

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

**Substantive Meeting
Tuesday 1 November 2022 – Friday 4 November 2022**

Virtual Meeting

Name of registrant: Elaine Clark

NMC PIN: 85J1450E

Part(s) of the register: Registered Nurse – Sub Part 2
Mental Health Nursing (Level 2) – April 1988

Relevant Location: Lincolnshire

Type of case: Misconduct

Panel members: Philip Sayce (Chair, Registrant member)
Kim Bezzant (Registrant member)
Frances McGurgan (Lay member)

Legal Assessor: Juliet Gibbon

Hearings Coordinator: Elena Nicolaou

Facts proved: All (by way of admission)

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Clark's email address on 27 September 2022.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, the date the meeting would be held after, the venue of the meeting and the fact that Mrs Clark had requested a meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Clark 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 at Doulton Court Care Home:

1. On 9 January 2018, administered 2 tablets of paracetamol to Resident A when they were prescribed 1 tablet;
2. On 1 May 2018 administered an incorrect dose of omeprazole to Resident B;
3. On 5 May 2018 failed to record the administration of an additional dose of insulin to Resident C;
4. On 2 July 2018 authorised the administration of un-prescribed and/or unlabelled ear drops to Resident D;
5. On 11 September 2018 in relation to Resident E:
 - a. applied un-prescribed powder to the resident;
 - b. Documented that you applied cream when powder was applied;

- c. did not record the resident's sore skin;
6. On 11 September 2018, did not record the receipt of medicines on Resident E's return to Doulton Court from hospital;

That you, a registered nurse at Apex Care Centre:

7. In relation to Resident F's Alfacalcidol medication:
- a. recorded an incorrect starting count on 8 June 2019;
 - b. recorded an incorrect starting count on 11 June 2019;
 - c. recorded no entry on 12 June 2019;
8. On 14 June 2019 amended the starting count figure for Resident F's Alfacalcidol medication on the following dates:
- a. 11 June 2019;
 - b. 12 June 2019;
9. Your actions in charge 8 above were dishonest in that you intended to cover up your earlier record keeping error;
10. On 3 May 2020 in relation to Resident G:
- a. failed to follow the prescribed catheterisation process for Resident G by failing to use cathgel;
 - b. At 12:51 replaced your earlier entry at 11:10 to indicate "easy insertion draining well" when this was inaccurate;
11. Your actions in charge 10(b) were dishonest in that you intended to conceal that:
- a. the catheter change was performed without cathgel;
 - b. the catheter was not draining well;
12. Failed to document the destruction of Zopiclone for Resident H between 28 November 2020 and 3 December 2020;

13. On 12-13 December 2020, amended entries in the destroyed medicines book to indicate that Zopiclone had been destroyed on 22 November 2020;

14. Your actions in charge 13 were dishonest in that you intended to conceal your error;

15. On one or more occasions between 28 November 2020 and 1 December 2020, you did not arrange for the drug book to be countersigned when medication was destroyed;

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

Decision and reasons on facts

At the outset of the meeting, the panel noted the written representations from Mrs Clark's representative at the RCN, dated 31 August 2022, which stated that Mrs Clark has made full admissions to all of the charges:

'For completeness we note that Ms Clark admits the facts of the allegations and that her fitness to practise is impaired.'

The panel therefore finds all of the charges proved in their entirety, by way of Mrs Clark's admissions.

Background

The charges 1 - 6 arose whilst Mrs Clark was employed as a registered nurse by Four Seasons Health Care and was working at Doulton Court Care Home (the Home) at the time of the allegations. The NMC received a referral on 24 October 2018.

It is alleged that Mrs Clark made multiple medication errors whilst working at the Home, between January 2018 and September 2018. Following an investigation at the Home, Mrs Clark was given a first and final written warning on 16 August 2018. On 11 September

2018, it is alleged that Mrs Clark made a further medication error. A further disciplinary hearing was held on 17 October 2018 and Mrs Clark was dismissed from her employment.

