Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 24 June – Tuesday, 2 July 2024

Virtual Hearing

Name of Registrant:	**Leanne Scott**
NMC PIN:	10E0734E
Part(s) of the register:	Registered Nurse – Adult Nursing RNA – (13 May 2010)
Relevant Location:	Derbyshire
Type of case:	Misconduct
Panel members:	Mark Gower (Chair, Lay member) Louise Poley (Registrant member) Anne Rice (Lay member)
Legal Assessor:	Oliver Wise
Hearings Coordinator:	Nicola Nicolaou
Nursing and Midwifery Council:	Represented by Rowena Wisniewska, Case Presenter
Miss Scott:	Not present and unrepresented
Facts proved:	Charges 1b), 4, and 5
Facts not proved:	Charges 1a), 2, and 3
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Scott was not in attendance and that the Notice of Hearing letter had been sent to Miss Scott's registered email address by secure email on 7 May 2024.

Ms Wisniewska, 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 allegations, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Scott's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

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

Following the service of Notice of Hearing, Ms Wisniewska made a request that this case be held partly in private on the basis that [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold

hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined it would go into private session when [PRIVATE].

Decision and reasons on proceeding in the absence of Miss Scott

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

Ms Wisniewska informed the panel that the NMC had received an email from Miss Scott dated 23 June 2024, [PRIVATE]. Ms Wisniewska submitted that Miss Scott may have impliedly sought an adjournment of these proceedings, but that no specific request had been made.

Ms Wisniewska submitted that:

- Miss Scott was served sufficient notice of this hearing;
- There is a general public interest in dealing with cases expeditiously;
- Delaying the hearing may mean that witnesses find it harder to remember their evidence;
- Adjourning the hearing is likely to cause inconvenience to witnesses who have made themselves available to attend and to give evidence on the original hearing dates; and
- An adjournment granted does not make it any more likely that Miss Scott would attend on a future occasion.

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 not absolute and 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.

At the direction of the panel, the NMC Hearings Coordinator sent an email to Miss Scott at 11:30, on 24 June 2024. The email stated:

> *'…Dear Miss Scott,*
>
> *Your FTPC Substantive hearing has started this morning. The panel have been asked by the Case Presenter, who is the lawyer presenting the case on behalf of the NMC, to proceed with hearing the case in your absence.*
>
> *The panel need to decide on the appropriate course of action given all the circumstances.*
>
> *In making that decision, the panel would be greatly assisted by your attendance, at least for a short period today. This is so that you can explain whether you can properly participate in this hearing in the next 10 days for which it is listed. If you cannot, in your view attend the hearing,* [PRIVATE].
>
> *Your attendance would greatly assist your case. The panel would welcome your attendance* [PRIVATE]. [PRIVATE].
>
> *Please respond to this email, copied to all, as quickly as you can, and in any event by 13:00 today Monday 24th June…'*

Miss Scott responded to the above email at 11:49 on 24 June 2024, and said:

> '[PRIVATE]'

The panel has decided to proceed in the absence of Miss Scott. In reaching this decision, the panel has considered the submissions of Ms Wisniewska, the emails from Miss Scott

dated 23 June and 24 June 2024, 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 the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. The main considerations were:

- No application for an adjournment has been made by Miss Scott;
- Miss Scott has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Three witnesses are due to attend and give live evidence during this hearing;
- 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;
- The charges relate to events that occurred in 2022; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Scott in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, Miss Scott has responded to an email from the NMC Hearings Coordinator on 24 June 2024 saying that she wants the hearing to proceed in her absence. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. 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 Miss Scott's decision to absent herself from the hearing.

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

Details of charge

That you, a registered nurse:

1. On one or more of the dates set out in Schedule A:
   a) altered stock balances without providing a rationale **[NOT PROVED]**
   b) Did not escalate and/or report medication discrepancies to management **[PROVED]**

2. On one of more of the dates set out in Schedule B, altered medication stock balances without obtaining a second signatory **[NOT PROVED]**

3. Your actions at charge 2 were dishonest in that you sought to create the misleading impression that the amendments were witnessed, when they were not. **[NOT PROVED]**

4. On 14 July 2022 asked Colleague A to sign as second signatory to the disposal of medication, when they had not witnessed such disposal. **[PROVED]**

5. Your actions at charge 4 were dishonest in that you deliberately sought to represent that Colleague A had witnessed the disposal of the medication when you knew they had not. **[PROVED]**

