Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 11 September 2023 – Wednesday 20 September 2023

Virtual Hearing

Name of Registrant:	**Fiona Ulyett**
NMC PIN	12G0278W
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – 7 September 2012
Relevant Location:	Swansea
Type of case:	Misconduct
Panel members:	David Crompton (Chair, Lay member) Michael Duque (Registrant member) Caroline Friendship (Lay member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Anya Sharma
Nursing and Midwifery Council:	Represented by Molly Dyas, Case Presenter
Ms Uylett:	Not present and unrepresented
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Uylett was not in attendance and that the Notice of Hearing letter had been sent to Ms Uylett's registered email address by secure email and also to her registered address by recorded delivery and by first class post on 25 July 2023.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Ms Uylett's registered address on 27 July 2023. It was signed for against the printed name of 'ULYETT'.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Uylett'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 Ms Uylett 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 Ms Uylett

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

Ms Dyas informed the panel that Ms Uylett last made contact with the NMC in February 2022. Since then, there has been no contact with Ms Uylett with the NMC in relation to these proceedings and, as a consequence, 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 Ms Uylett. In reaching this decision, the panel has considered the submissions of Ms Dyas and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Uylett;
- Ms Uylett has not engaged with the NMC since February 2022 and has not responded to any of the letters or emails sent to her about this hearing;
- There is no reason to suppose that adjourning would secure Ms Uylett's attendance at some future date;
- The NMC are calling three live witnesses who are due to attend in the next few days;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019 - 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.

There is some disadvantage to Ms Uylett in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, Ms Uylett has made no response to the allegations. She 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 Ms Uylett's decision to absent herself from 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 Ms Uylett. The panel will draw no adverse inference from Ms Uylett's absence in its findings of fact.

Details of charge

That you, a registered nurse:

1) Between January 2019 and April 2021, on one or more occasion:

    a) pre-potted medication for one or more Resident(s) without clinical justification;
    b) left medication unattended in one or more Resident(s) room;
    c) told care staff to administer medication to one or more Resident(s), despite the care staff not being trained and/or qualified to do so;
    d) failed to ensure that medication being administered was done so properly and/or as prescribed;
    e) failed to follow established practice in relation to covert medication administration in that you instructed care staff to add medication in one or more Resident(s) food without their being in place a covert medication plan;

2) Between January 2019 and April 2021, on one or more occasion, signed Resident(s) MAR chart(s) to indicate that you had administered medication when you had not;

3) Your actions at charge 2 above were dishonest as you knew that you had not administered the medication and had sought to mislead anyone considering the records into believing that you had;

4) On one or more occasion:

   a) told Colleague A to administer Oxycodone, a controlled drug, to Resident A despite knowing that Colleague A was not trained and/or qualified to do so;
   b) failed to ensure that you complied with the controlled drug policy in that you did not ensure that a second nurse was present when the controlled drug at charge 4(a) was administered;
   c) signed Resident A's medication chart to indicate that you had administered the controlled drug as set out at charge 4(a) when you had not;

5) Your actions at charge 4(c) above were dishonest as you knew that you had not administered the medication to Resident A and had sought to mislead others into believing that you had.

6) On one or more occasion, told Colleague A to sign the controlled drugs register and/or medication chart, to confirm that Colleague A had witnessed you administering a controlled drug to a Resident when they had not;

7) Your actions at charge 6 above were dishonest as you knew that Colleague A had not witnessed you administering the controlled drug at charge 6 above and had sought to mislead others into believing that they had.

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

NMC Opening

Ms Uylett's name first came onto the NMC register in September 2012 as a registered adult nurse. Ms Uylett was referred to the NMC on 8 June 2021, from a company who owns a care home, namely Cwrt Enfys (the 'Home'), in Swansea which cared for elderly patients. Ms Uylett was employed at the Home as Unit Manager between 15 February 2017 and 13 May 2021.

Whilst Ms Uylett was employed at the Home, Colleague A raised a grievance against Ms Uylett, which now does not form part of this case. During the investigation into this grievance, allegations were raised about Ms Uylett's clinical practise, particularly in relation to medications.

It is said that Ms Uylett was pre-potting medication and giving it to carers to administer to patients. Carers are not qualified to be administering medication. This included a controlled drug ('CD'), Oxycodone.

Ms Uylett was suspended whilst the Home conducted a full investigation. The outcome of the investigation was that the matter should progress to a disciplinary meeting, but Ms Uylett resigned before that meeting or hearing could take place.

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

At the outset of the hearsay application, Ms Dyas made a request that this application be held in private on the basis that it concerns the health of Mr 1. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

The panel determined to go into private session in connection with Mr 1's health as and when such issues are raised.

Decision and reasons on application to admit written statement of Ms 2

The panel had sight of Ms Dyas' written submissions made under Rule 31 to allow the written statement of Ms 2 into evidence. Ms 2 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, Ms 2 had indicated to the NMC that she was not willing to give evidence.

The Application

1. *The NMC apply to admit the witness statement of [Ms 2].*

Background – [Mr 1]

2. *[Mr 1] was a home manager at another Home under the same company (SilverCrest) and was assigned the task of assisting [Ms 2] in the investigation. The panel will see for instance that he was present at local investigation interviews. The NMC understands it is uncontentious to say that he had no known relationship with the registrant and was brought in as an unconnected third party.*

3. *On 8 May 2022, [Mr 1] informed the NMC that he was no longer able or willing to co-operate with the NMC. Prior to this date he had been engaging with those preparing his draft statement.* [PRIVATE].

