

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

**Substantive Meeting  
Tuesday 31 October – 1 November 2023**

Virtual Meeting

<b>Name of registrant:</b>	<b>Luke Ashley Glen Adams</b>
<b>NMC PIN:</b>	11D0897E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nurse - 14 May 2011
<b>Relevant Location:</b>	Sheffield
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Debbie Jones (Chair, Lay member) Helen Chrystal (Registrant member) June Robertson (Lay member)
<b>Legal Assessor:</b>	Simon Walsh
<b>Hearings Coordinator:</b>	Tyrena Agyemang
<b>Facts proved:</b>	Charges 1 and 2
<b>Facts not proved:</b>	N/A
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Suspension order (12 months)</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## **Decision and reasons on service of Notice of Meeting**

The panel was informed that the Notice of Meeting had been sent to Mr Adams' registered email address on 26 September 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations, stated that the meeting would be held on or after 30 October 2023 and invited Mr Adams to provide any written evidence seven days before this date.

In the light of all of the information available, the panel was satisfied that Mr Adams has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## **Details of charge**

That you, a registered nurse:

1. On one or more of the following occasions you took, without authorisation, medication from Trust stocks:

- a. 30 December 2020
- b. 31 December 2020
- c. 1 January 2021
- d. 4 January 2021
- e. 13 January 2021

2. Your actions at charge 1 above were dishonest in that you knew you were not entitled to take the medication but did so anyway.

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

## **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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.

## **Background**

The charges arose whilst Mr Adams was employed as a band 6 registered nurse at Sheffield Teaching Hospital NHS Foundation Trust (“the Trust”).

Mr Adams was referred to the NMC on 9 June 2021 in relation to allegations that occurred between December 2020 and January 2021.

It was alleged that a Pharmacy Technician noted that DF118 medication (a painkiller containing codeine, that is solely prescribed) was going missing from the Neuro Critical Care Pharmacy (‘the Pharmacy’). These losses occurred in the period between December 2020 and January 2021.

Person 1, the Matron of Neurosurgery at the Trust, carried out a local investigation. In December 2020 CCTV was installed in the Pharmacy. CCTV clips were provided of the Pharmacy for the following dates: 30 December 2020, 31 December 2020, January 2021, 4 January 2021 and 13 January 2021. In each clip Mr Adams was seen to enter the Pharmacy, go to the area where DF118 is stored, take a strip of the drug and place it either in his pocket or walk out of the Pharmacy with it in his hand. Person 1 identified Mr Adams from the CCTV. The CCTV coverage and audits before and after shifts all indicated

that Mr Adams had taken the drugs with no clinical justification. No patients on the unit had been prescribed DF118 at the time.

Person 1 met with Mr Adams on 22 January 2021. He declined representation and he admitted taking the medication on all the occasions. Mr Adams apologised for his actions. The Matron said, "*He was open and honest with me, and I felt sorry for him when he was telling me as he was a great nurse.*" Mr Adams was suspended.

Following this meeting, Mr Adams submitted a local statement to the Matron, [PRIVATE].

Mr Adams submitted a further statement for the disciplinary hearing on 17 May 2021, repeating his admissions. [PRIVATE]. He was dismissed for gross misconduct for the repeated thefts.

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

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

### **Charge 1**

1. On one or more of the following occasions you took, without authorisation, medication from Trust stocks:

- a. 30 December 2020
- b. 31 December 2020
- c. 1 January 2021
- d. 4 January 2021
- e. 13 January 2021

**This charge is found proved.**

In reaching this decision, the panel took into account the documentary evidence before which included Mr Adams' statement dated 30 January 2021 and the Interim Order

decisions dated 7 July 2021 and 31 May 2022 which indicated that during the interim order hearings Mr Adams accepted that the facts alleged were accurate.

The panel acknowledged Mr Adams' admissions to the charges throughout the Trust's internal investigation process.

On the balance of probabilities, the panel finds this charge proved.

## **Charge 2**

2. Your actions at charge 1 above were dishonest in that you knew you were not entitled to take the medication but did so anyway.

**This charge is found proved.**

In reaching this decision, the panel took into account all the documentary evidence before it.

The panel took into account Mr Adams' admissions during the interim order hearings, in his statement, and the circumstances that led to the misconduct. The panel considered that Mr Adams' was clearly aware he should not have removed the medication as he had no clinical justification to do so.