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

Schedule A

a) 23 May 2022
b) 12 July 2022
c) 17 July 2022
d) 18 July 2022
e) 22 July 2022

Schedule B

a) 12 May 2022
b) 12 July 2022
c) 17 July 2022
d) 18 July 2022
e) 22 July 2022

Background

On 30 August 2022, the NMC received a referral from the Development and Governance Director at Hill Care Group ('the Employer'). The referral identified a number of regulatory concerns relating to Miss Scott's medication management, record keeping, and associated dishonesty. It is alleged that these matters are said to have taken place while Miss Scott was working at Barnfield Nursing Home ('the Home') as the Clinical Lead from March 2022 until her resignation in August 2022.

The Home became aware of the medication discrepancies in July 2022, and upon review and investigation, found that on a number of dates in May and July 2022, Miss Scott had altered stock balances and then recorded the amendments as having been witnessed, when they hadn't. It is alleged that Miss Scott had provided this information to create the misleading impression that the entries had been witnessed when they had not.

It is also alleged that Miss Scott asked a colleague, Witness 2, to sign as a witness for the disposal of medication despite knowing that Witness 2 had not witnessed the disposal of the medication.

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 Wisniewska.

The panel has drawn no adverse inference from the non-attendance of Miss Scott.

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 live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Nursing Home Manager at the time of the events

- Witness 2: Full-time agency nurse (referred to in the charges as "Colleague A")

- Witness 3: Regional Manager of Hill Care Group

Decision and reasons on application by Ms Wisniewska to exclude the written evidence adduced by Miss Scott

At the conclusion of the NMC case, Ms Wisniewska submitted under Rule 31, that the panel should exclude from the evidence it was to consider, the supporting evidence in the form of statements from Ms 4 (previous registered nurse at the Home), Ms 5 (previous senior healthcare assistant at the Home), and Mr 6 (previous manager at the Home). Ms

Wisniewska relied on the case of *El Karout v NMC* [2019] EWHC 28 (Admin), and the case of *Thorneycroft vs NMC* [2014] EWHC 1565 (Admin). She submitted that the panel should take into account the considerations set out at paragraph 56 of the judgement in *Thorneycroft*:

1) *whether the statement was the sole or decisive evidence in support of the charge;*

Ms Wisniewska submitted that the evidence of Ms 4, Ms 5, and Mr 6 is the sole witness evidence with regard to Miss Scott's version of events that have been untested by cross-examination.

2) *the nature and extent of the challenges to the contents of the statement;*

Ms Wisniewska submitted that Miss Scott has not admitted any of the charges, but equally, the NMC has not been able to cross examine these witnesses and so there has not been any testing of the quality of the evidence.

3) *whether there was any suggestion that the witness had reason to fabricate their allegations;*

Ms Wisniewska submitted that there is nothing to suggest that the witnesses had any reason to fabricate their evidence, but the evidence has not been cross-examined. Ms Wisniewska submitted that one of the witnesses, Ms 5, was referred to as a friend of Miss Scott by Witness 3 in her oral evidence.

4) *the seriousness of the allegations, taking into account the impact that adverse findings might have on the Registrant's career;*

Ms Wisniewska submitted that the allegations are serious which, if found proved, will have adverse impacts on Miss Scott's career.

5) *whether there was a good reason for the non-attendance of the witness;*

Ms Wisniewska submitted that there is not good reason to support Miss Scott's non-attendance, and that she could have attended today or earlier in the hearing to call these witnesses to testify.

6) *whether the NMC had taken reasonable steps to secure the attendance;*

Ms Wisniewska submitted that Miss Scott did not take sufficient steps to secure the attendance of these witnesses.

7) *the fact that the registrant did not have prior notice that the witness statement was to be read.*

Ms Wisniewska submitted that Miss Scott provided the witness statements to the NMC in advance of this hearing.

Ms Wisniewska invited the panel not to admit the hearsay evidence of Ms 4, Ms 5, and Mr 6 in these proceedings on the basis that, although it may be relevant, it has not been tested and would not be fair, in all the circumstances, to admit it.

Following questions from the panel, Ms Wisniewska informed the panel that the evidence was put before it by the NMC, but that Miss Scott was not provided with a warning that the admissibility of her evidence would be challenged. No preliminary meeting was held to consider questions of admissibility of evidence.

