

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

**Substantive Hearing
12-21 June 2023
20 – 24 November 2023**

Virtual Hearing

Name of Registrant: Niall O’loingsigh

NMC PIN 15B1103E

Part(s) of the register: Registered Nurse - Sub Part 1
Mental Health Nursing – 18 June 2015

Relevant Location: Bristol

Type of case: Misconduct

Panel members: Richard Weydert-Jacquard (Chair, Registrant member)
Christine Moody (Lay member)
Susan Tokley (Registrant member)

Legal Assessor: Michael Levy (12-21 June 2023)
John Donnelly (20 – 22 & 24 November 2023)
Hala Helmi (23 November 2023)

Hearings Coordinator: Roshani Wanigasinghe (12-21 June 2023)
Shela Begum (20 – 24 November 2023)

Nursing and Midwifery Council: Represented by James Lloyd, Case Presenter

Mr O’loingsigh: Present and represented by Jennifer McPhee from Anderson Strathern

Facts admitted: Charges 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11

Facts proved: Charge 12b and 12c

Facts not proved: Charge 12a and 13

Fitness to practise:

Impaired

Sanction:

Conditions of practice order (12 months)

Interim order:

Interim conditions of practice order (18 months)

Details of charge

That you a registered nurse;

1. On 26 November 2020 failed to administer Carbocisteine 375mg to Resident E.
[Proved by admission]

2. On 26 November 2020 in respect of Resident E, instructed Colleague 1 to:
 - (a) Enter Code F on Resident E's MAR Chart. **[Proved by admission]**
 - (b) Write on the back of Resident E's MAR chart that Resident E was asleep at the time of the medication round. **[Proved by admission]**

3. On 26 November 2020 incorrectly entered Code F on Resident E's MAR Chart.
[Proved by admission]

4. Your actions in charge 2 and/or charge 3 were dishonest in that you were attempting to mislead others into believing that Resident E was asleep at the time of administering the medication when you knew;
 - (a) That Resident E was capable of taking their medication. **[Proved by admission]**
 - (b) That you had omitted to administer Resident E's medication. **[Proved by admission]**

5. Failed to document on Resident A's MAR chart on 12 April 2021 indicating that you had administered;
 - (a) Amlodipine 10mg. **[Proved by admission]**
 - (b) Bisoprolol 1.25mg. **[Proved by admission]**
 - (c) Clopidogrel 75mg. **[Proved by admission]**
 - (d) Lansoprazole 15mg. **[Proved by admission]**

6. Failed to document on Resident B's MAR chart on 12 April 2021 indicating that you had administered;
 - (a) Apixaban 5mg. **[Proved by admission]**
 - (b) Bisoprolol 2.5mg. **[Proved by admission]**
 - (c) Fludrocortisone 100micrograms. **[Proved by admission]**
 - (d) Lansoprazole 15mg. **[Proved by admission]**

7. Failed to document on Resident C's MAR chart on 18 May 2021 indicating that you had administered;
 - (a) Adcal-D Dissolve 1500mg/400 unit effervescent tablets. **[Proved by admission]**
 - (b) Citalopram 20mg. **[Proved by admission]**
 - (c) Clopidogrel 75mg. **[Proved by admission]**
 - (d) Lansoprazole 15mg. **[Proved by admission]**
 - (e) Folic Acid 5mg. **[Proved by admission]**

8. Failed to document on Resident D's MAR chart on 18 May 2021 indicating that you had administered 100g Nutricrem dessert. **[Proved by admission]**

9. On 18 May 2021 failed to dispense Resident B's medication separately from the liquid medication. **[Proved by admission]**

10. On 18 May 2021, having discovered that Resident B had been administered their medication, failed to;
 - (a) Dispose of the medication by placing it in a tamper-proof container.
[Proved by admission]
 - (b) Recording the disposal of medication in the disposal ledger.
[Proved by admission]

11. On 13 May 2021 behaved in an unsupportive and/or unprofessional manner towards a colleague by stating;
 - (a) *"give it, I don't care anymore"* or words to that effect. **[Proved by admission]**

12. On or after the 18 May 2021 behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by;

(a) Smacking them on the back. **[Charge found NOT proved]**

(b) Stating “*well done mate, you did the right thing but I may lose my PIN though*” or words to that effect. **[Charge found proved]**

(c) Attempted to discuss with Colleague 2 the concerns that Colleague 2 had reported in relation to your nursing practice. **[Charge found proved]**

13. On 18 May 2021 behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by failing to answer and/or shrugging in response to Colleague 2’s question about the disposal of Resident B’s medication. **[Charge found NOT proved]**

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

Decision and reasons on application for hearing to be held in private under Rule 19

Mr Lloyd, on behalf of the Nursing and Midwifery Council (NMC), [PRIVATE] invited the panel to hear parts of this hearing in private. The application was made pursuant to Rule 19 of the Rules.