4. *This information is put before the panel to explain why there is no witness statement from [Mr 1], and why he cannot be substituted in [Ms 2]'s place as a live witness.*

[Ms 2]

5. *The NMC understands that [Ms 2]is unable to give evidence due to a work commitment. Paragraph 23 of her statement confirms that she is not willing to give evidence at a hearing in this matter.*

6. *The statement is electronically signed and dated 1 August 2022. It is submitted the panel can take this into consideration when deciding whether to admit the statement, because it carries different weight to, for instance, a handwritten note exhibit which is not signed or dated and the origin of which is unclear. This statement bears the statement of truth and signature and would be admissible in civil proceedings.*

7. *The statement gives an overview of the investigation, explaining the appointment of [Mr 1] and dates of both the grievance meeting with [Colleague A] and witness interviews. It produces minutes of the interviews.*

8. *The panel will in due course receive a direction about the local investigation finding. In short, because another body has made a finding it does not mean the panel must follow that finding – it will make its own judgment based on the evidence before it. However, the investigation and its findings are not the only evidence in the case.*

9. *Whilst [Ms 2] gives important evidence about the local investigation, it is not the sole or decisive evidence in this case. The primary evidence comes directly from the witnesses [Colleague A], [Colleague B] and [Ms 1] from whom the panel have heard (or will her) live evidence, and who were – the NMC submit – direct witnesses to the registrant's medication practice. [Ms 2] was not there when these incidents allegedly occurred and the panel will bear that at the forefront of their mind if they decide to admit her statement as hearsay.*

10. *It is submitted that in the registrant's absence, the panel may consider there is a degree of fairness to be garnered from admitting [Ms 2]'s statement and its exhibits as hearsay. She produces [MS 2]3 which is the registrant's account given at the meeting of 6 May 2021. The panel may consider this is important to consider the registrant's position, even as it was on that date.*

11. *It appears that at the local level, the registrant did not seek to challenge the investigation or the meeting minutes. She has been sent the statements and exhibits in this case and has not sought to challenge the contents of the investigation minutes that were prepared. It is submitted that these are fair and relevant and the panel can use their professional judgement to attach the appropriate weight to these exhibits.*

12. *It is submitted that the panel can admit the statement and then in due course carefully consider the appropriate weight to be attached to it. In particular:*

    - *It will be submitted that the evidence comes from a 'professional' investigator and as such is inherently plausible and to be trusted. [Ms 2] appears to have had no motive to misrepresent matters and her appointment was not challenged by the registrant locally;*
    - *The statement is supported by other evidence in particular the witness statements and live evidence of those detailed above, and the local investigation interview minutes. In her statement [Ms 2] summarises matters which were reported to her but it is submitted that these allegations are contained elsewhere in the local minutes or other witnesses' statements; and*
    - *[Ms 2] is unlikely to be mistaken in the records she makes because on the whole the statement gives an overview of the investigation undertaken and summarises matters raised in the witness interviews. It will be submitted that [Ms 2] is fair and provides a fairly rounded view of matters – for example in paragraphs 12 and 13 she provides both the registrant and [Colleague A]'s view of their poor relationship and does not jump to conclusions about why this issue may have arisen.*

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Ms 2 serious consideration. The panel noted that Ms 2's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, 'This statement … is true to the best of my information, knowledge and belief' and signed by her.

The panel considered whether Ms Uylett would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Ms 2 to that of a written statement.

The panel considered that as Ms Uylett had been provided with a copy of Ms 2's statement and, as the panel had already determined that Ms Uylett had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case. The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live evidence of Ms 2 and the opportunity of questioning and probing that testimony, given that Ms 2 has indicated that she would not be willing to give live evidence despite the NMC's efforts to secure her as a live witness. The panel was of the view that Ms 2's witness statement is relevant and there is no reason to believe that the statement is not accurate, or that Ms 2 has any motive to make them inaccurate. The panel considered that there is also a public interest in the issues being explored fully, which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Ms 2 but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Ms Uylett.

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 A: Care Assistant at the Home at the time of the incidents

- Colleague B: Care Assistant at the Home at the time of the incidents

- Colleague C: Agency Carer at the Home at the time of the incidents

- Ms 1: Deputy Manager at the Home

The panel also had sight of the written witness statement from the following NMC witness:

- Ms 2: HR Consultant at Crownford

The panel also had sight of documents from Ms 4, Ms 5, Ms 6, Ms 7 and Person A.

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

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

Charge 1a)

1) Between January 2019 and April 2021, on one or more occasion:
a) pre-potted medication for one or more Resident(s) without clinical justification;

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence and witness statements of Colleague A, Colleague B, Colleague C and Ms 1, as well as the written witness statement of Ms 2.

The panel considered that it had heard oral evidence from Colleague A, Colleague B and Colleague C that the medication had been pre-potted for residents before it was given. The panel noted that Ms Uylett had not provided any clinical justification as to why she had pre-potted the medication, nor did any of the witnesses provide any evidence as to why Ms Uylett had pre-potted the medication.