The panel took into account the considerations set out at paragraph 56 of the judgement in *Thorneycroft*:

1) *whether the statement was the sole or decisive evidence in support of the charge;*

The panel concluded that the evidence of Ms 4, Ms 5, and Mr 6 was not sole or decisive, and that evidence was given in relation to these charges by both the NMC witnesses, and in writing by Miss Scott.

2) *the nature and extent of the challenges to the contents of the statement;*

The panel determined that the material was provided at the outset of this hearing. It noted that at no point during the hearing was reference made that this evidence would be considered hearsay.

3) *whether there was any suggestion that the witness had reason to fabricate their allegations;*

The panel concluded that there was no information before it to suggest that Miss Scott or the witnesses had fabricated their evidence.

4) *the seriousness of the allegations, taking into account the impact that adverse findings might have on the Registrant's career;*

Because the charges are serious, the panel concluded that fairness required Miss Scott to be permitted to defend herself by adducing her own written evidence, and that of her colleagues.

5) *whether there was a good reason for the non-attendance of the witness;*
6) *whether the NMC had taken reasonable steps to secure the attendance;*

In the panel's judgement, it is unlikely that Miss Scott, who is unrepresented, would be fully aware of the steps open to her to ensure the attendance of these witnesses to provide oral evidence at this hearing. This might include, for example, a direction that they attend to be given at a preliminary hearing. The NMC had taken no steps to secure their attendance.

7) *the fact that the registrant did not have prior notice that the witness statement was to be read.*

The panel noted that Miss Scott provided these witness statements to the NMC prior to this hearing with the knowledge that they would be read by the panel.

In conclusion, the panel determined that it would be unfair to exclude the written evidence submitted by Miss Scott. The panel decided that it would give such evidence appropriate weight, bearing in mind that the witnesses did not attend to give evidence, when deliberating on the facts.

In these circumstances the panel refused the application.

Decision and reasons on application to amend the charge

After the panel had retired to consider the facts, it noticed an error in charge 2 which reads *'on one of more of the dates…'* The panel determined that it should replace 'of' with 'or' so that it reads the same as set out in charge 1. Charge 2 as amended would then read:

2. On one ~~of~~ or more of the dates set out in Schedule B, altered medication stock balances without obtaining a second signatory

The panel was satisfied that the proposed amendment was in the interest of justice. No prejudice would arise to Miss Scott and no injustice would be caused to either party by the proposed amendment being allowed in that there is no material change to the substance of the charge. It was therefore appropriate to allow the amendment to correct the typographical error.

Decision and reasons on facts (continued)

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

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

Charge 1a)

That you, a registered nurse:

1. On one or more of the dates set out in Schedule A:
   a) altered stock balances without providing a rationale

This charge is found NOT proved.

In reaching this decision, the panel took into account a number of medication entries on 23 May, 12 July, 18 July, and 22 July 2022 in which Miss Scott had logged in under her own name and altered stock balances. The panel was satisfied that the stock balances were changed and went on to consider whether there was a rationale provided for the changes being made. The rationale was shown on each occasion as *'stock balance'*. The panel's expectation was that there might be more of an explanation as opposed to the simple phrase 'stock balance' provided by Miss Scott as the Clinical Lead. Whilst the panel might expect there to be a wider rationale, as had been shown in other entries, there was no evidence provided by the NMC to show, with any clarity, that 'stock balance' was an insufficient term to be applied as rationale.

The panel noted that Witness 3 said in her oral evidence that she knew a free text box was available under 'notes' as she said, *"the system … if you do make any changes, allows you to write notes as to what you're doing… I don't know exactly the limit … I would expect there to be some explanation as to what was being done".* The panel noted that Witness 3 was not able to provide any explanation as to what would constitute sufficient

rationale when altering the stock balance on the electronic Medication Administration Record ('EMAR') system.

The panel determined that it is unknown what level of guidance Miss Scott was provided in terms of conducting audits. The EMAR system was implemented before Miss Scott commenced her employment at the Home in March 2022. The panel determined that it is unclear from Witness 1 and 3's evidence if Miss Scott ever received training on how to use the EMAR system. It noted the Staff Supervision Record dated 4 August 2022 which said that Miss Scott would complete her training by 5 August 2022, suggesting that she had not yet completed her training. The panel also took into account Miss Scott's written statement in which she said, *'I was extremely new to this role and was never taught how to do medication audits on the EMAR computer'.*

The panel also considered other entries made by Miss Scott on the EMAR system and noted that there were entries that showed a greater level of detail in the free text notes box. However, the panel was not satisfied from the evidence provided by the NMC that 'stock balance' was insufficient as a rationale. Moreover, there were numerous and significant errors on the EMAR system in terms of calculating the stock.

