

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

**Substantive Meeting
Friday, 13 October 2023**

Virtual Meeting

Name of Registrant:	Carol Ann Eaton-Davies
NMC PIN	7710062W
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – Level 1 – April 1981
Relevant Location:	Carmarthenshire County
Type of case:	Misconduct
Panel members:	Tracy Stephenson (Chair, lay member) Florence Mitchell (Registrant member) Judith Webb (Lay member)
Legal Assessor:	Cyrus Katrak
Hearings Coordinator:	Xenia Menzl
Consensual Panel Determination:	Accepted
Facts proved by admission:	Charges 1, 2
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 Months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Eaton-Davies' registered email address by secure email on 9 October 2023.

The panel accepted the advice of the legal assessor.

The panel noted that the notice was not sent 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). However, it had an email from Mrs Eaton-Davies before it, dated 9 October 2023, which states:

'I give permission for the meeting to go ahead at short notice. I had been informed previously that the date of the meeting was on or around October 12. I hope that my permission is sufficient for you to continue with the meeting.'

The panel took into account that the Notice of Meeting provided details of the allegation, including that this meeting would take place on a date on or after 12 October 2023, and the fact that this meeting would be heard virtually.

In the light of all of the information available, the panel was satisfied that Mrs Eaton-Davies has been served with notice of this meeting.

Details of charge

That you, a registered nurse:

1. Between 2 October 2002 and 12 October 2020 accessed the clinical records of 8 patients without clinical justification, as specified in Schedule 1.
2. Between 2 October 2002 and 12 October 2020 generated repeat and acute prescriptions to 8 patients when not qualified to do so, as specified in Schedule 2.

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

Schedule 1

Patient B on approximately 141 occasions

Patient C on approximately 1,195 occasions

Patient D on approximately 164 occasions

Patient E on approximately 365 occasions

Patient F on approximately 27 occasions

Patient G on approximately 122 occasions

Patient H on approximately 125 occasions

Patient I on approximately 17 occasions

Schedule 2

Patient A - 700 repeat prescriptions and 129 acute prescriptions

Patient B – 28 repeat prescriptions and 23 acute prescriptions

Patient C –363 repeat prescriptions and 22 acute prescriptions

Patient D - 65 repeat prescriptions and 47 acute prescriptions

Patient E - 123 repeat prescriptions and 80 acute prescriptions

Patient F – 10 acute prescriptions

Patient G – 62 repeat prescriptions and 48 acute prescriptions

Patient H – 56 repeat prescriptions and 56 acute prescriptions

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 Eaton-Davies.

The signed and dated agreement, which was put before the panel, sets out Mrs Eaton-Davies' 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. 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:

'The Nursing & Midwifery Council ("the NMC") and Mrs Carol Ann Eaton-Davies ("Mrs Davies") PIN: 7710062W ("the Parties") agree as follows:

- 1. Mrs Eaton-Davies is aware of the CPD hearing. Mrs Eaton-Davies does not intend to attend and is content for it to proceed in her absence. Mrs Eaton-Davies agrees*

to make herself available by telephone in the event the panel has queries or wishes to make amendments in connection with this provisional agreement.

- 2. Mrs Eaton-Davies understands that if the panel wishes to make amendments to the provisional agreement with which she doesn't agree, the panel will reject the CPD and refer the matter to a substantive hearing.*

[Charges and Schedule as set out above]

Background

- 4. Mrs Eaton-Davies appears on the register of nurses, midwives and nursing associates maintained by the NMC. Mrs Eaton-Davies has been a registered nurse, specialising in adult nursing since April 1980.*
- 5. On 14 October 2020, the NMC received a referral about Mrs Eaton-Davies' fitness to practise from Rachel Griffiths, Advanced Nurse Practitioner ('ANP') at Meddygfa Penygroes Surgery ('the surgery').*
- 6. At the time of the concerns raised in the referral, the surgery employed Mrs Eaton-Davies as a Practice Nurse. Mrs Eaton-Davies commenced employment at the Surgery on 8 January 1990 until her resignation on 12 October 2020.*