Ms McPhee, on your behalf did not object to this application.

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

[PRIVATE] the panel determined to hold those parts of the hearing in private in order to protect your privacy.

Decision and reasons on application to admit hearsay evidence in respect of Colleague 6

The panel heard an application made by Mr Lloyd under Rule 31 to allow the written statement of Colleague 6 into evidence. Colleague 6 was not present at this hearing [PRIVATE].

Mr Lloyd submitted that Colleague 6 does not provide direct evidence to the experience of any shifts or residency in question. He submitted that the NMC had intended to call Colleague 6 because of the evidence and clarifications she can provide about the investigation. He submitted that Colleague 6's evidence is not sole and decisive. Mr Lloyd submitted however, that in order to manage any unfairness arising of the inability to cross examine and seek further clarifications from Colleague 6, he invited the panel to admit Colleague 6's witness statement except for two sentences within her statement. He invited

the panel to strike paragraph 11 and the second sentence of paragraph 12 of her statement.

Ms McPhee agreed to this application. She submitted that any unfairness would be managed by the striking off of paragraph 11 and the second sentence of paragraph 12 of Colleague 6's statement.

The panel accepted advice from the legal assessor which included the cases of *Thornycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) and *Mansaray v Nursing and Midwifery Council* [2023] EWHC 730 (Admin).

The panel first considered the reasons for Colleague 6's non-attendance. It bore in mind that reasonable and appropriate time had been provided and extended for her; [PRIVATE]. The panel considered that although Colleague 6's evidence did not relate to the direct charges, it would have been useful to hear evidence in relation to the internal investigation. The panel bore in mind that you have not objected to this application.

The panel accepted that Colleague 6's evidence was not sole and decisive. Further it bore in mind the contents of paragraphs 11 and the second sentence of paragraph 12. Given that further clarification from Colleague 6 cannot be explored, the panel agreed that it would be unfair to adduce these two sentences. It therefore decided to strike through paragraph 11 and the second sentence of paragraph 12 of Colleague 6's witness statement.

The panel determined that it would be fair to adduce Colleague 6's evidence given it was not the sole and decisive evidence. The panel therefore accepted the NMC's application to admit Colleague 6's witness statement as hearsay evidence and strike through paragraph 11 and the second sentence of paragraph 12.

Background

The NMC received a referral from the Care Home Manager at the Charterhouse Care Home (the Home) about you.

You were employed as a registered nurse and were then promoted to the lead nurse on Avon unit (the Unit) at the Home.

It is alleged that a colleague had made allegations that you were breaching safe medication management protocols and had been dishonest in relation to medication administration on 26 November 2020. This allegation had led to a disciplinary investigation and a hearing on 26 January 2021 where the following allegations were upheld:

- It is alleged that on 26 November 2020, you failed to give a resident with dementia his medication and falsified medication records to indicate that the resident was asleep and therefore did not receive his medication when, in fact, this was not the case.
- It is alleged that on 26 November 2020 you then asked a junior colleague to falsify records to indicate that the resident had been asleep.

The disciplinary panel had issued a final written warning. It is said that you then received extensive supervision and support, coaching and mentoring and additional medication competency training.

During a supervision session in April 2021, you are alleged to have stated that you felt well supported and had learnt from and actively reflected on the previous incidents.

However, further allegations had been made that you were continuing to breach safe medication management protocols. This led to another disciplinary investigation and hearing on 29 June 2021 where the allegations were upheld.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms McPhee, on your behalf, who informed the panel that you made admissions to charges 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

The panel therefore finds charges 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 proved, by way of your admissions.

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

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

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

- Colleague 1: Senior HealthCare Worker at the Home;
- Colleague 2: Registered nurse on the Unit at the Home during the time of the concerns;
- Colleague 3: Senior Care Worker at the Home during the time of the concerns;
- Colleague 4: Clinical Services Manager at the Home during the time of the concerns;

- Colleague 5: Home Manager at The Garden House Care Home.