The panel noted that there was a supervision with Witness 3 on 4 May 2022, and there is no relevant supervisory information contained within that entry. The panel further considered that Witness 3 had responsibility for audits, and further recognised that during this period, there was an absence of management at the Home.

For the reasons set out above, the panel concluded that it did not have sufficient evidence before it to find this charge proved.

Charge 1b)

b) Did not escalate and/or report medication discrepancies to management

This charge is found proved.

In reaching this decision, the panel took into account Miss Scott's denial of the allegation in her written statement dated 9 May 2024 when she said *'…I told* [Witness 3] *many times over the phone and in person that the medication counts were out and not correct…'* This is supported by written evidence from Ms 5 who said *'… I was present on multiple occasions when* [Miss Scott] *told* [Witness 3] *the medication counts were incorrect…'*

The panel heard oral evidence from Witness 1 and Witness 3 regarding an interview that took place on 1 August 2022 with Miss Scott when she was asked if she raised the medication discrepancies previously, to which Miss Scott replied that she hadn't. This is supported by Witness 3's written evidence when she said *'The Home Manager and myself interviewed* [Miss Scott] *regarding these changes … She was asked if she had made anyone aware of the discrepancies she said she had not…'*

The panel also heard from both Witness 1 and Witness 3 that an investigation into the medication discrepancies started immediately after concerns were raised by Nurse 7 on 29 July 2022 regarding missing Diazepam belonging to a resident. Given the nature and seriousness of the discrepancies in Miss Scott's entries, the panel would expect an investigation to have commenced immediately, or soon after if Miss Scott had reported these anomalies.

The panel considered the evidence and entries made by Miss Scott as the user and/or witness on 23 May, 12, 17, 18, and 22 July 2022 for residents A, B, and C. The panel found that there were, in some instances, minor inconsistencies which would not, in evidence, according to Witness 1, *"attract an investigation".* In other entries, there were worryingly large inconsistencies, including for Diazepam.

The panel put more evidential weight on Witness 1 and Witness 3's oral and written evidence as it was able to test the quality of the evidence, where it was not able to challenge Miss Scott or Ms 5 regarding their evidence. The panel also noted that neither

Miss Scott, or Ms 5's written evidence provided specific dates or indication of how significant some of the discrepancies were.

The panel determined that it is more likely than not that Miss Scott did not escalate and/or report these medication discrepancies to management. Therefore, the panel find this charge proved.

Charge 2

2. On one or more of the dates set out in Schedule B, altered medication stock balances without obtaining a second signatory

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1's oral evidence that at the time, all permanent nurses and senior carers had their own login to the EMAR system. Witness 1 said *"if they've not had the training and they don't really know what they're signing for … you could get anyone to sign that, if you're using the agency login".* Witness 1 then went on to explain that there was a sticker on the EMAR laptop that included the agency login details. This is supported by a photo provided by Miss Scott which shows the EMAR laptop with a sticker containing login details.

The panel noted that Witness 3 made the assertion that the implementation of the EMAR system was to largely improve the management of medication within the home. However, the panel has been provided with both written and oral evidence that the login system was only changed after the investigation. Witness 2's oral evidence was that *"they had one login for all the agencies"* and only after the discrepancies were reported to management *"then they gave us other all agency nurses their own particular individual login"*.

The panel had sight of Mr 6's written statement which said, *'senior care assistants … were not given their own login details until they had completed the EMAR training yet were*

having to use the agency login in order to assist nurses in meds requiring a second signature…' The panel also took into account a text message sent by Mr 6 to Ms 5 on 23 March 2022 where Mr 6 asked Ms 5 to log in to EMAR using Miss Scott's login details. This is supported by other evidence. Ms 4's account confirmed that no agency staff at the time had individual login details. Ms 5's account made reference to the generic agency password taped to the laptop. Witness 2's witness statement dated 27 January 2023 said, *'The Home used to use the 'Agency 3' login for all agency staff but that has since been changed and all agency staff have an individual login'.* The panel also considered the oral evidence of Witness 1 and Witness 3 when they both confirmed that it could have been possible that someone else could have countersigned using the agency login.