Mrs Clark commenced employment with Apex Care Home (Apex) in January 2019, and it is alleged that Mrs Clark made errors in relation to record keeping and some clinical practice concerns were also raised. A disciplinary hearing was held on 14 May 2020, when Mrs Clark admitted she had made a mistake.

It is alleged that on 13 December 2020, Mrs Clark amended entries in the '*destroyed medicines book*' in relation to Zopiclone medication for a resident. Mrs Clark attended a subsequent disciplinary hearing on 21 December 2020 and was given a final written warning.

Fitness to practise

Having reached its determination on the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Clark's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

Submissions on misconduct and impairment

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. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (“the Code”) in making its decision.

The NMC identified the specific, relevant standards where Mrs Clark’s actions amounted to misconduct. In its written submissions, it stated:

‘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 rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances.’

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):

‘[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.’

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 ("the Code"). It is submitted that the following provisions of the Code have been breached in this case;

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

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

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

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:

18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs

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

18.3 make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

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, treating people fairly and without discrimination, bullying or harassment

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

20.4 keep to the laws of the country in which you are practising

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

Mrs Clark's actions occurred repeatedly over a significant period of time and at different workplaces. The concerns raised are serious and fall far below the standards expected of a registered professional. The Code imposes a clear duty on nurses, midwives and nursing associates to abide by laws of the country in which they practice. Mrs Clark's conduct raised fundamental concerns about her trustworthiness as a nurse.

Impairment

Impairment needs to be considered as at today's date, i.e. whether the Mrs Clark's fitness to practice is currently impaired. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction.

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:

- i) 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*
- ii) has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- iii) 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*
- iv) has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

The panel may also find it useful to 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”.

It is the submission of the NMC that all four limbs can be answered in the affirmative in this case. Dealing with each one in turn:

- i) There is evidence that Resident G was harmed by Mrs Clark’s failure to follow the prescribed catheterisation process which caused him pain, bleeding and hospital treatment was required; Mrs Clark also placed patients at significant risk of harm, particularly as she had been treating elderly patients who might have been vulnerable in her care. These alleged failings are likely to cause risk to patients in the future if they are not addressed.*
- ii) Members of the public with knowledge of the conduct in this case may be deterred from accessing services from Mrs Clark or any organisation that*

may employ her, which also has the ability to impact upon patient care. As a result, Mrs Clark's actions indirectly place patients at unwarranted risk of harm.

iii) Members of the public rightly expect registered professionals to behave in a professional manner and to promote trust and confidence in the nursing profession. The conduct referred to in the charges manifestly bring the profession into disrepute.

iv) Additionally, the provisions of the Code referred to above constitute fundamental tenets of the nursing profession. The conduct alleged breached such fundamental tenets.

v) Mrs Clark was dishonest in that she covered up her wrongdoing. This seriously undermines patient safety and damages public trust in the profession.

Impairment is a forward thinking exercise which looks at the risk Mrs Clark'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.

The clinical concerns identified in this case relate to failures in record keeping, medication management and catheterisation and are capable of remediation. However, the NMC's guidance says there are a small number of concerns that are so serious that it may be less easy for the nurse to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening. These include "dishonesty, particularly if it was serious and sustained over a period of time..."

Mrs Clark has provided some insight. Mrs Clark accepts that she falsified a document to dispose of monthly medications, saying that she did so because she did not have a witness or a second checker. In relation to alteration of the running

medication balance, Mrs Clark explains that she did this, not because she was acting dishonestly, but rather because she noticed that it was wrong and hoped to rectify her mistake. However, Mrs Clark does not provide an explanation for why she made a record to cover concerns relating to the catheterisation procedure.