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and you.

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

Charge 12a

12. On or after the 18 May 2021 behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by;
 - (a) Smacking them on the back.

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 2 and your evidence.

It noted that Colleague 2 was clear throughout her evidence that she was 'smacked' by you.

Your position remained that it was a 'pat' on her back rather than a smack, in an effort to reassure Colleague 2 about the report she had made regarding concerns about you.

The panel was of the view that, whilst both Colleague 2 and you agree that physical contact between the two individuals was made which was initiated by you, there is no other witness evidence to this contact to support the assertion from Colleague 2 that it was

a smack and not a pat. The panel therefore did not have any further evidence from any other witnesses to corroborate one or the other's description of the contact made nor was there any other evidence of local investigation regarding this contact.

The panel determined that on the balance of probabilities, the NMC has not discharged its burden of proof. In coming to this conclusion, the panel did not have sufficient evidence to find that on or after the 18 May 2021, you behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by, smacking them on the back.

In light of this evidence, the panel found charge 12a not proved.

Charge 12b

12. On or after the 18 May 2021 behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by;

(b) Stating *“well done mate, you did the right thing but I may lose my PIN though”* or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague 2 and your evidence.

The panel had regard to Colleague 2's witness statement to the NMC, which was consistent with her oral evidence, in which she said:

“... they said “well done mate, you did the right thing but I may lose my PIN though”. The Nurse would try and discuss things related to me reporting my concerns, and how anxious they were feeling as a result of it.”

The panel bore in mind your oral evidence in which you said that you were supportive of Colleague 2's report of the concerns made against you. The panel noted that you did not deny having said anything to Colleague 2, and in fact, you said that you had wanted to reassure them that you were not aggrieved by their action in reporting their concern about your practice. Further, you said you had discussed consequences of the report with Colleague 2, although you denied having used the specific words as charged.

The panel was of the view that, whilst you have disputed the exact wording of the charge, you have repeatedly stated during your oral evidence that your intention in discussing the consequences of Colleague 2's report was to alleviate any concerns and reassure her that she had acted appropriately, although you were worried about the consequences that may follow upon you. Further, the panel bore in mind the differences in the seniority level between you and Colleague 2. You were in a position of authority and therefore such a conversation would have been unhelpful to Colleague 2 and therefore would be deemed unsupportive and/or unprofessional.

Given the evidence above, the panel determined that, it is more likely than not that on or after the 18 May 2021, you behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by stating "*well done mate, you did the right thing but I may lose my PIN though*" or words to that effect.

The panel therefore found charge 12b, on balance of probabilities, proved.

Charge 12c

12. On or after the 18 May 2021 behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by;
 - (c) Attempted to discuss with Colleague 2 the concerns that Colleague 2 had reported in relation to your nursing practice.

This charge is found proved.

In reaching this decision, the panel took into account its decision at charge 12b above and the evidence of Colleague 2 and your evidence.

The panel determined that, having found charge 12b proved, it follows that this charge is also found proved.

Furthermore, the panel bore in mind that you said in oral evidence that you had raised the report made by Colleague 2 in general terms within the wider team.

The panel also bore in mind Colleague 2's witness statement to the NMC, in which she stated:

"... The Nurse would try and discuss things related to me reporting my concerns, and how anxious they were feeling as a result of it. I would tell them that it is not something that I wanted to talk about with them, and would not raise anything further with the Nurse. I did express this to Charterhouse management and was advised this was the response I should be giving, if the Nurse tried to engage in conversation with me regarding the reportings."

The panel found that you had attempted to discuss with Colleague 2 your feelings of distress and anxiety, regarding the potential consequences to your nursing practice as a result of the concerns that she reported. You accepted this during your oral evidence. The panel was of the view that although it appears that you did so, in an attempt to genuinely reassure Colleague 2, this form of communication had made Colleague 2 uncomfortable. Further, the panel bore in mind the difference in the seniority level between you and Colleague 2. You were in a position of authority and therefore such a conversation would have been unhelpful to Colleague 2 and therefore would be deemed unsupportive and/or unprofessional.

In these circumstances, the panel found that it had sufficient evidence before it to find that on or after the 18 May 2021, you behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by having attempted to discuss with Colleague 2 the concerns that she had reported in relation to your nursing practice.

