

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

**Substantive Hearing
Monday, 8 January 2024 – Thursday, 11 January 2024**

Virtual Hearing

Name of Registrant:	Michelle Louise Craft
NMC PIN:	14A0790W
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – 24 February 2015
Relevant Location:	Pembrokeshire
Type of case:	Misconduct
Panel members:	Shaun Donnellan (Chair, Lay member) Donna Hart (Registrant member) Mary Golden (Lay member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Hamizah Sukiman
Nursing and Midwifery Council:	Represented by Shoba Aziz, Case Presenter
Ms Craft:	Present and represented by Kriti Upadhyay, instructed by Royal College of Nursing (RCN)
Facts proved by admission:	Charges 1a, 1b, 1c, 2a, 2b, 2c, 2d, 3a, 3b, 3c, 4a, 4b, 4c, 4d, 5, 6a and 6b
Facts not proved:	None
No evidence offered:	Charges 1d and 3d
Fitness to practise:	Impaired
Sanction:	Suspension order (12 months)
Interim order:	Interim suspension order (18 months)

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

At the outset of the hearing, Ms Upadhyay, on your behalf, made an application for this case to be held partially in private on the basis that [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Aziz, on behalf of the Nursing and Midwifery Council (NMC), indicated that she supported the application.

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

The panel determined to go into private session as and when [PRIVATE].

Decision and reasons on application to amend the charge

Ms Aziz made an application to amend the wording of charges 1c and 3c.

The proposed amendment was to replace 'administration' to 'preparing to administer' on both charges. Ms Aziz submitted that the proposed amendment would provide clarity and more accurately reflect the evidence. She further submitted that the proposed amendments are not prejudicial to you, and do not increase the gravity of the allegations.

Ms Aziz informed the panel that you are prepared to admit these charges if they were amended, and it is in the interest and fairness of all parties for the panel to accept the proposed amendments.

With regard to charge 1c, the original charge is as follows:

'That you a registered nurse:

1. On 1 January 2021 you failed to follow correct controlled drug procedures in respect of a controlled drug, namely diamorphine, in that you failed to ensure that a second checker was present throughout the:
 - a. ...
 - b. ...
 - c. Administration;
 - d. ...'

The original charge 3c is as follows:

'That you a registered nurse:

3. On 4 January 2021 you failed to follow correct controlled drug procedures in respect of diamorphine, which is a controlled drug, in that you failed to ensure a second checker was present throughout the:
 - a. ...
 - b. ...
 - c. Administration;
 - d. ...'

The proposed amendment for charge 1c is as follows:

'That you a registered nurse:

1. On 1 January 2021 you failed to follow correct controlled drug procedures in respect of a controlled drug, namely diamorphine, in that you failed to ensure that a second checker was present throughout the:
 - a. ...
 - b. ...
 - c. ~~Administration~~ **Preparing to administer**;
 - d. ...'

The proposed amendment for charge 3c is as follows:

'That you a registered nurse:

3. On 4 January 2021 you failed to follow correct controlled drug procedures in respect of diamorphine, which is a controlled drug, in that you failed to ensure a second checker was present throughout the:
 - a. ...
 - b. ...
 - c. ~~Administration~~**Preparing to administer;**
 - d. ...'

Ms Upadhyay submitted that, irrespective of which charges you may or may not accept at this stage in the proceedings, the proposed amendments would most accurately reflect the evidence the NMC wishes to rely on. She invited the panel to accept the proposed amendments.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. The panel noted that you were represented, and both Ms Upadhyay and Ms Aziz were in agreement for the proposed amendment. Therefore, the panel determined it was appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Details of charge (as amended)

That you a registered nurse:

1. On 1 January 2021 you failed to follow correct controlled drug procedures in respect of a controlled drug, namely diamorphine, in that you failed to ensure that a second checker was present throughout the:
 - a. Dispensing;
 - b. Preparation;
 - c. Preparing to Administer;
 - d. Destruction.

