Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 7 July, 2025

Virtual Hearing

Name of Registrant:	Jackie Shaw
NMC PIN:	10G1080E
Part(s) of the register:	RNC: children's nurse, level 1 (5 September 2010) V300: Nurse independent / supplementary prescriber (10 June 2020)
Relevant Location:	Staffordshire
Type of case:	Misconduct
Panel members:	Konrad Chrzanowski (Chair, lay member) Rosalyn Mloyi (Registrant member) Alison Hayle (Lay member)
Legal Assessor:	Laura McGill
Hearings Coordinator:	Ekaette Uwa
Nursing and Midwifery Council:	Represented by Giedrius Kabasinskas, Case Presenter
Ms Shaw :	Not Present and unrepresented
Consensual Panel Determination:	Accepted
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired

Sanction:	**Suspension order (12 months) with a review**
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 Shaw was not in attendance and that the Notice of Hearing letter had been sent to Ms Shaw's registered email address by secure email on 6 June 2025.

Mr Kabasinskas, 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 Shaw'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 Shaw 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 Shaw

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

Mr Kabasinskas informed the panel that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Ms Shaw on 10 June 2025.

Mr Kabasinskas also referred the panel to paragraph 1 of the CPD which states as follows:

> *"Ms Shaw is content for her case to be dealt with by way of a CPD meeting. Ms Shaw does not intend to participate in the hearing and is content for it to proceed in her absence. Ms Shaw and her representative will make themselves available by telephone should clarification on any point be required, or should the panel wish to make any amendments to the provisional agreement. Ms Shaw understands that if the panel determines that a more severe sanction should be imposed, the panel will adjourn the matter for this provisional agreement to be considered at a CPD hearing"*

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 Shaw. In reaching this decision, the panel has considered the submissions of Mr Kabasinskas, the CPD, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Ms Shaw has engaged with the NMC and has signed a provisional CPD agreement which is before the panel today;
- Ms Shaw has not requested an adjournment;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Ms Shaw.

Details of charge

That you, a registered nurse:

1) On or around 6 September 2023 asked Colleague A to put aside medication set out in Schedule 1 for your personal use.

2) Your conduct in Charge 1 was dishonest in that you knew you did not have permission to take medication form the Home for your personal use.

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

Schedule 1

Oramorph

Consensual Panel Determination

At the outset of this hearing, Mr Kabasinskas informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Ms Shaw.

The agreement, which was put before the panel, sets out Ms Shaw's full admissions to the facts alleged in the charges, that her actions amounted to misconduct and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a suspension order for a period of 12 months with review.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

> *'The Nursing & Midwifery Council ("the NMC") and Jackie Shaw ("Ms Shaw"), PIN:*
>
> *098070/2023 ("the Parties") agree as follows:*
>
> 1. *Ms Shaw is content for her case to be dealt with by way of a CPD meeting. Ms Shaw does not intend to participate in the hearing and is content for it to proceed in her absence. Ms Shaw and her representative will make themselves available by telephone should clarification on any point be required, or should the panel wish to make any amendments to the provisional agreement. Ms Shaw understands that if the panel determines that a more severe sanction should be imposed, the panel will adjourn the matter for this provisional agreement to be considered at a CPD hearing.*
>
> ***The charges***
>
> 2. *Ms Shaw admits the following charges:*
>
> *That you, a registered nurse:*
>
> 1) *On or around 6 September 2023 asked Colleague A to put aside medication set out in Schedule 1 for your personal use.*
>
> 2) *Your conduct in Charge 1 was dishonest in that you knew you did not have permission to take medication from the Home for your personal use.*
>
> *AND in light of the above, your fitness to practise is impaired by reason of your misconduct.*

Schedule 1

Oramorph

The Facts

3. *Ms Shaw has appeared on the register of nurses, midwives and nursing associates maintained by the NMC, as a Registered Nurse since September 2010.*

4. *On 19 December 2023, the NMC received a referral from the Director of Operations at Willinbrook Healthcare Ltd with concerns relating to Ms Shaw who was employed at Manor House Nursing Home (the Home). Ms Shaw started her employment as a staff nurse at the Home on 21 February 2022.*

