

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

**Substantive Hearing
Tuesday 2 May 2023 – Friday 5 May 2023**

Virtual Hearing

Name of Registrant: Alison Bradwell

NMC PIN 15F1753E

Part(s) of the register: Sub part 1 RNA, Registered Nurse - Adult (21 September 2015)

Relevant Location: Manchester

Type of case: Misconduct

Panel members: Avril O'Meara (Chair, Lay member)
Melanie Lumbers (Registrant member)
Brian Stevenson (Lay member)

Legal Assessor: Marian Killen

Hearings Coordinator: Zahra Khan

Nursing and Midwifery Council: Represented by Rebecca Paterson, Case Presenter

Miss Bradwell: Not present and not represented at the hearing

Facts proved: Charge 1

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Bradwell was not in attendance and that the Notice of Hearing letter had been sent to Miss Bradwell's registered email address by secure email on 30 March 2023.

Ms Paterson, 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 venue of the hearing, that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Bradwell's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Miss Bradwell

The panel next considered whether it should proceed in the absence of Miss Bradwell. It had regard to Rule 21 and heard the submissions of Ms Paterson who invited the panel to continue in the absence of Miss Bradwell.

Ms Paterson referred the panel to an email dated 9 December 2022 whereby Miss Bradwell's previous legal representative confirmed that he no longer represents her. Ms

Paterson informed the panel that there has been no response from Miss Bradwell to emails and a telephone call from the NMC.

Ms Paterson also submitted that as there had been no engagement at all by Miss Bradwell with the NMC in relation to these proceedings, there was no reason to believe that an adjournment would secure her 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*'.

The panel has decided to proceed in the absence of Miss Bradwell. In reaching this decision, the panel has considered the submissions of Ms Paterson and the advice of the legal assessor. It has had particular regard to the factors set out in *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Bradwell;
- Miss Bradwell has not engaged with the NMC and has not responded to any of the correspondence sent to her about this hearing;
- There is no reason to suppose that adjourning would secure Miss Bradwell's attendance at some future date;
- Two witnesses are due to attend today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charge relates to an event that occurred in January 2021;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong public interest in the expeditious disposal of the case.

The panel acknowledged that there is some disadvantage to Miss Bradwell in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Miss Bradwell at her registered address, she has made no response to the allegations. Miss Bradwell will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Bradwell's decisions to absent herself the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Redactions

At the outset of the hearing the panel was provided with a redacted statement and exhibit bundle of Witness 1 by Ms Paterson. She informed the panel that redactions were made after a discussion with the independent legal assessor and that they both considered some of the material to be potentially prejudicial, hence the need to redact it.

Ms Paterson submitted that panels were professional bodies and could put potentially prejudicial material out of their minds.

The panel heard and accepted the advice of the legal assessor and determined it could assess the case fairly.

Application to allow Witness 2 to see evidence exhibited by Witness 1

Ms Paterson asked the panel for permission to provide Witness 2 with an extract from Moss Cottage Nursing Home ('the Home')'s investigation report which formed part of Witness 1's exhibit. Ms Paterson submitted that Witness 2 could have access to the background to see whether it was an accurate summary of the telephone conversation that Witness 1 said they had with Witness 2 on 16 January 2021.

The panel accepted the advice of the legal assessor.

The panel decided not to allow Witness 2 to have access to that information. The panel was of the view that it may be prejudicial as this was information recorded by Witness 1 in the investigation report and it could have the effect of leading Witness 2. The panel noted that Ms Paterson could ask Witness 2 questions directly about any telephone conversations she had with Witness 1 around the time of the incident.

Therefore, the panel denied the application.

Details of charge

'That you, registered nurse:

- 1. On 15 January 2021, whilst assisting Colleague A check a controlled drug, attempted to steal an ampoule of Midazolam. [PROVED]*

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

Background

The charges arose whilst Miss Bradwell was employed as a registered nurse by Moss Cottage Nursing Home ('the Home').

Miss Bradwell was referred to the NMC on 18 January 2021 by Witness 1 at the Home. At the time of the concerns raised in this referral, Miss Bradwell was working as a care assistant. Miss Bradwell commenced her employment at the Home as a registered nurse on 21 January 2020. In February 2020 Miss Bradwell was moved to a care assistant role undertaking night shifts.

