

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

**Substantive Meeting
Monday, 14 August 2023 – Tuesday, 15 August 2023**

Virtual Hearing

Name of Registrant:	Rachael Elizabeth Evans
NMC PIN	9816533E
Part(s) of the register:	Registered Nurse - Sub Part 1 Adult Nursing - September 2001
Relevant Location:	Swindon
Type of case:	Misconduct/Conviction
Panel members:	Adrian Blomefield (Chair, Lay member) Claire Rashid (Registrant member) Anna Ferguson (Registrant member)
Legal Assessor:	Robin Ince
Hearings Coordinator:	Deen Adedipe
Consensual Panel Determination:	Accepted
Facts proved:	Charges 1, 2, 3, 4, 5
Facts not proved:	Not applicable
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 that the Notice of Meeting had been sent to Mrs Evans' registered email address by secure email on 29 June 2023.

Further, the panel noted that the Notice of Meeting was also sent to Mrs Evans' representative at the Royal College of Nursing on 29 June 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations, the date after which the matter was to be heard and the fact that this meeting will be heard virtually.

In the light of all of the information available, the panel was satisfied that Mrs Evans 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).

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Details of charge

That you, a registered nurse:

1. Between February 2020 and October 2020, on one or more occasion, at Great Western Hospital (“the hospital”):
 - a. Ordered codeine without clinical justification.
 - b. Removed the record of ordering codeine from the controlled drugs book.
 - c. Did not register codeine in the controlled drugs record book
 - d. Removed codeine from the hospital.

2. On 6 October 2020:
 - a. Collected 60 mg of codeine from the pharmacy.
 - b. Removed the record of ordering codeine from the controlled drugs book.
 - c. Did not sign in 60mg of codeine in the controlled drug order book.
 - d. Did not put codeine into the controlled drug cupboard.
 - e. Consumed codeine.
 - f. Asked Colleague A to conceal codeine.

3. Your conduct as charges 1 and 2 was dishonest, in that you knew:
 - a. Codeine was not clinically required
 - b. You were not entitled to remove codeine from the hospital.
 - c. Codeine belonged to the hospital.

4. Between 24 March 2022 and 11 May 2022, failed to cooperate with the NMC investigation into your health in that you:

- a. Did not respond to phone calls from DNA legal
- b. Did not respond to emails from DNA legal
- c. Did not provide a nail sample for testing to DNA legal.

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

That you, a registered nurse:

5. On 29 March 202, were convicted of stealing codeine tablets between 25 February 2020 and 6 October 2020 belonging to Great Wester Hospital NHS Foundation Trust.

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Mrs Evans.

The agreement, which was put before the panel, sets out Mrs Evans' full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct and conviction. It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

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

That provisional CPD agreement reads as follows:

1. *'Mrs Evans is content for her case to be dealt with by way of a CPD meeting.*

Preliminary issues

2. *This is a misconduct and conviction case. There is reference to Mrs Evans' health as part of the response to the charges. It is agreed by the Parties that details of any health condition should be redacted from any published public determination, to protect Mrs Evans' right to privacy and in accordance with the NMC's publication guidance.*

The charge

3. Mrs Evans admits the following charges:

That you, a registered nurse:

1. *Between February 2020 and October 2020, on one or more occasion, at Great Western Hospital (“the hospital”):*
 - a. *Ordered codeine without clinical justification.*
 - b. *Removed the record of ordering codeine from the controlled drugs book.*
 - c. *Did not register codeine in the controlled drugs record book*
 - d. *Removed codeine from the hospital.*

2. *On 6 October 2020:*
 - a. *Collected 60 mg of codeine from the pharmacy.*
 - b. *Removed the record of ordering codeine from the controlled drugs book.*
 - c. *Did not sign in 60mg of codeine in the controlled drug order book.*
 - d. *Did not put codeine into the controlled drug cupboard.*
 - e. *Consumed codeine.*
 - f. *Asked Colleague A to conceal codeine.*

-
3. *Your conduct as charges 1 and 2 was dishonest, in that you knew:*
 - a. *Codeine was not clinically required*
 - b. *You were not entitled to remove codeine from the hospital.*
 - c. *Codeine belonged to the hospital.*