Mrs Clark's reflective pieces have focussed predominantly on the medication errors whereby she has demonstrated significant insight and remediation by undertaking numerous courses. Unfortunately, the little focus that has been paid to the issue of dishonesty and amending records does not sufficiently demonstrate that she has reflected on or considered why she acted dishonestly.

Mrs Clark attended further medication training, the latest being completed on 22 February 2021. In her testimonial of events (undated) she says:

"Processes for good medication practise and management need to be put in place to prevent and reduce errors which could have detrimental effects on residents wellbeing... I am more careful in dispensing medication... I am continually undertaking training and I have recently completed Respect train the trainer..."

However, the seriousness of the concerns and the fact that they were not isolated, coupled with the lack of insight and what appears to be an underlying attitudinal problem and the absence of evidence of remediation, suggests that there is a high risk of repetition.

Mrs Clark has demonstrated insufficient insight into her practice. Furthermore, she does not appear to have undertaken further training in record keeping and catheterisation. The concerns raised in this case do not appear to have been addressed and managed. Mrs Clark's conduct raises fundamental concerns about her trustworthiness as a nurse.

Therefore, we consider Mrs Clark's fitness to practice is impaired on both public protection and public interest grounds'.

In the RCN's letter, dated 31 August 2022, they stated that Mrs Clark admits that her fitness to practise is impaired. They also referred to the various reflections, testimonials, training and supporting documents provided.

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

The NMC invited the panel to find Mrs Clark's fitness to practise impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council, 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 Mrs Clark's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 *treat people with kindness, respect and compassion*

1.2 *make sure you deliver the fundamentals of care effectively*

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

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:

- 18.1** *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*
- 18.2** *keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs*
- 18.3** *make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines*

19 *Be aware of, and reduce as far as possible, any potential for harm associated with your practice*

To achieve this, you must:

- 19.1** *take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

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, treating people fairly and without discrimination, bullying or harassment*
- 20.3** *be aware at all times of how your behaviour can affect and influence the behaviour of other people*

20.4 *keep to the laws of the country in which you are practising*

20.5 *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress’.*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel first considered each of the charges individually and determined whether they amounted to misconduct.

Charge 1

The panel was of the view that charge 1 amounted to misconduct. There is evidence that Mrs Clark administered two tablets to Resident A when she should have administered one and, within her reflective piece, she also confirmed that she did. This action could have put a frail and vulnerable resident at risk. Mrs Clark’s actions fell below what was expected of a registered nurse. It is clear that the prescription in place for this patient was not followed by Mrs Clark and she did not report the incident to the GP.

Charge 2

The panel was of the view that charge 2 amounted to misconduct, for similar reasons to those in charge 1. The actions in this specific charge had potential to cause more harm to the resident, who was likely to have been caused unnecessary discomfort as a result of Mrs Clark failing to give the correct dose of Omeprazole. Under-dosing could have caused the resident to experience stomach problems, including pain and discomfort. The panel considered that Mrs Clark’s actions indicate a pattern of behavior as procedures and policies were not being followed as they should have been in the Home.

Charge 3

The panel was of the view that Mrs Clark’s failure to record on the MAR chart that she had administered an additional dose of insulin to Resident C, as set out in charge 3, amounted to misconduct. Due to the nature of the drug, the resident would have been at risk of potential harm if the additional dose had been given again by another nurse who was not aware that the resident had already received the additional dose of insulin. Mrs Clark did

not follow the record keeping procedures in place or the Management of Medicines policy. Mrs Clark's actions fell below what was expected from a registered nurse. The panel noted the evidence of the Manager of the Home that checking prescribed medications is particularly important in a care home setting where some residents may not have capacity and therefore may not be able to communicate correct doses to staff or communicate any symptoms and distress they are feeling.