The facts relating to the charges

Charge 1

- 7. Between 2 October 2002 and 12 October 2020, Mrs Eaton-Davies pursued a course of conduct of repeatedly accessing the clinical records of 8 patients. The records related to patients who were family members. The surgery undertook an internal audit and Schedule 1 sets out the number of occasions, on which the various patients' records were accessed.*

8. *In the absence of clinical justification or any authority to access these records this constituted a breach of confidentiality.*

Charge 2

9. *During the same period Mrs Eaton-Davies generated repeat and acute prescriptions for herself and the other identified patients. Acute prescriptions are items which have previously been prescribed for a patient but have not been placed on repeat. Such prescriptions included high risk medications. Medications which are deemed high risk, are those, which are most likely to cause significant harm to a patient. They require monitoring, because there is a high risk of error, if administered wrongly. There is potential for abuse of medications, such as Co-codamol, Codeine, Diazepam and Temazepam because they are addictive. Epi pens are high risk because they contain adrenaline. Salazopyrin, which is an anti-inflammatory drug prescribed for arthritis, requires blood tests to monitor kidney and liver function because this affects the dosage. Mrs Eaton-Davies generated prescriptions for these acute medications. Schedule 2 demonstrates the numerous occasions when repeat and acute prescriptions were generated in relation to herself and 7 other patients of the surgery.*
10. *Mrs Eaton-Davies compromised the safety of herself and the other 7 patients by generating prescriptions, without the appropriate assessment of a qualified professional in consideration of the patient's health and medication regime. Mrs Eaton-Davies is not a nurse prescriber and had no authority to generate prescriptions other than for patients on her allocated clinical list. Mrs Eaton-Davies could generate a prescription for patients on her allocated clinical list either during or after the clinical consultation. Mrs Eaton-Davies would then have to liaise with either a GP or an ANP to sign the prescriptions at the time of printing. Acute prescriptions ought to have been placed on the GPs or Pharmacist screen for approval. Any acute prescriptions should always be accompanied by an entry in*

the patient's notes. The Surgery's GPs would approve any prescription requests daily. Any repeat prescription would be in paper format, and the process was for a GP to look through the prescriptions and check the dosages were correct, before signing.

11. The NMC obtained a witness statement from Dr G Ellis-Williams, a senior partner and GP at the surgery. Dr G Ellis-Williams confirmed they had known Mrs Eaton-Davies since 1992, as a work colleague and patient. Dr G Ellis-Williams was present at the internal investigation meeting on 12 October 2020 and had seen the audit undertaken by the practice manager. Dr G Ellis-Williams in their professional capacity provided commentary within their witness statement as to the prescriptions generated.

12. Dr G Ellis-Williams stated the prescriptions appeared to be in keeping with all the identified patients' health requirements and medical history. Dr G Ellis-Williams commented it was likely, that Mrs Eaton-Davies felt she was acting in the best interests of her family, by generating the prescriptions, and Mrs Eaton-Davies was trying to ease her colleagues' workloads.

13. There is no evidence that any direct harm was caused to any of the patients, arising out of the conduct charged. However, the risk of harm was significant, due to the need for assessment and monitoring of the medications that were identified as high risk, as set out in paragraph 9 above. As previously noted, medications such as Salazopyrin, which is an anti-inflammatory drug, prescribed for arthritis, requires blood tests to monitor kidney and liver function. The results of such tests would affect the dosage prescribed to the patient. The provision of such prescriptions without medical assessment clearly put patients at risk of significant harm.

14. A local investigation was instigated but not completed by the surgery because Mrs Eaton-Davies resigned from her employment on 12 October 2020.

Misconduct

15. Mrs Eaton-Davies has admitted the regulatory charges in the completed case management form dated 5 June 2023.

16. **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'

17. 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'

18. The parties agree that Mrs Eaton-Davies' fitness to practise is currently impaired by reason of her misconduct. Her conduct as described in the charges fell seriously short of the standards set out in **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** ("the Code").

