medications and that he did not administer medication to all residents:

[Mr Chibzui]: Yes, it's my fault, I have thrown them, and I have signed for them, it is my fault. I will admit that I shouldn't have done that. I did find one pot with the 2 paracetamol, which I thrown but the rest yeah was me.

[Ms 2]: Did you administer any residents their medications?

[Mr Chibzui]: Not all of them, some had their medication, the ones that didn't I should have destroyed.

[Ms 2]: Why? Can you explain to me what this is? ([Ms 2] pointing to the pots of medication on the table)

[Mr Chibzui]: Basically, they refused, well not all refused, some were not available for their medication. I was rushing, Yeah, it's my fault, I haven't given to the residents'.

[Ms 2]: These residents here (pointing to the MAR charts and pots) all of [sic] these here, none of them have had their medication?

[Mr Chibzui]: No'

The panel noted that in Witness 4's oral evidence she said that on average one patient per shift might refuse to take medication, but for twelve to fourteen patients to refuse medication would be virtually impossible.

The panel decided that it preferred the evidence of Witness 4 and rejected the version of events Mr Chibzui provided at the local level meeting. The panel determined that was Mr Chibzui's responsibility to administer the prescribed medication on 22 December 2021 to Resident B, Resident C, Resident D, Resident E, Resident F, Resident G, Resident H, Resident I, Resident J, Resident K, Resident L and Resident M.

The panel decided that, absent any other explanation, it was more likely than not that Mr Chibzui failed to administer the prescribed medication on the day in question.

Charge 3b

That you, a registered nurse:

- 3) On 22 December 2021, at Pirton Grange:
 - b) Incorrectly disposed of medication prescribed to one or more residents referred to in Schedule A without justification.

This charge is found proved.

In reaching this decision, the panel took into account the written statements of Witness 4 and Witness 5 together with their corresponding exhibits and their oral evidence.

The panel took account of Witness 4's written statement in which she states that in the event the resident refuses to take medication, the medication needs to be disposed of in the drug disposal bin and disposal register completed and signed by two nurses to

confirm that the medication has been destroyed. Witness stated that medication pots were found in the bin bag designated for paper and cups.

The panel noted that on 24 December 2021 during a local internal investigation meeting, Mr Chibzui admits the following: "*I did break the policy as I should have taken them down and destroyed them*". The panel noted that in Witness 4's oral evidence she confirmed that there were only two entries in the Drug Disposal Record Book on 22 December 2021 and neither one of them was made by Mr Chibzui.

On the basis of the evidence before it and Mr Chibzui's own admission made at the local investigation interview on 24 December 2021, the panel find this charge is proved.

Charge 3c

That you, a registered nurse:

3) On 22 December 2021, at Pirton Grange:

c) Incorrectly completed MAR charts for one or more residents referred to in Schedule A to confirm that the medication had been administered.

This charge is found proved.

In reaching this decision, the panel took into account the written statements of Witness 4 and Witness 5 together with their corresponding exhibits and their oral evidence.

The panel noted Witness 4's written statement in which she states that she checked the MAR charts and noted that the MAR charts were signed by Mr Chibzui to say that medications for all residents had been administered. The panel had sight of the Administration and Storage of Medication Policy which was the prevailing rules at the Centre on how to complete MAR charts. The panel determined that Mr Chibzui would have been aware of them.

The panel noted the entries on 22 December 2021 on the MAR charts contained Mr Chibzui's initials relating to Resident B, Resident C, Resident D, Resident E, Resident F, Resident G, Resident H, Resident I, Resident J, Resident K, Resident L and Resident M.

The panel noted that during the local investigation meeting on 24 December 2021 with Witness 5 and Ms 2, Mr Chibzui confirmed that the initials were his. During this meeting, Mr Chibzui also stated that he had thrown the medication and signed for them and that the medication was not given to those residents.

The panel decided that on the basis of the contemporaneous evidence, Witness 4 and Witness 5's written statements and oral evidence, and to Mr Chibzui's own admissions at local level investigation interview, it is more like than not that Mr Chibzui incorrectly completed MAR charts confirming that the medication had been administered to Resident B, Resident C, Resident D, Resident E, Resident F, Resident G, Resident H, Resident I, Resident J, Resident K, Resident L and Resident M. The panel therefore find this charge proved.