The alleged facts are as follows:

On 15 January 2021, Witness 2 asked Miss Bradwell to check a controlled drug ('CD') with them for a resident who was on end-of-life care. Witness 2 says that they drew the prescribed minimum dose of 2.5 mg of Midazolam from the 10mg/2ml ampoule and they asked Miss Bradwell to dispose of the remaining 7.5mg/1.5ml in the 'doom kit' in the CD cabinet. Witness 2 says that they observed Miss Bradwell hiding something in her left hand. Witness 2 asked Miss Bradwell what it was and she twice replied "*nothing*". Witness 2 then asked Miss Bradwell to open the palm of her hand and Witness 2 noticed that Miss Bradwell was holding the ampoule of the remaining Midazolam.

Witness 2 says that Miss Bradwell said to them, "*I hope you are not thinking I was trying to take this medication, why would I and what would I use it for.*" Witness 2 says that they replied, "*I don't know Alison [Miss Bradwell] you know what you were doing*". Witness 2 reports that they removed the medication and disposed of it themselves. Witness 2 reported her concerns to Witness 1. The following morning, Miss Bradwell was suspended, pending an investigation and a referral was made to the police. The police subsequently took no further action.

Witness 1 says that they also referred the matter to the NMC. Witness 1 interviewed Miss Bradwell on 18, 19 and 20 January 2021, and again by the Regional Manager on 4 February 2021. Throughout these interviews, Miss Bradwell denied that she was trying to conceal the remainder of the CD. Witness 1 says that Miss Bradwell maintained that her gloves were too big, the ampoule had got caught in/stuck to the left glove when Miss Bradwell attempted to drop it into the doom kit. Miss Bradwell said she was not aware that this had happened until she felt something stuck on her glove when tying her apron.

Decision and reasons on facts

In reaching its decision on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Paterson.

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

The panel is aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Registered Home Manager at the Home
- Witness 2: Registered Nurse at the Home

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

Charge 1

“That you, registered nurse, on 15 January 2021, whilst assisting Colleague A check a controlled drug, attempted to steal an ampoule of Midazolam.”

This charge is found proved.

In reaching this decision, the panel heard live evidence from Witness 1 and Witness 2. The panel also considered the witness statements and exhibits of Witness 1 and Witness 2 including the minutes of the Home’s investigation meetings with Miss Bradwell and Witness 2’s written statement dated 16 January 2021. The panel was also provided with photographs which included the controlled drugs cupboard containing a large doom kit, and an ampoule of Midazolam for sizing reference.

The panel took into account the minutes of the investigation meeting on 18 January 2021 where Miss Bradwell confirmed that she was on shift on 15 January 2021 and was present with Witness 2 while they (Witness 2) drew up and administered a controlled drug for a resident. Miss Bradwell also stated that she was aware of what a controlled drug is. The panel was satisfied that the alleged incident occurred on 15 January 2021 on the basis of the account provided by Miss Bradwell at the investigation meetings, Witness 2’s evidence, and the Investigation Report dated 21 January 2021. Further, the panel had sight of the entry in the controlled drug register for Midazolam dated 15 January 2021 at 22:50, signed by Miss Bradwell and Witness 2. Therefore, the panel was satisfied that Miss Bradwell was present with Witness 2 on 15 January 2021 when they drew up and administered Midazolam, a controlled drug.

The panel first considered the minutes of the investigatory meetings with Miss Bradwell held between 16 January 2021 and 4 February 2021 in which Miss Bradwell gave her account of the incident. Miss Bradwell denied that she had attempted to take the ampoule of Midazolam. Miss Bradwell described how she *“opened the CD cupboard, got the controlled drug disposal kit and shook the amp to get rid of the drug, the nurse then gave*

me an apron and I tied it then realised I had the amp stuck to my glove on my hand.” Miss Bradwell also stated that *“there wasn’t much left in it”* and *“I didn’t shake it much”*.

Miss Bradwell stated, *“I didn’t conceal anything at all, it got stuck on my large gloves”*. During the investigatory meeting on 19 January 2021, when describing how she became aware of the ampoule in her hand, Miss Bradwell said *“I took an apron, put it over my head, put my hand behind me to tie the apron and that’s when I felt something stuck on my glove”*.