-
- d. **[PRIVATE]**

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

That you, a registered nurse:

4. *On 29 March 202, were convicted of stealing codeine tablets between 25 February 2020 and 6 October 2020 belonging to Great Wester Hospital NHS Foundation Trust.*

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

The facts

4. *Mrs Evans appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered Adult Nurse and has been on the NMC register since 9 September 2001. Mrs Evans was employed by Great Western Hospitals NHS Foundation Trust (“the Trust”) from 2001. At the time of the concerns which led to the referral, Mrs Evans was working as a Ward Sister on Neptune Ward (“the Ward”).*
5. *On 6 October 2020, Pharmacy Assistant Donna West found a pack of 60mg of Codeine tablets stored in the general medicine cupboard instead of the controlled drugs cupboard.*
6. *The Director of Pharmacy (“Mr Devenish”), was alerted and a check was conducted on the Ward. It was found that unusually high amounts of Codeine had been ordered, and copies of drugs orders had been ripped out from the relevant controlled drugs (“CD”) order book. The controlled drugs cupboard was checked, and Codeine was missing.*
7. *Mrs Evans was asked by management where the missing Codeine was as she had collected it that morning, from the pharmacy, with another drug that was in the controlled drugs cupboard. Mrs Evans said she wasn’t sure and that had a lot of items with her, and that she would check.*
8. *Mrs Evans approached the senior staff nurse (“Ms Gray”) and said that she had done something stupid and had taken Codeine. Mrs Evans said that it was ward stock and asked for help from Ms Gray to conceal what she had done.*
9. *Mrs Evans handed the packet of Codeine to Ms Gray and was asking her “what should ‘we’ do”. Ms Gray disposed of the Codeine in the pharmacy bin so no one could have access to them. Shortly after this was reported by Ms Gray to Mr Devenish, and Mrs Evans admitted what had happened.*

10. *The Trust found that between 25 February 2020 and 6 October 2020, there were 45 incidents of Codeine being ordered. In each case the page containing the drugs order had been removed from the controlled drugs book.*
11. *Each order had been for a box of 28 x Codeine tablets and had been ordered by Mrs Evans. None of these Codeine orders had been entered in the ward drugs register by Mrs Evans.*
12. *Mrs Evans was convicted of theft and received a £100 fine on 29 March 2021.*
13. **[PRIVATE]**
14. **[PRIVATE]**
15. **[PRIVATE].**
16. **[PRIVATE]**
17. **[PRIVATE].**
18. *On 30 March 2022, the NMC contacted Mrs Evans' representative to assist in engagement.*
19. **[PRIVATE]**
20. **[PRIVATE].**
21. **[PRIVATE].**
22. **[PRIVATE]**
23. **[PRIVATE]**
24. **[PRIVATE].**
25. **[PRIVATE].**

26. As part of the NMC's investigation process witness statements have been obtained from:

- Amanda Gray, Senior Staff Nurse at the Trust at the relevant time.
- Paul Devenish, Director of Pharmacy at the Trust.

27. The following documentation has been obtained:

- Local investigation report and associated appendices.
- Memorandum of conviction.
- Summary of police evidence.
- **[PRIVATE]**

28. On 20 January 2023, Mrs Evans admitted to all the charges and that her fitness to practise is impaired in the Case Management Form returned.

Charges

Charge 1

29. On 6 October 2020, at around 16:30 Mr Devenish was alerted to a concern that had arisen in the Ward regarding missing Codeine tablets. Initial enquiries were made, and it was established that there were inconsistencies in the paperwork and that Neptune Ward had an unusually high volume of codeine issued to it in the past week when compared to the number of patients who were prescribed it.

30. Mr Devenish carried out a check of the CD cupboard and there were no 60mg codeine tablets, despite some having been dispensed earlier in the day. A box of 28 x 60mg were signed for earlier that day by Mrs Evans. Mr Devenish checked the CD order book and found that there was no carbon copy of this order, and it was clear that the duplicate page had been torn from the book.

