

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

Substantive Hearing
Monday, 25 July 2022 – Monday, 1 August 2022
Wednesday 15 February 2023 – Friday 17 February 2023
Virtual Hearing

Name of registrant: David Anthony Robinson

NMC PIN: 96I3960E

Part(s) of the register: Nursing, Sub part 1
Mental health nurse (11 October 1999)

Relevant Location: Norfolk

Type of case: Lack of competence / Misconduct

Panel members: Richardo Childs (Chair, lay member)
Carol Porteous (Registrant member)
Alison Hayle (Lay member)

Legal Assessor: Charles Parsley

Hearings Coordinator: Opeyemi Lawal

Nursing and Midwifery Council: Represented by Molly Dyas, Case Presenter

Mr Robinson: Not present and unrepresented

Facts proved: 1, Schedule charges – 1a, 1b, 2, 3(in part),4a, 4b, 5, 6a,6b,7a,7b,7c,9,10a,10b

Facts not proved: 2,3,4,5, Schedule charge 8

Fitness to practise: Impaired

Sanction: **Conditions of Practice Order (12 months)**

Interim order: **Interim Conditions of Practice Order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Robinson was not in attendance and that the Notice of Hearing letter had been sent to Mr Robinson's registered email address on 31 May 2022.

Ms Dyas, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and joining details for the hearing and, amongst other things, information about Mr Robinson's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Robinson has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Robinson

The panel next considered whether it should proceed in the absence of Mr Robinson. It had regard to Rule 21 and heard the submissions of Ms Dyas who invited the panel to continue in the absence of Mr Robinson. She submitted that Mr Robinson had voluntarily absented himself.

Ms Dyas submitted that there had been no engagement from Mr Robinson with the NMC in relation to these proceedings since the beginning of May 2022 and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

Ms Dyas referred the panel to the email from Mr Robinson sent to his NMC case officer on 03 May 2022, which stated:

“...I have carefully weighed up everything and after very careful consideration I will not be attending the hearing.”

The panel accepted the advice of the legal assessor. In relation to the email that Ms Dyas referred to, the legal assessor noted that this email was in reference to a hearing in the High Court in May 2022, and did not refer specifically to this substantive hearing. As a result, Ms Dyas provided further documentation to support her submission that Mr Robinson was no longer engaging with the proceedings.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is one that should be exercised ‘*with the utmost care and caution*’ as referred to in the case of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5.

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

- No application for an adjournment has been made by Mr Robinson;
- Mr Robinson has not engaged or responded to any of the emails sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong interest in the expeditious disposal of the case both to the public and Mr Robinson.

There is some disadvantage to Mr Robinson in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he has not responded to all of the allegations. Mr Robinson will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, the panel may explore with the witnesses any issues raised by Mr Robinson within the documentation provided. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Robinson's decisions to absent himself the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Robinson. The panel will draw no adverse inference from Mr Robinson's absence in its findings of fact.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Dyas, on behalf of the NMC, to amend the wording of allegations 1 to 10 within the schedule. The proposed amendment would fully anonymise the identity of the residents concerned. It was submitted by Ms Dyas that without full anonymisation there is a potential that the residents could be identified as it is a public hearing.

Ms Dyas also applied to amend the dates in charges 2 and 4. The proposed amendment of charges 2 and 4 was to correct typographical errors.

The proposed charges are reflected as amended in the charges below.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such amendments, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Robinson and no injustice would be caused to either party by the proposed amendments being allowed. None of the amendments change the substance or nature of the allegations of which Mr Robinson has had notice. It was therefore appropriate to allow the amendments.

When the panel were deliberating on its decision in relation to the charges, it noted a typographical error, in the misspelling of the drug thyroxine as 'thyroxine'. The panel on its own motion amended the spelling of this drug for the reasons stated above.

Details of charge as amended

That you, a registered nurse:

1. Whilst employed by Sun Court Nursing Home, between July and October 2020, failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a registered nurse in respect of medication administration and/or management on (but not restricted to) one or more of the occasions set out within Schedule 1;
2. Between 6 December 2021 and 8 December 2021, breached condition 7.b. of your interim conditions of practice order by failing to provide a copy of said conditions to Gaia Recruitment Agency;
3. Your conduct at charge 2 was dishonest, in that you knew you were subject to said conditions, and deliberately withheld that information;
4. Between 6 December 2021 and 8 December 2021, failed to inform Gaia Recruitment Agency that you were subject to an interim conditions of practice order;

5. Your conduct at charge 4 showed a lack of integrity, in that you knew you should have informed Gaia Recruitment Agency of the conditions of practice order;

And, in light of the above, your fitness to practise is impaired by reason of your lack of competency and your misconduct.

Schedule 1:

1. On 20 July 2020;
 - a. Signed to say you had administered paracetamol to Resident A when you had not;
 - b. Administered thyroxine to Resident B when you should have administered Levetiracetam;
2. On 26 July 2020, failed to place Resident C at 90 degrees and/or flush the peg before administering their medication;
3. On 14 August 2020, failed to administer baclofen and epilim to Resident D;
4. On 18 August 2020;
 - a. Reported that an unknown resident was to have Fenbid cream applied to an open wound, when Fucidic Acid had been prescribed;
 - b. Gave Resident C Omeprazole when it had already been administered;
5. On 19 August 2020, administered two citalopram 10mg tablets to Resident A instead of one citalopram and one clopidogrel as prescribed;
6. On 23 August 2020;
 - a. Failed to administer mirtazapine to Resident D;
 - b. Failed to administer doxazosin and ferrous fumarate to Resident E;
7. On 13 September 2020;

- a. Failed to administer clopidogrel to Resident F;
 - b. Failed to administer thiamine to Resident G;
 - c. Failed to administer sertraline to Resident H;
8. On 14 September 2020, failed to administer paracetamol to Resident I;
9. On 18 September 2020, administered apixaban instead of atorvastatin to Resident B;
10. On 2 October 2020;
- a. Failed to administer paracetamol and sodium bicarbonate to Resident J;
 - b. Failed to administer a butrans patch to Resident K

The panel note there had not been any admissions to the charges.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Dyas under Rule 31 to allow the letter exhibited by Ms1 into evidence. Ms Dyas explained this was a note written by carers, which was not the account of Ms 1.