2. On 1 January 2021 you prepared diamorphine for the purpose of administering it to Resident A without checking:
 - (a) With Resident A and/or those caring for him whether he was in pain;
 - (b) Whether this was clinically justified;
 - (c) Resident A's medication record to determine the correct dosage;
 - (d) Resident A's medication record to identify other available pain relief medication prescribed to Resident A.

3. On 4 January 2021 you failed to follow correct controlled drug procedures in respect of diamorphine, which is a controlled drug, in that you failed to ensure a second checker was present throughout the:
 - a. Dispensing;
 - b. Preparation;
 - c. Preparing to Administer;
 - d. Destruction.

4. On 4 January 2021 you prepared diamorphine for the purpose of administering it to Resident A without checking:
 - (a) With Resident A and/or those caring for him whether he was in pain;
 - (b) Whether this was clinically justified;
 - (c) Resident A's medication record to determine the correct dosage;
 - (d) Resident A's medication record to identify other available pain relief medication prescribed to Resident A.

5. Following your actions at one or more of the charges 2(a) to (d) and/or 4(a) to (d) above, you failed to record your rationale for your actions in Resident A's daily notes and/or controlled drugs book.
6. On or about 30 December 2020 you:
 - a. Destroyed controlled medication, namely Matrifen patches, without a second checker present;
 - b. Failed to correctly dispose of Matrifen patches for a deceased resident by failing to put them in a doop kit.

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

Decision and reasons to offer no evidence

The panel considered an application from Ms Aziz that there is no case to answer in respect of charges 1d and 3d. This application was made under Rule 24(7) of the Rules.

In relation to this application, Ms Aziz submitted that the Case Examiner's decision was made on an incorrect basis with respect to these charges, pursuant to the second limb of the NMC Guidance on applications of no case to answer (DMA-3). She submitted that the NMC has no evidence to support these charges. In these circumstances, it was submitted that these charges should not be allowed to remain before the panel.

Ms Upadhyay submitted that she supported the application, and there is no evidence to support either charge.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether

sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charges 1d and 3d proved. The panel considered, pursuant to the NMC guidance, that this application does not increase this case's seriousness. The panel determined that this application should be allowed in light of the Case Examiner's decision being made incorrectly, and the consequent lack of evidence to support either charge.

Background

The charges arose whilst you were employed as a registered nurse at Ridgeway Care Centre (the Home). You worked at the Home from 6 July 2020 until your resignation on 30 January 2021. The charges relate to events occurring on 30 December 2020, 1 January 2021 and 4 January 2021. You were referred to the NMC on 5 February 2021.

It is alleged by the Home that, on 1 and 4 January 2021, you took 30mg diamorphine from the controlled drugs cupboard to administer to Resident A who was prescribed diamorphine as part of his care. The diamorphine used in the Home was in white powder format and required to be diluted with water, then becoming a clear liquid. On both occasions, the Home alleged you took the diamorphine from the cupboard without a witness, diluted it and prepared to administer it to Resident A prior to speaking to the resident about his desired pain relief options. When Resident A stated that he did not want pain relief, you asked senior carers to witness the destruction of the diamorphine. The liquid was destroyed into a DOOP kit (controlled drug destruction kit) and you wrote in the controlled drug book and drug chart that it had been destroyed.

After the destruction, the Home alleged you failed to document the above actions in the resident's daily notes or account for your reasons for wanting to give diamorphine when other oral medications were available.

The Home suspended you and reported the incident to Safeguarding and the Care Inspectorate for Wales.

The referral also raised an additional concern, that on 30 December 2020, Ms Craft documented the destruction of Resident B's Matrifen patches (controlled drugs). The second witness whose signature appeared in the controlled book stated that she did not witness the destruction and had signed the controlled book later accidentally.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Upadhyay, who informed the panel that you made full admissions to charges 1a, 1b, 1c, 2a, 2b, 2c, 2d, 3a, 3b, 3c, 4a, 4b, 4c, 4d, 5, 6a and 6b.