31. *Mr Devenish commenced an investigation into the discrepancy. On further review of the CD order book, a number of duplicate page orders had been torn out of the book.*
32. *There were a lack of entries in the CD book for 60mg Codeine and that a number of pages from the book had been ripped out. Mrs Evans signed for Codeine earlier in the day, Mr Devenish asked if she had seen the tablets, but she said she couldn't remember.*
33. *Between 25 February 2020 and 6 October 2020, there were 45 similar incidents that were identified, by checking which order slips were missing from the CD order books and obtaining the corresponding order from the pharmacy copy. None of the Codeine ordered or collected by Mrs Evans during these dates had been entered in the Ward CD register.*
34. *The original pharmacy copies were obtained and cross checked by the serial number relating to the missing pages. In each case, the drug involved was Codeine and orders had all been placed by Mrs Evans.*
35. *Codeine had been collected from the pharmacy by Mrs Evans on almost every occasion. There was one occasion where the Codeine had been collected by another person, and a further seven incidents where the Codeine had been collected by another person but had been endorsed on the form 'accepted on ward by Mrs Evans'.*
36. *Mrs Evans accepts that she ordered Codeine without clinical justification, removed the record of any order, did not register the order in the controlled drugs record book and removed Codeine from the Hospital.*

Charge 2

37. *On 6 October 2020 Mrs Evans accepts that she collected 60 mg of Codeine from the Hospital's pharmacy, and she removed the record of ordering the*

Codeine from the controlled drugs book. The Codeine was not signed into the controlled drug order book, and Mrs Evans did not put the Codeine into the controlled drug cupboard.

- 38. On being questioned by Mr Devenish as to where the Codeine was that she collected that morning, Mrs Evans said she was unsure and left the area.*
- 39. Mrs Evans approached Ms Gray and informed her that she had consumed Codeine. Mrs Evans informed Ms Gray that it was ward stock and produced a pack of 60mg of Codeine tablets from her pocket. Ms Gray took these tablets from her. Mrs Evans told Ms Gray she had taken some of the Codeine and flushed the rest down the toilet.*
- 40. Ms Gray told Mrs Evans that she would need to be honest about what she had done. Mrs Evans said that the pharmacist and senior were looking for the Codeine.*
- 41. Mrs Evans made suggestions that about what could be done to make things right to cover up her actions. Mrs Evans handed the packet of Codeine to Ms Gray and was asking her "what should 'we' do". Mrs Evans asked Ms Gray to hide the Codeine. Ms Gray disposed of the Codeine in the pharmacy bin so no one could have access to them. Shortly after this was reported by Ms Gray to Mr Devenish, and Mrs Evans admitted what had happened.*

Charge 3

- 42. By ordering Codeine without clinical justification, removing the record of the order, the failure to register codeine in the CD record book and the subsequent removal of the Codeine from the hospital, Ms Evans' conduct is dishonest in that she knew the codeine was not clinically required, nor was she entitled to remove the codeine from the hospital as she knew it belonged to the hospital.*

43. *In finding dishonesty, the test laid down by the Supreme Court in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67 applies:*

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

Dishonesty in relation to Charge 1

44. *When placing a Codeine order without clinical justification Ms Evans knew that she was not entitled to remove the Codeine that belonged to the hospital. The dishonest conduct here is the removal of the CD order forms to conceal her actions. By removing the record of the order further demonstrates the knowledge that Ms Evans was not legitimately entitled to the codeine.*

45. *Applying the objective standards of ordinary decent people, it is clear that concealing the ordering of Codeine on more than one occasion, by removing the record of order, the failure to record the order in the controlled drugs book, and the removal of the Codeine from the Hospital, would be considered dishonest.*

Dishonesty in relation to Charge 2

46. *Mrs Evans collected the Codeine order, and removed the record of ordering, did not sign the codeine into the CD order book, consumed the Codeine and asked AG to conceal the codeine.*

47. *Applying the objective standards of ordinary decent people, it is clear that concealing the ordering of codeine, removal of the codeine and the request of another to assist concealing the codeine on 6 October 2021, would be considered dishonest.*

Charge 4

48. **[PRIVATE]**

49. **[PRIVATE].**

50. **[PRIVATE]**

51. **[PRIVATE].**

52. *During the time phone calls were also made to arrange an appointment, which were unsuccessful.*