Ms Dyas also made another application under Rule 31 to allow Mr Robinson's interim conditions of practise and transcript from the last hearing into evidence. Ms Dyas submitted that there will be no unfairness in admitting the evidence as Mr Robinson was in attendance and represented at the time. Ms Dyas highlighted that as Mr Robinson is not here to defend himself, it will assist the panel to see what was said on his behalf at the previous hearing.

In the preparation of this hearing, the NMC had indicated to Mr Robinson in the Case Management Form (CMF), that it was the NMC's intention to provide live evidence to the panel. Despite knowledge of the nature of the evidence, Mr Robinson made the decision not to attend this hearing. On this basis Ms Dyas advanced the argument that there was no lack of fairness to Mr Robinson in allowing the healthcare assistants' note exhibited by Ms 1 to be admitted into evidence.

With regards to the note, the panel considered that the note does not refer to a specific charge but refers to Mr Robinson's lack of competence which is in question in this case. The healthcare assistants have not provided witness statements or been called to give evidence which could be tested at the hearing. The panel highlighted that despite the note not having a statement of truth, it was signed and dated 15 October 2020 by two healthcare assistants. Furthermore, there does not appear to be any suggestion it has been fabricated.

In terms of the interim conditions of practise order, the panel were of the view that it is in the interest of Mr Robinson and the NMC that the panel know what the conditions say, as some of the charges refer to the conditions. This will allow the panel to make a full assessment on whether condition 7b was breached.

In relation to the transcript, the panel determined that it is relevant and identifies Mr Robinson's knowledge of any alleged breach or failure to inform. Therefore, admitting the transcript may be relevant assessing his integrity and potential dishonesty, also, give details on the background. The panel highlighted that it is not a full transcript, as there are some redactions on the part of the submissions made on Mr Robinson's behalf.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence of the interim conditions of practise order, transcript and letter, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

The panel made an earlier decision to admit Ms 5 witness statement as she was not in attendance and there was no reason for her non-attendance.

Ms Dyas informed the panel the Ms 5 is available to now give evidence, at a later date during the course of the hearing.

The panel determined that it is in the fairness and interest of Mr Robinson to have Ms 5 give evidence.

Admissibility of evidence

Within the exhibit bundle there was a reference to Mr Robinson's answer to a question posed to Mr Robinson, during his interview with Ms 7.

Ms Dyas raised this issue and addressed the panel on the admissibility of the part, especially since it was unredacted.

The panel accepted the advice of the legal assessor.

The panel decided to exclude any consideration of the matter from its deliberations.

Decision and reasons for Adjourning the hearing

While the panel was making their decision on the facts, it became clear that the panel would not be able to hand down their written decision before the hearing was due to finish on 1 August 2022. As a result, the hearing was adjourned part heard to 18 October 2022.

Postponement of hearing scheduled for 18 October 2022

Before the hearing was due to reconvene on 18 October 2022 the chair was notified on 7 October 2022 that a panel member could no longer attend the hearing scheduled on 18 October to 20 October 2022. The panel had deliberated on the facts; following its adjourning, the panel received an initial draft which was incomplete, but it had not reviewed that draft and therefore not handed down its determination on the facts. The Nursing and Midwifery Council (NMC) were therefore requesting that the hearing be postponed.

At this point the notice of hearing for 18 October 2022 had been sent and therefore the NMC requested the chair 'approve' a postponement. A preliminary view was taken that a postponement was likely, but the chair was of the view that advice from the legal assessor was required before any final decision was made.

On discussion with the chair, the legal assessor noted that Rule 32 required that, in considering whether or not to grant a request for postponement, the chair shall have regard to matters including the public interest in the expeditious disposal of the case, the potential inconvenience to a party or witnesses and fairness to the registrant.

To have regard to those matters, the chair would need information about when the case could be re-listed, whether that could be earlier before a different panel than the present panel and whether the registrant had any views about the NMC's application.

On 10 October 2022 it was suggested by the NMC that a new panel member could replace the panel member who was unavailable. The legal assessor noted that a substitution at this current stage of proceedings would be different from the position contemplated by the NMC's guidance 'Constitution of panels - The Nursing and Midwifery Council' in that an incoming panellist at this stage would not have heard the witnesses or have been party to the discussions which the original panel had had. The incoming panellist could not "own" the draft decision on the facts to the point which had been reached when the hearing was adjourned. Further, if the NMC were to substitute a panellist at this stage it might undermine further the registrant's confidence in the fairness of the process.

The NMC's position was that a postponement is required because the panel cannot make its decision on 18 October due to the unavailable panel member.

The NMC's view in relation to reconvening a fresh panel to rehear the evidence was that they are not able to ask witnesses to come back to a new hearing so this case must resume. In addition, in light of the legal assessor's comments the NMC would not seek to substitute the panel member.

At the time of the decision, the NMC had not received a response from the registrant. The NMC was of the view that the registrant would not be happy with any postponement as he has previously complained about the length of time this process has taken.

The chair accepted the advice of the legal assessor which included reference to Rule 32, and in particular reference to the criteria within Rule 32.