The panel next considered the evidence of Witness 2. In their live evidence, Witness 2 stated that their suspicions had initially been raised because Miss Bradwell had appeared to dispose of the ampoule and close the doom kit and controlled drug cupboard in a very short space of time. Witness 2 told the panel that *“I turned to get the tray and when I turned round Miss Bradwell was locking the cupboard with her right hand.”* Witness 2 told the panel that Miss Bradwell could not have disposed of the medication in that short time. Given the amount of medicine left in the ampoule, Witness 2 told the panel that it would have taken at least 30 seconds to dispose of it.

Witness 2 said that they noticed that Miss Bradwell had her left hand closed in a fist and had asked Miss Bradwell twice what she had in her left hand. Miss Bradwell had replied *“nothing”* both times and had put her closed left hand behind her back. Witness 2 said that it was only when they expressly told Miss Bradwell to open her hand that Miss Bradwell brought it forward and opened it. Witness 2 stated that the ampoule was in the palm of Miss Bradwell's hand, and she said to Witness 2 *“look it's stuck in the gloves”*. Witness 2 said that she took the ampoule from Miss Bradwell and the Midazolam had not been discharged from it. Witness 2 said that she then disposed of the live medicine and the ampoule in the doom kit. When questioned further about the incident Witness 2 stated that they believe that Miss Bradwell had not taken adequate steps to empty the ampoule and that, by twice denying that she had anything in her hand, closing her fist and placing it behind her back, she was attempting to conceal the ampoule from Witness 2.

Witness 2 stated that they did not hand Miss Bradwell an apron after they had drawn up the Midazolam. Witness 2 said that they had both put aprons and gloves on before starting the procedure. Witness 2 stated that Miss Bradwell had only put her left hand behind her back and disputed Miss Bradwell's evidence that she was tying her apron.

The panel found Witness 2's account of events to be more credible than the explanations offered by Miss Bradwell in the investigation meeting minutes.

The panel accepted Witness 2's evidence that Miss Bradwell could not have disposed of the ampoule and the remaining Midazolam in the brief time Witness 2's attention was elsewhere. The panel noted that the disposal involved unscrewing the doom kit lid, shaking the remaining liquid from the ampoule into the doom kit, disposing of the ampoule, re-screwing the lid, and locking the cupboard. The panel was of the view that this could not have been completed in the very short time that Witness 2's attention was elsewhere.

The panel considered that this procedure would have required Miss Bradwell to use both hands and that due to the size and sharp edge of the ampoule, it would have been obvious to her when she was re-screwing the lid on the doom kit that the ampoule was still in her hand.

The panel found Witness 2's evidence that they had put on gloves and aprons at the start of the procedure more credible than Miss Bradwell's evidence which suggested that she had been given an apron part way through the procedure. The panel also noted the evidence of Witness 1 who stated that aprons were not kept in the clinic room. Witness 1 also stated that not wearing gloves and aprons would have been inconsistent with the Home's Personal Protective Equipment ('PPE') policy during the pandemic.

Although Miss Bradwell said that she was trying to tie her apron, which was why she had moved her left hand behind her, the panel preferred Witness 2's evidence that Miss Bradwell had moved her hand behind her only when she was asked what was in it. The

panel accepted Witness 2's evidence that Miss Bradwell was attempting to conceal the ampoule. The panel noted that Witness 2 was standing right next to Miss Bradwell in the small clinical area and could see what was happening behind her back.

The panel also noted that when asked what was in her hand by Witness 2, Miss Bradwell had twice replied "*nothing*" and was reluctant to bring her hand forward. It was only when Witness 2 demanded that she open her hand that she said that the ampoule had been stuck to her glove. Witness 2 took the ampoule from Miss Bradwell to dispose of it. The panel was satisfied that the ampoule still contained most of the Midazolam, which was not consistent with Miss Bradwell having tried to dispose of it in the doom kit.

The panel reminded itself of Ms Paterson's submissions where she referred the panel to the principles set out in *Ivey vs Genting Casinos [2017] UKSC 67* and to section 1 of the Theft Act 1968. Ms Paterson informed the panel that the definition of the word 'steal' included dishonestly appropriating property with the intention of permanently depriving the owner of it. Ms Paterson submitted that the panel should first consider this subjective test and determine what was Miss Bradwell's state of mind or belief at the time of the incident. Having determined that, the panel should then consider if Miss Bradwell's actions were dishonest by the standards of ordinary decent people.

The panel also reminded itself the advice of the legal assessor.