Charge 4a and 4b

That you, a registered nurse:

- 4) Your conduct at 3 b and/or 3c was dishonest, in that you:
 - a) Knew you had not administered medication
 - b) Sought to mislead other that you had administered medication.

These charges are found proved.

In reaching this decision, the panel took into account the local investigation meeting notes dated 24 December 2021. During this meeting, Mr Chibzui made the following statements:

"Yes, it it's my fault, I have thrown them, and I have signed for them, so it is my fault. I will admit that I shouldn't have done that."

When the question was put to him by Ms 2 if he administered any medication to any residents, his response was the following:

"Not all of them, some had their medication, the ones that didn't I should have destroyed."

...

“Basically, they refused, well not all refused, some were not available for their medication. I was rushing, Yeah, it’s my fault, I haven’t given to the residents.”

Mr Chibzui was asked by Ms 2 to confirm if it was his initials on the MAR Charts on 22 December 2021, to which Mr Chibzui responded:

“yes”

Mr Chibzui was invited to explain as to why residents have not had their medication, to which he responded:

“As I said, 1 of these pots was found of the trolley for Resident K but the rest of them, they are from my shift, so basically, I did break policy as I should have taken them down and destroyed them.”

Mr Chibzui was invited to comment on the point that he signed the MAR charts to say that he has administered medication, his response was:

“Yes technically I should have destroyed and recorded them on the MAR chart.”

The panel considered the test for dishonesty as set out in the case of *Ivey*. It noted that Mr Chibzui had admitted that he knew that he was not giving medication to residents. The panel was of the view that Mr Chibzui understood that it was his conscious and deliberate decision to not administer the medication in question. Further, the panel determined that Mr Chibzui accepted that he put his signature on the MAR charts, which would indicate that medication was given. The panel determined that Mr Chibzui accepted that if the medication was not given it should have been destroyed and recorded as such.

The panel noted that Mr Chibzui had suggested that twelve to fourteen residents refused or were not available for their medications, the panel reject this explanation as implausible.

The panel determined that the element of concealment is also important to consider,

the way the medication was disposed and that had Witness 4 not lost her tablet she would not have checked the bin, the medication pots probably would not have been found.

The panel was mindful that whether Mr Chibzui's conduct was honest or dishonest is to be determined by applying the objective standards of ordinary decent people. The panel determined that ordinary people would deem that not giving the medication and signing it as given is dishonest.

The panel considered whether there could have been another innocent explanation for Mr Chibzui's conduct, which points away from him having behaved dishonestly, why twelve to fourteen residents' medication was not administered. The panel determined that this cannot be categorised as innocent or careless mistake and the explanations provided by Mr Chibzui were implausible. It decided that there is no other explanation for Mr Chibzui's conduct.

The panel therefore find charges 4a and 4b proved in their 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 Chibzui'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 Chibzui's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Kabasinkas invited the panel to take the view that the facts found proved amount to misconduct, in that Mr Chibzui's actions fell short of what would be expected of a registered nurse. Mr Kabasinkas directed the panel to specific paragraphs within 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code), where in the NMC's view, Mr Chibzui's actions amounted to misconduct, as follows: 1.1, 1.2, 1.4, 1.5, 2.5, 6.1, 7.3, 7.4, 10.1, 10.2, 10.3, 18.3, 18.4, 19.1, 19.4, 20.2 and 20.3.

Mr Kabasinkas referred the panel to *Roylance v GMC* [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. 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'.

Mr Kabasinkas submitted that shouting at a resident falls far below the expected standard of a registered nurse. He submitted that not administering medication, disposing them incorrectly and falsifying MAR charts amounts to misconduct. He submitted that it is the NMC position that the dishonesty Charge 4 is serious and it speaks for itself. He referred to Mr Justice Collins in *Nandi v GMC* [2004] EWHC 2317 on serious misconduct:

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. It is of course possible for negligent conduct to amount to serious professional misconduct, but the negligence must be to a high degree...'

And in relation to dishonesty:

'...dishonest conduct can very easily be regarded as serious professional misconduct, but conduct which does not amount in any way to dishonesty can constitute serious professional misconduct if it falls far short of the standard that is considered appropriate by the profession.'

Mr Kabasinkas also referred to the notes in Halsbury's Statutes to section 36 of the Medical Act of 1983, which gives some indication as to how the courts have over the years approached the question of serious professional misconduct.