The panel therefore found charge 12c, on balance of probabilities, proved.

Charge 13

13. On 18 May 2021 behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by failing to answer and/or shrugging in response to Colleague 2's question about the disposal of Resident B's medication.

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Colleague 2 and your evidence.

The panel had regard to Colleague 2's witness statement to the NMC, which was consistent with her oral evidence, in which she said:

"The Nurse told me that they had left the medicines they had dispensed in a pot, with a napkin on top and asked if I could do them a favour and give Resident B their medication from that pot the next morning, as I was due to work that side of the Unit the next morning. I questioned the Nurse as they had taught me to dispose of medication in such situations and I asked them why they did not want me to dispose of the medicine and order more, as they had taught me. The Nurse shrugged in response and I told the Nurse that I would deal with the pot of medicines and I walked away."

Whilst Colleague 2's witness statement states that you shrugged and she walked away, the panel bore in mind your evidence in which you said that you 'may have' shrugged, however, not in an unsupportive manner. The panel bore in mind that there was no further evidence in either Colleague 2's statement, your evidence or any other evidence that suggested that you behaved in an unsupportive and unprofessional manner.

The panel further took into account Colleague 2's witness statement where she states that she walked away after this conversation, not you. Consequently, the panel was of the view that it was Colleague 2 who ended the conversation rather than you.

The panel determined that on the balance of probabilities, the NMC has not discharged its burden of proof. In coming to this conclusion, the panel did not have sufficient evidence to find that on 18 May 2021, you behaved in an unsupportive and/or unprofessional manner towards Colleague 2 by failing to answer and/or shrugging in response to Colleague 2's question about the disposal of Resident B's medication.

In light of this evidence, the panel found charge 13 not proved.

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 your 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 ability to practise kindly, safely and professionally.

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, your fitness to practise is currently impaired as a result of that misconduct.

The panel also heard evidence from you under affirmation during which you conceded that your actions may be considered as misconduct. During your evidence you provided the panel with your reflections on your actions and the steps you have taken to remediate. You expressed remorse for your failures and informed the panel that you are not the same person as you were at the time of the incidents and that you would not repeat those actions.

Submissions on misconduct

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

Mr Lloyd submitted that whether the facts found proved amount to misconduct is a matter for the panel's professional judgement and that there is no burden of proof on the NMC to prove misconduct.

Mr Lloyd referred to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision. He invited the panel to take the view that the facts found proved amount to misconduct and identified the specific, relevant standards where the NMC says your actions amounted to misconduct.

Mr Lloyd submitted that your conduct did fall seriously below the standards expected of a registered nurse in the particular circumstances, and therefore your actions as proven amount to misconduct. Mr Lloyd stated that your actions involved a number of failings

relating to the record keeping of medication and repeated failures in respect of the completion of MAR charts including the falsification of records on at least one occasion.

Mr Lloyd reminded the panel that it has heard during evidence about the potential consequences of failing to maintain proper patient records. He stated that all parties, including you, agree that where there are no accurate records or where records are inaccurate, there is resultant danger in respect to the continuity of care that can be provided to a patient where drugs are not properly recorded as having been administered or not, there is a resultant risk of under or overdose of particular medications.

Mr Lloyd submitted that where medication regimes set by professionals are not respected, there may be consequences and side effects for patients, and in that sense there is a very real risk of harm to patients and a risk of harm brought about by your actions including falsification of a MAR chart.

Mr Lloyd submitted that part of this case involves you, as a comparatively senior practitioner exerting pressure on those more junior to you, not working collaboratively, not working for the better interests of patients, and also that pressure manifesting in a junior colleague being asked by you to dishonestly falsify a part of the MAR chart.

Mr Lloyd submitted that maintaining patient safety, acting with integrity and working collaboratively are fundamental tenets of the nursing profession and a breach of those in almost any circumstances are considered serious, but in this particular case is especially so as these allegations were not isolated. He stated that they relate to a lengthy period of time, there was repetition and a pattern of behaviour. He submitted that this is a serious falling short of standards, which must amount to misconduct.

Ms McPhee referred to the cases of, *Roylance v General Medical Council (No 2)* [2000] 1 AC 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *Johnson and Maggs v Nursing and Midwifery Council (No 2)* [2013] EWHC 2140 (Admin).