Having considered the criteria in Rule 32, the chair decided to postpone the hearing to the earliest date which could be confirmed with the current panel and legal assessor for the following reasons:

- In considering the public interest in the expeditious disposal of the case the chair was mindful that this case is of some age, and whether a fresh panel may be able to hear the case before this panel reconvened.
- Despite the request for this information from the NMC, the chair had not been furnished with any answer as to when a new panel could convene with witnesses giving evidence again because the NMC's position was that they could not ask witnesses to come back to a new hearing. In the absence of this information, the chair was not in a position to say that the hearing would be heard by a new panel before this current panel could reconvene. As a result, any postponement to a new panel might not achieve an earlier outcome than the current panel continuing with the case.
- Any public interest must be balanced with the potential inconvenience caused to a party or any witnesses to be called by that party. The witnesses in this case have already given evidence and to ask them to give evidence again is likely to cause inconvenience not only to the NMC but to the witnesses and their employers. Further, if those witnesses decide not to engage in the process that would undermine public confidence in the system.

- The chair also considered whether a postponement would be fair on the registrant. Although the chair does not have the registrant's view, the NMC has commented that the registrant would not be happy with any postponement. However, it would be fairer on the registrant that any decision reached at the facts stage is considered by all those that heard the evidence and any written decision that is handed down reflects that decision. To achieve that end a postponement is required.

Therefore, for the reasons outlined above the chair was of the view that the hearing should be postponed to the earliest possible date.

[The hearing resumed on Wednesday 15 February 2023]

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Robinson was not in attendance and that the Notice of Hearing letter had been sent to Mr Robinson's registered email address by secure email on 18 January 2023 at 10:38am.

Ms Dyas, on behalf of the Nursing and Midwifery Council (NMC), initially submitted that the NMC had complied with Rule 11. However, after an adjournment Ms Dyas submitted that the NMC had complied with the requirements of Rules 32(3) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) which overrode the provisions within Rule 11 because this was a resuming hearing.

Rule 11 provides:

11.— Notice of hearing

(1) Where a hearing is to be held in accordance with rule 10(2), the [Fitness to Practise] Committee shall send a notice of hearing to the registrant.

(2) The notice of hearing shall be sent to the registrant—

(a) where a preliminary meeting has been held in accordance with rule 18, as soon as practicable after that meeting; and

(b) in every case, no later than 28 days before the date fixed for the hearing.

(3) The notice of hearing shall—

(a) inform the registrant of the date, time and venue of the hearing;

[(b) where the [Fitness to Practise] Committee is to consider an allegation at an initial hearing, contain a charge particularising the allegation, which shall set out any alleged facts on which it is based, and be accompanied by copies of any documents in support that have not previously been disclosed to the registrant by the Council or a Practice Committee;]

- (c) where the [Fitness to Practise] Committee is to review an order previously made or consider an application for restoration to the register, contain a copy of the order or striking-off order previously made, and the Committee's reasons for making that order;*
- (d) inform the registrant of her right to attend, and to be represented at, the hearing in accordance with rule 20;*
- (e) inform the registrant of the [Fitness to Practise] Committee's power to proceed with the hearing in her absence;*
- (f) inform the registrant of her right to adduce evidence in accordance with rule 31;*
- (g) inform the registrant of her right to call witnesses, and to cross examine any witnesses called by the Council or by the [Fitness to Practise] Committee;*
- (h) require the registrant to inform the Council, within 14 days of receipt of the notice, whether she intends to—*
 - (i) attend the hearing,*
 - (ii) be represented at the hearing;*
- [...]*
- (j) inform the registrant of the [Fitness to Practise] Committee's power to make an interim order under article 31(2) of the Order;*

[...]

[(3A) In paragraph (3) "venue" includes details of audio or video conferencing arrangements.]

Rule 32 provides:

32.— Postponements and adjournments

(1) ...

(2) ...

(a) ...

(b) ...

(3) Where the proceedings have been adjourned, the Practice Committee shall, as soon as practicable, notify the parties of the date, time and venue of the resumed hearing.

[(3A) In paragraph (3) "venue" includes details of audio or video conferencing arrangements.]

Rule 34(5) provides:

(5) Where any notice or document is sent or otherwise served under these Rules, it shall be treated as having been served—

[...]

(b) where the notice has been left at an address or sent by electronic mail, on the day on which it was left or sent.

Ms Dyas submitted there has been good service because Mr Robinson had been notified by email on 20 October 2022 that the hearing would be taking place virtually on 15 February 2023 at 9.00am. She submitted that this complied with Rule 32 when giving Rule 32(3) its purposive meaning.

In light of Ms Dyas' submission that Rule 32(3) applied, the panel invited the NMC to provide a statement as to why it was not reasonably practicable for the notice, which gave notice for a hearing at 9am on 15 February 2023, to have been sent before 18 January 2023 at 10.38am, given the content of the email dated 20 October 2022 which stated:

'We'll send you a notice by recorded delivery or email with the date, time and place of the hearing at least 28 days before (but usually six to eight weeks before). This notice will also explain details of the allegation.'

The panel provided the NMC sufficient time (half of day 1 and morning of day 2) to provide a statement to explain why it was not reasonably practicable to send the notice before 18 January 2023. However, the panel were not provided with this explanation.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Robinson's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

The panel also took into consideration the email dated 20 October 2022 sent to Mr Robinson which stated that:

'We'll send you a notice by recorded delivery or email with the date, time and place of the hearing at least 28 days before (but usually six to eight weeks before). This notice will also explain details of the allegation.'

The panel took into consideration Rule 32(3) and Rule 32(3A) as the hearing was previously adjourned.

In light of the email of 20 October 2022 and no further explanation as to why it was not practicable to have sent the notice of hearing before 18 January 2023, the panel was not satisfied that Mr Robinson had been served with the Notice of Hearing in accordance with the requirements of Rules 32(3)(a) for day 1. However, the panel was satisfied that notice was effective for day 2 and day 3 of the hearing because it was clear from the email that even if Rule 11 was not in play the NMC had at the forefront of its mind that they would seek to send the notice of hearing, which included the details of the video conference arrangements, no later than 28 days before the hearing.

Decision and reasons on proceeding in the absence of Mr Robinson

The panel next considered whether it should proceed in the absence of Mr Robinson. It had regard to Rule 21 and heard the submissions of Ms Dyas who invited the panel to continue in the absence of Mr Robinson.