The panel determined that Miss Bradwell was aware that she had not disposed of the Midazolam and ampoule. The panel was satisfied that Miss Bradwell had attempted to conceal the ampoule in her hand. The panel considered whether there was an alternative explanation such as an innocent mistake which would account for Miss Bradwell's behaviour, and it could not find one. The panel was satisfied that her behaviour was deliberate rather than careless or reckless.

The panel also considered whether Miss Bradwell's conduct was dishonest by the standards of the ordinary and decent person. The panel determined that the ordinary

decent person would consider Miss Bradwell's behaviour in attempting to steal the ampoule containing a controlled drug was dishonest.

The panel was satisfied that Miss Bradwell had attempted to steal the ampoule and that there was no credible alternative explanation for her behaviour.

The panel therefore found charge 1 proved.

Additional material

When handing down its decision on the facts, the Chair informed Ms Paterson that it had been alerted to potentially prejudicial material being included within the background section of the draft decision which it had been reviewing for accuracy. The Chair noted on the record that the decision on facts had already been reached without any of this material being taken into account and indicated that legal advice had been provided.

The legal assessor confirmed on the record that the panel had already reached its decision on the facts and that the material had no bearing on its decision. She repeated the legal advice she had given.

Ms Paterson was provided with an opportunity to consider the matter and was provided with a copy of the potentially prejudicial material as well as a copy of the decision on facts. After consideration of the material, Ms Paterson submitted that she had no concerns and that it did not impact on the fairness of the hearing as professional panels regularly have to put such material out of their minds.

Application to allow the panel to be provided with a determination from a previous substantive hearing of a Fitness to Practice Committee

Ms Paterson invited the panel to accept at the misconduct and impairment stage, a copy of a previous regulatory decision which it was submitted, was relevant to insight and risk of

repetition in view of the similarity of an allegation relating to dishonesty. She submitted that it is appropriate for the panel to have all this information before it prior to considering misconduct and impairment should the panel find misconduct in relation to the charge it has found proved. She submitted that she would be referring the panel to the relevant pages in the decision rather than redacting it.

The legal assessor advised the panel that it should not take this decision into account at this stage and that it was more appropriate to consider it at sanction stage.

In summary, the legal assessor advised that:

1. Miss Bradwell was entitled to a fair hearing;
2. The panel was independent and tasked with reaching a decision on current impairment;
3. The panel should reach its decision on insight, remediation and risk of repetition based on the material before it and not on the contents of a previous determination; and
4. There was a risk that the contents of the decision could be prejudicial to the registrant.

After the panel had retired to consider the submissions and legal advice, it was informed that Ms Paterson had identified an authority in support of her submission which had not previously been brought to the attention of the panel or legal assessor.

The panel heard further submissions from Ms Paterson in relation to the case of *Mirtorabi v NMC [2017] EWHC 476*. She referred the panel to Mrs Justice Lang's decision at paragraph 25 as follows:

"the appellant did not, and indeed could not, argue that the CCC [Conduct and Competence Committee] was not entitled to the appellants regulatory history when it was considering whether her fitness to practise was impaired and the appropriate sanction."

and at paragraph 26:

"in my judgement, the CCC was entitled to take the previous disciplinary decisions into account in the way in which it did when assessing the extent of the appellants impairment and the appropriate sanction".

The legal assessor provided further advice in light of this decision being brought to her attention. In summary, she advised the panel that Miss Bradwell had a legal representative in that case, it had been conceded by the representative that the CCC was entitled to see the regulatory history and an agreed note had been furnished to the CCC. She advised that the decision of the High Court confirmed that the panel could consider this material at the impairment stage. She advised that the panel should also consider fairness in reaching its decision.

The panel accepted the further advice of the legal assessor.

The panel also had regard to the NMC Impairment Guidance. The panel determined to accede to the application but, in the interests of fairness, it would reach its decision on misconduct and if misconduct was found proved, then it would move forward to the impairment stage and admit the previous regulatory decision.

The panel therefore allowed Ms Paterson's application.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Bradwell'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, Miss Bradwell'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.*'

Ms Paterson invited the panel to take the view that the facts found proved amount to misconduct. Ms Paterson invited the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) in making its decision. Ms Paterson referred the panel to paragraphs 18 and 20 of the Code.

Ms Paterson also referred the panel to the case of *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34 and submitted that, for all professionals, a finding of dishonesty lies at the top end of the spectrum of gravity of misconduct. Ms Paterson identified the specific, relevant standards where Miss Bradwell's actions amounted to misconduct. She submitted that charge 1 does amount to serious misconduct.