Ms McPhee submitted that the panel is also entitled to take into account a breach of the standards set out in the NMC Code or other standards, guidance or advice produced by the NMC. While a breach of the standards does not in itself establish that a registrant's fitness to practise is impaired, it is persuasive, and registrants are advised specifically to address evidence in any breach of NMC standards.

Ms McPhee submitted that you do not dispute that the admitted conduct might be deemed as misconduct.

Submissions on impairment

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

Mr Lloyd submitted that if the panel finds the charges found proved amount to misconduct, it will go on to consider whether your fitness to practise is currently impaired.

Mr Lloyd submitted that impairment is a forward-looking exercise. He acknowledged that there are two facets to impairment, which are referred to as the personal component and the public component.

Mr Lloyd stated, in respect of the personal component, the panel has had regard to your evidence. He invited the panel to consider the risk of repetition, the extent to which you have identified your failings, and the causes of those failings and whether you have shown genuine insight and have remediated. He submitted that only when a panel is satisfied that there is genuine insight and effective remediation, could it conclude that there is no risk of repetition and therefore no impairment on that component.

Mr Lloyd referred to the case of *Khan v General Medical Council* [2015] EWHC 301 (Admin). He invited the panel to consider your evidence in relation to this matter whether you have sufficiently demonstrated that you have identified and remediated the causes of this behaviour and the cognitive processes which led to it.

Mr Lloyd conceded that, since these events, there has been no repetition and so far as the NMC is concerned you have complied with your interim conditions of practice order without fault.

Mr Lloyd referred to the case of *Grant*. He addressed the importance of maintaining public confidence and declaring and upholding proper standards of behaviour. He submitted that a finding of impairment is necessary in this case given the gravity of the conduct and the breaches of fundamental tenets of the profession of honesty, integrity, safe patient care, and working collaboratively. He submitted that a member of the public, informed of all of those factors may have their confidence in the profession and indeed the regulator undermined if a finding of impairment were not made.

Mr Lloyd submitted that this is conduct so serious that it must be marked. He submitted that a finding of impairment is necessary particularly in respect of the public component and the need to uphold and declare those proper standards of behaviour in the face of such serious conduct.

Ms McPhee set out the relevant considerations for the panel when determining current impairment. She referred to the case of *Grant* as well as the NMC's guidance.

Ms McPhee addressed the charge relating to dishonesty. She submitted that the dishonesty was a single event that was set against an unusual background. She submitted that the panel has heard from witnesses and from you in relation to the business of the shift during which this occurred and the difficult and high-pressure circumstances which were present in that shift. She referred to your evidence during which you stated that upon

reflection, and considering every reason why you did what you did, and you stated that this was a massive error of judgement and [PRIVATE] made a poor choice described as a “*snap judgement*”. She submitted that this was one example of dishonesty which stemmed from the same event. Further, she clarified that this instruction by you was not designed to target a junior member of staff. She submitted that you have been able to provide the panel with a number of other actions you could have undertaken to avoid this situation.

Ms McPhee submitted that you have apologised and had admitted to the wrongdoing since it was immediately brought to your attention and were open and honest throughout the local investigation. She submitted that you have learned from your errors, excavated it and looked at what went wrong and why and have put internal provisions in place to ensure that would never happen again. She stated that you have been [PRIVATE] tested and have been found to act openly and honestly.

In respect of the drug errors and documentation, Ms McPhee submitted that after the events of 2020, you were subject to further cost cutting measures and important resources had been taken away from you such as the loss of reliable members of staff. She submitted that the side effects of the Covid-19 pandemic were in play and these allegations relate to two unusual shifts where you were stretched thinly, and resources were compromised. She submitted that you are clear about what you would do in future, what you have learned and what you have done since then. She informed the panel that you have undertaken several self-directed learning courses, continuing professional development (CPD) and were in post for 4 months in a demanding care home, where you “dispensed more medication than you did the entire time at Charterhouse”. She stated that during this period you were subject to interim conditions of practice and complied with all of these with no repeated drug errors.

Ms McPhee submitted that the panel has heard from you about what your intentions were in respect of your attitudes towards colleagues. She stated that you [PRIVATE] accept that the communication was not acceptable or helpful. She stated that you did not simply have

a casual disregard for your colleagues and immediately followed up your actions with an apology and also provided the colleague with your clinical reasoning.