5. *On 6 September 2023, Ms Shaw sent a text message to a colleague at the Home, [Colleague A] a Healthcare Support Worker (HCSW), asking that a deceased resident's Oromorph, which is a controlled drug, be kept aside rather than destroyed (which is the policy), so that she could collect the Oramorph for her own personal use.*

6. *The message reads as follows:*

   "Also, if Simon is on tonight and Patient A's oromorph has not been destroyed ask him if it can come my way, if he don't mind' if you don't mind would you get it let me know and I'll come round and get it from you when you get home It only goes down the sink I've got a better use"

7. *An investigation was completed between 15 and 19 September 2023.*

8. *During the local investigation, Ms Shaw said that part of the text message had been fabricated and sent by someone else, even though it was sent when she was not working, the message came from her mobile number and she accepted the paragraphs before and after in the message. A disciplinary hearing was held on 17 October 2023 where she denied the allegation and stated, "it is easy to falsify a text".*

9. *Ms Shaw has provided the NMC with emails dated 12 April 20204 and 18 April 2024 where she states:*

   "I agree that the conversation took place in a spur of the moment idiocy….this was a conversation in the office, where SHCA and I were having 5 minutes after having a particularly busy day….not being at all serious said 'do you think that spare oramorph could come my way', we both laughed at this and said no. this conversation took place in late July/august, nothing further was said….I agree that it was dishonest to even think let along have a conversation….Yes, it is dishonest to ask another colleague to do something or have an improper conversation with, as this can then put them in an awkward position. It is a break of trust between colleagues. I agree that the conversation should never have taken place even though it was 'a joke' as stated in my interview. I just could not think of the right words to explain the sitation' therefore it was taken out of context."

10. *Ms Shaw advises that she last practised as a nurse in September 2023 but is unable to fulfil her duty as a nurse due to health issues and she will not reapply to the register in the future.*

Misconduct

11. *It is agreed that the conduct, as particularised in the admitted charges, amounts to misconduct. Ms Shaw's misconduct was serious as she abused*

her position as a registered nurse by asking a colleague, who was her junior, to set aside medication which was a controlled drug prescribed to a patient and her actions were dishonest in that she knew she was not entitled to take the medication from the Home prescribed for a patient for her personal use.

12. *The comments in Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 provides guidance when considering what could amount to misconduct:*

    '[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'

13. *Further assistance may be found in the comments of Jackson J in Calhaem v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin):*

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

    And

    > *'The adjective 'serious' must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners'*

14. *The Parties agree that Ms Shaw's misconduct was serious as she dishonestly asked a more junior colleague to setting aside the controlled medication for her personal use. Such conduct is serious and falls far short*

of what is expected of a registered nurse. The misconduct is a serious departure from expected standards, risks causing harm to the public and brings the nursing profession into disrepute. Nurses occupy a position of privilege and trust in society and are expected at all times to be professional.

15. *The NMC Guidance (SAN-2) tells us that honesty is of central importance to a nurse, midwife or nursing associate. Therefore, allegations of dishonesty will always be serious. The forms of dishonesty that can be considered more serious include a misuse of power which applies in this case in terms of Ms Shaw's position as a registered nurse in asking her more junior colleague to obtain the controlled medication for her.*

16. *At the relevant time, Ms Shaw was subject to the provisions of The Code:* ***Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code").*** *The Parties agree that the following provisions of the Code have been breached in this case*

    20. *Uphold the reputation of your profession at all times.*
        To achieve this, you must:
    20.1 keep to and uphold the standards and values set out in the Code.
    20.2 act with honesty and integrity at all times….
    20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.

17. *Nurses are obliged under the Code to always act honestly and with integrity. It is acknowledged that not every breach of the Code will result in a finding of misconduct. However, Ms Shaw accepts that the failings set out above are a serious departure from the fundamental tenets of the profession and the professional standards and behaviour expected of a registered nurse. Ms Shaw was dishonest in seeking to procure medication from her place of work, thereby failing to uphold the reputation of the profession.*

Impairment

18. *The Parties agree that Ms Shaw's fitness to practise is currently impaired by reason of her misconduct.*

19. *Impairment is conceptually forward looking and therefore the question for the panel is whether Ms Shaw is impaired as at today's date per Cohen v General Medical Council [2008] EWHC 581 (Admin), and Zgymunt v General Medical Council [2008] EWHC 2643 (Admin).*

20. *The NMC's guidance (DMA-1) explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. 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?"