In relation to misconduct alone, Ms Paterson submitted that the attempt to steal an ampoule of Midazolam amounts to dishonesty. She submitted that paragraph 18 of the Code requires nurses to handle medicines within the limits of the law and other relevant policies, guidance, and regulations. She submitted that it also requires nurses (at paragraph 18.4) to take all steps to keep medicines stored securely. Therefore, she submitted that the factors found proved amount to a breach of the Code. She submitted that, in this case the context is particularly serious as Miss Bradwell was meant to be checking and signing against the administration of a controlled drug which was a sedative, and, as Witness 2 said in their evidence, can be dangerous.

Ms Paterson submitted that, although at the time of the incident Miss Bradwell was working as a care assistant, the context raises fundamental questions about Miss Bradwell's professionalism and her honesty and integrity. She also submitted that dealing with medication is a core area of a nurse's role and that Miss Bradwell would have known that she was there acting as a safeguard for the proper administration and handling of the Midazolam.

Further, Ms Paterson submitted that not only would Miss Bradwell have succeeded in stealing the ampoule of Midazolam if not stopped by Witness 2, she would also have signed for the disposal of a controlled drug which she knew had not in fact been properly disposed of.

Ms Paterson submitted that the facts as found proved do amount to a serious departure from expected standards of conduct and behaviour and therefore amounts to serious professional misconduct.

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

Decision and reasons on misconduct

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

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

'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:

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

18.4 take all steps to keep medicines stored securely

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times, 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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was satisfied that the above paragraphs of the Code are relevant and engaged in this context.

The panel noted that Miss Bradwell had improperly recorded that she had disposed of the controlled drug when she had not. The panel determined that although Miss Bradwell's misconduct is a single act, it involved the attempted theft of a controlled drug and therefore includes dishonesty which is at a higher end of the spectrum of seriousness and is sufficiently serious to amount to misconduct.

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

Submissions on impairment

Ms Paterson 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. She referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Paterson provided the panel with a previous decision of an NMC Fitness to Practise Committee, dated 18 November 2022. She submitted that it would be appropriate for the panel to have the entire document should it wish to. However, she informed the panel that

she had redacted the decision out of an abundance of caution and that she would refer the panel to the relevant and specific parts of the document.

Ms Paterson submitted that Miss Bradwell is currently impaired on the grounds of public protection and public interest.

Ms Paterson submitted that, when considering the question of impairment, the panel may wish to look to the guidance set out by Dame Janet Smith in her Fifth Shipman report and that the panel may find that all of the limbs are engaged.

Ms Paterson submitted that Miss Bradwell's actions had the potential to put patients at unwarranted risk of harm. She submitted that Miss Bradwell was there to check the administration of a controlled drug. Further she submitted, given that her focus was at that time on stealing an ampoule of Midazolam, it was shifted away from ensuring the process of safe and effective administration of a controlled drug. She submitted that the purpose of Miss Bradwell's attempt to steal the Midazolam was unknown, but noted that there are specific regulations in place in relation to controlled drugs. Ms Paterson submitted that Witness 2 has informed the panel that Midazolam is a sedative and can be dangerous, and so there would have been within the Home a live controlled drug which had not been disposed of and that as a result, patients were potentially at unwarranted risk of harm.

Ms Paterson submitted that Miss Bradwell's actions as found proved have brought the nursing profession into disrepute and breached one of its fundamental tenets. She submitted that Miss Bradwell has acted in a way which calls into question her integrity. Ms Paterson submitted that when considering whether Miss Bradwell is liable to act in such a way in the future, it is worth noting that dishonest conduct is indicative of an underlying attitudinal concern and such concerns are more difficult to put right.

Ms Paterson submitted that the previous panel's findings are relevant at this point. She informed the panel that Miss Bradwell was the subject of a substantive hearing between

22 February and 18 November 2022 and was found to have been dishonest on a separate occasion.

Ms Paterson referred the panel to that decision and submitted that Miss Bradwell informed a colleague that a patient had received their medication when in fact they had not. That panel found her conduct to have been dishonest in that she had attempted to cover up her error.