53. **[PRIVATE]**

Charge 5

54. *Mrs Evans was convicted at Swindon Magistrates' Court for the offence of theft of Codeine tablets of an unknown value belonging to the Great Western Hospital NHS Foundation Trust and was sentenced to a financial penalty of £100 and a victim surcharge of £34. Mrs Evans was also required to pay costs of £85 to the CPS.*

Misconduct

55. *The Parties agree that the conduct as particularised in charges 1 – 4 amount to misconduct.*

56. The comments of **Lord Clyde in Roylance v General Medical Council [1999] UKPC 16** may provide some assistance when considering what could amount to misconduct:

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

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

“[Misconduct] connotes a serious breach which indicates that the [nurse’s] fitness to practise is impaired”

and

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

58. *Mrs Evans' actions are serious and fall short of what is expected of a registered nurse. Mrs Evans abused her position of trust as the Ward Sister by using her position to order codeine, and to remove the codeine from the hospital on at least 45 occasions. The conduct was over a sustained period of time and was only discovered when a colleague discovered there was a discrepancy with the controlled drugs cupboard. Mrs Evans then asked for assistance to conceal the codeine that she had on her person. Dishonesty in her actions only increases the seriousness of the conduct. [PRIVATE]. The conduct is a serious departure from standards expected in the nursing profession. Mrs Evans' conduct would be considered deplorable by fellow practitioners.*

59. *At the relevant time, Mrs Evans was subject to the provisions **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** ("the Code"). The Parties agree that the following provisions of the Code were engaged and breached in this case;*

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.4 take account of your own personal safety as well as the safety of people in your care.

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:

18.4 take all steps to keep medicines stored securely

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

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

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 ... 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

20.6 stay objective and have clear professional boundaries at all times with people in your care ...

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

23 Cooperate with all investigations and audits

To achieve this, you must:

23.1 cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise.

60. *It is acknowledged that not every breach of the Code will result in a finding of misconduct. However, Mrs Evans accepts that the failings set out above are a serious departure from the professional standards and behaviour expected of a registered nurse. Mrs Evans acknowledges that her conduct presented a risk of harm to herself and others around her.*

Impairment

61. *The Parties agree that Mrs Evans' fitness to practise is currently impaired by reason of her misconduct and conviction.*

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

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

- i. 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*
- ii. has in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- iii. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [nursing] profession; and/or*
- iv. has in the past acted dishonestly and/or is liable to act dishonestly in the future"*

63. *The Parties agree that all four limbs as identified in the above case, are engaged.*

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

64. *It is agreed by the Parties that consuming Codeine, that was not prescribed, whilst on duty has the potential to place patients at risk of unwarranted harm. By seeking out and consuming Codeine whilst on duty, Mrs Evans has placed her focus on drug-seeking, rather than patients in her care. Mrs Evans has actively sought to obtain Codeine whilst on duty. One of the known side effects of Codeine, an opiate, is that it can cause drowsiness. Since there was no medical oversight of her dosage, , when it was consumed whilst on duty, this could have placed patients in her care at risk of harm from the potential for medication errors and unsafe treatment. On 6 October 2020 Mrs Evans consumed Codeine and continued her shift, only being asked to leave once the medication error was discovered. Although there was no actual harm on 6 October 2020, [PRIVATE]. As such, the risk of repetition of this behaviour must remain.*

Has in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute

65. *The Parties agree that Mrs Evans has brought the reputation of the profession into disrepute. A member of public, quite rightly, would expect a nurse to conduct herself in a standard expected of a nurse. Mrs Evans' conduct falls short what is expected of a registered professional. Having abused her position as a ward sister, over a substantial period of time, by ordering and removing Codeine from the hospital, receiving a conviction for the same, and a failure to engage with her regulator, it is clear this conduct has brought the profession into disrepute.*

Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [nursing] profession

66. Registered professionals occupy a position of trust in society. The public expects nurses to provide safe and effective care and conduct themselves in ways that promotes trust and confidence. Honesty and providing safe care are two fundamental tenets of the profession. Mrs Evans actions had the potential to cause harm to patients. Dishonesty is fundamentally incompatible with working in the nursing profession. and members of the public to be concerned about their safety and feel unnecessarily anxious about their healthcare and treatment. This, the Parties agree, could result in patients, and members of the public, being deterred from seeking nursing assistance when needed.