21. *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.*

22. *In addressing impairment, the Parties have considered the factors outlined by* ***Dame Janet Smith in the Fifth Shipman Report and approved by Cox J in the case of CHRE v Grant & NMC [2011] EWHC 927 (Admin) ("Grant").*** *A summary is set out in the case at paragraph 76 in the following terms:*

"Do our findings of fact in respect of the [nurse's] misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his / her fitness to practise is impaired in the sense that she / 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 [nursing] 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 [nursing] profession; and / or*

d. *has in the past acted dishonestly and / or is liable to act dishonestly in the future."*

23. *The panel should also consider the comments of Cox J in Grant at paragraph 101:*

    "The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case."

24. *The Parties agree that limbs a, b, c and d in the above case, are engaged. Dealing with each limb in turn.*

25. *In respect to limb a, it is submitted that controlled drugs policies and procedures are designed to ensure patient safety. Failure to adhere to such policies clearly has the potential to place patients and others at risk of harm. As a registered nurse, Ms Shaw was expected to act as a role model to other staff and by asking a junior colleague to act dishonestly, has sought to*

compromise the integrity of that individual. Additionally, Ms Shaw's actions had the potential to undermine the safety of care of patients in that she was encouraging a colleague to not follow the proper and safe policies and procedures in relation to controlled drugs.

26. *With respect to limb b, registered professionals occupy a position of trust in society to act with honesty and integrity. It is submitted that Ms Shaw's dishonest actions represent a breach of the trust placed in her as a registered professional. The Parties agree that such behaviour not only brought Ms Shaw's reputation into disrepute as a registered nurse, but also that of the wider profession.*

27. *With respect to limb c, the parties agree that Ms Shaw has breached fundamental tenets of the profession as detailed in paragraph 15 in that she has failed to uphold the reputation of the profession by failed to act with honesty and as a role model of professional behaviour. As such, Ms Shaw's actions have jeopardised the public's trust in the profession.*

28. *With respect to limb 4, Ms Shaw acted dishonestly in that she knew she should not have asked her colleague to put aside medication for her and that did not have permissions to take medication from the Home for her personal use. Despite knowing her actions were wrong, she prioritised her own interests, indicating an underlying attitudinal issue which is difficult to remediate and there has been no indication of remediation.*

Remediation, reflection, training, insight, remorse

29. *NMC guidance adopts the approach of the case of* ***Cohen v General Medical Council [2008] EWHC 581 (Admin)*** *by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

30. *The Parties have also considered the NMC's guidance entitled 'Insight and strengthened practice' (FTP-15) which 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".*

Is the concern easily remediable?

31. *There are significant attitudinal concerns given the nature of the dishonesty in this case. The guidance tells us that "Examples of conduct which may not be possible to address, and where such steps as training courses or supervision at work are unlikely to address the concerns include…dishonesty, particularly if it was….directly linked to the nurse, midwife or nursing associate's practice" which applies in this case.*

Whether it has in fact been remedied?

32. *The NMC's guidance entitled 'Has the concern been addressed" tells us, "Before steps can be taken to address concerns, the nurse, midwife or nursing associate must recognise the problem that needs to be addressed. Therefore insight on the part of the nurse, midwife or nursing associate is crucially important".*

33. *In Ms Shaw's Context Form she states that she should have been more professional and thought about what she was saying in the office and she has reflected and regrets holding the conversation which she described as banter. The parties agree this was not banter, but a direct request from Ms Shaw to her junior colleague to obtain a controlled medication.*

34. *There is a screen shot of the text message sent by Ms Shaw to her colleague asking her not to destroy the controlled drugs which she intended to pick up from their home for personal use. Ms Shaw had previously denied sending the relevant part of the text message, stating that part must have been fabricated. The parties now agree that she did send it.*

35. *Ms Shaw accepts the charges, which shows some insight. However that insight is limited as Ms Shaw has indicated that she no longer wishes to practice as a nurse and no remedial action has been undertaken.*

36. *Consequently, it is submitted that Ms Shaw has not demonstrated sufficient insight into her conduct, and the potential effects of this on patient safety and the reputation of the profession. If insufficient remediation has occurred, it is more likely that the conduct could be repeated if she were to continue practising as a nurse.*