The panel therefore finds charges 1a, 1b, 1c, 2a, 2b, 2c, 2d, 3a, 3b, 3c, 4a, 4b, 4c, 4d, 5, 6a and 6b proved in their entirety, by way of your admissions. In light of the NMC offering no case to answer to charges 1d and 3d, the panel finds all the charges proved, pursuant to Rule 24(5) of the Rules.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if

the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, Ms Aziz submitted that the panel should have regard to *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*’ Ms Aziz also drew the panel to other relevant case law, including *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin) when considering seriousness, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) when considering serious misconduct as well as *General Medical Council v Meadow* [2007] QB 462 (Admin). She also referred to the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Ms Aziz first invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives 2015’ (the Code), revised in 2018, in making its decision.

Ms Aziz identified the specific, relevant standards where your actions amounted to misconduct. She drew the panel’s attention to Code 7.1 and 5.1, as well as Code 20.1, 20.2, 20.3, and 20.5. She submitted that there is a breach of the professional standards expected of you as outlined in the Code, and you have agreed that your conduct was below the standards expected of a professional nurse, which amounted to misconduct.

Ms Upadhyay submitted that she wished to clarify and correct the submissions made by Miss Aziz. She submitted that you did not administer the diamorphine, and it never left the office in which it was prepared. She further submitted that this minor,

yet important, distinction is why the NMC applied to change the wording of the charges in the first place.

She then submitted, in response to Ms Aziz's submissions on impairment (below) with regard to you 'justifying' your actions, that you demonstrated early insight into your failings. She drew the panel's attention to the investigation meeting minutes, dated 8 January 2021, which stated:

'... Witness 1 = could you tell me why you have failed to follow procedures, in regard if CDs the diamorphine

Michelle= I don't know

Witness 1 = You are fully aware it is two people from start to finish for CD checking and both times you have failed to complete it correctly. It is a national policy not just a home policy, Which is my concern

Michelle= yes I understand...'

Ms Upadhyay submitted that this is clear evidence of your early acceptance that you were wrong to do what you did. She submitted that you reflected from this and demonstrated early insight at the meeting, as you stated:

'... I will not be getting Diamorphine out again I will be phoning you for permission. I will ask you if someone is in pain can I give them Diamorphine. As I am not going through this again...'

Ms Upadhyay submitted that, in your reflective piece, you accepted the charges are serious and likely to amount to misconduct. Consequently, you also accepted that the panel is likely to find your fitness to practise impaired, as your actions fall below the standards expected of you as set out by the Code. Ms Upadhyay submitted that it is unclear how Code 5.1 and 20.2 are breached in this case, and asked Ms Aziz to clarify.

She further submitted that you reflected on the breaches to Code 18, which relates directly to medications. She submitted that these provisions, with specific focus on

18.1, 18.2 and 18.3 are engaged in this case. Ms Upadhyay submitted that you admitted to the lack of clinical justification for your actions.

Ms Aziz, in response to Ms Upadhyay, submitted that she did not draw the panel's attention to Code 18 as you had admitted it in your reflection. With regard to Code 5.1 and 20.2, she submitted that these concern nurses as a profession, and the submissions were made in relation to professionalism and upholding the reputation of the profession at all times.

Submissions on impairment

Ms Aziz moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

Ms Aziz submitted there is sufficient reason to believe your fitness to practise is currently impaired. She submitted that you have not shown insight until recently, when you submitted your reflective piece. She further submitted that your insight is developing and is currently not sufficient. Ms Aziz also submitted that you admitted to the act but not to the wrongdoing until the commencement of this hearing, and you have sought to justify your actions to a large extent up until this hearing.

Ms Aziz submitted that you have attempted to address your conduct and referenced your training certificates from 2021 as well as the ones acquired more recently. She submitted this indicated a developing insight, yet it is insufficient at this time. She also submitted that the training amounted to insufficient remediation. In light of the serious misconduct, your fitness to practise is currently impaired.

In response to a question asked from the panel, Ms Aziz submitted that you attempted to justify your actions by not engaging with the disciplinary meeting held by the Home, and you opted to resign at that point.