19. The Parties agree that the following paragraphs of the Code were engaged and breached in this case:

5 Respect people's right to privacy and confidentiality

As a nurse or midwife, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.

To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care

8 Work cooperatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

8.5 work with colleagues to preserve the safety of those receiving 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:

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

18.5 wherever possible, avoid prescribing for yourself or for anyone with whom you have a close personal relationship.

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

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

20. *Respecting a patient's privacy is a fundamental tenet of nursing to ensure patients feel they can be open and honest about their health and the information will be kept private. Mrs Eaton-Davies in her privileged position of trust, had access and accessed clinical records, which may have contained information the patients, her family members wished to keep private.*

21. *In respect of generating prescriptions (charge 2), Mrs Eaton-Davies acted beyond her authority and qualification, by generating prescriptions for patients and herself who were not on her allocated patient list. Mrs Eaton-Davies undermined the prescription system, as prescriptions were issued without appropriate medical assessment. Whilst the prescriptions may have been in keeping with the patient's individual health conditions, they were generated without the oversight of a qualified practitioner. The prescribed medicines required medical assessment in respect of the appropriate dosage and without such there was a risk that a patient would not be treated safely and effectively or would develop a dependency. This highlights the dangers of an unauthorised, unqualified person acting outside the limits of their qualification.*

Mrs Eaton-Davies' conduct breached the obligations of a registered professional to comply with the Code and whilst not every breach will amount to professional misconduct it is agreed that the actions as outlined in the charges raise serious questions about the professionalism and trustworthiness of Mrs Eaton-Davies and amount to misconduct.

Impairment

22. *Mrs Eaton-Davies accepts that her fitness to practise is currently impaired by reason of her misconduct as stated in the completed case management form dated 5 June 2023.*

23. Consideration has been given to the nature of the concern by looking at the factors set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;

“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:

- *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*
- *Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
- *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or*
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future?*

The Parties agree that limbs 1 to 3 are engaged in this case. Dealing with each in turn:

Public Protection

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;

24. In accordance with **Article 3(4) of the Nursing and Midwifery Order 2001** (“the Order”) the overarching objective of the NMC is the protection of the public.

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;

25. The case of Grant makes it clear that the public protection must be considered paramount, and Cox J stated at para 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 ..."

26. Whilst there is no evidence that Mrs Eaton-Davies' actions caused direct harm to patients of the surgery. Mrs Eaton-Davies actions put the patients and herself at unwarranted risk of harm. Accessing patients' clinical records on multiple occasions without clinical justification or without authorisation is an invasion of privacy which risks causing emotional distress or emotional/psychological harm. Generating prescriptions, particularly acute ones, without the input of a suitably qualified professional, left the relevant patients vulnerable to potential adverse consequences without medical oversight.

27. Mrs Eaton-Davies has stepped away from nursing and has no intention to return. Accordingly, she is unable to demonstrate kind, safe and effective practice since the events outlined and therefore, there remains a risk of repetition and an unwarranted risk of harm. The parties agree that Mrs Eaton-Davies' fitness to practise is impaired on the grounds of public protection.

Public Interest

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

28. In accordance with Article 3(4) of the order the Council's overarching objective includes

(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.

29. The case of Grant (the comments of **Cox J in Grant** at paragraph 101) makes it clear that the public interest must be considered separately at the impairment stage.

“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.”

30. Cox J emphasised at para 71 ‘the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession’

31. Upholding and protecting the wider public interest includes (1) the promotion and maintenance of public confidence in the nursing and midwifery professions and (2) the declaration and maintenance of proper and professional standards. This includes ensuring that registrants act in accordance with the professional Code. Registered professionals occupy a position of privilege and trust in society to be responsible for the care of patients. Mrs Eaton-Davies’ acts and omissions as outlined above fell far below the below the standards expected of a registered nurse. Such misconduct undermines the public’s trust and confidence in the profession and could result in patients and members of the public being deterred

from seeking assistance or treatment from nurses. Members of the public need to be assured that their clinical records remain private, and their medical needs are met appropriately and safely.