Has in the past acted dishonestly and/or is liable to act dishonestly in the future

67. Mrs Evans acted dishonestly which was reflected by her theft of the Codeine tablets and conviction of the same. Mrs Evans ordered the Codeine on 45 occasions whereby the pages of the order book were removed, in an attempt to conceal the orders being requested, and the subsequent removal of the drugs from the Hospital. This was repeated conduct of dishonesty and an abuse of a position of Trust. Mrs Evans attempted to conceal her theft of Codeine on 6 October 2020 further and sought a colleague's assistance in concealing the Codeine and her conduct. [PRIVATE]. Given this, she is liable to engage in further dishonest behaviour, by stealing codeine and concealing the thefts, in future. [PRIVATE].

Remorse, reflection, insight, and strengthening practice

68. With regard to future risk the Parties have considered the comments of **Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin)** namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.

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

5.

70. Mrs Evans' actions involved dishonesty which is regarded as conduct which is more difficult to remediate. The NMC's guidance entitled "Can the concern be addressed?" ([FTP13a](#)) states as follows:

"Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include..... dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to the nurse, midwife or nursing associate's practice."

6.

71. Mrs Evans' dishonesty was directly related to her practice, in that she accessed and took medication from the Trust where she was working.

72. The NMC's guidance entitled "**Serious concerns which are more difficult to put right (FTP-3a)**", says there are a small number of concerns that are so serious that it may be less easy for a nurse, midwife or nursing associate to put right the conduct or the problems in their practice. One such example of this is "breaching the professional duty of candour to be open and honest when things go wrong"

73. The Parties therefore concluded that, in line with the guidance, while this is conduct which is less likely to be remediated solely through training and supervision, if it is to be remediated then evidence that Mrs Evans has participated in such methods will be essential.

74. *The Parties next considered if Mrs Evans has reflected and taken opportunities to show insight into what happened. The Parties acknowledge that Mrs Evans has demonstrated some level of insight, evidenced by way of her admission to the charges and guilty plea.*

75. *In written submissions submitted to the NMC on 15 March 2021, Mrs Evans' representative on her behalf stated the following:*

'My actions were despicable and inexcusable and I wholly regret everything that I have done. Most importantly, I have let our patient's and the general public down. We are taught through the NMC Code of Conduct that nurses must have a clear and consistent positive message and reinforcing professionalism at all times – my actions have brought the profession into disrepute and I am thoroughly ashamed of this.'

'Our Code tells us that we must Promote professionalism and trust and uphold the reputation of your profession at all times. I fully accept that my actions and behaviour contradicted everything that this stands for. In particular, I have not:

- upheld the standards and values set out in the Code*
- kept to the laws of the country in which I am practising*
- acted as a role model of professional behaviour that staff can aspire to*
- [PRIVATE].'*

'Not only have I let my fellow nursing community down, I have brought shame and embarrassment on my wonderful family. I am tremendously lucky to have these extremely supportive, encouraging and compassionate people around me and I will be forever grateful for their love and guidance. '

'I am truly sorry for what I have done and fully accept all responsibility for my actions.

[PRIVATE]

I am extremely grateful to the nurses that urged me to admit to what I had done and they were my voice of reason when I was in a full state of panic. [PRIVATE]

'This leads to what the future holds for me.

[PRIVATE]

76. In accordance with **Article 3(4) of the Nursing and Midwifery Order 2001** (“the Order”) the overarching objectives of the NMC are to protect the public, and to maintain public confidence in the profession.

77. The Order states:

“The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-

- a) to protect, promote and maintain the health, safety and well-being of the public;*
- b) to promote and maintain public confidence in the professions regulated under this Order; and*
- c) to promote and maintain proper professional standards and conduct for members of those professions.”*

Public protection impairment

78. A finding of impairment is necessary on public protection grounds.

79. Whilst no actual harm was caused **[PRIVATE]** Mrs Evans was seeking to obtain Codeine repeatedly by preparing the order form and removing the orders from the controlled drug order book in an attempt to conceal her actions. Mrs Evans focus was not providing care to the patients **[PRIVATE]**.