Public protection impairment

37. *A finding of impairment is necessary on public protection grounds.*
38. *Ms Shaw has not demonstrated sufficient insight and NMC guidance tells us that concerns regarding this type of dishonesty relating to clinical practice is unlikely to be put right through training or supervised practice. The concerns relate to her attitude and there is no evidence of remediation.*

Public interest impairment

39. *A finding of impairment is necessary on public interest grounds. In* ***Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J*** *commented that:*

a. *"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."*

40. *Having regard to the serious nature of the misconduct, and the principles referred to above, a finding of impairment is necessary on public interest grounds. The public would be concerned about the serious failings in this case. A finding of impairment is necessary to uphold the standards of the profession, maintain confidence in the profession and the NMC as a regulator. Without a finding of impairment, public confidence in the profession and the NMC would be undermined.*

41. *The Parties agree that Ms Shaw's fitness to practise is impaired on public protection and public interest grounds.*

Sanction

42. *In accordance with the Order, the overarching objective of the NMC is the protection of the public.*

43. *Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that the appropriate sanction in this case is a suspension order with a 12-month review.*

44. *In reaching this agreement, the Parties considered the NMC's Sanctions Guidance ("SG"), bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be*

punitive but to protect the public and satisfy public interest. The panel should take into account the principle of proportionality and it is agreed between the parties that the proposed sanction is a proportionate one that balances the risk to public protection and the public interest with Ms Shaw's interests.

45. *The aggravating features of this case have been identified as follows:*

    a. *Lack of insight into failings.*

    b. *Abuse of a position of trust.*

46. *The mitigating features of this case have been identified as follows:*

    a. *Single instance of misconduct.*

47. *Taking no action or a caution order- The NMC's guidance (SAN-3a and SAN-2b) states that it will be rare to take no action where there is a finding or current impairment, and this is not one of those rare cases. The seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be sufficient to maintain high standards within the profession or the trust the public place in the profession. Neither outcome would address the risk Ms Shaw poses to the public.*

48. *Conditions of Practice Order – The NMC's guidance (SAN-3c) states that a conditions of practice order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

    a. *no evidence of harmful deep-seated personality or attitudinal problems,*

    b. *identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining,*

c. *no evidence of general incompetence,*

d. *potential and willingness to respond positively to retraining,*

e. *the nurse, midwife or nursing associate has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision,*

f. *patients will not be put in danger either directly or indirectly as a result of the conditions,*

g. *the conditions will protect patients during the period they are in force, and*

h. *conditions can be created that can be monitored and assessed.*

49. *The misconduct and the concerns behind the misconduct are indicative of deep-seated, personality or attitudinal concerns and relate to dishonesty. These have not been addressed by Ms Shaw. Ms Shaw has indicated that she no longer wishes to work as a nurse and therefore there is nothing to suggest that it would be possible to formulate conditions which would appropriate, proportionate or workable and would not adequately protect the public or satisfy the public interest.*

Suspension Order of 12 months with review

50. *It is submitted that the most appropriate and proportionate sanction in this case is a Suspension order of 12 months with review. The NMC Guidance at SAN-2 tells us that not all dishonesty is equally serious and dishonest conduct will generally be less serious in cases of one-off incidents. NMC Guidance at SAN-3d further tells us that this may be appropriate where*

there is a single instance of misconduct but where a lesser sanction is not sufficient and there is no evidence of repeated behaviour since the incident. This appears to be an isolated incident and therefore an Interim Suspension Order is sufficient to protect the public and address the public interests in this case.

Striking Off Order

NMC Guidance at SAN-3e entitled "Striking-off Order" tells us:

a. *"This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:*

b. *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*

c. *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*

d. *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

51. *The panel is referred to NMC guidance on seriousness at SAN 2. This tells us that whilst cases involving dishonesty are particularly serious and call into question whether a nurse should be allowed to remain on the register, dishonest conduct will generally be less serious in cases of one- off incident which is admitted by Ms Shaw.*

52. *It is submitted for the reasons stated above Ms Shaw misconduct is not fundamentally incompatible with being a registered professional.*

Interim order

53. *An interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest for the reasons given above. The interim order should be for a period of 18 months in the event panel's decision is appealed. The interim order should take the form of an interim suspension order.*

54. *The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.*

The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Ms Shaw. The provisional CPD agreement was signed by Ms Shaw on 10 June 2025 and the NMC on 13 June 2025.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice.