The panel considered the agency ledger which detailed the staff scheduled to work between March and August 2022. It noted the NMC's assertion that, on 17 and 18 July 2022, only members of agency staff were working on the night shift, therefore it must have been Miss Scott signing in as herself and also using the 'Agency 3' login to countersign her actions. However, on the basis of all the evidence seen and heard by the panel, it determined that people other than agency staff could have signed in using the 'Agency 3' login.

The panel also took into account that there was a lack of management during this time. It noted that Mr 6 was employed as manager of the Home between March and April 2022, and that Witness 1 did not step in as manager until July 2022, leaving months without any management. The panel noted that the Home had been previously criticised by the Care Quality Commission (CQC) regarding leadership and medication management, in that it *'requires improvement'.* The panel further noted that Witness 3 was responsible for the oversight of the Home when there was no manager. However, it determined that the turnover of management was such that it would be difficult for anyone to have a proper understanding of what was happening in the Home at the time.

The panel considered that there were a number of sub-standard practices occurring within the Home in relation to sharing agency login details, general management of the home,

and auditing of the drugs. This is accepted by Witnesses 1, 2, and 3 in their oral and written evidence. The panel noted that Witness 3 had made assertions that training on the use of the EMAR system has been completed; however, the panel determined that the NMC had not provided any documentary evidence to support this.

Despite placing limited weight on the evidence of Ms 4, Ms 5 and Mr 6, as the evidence was untested, the panel determined that it amplified the ongoing concerns regarding the access to the agency login within the Home, as well as the general management of the Home. The panel considered that there was a professional obligation on Miss Scott as the clinical lead, to ensure, particularly when dealing with important medications of varying and large quantities, that there was always a witness to the EMAR amendments. As a consequence of all the ambiguity around the sub-standard practices occurring within the Home at the time, the panel could not conclude that someone else did not countersign for the medication.

For all the reasons set out above, the panel determined that charge 2 was found not proved.

Charge 3

3. Your actions at charge 2 were dishonest in that you sought to create the misleading impression that the amendments were witnessed, when they were not.

This charge is found NOT proved.

On the basis that charge 2 has not been found proved, charge 3 falls away.

Charge 4

4. On 14 July 2022 asked Colleague A to sign as second signatory to the disposal of medication, when they had not witnessed such disposal.

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's oral evidence and determined that it was consistent with his written evidence in terms of his explanation as to how the incident came about. The panel also determined that Witness 2 was able to give a good verbal account of why he felt uncomfortable as to what he was being asked to do. It further noted Witness 2's oral evidence when he said he could see *"empty boxes and then strips of medication all mixed up in a destroy bin".* This is supported by Witness 2's written statement dated 27 January 2023 when he said, *'I saw that tablets were already in the bin and I saw lots of empty boxes in the bin'.*

The panel considered Witness 2's written evidence when he said that he challenged Miss Scott as to why she didn't wait for him before disposing of the medication to which she replied, *'babe I've done it now'*. Witness 2 told the panel that he reported this incident, but he cannot remember exactly when he did. The panel took into account Miss Scott's response to the allegation dated 19 July 2024 in which she said, *'if* [Witness 2] *did not witness me destroy these medications, then why did he sign to say that he did?'*. In his oral evidence, Witness 2 explained that he signed for the disposal of medication as Miss Scott *"was my clinical lead and being respectable … I've signed for her"* but that he did not feel comfortable doing it and advised Miss Scott that he would not do it again if he was asked.

The panel took into account that Witness 2's evidence was contested by Miss Scott in her statement dated 19 June 2024 when she said, *'On paper there are two signatures from myself and* [Witness 2] *which shows medication was destroyed together'.* The panel also had sight of the destroyed or returned medication chart which shows a large quantity of medication being destroyed on 14 July 2022.

The panel determined that Witness 2 would not have given his account of events if it were not true as he would be implicating himself by acting improperly and signing for the disposal of medication when he had not witnessed it.

The panel considered that Witness 2 had no reason to fabricate his evidence as he described having a good professional relationship with Miss Scott. It noted that in his oral evidence, he said, *“she made me feel welcome … She never made me feel like I wasn't part of the team … and she was … very professional with me”.*

For the reasons set out above, the panel determined that on 14 July 2022, Miss Scott asked Colleague A to sign as second signatory to the disposal of medication, when they had not witnessed such disposal.