Charge 4

The panel was of the view that charge 4 amounted to misconduct. Mrs Clark had counter-signed the MAR chart, authorising administration of ear drops brought in by the resident's family. The ear drops had not been prescribed to the resident who did not have any ear issues noted within her medical records. Further, the ear drops appeared old, there was no visible use-by date and the seal had already been broken. The ear drops could, therefore, have harbored bacteria and caused an infection which could have been very serious to a vulnerable elderly person. The panel noted the Manager of the Home's statement in which they stated: *'These errors in the Registrant's judgement were in breach of the most basic of nursing principles: a nurse as senior as the Registrant should have been well aware of the importance of avoiding infection and also of checking medications closely ... at the very least the Registrant should have checked with the resident's GP that it was okay to give her the eardrops as per the Home's Management of Medicines Policy'*.

Charge 5

This panel was of the view that charge 5 amounted to misconduct. Mrs Clark applied powder to the resident in question which was not prescribed. The powder was used instead of the resident's prescribed cream. The panel noted the Manager of the Home's evidence that there was a risk of infection in applying a non-prescribed powder from a container that was already open and could have been previously used for someone else. The resident was particularly frail and, therefore, prone to infection. Further, Mrs Clark had documented in the resident's daily notes that she administered cream, which was misleading.

In the investigation report, dated 4 October 2018, it stated:

'That [Mrs Clark] failed to report the sore skin on Datix or update the relevant care plan as policy'.

The panel considered Mrs Clark's actions in charge 5a-c to be further examples of her failures to follow correct procedures in her care of residents at the Home.

Charge 6

The panel was of the view that charge 6 amounted to misconduct. The panel noted the investigation report, dated 4 October 2018, which stated:

That [Mrs Clark] failed to record medication received into the home for same resident on return from hospital'.

The panel noted that in the investigation meeting, dated 4 October 2018, Mrs Clark stated that there were no changes to the resident's medication when he returned from hospital. As a result of Mrs Clark not documenting the medicines received into the Home, however, upon the resident's return from hospital, the Home would not have been able to perform an accurate audit on the residents' medications and establish if a dose had been missed or if too many doses had been given. The panel considered that this posed a risk of harm to the patient. It also noted that, prior to this incident, Mrs Clark had recently re-read the Home's Management of Medicines Policy as a result of her previous errors, but despite this she had not followed the policy.

Charge 7

The panel was of the view that Mrs Clark's actions in recording an incorrect starting count of a resident's medication and her failure to make any entry on another occasion amounted to misconduct. All medications are in boxes and the Home keeps a running total of how many are left in each box whenever they are administered. The Clinical Lead counted the medication on 13 June 2019 but her count did not tally with previous entries recorded by Mrs Clark on the MAR chart. Mrs Clark had initially recorded the amount of medication as 35 when it should have been 24. On 11 June 2019 Mrs Clark had wrongly

recorded the amount of medication as 33 and had not made any entry on 12 June 2019. Mrs Clark had clearly not counted the medication, as she should have, but had relied on the previous entries on the MAR chart. The panel was of the view that Mrs Clark's actions fell below the standards expected of a nurse.

Charge 8

The panel was of the view that charge 8, as worded, does not amount to misconduct. It noted that Mrs Clark had, on 14 June 2019, amended the starting count figure for the entries on Resident F's MAR chart for 11 and 12 June 2019 but it considered that, of itself, did not constitute misconduct. The real mischief was that Mrs Clark had amended the entries in an attempt to cover up her earlier record keeping errors and that is dealt with in Charge 9.

Charge 9

The panel noted that on 14 June 2019 Mrs Clark had retrospectively amended the entries on Resident F's MAR chart for 11 and 12 June 2019. Mrs Clark had not made it clear that she amended the entries retrospectively. The panel noted that this was not a legitimate way to amend Mrs Clark's previous errors and had clearly been done in an attempt to cover up her previous errors in recording the wrong amount of the medication on two occasions. The panel was of the view that Mrs Clark knew that what she was doing was dishonest and that an ordinary decent member of the public would also consider her conduct to be dishonest.