Ms Upadhyay invited the panel to consider the NMC's detailed guidance on current impairment (DMA-1) and, in reaching that decision, consider the context surrounding why the incidents occurred as well as evidence of any reflection, training, insight and steps taken by a registrant to address the concerns raised. She submitted that the *Cohen* principles are engaged, and you have fully engaged with these proceedings and the regulator throughout. She further submitted that you did not need to submit documents in support of your case, but you chose to do so.

With regard to insight, she drew the panel's attention to your early acceptance that it was wrong to act in the way you did, and your insight has further developed since then. [PRIVATE]. She submitted that this shows evidence of insight, which has been detailed in your reflective statement.

Ms Upadhyay submitted that the reflective piece also evidence remorse, and you apologised for your mistakes wholeheartedly and learnt from those mistakes. She further submitted that you wish for the opportunity to rectify those mistakes fully. She informed the panel that you have had three years to reflect on how your actions fell short of the professional standards expected of you, and you have detailed the potential impact of your actions on Resident A as well as your colleagues in a particularly challenging time in light of the COVID-19 pandemic. She submitted that you reflected on the impact of your actions on the reputation of the nursing profession, and the importance of both the public and the NMC to have confidence in your nursing ability.

[PRIVATE].

[PRIVATE]. She further submitted that you accept that you have not been able to remediate the concerns completely, but the concerns are remediable as they are clinical in nature and concern medications specifically. She submitted that there is no evidence of any attitudinal concerns. Conversely, she drew the panel's attention to the witness statement provided by Witness 1, which stated:

'... Ms Craft [...] comes over incredibly well and there is a good nurse under there. She was very good with my residents; I didn't have any concerns about

her actual nursing, just this stuff around the controlled drugs. I was sorry this all happened, but it had to there was just no reasonable explanation for not following the correct process ...'

She also drew the panel's attention to the statement from Witness 2:

'... I had no concerns about Michelle's nursing before this. It was a big shock. She is a lovely lady and the residents liked her. I found her lively and easy to talk to. Following this incident, I am more cautious now. I make sure I triple check things before I sign them...'

She invited the panel to consider the statement from Witness 3:

'... I had no other concerns about Ms Craft's practice. I thought she was generally a good nurse, and she had a good rapport with residents. Maybe if I was more suspicious of her as a person, the incident on 1 January would have rung more alarm bells, but I thought she was lovely. This was the one and only time I'd come across something like this with her...'

She drew the panel's attention to the statement from Witness 4, which stated:

'... I had no other concerns about Ms Craft's practice. She was always a bubbly person and very good with residents...'

Ms Upadhyay submitted that all four witnesses made positive comments about your general ability as a nurse. She further submitted the concerns are limited to medications, which you have admitted to and accept that you have not yet fully remediated these failings. She informed the panel that you have not worked as a registered nurse since August 2021, [PRIVATE]. Consequently, you have not worked in a healthcare setting since December 2021. [PRIVATE]. Ms Upadhyay further submitted that you, nonetheless, recognise this limits your ability to engage in practical elements of medication administration, and you are unable to provide evidence of full remediation.

[PRIVATE]. She drew the panel's attention to the training you have undertaken, some accompanied with a brief reflective account which explained the contents of the course and the provisions of the Code which were engaged. She submitted that you have provided some evidence of training, and you intend to do further training and reading in future. You recognise that this training needs to be evidenced in practice, but she submitted that you are realistic about your inability to do so at this time.

In light of the above, Ms Upadhyay submitted that you understand the limitations surrounding your remediation, and consequently, the panel is likely to find your fitness to practise impaired. However, she invited the panel to consider your efforts in reaching its decision.

The panel accepted the advice of the legal assessor which included reference to the judgments in *Roylance*, *Grant* and *Calhaem v General Medical Council* [2007] EWHC 2606 (Admin). The legal assessor also referred the panel to the judgment in *Cohen*.

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, as well as the judgment in *Calhaem*.

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

'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:

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

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations.

To achieve this, you must:

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

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.'

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 charges, both individually and collectively, were sufficiently serious to amount to misconduct.