In terms of the oral evidence it heard, the panel noted that Colleague A had made the complaint when she had handed in her resignation and an internal investigation took place. The panel have Colleague A's contemporaneous resignation letter and statement, where there is a mention of medication left unattended in pots or left in pots to administer to residents. Evidence was also collected from other witnesses as part of the investigation, where some witness statements corroborated this evidence. The panel was of the view that this strengthens the evidence.
The panel also had sight of the investigation meeting notes which were conducted with Ms 3 and Ms 4 on 26 April 2021, which both referred to medications given to them to

administer in pots or left unattended in pots. It considered that this corroborates the oral evidence of the NMC witnesses.

The panel therefore found this charge proved on the balance of probabilities.

Charge 1b)

b) left medication unattended in one or more Resident(s) room;

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence and witness statement of Colleague A and Colleague B, as well as the grievance meeting notes dated 21 April 2021.

The panel had sight of Colleague A's grievance meeting notes, where Colleague A explained that medication in pots was left unattended in residents rooms; *'every room that we would go into there would be a pot of medication there'.* The panel considered that this is also corroborated in Colleague 2's witness statement, as well as her oral evidence:

> *'In the mornings, [Ms Uylett] sometimes took the medication down to the back corridor. [Ms Uylett] then told us that they had potted every resident's medication and that they had left it by the side of their beds for us to administer. When we went into the residents' rooms we had to attend to their personal care and pressure relief as well as administer these pots of medication. It was hard to do this all in the mornings.'*

The panel also took into account the investigation meeting notes with Ms 4 dated 26 April 2021, where Ms 4 made specific reference to medication being left unattended in pots in a resident's room.

The panel took into account that Colleague B during her oral evidence explained to the panel that pots of medication were left on a bar at the end of the resident’s bedframe and described this as ‘the thick bit by the end of the bed’.

The panel therefore found this charge proved.

Charge 1c)

c) told care staff to administer medication to one or more Resident(s), despite the care staff not being trained and/or qualified to do so;

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence and witness statements of Colleague A, Colleague B, Colleague C and Ms 1.

The panel considered that these NMC witnesses provided evidence that they were asked by Ms Uylett to administer medication, even though as care staff they were not qualified to do so. It noted that during panel questions, it was revealed that the healthcare assistants felt fearful of refusing to administer medication to the residents.

The panel heard oral evidence from Colleague C, who told the panel that he saw Ms Uylett on one occasion ask Colleague A to give medication. The panel also heard from Colleague B, who also confirmed during her oral evidence that this had happened and also from Ms 1, who stated during her oral evidence that this should not be happening.

The panel also considered the investigation meeting notes with Ms 5 dated 30 April 2021, where Ms 5 speaks about giving medications and having been asked specifically by Ms Uylett to give the medication. It further considered the investigation meeting notes with Ms 6 dated 26 April 2021, where Ms 6 stated that she gave medications on *‘a rare occasion’* when asked. The investigation meeting notes with Person A dated 26 April 2021 being asked whether there was a time when they were asked to give medication when they should not have, to which Person A answered ‘yes’ in this regard.

The panel therefore find this charge proved.

Charge 1d)

d) failed to ensure that medication being administered was done so properly and/or as prescribed;

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence and its findings in relation to charges 1a), 1b) and 1c).

The panel was of the view that by pre-potting medication, leaving medication unattended and asking care staff to administer medication, as a result, that medication was not being administered properly or as prescribed.

The panel considered that it has the Silvercrest Care Medication Policy before it, as well as the Professional Guidance on the Administration of Medicines in Healthcare Settings which were exhibited as part of Ms 1's witness statement. The panel took into account that Ms 1 provided a detailed account of what is proper medication administration.

The panel therefore finds this charge proved.

Charge 1e)

e) failed to follow established practice in relation to covert medication administration in that you instructed care staff to add medication in one or more Resident(s) food without their being in place a covert medication plan;

This charge is found proved.

In reaching this decision, the panel took into account that Ms 1 had referred it to the Silvercrest Care Medication Policy in relation to covert medication administration during her evidence, which was last updated October 2021. The panel considered that this specific policy had been written after the dates which cover these charges, namely January 2019 and April 2021. Despite this, the panel heard evidence from Ms 1 that there was an obligation on Ms Uylett to dispense medication appropriately.

The panel noted that it had heard oral evidence from Colleague C, who explained that he was asked to put medication in a resident's food. It considered that this supports that medication was given by someone who was not qualified to administer medication and prior to any covert medication policy that was put in place.

In her oral evidence, Colleague A referred specifically to Ms Uylett, and explained to the panel that Ms Uylett would give carers porridge, or something soft to put the medication in.

Ms 7 in her investigation meeting notes dated 26 April 2021 refers to tablets being crushed up inside a drink and given to a resident and mentions Ms Uylett. Ms 3 in her investigation meeting notes dated 26 April 2021 also refers to medications in a drink and refers to Ms Uylett. The panel considered that taking all of this evidence as a whole adds weight to this charge.

The panel therefore finds this charge proved.

Charge 2)

2) Between January 2019 and April 2021, on one or more occasion, signed Resident(s) MAR chart(s) to indicate that you had administered medication when you had not;

This charge is found proved.