Charge 5

5. Your actions at charge 4 were dishonest in that you deliberately sought to represent that Colleague A had witnessed the disposal of the medication when you knew they had not.

This charge is found proved.

In reaching this decision, the panel determined that it found Witness 2’s evidence to be reliable and consistent in the previous charge and adopt the same for this charge.

The panel took into account Miss Scott’s written statement dated 19 June 2024 when she said, *‘There is no concrete evidence to accuse me of this, when* [Witness 2] *has legally signed for the witness of destroyed mediation’.* The panel considered that Witness 2 acknowledged in both his written and oral evidence, that he signed for the disposal of medication despite feeling uncomfortable.

The panel also took into account that in her written statement, Miss Scott highlighted the NMC medication policy. As such, the panel was confident that Miss Scott would have been aware of the policy. When considering the level, quantity, and type of medication that was being disposed of, it would have been vital that these were witnessed despite the poor practice that has been evidenced regarding the Home. The panel determined that

Miss Scott would have also known about the Home's medication destruction policy, detailing the drug destruction process, and how to comply with such process.

The panel concluded that it is obvious that the point of asking Colleague A to sign as the second signatory when he had not witnessed the disposal of medication, was to represent to anyone reading the medication records that colleague A had witnessed the disposal of the medication. The panel determined that some of the standards in the Home were sub-standard, as evidenced by the CQC Report, and the evidence reviewed in this case. It determined that Miss Scott as a registered nurse, and Clinical Lead had responsibilities to accurately record the administration and disposal of drugs. The panel can see no other motivation for asking Colleague A to sign as second signatory other than to pretend that he had witnessed her disposal of the medication, which was in breach of her duty. The panel determined that an ordinary decent and honest nurse, or member of the public would regard this deliberate action as dishonest.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Scott'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 ability to practise kindly, safely, and professionally.

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

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

circumstances, Miss Scott's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

Ms Wisniewska identified the specific, relevant standards where Miss Scott's actions amounted to serious professional misconduct, namely paragraphs 10 (10.1, 10.2, and 10.3), 19 (19.1), and 20 (20.1, and 20.2) of the Code.

Submissions on impairment

Ms Wisniewska moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Ms Wisniewska made reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

In relation to the case of *CHRE v NMC and Grant*, Ms Wisniewska submitted that all four limbs of Dame Janet Smith's *"test"* are engaged. Ms Wisniewska submitted that Miss Scott is liable to act in such a way in the future, as there is no evidence before the panel to suggest that she has taken any steps to demonstrate her insight, reflection, or learning in relation to the concerns.

Ms Wisniewska submitted that dishonesty is not behaviour that is easily capable of remediation and is indicative of a serious attitudinal failing which conflicts with and is not in accordance with the standards expected of a registered nurse.

Ms Wisniewska invited the panel to make a finding of current impairment by virtue of Miss Scott's past misconduct and the risk of harm she presents to patients both at the time and going forward, given the serious attitudinal failing in respect of dishonesty, and the lack of evidence of remediation.

The panel accepted the advice of the legal assessor which included reference to *CHRE v NMC and Grant*.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

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

> ***'6 Always practise in line with the best available evidence***
> *To achieve this, you must:*
> *6.2 maintain the knowledge and skills you need for safe and effective practice*
>
> ***8 Work cooperatively***
> *To achieve this, you must:*
> *8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

10 Keep clear and accurate records relevant to your practice

To achieve this, you must:

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

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate

13.5 complete the necessary training before carrying out a new role

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

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

22 Fulfil all registration requirements

To achieve this, you must:

22.3 keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim to maintain and develop your competence and improve your performance'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, it noted that the charges relate to accurate record-keeping, failure to escalate medication discrepancies to management, and dishonesty, which are all fundamental tenets of the nursing profession, and breaches of the Code. The panel determined that whilst the charges do not directly relate to patient care, yet indirectly they have the potential to impact patients.

The panel determined that dishonesty is a breach of one of the fundamental tenets of nursing and falls below the expected standard of a registered nurse. It noted the significant number of drugs that were unaccounted for within a short period of time. The panel also determined that Miss Scott, who was in a position of seniority, put her colleague, Witness 2, in an uncomfortable position as a result of her actions and associated dishonesty.

The panel found that Miss Scott's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

“Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”
If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.’

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. At 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.’

At paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's “test” which reads as follows:

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

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

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel determined that whilst there is no evidence to suggest that patients were harmed, there was potential to cause harm as a consequence of Miss Scott's misconduct. Miss Scott's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find a charge relating to dishonesty extremely serious.

The panel determined that dishonesty is difficult to remediate, and that this dishonesty raises attitudinal concerns in that Miss Scott asked a colleague with less seniority to sign for the disposal of medication that he had not witnessed.

The panel noted that poor culture within the Home, as seen in the evidence in this case, may amount to mitigation, but that it does not excuse the non-compliance with the Code and the standards expected of a registered nurse.

Regarding insight, the panel considered that there is no evidence before it to suggest that Miss Scott has insight or has taken any steps to strengthen her practice. Miss Scott has not demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. As a result, the panel

determined that there is a risk of repetition and therefore decided that a finding of current impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of current impairment on public interest grounds is required because members of the public would expect that accurate records were maintained to ensure the safe care of the residents. Dishonest practice in relation to charge 4 would give rise to a lack of confidence in the nursing profession.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Scott's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

Submissions on sanction

Ms Wisniewska informed the panel that the NMC are seeking a striking-off order. She outlined the following aggravating features:

- Abuse of a position of trust
- Lack of insight into failings
- Pattern of misconduct over a period of time
- Conduct which put patients at risk of suffering harm
- Dishonesty is a breach of one of the fundamental tenets of nursing and falls below the expected standard of a nurse

Ms Wisniewska did not outline any mitigating features in this case.

Ms Wisniewska submitted that taking no further action, or imposing a caution order would be inappropriate given the gravity of misconduct in this case. She submitted that more must be done by way of sanction to protect the public from harm and to maintain public confidence in the nursing profession.

Ms Wisniewska submitted that no workable, relevant, measurable, or proportionate conditions could be formulated to address the concerns in this case, given that Miss Scott's failings amounted to dishonesty and serious misconduct.

Ms Wisniewska submitted that a suspension order would not be appropriate given that Miss Scott fell short of the requirement to act with honesty and integrity at all times. She submitted that there is evidence of attitudinal concerns with a risk of repetition.

Ms Wisniewska submitted that the concerns raise fundamental questions about Miss Scott's professionalism, and that public confidence in the nursing profession cannot be maintained if Miss Scott is not removed from the register. She submitted that a striking-off order is the only appropriate and proportionate sanction to protect patients and the public and to maintain professional standards.

Decision and reasons on sanction

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

The panel accepted the advice of the legal assessor.

Having found Miss Scott'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:

- Abuse of a position of trust
- Lack of escalation regarding significant medication discrepancies
- A pattern of misconduct over a period of time
- Failing to act with honesty and integrity at all times
- Lack of insight into failings in that there is no evidence to suggest that Miss Scott has taken any responsibility for her actions

The panel also took into account the following mitigating features:

- Poor culture and leadership in the Home
- Miss Scott was new to her role with no management in place

The panel first considered whether to take no action but concluded that this would be inappropriate due to the number of breaches of the Code, and the fact that one of the charges relates to dishonesty. 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 attitudinal concerns identified, an order that does not restrict Miss Scott's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Scott's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Scott's registration would be a sufficient and appropriate response. The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case, particularly that of dishonesty and the associated attitudinal issue. The dishonesty identified in this case is not something that can be easily remediated. Furthermore, the panel concluded that the placing of conditions on Miss Scott's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel found that the above factors were not applicable in this case, and Miss Scott's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Miss Scott did not escalate the significant discrepancies in medication errors that she found. Additionally, she placed another registered nurse, who was less senior to her, in an uncomfortable position by asking them to sign that they had witnessed the disposal of medication when they had not. Miss Scott was fundamentally dishonest in doing so. The panel concluded that Miss Scott breached the fundamental tenets of the profession. 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?*

Miss Scott's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel determined that there were significant attitudinal concerns, and there is an absence of evidence to support the justification of any other sanction. The most serious elements of Miss Scott's misconduct were her abuse of position and/or trust, dishonesty, and a persistent lack of insight into the seriousness of the allegations. The panel was of the view that the findings in this particular case demonstrate that Miss Scott's 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, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

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.

This will be confirmed to Miss Scott in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Miss Wisniewska. She invited the panel to make an interim suspension order for a period of 18 months as it is necessary to protect the public and meet the wider public interest pending any appeal that may be made in respect of the striking-off order.

The panel heard and 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. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

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

That concludes this determination.