Mr Kabasinkas submitted that Mr Chibzui's dishonest conduct can very easily be regarded as serious professional misconduct. He submitted that Mr Chibzui's dishonest conduct falls far short of a standard that is considered appropriate by the nursing profession.

Mr Kabasinkas invited the panel to take the view that the facts found proved amount to misconduct.

Submissions on impairment

Mr Kabasinkas 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. He referred to the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), in which Dame Janet Smith in her Fifth Shipman report, as endorsed by Mrs Justice Cox, sets out a test for impairment:

'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.'*

Mr Kabasinskas submitted that all four limbs of the test for impairment in *Grant* are engaged. He submitted that the panel may wish to consider whether Mr Chibzui's conduct can be remediated. Mr Kabasinskas submitted that in relation to Charge1, at local level Mr Chibzui admitted speaking in a loud voice but denied shouting. However, in a reflective account he stated that he shouted at Resident A as he was hearing impaired. Mr Kabasinskas submitted that this issue is not remediable and the incident has been minimised by the Mr Chibzui who has made limited concessions but failed to step out and realise how his conduct affected the resident and other colleagues. He submitted that although the Mr Chibzui has worked at a different care home and there is no evidence before us of incidents of a similar nature, there is limited insight on Mr Chibzui's part in relation to this incident. He submitted therefore, that the risk of repetition remains.

In relation to Charges 2 and 3, Mr Kabasinskas submitted that they are both interlinked and both charges relate to the administration of medication and not completing MAR charts. He submitted however, that in Charge 3 Mr Chibzui went even further and concealed the evidence of his misconduct.

Mr Kabasinskas submitted that there we have no evidence of any insight from Mr Chibzui apart from admissions at the local level. However he has not worked since and there is no evidence to show that he has strengthened his practice. Mr Kabasinskas submitted that after May 2021 he was put on training in December 2021 and was assessed and deemed competent and in December 2021 to prescribe medications. However, he submitted that there are no training or work records from the Mr Chibzui to show that he has addressed these areas of concern or strengthened his practice in these areas of practice.

In relation to Charge 4, Mr Kabasinskas submitted that dishonesty is serious and very difficult to remediate. He submitted that the concern is attitudinal in nature. Having regard to all of the evidence Mr Kabasinskas submitted that a risk remains to the health and safety of the public, as Mr Chibzui has not demonstrated that he has learned from the incident.

Mr Kabasinskas submitted that honesty is a fundamental tenet of the nursing profession and to be dishonest in and of itself would and should lead to a finding of impairment in this case, in order to uphold standards and maintain public confidence in the profession.

Mr Kabasinskas submitted that the findings are so serious and not only raises concerns about the Mr Chibzui's professional standards, but also to his lack of trustworthiness and professionalism. He submitted that restrictive action needs to be taken and invited the panel to make a finding of current impairment in this case on the ground of public protection and also otherwise in the wider public interest.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Nandi, Grant, General Medical Council v Meadow* [2007] QB 462 (Admin); *Cohen v GMC* [2008] EWHC 581 (Admin); *Holton v GMC* [2006] EWHC 2960 (Admin); *Sharma v Solicitors Regulation Authority* [2010] EWHC 2022 (Admin); and *Parkinson v NMC* [2010] EWHC 1898 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code in making its decision. It also had regard to the case of *Roylance* 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.'*

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

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

1.5 respect and uphold people's human rights

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:

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

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

18.4 take all steps to keep medicines stored securely

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

To achieve this, you must:

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

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that shouting at a resident the panel noted in Mr Chibzui's reflective piece he stated '*I completely understand that it was unprofessional and hurtful...the way I acted has managed to affect a vulnerable resident who did not deserve that*'. The panel determined that Resident A was vulnerable and Mr Chibzui's actions negatively impacted on junior colleagues. Therefore, Mr Chibzui's conduct that day amounted to a serious breach of the Code.

Regarding the medication administration, the panel considered that *'throwing'* away fourteen rounds of medication, amounting to at least 36 separate tablets in a plastic bin bag but still signing records to show that they had been administered, amounted to a serious breach of the Code. It therefore considered that this act fell seriously short of the conduct and standards expected of a registered nurse.

At the local investigation Mr Chibzui stated *"yes it's my fault I have thrown them and I have signed for them so it's my fault. I admit that I should not have done that..."*. The panel determined that Mr Chibzui therefore admitted at the local investigation that he had not administered medication to fourteen residents. The panel determined that by signing the MAR charts other professionals would believe that the medication had been administered.