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

32. Registered professionals occupy a position of privilege and trust in society, being responsible for the care of patients. Mrs Eaton-Davies acknowledges that her behaviour of accessing patient records without clinical justification and generating prescriptions without medical input, not only brought her reputation into disrepute, but also that of the wider profession. This in turn undermines the public's confidence in the profession.

33. Mrs Eaton-Davies has stepped away from nursing and has no intention to return to practice. In these circumstances, in the absence of remediation, the risk of repetition remains.

Breaching the fundamental tenets of the profession

34. The Code divides its guidance for nurses, midwives, and nursing associates in to four categories which can be considered as representative of the fundamental principles of nursing care. These are

- a) Prioritise people*
- b) Practice effectively*
- c) Preserve safety and*
- d) Promote professionalism and trust*

35. Mrs Eaton-Davies agrees that she has breached fundamental tenets of the profession by, (1) improperly accessing patient records and therefore failing to

maintain confidentiality and (2) generating prescriptions for those patients outside her training and competence. Mrs Eaton-Davies has not practised since the relevant matters came to light and is unable to demonstrate safe and professional practice. It is agreed that in the absence of steps taken to strengthen practice or remediation there is a risk of breaching fundamental tenets of the profession in the future.

Remorse, reflection, insight, training, and remediation

36. NMC guidance adopts the approach of **Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)** 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.

37. The Parties have also considered 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".

38. The parties considered to what extent Mrs Eaton-Davies had reflected upon events and had demonstrated insight into the charges, together with any steps taken to strengthen her practice and remediate the concerns.

39. Mrs Eaton-Davies has engaged with the NMC and made admissions to the regulatory concerns on 22, 26 and 29 October 2020, accepting the conduct, and acknowledging the seriousness of her actions, stating it was a 'stupid thing' to do and there was 'no excuse'. Mrs Eaton-Davies admitted breaching the NMC Code of Conduct and stated that she had lost sight of the guidelines in trying to help her family. She had not meant them any harm and regrets that her nursing career will finish in this manner.

40. *This was reiterated in the regulatory concern response form dated 4 February 2021, whereby Mrs Eaton-Davies expressed remorse for her actions, stating that she has now retired and is not a threat to anyone and does not intend to practise anymore.*
41. *In the case management form dated 5 June 2023, Mrs Eaton-Davies admitted the charges and confirmed her fitness to practise was impaired.*
42. *Mrs Eaton-Davies has acknowledged that she should not have acted as she did and expressed her regret. Dr G Ellis-Williams has provided a supportive letter confirming they did not believe there had been any malicious intent on Mrs Eaton-Davies' part, but simply a desire to help her family and colleagues. It is agreed that Mrs Eaton-Davies has demonstrated remorse and that her reflection and insight has developed since events. However, Mrs Eaton-Davies has not reflected fully on the impact that her conduct has on the profession and her trustworthiness as a registered professional. Mrs Eaton-Davies has removed herself from nursing and is unable to demonstrate safe, effective, and professional practice which would form the basis of strengthened practice or remediation.*
43. *Based on the above, the Parties agree that a reasonable and fully informed member of the public would expect a finding of impairment to follow and would be extremely concerned if a nurse was not found impaired due to the concerns raised. Any other outcome would undermine confidence in the profession. A finding of impairment is therefore necessary on the grounds of public protection and in the public interest, because whilst there is remorse, regret, and some reflection. There is limited insight by Mrs Eaton-Davies as to the impact her actions and omissions could have, had on the patients, the general public and the profession as a whole. She has removed herself from nursing and is unable to demonstrate safe, effective, and professional practice which would form the basis of strengthened practice or remediation.*

Sanction

44. *Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that a striking-off order is the most appropriate and proportionate sanction in the circumstances of this case.*