Charge 10

The panel was of the view that charge 10 amounted to misconduct. The correct procedure for inserting a catheter for this resident required the use of a gel called '*Cathgel*', which makes the insertion easier and less traumatic for the resident. In failing to use the Cathgel Mrs Clark had showed a total disregard for the resident in question and had caused them unnecessary pain and discomfort during the procedure. It noted that Mrs Clark had been trained in respect of male catheterisation on 24 July 2019 and this failing related to fundamental nursing skills. Mrs Clark did not follow the policy in place and additionally

recorded on the resident's notes '*an easy insertion and draining well*' which was not correct in that Resident G had experienced considerable pain and had bled following the procedure, and the night staff had to get him admitted to hospital as he had a blocked catheter and was not passing any urine.

Charge 11

The panel was of the view that charge 11 amounted to misconduct and involved dishonesty. Mrs Clark intended to conceal that the catheter change was performed without Cathgel, and that the resident's catheter was not draining well. The panel noted that there is a function that allows nurses to make updates on residents' electronic notes. The updated entry would make it clear that it is made further to the initial entry. Mrs Clark did not use the proper function for recording her update which meant the resident's records were not presented correctly. The panel was of the view that Mrs Clark must have known that replacing the entry rather than updating it with incorrect information in the resident's electronic notes was dishonest and it concluded that an ordinary decent member of the public would also consider her conduct to be dishonest.

Charge 12

The panel considered that charge 12 amounted to misconduct. There was a duty on Mrs Clark to document the destruction of Zopiclone for this resident, which she failed to do. The panel also noted that this was a controlled drug, which meant that Mrs Clark should have taken more care and followed Apex's policy on the destruction of controlled drugs.

Charge 13

The panel was of the view that charge 13, as worded, does not amount to misconduct. It noted that Mrs Clark had, on 12 - 13 December 2019, amended entries in the destroyed medicines book to indicate that Zopiclone had been destroyed on 22 November 2020 but it considered that, of itself, did not constitute misconduct. The real mischief was that Mrs Clark had made the entry in an attempt to conceal her previous error in not recording that the medication had been destroyed and that is dealt with in charge 14.

Charge 14

The panel noted that when a controlled medication is destroyed it requires a witness to countersign for the destruction in the dedicated '*destroyed medication book*'. Controlled drugs are destroyed in a '*doom kit*' and then placed in a green bucket. Apex follows Boots Pharmacy's policies. It was noted on 11 December 2020 that the previous medication chart for the resident showed a balance of nine Zopiclone on 22 November 2020 whereas the new box had 12 Zopiclone. The Clinical Lead at Apex checked the destroyed medication book to see if the nine Zopiclone had been destroyed but could not find any entry that related to the destruction of the drug. The Clinical Lead texted Mrs Clark, who was on shift, to ask if she knew anything about the missing Zopiclone and she responded that she had destroyed it as overstock. She was asked to provide evidence and subsequently produced the destroyed medicines book with a new entry in her name that was dated 22 November 2020. This entry had not been present when the Clinical Lead had previously checked the book but had been added retrospectively by Mrs Clark. Mrs Clark initially denied that she had retrospectively added the entry to the book but eventually admitted that she had added the entry the night the Clinical Lead had texted her on 12 - 13 December 2020. Mrs Clark admitted that she was unsure if the Zopiclone tablets had been put in the doom kit. The panel considered that Mrs Clark had made the entry to conceal her previous error in not recording that the Zopiclone tablets had been destroyed. The panel was of the view that Mrs Clark knew that what she was doing was dishonest and that an ordinary decent member of the public would also consider her conduct to be dishonest.

Charge 15

The panel was of the view that charge 15 amounted to misconduct. There was a duty on Mrs Clark to arrange for the drug destroyed medicines book to be countersigned when medication was destroyed, but she had failed to do so.