Ms Dyas referred the panel to the recent email from Mr Robinson where he highlighted his continued engagement with the process and provided submissions to his case officer.

Mr Robinson sent an email dated 30 January 2023 containing submissions that the hearing should be paused pending the resolution of his complaint against the NMC.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5.

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

- Mr Robinson's submission that these proceedings be paused conflicted with his desire to have matters resolved as soon as possible;
- Mr Robinson has informed the NMC that he has received the Notice of Hearing and confirmed he would not be attending the hearing;

- It is unclear whether adjourning the hearing would secure Mr Robinson's attendance at some future date because within his submission Mr Robinson did not specify if he would attend any future hearing;
- There is a strong public interest in the expeditious disposal of the case, in which the evidence has been concluded, following which there was an adjournment to the current date.

There is some disadvantage to Mr Robinson in proceeding in his absence, but this is a consequence of Mr Robinson's decision to absent himself from the hearing, waive his rights to attend, and/or be represented. Further, Mr Robinson has provided some submissions which the panel can take into account despite his absence.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Robinson. The panel will draw no adverse inference from Mr Robinson's absence in its findings of fact.

Decisions and reasons on abuse of process

Mr Robinson sent his case officer emails on two occasions, one on 9 January 2023 and the other 30 January 2023. In both emails Mr Robinson detailed his grievances against the NMC, in which he addressed the duration of the case and the way his case is being handled.

Mr Robinson emphasised in both emails that he would prefer the NMC to facilitate a mediation process so he can engage in the process.

Ms Dyas took the panel through the NMC's 'Abuse of process guidance' which sets out the considerations for deciding whether there is an abuse of process.

The guidance states:

The panel can decide there is an abuse of process if:

- *it will be impossible for the nurse, midwife or nursing associate to have a fair hearing, or*

- *continuing with the case would, in all the circumstances, offend the panel's sense of 'justice and propriety'*

Ms Dyas applied the test to the limb of 'unreasonable delay'. She submitted that there has not been an unreasonable delay in Mr Robinson's case as it is not a case of 10-15 years that will have an adverse impact on the witness's memories. She submitted that the time between the alleged incidents and the start of the substantive hearing was comparable in duration to other cases before the NMC. Ms Dyas also noted that the witnesses have given evidence before the panel.

Ms Dyas noted that the NMC does not provide mediation services so that is something which cannot be facilitated.

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

The panel determined that there has not been any unreasonable delay which might cause real concern. It noted that witnesses have given evidence and if they did not remember parts of the incident, they said so. However, the panel were provided with documentary evidence to help understand the charges, which assisted witnesses' recall of events at the times of the allegations. Therefore, the panel concluded that with the documents and oral evidence a fair hearing could still be had even where memories had faded.

The panel recognised that it can take years to conclude proceedings from the point at which allegations are investigated. The events in this case occurred up to three years ago, which the panel concluded was not a significant period of time for these types of matters. Further, the panel decided that there had not been any exceptional circumstances to date that made the length of the proceedings unreasonable.

In light of this the panel concluded that a fair hearing could still be had and any delay had not impacted proceedings such that it made the hearing an abuse of process.

With regards to the suggestion that there had been bad faith or a serious breach of professional duty by the NMC the panel concluded that there had not been. The panel considered all the information before it and was of the view that Mr Robinson's complaint spoke generally about the NMC as opposed to highlighting specific breaches or elements of bad faith. Mr Robinson's complaint about the breach of confidentiality related to the application to extend the interim order and not to this substantive hearing.

In all the circumstances, for the reasons above, the panel concluded that there were no matters which offended the panel's 'sense of justice and propriety'. Therefore, the panel determined that the hearing can continue.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Dyas on behalf of the NMC and the written representations of Mr Robinson.

The panel has drawn no adverse inference from the non-attendance of Mr Robinson.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard evidence from the following witnesses called on behalf of the NMC:

- Ms 1: Registered Manager for Suncourt Nursing Home.
- Ms 2: Outgoing Deputy Manager at Suncourt Nursing Home.
- Ms 3: Registered Nurse at Suncourt Nursing Home.

- Ms 4: Registered Nurse at Suncourt Nursing Home.
- Ms 5: Registered Nurse at Suncourt Nursing Home.
- Ms 6: Band 5 registered nurse at Suncourt Nursing Home.
- Ms 7: Chief Executive at Gaia Recruitment

Background

The charges arose whilst Mr Robinson was working at the Home as Deputy Manager, Mr Robinson was given a number of weeks supervised practice as he had not managed medications for two years. Following the supervised practice, a number of concerns were raised. It was alleged that medications were being missed and that the wrong medication had been given to a number of residents.

Mr Robinson was dismissed from the Home on 26 October 2020, following these alleged errors.

Mr Robinson's registration became subject to an NMC Interim Conditions of Practice Order ('ICOPO') on 27 November 2020. One of his conditions was:

"7. You must immediately give a copy of these conditions to:

a) Any organisation or person you work for.

b) Any employers you apply to for work (at the time of application).

c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

d) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity"

On 6 December 2020, Mr Robinson applied for a job through Gaia Recruitment Agency (the Agency). It is alleged that Mr Robinson failed to inform the Agency, at the time of his application, that he was subject to an ICOPO. Mr Robinson was interviewed by the

Agency on 8 December 2020, and it is alleged that he again failed to disclose that he was subject to an ICOPO. Following the interview, Ms 7 checked his registration on the NMC website and saw that Mr Robinson had an ICOPO in place. Ms 7 informed Mr Robinson that his application had not been successful.

The ICOPO was changed to an Interim Suspension Order on 27 January 2021.

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

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

Charge 1

“Whilst employed by Sun Court Nursing Home, between July and October 2020, failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a registered nurse in respect of medication administration and/or management on (but not restricted to) one or more of the occasions set out within Schedule 1”

This charge is found proved.