In light of this, the panel 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 Mr Adams' fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Adams' fitness to practise is currently impaired as a result of that misconduct.

### **Representations on misconduct and impairment**

The NMC provided the panel with written submissions.

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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 NMC invited the panel to take the view that the facts found proved amount to misconduct in its written submissions:

#### ***Misconduct***

*11. The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define 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 rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances.'*

12. As may the comments of Jackson J in *Calheam v GMC* [2007] EWHC 2606 (Admin) and Collins J in *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), respectively

*'[Misconduct] connotes a serious breach which indicates that the doctor's (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 practitioner'.*

13. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per *Roylance*) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.

14. We consider the following provision(s) 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

15. Honesty is integral to the standards expected of a registered nurse and central to the Code. The concern in this case also calls into question the basics of Mr Adams' professionalism.

16. We consider the misconduct serious because Mr Adams stole controlled medication from the Trust on multiple occasions between December 2020 and

January 2021. He stole from his employers and his actions were dishonest in that he knew he was not entitled to take the medication but did so anyway.

17. In line with the NMC guidance entitled “**How we determine seriousness**” theft from an employer is considered an example of serious misconduct which is more difficult to put right.

18. Having regard to these factors it can be said that Mr Adams’ behaviour fell far below the standards expected of a registered professional.

19. The NMC’s guidance 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?”

20. If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.

21. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC’s guidance on impairment.

22. When determining whether the Registrant’s fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or



*2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*

*3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*

*4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

*It is the submission of the NMC that 1, 2, 3 and 4 can be answered in the affirmative in this case.*

*23. By stealing medication from his employers, the registrant's actions had the potential to put patients at unwarranted risk of harm as it could have reduced sufficient supplies for patients who require the medication and prevent them from receiving the medication. The registrant's colleagues would also not be able to rely upon the official records of medication if medication is stolen and may base clinical decisions on medication which is not available (stolen).*

*24. The misconduct in this case is serious and involves dishonesty. This behaviour brings the nursing profession into disrepute and undoubtedly causes damage to the reputation of the nursing profession.*

*25. The registrant's dishonest actions also breached fundamental tenets of the profession. Nurses are expected to act with honesty, integrity and trustworthiness at all times. The registrant's misconduct which involves him stealing controlled medication from this employer completely contradicts those fundamental tenets of nursing.*

*26. Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application 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.*

*27. We consider that Mr Adams has displayed some insight. We take this view because he was frank with the Matron, showed insight when first challenged and made full admissions to the thefts.*

*28. There is no evidence of any training, or any reflection undertaken by Mr Adams to address the misconduct in this case. We therefore consider that there is a continuing risk to the public due to his lack of full insight and failure to demonstrate any meaningful reflection.*

*29. There is a significant risk of harm to the public were Mr Adams allowed to practise without restriction. Therefore a finding of impairment is required for the protection of the public.*

### **Public interest**

*30. 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:*

*“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.”*

*31. Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.*

*32. In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

*33. However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

The panel accepted the advice of the legal assessor who endorsed the view of the law expressed by the NMC in its Statement of Case. This included reference to the cases of: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

## **Decision and reasons on misconduct**

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

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

### ***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*

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 Mr Adams' behaviour and conduct did fall seriously below that standards expected of a registered nurse.

### **Decision and reasons on impairment**

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

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

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

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

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

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*

*determination show that his fitness to practise is impaired in the sense that S/He/They:*

- a) ...
- 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 was of the view that Mr Adams' 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.

Regarding insight, the panel considered that Mr Adams has made admissions at a very early stage during the Trust's investigation and when he had attended his interim order hearing he also made admissions to the allegations. The panel had clear evidence of his remorse. [PRIVATE].

The panel was satisfied that the misconduct in this case is capable of being addressed and the panel carefully considered the evidence before it in determining whether or not Mr Adams has taken steps to strengthen his practice. However, the panel agreed with the NMC submissions, in that there is no evidence of any training, or any reflection undertaken by Mr Adams to address the misconduct in this case before the panel.

Therefore, the panel is of the view that there is a risk of repetition based on the lack of evidence before it. The panel therefore 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 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 as a member of the public, aware of the circumstances in this case would be concerned if a nurse with these concerns was allowed to practise unrestricted.