The panel determined that Mr Chibzui's actions by not administering the medication and recording them as administered, independently of and alongside the dishonesty found proved, did fall seriously short of the conduct and standards expected of a nurse. The panel therefore found that the charges individually and collectively amounted to misconduct. The panel noted Mr Chibzui's local level admission that he did not administer the medication however the panel determined this is indicative of Mr Chibzui's improper behaviour and conduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Chibzui'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 all four limbs of Dame Janet Smith's test for impairment are engaged in this case. The panel finds that patients were put at risk of harm as a result of Mr Chibzui's misconduct. Mr Chibzui's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel was satisfied that the misconduct contained in Charges 1 to 3 in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Chibzui has taken steps to strengthen his practice. The panel took into account that Mr Chibzui had successfully undertaken training on medication management and procedures within the Home in December 2021. However, the panel noted that he had signed for 14 patients' medication on the MAR charts and yet went on to throw away 14 patients' medication which was at least 36 tablets shortly after he completed his training. The panel determined this to be an aggravating feature and that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the ground of public protection.

The panel determined that Mr Chibzui's dishonesty is not easily remediable. It has not seen sufficient evidence of remediation or insight, nor that he has addressed the dishonesty in this case. The panel determined that it is likely that the conduct found proved would be repeated.

The panel noted in a reflective form, Mr Chibzui stated:

'The panel I haven't had the chance to practice anymore. I was dismissed and whilst I tried to work in the same care system, I have been denied due to the case being investigated by NMC. I would like the chance to prove I have learnt something from this situation and that I grew in my profession.'

The panel noted that Mr Chibzui blames the NMC for the position he alone has found himself in. The panel determined that there was insufficient evidence before it to show that Mr Chibzui has demonstrated sufficient insight into his behaviour.

The panel bore in mind that the overarching objective of the NMC which is the protection of the public. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because of the serious nature and dishonesty element of Charge 4. 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 Mr Chibzui's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Chibzui'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 Chibzui off the register. As a result of this order the NMC register will show that Mr Chibzui 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, the submissions of Mr Kabasinkas and it had careful regard to the Sanctions Guidance (SG) published by the NMC.

Submissions on sanction

Mr Kabasinkas referred the panel to the NMC SG and submitted that it is the NMC's position that the serious misconduct in this matter warrants nothing less than a striking-off order. He submitted that having found Mr Chibzui's fitness to practise impaired, the next question for the panel is to decide on sanction, considering the public interest, which encompasses three separate strands, namely the protection of patients and

others, the maintenance of public confidence in the professions and the regulatory body and the declaring and upholding of standards of conduct and behaviour.

Mr Kabasinskas submitted that the aggravating features in this case were: Mr Chibzui's lack of insight and evidence of remediation in relation to Charge 2 and Charge 4; vulnerable residents put at risk of harm on at least two occasions in relation to Charge 1 and Charge 3; two instances of similar incidents of misconduct in May 2021 and December 2021 and dishonesty in that he failed to correctly sign MAR charts and administer medication as prescribed. As a mitigating factor, Mr Kabasinskas submitted that the panel may wish to take into account Mr Chibzui's admissions at an early stage in relation to Charge 2 and Charge 3.

Mr Kabasinskas submitted that the dishonesty in this case is very serious. He submitted that the SG states that a nurse's ability to stay on the record would be questioned if they breached the professional duty of candour especially if it could cause harm to patients and vulnerable victims. He further submitted that SG states that the person who acted dishonestly will always be removed from the register. He acknowledged that it is a matter for the panel to decide which sanction to impose.

Mr Kabasinskas submitted that a nurse who would shout at a resident, not administer medication and dishonestly dispose of medication, is fundamentally against the duties of a nurse and incompatible with remaining on the register. He submitted that by Mr Chibzui not administering medication to more than one registrant and signing the MAR charts to show that the medication was administered, some of which was strong medication, could have had a detrimental effect on the residents. Mr Kabasinskas submitted that these features should be taken into account by the panel when considering sanction in this matter. He submitted that the threshold for striking-off the register has been reached.

Mr Kabasinskas invited the panel to conclude that taking no action or imposing a caution order is inappropriate in this case, given the panel's findings. He submitted that to take no action or to impose a caution order would not be sufficient to uphold the public interest in this matter as the case is simply too serious.