The panel noted in effect that the NMC did not prove any of the specifics in relation to the signatures in the MAR charts against which resident on which day, and by whom.

However, the panel considered the way in which this charge is worded and noted that the bar is set low in relation to this matter. It further noted that witnesses described Ms Uylett as pre-populating the MAR chart prior to any medications being administered. In light of its previous findings that the medication had been administered inappropriately and someone has signed the MAR chart for it, the panel concluded that it is more likely than not that on a number of these occasions it would have been Ms Uylett who signed the MAR charts.

The panel therefore find this charge proved.

Charge 3)

3) Your actions at charge 2 above were dishonest as you knew that you had not administered the medication and had sought to mislead anyone considering the records into believing that you had;

This charge is found proved.

In reaching this decision, the panel took into account Ms 1's evidence in relation to medication management, competence assessments yearly and on induction, which included signing for medication and being there when it was administered. The panel was of the view that it was the knowledge and belief of Ms Uylett that her actions were not in keeping with training at the Home, the Home's medication policy and professional guidance and practice. The panel have also heard evidence that Ms Uylett was putting medication in other individual's pockets, which was a conscious decision and was therefore a secrecy around this and an understanding that this is not what should be happening.

The panel concluded, based on its findings for charge 2, that Ms Uylett knew that signing for medication she had not properly administered was wrong and was intended to mislead someone to believe the medicine had been properly administered. This was a deliberate deception and the panel took the view it would be considered as dishonest by the standards of ordinary reasonable members of the public.

The panel therefore finds this charge proved.

Charge 4a)

4) On one or more occasion:

a) told Colleague A to administer Oxycodone, a controlled drug, to Resident A despite knowing that Colleague A was not trained and/or qualified to do so;

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence and witness statements of Colleague A and Colleague B.

The panel considered Colleague A's witness statement in relation to this charge, in particular the following:

> *'On one occasion in the morning, [Ms Uylett] asked me to administer a controlled drug called Oxycodone to Resident A who I believe was in Room 3 or 4. I attach a screenshot of Resident A's controlled drug book evidencing the Oxycodone prescription at Exhibit "[Colleague A]3". [Ms Uylett] left a syringe with five millilitres of the Oxycodone in it on the side in Resident A's room and told me to administer it. At the time I did not know that this liquid, which I believe was clear, was a controlled drug. I knew it was Oxycodone because [Ms Uylett] said to me 'Can you give this to Resident A , it is Oxycodone'. I was in Resident A 's room at this point. [Ms Uylett] then put the syringe and a pot with some tablets in, on the side, before they then left the room. Once [Ms Uylett] had left the room, I administered the medication. After I administered the Oxycodone and the tablets, I left the room. I took the now empty syringe to [Ms Uylett] and took the empty pot to the kitchen. I then went to attend to someone else's personal care.'*

The panel noted that Colleague A's witness statement is consistent with her oral evidence. It also took into account the witness statement of Colleague B, and considered that there was a degree of corroboration:

'As far as I am aware, the tablets and liquids I was asked to administer were not controlled drugs, although I do not know what they were. However, [Colleague A] another Care Assistant, told me that [Ms Uylett] gave them controlled drugs to administer to residents. A controlled drug is a much more serious type of medication. [Colleague A] told me that [Ms Uylett] would prepare it and then just hand it to them to administer it. I am not sure why [Colleague A] specifically was doing this, but I would assume it was because [Ms Uylett] not want to administer it themselves. [Colleague A] spoke to me because they wanted reassurance that if anything did go wrong, [Colleague A] would be alright.'

The panel therefore finds this charge proved.

Charge 4b)

b) failed to ensure that you complied with the controlled drug policy in that you did not ensure that a second nurse was present when the controlled drug at charge was administered;

This charge is found proved.

In reaching this decision, the panel took into account its findings in relation to 4a).

The panel determined it had not been provided with any evidence to suggest that a second nurse was present when the controlled drug was administered as per policy.

The panel also took into account Colleague A's witness statement, in particular:

'I was not supervised whilst I was administering medication to the residents. I was told by [Ms Uylett] to administer the tablets by giving them to the resident on a spoon or by just putting them in their mouths and telling them to swallow. I was

not told whether I should do them one at a time or altogether. If a resident refused medication then I either took the medication back to [Ms Uylett] in the container, or I left the container by the side of the bed and then ask another member of staff to try. [Ms Uylett] rarely administered the medication themselves and so would usually just ask another care assistant to try. If the container was left in the room, then the next care assistant to see this would try. This could be two minutes to an hour after I had initially tried to administer the medication. However, there was sometime liquid medication sitting on the side at tea time at 17:30 which was supposed to be administered in the morning at 08:00.

I was not particularly comfortable administering medication, mainly because I knew I was not supposed to. However, I felt that I just could not say no to [Ms Uylett]. If anything went wrong, then I could have been the person responsible. I did not want to hurt anyone. I received no training on how to administer the medication and was only told about either putting the medication on a spoon or in the mouth. I was never told about whether the medication should be taken with food for instance. Fortunately, I do not believe any of the residents came to any harm.'

The panel therefore finds this charge proved.