Further, Ms Paterson submitted that although on the face of it the circumstances and context are different both the previous incident and the incident before the panel are instances of dishonesty and relate to concealment. She submitted that this panel is now in a position to rightfully conclude that this is not an isolated instance of dishonesty. She further submitted that on both occasions Miss Bradwell's misconduct involved her putting her own interests above the interests of patients.

Ms Paterson submitted that the relevance of the previous panel's findings is that it goes to the likelihood of repetition of similar conduct in the future. She submitted that the panel will likely consider whether there is evidence of insight and/or remediation.

She submitted that Miss Bradwell is of course entitled to deny the allegation and her exercising that right at the local investigation level should not be held against her. She submitted that the panel will also bear in mind that it can be difficult to demonstrate remediation where a finding of dishonesty has been made.

Ms Paterson informed the panel that at the previous substantive hearing, the previous panel had noted that Miss Bradwell had shown minimal insight and did not demonstrate personal reflection or remorse. She submitted that it is of note that despite the previous hearing being concluded in November of last year, there is no evidence before this panel that Miss Bradwell appreciates the seriousness of dishonesty, nor the risks associated with her misconduct and the impact that it has on the profession as a whole.

Ms Paterson submitted that as a result there is a risk of repetition of Miss Bradwell acting in a similar manner in future. Ms Paterson therefore submitted that, when answering the question laid out in the NMC's guidance on impairment: "*Can the nurse, midwife or nursing associate practise kindly, safely and professionally?*", she submitted that the panel cannot be satisfied that Miss Bradwell can.

In light of the above, Ms Paterson submitted that Miss Bradwell's fitness to practice is currently impaired on public protection grounds because she poses an ongoing risk to patient safety. She submitted that members of the public would also be very concerned if a finding of impairment were not made. She submitted that a finding of current impairment is required to maintain public confidence in the profession and to uphold proper professional standards and conduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *CHRE v NMC and Grant* [2011] EWHC 97 and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Decision and reasons on impairment

The panel went on to decide if as a result of the misconduct, Miss Bradwell'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 and to maintain professional boundaries. 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* [2011] EWHC 97 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 are relevant in this case.

The panel found that patients were put at unwarranted risk of harm and that there was potential to cause serious harm as a result of Miss Bradwell's misconduct had Witness 2 not discovered that Miss Bradwell was attempting to steal a controlled drug. The panel determined that in Miss Bradwell's attempt to steal a controlled drug, she has acted dishonestly. Therefore, the panel was of the view that Miss Bradwell's misconduct breached the fundamental tenets of the nursing profession and brought its reputation into disrepute.

The panel noted that Miss Bradwell had not engaged with the NMC process, and it has not received anything from her for this hearing. Regarding insight, the panel considered that Miss Bradwell has not demonstrated an understanding of how her actions put patients at unwarranted risk of harm nor an understanding of why what she did was wrong and how this impacted negatively on the nursing profession. The previous panel found Miss Bradwell to have had "*minimal insight*" into her misconduct at that hearing.

The panel noted that it would be difficult for Miss Bradwell to show strengthened practice in relation to dishonesty. However, the panel did not have evidence before it as to whether Miss Bradwell had taken any steps to remediate her dishonesty. The panel had no evidence before it that Miss Bradwell has shown any remorse for her misconduct.

The panel determined that Miss Bradwell's misconduct (in relation to this hearing and the previous substantive hearing) put patients at unwarranted risk of harm. The panel found that there is high risk of repetition given that this panel found that she has engaged in further dishonest conduct, and she has not provided any evidence of insight, remorse, or remediation. 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.

In light of the above, the panel determined that a finding of impairment on public interest grounds is required due to the seriousness of Miss Bradwell's misconduct and because public confidence in the profession would be undermined if a finding of impairment were not made in this case. The panel therefore finds Miss Bradwell's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Bradwell's fitness to practise is currently impaired both on the grounds of public protection and the wider public interest.

Sanction

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

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

Submissions on sanction

Ms Paterson informed the panel that in the Notice of Hearing, dated 30 March 2023, the NMC had advised Miss Bradwell that it would seek the imposition of a six-month suspension order with a review prior to its expiry if it found Miss Bradwell's fitness to practise currently impaired.

In relation to aggravating features, Ms Paterson submitted that this case involves an abuse of a position of trust. Ms Paterson submitted that Miss Bradwell has a history of dishonest conduct which occurred while there were already restrictions in place on her practice. She also submitted that the lack of evidence of insight into the dishonesty, or seriousness of misconduct, amounts to an aggravating feature.