45. *In reaching this agreement, the Parties considered the 'NMC's Sanctions Guidance' ("the Guidance") (SAN-11), bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be punitive but to protect the public and satisfy the wider public interest considerations. The panel should consider the principle of proportionality and it is agreed that the proposed sanction is a proportionate one that balances the risk to public protection and the public interest with Mrs Eaton-Davies' interests.*

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

- *Repetition over an 18-year period*
- *Experienced nurse*
- *Abuse of trust*
- *Undermining of the prescription system*
- *Lack of recognition of the risks associated with acute prescriptions that are not appropriately monitored.*

47. *The mitigating feature of this case are identified as follows:*

- *Genuine remorse and regret*

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

- a) **No further action (SAN-3a)** – *The Parties agree that taking no further action would wholly be inappropriate in view of the public protection issues identified. Such a sanction would not mark the seriousness of the relevant conduct and*

would be insufficient to maintain public confidence in the profession and maintain professional standards.

- b) **Caution Order (SAN-3b)** – *The Parties agree that a caution order would be insufficient to protect the public or mark the seriousness of the misconduct. It is not a case at the lower end of the spectrum of impaired fitness to practise. Such a sanction would be insufficient to protect the public from an unwarranted risk of harm and to maintain public trust and confidence in the profession and its regulation.*

- c) **Conditions of Practice Order (SAN-3c)** – *The Guidance says that a conditions of practice order is appropriate when the concerns can be remediated. In this case, as Mrs Eaton-Davies has retired from practice, there are no workable conditions that can be identified to remediate data protection or confidentiality concerns. No assessment or training has been identified which could address the risk and seriousness. A medicines competency test may resolve the concerns around the generation of prescriptions, however as Mrs Eaton-Davies has retired from practice in 2020, this would not be feasible. A conditions of practice order would not be in the public interest and would be insufficient to adequately protect the public from an unwarranted risk of harm because of the seriousness of the concerns and the repeated breaches.*

- d) **Suspension Order (SAN-3d)** – *Mrs Eaton-Davies' conduct is fundamentally incompatible with continuing to practise as a professional, given the repeated data protection breaches; the undermining of the prescription system and the associated failure to ensure appropriate monitoring and assessment in respect of acute prescriptions. Mrs Eaton-Davies has not been practicing since 2020 and has indicated that she has retired. The misconduct took place over an 18-year period and temporary removal from the register would be insufficient to protect the public from a significant risk of unwarranted harm and satisfy the wider public interest considerations.*

- e) **Striking-Off Order (SAN-3e)** – *A striking-off order is the appropriate and proportionate sanction in the circumstances of this case. The regulatory concerns raise fundamental questions about Mrs Eaton-Davies' trustworthiness and professionalism. It is submitted that public confidence in the profession and the NMC could not be maintained if Mrs Eaton-Davies were not removed from the Register. The actions of Mrs Eaton-Davies regardless of her intentions, have breached confidentiality and privacy and undermined the prescription system, putting patients at a significant risk of unwarranted harm over a period of ... In the circumstances of this case where there is no realistic possibility of remediation it is agreed that the only sanction which will be sufficient to protect patients and maintain professional standards is a striking-off order*

Referrer's comments

49. *The NMC contacted the referrer by email dated 28 June 2023 seeking comments in respect of the proposed agreed striking off order. In an email dated 29 June 2023 the referrer expressed support for the agreed order.*

Interim order

50. *An interim order is required in this case. The interim order is necessary for public protection and is otherwise in the public interest. The substantive order will not come into effect until some 28 days after the hearing and should Mrs Eaton-Davies lodge an appeal within the relevant period, the substantive order would not come into effect pending a resolution of the appeal. This would permit Mrs Eaton-Davies to practise without restriction during this time and would therefore fail to provide protection for the public or take account of public interest consideration. It is agreed that an interim suspension, is required for a period of 18 months because it is likely to take that amount of time for the appeal to be heard.*

51. The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings of fact, 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 to determine, provided that it would be relevant and fair to do so.