In considering a conditions of practice order, Mr Kabasinkas submitted that it is not remotely applicable in this case, as these issues are not only clinical but attitudinal in nature which flow from a serious incident. Further, he has not produced any evidence to demonstrate that he has strengthened his practice. He submitted that it would serve no practical purpose for the to impose a suspension order.

Mr Kabasinkas reiterated that the threshold for striking-off has been met in this case and invited the panel to impose a striking-off order in this case.

The panel accepted the advice of the legal assessor who referred to the SG; *Mojjueh v NMC* [2015] EWHC 1999 (Admin) and *Parkinson v NMC* [2010] EWHC 1898 (Admin).

Decisions and reasons on sanction

Having found Mr Chibzui'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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mr Chibzui has not provided any insight, remorse or remediation into his misconduct;
- The vulnerability of the residents who were involved in each incident;
- Risk of harm to a significant number of people involving the omission of at least 36 medications.

The panel could not identify any mitigating features to be considered in this case.

The panel first considered whether to take no action or to refer the case to mediation but concluded that this would be inappropriate in view of the seriousness of the case.

The panel decided that it would be neither proportionate nor in the public interest to take no action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Chibzui'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 Chibzui'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 Mr Chibzui's registration would be a sufficient and appropriate response. The panel was of the view that Mr Chibzui has not provided sufficient insight into his failings and has not demonstrated remorse or remediation into the regulatory concerns against him. The panel is of the view that there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case. The panel was of the view that the misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Chibzui's registration would not adequately address the seriousness of this case and would not protect the public or meet the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 reminded itself of the serious nature of this incident and of Mr Chibzui's misconduct in this matter. It had considered his actions to be a significant departure from the standards expected of a registered nurse. The panel considered Mr Chibzui's behaviour to be demonstrative of an attitudinal problem. The panel determined that his conduct was completely contrary to all that nursing stands for.

The panel found that Mr Chibzui had offered limited insight, no remorse or remediation in respect of his conduct, despite having a substantial amount of time to reflect on these incidents. The panel could not be certain of the future risk of repetition and significant risk of unwarranted harm to residents in Mr Chibzui's care, should he be permitted to practise as a registered nurse at some point in the future. The panel decided that the seriousness in this case warrants a stronger sanction. The panel therefore 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 was of the view that the findings in this particular case demonstrate that Mr Chibzui's actions were so serious, and to allow him to remain on the NMC register as a registered nurse would undermine public confidence in the nursing profession and in the NMC as a regulatory body. With this in mind, the panel concluded that the only course of action available to it was to impose a striking-off order. It considered that any other sanction in this case would be wholly inappropriate given this panel's findings.

The panel noted that the SG states that the courts have supported decisions to strike off healthcare professionals where there has been a lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills.

Taking account of the above, the panel determined that Mr Chibzui's actions were not merely serious departures from the standards expected of a registered nurse but serious breaches of the fundamental tenets of the profession, therefore, it was deemed fundamentally incompatible with him remaining on the NMC register. In the panel's judgment, to allow someone who had behaved in this way to maintain registration with the NMC would undermine public confidence in the nursing profession and in the NMC as a regulatory body. The panel determined that Mr Chibzui's conduct would be regarded as deplorable by fellow practitioners.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on Mr Chibzui both professionally and personally. The panel was satisfied that the need to protect the public interest outweighs the impact on Mr Chibzui in this regard.

Considering all of these factors, the panel determined that the appropriate and proportionate sanction is a striking-off order. Having regard to the matters it identified, including the effect of Mr Chibzui's actions in damaging public confidence in the nursing profession, the panel has concluded that nothing short of this would be sufficient in this case.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period or the conclusion of any appeal, 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 Chibzui's own interest.

The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Kabasinkas. He submitted that an interim suspension order for a period of 18 months should be imposed by the panel. He submitted that given the panel's decision of strike off, it is necessary to ensure that Mr Chibzui is not permitted to practise without any restriction during 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. In reaching the decision to impose an interim order, the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive 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 on the substantive order.

The panel took into account that in the event of an appeal the case may not be heard by the courts for some considerable time. The panel therefore imposed an interim suspension order for a period of 18 months.

The panel is satisfied that the order is proportionate and properly balances the need to protect the public and the public interest with the effects on Mr Chibzui.

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

That concludes this determination.

This will be confirmed to Mr Chibzui in writing.