In relation to charges 11, 12b and 12c, she submitted that the panel has heard your insight on this matter and had regard to the reflection and CDP to strengthen your practice along with the counselling undertaken. She referred to the testimonials which span the entire fitness to practise process and stated that they all show that there have been no issues regarding your professionalism and that you have been in positions where you are managing staff and that you are now a mentor to other members of staff in your current role.

In closing, Ms McPhee submitted that you have shown insight, which is fully developed and have engaged in remediation and have embedded this within your practice to ensure you understand the wrongdoing and that this would never be repeated again. She stated that you have apologised profusely for your wrongdoing and have actively engaged with every part of the process, indeed it never has been repeated again and for this reason she invited the panel to find your fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Professional Standards Authority for Health and Social Care v General Medical Council and Uppal* [2015] EWHC 1304 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

'1 Treat people as individuals and uphold their dignity

1.2 make sure you deliver the fundamentals of care effectively

8 Work co-operatively

8.2 maintain effective communication with colleagues

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

8.6 share information to identify and reduce risk

10 Keep clear and accurate records relevant to your practice

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

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

20 Uphold the reputation of your profession at all times

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

20.2 act with honesty and integrity at all times, [...]

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

In respect of charge 1, the panel determined that this related to a failure to administer a medication to Resident E. The panel determined that a single drug error of this nature would not be considered so serious to amount to misconduct.

The panel noted that charges 2, 3 and 4 all relate to the same incident. The panel determined that your actions as set out in charges 2 and 3 would be viewed as deplorable by fellow practitioners and by fully informed members of the public. Further, the panel found that, in respect of charge 4, nurses are expected to act with honesty and integrity and that a finding of dishonesty is a serious departure from the standards expected of a registered nurse. Further, the panel noted that the dishonesty did not relate to you alone but involved you instructing a junior staff to be dishonest. The panel found that as a senior member of staff you would have been expected to set the standard of professionalism and also expected to act with honesty and integrity at all times, however you failed to do so. The panel determined that charges 2, 3 and 4 were so serious as to amount to misconduct.

The panel considered the charges in respect of a failure to document on residents MAR charts that medications had been administered, namely charges 5, 6, 7 and 8. The panel took the view that, taken individually, a failure to document medications had been administered on one occasion would not be considered so serious to amount to misconduct. However, the panel considered that, as set out in charges 5, 6, 7 and 8, there were repeated failures by you to document on resident MAR charts that medications had been administered. The panel noted that this relates to a fundamental aspect of nursing care which, following the first failure, had been addressed by you and that you explained, you had implemented systems to ensure that the documentation was completed. The panel noted that despite this, you repeatedly failed to document the administration of medications as set out in the charges. The panel determined that taken together, these charges are sufficiently serious to amount to misconduct.

In respect of charge 9, the panel found that there were serious safety concerns with tablets being put into a suspension of paracetamol and being administered to a resident in

this way. Further, in respect of charge 10 the panel found that you failed to safely and appropriately dispose of the medications. The panel found that these failures also related to fundamental aspects of administering and managing medications and that as a registered nurse you would have been expected to safely follow the correct procedures. The panel determined that your actions as set out in these charges were so serious to amount to misconduct.

In relation to charge 11, the panel determined your actions as set out in this charge demonstrated a serious departure of the behaviours and standards expected of a registered nurse. The panel concluded that it is so serious to amount to misconduct.

In respect of charge 12b and 12c, the panel took into account you held a position of seniority at the time and made these comments to a junior colleague. The panel found that the comments were wholly inappropriate and are sufficiently serious to amount to misconduct.

The panel found that your actions as set out in charges 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel found that your actions demonstrated a serious departure from the code and were sufficiently serious to amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”

If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not 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 found that all limbs of the “test” are engaged in this case. The panel finds that residents were put at risk of harm a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel took into account that you made admissions early on in respect of your failures, you demonstrated an understanding of how your actions had the potential for a risk of harm to those in your care and the potential impacts on continuity of patient care. Further, the panel was satisfied that you have demonstrated an understanding of why your actions were wrong and how this impacted negatively on the reputation of the nursing profession.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel noted that you have been working well within your current role and that you have been subject to an interim conditions of practice order for a significant period of time and that you have, without fail, fully complied with the interim order. Further, the panel took into account the testimonials which attest to your good character, the evidence of training undertaken by you to address

the concerns, the reflective accounts provided by you including your essay on the importance of honesty and integrity in nursing.