Public interest impairment

80. In **CHRE v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)** Cox J commented as follows at paragraphs 71, 74 and 75:

71. “It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession ..”

74. “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.”

75. “I regard that as an important consideration in cases involving fitness to practise proceedings before the NMC where, unlike such proceedings before the General Medical Council, there is no power under the rules to issue a warning, if the committee finds that fitness to practise is not impaired. As Ms McDonald observes, such a finding amounts to a complete acquittal, because there is no mechanism to mark cases where findings of misconduct have been made, even where that misconduct is serious and has persisted over a substantial period of time. In such circumstances the relevant panel should scrutinise the case with particular care before determining the issue of impairment.”

81. *For the reasons set out above, it is agreed by the Parties that Mrs Evans conduct has brought the profession into disrepute and that she has breached the trust placed in her. A fully informed member of the public would be concerned by Mrs Evans actions.*

82. *In the circumstances of this case, the Parties agree that a reasonable and fully informed member of the public would expect a finding of impairment to follow, and public confidence would be diminished should that not happen. It is also for the NMC as a regulatory body to declare and maintain proper professional standards of conduct. Notwithstanding Mrs Evan's remorse and insight into her behaviour, the concerns in this case are so serious that, a finding of impairment is required to uphold proper professional standards and conduct and to maintain public confidence in the profession.*

83. *The Parties agree that Mrs Evan's fitness to practise is impaired on public protection and public interest grounds.*

Sanction

84. *In accordance with Article 3(4) of the Nursing and Midwifery Order the overarching objective of the NMC is the protection of the public. Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that a striking-off order is the appropriate and proportionate sanction in this case.*

85. *The NMC's guidance on Factors to consider before deciding on sanctions SAN-1 states that:*

"Being proportionate means finding a fair balance between the nurse, midwife or nursing associate's rights and our overarching objective of public protection. We need to choose a sanction that doesn't go further than we need to meet this objective. This reflects the idea of right-touch regulation, where the right amount of 'regulatory force' is applied to deal with the target risk, but no more."

86. *In reaching this agreement, the Parties considered the NMC’s Sanction Guidance (“the Guidance”). The panel will be aware that the purpose of sanctions is not to be punitive but to protect the public and satisfy wider public interest considerations. The panel should take into account the principle of proportionality and balance the risk to public protection and the public interest with Mrs Evans’ interests.*

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

- a) Abuse of position of trust*
- b) Sustained dishonesty*

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

- a) Admissions at local level*

89. *Considering each sanction in turn starting with the least restrictive:*

90. **No further action** – *The NMC’s guidance (SAN-3a) states that:*

The panel will use this discretion only in rare cases, and it will need to explain its decision very clearly.

This is because as part of its decision about fitness to practise, the panel must already have decided that the nurse, midwife or nursing associate:

- presents a continuing risk to patients*
- was responsible for conduct or failings that undermined the public’s trust in nurses, midwives or nursing associates, or*
- breached one of the fundamental tenets of the professions.*

Any one of those factors, or more than one, may apply in a particular case. They will usually mean that to achieve our overarching objective of public protection, the panel needs to take action to secure patient safety, to secure public trust in nurses, midwives and nursing associates, or to promote and maintain proper professional standards and conduct.

91. *The Parties agree that taking no further action would be wholly disproportionate in this case due the conduct is so serious that it undermines the public's trust in nurses.*

92. **Caution Order** – *The NMC's guidance (SAN-3b) states that a caution order is only appropriate if the Fitness to Practise Committee has decided there is no risk to the public or to patients requiring the nurse's practice to be restricted, meaning the case is at the lower end of the spectrum of impaired fitness, however the Fitness to Practise committee wants to mark the behaviour was unacceptable and must not happen again.*

93. *The Parties agree that such an order would also be disproportionate in light of the seriousness of the conduct. A caution order would not mark the seriousness of the conduct, nor satisfy the wider public interest considerations of maintaining trust in the profession and upholding professional standards of conduct. It would also not address the public protection risks.*