Charge 4c)

c) signed Resident A's medication chart to indicate that you had administered the controlled drug as set out at charge 4(a) when you had not;

This charge is found proved.

In reaching this decision, the panel took into account its findings in relation to charges 4a) and 4b). The panel therefore found charge 4c) proved on the balance of probabilities that Ms Uylett had signed MAR charts to indicate that she had administered the controlled drug set out at charge 4a) when she had not.

The panel therefore finds this charge proved.

Charge 5)

5) Your actions at charge 4(c) above were dishonest as you knew that you had not administered the medication to Resident A and had sought to mislead others into believing that you had.

This charge is found proved.

The panel adopted its findings in relation to charge 3 in respect of this charge.

In addition, the panel took into account that two documents (the MAR chart and the CD book) would have needed to be signed in relation to the administration of a controlled drug and that by not doing so, Ms Uylett would have breached two medication drug policies at the Home. The panel was of the view that Ms Uylett understood that this was not the right thing to do and despite this, she made a conscious decision to sign the MAR chart and the CD book despite not having administered the medication herself.

The panel was of the view that this was a deliberate deception that an ordinary member of the public would consider to be dishonest and a deviation from what is expected of a registered nurse.

The panel therefore finds this charge proved.

Charge 6)

6) On one or more occasion, told Colleague A to sign the controlled drugs register and/or medication chart, to confirm that Colleague A had witnessed you administering a controlled drug to a Resident when they had not;

This charge is found proved.

In reaching this decision, the panel took into account the witness statement of Colleague A. The panel considered that this is the only evidence it has before it in relation to this charge.

The panel noted that Colleague A provides some detail about what happened in her witness statement, and specifically stated that she had signed a controlled drugs book as a witness on *'one or two occasions'*. Colleague A was also consistent with what she said in her witness statement during her oral evidence, and the panel was of the view that Colleague A's evidence is consistent and credible, and on the balance of probabilities the panel considered it more likely than not to have happened.

The panel therefore finds this charge proved.

Charge 7

7) Your actions at charge 6 above were dishonest as you knew that Colleague A had not witnessed you administering the controlled drug at charge 6 above and had sought to mislead others into believing that they had.

This charge is found proved.

In reaching this decision, the panel took into account that Ms Uylett was aware that she had not complied with the controlled drugs policy and sought to mislead others into believing that she had. It noted that Ms Uylett would have been fully aware that the medication had not been administered in the correct way and sought to misled others into believing that you had administered the controlled drug with Colleague A as a second checker.

The panel was of the view that this was a deception that an ordinary member of the public would consider to be dishonest and a deviation from what is expected of a registered nurse.

The panel therefore finds this charge 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 Ms Uylett'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, Ms Uylett's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

Ms Dyas referred the panel to her written submissions on misconduct and impairment:

> ***<u>Introduction</u>***
>
> 1. *Between 11 September and 15 September 2023, a panel of the fitness to practise committee heard the substantive hearing dealing with the facts in respect of Ms Ulyett.*
>
> 2. *On 18 September 2023 the panel handed down their decision, finding the following facts proved:*
>
>   *1a-e, 2, 3, 4a-c, 5, 6, 7 (in other words the entirety of the factual charge).*

3. *It is submitted that the findings amount to misconduct and the Registrant's fitness to practise is currently impaired.*

The Law -Misconduct

Misconduct - the legal framework

4. *Misconduct is a separate and distinct concept from impairment: Cheatle para 19. A two-step approach (i.e. considering misconduct etc. first before moving on to consider impairment) was endorsed by the Court of Appeal in Shodlock [2015] EWCA Civ 769.*

5. *Misconduct is a matter for the panel's judgment; the burden and standard of proof do not apply after the fact-finding stage.*

6. *"Misconduct" under the current rules denotes the same concept as "serious professional misconduct" ("SPM") under the former rules; alternatively, the threshold for intervention is the same: Meadow para 198, (cited in Calhaem para 36) and Calhaem para 28.*

7. *Misconduct as an element of SPM meant some act or omission falling short of what would be proper in the circumstances; the standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [registrant] in the particular circumstances: Roylance page 331C.*

8. *The [regulator] should establish conduct connected with the profession in which the [registrant] concerned has fallen short, by omission or commission, of the standards of conduct expected among [registrants] and that such falling short as is established should be serious: Doughty, cited in Roylance page 331D.*

9. *‘Serious’ misconduct in other contexts has been referred to as “conduct which would be regarded as deplorable by fellow practitioners”: Nandi para 31; Meadow para 200.*

10. *SPM does not require moral turpitude. Gross professional negligence can fall within it. Something more is required than a degree of negligence enough to give rise to civil liability but not calling for the opprobrium that inevitably attaches to the disciplinary offence: Preiss, cited in Calhaem para 30.*

11. *SPM may take the form not only of acts of bad faith or other moral turpitude but also of incompetence or negligence of a high degree: Meadow para 200 (cited in Calhaem at para 36).*

12. *Mere negligence does not constitute misconduct. Nevertheless and depending on the circumstances, negligent acts or omissions which are particularly serious may amount to misconduct: Calhaem para 39(1).*

13. *A single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions. Nevertheless and depending on the circumstances, a single negligent act or omission, if particularly grave, could be characterised as misconduct: Calhaem para 39(2).*