In respect of the repeated record keeping failures, based on your evidence at the impairment stage, the panel noted that you acknowledge these occurred due [PRIVATE]. During your evidence, when asked about what strategies you would implement if you were faced with a similar scenario whilst you acknowledged the paramount importance of safe medication administration and the required level of prioritisation and [PRIVATE], the panel was not satisfied that you addressed how you would handle a situation where you had reached your capacity and what you would do to address this.

The panel was not satisfied that you have fully demonstrated that you would be able to in future identify when you have reached your capacity, and how you would safely manage these circumstances so as not to compromise patient care. The panel was not satisfied that you have identified what steps you would take to seek support for any limitations you might identify within your practice, nor was it satisfied that you have demonstrated a full understanding as to your capacity to [PRIVATE] in high pressure situations. The panel also took into account that these failures occurred despite them being formally raised with you and you having received a final written warning in relation to them. Given that there has in the past been repetition of the failures even after you had implemented measures to try and avoid them occurring and that you have not sufficiently demonstrated what steps you would take to ensure that they did not occur, there is a real risk of repetition of these failures. The panel was not satisfied that it has seen evidence that you have demonstrated that you recognise your limitations in respect of competing priorities and how you would manage those to prioritise and preserve patient safety, notwithstanding that you are working well in the role you are currently in.

In light of this, the panel decided that a finding of impairment is necessary on the grounds of public protection. The panel found that these concerns relate to a core and fundamental

aspect of nursing care and the potential consequences of this not being carried out safely impact directly on patient care.

When considering public interest, the panel was mindful that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. However, the panel determined that, based on the evidence before it, and taking into account the circumstances and context in which your dishonesty occurred, the likelihood of repetition of this conduct is very low. The panel noted that this related to a single instance of dishonesty, and that you have addressed this by way of counselling and have demonstrated insight and remorse on this matter. The panel was satisfied that you have demonstrated that your misconduct in relation to the dishonesty would not be repeated.

The panel determined that, when balanced against the insight and remorse you have demonstrated in relation to this matter, your compliance with the interim conditions of practice and the character references which attest to your honesty, an ordinary member of the public apprised of the facts of this case would not deem that a finding of impairment is necessary on public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public protection grounds.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

In reaching this decision, the panel has had regard to all the evidence, including a further reflective piece from you following the impairment stage, 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

The panel had regard to the Notice of Hearing in which the NMC had advised you that it would seek the imposition of a 6-month Suspension Order with a review if it found your fitness to practise currently impaired.

Mr Lloyd submitted that there is no burden of proof upon either party in respect of sanction. He acknowledged that if the panel had found all matters in this case proved, the NMC's sanction bid would have been that of a suspension order with review.

Mr Lloyd noted that not all the charges have been found proved, and that the panel has not found impairment on the basis of the dishonesty charge. He therefore submitted that what sanction to impose is a matter entirely for the panels judgment and it may consider whether a sanction less severe than a suspension, or indeed conditions of practice may be appropriate in this case.

Mr Lloyd submitted that this is a case in which a sanction is necessary and to take no action in the face of the panel's findings, would not secure the public interest and ensure

the public is protected. He therefore submitted that the panel may well consider that conditions of practice should, at the least, be imposed to address the existing concerns.

Mr Lloyd submitted that the panel must apply the principle of proportionality in that it must impose the least restrictive sanction, balancing the rights of the registrant and indeed the public interest whilst adequately protecting the public from a risk of harm that had been identified.

Mr Lloyd submitted that in terms of mitigating circumstances, the panel has heard from you in relation to the circumstances which led to you acting in the way that you did. He submitted that, in terms of aggravating features, this is a case where there were a number of failings over a lengthy period of time.

Mr Lloyd submitted that a sanction is necessary in this case, but what sanction that might be is entirely a matter for the panel. He also clarified to the panel that you have had no prior regulatory fitness to practice concerns raised about you.

Ms McPhee invited the panel to consider what sanction to impose starting with the least restrictive sanction and working upwards. She invited the panel to consider imposing a caution order and stated that this would crystallize the patient protection requirements in respect of medication administration.