94. **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.”*

95. *The nature of the conduct and conviction is such that conditions on Mrs Evans’ practice would not be sufficient [PRIVATE] .A Conditions of Practice Order would be insufficient to mark the seriousness of the misconduct and would not sufficiently maintain public confidence in the profession.*

96. **Suspension order** – *The NMC’s guidance (SAN-3d) states that a suspension order may be appropriate in cases where the misconduct isn’t fundamentally incompatible with the nurse, midwife or nursing associate continuing to be a registered professional, and our overarching objective may be satisfied by a less severe outcome than permanent removal from the register*

97. *In deciding whether a suspension order is appropriate the guidance asks a panel to consider the following:*

- *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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*

- *in cases where the only issue relates to the nurse, midwife or nursing associate's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions*
- *in cases where the only issue relates to the nurse, midwife or nursing associate's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions*

98. *The conduct in this case is not a single incident of misconduct, rather a sustained period of an abuse of position of trust namely theft of medication. The dishonest conduct in this case highlights deep seated personality and attitudinal problems that can be difficult to remedy. Whilst there has not been evidence of repetition, Mrs Evans has not been in a clinical setting since the allegations were referred. The insight shown by Mrs Evans is limited and it could not be said that she does not pose a significant risk of repeating the behaviour. A suspension order therefore is not proportionate to address the public protection and public interest in the profession.*

99. **Striking off order-** *The NMC's guidance (SAN 3e) states that striking off order is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:*

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate 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?*

100. *The Parties agree that a striking off order is the only sanction that is appropriate and proportionate in the circumstances of this case.*
101. *The conduct raises fundamental questions about Mrs Evans' professionalism. Mrs Evans used her senior position at the Hospital to, on at least 45 occasions order, conceal, and remove codeine over a sustained period of time. The conduct resulted in a conviction for theft. [PRIVATE]. The public confidence in nurses could not be maintained if Mrs Evans were not removed from the register. Whilst Mrs Evans has raised health concerns in responses to the NMC's investigation as documented above, [PRIVATE].*
102. *These concerns raise fundamental concerns about her trustworthiness as a registered professional and call into question the basics of her professionalism. Mrs Evans' conduct is fundamentally incompatible with a being registered professional.*
103. *A striking-off order would reflect the seriousness of the misconduct and send a message to the profession, that such behaviour is wholly unacceptable for a registered nurse. According to the NMC guidance, a striking-off order would be most appropriate were the misconduct is fundamentally incompatible with continuing registration. The overarching objective of public protection would be satisfied by a striking-off order, and it would be in the public interest to impose a striking-off order. As such, the Parties agree that only a removal from the register is sufficient to mark the seriousness of the misconduct and meet the wider public interest.*

Interim Order

104. *An Interim Order is required in this case. The interim order is necessary for the protection of the public and is otherwise in the public interest for the reasons given above. The interim order should be for a period of 18 months in the event that Mrs Evans seeks to appeal the panel's decision. The interim order should take the form of an interim suspension order.*

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

Here ends the provisional CPD agreement between the NMC and Mrs Evans. The provisional CPD agreement was signed by Mrs Evans on 7 June 2023 and on behalf of the NMC on 8 June 2023.

Decision and reasons on the CPD

The panel decided to accept the CPD.

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

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

Decision and reasons on impairment

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

In respect of misconduct and conviction the panel determined that Mrs Evans had stolen controlled drugs on 45 separate occasions. She had ordered, concealed and removed the medication without clinical justification or any right to do so. The panel was of the view that there was an element of preconceived planning in her actions. These were not 45 spontaneous instances but a sustained course of action that required Mrs Evans to meticulously take steps to order the medication and then to cover up her actions. This included the falsification and removal of records. The panel determined that this fell far short of conduct expected of a registered nurse.

The panel considered that the repeated conduct of dishonesty was an abuse of a position of trust. Her conduct only came to light when a colleague discovered there was a discrepancy within the controlled drugs cupboard. The fact that Mrs Evans initially asked a colleague for assistance to conceal the codeine that she had on her person also increases the seriousness of the conduct.