14. *In summary, in order to establish misconduct, the committee would need to form a judgment that there was bad faith/moral turpitude or incompetence/ negligence which was “gross” or of a “high degree” or which was “particularly serious” or (in a single instance case) incompetence/negligence which was “particularly grave”, bearing in mind that single instance cases are less likely to cross the threshold than multiple instance cases. [See also the analysis of authorities (though not citing Calhaem) in R (Remedy UK Ltd) v GMC].*

Impairment

15. *Dame Janet Smith's description of impairment in her fifth report from the Shipman enquiry, endorsed in CHRE v NMC, Grant [2011] EWHC 927 (Admin) at §76, includes situations in which a Registrant's misconduct is found to be impair their fitness to practice in the sense that he/she*

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.'

16. *The attitude of the registrant is relevant to the question of whether their fitness to practice is **currently impaired** Nicholas-Pillai v GMC [2009] EWHC 1048.*

17. *The panel will also consider the case of Cohen v GMC [2008] EWHC 581 (Admin), where the court addressed the issue of impairment with regard to the following three considerations: a. 'Is the conduct that led to the charge easily remediable? b. Has it in fact been remedied? c. Is it highly unlikely to be repeated?'*

18. *The NMC's guidance entitled 'Insight and strengthened practice' (FTP-13) states, "Evidence of the nurse, midwife or nursing associate's insight and any steps they have taken to strengthen their practice will usually be central to deciding whether their fitness to practise is currently impaired".*

19. *In addition there is guidance on 'serious concerns which are more difficult to put right' (FTP-3a), which includes a breach of the duty of candour by falsifying records which is attitudinal in nature.*

Dishonesty

20. *In the case of Sawati v GMC, the High Court considered the principles to be derived from the "rejected defence" authorities.*

"77 ... there is a potential trap where the failing in question is a defect of honesty. Dishonesty is a serious charge against a professional, potentially putting a career at risk. Dishonesty is often said in general to be 'difficult to remediate'; it tends to be viewed as a defect of character. But if a doctor whose career is on the line denies dishonesty and finds their defence rejected, they are at risk of being found for that reason to 'be in denial' about, or 'lack insight' into, their fault – and 'difficult to remediate' is converted into 'irremediable'.

78. The second route is 'not telling the truth to the Tribunal'. How a professional responds to formal proceedings may be relevant to an overall assessment of their professionalism: putting the public's interests ahead of their own, integrity and candour, and other important considerations may be engaged, as well as insight and remediability. Lying to Tribunals and putting forward disingenuous or meretricious defences cannot be expected to be consequence-free."

21. *In Sayer v General Osteopathic Council [2021] EWHC 370 (Admin) (paragraph 25):*

"(1) Insight is concerned with future risk of repetition. To this extent, it is to be distinguished from remorse for the past conduct.
(2) Denial of misconduct is not a reason to increase sanction.
(3) It is wrong to equate maintenance of innocence with lack of insight. Denial of misconduct is not an absolute bar to a finding of insight. Admitting misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it.
(4) However, attitude to the underlying allegation is properly to be taken into account when weighing up insight. Where the registrant continues to deny impropriety, that makes it more difficult for him to demonstrate insight.
(5) The assessment of the extent of insight is a matter for the tribunal, weighing all the evidence and having heard the registrant. The Court should be slow to

interfere."

Submissions

Misconduct

22. *It is submitted that the facts found proved are sufficiently serious to amount to misconduct. Conduct on each of the charges found proves amounts to a significant departure from the standards set out in the NMC code.*

23. *The preamble to the Code provides: you must…provide a high standard of practice and care at all times: be open and honest, act with integrity and uphold the reputation of your profession.*

24. *It is submitted that the following areas of the Code have been breached:*

8 Work Cooperatively To achieve this, you must 8.2 maintain effective communication with colleagues 8.3 keep colleagues informed when you are sharing the care of individuals with other healthcare professionals and staff 8.5 work with colleagues to preserve the safety of those receiving care 8.6 share information to identify and reduce risk.

10 Keep clear and accurate records relevant to your practice This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records. To achieve this, you must

11 Be accountable for your decisions to delegate tasks and duties to other people To achieve this, you must: 11.1 only delegate tasks and duties that are within the other person's scope of competence, making sure that they fully understand your instructions 11.2 make sure that everyone you delegate tasks to is adequately supervised and supported so they can provide safe and compassionate care 11.3 confirm that the outcome of any task you have delegated to someone else meets the required standard

13 Recognise and work within the limits of your competence

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

Promote professionalism and trust
You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.
20 You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other healthcare professionals and the public.