Ms McPhee referred to your most recent reflective piece which demonstrates that you have further reflected on your medication administration, details that you worked in Barchester for four months without there being any concerns about your management and administration of medications. She reiterated that this was a 90-bed unit compared to Charterhouse where you cared for 15 residents.

Ms McPhee reminded the panel that during this period, you were subject to interim conditions of practice and fully compliant without any issues raised about your nursing practice.

Ms McPhee acknowledged that the panel was not convinced based on what it has heard that you have demonstrated full reflection and remediation. However, she assured the panel that since receiving the panel's decisions in respect of impairment, you have further developed your insight and centred your thoughts around the importance and the prioritization of medication administration.

Ms McPhee submitted that a caution order would be reflected on your registration and that this would mark the protection of the public in that any employer would be made aware that there has been fitness to practise proceedings in relation specifically to the management of medications.

Ms McPhee reminded the panel that you have not been working in a role which requires you to administer medications for a year and a half. She referred to your reflective piece in which you set out that you intend to seek out further training in medications administration and are committed to maintaining your counselling to make sure that you understand the limitations in your practice and manage your stress levels. She reminded the panel that you made the decision to leave Barchester because you felt that you were reaching your limit and obtained new employment which would not put your fitness to practise in further jeopardy.

Ms McPhee submitted that you are now insightful, reflective in your practice, and are seeking to do better. She submitted that if the panel does not agree with a caution order, she invited it to consider a conditions of practice order. She stated that conditions of practice could be formulated that are workable to support your practice. She suggested some conditions which she deemed appropriate in this case.

Ms McPhee submitted that you have fully remediated in some aspects of this case, and in terms of any suspension order, it would be grossly disproportionate. She submitted the imposition of a suspension order would result in you losing your current position, which you have worked very well in for the last year and a half. [PRIVATE]. She submitted that

any suspension order on your registration would be grossly disproportionate given the findings of the panel.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Conduct which put patients at risk of suffering harm at the time of the incidents
- Repeated failures over a period of time

The panel also took into account the following mitigating features:

- Evidence of developing insight and remorse
- Evidence of steps taken to address the concerns including counselling
- Early admissions to the charges
- Personal mitigation
- The work environment you were in was experiencing the impact of the Covid-19 pandemic

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 would protect the public 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 your 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would not be proportionate to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel considered the factors above and found that they do apply to the circumstances of this case. Further, it determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel took into account that you have been subject to an interim conditions of practice order for a significant period of time and that you have without fail complied with this in full. The

panel was therefore satisfied that you would be willing to meaningfully engage and comply with any conditions of practice it may impose.

The panel had regard to the fact that since these incidents happened, you have been working well as a registered nurse in your current role with the provisions of an interim conditions of practice order and therefore determined that it was in the public interest that, with appropriate safeguards, you should be able to continue to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case given its findings in relation to your developing insight, steps taken to address the concerns and that you have demonstrated that you are able to practise safely with restrictions on your registration.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. Should you undertake a new role which involves management and administration of medications, you must update your training and be assessed as competent in this area. This should include, being supervised but not always directly observed by a registered nurse and subsequent successful completion of a competency assessment.

2. You must provide a reflective piece detailing the following:
 - How you are prioritising patient safety whilst balancing competing demands of nursing practice prior to any review of this case. It should address any limitations you identify within your nursing practice and how you manage these limitations in your current role and/or any potential future nursing role.
 - How you ensure that you are maintaining professionalism in respect of your conduct with colleagues whilst under the pressures of nursing practice.

You must provide examples of how you have addressed the above in your nursing practice.

3. You will send the NMC a report seven days in advance of the next NMC hearing or meeting from your line manager.

4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.

5. You must keep the NMC informed about anywhere you are studying by:

- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
6. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
7. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 months.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at any future review hearing of this case.
- Evidence of any training you have undertaken in the medications management and administration.

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Lloyd. He submitted that in cases such as this where a restrictive order has been imposed by a panel, as that order does not take effect immediately and only comes into effect after the 28-day appeal period has passed, an interim order which mirrors the substantive order should be imposed to cover

this period. He invited the panel to impose an interim order for the period of 6 months to cover the 28-day period and any period during which an appeal may be dealt with.

The panel also took into account the submissions of Ms McPhee. She submitted that the position in relation to this is neutral.

Decision and reasons on interim order

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

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months to cover the 28-day appeal period and any period during which an appeal might be dealt with.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.