In order to reach a decision on Charge 1, the panel first had to consider whether any of the allegations outlined in the Schedule were found proved.

Schedule 1 Charges

Charge 1a

“Signed to say you had administered paracetamol to Resident A when you had not”

This charge is found proved.

In reaching this decision, the panel took into account oral evidence from Ms 1 and Ms 3.

Ms 3 explained that she referred this concern to Ms 3 at the time that she noticed it. Ms 3 has then recorded it in an audit she undertook on 29th July 2020.

Ms 3 said in respect of the MAR chart that 27 should have been the number of paracetamol left. Ms 3 said she checked the other boxes of paracetamol for the other residents and could not find any discrepancies with the boxes. Ms 3’s statement describes the Deputy Manager as working with Mr Robinson at the time and knowing that paracetamol had not been administered.

In light of this, the panel find this allegation proved on the balance of probabilities.

Charge 1b

“Administered thyroxine to Resident B when you should have administered Levetiracetam”

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence from Ms 1.

Ms 1 gave evidence that these are very different medications in terms of their usage and very different in appearance.

The panel determined that there is no direct evidence on who picked up the error during the audit. Mr Robinson had recorded that he had administered levetiracetam; however,

the drug audit showed that no levetiracetam had been administered but an additional thyroxine was not accounted for. As a result, the panel determined that it was more likely than not that when Mr Robinson was administering medication to Resident B, he had administered an additional thyroxine tablet instead of the prescribed levetiracetam.

In light of this, the panel found this charge proved on the balance of probabilities.

Charge 2

“On 26 July 2020, failed to place Resident C at 90 degrees and/or flush the peg before administering their medication”

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence from Ms 2.

Ms 2 explained that Resident C was the only resident with a ‘PEG’ tube in Suncourt. She explained why it was so important for Resident C to be sat up when medication is being administered through the PEG.

In relation to her exhibit, this lends contemporaneous support to the concern with positioning when administering through the PEG: *“still didn’t recognise the importance of positioning at 90° when dealing with PEG”*.

The panel noted that it was documented in a ‘record of discussion’ that took place recorded on 31 July 2020 that Mr Robinson was concerned about Resident C’s PEG with ‘flushes’ being referenced in the “action required” box. In her oral evidence, Ms 2 could not remember a specific issue with flushes on the day in question. However, her statement refers to having to remind Mr Robinson to flush the PEG.

Ms 2 completed a record of ‘health and safety concern’ regarding this incident, noting that Mr Robinson had failed to sit Resident C at 90 degrees and having general

problems with the PEG. As a result, it was noted that Mr Robinson required further supervision to be competent at this procedure. Therefore, the panel found that it was more likely than not that this incident had occurred.

Therefore, for the reasons above the panel found this allegation proved on the balance of probabilities.

Charge 3

“On 14 August 2020, failed to administer baclofen and epilim to Resident D”

This charge is found partly proved.

In reaching this decision, the panel took into account documentary and oral evidence from Ms 1.

The panel noted that the ‘record of medication error’ in relation to this incident only noted that baclofen had not been administered. Further, an email copied with date obscured sent by Ms 1 noted that Epilim had been administered late. Therefore, Mr Robinson had not failed to administer Epilim.

However, upon reviewing the MAR Chart, Mr Robinson failed to administer baclofen as it was not administered at 7:30 and it could not have been given later due to the next drug. This was supported by the completed ‘record of medication error’ which noted that Mr Robinson was unable to say why this error occurred.

In light of the above, the panel therefore determined on the balance of probabilities that this charge was proved but only in relation to Mr Robinson failing to administer baclofen.

Charge 4a

“Reported that an unknown resident was to have Fenbid cream applied to an open wound, when Fucidic Acid had been prescribed.”

This charge is found proved.

In reaching this decision, the panel took into account oral evidence from Ms 5.

Ms 5 provided a signed witness statement and although this was not able to be admitted as her evidence in chief in the proceedings, Ms Dyas submitted that Ms 5's oral evidence was in line with it where the incident was described. The panel noted that Ms 5 was able to recall that it was the morning meeting when the comment in relation to the Fucidic acid prescription was made by Mr Robinson. Ms 5 was able to recall that Mr Robinson was corrected and told the panel that he appeared "embarrassed" after this. Upon panel questioning, she further clarified that Fenbid cream had not been prescribed so was not present on the medications trolley. In addition, the panel noted a 'record of health and safety concern' which documented that Mr Robinson had reported that Fenbid cream was to be applied.

In light of this, the panel find this allegation proved on the balance of probabilities.

Charge 4b

"Gave Resident C Omeprazole when it had already been administered"

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence from Ms 1.

Ms 1 told the panel that she requested Mr Robinson to complete an incident form in respect of this and she exhibited this form as part of her evidence. The account given by Mr Robinson on that contemporaneous record appears to be an admission to having given the medication when it had already been administered. He refers to his "lessons learned" at the bottom of the page as "always check date, number of doses before administering".

Ms 1 was also taken to the MAR chart for this resident and she explained how this showed that Omeprazole had been incorrectly administered on 18 August.

In light of this, the panel find this allegation proved on the balance of probabilities.

Charge 5

“On 19 August 2020, administered two citalopram 10mg tablets to Resident A instead of one citalopram and one clopidogrel as prescribed”

This charge is found proved.

In reaching this decision, the panel took into account the documentary and oral evidence.

The panel noted that for this charge, there was an ‘Incident Reporting form’ which had been completed by Mr Robinson.

Ms 1 gave evidence about how this incident had come to her attention, in particular her consideration of the number of medications that Mr Robinson had with him.

The panel noted that they had only been provided with one side of the MAR chart and there could have been more entries on the back page.

However, in light of the completed form by Mr Robinson, the panel found this charge proved on the balance of probabilities.