Mr Kabasinskas referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Ms Shaw. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the profession and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Ms Shaw admitted the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Ms Shaw's admissions, as set out in the signed provisional CPD agreement.

Decision and reasons on misconduct

In respect of misconduct, the panel determined that the facts admitted and found proved amounted to serious misconduct. It was of the view that Ms Shaw's misconduct involved a breach of fundamental tenets and professional standards, in particular the requirement to act with honesty and integrity.

The panel had regard to the relevant provisions of the code and was satisfied that Ms Shaw's conduct represented a significant departure from the standards expected of a registered nurse and breached the following sections of the Code:

> *20. 'Uphold the reputation of your profession at all times.*
> *To achieve this, you must:*

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

20.2 act with honesty and integrity at all times….

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

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

In this respect, the panel endorsed paragraphs paragraph 11 to paragraph 17 of the provisional CPD agreement in respect of misconduct.

Decision and reasons on impairment

The panel then went on to consider whether Ms Shaw's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Ms Shaw, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel then considered whether Ms Shaw's fitness to practise is currently impaired by reason of misconduct.

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.'

The panel determined that Ms Shaw's fitness to practise is currently impaired.

In reaching its decision, the panel applied the test set out in the judgment of Mrs Justice Cox in the case of *Council for Health Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) in reaching its decision.

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 were engaged in this case. It concluded that Ms Shaw's dishonest conduct breached a fundamental tenet of the profession and brought it into disrepute. It also determined that while no actual harm occurred, the behaviour created a future risk to patients by disregarding medicines policies and found that there was limited evidence of insight and absence of remediation which further supports a risk of repetition.

Turning to the observations made by J Silber in the case of *Cohen v General medical Council* [2008] EWHC 581. The panel found that misconduct, involving dishonesty, is

inherently difficult to remediate. There was no evidence before the panel of any remediation or reflection into the failings and there was limited insight shown by Ms Shaw. Therefore, it could not be satisfied that the concerns identified have been remedied and are unlikely to be repeated.

In light of its findings of potential risk of harm in the future, the panel determined that Ms Shaw is currently impaired on the grounds of public protection. It also considered the wider public interest, which includes upholding professional standards and maintaining public confidence in the profession. The panel was of the view that a fully informed member of the public, aware of Ms Shaw's conduct and the lack of remediation, would be concerned if no finding of impairment were made. The panel therefore determined that a finding of impairment was also necessary on public interest grounds.

In this respect the panel endorsed paragraphs paragraph 18 to paragraph 41 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Ms Shaw'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:

- Lack of insight into failings.
- Abuse of a position of trust.
- Initially falsely accusing a colleague of fabricating evidence and hence, of dishonesty.
- Dishonesty for personal gain.

The panel also took into account the following mitigating features:

- Single instance of misconduct.

The panel noted that Ms Shaw ultimately made full admissions, though these came after initially denying the concerns. It considered that this was a serious case involving dishonesty and an abuse of professional trust, but that the misconduct was limited to one identifiable incident. The panel was of the view that while there were attitudinal concerns, it found no evidence before it of deep-seated personality issues.

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 Shaw'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 Shaw's 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 be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Shaw's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that Ms Shaw is currently not working and has intimated that she no longer wishes to practice therefore, the panel could not identify any workable conditions. The panel is also

of the view, that the misconduct identified in this case was not something that can be addressed through retraining.
Furthermore, the panel concluded that the placing of conditions on Ms Shaw's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register, and brief period of removal would allow Ms Shaw time to reflect, remediate her behaviour and return to nursing should she wish to do so.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Shaw's case to impose a striking-off order.

Balancing all of these factors the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Ms Shaw. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of Ms Shaw's engagement with the NMC
- Evidence of insight into the misconduct and its impact on Colleagues, the profession and public confidence,
- Evidence of remediation, reflection or any steps taken by Ms Shaw to strengthen her practice;
- Any testimonials from any employer, whether in nursing or not and
- An indication of Ms Shaw's intention regarding future practice, including whether she wishes to return to nursing.

This will be confirmed to Ms Shaw in writing.

Decision and reasons on interim order

As the suspension 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 Shaw's own interests until the suspension sanction takes effect.

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

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 agreed with the CPD 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. It 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.

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

That concludes this determination.