The panel then went on to consider whether the facts found proved amounted to misconduct collectively. The panel found that Mrs Clark's actions, both individually, as set out above, and collectively did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel was of the view that all four limbs of Grant are engaged in this case.

The panel finds that patients were put at risk as a result of Mrs Clark's misconduct. Mrs Clark's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that the concerns of the case are wide-ranging and involved fundamental aspects of nursing practice; medications management, record keeping and clinical care.

In relation to medications management, the panel considered that these actions were serious. It considered that the evidence of the reflections and training provided by Mrs Clark is not sufficient to find that she is no longer impaired. The panel considered that Mrs Clark's reflection did not focus on the potential impact towards the patients, but more on the impact on herself. It noted that Mrs Clark has completed training courses regarding medications management, but the panel cannot be sure that the same mistakes would not happen again. The panel considered that there appears to be an inability to implement the training that Mrs Clark has undertaken, and her actions demonstrate a repeated pattern of behaviour over a prolonged period of time.

In relation to clinical care, the panel again considered that Mrs Clark's reflections were not sufficient enough to address the concerns or demonstrate her insight into her actions and impact it could have had on the patients. A number of the failings relate to fundamental

aspects of nursing care, and the only reference to Mrs Clark's patient care is set out in the RCN's letter. Due to Mrs Clark's lack of insight, the risk of repetition remains high.

In relation to record keeping, the panel considered that there remains a high risk of repetition. It considered that Mrs Clark's record keeping errors demonstrated consistently low standards and ranged from not documenting aspects of care to inappropriately and dishonestly amending patient records. The panel considered that Mrs Clark's actions could have had an adverse impact on patients under her care.

The panel had regard to the training certificates provided by Mrs Clark. Although it acknowledged that she had sought out and undertaken relevant training, there was no evidence before the panel that this training had strengthened her practice.

In relation to dishonesty, the panel referred to the NMC's guidance. Dishonesty is difficult to remedy and there is evidence that Mrs Clark was dishonest on three occasions over a period of about 18 months. The panel noted that Mrs Clark does not refer to her dishonesty in any of the reflective pieces that have been provided to the panel.

Taking into account the panel's findings that residents were either caused harm or put at risk of harm and that there remains a risk of repetition, the panel 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 because the public would be concerned if a finding of impairment were not made. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made and therefore also finds Mrs Clark's fitness to practise is also impaired on the grounds of public interest.

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

Sanction

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

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

Representations on sanction

In its written submissions, the NMC stated:

'Sanction

The NMC consider the appropriate and proportionate sanction in this case to be a striking-off order.

With regard to our sanctions guidance the following aspects have led the NMC to this conclusion:

The aggravating factors in this case include:

- *Dishonest conduct on 3 occasions, in two different locations – repetition involved, demonstrating a 'pattern' of behaviour*
- *Abuse of position*
- *Potential for serious harm to patients*
- *Lack of insight into dishonesty*

The mitigating factors in this case include:

- *Significant insight into medication errors*
- *Long standing career of 30 years*

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 of current impairment and this is not one of those rare cases. The seriousness of the offences means that taking no action would not be appropriate. A caution order would also not be appropriate as this would not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.*

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):*

- *no evidence of harmful deep-seated personality or attitudinal problems*
- *identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining*
- *no evidence of general incompetence*
- *potential and willingness to respond positively to retraining*
- *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*
- *patients will not be put in danger either directly or indirectly as a result of the conditions*
- *the conditions will protect patients during the period they are in force*
- *conditions can be created that can be monitored and assessed.*

This case involves attitudinal concerns as Mrs Clark acted dishonestly on three separate occasions, by the very fact that she covered up her mistakes.

Furthermore, Mrs Clark has not demonstrated sufficient insight and there is a significant risk of repetition. There are no practical conditions that could be put in place that would maintain public confidence.