In this respect, the panel endorsed paragraphs 55 to paragraph 60 of the provisional CPD agreement in respect of the statutory grounds of misconduct and conviction. It determined that Mrs Evans was in breach of elements of the code as highlighted in the CPD agreement and concluded that her actions would be deplorable to other members of the nursing profession. Accordingly, the panel found that Mrs Evans' actions satisfied the tests in relation to the statutory grounds of misconduct and conviction.

The panel then considered whether Mrs Evans' fitness to practise is currently impaired by reasons of misconduct and conviction. The panel determined that Mrs Evans' fitness to practise is currently impaired. The panel took account of the case of Grant and determined that all four limbs as identified in the case, are engaged. In this respect the panel endorsed paragraphs 61 to paragraph 67 of the provisional CPD agreement.

The panel took regard of Mrs Evans' agreement to the facts as set out in the charges. It determined that taking non prescribed medication whilst on duty could pose a risk to patients in her care.

The panel considered Mrs Evans' actions brought the nursing profession into disrepute. The panel was not apprised of any information with regard to Mrs Evans' health and it therefore found a risk of repetition.

[PRIVATE]. It took regard of agreements by the parties in the CPD Agreement which determined that :

[PRIVATE]

The panel considered whether Mrs Evans had demonstrated remorse, reflection or insight and had improved her practice. It took account of, and endorsed, paragraphs 68 to 77 of the provisional CPD agreement. The panel noted that, whilst Mrs Evans had demonstrated some insight in her written reflections in March 2021, she had not engaged further and there was no evidence before the panel that Mrs Evans had either developed further insight or improved her practice. **[PRIVATE]**. Accordingly, the panel was inevitably drawn to the conclusion that Mrs Evans remained impaired on public protection grounds.

Furthermore, in light of the seriousness of Mrs Evans' failings, the panel considered that a finding of impairment was also required on public interest grounds on the basis that a reasonable and fully informed member of the public would expect a finding of impairment in order to declare and maintain proper professional standards of behaviour and conduct. Consequently, the panel endorsed paragraphs 80 to 82 of the provisional CPD agreement and concluded that a finding of impairment was also required on public interest grounds.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- a) Abuse of position of trust
- b) Sustained, premeditated and planned dishonesty
- c) A pattern of misconduct over a period of time
- d) Conduct which put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- a) Admissions at local level
- b) Apologies and demonstration of insight in the initial stages
- c) Personal mitigation including illness

The panel noted that Mrs Evans in the earlier stages of investigations had demonstrated some level of insight and regret and given a full admission of guilt acknowledging the potential impact of her actions on patients and the public. However, there has been no information on her insight especially as she has not cooperated more recently **[PRIVATE]**.

The panel had regard to the written submissions by Mrs Evans representative to the NMC on 15 March 2021.

'My actions were despicable and inexcusable and I wholly regret everything that I have done. Most importantly, I have let our patient's and the general public down. We are taught through the NMC Code of Conduct that nurses must have a clear and consistent positive message and reinforcing professionalism at all times – my actions have brought the profession into disrepute and I am thoroughly ashamed of this.'

*'Not only have I let my fellow nursing community down, I have brought shame and embarrassment on my wonderful family. I am tremendously lucky to have these extremely supportive, encouraging and compassionate people around me and I will be forever grateful for their love and guidance. 'I am truly sorry for what I have done and fully accept all responsibility for my actions. **[PRIVATE]**'*

The panel had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose was to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

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 Mrs Evans' 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 Evans' 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 Evans' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Evans's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

Mrs Evans' conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Moreover, this was not a single instance but a sustained pattern of dishonesty; not cooperating with the NMC suggests that Mrs Evans has some attitudinal problems; and the panel has found that she does not have any significant insight and that there remains a significant risk of repetition. The panel considered that the serious breaches of the fundamental tenets of the profession evidenced by Mrs Evans's actions is fundamentally incompatible with Mrs Evans remaining on the register.

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

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

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

The panel considered that Mrs Evans'-actions were significant departures from the standards expected of a registered nurse and, especially absent any development of significant insight, are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Evans' actions were extremely serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

Decision and reasons on interim order

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 Evans' own interests. The panel heard and accepted the advice of the legal assessor.

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

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

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

That concludes this determination.