21 Uphold your position as a registered nurse or midwife
To achieve this you must:

25. *These facts proved include firstly, the practice of pre-potting medications. This was described by Ms Thomas as "incredibly bad practice". It is in breach not only of the registrant's training, but established practice, the NMC Code, and the Home's medication policy.*

26. *Perhaps most significantly, there is dishonesty relating directly to the registrant's administration of medication. This is significantly serious to amount to misconduct and it is repeated over a significant period of time.*

27. *The panel have found that the registrant was using care staff who were untrained in the administration of medication to regularly administer drugs, the registrant was even secretly slipping medication into their pockets. Asking care staff to administer medications even extended to controlled drugs. The registrant's practice is extremely concerning especially since there does not appear to be any clear motive or contextual factors at play.*

Impairment

28. *It is submitted that all four limbs of Shipman test are engaged.*

29. *Firstly, there was a significant risk of harm to patients who were administered medication by untrained carers. Those administering were therefore not following the five Rs or established practice and not making the appropriate safety checks. This would include for instance, how the medication was administered and monitoring for any side effects. The panel may consider one of the most concerning aspects of the evidence was carers being given multiple pots of medication and having to remember which related to which patient.*

30. *Secondly, it is submitted that the above behaviour is very likely to bring the profession into disrepute – another nurse is likely to be appalled at the registrant's practice and behaviour.*

31. *Thirdly, fundamental tenants have been breached and this has been addressed above with reference to the code.*

32. *Fourthly, the panel have found dishonesty.*

33. *In terms of the medication recording, it is submitted there is limited insight in the reflective statement in the bundle. To some extent the Registrant stepped away from her reflective piece/statement in her evidence,*

34. *Overall, the Panel may consider the Registrant demonstrated a rather lax attitude towards medication and a concerning lack of care and pressure on carers to act outside of their remit.*

35. *It is submitted that there is no insight in relation to the dishonesty and the panel will note the charges were denied.*

36. *The panel will note that dishonesty is inherently difficult to remedy. There is nothing to suggest that the Registrant has reflected upon the issue of dishonesty specifically. This dishonesty was conducted over a period of time and extremely frequently – one witness said 3 out of 4 shifts she worked on she would be expected to administer medication.*

37. *In the absence of insight and remediation, there is a risk of repetition particularly in relation to dishonesty. Some of the allegations found proved are attitudinal in nature.*

38. *Registered 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.*

39. *The panel are therefore invited to find impairment on both the public interest and public protection grounds.*

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, *Calhaem v GMC [2007 EWHC 2606 Admin* and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.' The panel also had regard to the case of Calhaem v GMC [2007 EWHC 2606 Admin, which sets out 'Misconduct denotes the same concept as " serious professional misconduct " and the threshold for intervention is the same'.*

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

> *8 Work Cooperatively*
> *To achieve this, you must*
> *8.2 maintain effective communication with colleagues*
> *8.3 keep colleagues informed when you are sharing the care of individuals with other healthcare professionals and staff*
> *8.5 work with colleagues to preserve the safety of those receiving care*
> *8.6 share information to identify and reduce risk.*
>
> *10 Keep clear and accurate records relevant to your practice*
> *This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.*
> *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*
>
> *11 Be accountable for your decisions to delegate tasks and duties to other people*
> *To achieve this, you must:*
> *11.1 only delegate tasks and duties that are within the other person’s scope of competence, making sure that they fully understand your instructions*
> *11.2 make sure that everyone you delegate tasks to is adequately supervised and supported so they can provide safe and compassionate care*
> *11.3 confirm that the outcome of any task you have delegated to someone else meets the required standard*

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

Promote professionalism and trust
You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

21 Uphold your position as a registered nurse or midwife

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the nature of the charges found proved against Ms Uylett are very serious and involve a number of elements of dishonesty.

The panel therefore determined that Ms Uylett's actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses/midwives must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*
>
> *a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that all four limbs of the test are engaged in Ms Uylett's case. The panel finds that as a result of Ms Uylett's misconduct, patients were put at a significant risk of potential harm. Ms Uylett's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel was of the view that the misconduct in this case is capable of being addressed. The panel had sight of Ms Uylett's response bundle dated July 2021, which includes her answers to some questions posed by the NMC, as well as a limited reflective statement. The panel considered that whilst Ms Uylett had made some admissions and recognised that her actions needed to change, however there was minimal evidence of any insight into the regulatory concerns or any attempts to strengthen her nursing practise. The panel also took into account that Ms Uylett has not demonstrated any remorse or made any attempts to remediate the regulatory concerns.

The panel noted that the dishonesty in Ms Uylett's case is also difficult to remediate and in this regard, considered the case of *Sawati v General Medical Council [2022] EWHC 283 (Admin).* Ms Uylett has also failed to engage with the NMC, with her last contact being in February 2022, and has chosen not to engage any further with the investigation process or attend the substantive hearing.

The panel is therefore of the view that there is a high risk of repetition and decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that 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 standards and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required, given the various medication administration errors and a number of serious

matters of dishonesty. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Ms Uylett's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

Submissions on sanction

Ms Dyas referred the panel to her written submissions on sanction:

1. *The NMC's position is that the appropriate sanction is a strike off. This document serves as a basic skeleton of submissions that will be advanced on 19 September 2023.*

2. *Panel will be aware need to consider sanctions in ascending seriousness, and have regard to the principle of proportionality.*

Mitigating and Aggravating Factors

3. *Aggravating*

i. Lack of insight;
ii. Pattern over a period of time; and
iii. Significant risk of harm to vulnerable patients

4. *Mitigating*
   i. Some insight, but it is submitted this is extremely limited
   ii. Previous 'good character'

Interim order

5. *Separate from final sanctions and have a different purpose. These are designed to address risk whilst a case is waiting to be heard.*

Serious cases guidance (dishonesty)

6. *The panel will have regard to the NMC's sanction guidance on serious cases which provides specific guidance about dishonesty:*

   Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register. However, in every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct that has taken place. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power*
- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to patients*
- *premeditated, systematic or longstanding deception*

Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents in private life of nurse, midwife or nursing associate*

Nurses, midwives and nursing associates who have behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. It is therefore particularly important in dishonesty cases that the professional makes every effort to attend the hearing so that the Committee can hear at first hand their response to the allegations.