Ms Paterson submitted that there are no mitigating features.

Ms Paterson submitted that the panel will likely also consider the seriousness of the misconduct in this case. She further submitted that the panel may consider that in this case the context suggests that Miss Bradwell's behaviour was opportunistic in nature which perhaps may point to it being at the lower end of the spectrum of seriousness. However, notwithstanding it is still serious due to the abuse of position of trust and Miss Bradwell's lack of engagement and insight.

Ms Paterson submitted that taking no action would not be appropriate in light of the seriousness of the misconduct in this case. She submitted that a caution order would not be appropriate or protect the public against the risks that have been identified nor would it address the seriousness. Further, she submitted that a conditions of practice order would not be appropriate as it would not address the dishonesty and attitudinal concerns in this case.

Ms Paterson therefore submitted that a suspension order is the most appropriate sanction due to the seriousness of the misconduct. She submitted that Miss Bradwell's temporary removal from the register is also in the public interest. However, she submitted that it was ultimately a matter for the panel as to whether a suspension order was the most appropriate and proportionate order.

Decision and reasons on sanction

The panel heard and accepted the legal advice.

Having found Miss Bradwell'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 found the following aggravating features in this case:

- Abuse of a position of trust;
- Previous history of proven dishonesty;
- The incident occurred whilst restrictions were on Miss Bradwell's practise;
- Lack of insight; and
- Miss Bradwell's misconduct potentially put patients at risk of harm.

The panel determined that there are no mitigating factors. The panel noted that the previous panel in its decision referred to Miss Bradwell's health, but that panel had no evidence in relation to her health conditions. There was no evidence at this hearing in relation to her health conditions.

The panel decided that Miss Bradwell's misconduct was at the higher end of the spectrum of seriousness. It took into account the aggravating features, in particular the abuse of a position of trust, repeated dishonesty in a clinical setting, and noted Miss Bradwell's lack of engagement. The panel was satisfied that the misconduct demonstrated attitudinal concerns and that together with the aggravating features put it at the higher end of the spectrum of seriousness.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Bradwell's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Bradwell'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 Miss Bradwell'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 misconduct in this case. The dishonesty identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Bradwell's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse.

This was not a single incident of misconduct. Miss Bradwell has been found to have been dishonest on two separate occasions in a clinical setting. The panel was satisfied that Miss Bradwell's repeated dishonesty and failure to demonstrate insight, remorse, and remediation or engage with the NMC regulatory process demonstrates attitudinal concerns. Although the panel does not have evidence of a repetition of similar behaviour, since the incident in January 2021, Miss Bradwell's practice was restricted and there is evidence of similar behaviour prior to January 2021. The panel found that Miss Bradwell has not demonstrated any insight and it has found there is a high risk of her repeating the misconduct.

Before making a final decision about a suspension order, the panel went on to consider a striking-off order and 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 determined that Miss Bradwell's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Bradwell's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

In making this decision, the panel carefully considered the submissions of Ms Paterson in relation to the sanction that the NMC was seeking in this case. However, the panel considered that Miss Bradwell's misconduct was at the higher end of the spectrum of seriousness. The panel found there to be attitudinal concerns and noted that Miss

Bradwell's misconduct is repeated behaviour and not an isolated incident. Further, the panel decided that there is a real risk of repetition and a potential risk of serious harm to the patients, colleagues, and the public.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Bradwell's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, 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 will be confirmed to Miss Bradwell in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Paterson. She submitted that if Miss Bradwell decides to appeal the outcome of this hearing, the order decided today cannot come into effect until the appeal process is over. Ms Paterson acknowledged that there is currently a suspension order in place until December 2023 restricting Miss

Bradwell's practice. However, she submitted that, if Miss Bradwell does decide to appeal the striking-off order, the public may not be protected during the appeal period. Therefore, Ms Paterson submitted that an interim suspension order of 18 months is required to protect the public and uphold the public interest.

Decision and reasons on interim order

The panel was satisfied that an interim suspension 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, the public protection and public interest issues it identified, and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. The panel noted that while the current suspension order would cover the 28-day appeal period, it would not necessarily protect the public should Miss Bradwell decide to exercise her right to appeal its decision.

The panel therefore imposed an interim suspension order for a period of 18 months to allow for any appeal process to be completed.

That concludes this determination.