Having regard to all of the above, the panel was satisfied that Mr Adams' fitness to practise is currently impaired.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Mr Adams' registration has been suspended.

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

## **Representations on sanction**

The panel noted that in the Notice of Meeting, dated 26 September 2023, the NMC had advised Mr Adams that it would seek the imposition of a Suspension Order for a period of 12 months if it found Mr Adams' fitness to practise currently impaired.

The panel had regard to the NMC's written submissions:

*35. We consider the following sanction is proportionate:*

## **Suspension order – 12 months**

36. *Taking no further action or imposing a caution order would be inappropriate as they would not reflect the seriousness of the misconduct and would not protect the public or maintain public confidence in the profession.*

37. *The concerns in this case do not relate to clinical failings, instead they relate to the registrant taking medication from the Trust without authorisation. His actions were dishonest and indicate that he has an attitudinal/behavioural problem which cannot be addressed by a conditions of practice order. There are no conditions which can adequately address the dishonesty in relation to the theft of medication. It would therefore not be appropriate or proportionate in these circumstances to impose conditions as they would not adequately protect the public or satisfy the significant public interest in this case.*

38. *A suspension order for a period of 12 months would be appropriate and proportionate in this case. Although this is not a one-off incident and the dishonesty in this case is serious, Mr Adams has made full admissions from the outset and had shown insight when first challenged by the matron. The maximum period of suspension would be sufficient in this case to protect the public while allowing the registrant a further opportunity to reflect and develop their insight. A suspension order for 12 months is also sufficient to mark the seriousness of the misconduct, particularly the dishonesty and maintain public confidence in the profession.*

39. *A striking-off order would be disproportionate and punitive in the circumstances given the full admissions Mr Adams made and the insight shown, albeit it requires further development.*

40. *With regard to our sanctions guidance the following aspects have led us to this conclusion:*

- *Deliberately breached professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients misuse of power;*
- *There appears to be an attitudinal/behavioural problem;*

- *The registrant routinely stole prescribed medication from the Trust for his personal use;*
- *The dishonesty is serious, linked directly to clinical practice and very difficult to put right;*

## **Decision and reasons on sanction**

Having found Mr Adams' 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:

- The registrant stole prescribed medication from the Trust for his personal use on more than one occasion; and
- The dishonesty is serious, linked directly to clinical practice and perhaps difficult to put right.

The panel also took into account the following mitigating features:

- Admissions to all allegations, including allegations relating to dishonesty at the local investigation stage.

The panel first considered whether to take no action or to undertake mediation of the matter, but concluded that neither would be appropriate nor proportionate in view of the seriousness of the case.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Adams' practice would not be appropriate in the circumstances. The SG states



that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Adams' 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 Mr Adams' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case.

Furthermore, the panel concluded that the placing of conditions on Mr Adams' 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. It was satisfied that in this case, the misconduct was not fundamentally incompatible with Mr Adams remaining on the NMC register. It considered that he has partially engaged with the NMC and shown remorse for his actions.

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 at this stage. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Adams' case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Adams. 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.

The panel reviewing this order may be assisted by:

- Evidence of steps Mr Adams has taken to address his misconduct and how he would conduct himself if placed in a similar situation;
- A reflective piece outlining the impact of Mr Adams' actions on the nursing profession and wider public interest and any further insight regarding his actions that he has developed since this meeting;
- References from an employer, manager or fellow professional, including any voluntary work Mr Adams undertakes, addressing his conduct in the workplace.

This will be confirmed to Mr Adams in writing.

### **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 Mr Adams' own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Representations on interim order**

The panel took account of the written representations made by the NMC:

*41. If a finding is made that Mr Adams' fitness to practise is impaired, and a restrictive sanction is imposed, we consider an 18 month interim order should be imposed for the same reasons on the basis that it is necessary for the protection of the public and / or otherwise in the public interest. If the panel imposes a conditions of practice order an interim conditions of practice order is appropriate alternatively if a suspension order is imposed, an interim suspension order is appropriate. This is because any sanction imposed by the panel would not come into immediate effect but only after the expiry of 28 days beginning with the date on which the notice of the order is to Mr Adams or after any appeal is resolved. An interim order of 18 months is necessary to cover any possible appeal period.*

#### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. 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 appeal period, should Mr Adams choose to appeal the panel decision. This interim order is imposed for the same reasons as the substantive order.

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

That concludes this determination.