Suspension Order - According to the NMC guidance (SAN-3d), a suspension order would not be appropriate in this case as the misconduct is fundamentally incompatible with the registrant continuing to be a registered professional. Mrs Clark has not provided sufficient evidence that her behaviour will not be repeated. It is determined that in this case a suspension order would not be sufficient to protect the public or mark the seriousness of the conduct.

Striking-off Order - The NMC's guidance (SAN-3e) says that a striking-off order is likely to be appropriate when what the nurse has done is fundamentally incompatible with being a registered professional. Covering up when things going wrong seriously undermines patient safety and damages public trust in the profession. Mrs Clark's actions, her dishonesty in particular, raises fundamental questions about her professionalism. This sanction is the only proportionate and appropriate sanction to meet the NMC's overarching objective as a regulator to protect the public and ensure the public's confidence is maintained.'

In the RCN's letter, dated 31 August 2022, it stated:

'...we would ask that a sanction short of strike off be imposed and more specifically the previously proposed sanction bid of a 4–6-month suspension order...'

Decision and reasons on sanction

Having found Mrs Clark's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose. The panel accepted the advice of the legal assessor.

The panel took into account the following aggravating features, as set out in the NMC's written submissions:

- *'Dishonest conduct on 3 occasions – repetition involved, demonstrating a 'pattern' of behaviour*
- *Abuse of her position*

- *Actual and the potential for serious harm to patients*
- *Lack of insight into dishonesty'*

The panel also took into account the following mitigating features:

- Mrs Clark has made some attempts to strengthen her practice;
- Mrs Clark has expressed remorse;
- Mrs Clark has undertaken some appropriate training;
- Mrs Clark's personal circumstances at the time of the incidents that occurred at Apex; and
- Mrs Clark had a 32-year unblemished record as a registered nurse prior to the first incident.

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.

The panel 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 Mrs Clark'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 Mrs Clark's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Clark's registration would be a sufficient and appropriate response. The panel noted that some of the concerns, namely record keeping and medications management could be addressed by conditions of practice. There is also dishonesty, that occurred on three separate occasions, and therefore the panel is of the view that conditions of practice would not be appropriate. Mrs Clark has also demonstrated a lack of insight into her actions and the impact they could have had on patients and has not reflected on her dishonesty.

Furthermore, the panel concluded that the placing of conditions on Mrs Clark's registration would not adequately address the seriousness and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The conduct, as highlighted by the facts found proved, amounted to serious misconduct by Mrs Clark that occurred in two places of employment. There were also three occasions when Mrs Clark acted dishonestly, and her misconduct was a pattern of behaviour that was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Clark's actions is fundamentally incompatible with her remaining on the register.

The panel noted that Mrs Clark has provided evidence of reflection and training, however, it considered that her reflection was not sufficient and did not address the impact on patients or her dishonesty and appeared to focus on the impact on herself. Mrs Clark had undertaken some relevant training, however there is no evidence that she has implemented that learning within her practice, as there was a repeated pattern of behaviour over a prolonged period of time, despite the ongoing training. The regulatory concerns involve wide-ranging aspects of nursing care. Mrs Clark has also been dishonest on three occasions over a period of 18 months, which the panel considered to be very serious. Mrs Clark has not acknowledged the dishonesty in this case. The panel considered that this is not a single incident of misconduct and Mrs Clark's actions had put residents at risk of harm.

Therefore, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mrs Clark's actions were significant departures from the standards expected of a registered nurse, and, in the panel's view, are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings demonstrate that Mrs Clark's misconduct was very serious and to allow her to continue to practise would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and having taken into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Clark's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of a striking-off order would be a sufficient sanction.

The panel also considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standards of behaviour required of a registered nurse.

This will be confirmed to Mrs Clark in writing.

Interim order

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

Representations on interim order

The panel took account of the representations made by the NMC that an interim suspension order should be imposed for a period of 18 months.

Decision and reasons on interim order

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

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

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

That concludes this determination.