The panel noted that you accept your actions amounted to misconduct, but it appreciated that it had to come to its own conclusion on misconduct. Accordingly, the panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. Nurses 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 *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) ...'

The panel determined that the first three limbs of *Grant* were engaged in this matter, both with respect to your past actions and your liability in the future. The panel determined that the fourth limb is not engaged, as the charges do not concern dishonesty. The panel finds that patients were put at risk of physical harm as a result of your misconduct. Your misconduct had breached the tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel noted that you accept your fitness to practise is impaired. However, the panel reached its own conclusion through *Grant*.

Regarding insight, the panel determined that you show developing insight into your actions. The panel considered your admissions, which were made at the outset of this hearing. The panel also considered your reflective statement, which detailed your understanding of how your actions put the patient at a risk of harm and how this impacted negatively on the reputation of the nursing profession. The reflection also detailed how you would handle the situation differently in the future.

The panel was satisfied that the misconduct in this case is capable of being addressed, as the concerns are clinical in nature and is a repetition of the same error. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel

determined that you have not had the opportunity to strengthen your practice as you have not worked as a registered nurse since August 2021. The panel considered the training you have completed in that time, but it concluded that you have not shown practical progress in the strengthening of your practice.

Consequently, the panel is of the view that there is a risk of repetition based on your lack of ability to strengthen your practice beyond training. 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 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 your fitness to practise impaired on the grounds of public interest. Accordingly, the panel determined that a finding of impairment on public interest grounds is required.

Having regard to all of the above, the panel was satisfied that your 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 your 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.

Submissions on sanction

Ms Aziz outlined the factors that the panel would consider in reaching its decision on sanction. She referred the panel to the judgment in *Nicholas-Pillai v General Medical Council* [2009] EWHC 1048 (Admin). She also referred the panel to the judgment in *Fuglers LLP & Others v Solicitors Regulatory Authority* [2014] EWHC 179 (Admin), and submitted that, when the panel is determining sanction, it should consider the following factors:

- Culpability for the misconduct in question;
- The harm caused by the misconduct;
- Aggravating features, including previous disciplinary matters; and
- Mitigating factors.

Ms Aziz drew the panel's attention to her submissions during the impairment stage and submitted that she emphasised these submissions now as panel should consider the public protection and public interest concerns when imposing a sanction. She submitted that if you were allowed to practise without restriction, in light of the charges found proved, there is a real risk of harm and high risk of repetition, as the incidents occurred within a matter of days from each other.

With regard to previous fitness to practise history, she submitted that these incidents arose when you were subject to a 12-month caution order by the NMC for another matter. She submitted that the public confidence in the profession and the NMC as its regulator would be damaged if you were allowed to continue practising without restrictions.

She reminded the panel of its obligation to consider seriousness as well as weighing the public interest and upholding public confidence against your interests. She referred the panel to the judgments in the cases of *Giele v General Medical Council* [2006] 1 WLR 942 and *Bijl v General Medical Council* [2001] UKPC 41.

Ms Aziz then referred the panel to the judgment in *Council for the Regulation of Healthcare Professionals v General Medical Council and Southall* [2005] EWHC 579

(Admin) and submitted that the panel should consider testimonials before it when determining sanction. She further submitted that the testimonials seemingly show you, apart from these charges, have been commended for your work as a nurse.

She submitted that the panel should consider aggravating factors pursuant to this case, which may be abuse of a position of trust, a lack of insight into failings, a pattern of misconduct over a period of time or conduct which put patients at risk of suffering harm. She then referred the panel to the judgment in *Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879, and she reminded the panel to consider evidence of remediation and mitigation in this matter.

Ms Aziz submitted that a conditions of practice order would not be the appropriate sanction in this case. [PRIVATE]. She informed the panel that you intend to appeal that decision following the conclusion of these proceedings, but at this time, [PRIVATE]. She further submitted that these incidents occurred whilst you were subject to an NMC caution order, which speaks to the seriousness of the charges found proved. In light of this, Ms Aziz submitted that the NMC seeks a 12-month suspension, given the public protection and public interest concerns.