Charge 6a

“Failed to administer mirtazapine to Resident D”

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence.

Upon reviewing the MAR chart, the entry for the relevant date contained an 'x'. Ms 1 explained to the panel that this was to show that the drug had not been given. Ms 1 had identified this failure by Mr Robinson when conducting a drug audit. The panel noted that the drug count on the MAR chart showed that no mirtazapine had been dispensed that day. Therefore, on the balance of probabilities, the panel determined that Mr Robinson failed to administer mirtazapine.

Therefore, the panel finds this charge proved.

Charge 6b

“Failed to administer doxazosin and ferrous fumarate to Resident E”

This charge is found proved.

In reaching this decision, the panel took into account documentary evidence and oral evidence from Ms 3.

Upon reviewing the MAR chart, the entries for both of the prescribed drugs at 1700 hours again contained a circled 'x'. Further, Ms 3 had completed a 'medication incident reporting form' in relation to the doxazosin and 'possibly ferrous fumarate' having not been administered. Within the medication incident reporting form Mr Robinson's response to this allegation was that he was unsure why he made these errors and did not appear to deny the suggestion that neither drug was not administered. Therefore, on a balance of probabilities, the panel determined that Mr Robinson failed to administer at the medications at 1700 hours.

Therefore, the panel finds this charge proved.

Charge 7a

“Failed to administer clopidogrel to Resident F”

This charge is found proved.

In reaching this decision, the panel took into account oral evidence of Ms 1.

In Ms 1’s oral evidence, she confirmed that this particular patient could refuse to take their medication and had done so in the past. However, Ms 1 informed the panel that when this occurred it should have been recorded, but in this instance, there was no record of this happening. Further, Ms 1 explained that if the medication had been dispensed but not administered because of the patient’s refusal, it should have been disposed of so that the count would have gone down.

Ms 1 completed a ‘medication incident reporting form’ which included Mr Robinson’s response to this allegation. Mr Robinson is noted as stating that he thought that the patient had refused the drug but he had not recorded this.

In light of the failure to record any refusal when he was aware he needed to do this and the drug count not having gone down, the panel find this charge proved on the balance of probabilities.

Charge 7b

“Failed to administer thiamine to Resident G”

This charge is found proved.

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

Upon reviewing the MAR chart, the panel noted that the count of tablets carried over to the next day was not consistent with the correct dose having been administered during Mr Robinson’s shift.

Ms 1 completed a 'medication incident reporting form' relating to this incident. Mr Robinson's response to this allegation is noted within the form. Mr Robinson is noted as saying that he recorded the number of drugs in the morning but not at 1300 hours despite the MAR chart being signed. The form also noted that Mr Robinson did not know why the drug was not given.

In light of this, the panel find this charge proved on the balance of probabilities.

Charge 7c

"Failed to administer sertraline to Resident H"

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence.

The panel noted that the entry for sertraline on 13 September on the patient's MAR chart was blank. This came to light when Ms 1 completed an audit of the records. Ms 1 completed a 'medication incident reporting form' regarding this incident which Ms 1 confirmed that Resident H had not been given sertraline by Mr Robinson. The form did not have any recorded response from the registrant noted.

In light of this, the panel find this charge proved on the balance of probabilities.

Charge 8

"On 14 September 2020, failed to administer paracetamol to Resident I"

This charge is found not proved.

In reaching this decision, the panel took into account documentary and oral evidence from Ms 1.

The panel noted that the MAR chart for this patient recorded paracetamol as a drug that was to be taken when required. Ms 1's evidence was that Resident I was able to request medication herself if she required it.

The panel were of the view that there was no proof that Resident I had requested paracetamol on this occasion. Therefore, the panel determined that Mr Robinson had no duty to administer paracetamol to the patient.

In light of this, the panel find this allegation not proved.

Charge 9

“On 18 September 2020, administered apixaban instead of atorvastatin to Resident B”

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence from Ms 4.

Ms 4 stated in her oral evidence that upon completing her drug round she saw that one apixaban was missing according to the MAR chart count.

The panel noted that on the MAR chart, that the drug count for apixaban on evening of 17 September was noted as being 42. The panel also noted that the drug count for apixaban on the evening of 18 September was 39. Resident B should only have had two apixaban in any 24-hour period. Therefore, the panel determined an extra apixaban had been administered. For the same period the count of atorvastatin did not decrease although it should have reduced by one had it been administered.

The medication incident reporting form completed by Ms 1 noted that the atorvastatin, although recorded as being administered, had not been administered. Mr Robinson's

recorded response stated that he could not remember what medication had been administered and he thought he had given her two pills.

In light of this, the panel determined that, on the balance of probabilities, Mr Robinson administered Resident B an additional apixaban tablet instead of the atorvastatin.

Therefore, the panel finds this charge proved.

Charge 10a

“Failed to administer paracetamol and sodium bicarbonate to Resident J”

This charge is found proved.

In reaching this decision, the panel took into account documentary evidence and oral evidence of Ms 1.

The panel noted that Ms 1 had noticed this error when auditing Mr Robinson’s patient’s records, and on finding the error completed a ‘medication incident reporting form’. Mr Robinson’s recorded response to this allegation was that he had administered medication but did not know why he did not look at the other medication (namely the paracetamol and sodium bicarbonate).

In light of this, the panel find this allegation proved on the balance of probabilities given Mr Robinson’s recorded apparent acceptance of failing to administer both drugs.

Charge 10b

“Failed to administer a butrans patch to Resident K”

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence.

The panel noted that Mr Robinson was on shift at the time when the 7-day patch was due to be administered. The panel noted that the 'Transdermal patch application record' was completed by Ms 6 and not Mr Robinson.

Ms 6 gave oral evidence confirming that she noticed that the patch had not been changed at lunchtime as required. Ms 6 confirmed that it was her signature on the 'Transdermal patch application record' and that she changed the resident's patch.