7. *There is a specific section on rejected defence cases*

A rejected defence of honesty may, in some cases, properly be regarded as an aggravating feature, but panels will need to consider carefully the following factors:

- *there is a distinction to be drawn between an allegation of conduct which is intrinsically dishonest, like fraud or forgery, as opposed to an allegation which relates to conduct (record-keeping, for example) which is capable of being performed either honestly or dishonestly. A rejected defence of honesty is less likely to be properly regarded as an aggravating factor if it is based on a disagreement between the panel and the professional about facts relating to the professional's subjective state of mind (for example a situation where the professional's defence is that a record-keeping error was innocent, but the panel concludes that it was deliberate/dishonest).*

- *refusal to admit objective facts is more likely to be relevant to sanction than a professional's insistence on an honest, subjective perspective. An example of failing to admit objective facts might be telling the panel 'I told my manager*

that I was feeling unwell and had to finish my shift early' in circumstances where the panel concludes that no such conversation ever took place. That kind of rejected evidence is more likely to be relevant to sanction than a professional telling the panel 'my record-keeping error was a mistake' when the panel finds that the motivation was deliberate dishonesty. The fact that the panel did not accept the professional's evidence about their subjective state of mind is less likely to be relevant to sanction.

- *the panel should consider whether there is any other evidence of lack of insight on the part of the professional, other than the rejected defence*

- *the panel should consider the nature of the rejected defence: a failure to admit an allegation does not always indicate that someone has not told the truth to the panel. The panel must consider, for example, whether the defence amounted to an act of dishonesty or misconduct in its own right. Did it wrongly implicate or blame others, or falsely accuse witnesses of being dishonest?*[1]

8. *Addressing the more serious points-*

   i. *Covering up dishonesty – secrecy;*
   ii. *Not a "victim" in this case but involves vulnerable patients/residents;*
   iii. *Long-standing bad practice.*

9. *Less serious -*
   i. *This is not a one off incident;*
   ii. *Not spontaneous; and*
   iii. *Not in private life*

10. *In addition to this, it is submitted that it is an aggravating factor that carers not trained in administering medication were pressured and intimidated into acting outside their scope. This, it is submitted, was an abuse of the registrant's position of relative power as the unit manager. Perhaps the only explanation for her actions is that she wished to make less work for herself/make her role*

easier by delegating to others, at the expense of patient safety. This is a serious attitudinal concern.

11. *Charges found proved relate to dishonesty in a clinical context, in which there are multiple frequent incidents of the registrant practising unsafe medication administration and signing medication charts falsely. The panel may find that the registrant's actions are therefore fundamentally incompatible with her remaining ton the register.*

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

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Ms Uylett has expressed minimal insight into her failings
- Pattern of misconduct over a significant period of time, which potentially put vulnerable residents at a risk of suffering harm
- Ms Uylett knowingly abused her position of trust at the Home in her role as a senior nurse
- Ms Uylett oversaw a poor culture in respect of staff relations and medicines

The panel also took into account the following mitigating features:

- Ms Uylett's previous engagement with the NMC in the early stages of the NMC investigation

- Ms Uylett’s previous good character

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 Ms Uylett’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 Ms Uylett’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 Ms Uylett’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 serious nature of the charges in this case. The panel also took into account that due to Ms Uylett’s lack of engagement with the NMC, it has no information before it to suggest that Ms Uylett would engage with any conditions of practice that were imposed on her nursing practice.

In addition, the panel considered that whilst some of the regulatory concerns and risks could be managed by a conditions of practice order, a conditions of practice order would not address the dishonesty in this case, particularly in light of there being some evidence before it of an attitudinal problem. As a result, the panel concluded that the placing of conditions on Ms Uylett’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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *…*
- *…*

The panel was of the view that Ms Uylett's misconduct occurred repeatedly over a period of time. The panel further determined that Ms Uylett has gained only minimal insight and therefore poses a significant risk of repeating the behaviour.

The panel concluded that this was a significant departure from the standards expected of a registered nurse. The panel took the view that this serious breach of the fundamental tenets of the profession evidenced by Ms Uylett's actions as well as her repeated dishonesty over a significant period of time is fundamentally incompatible with Ms Uylett remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*

Ms Uylett'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 Ms Uylett's actions were serious, and to allow her to continue practising with minimal insight and without strengthening her practice, would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Ms Uylett'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 Ms Uylett in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Dyas. She submitted that an interim suspension order for a period of 18 months is appropriate to cover the 28-day period of appeal in case Ms Uylett choses to appeal, and in that event, the order will not come into effect while the appeal is pending.

Ms Dyas submitted that this application is made on both public protection and public interest grounds.

Decision and reasons on interim order

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

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

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

That concludes this determination.