In response to a question asked by the panel, Ms Aziz informed the panel that the aggravating features submitted were the features panel should consider, pursuant to the SG, and it is for the panel to decide which of these features apply to this case.

During the course of Ms Aziz's submissions, the panel was informed (for the first time) of an earlier Fitness to Practise finding against you, which the panel had the advantage of reading the determination from that hearing. The panel were not previously informed of this finding up until this stage of the proceedings, but it is able to consider it in context of determining the appropriate sanction.

Ms Upadhyay submitted that you have admitted impairment, and you are realistic about the likelihood that the panel is going to impose a period of suspension. She further submitted that, whilst you are realistic about this prospect, your position differs from the NMC with regard to the duration of suspension.

With regard to the previous Fitness to Practise findings against you which resulted in the caution order in 2020, Ms Upadhyay expressed that it was disappointing that you were not informed of the NMC's reliance on it until proceedings have reached this stage, as you may have wished to specifically comment on the matter in your reflection. Nonetheless, she submitted that, from the previous determination, a caution order that was imposed on public interest grounds only, and that the previous panel at that time considered there was no risk to the public and you had fully remediated those concerns at the time.

Ms Upadhyay submitted that you accepted the situation is different for this case. She submitted that, pursuant to her submissions in the impairment stage, you have already accepted that you are currently unable to demonstrate full remediation, and you are unable to demonstrate a successful record of unblemished practice, given you have not worked as a registered nurse for two years. She invited the panel to consider an appropriate length of suspension, in light of these circumstances.

Ms Upadhyay invited the panel to consider the SG (SAN-1), with particular focus on the NMC guidance on suspension order (SAN-3d). She submitted that the panel should consider proportionality and consider sanctions from the least restrictive sanction and moving up, whilst considering proportionality, aggravating and mitigating factors, as well as previous Fitness to Practise history. She further submitted that the NMC's bid for 12 months was the same bid as before you admitted to the charges at the outset of the hearing.

She further submitted that she endorsed Ms Aziz's reference to the judgment in *Nicholas-Pillai* and asked the panel to consider your attitude thus far. She submitted that you have shown positive engagement with these proceedings. You have fully accepted the allegations made against you, and you have not sought to challenge the witnesses or place them through [PRIVATE]. Further, she submitted that you have shown insight and remorse, both documented in your reflective piece. She reiterated her earlier submission that you did not need to attend this hearing or submit documentation, but you chose to do so.

Ms Upadhyay submitted that she agreed with the NMC that a conditions of practice order is unlikely to be workable as you are unable to work as a registered nurse. She further submitted that, if your circumstances change and [PRIVATE], you can apply for an early review.

With regard to mitigating factors, she invited the panel to consider the early admissions you made during the disciplinary process, as well as the subsequent full admissions you made at the outset of this hearing. She submitted that the panel should consider the insight this panel has determined you have shown, the apology you detailed in your reflective piece and attempts at training you have completed, in so far as you are able.

She further submitted that these failings have had a personal impression on you, and you have reflected on the impact of your failings on patients, colleagues and the reputation of the profession. She invited the panel to consider the positive evidence from your colleagues regarding your general conduct.

[PRIVATE].

With regard to aggravating factors, she submitted that the key aggravating factor is a previous regulatory finding against you, as well as your conduct has put patients at risk of suffering harm. She further submitted that there were different circumstances surrounding the previous regulatory finding against you and you were, and you remain, deeply remorseful. Ms Upadhyay told the panel that you accepted that you put residents at risk of harm, and you acknowledged that you needed to take further steps to strengthen your practice with a specific focus on medication administration. However, at this time, she submitted that you fully accept and understand a period of suspension to protect the public may be imposed, due to your inability to remediate the failings.

Ms Upadhyay submitted that this case involves no concerns of dishonesty, and the charges took place over a relatively short period of time. She further submitted that the panel had found your conduct is capable of remediation, and you demonstrate no

attitudinal issues. She further submitted that you demonstrated insight into your failings.