In light of this, the panel find this allegation proved on the balance of probabilities.

Having found that 15 of the allegations set out in the Schedule, (described in the Schedule as 'charges',) were proved, the panel then went on to consider whether, as a result, Charge 1 was proved.

The panel reminded itself that, if it found this charge proved, it was not making any findings in respect of lack of competence or misconduct.

The panel decided that, although on a number of occasions Mr Robinson had been provided with opportunities to carry out his duties in respect of medication administration and management in practice, both with or without supervision, he continued to make errors.

For example, Ms 1 stated in her oral evidence,

'I mean I just did not know how to help stop the errors, if you know ... even when I was supervising, sadly he would go down the medicine chart and somehow miss a medication. He'd get to the end and I said, "And what else?" and he'd look again and I sort of had to jog him.'

Further, the panel noted that, for a period of approximately two or three weeks before Mr Robinson left employment at the Home, he was not permitted to undertake medicine administration duties because of the alleged number of errors he had made.

Therefore, in light of the number of errors made, and the periods of supervision where Mr Robinson continued to make errors, that on balance of probabilities Mr Robinson did not demonstrate the standards of knowledge, skill, and judgement required to practise without supervision.

Charge 2

“Between 6 December 2021 and 8 December 2021, breached condition 7.b. of your interim conditions of practice order by failing to provide a copy of said conditions to Gaia Recruitment Agency”

This charge is found not proved.

In reaching this decision, the panel took into account documentary evidence and evidence on Ms 7.

The panel had a copy of the interim conditions of practice that were in place in December 2020 of which 7b read as follows

“7. You must immediately give a copy of these conditions to:

[...]

b) Any employers you apply to for work (at the time of application).

The panel determined that there is no evidence to suggest that the recruitment agency was Mr Robinson’s employer at the time or that he was applying for a role in that Agency. The panel heard from Ms 7 who was clear that the Agency would not be Mr Robinson’s employer. Any employment would be by the recruitment Agency’s client.

The panel determined that the wording of condition 7b did not require Mr Robinson to provide a copy to the Agency because it was not an employer for which he had applied to work. The panel’s decision was reinforced by the fact that it is common for conditions of practice to specifically state that a copy be provided to any agency, however, Mr Robinson’s conditions did not state this.

Therefore, the panel finds charge 2 not proved.

Charge 3

“Your conduct at charge 2 was dishonest, in that you knew you were subject to said conditions, and deliberately withheld that information”

This charge is found not proved.

As a result of the conduct alleged in charge 2 not being found proved, the panel decided that charge 3 could not be found proved.

Charge 4

“Between 6 December 2021 and 8 December 2021, failed to inform Gaia Recruitment Agency that you were subject to an interim conditions of practice order”

This charge is found not proved.

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

Ms 7 was clear in her evidence that she did not ask Mr Robinson directly if he was subject to any conditions of practice. The panel determined that on the documentary evidence provided at no point was this question asked on the Agency’s application form nor in their standard questions that they asked potential recruits. In Ms 7’s oral evidence she stated that “most registrants”, would volunteer this information without being asked. However, such comment also implied that not all registrants inform the recruitment Agency of their restrictions, nor can a general view address what each individual’s conditions of practice order obligates each registrant to do.

Therefore, the panel was of the view that at no point within the two interviews that Mr Robinson had with the Agency or in the application form had he failed to inform the Agency of the conditions of practice because he was not asked this question.

The panel then considered whether Mr Robinson was under an obligation to inform the Agency of the order. The panel determined that the conditions of practice did not place any obligation on Mr Robinson to inform the Agency of the conditions of practice order because the order did not specifically identify an 'agency' as an entity that required notification.

Therefore, the panel determined that Mr Robinson had no duty or obligation to inform the Agency of the restrictions on his registration.

In light of this, the panel found this allegation not proved.

Charge 5

"Your conduct at charge 4 showed a lack of integrity, in that you knew you should have informed Gaia Recruitment Agency of the conditions of practice order"

This charge is found not proved.

As a result of the conduct alleged in charge 4 not being found proved, the panel decided that charge 5 could not be found proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether those facts it found proved amount to a lack of competence or misconduct and, if so, whether Mr Robinson'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 a lack of competence or misconduct. Secondly, only if the facts found proved amount to a lack of competence or misconduct, the panel must decide whether, in all the circumstances, Mr Robinson's fitness to practise is currently impaired as a result of that lack of competence.

Submissions on lack of competence

Ms Dyas submitted that the charges found proved would not amount to a finding of misconduct and only made submissions in relation to lack of competence.

The NMC has defined a lack of competence as:

'A lack of knowledge, skill or judgment of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified or seeks to practice.'

Ms Dyas invited the panel to take the view that the facts found proved amount to a lack of competence. 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.

Ms Dyas identified the specific, relevant standards where Mr Robinson's actions amounted to a lack of competence. Ms Dyas submitted that lack of competency needs to be assessed using a three stage process:

- Is there evidence that Mr Robinson was made aware of the issues around their competence?

- Is there evidence that they were given the opportunity to improve?
- Is there evidence of further assessment?

Ms Dyas submitted that the facts found proved show that Mr Robinson's competence at the time was below the standard expected of a registered nurse. She highlighted to the panel that the issues revolved around the fundamentals of medication administration and management and basic nursing care. Ms Dyas submitted that the allegations set out in the schedule do represent a fair sample of Mr Robinson's practice, as the allegations span July – October 2020, illustrating a pattern of failure. Ms Dyas submitted that this sample was more than a mere snapshot of Mr Robinson's practice.

Submissions on impairment

Ms Dyas moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Dyas acknowledged Mr Robinson's reflective piece and certifications that he submitted. Ms Dyas informed the panel that Mr Robinson has successfully renewed his Boots foundation and advanced medication administration courses. She submitted that Mr Robinson showed a good level of insight, however she further submitted that there is a risk of repetition, as Mr Robinson is yet to evidence his competence in practice.