Here ends the provisional CPD agreement between the NMC and Mrs Eaton-Davies. The provisional CPD agreement was signed by Mrs Eaton-Davies on 17 August 2023 and the NMC on 18 August 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 Eaton-Davies. 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 Eaton-Davies admitted all the facts of the charges. Accordingly, the panel was satisfied that charges 1 and 2 are found proved by way of Mrs Eaton-Davies admissions as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

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

The panel endorsed paragraphs 15 to 21 of the provisional CPD agreement in respect of breaches of the code and misconduct.

The panel determined that Mrs Eaton-Davies was in a position of trust and had a duty to ensure that patients, including her family members, feel that their information is kept confidential so that they can be open and honest about their physical and mental health. The panel was of the view that accessing the clinical records of patients and her family members, which may have contained information they wished to keep private, breached that trust.

Further, the panel was of the view that by generating prescriptions for herself and family members Mrs Eaton-Davies acted outside of her scope of practice. The panel was of the view that Mrs Eaton-Davies not only undermined the prescription system issuing prescriptions without the appropriate medical assessment or the oversight of a qualified practitioner but also put herself and her family members at a serious risk of harm by not ensuring that the patients were treated safely and effectively.

The panel concluded that Ms Davies actions in charge 1 and 2 fell well below the standard expected of a registered nurse and amounted to serious misconduct.

The panel then considered whether Mrs Eaton-Davies' fitness to practise is currently impaired by reason of her misconduct. In this respect the panel endorsed paragraphs 22 to 43 of the provisional CPD agreement.

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *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) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) [...]’

The panel finds that patients were put at a serious risk of harm as a result of Mrs Eaton-Davies’ misconduct. Mrs Eaton-Davies’ misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel noted that Mrs Eaton-Davies has engaged with the NMC and had made admissions to her misconduct, acknowledging the seriousness of her actions. She stated that she did not intend any harm and only tried to help her family. The panel noted that Mrs Eaton-Davies demonstrated remorse and apologised for her actions. It concluded that Mrs Davies has shown some insight and remorse into her misconduct.

However, the panel noted that Mrs Eaton-Davies stated that she has removed herself from nursing and has now retired. It concluded that she is not able to strengthen her practice or remediate her actions as she is not working and consequently unable to demonstrate safe and effective practice. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in a case where the nurse accessed the clinical records of eight patients without clinical justification, and generated repeat and acute prescriptions to these patients when not qualified to do so over a period of 18 years. The

panel therefore determined that Mrs Eaton-Davies' fitness to practise is also impaired on the grounds of public interest.

Decision and reasons on sanction

Having found Mrs Eaton-Davies' 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:

- Repetition over an 18-year period
- Experienced nurse
- Abuse of trust
- Undermining of the prescription system
- Lack of recognition of the risks associated with acute prescriptions that are not appropriately monitored.

The panel also took into account the following mitigating features:

- Genuine remorse and regret

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 Eaton-Davies' 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 Eaton-Davies' 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 Eaton-Davies' registration would be a sufficient and appropriate response. The panel concluded that the placing of conditions on Mrs Eaton-Davies' 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:

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Eaton-Davies' actions is fundamentally incompatible with Mrs Eaton-Davies 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?*

Mrs Eaton-Davies' actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. Mrs Eaton-Davies accessed the clinical records of eight patients without clinical justification, and generated repeat and acute prescriptions to these patients when not qualified to do so over a period of 18 years. The panel concluded that this raised fundamental questions about Mrs Eaton-Davies' trustworthiness and professionalism. Regardless of her intentions Mrs Eaton-Davies has breached confidentiality as well as privacy and undermined the prescription system, putting patients at a significant risk of unwarranted harm over a prolonged period of time. The panel was of the view that Mrs Eaton-Davies' actions were 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 Eaton-Davies' 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 Eaton-Davies' own interest. 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 interests. 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 to cover the 28 day appeal period and any period of appeal.

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

That concludes this determination.