She invited the panel to impose a suspension order for a period of six months. She informed the panel that it would be six months before you can hope to return to practice in a healthcare setting, and the panel may be minded to consider a suspension order in the region of between six to nine months more appropriate. She submitted that this would not be unduly punitive as it would mark the seriousness of the misconduct, address the public protection and public interest concerns whilst allowing you further time to reflect and carry out remote training. [PRIVATE].

Ms Upadhyay submitted that she agreed with Ms Aziz, and that this order should be reviewed before its expiry. She asked the panel to consider guiding you on what further steps it would recommend you take, to help a future panel reach a decision at a review.

She submitted that a striking off order, whilst not mentioned by Ms Aziz, would be disproportionate and inappropriate as the conduct has been deemed capable of remediation. She invited the panel to consider the relevant NMC guidance on imposing a striking-off order (SAN-3e).

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- A previous regulatory finding relating to the same clinical concern, namely medication administration of controlled drugs, noting the previous finding had an additional element of dishonesty;
- A pattern of similar misconduct over a period of time, namely the aforementioned regulatory findings, which have been repeated on this occasion albeit without dishonesty;
- An apparent cavalier attitudinal approach to the process of controlled drug administration, particularly in light of the previous regulatory finding;
- Limited insight into the wrongdoing; and
- Conduct which put patients at potential risk of suffering harm.

The panel also took into account the following mitigating features:

- Early admissions during the course of the investigation, as well as admissions at the outset of this hearing;
- Contextual information, including these incidents occurred in a care home during a difficult time in the midst of the COVID-19 pandemic; and
- [PRIVATE].

In reaching its decision, the panel had regard to both submissions, documentary evidence and the determination from the previous Fitness to Practise hearing. The panel had only become aware of the previous Fitness to Practise contested hearing during the course of submissions on sanction. The panel then received a copy, upon request, of that earlier determination prior to considering its decision on sanction in this case.

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 your practice would not be appropriate in the circumstances. The

SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence; and*
- *Potential and willingness to respond positively to retraining.*

The panel considered its findings on impairment, and it determined that the misconduct is of a clinical nature and thus remediable. However, the panel is of the view that there are no practical or workable conditions that could be formulated, given [PRIVATE]. Consequently, the panel concluded that the placing of conditions on your registration would not be neither a workable nor appropriate sanction for this case.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *No evidence of repetition of behaviour since the incident; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

With regard to a single instance of misconduct, the panel determined that the misconduct concerned three incidents of medication errors over four days. The panel was satisfied you show no evidence of either harmful deep-seated personality or attitudinal problems, albeit it noted that the previous Fitness to Practise findings against you, being of a similar nature, suggested a cavalier attitude to addressing concerns surrounding medication administration of controlled drugs. The panel was aware that there has been no repetition of the behaviour since the incident as you have not worked as a registered nurse since August 2021. With regard to insight, the panel considered your reflective piece, and concluded it showed only limited insight, particularly as it failed to address the previous NMC finding against you, and how this misconduct arose relatively soon following that finding.

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 [PRIVATE], the panel concluded that it would be disproportionate. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. Whilst the panel acknowledged that a suspension may have a punitive effect, it would be unduly punitive in your 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 you. 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 and address the public protection and public interest concerns in this case.

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. The panel also considered that, [PRIVATE], you can request an early review of this order.

Any future panel reviewing this case would be assisted by:

- Your attendance before the reviewing panel;
- A reflective piece addressing the repetitive nature of the misconduct, namely with a focus on the previous Fitness to Practise finding against you, and how these incidents arose in light of that previous finding;
- Evidence of any further training or relevant steps taken to strengthen your practice, such as reading.

This will be confirmed to you 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 your own interests until the suspension 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 Aziz. She submitted that an interim suspension order should be imposed given the panel's decision on sanction, given the 28-day appeal period before the substantive suspension order would come into force. This would mirror the substantive suspension order, and adequately address the public protection and public interest concerns already identified by this panel.

Ms Upadhyay submitted that she does not object to the application.

Decision and reasons on interim order

The panel determined that not to impose an interim suspension order would be wholly incompatible with its earlier findings.

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.

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

That concludes this determination.