Ms Dyas referred the panel to the NMC's contextual factors guidance, as Mr Robinson has mentioned that his stressful work environment had an influence on his practice. She submitted that the panel would have to decide to what extent any environmental factors were at play. Ms Dyas further submitted, despite any environmental factors, Mr Robinson was making extremely basic mistakes in nursing practice and those amount to lack of competence.

Ms Dyas outlined the NMC code which she submitted had been breached; 1, 1.1, 1.2, 1.3, 1.4, 1.5, 10, 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6. Ms Dyas submitted that impairment should be found on both public interest and public protection grounds.

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* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on lack of competence

When determining whether the facts found proved amount to a lack of competence, the panel had regard to the terms of the Code. In particular, the following standards:

'1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

6.2 maintain the knowledge and skills you need for safe and effective practice

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

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

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'

The panel bore in mind, when reaching its decision, that you should be judged by the standards of the reasonable average registered nurse and not by any higher or more

demanding standard. The panel determined that the charges demonstrate a pattern of behaviour over a period of time and is a full representation of your practice at that time.

Due to the number of medicine administration errors over that period, the panel has concluded that his practice fell short of the standard of competency of a reasonably expected acting in his role. The panel noted that even though there were staff shortages, and the working environment was causing staff members stress, this did not explain all of Mr Robinsons errors. Therefore, the panel concluded that the sample demonstrated a lack of competence.

In all the circumstances, the panel determined that Mr Robinson's performance demonstrated a lack of competence.

Decision and reasons on impairment

The panel next went on to decide if as a result of the lack of competence, Mr Robinson's fitness to practise is currently impaired.

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/their fitness to practise is impaired in the sense that S/He/They:

- 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) ...*
- d) ...’*

The panel found that patients were put at risk as a result of Mr Robinson’s lack of competence in administering medication which also brought the nursing profession into disrepute.

Regarding insight, the panel considered Mr Robinson’s reflective pieces, the remorse he expressed and his training certificates. The panel was of the view that Mr Robinson had demonstrated an understanding of the deficiencies in his practice, and its impact on patients and the professions and consequently good and full insight into the concerns.

In its consideration of whether Mr Robinson has taken steps to strengthen his practice, the panel took into account the relevant training that he has undertaken. The panel determined that the concerns are remediable, but Mr Robinson has not been able to demonstrate that he has applied this learning in his practice. Therefore, the panel was of the view there was a low risk of repetition.

The panel was of the view, for the reasons above, that limbs a and b were engaged both in the past and the future. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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, in this case, a finding of impairment on public interest grounds was also required.

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

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that Mr Robinson's name on the NMC register will show that he is subject to a conditions of practice order and anyone who enquires about his registration will be informed of this order.

Submissions on sanction

In the Notice of Hearing, dated 31 May 2022, the NMC had advised Mr Robinson that it would seek the imposition of a 12-month suspension order if it found Mr Robinson's fitness to practise currently impaired. During the course of the hearing, the NMC revised its proposal and submitted that condition of practice order is more appropriate in light of the panel's findings.

Ms Dyas made submissions in writing.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mr Robinson'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:

- There was a risk of harm to vulnerable residents in the home in which Mr Robinson held a position of responsibility.

The panel also took into account the following mitigating features:

- Mr Robinson has shown remorse and full insight;
- Mr Robinson's personal mitigation as written within the correspondence with the NMC.

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 Mr Robinson's practice would not be appropriate in the circumstances.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *Potential and willingness to respond positively to retraining;*
- *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;*
and
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case and which would sufficiently protect the public against the risks identified.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Robinson's case because the concerns only relate to his lack of competence relating to medication administration and management, and Mr Robinson has full insight into his failings. Further, the panel noted that as Mr Robinson had been suspended in the interim he had not been afforded the opportunity to practise subject to interim conditions.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will protect the public, will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. Until such time as you have been deemed competent in accordance with condition 2, you must only work for an employer who can provide you with the supervision and support to enable you comply with conditions 2, 3 and 4.
2. You must not administer medication unless directly supervised by another registered nurse, until you are deemed competent to do so by another registered nurse. You must provide details of successfully completing this competency to the NMC.
3. You must meet with your clinical supervisor and/or line manager (registered nurse) at least fortnightly to review and discuss the standard of your performance and your progress towards achieving your competency around medicines management.
4. You must send a report from your clinical supervisor and/or line manager (registered nurse) setting out the standards of your performance and clinical practice in relation to medicines management to the NMC before any NMC review hearing or meeting.
5. You must keep us informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
6. You must keep us informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.

- b) Giving your case officer the name and contact details of the organisation offering that course of study.
7. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any employers to whom you apply or agency through whom you apply for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
8. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
9. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 months. The panel determined that a 12 months order would afford Mr Robinson the opportunity to find work and comply with these conditions and demonstrate his competency in medication administration and management. The panel noted that if Mr Robinson achieves this he also has the opportunity to ask for an early review of the order.

Before the order expires a panel will hold a review hearing. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Evidence of an updated reflective account on your development regarding medication management and administration.
- Testimonials
- Evidence of up-to-date training particularly in the areas of the regulatory concerns.
- Mr Robinson's attendance at the review hearing.

This will be confirmed to Mr Robinson in writing.

Interim order

As the conditions of practice 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 until the conditions of practice sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Dyas. She invited the panel to impose an interim order for 18 months to cover the appeal period.

The panel accepted the advice of the legal assessor.

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, not to make an interim order will be incompatible with its earlier findings.

The panel concluded that the proportionate order would be an interim conditions of practice order. The conditions for the interim order will be the same as those detailed in the substantive order. The interim order will be for a period of 18 months to allow for an appeal.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Mr Robinson is sent the decision of this hearing in writing.

That concludes this determination.

This will be confirmed to Mr Robinson in writing.