

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

**Substantive Hearing
Monday, 17 June 2024 – Wednesday, 19 June 2024
Wednesday, 19 June 2024 – Thursday, 20 June 2024
Thursday, 20 June 2024 – Friday, 21 June 2024**

Virtual Hearing

Name of Registrant: **Marc Edwards**

NMC PIN 12A1581E

Part(s) of the register: RNMH: Mental Health Nurse, Level 1
(12 March 2012)

Relevant Location: Manchester

Type of case: Misconduct

Panel members: Richardo Childs (Chair, lay member)
Katrina Maclaine (Registrant member)
Caroline Friendship (Lay member)

Legal Assessor: John Donnelly

Hearings Coordinator: Samara Baboolal

Nursing and Midwifery Council: Represented by Rebecca Butler, Case Presenter

Mr Edwards: Not present and unrepresented

Facts proved: Charges 1, 2(a),(b),(c), 3, 4, 5

Facts not proved: None

Fitness to practise: **Impaired**

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Edwards was not in attendance and that the Notice of Hearing letter had been sent to Mr Edwards's registered email address by secure email on 13 May 2024.

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

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Mr Edwards

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

Ms Butler submitted that there had been no engagement at all by Mr Edwards with the NMC in relation to these proceedings since 5 August 2022 and, as a consequence, there

was no reason to believe that an adjournment would secure his attendance on some 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.

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

- No application for an adjournment has been made by Mr Edwards;
- Mr Edwards has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing; therefore, there is no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses have attended today to give live evidence, two others are due to attend;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2022; therefore, further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Edwards in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he has made no response to the allegations. Mr Edwards will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his 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 Mr Edwards's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Butler, on behalf of the NMC, to amend the wording of charges 1 and 2(b).

The proposed amendment was to remove the word 'not' from the charges. It was submitted by Ms Butler that the proposed amendment would provide clarity and create consistency with the original intention of the charges.

That you, a registered nurse:

- 1) Between 11th March 2022 and 13th March 2022, without authority, created a prescription for medication using the name of a person who was not being treated by Turning Point – Smithfield Detoxification Centre at the time;
- 2) Your actions in charge 1 were dishonest in that you:

- a. knew you did not have the authority or qualification to prescribe medication;
 - b. knew that the person named on the prescription was not a patient at Turning Point– Smithfield Detoxification Centre at the time;
 - c. intended the medication for your own use.
- 3) On 14th March 2022 presented a falsely created prescription to Victoria Chemist, Salford, in an attempt to obtain medication;
 - 4) Your actions in charge 3 were dishonest because you knew the prescription was not genuine.
 - 5) On or around 10th March 2022 breached data protection by emailing confidential information about patient(s) to a personal email account;

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

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

The panel allowed the amendments to charge 1 and 2(b) on the basis that the NMC's case, as it stands, is one which the alleged forged prescription was in relation to a patient that was being treated by Turning-Point, therefore, in failing to remove the word 'not' there would be an injustice if the other charges were found proved given the nature of the NMC's case.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Edwards and no injustice would be caused to either party by the proposed amendment being allowed because in the panel's view the NMC's case was clear from the evidence that had been

served on Mr Edwards. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

The panel heard the representations of the NMC, but not of Mr Edwards himself. However, it determined that in voluntarily absenting himself, Mr Edwards has lost the ability to respond to any applications made in the course of this hearing, including to amend the charge. The panel have made no finding of fact at this point; however, it would be an injustice to deny the application.

Details of charges as amended

That you, a registered nurse:

- 1) Between 11th March 2022 and 13th March 2022, without authority, created a prescription for medication using the name of a person who was being treated by Turning Point – Smithfield Detoxification Centre at the time; **[PROVED]**
- 2) Your actions in charge 1 were dishonest in that you:
 - a. knew you did not have the authority or qualification to prescribe medication;
 - b. knew that the person named on the prescription was a patient at Turning Point– Smithfield Detoxification Centre at the time;
 - c. intended the medication for your own use **[PROVED]**
- 3) On 14th March 2022 presented a falsely created prescription to Victoria Chemist, Salford, in an attempt to obtain medication; **[PROVED]**
- 4) Your actions in charge 3 were dishonest because you knew the prescription was not genuine; **[PROVED]**
- 5) On or around 10th March 2022 breached data protection by emailing confidential information about patient(s) to a personal email account; **[PROVED]**

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

Background

Mr Edwards was referred to the NMC by the Greater Manchester Police after regulatory concerns arose relating to the time that he was employed as a registered nurse at the Turning-Point Smithfield Detox Centre ('Smithfield'), a unit that helps people with alcohol and drug issues. Mr Edwards had been employed at Smithfield since May 2016.

On Monday, 14 March 2022 Smithfield was contacted by a pharmacy located in Salford to confirm the validity of the prescription that had just been presented to them. This was a pharmacy that within 1.8 miles from Smithfield and the prescription was for 56, 20mg capsules of OxyNorm; a Schedule 2 controlled drug. It was confirmed by the clinical lead at Smithfield that this was not a valid prescription. The pharmacy did not dispense any medication. The pharmacy had CCTV footage which showed the person who presented the prescription. As a result, an investigation into the prescription was undertaken by Smithfield. During the investigation, it became apparent that there were also potential data breaches in relation to information being emailed from the unit's shared folders to Mr Edwards's personal email address.

Decision and reasons on application to admit documentary hearsay evidence

The panel heard an application made by Ms Butler under Rule 31 to allow Appendix 1-5 and 9 into evidence.

Ms Butler relied on the case law of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and *El Karout v NMC* [2019] EWHC 28 (Admin). She submitted that the panel would have had sight of the evidence relating to the printer and the prescription form, as well as the evidence as to how the printer was jammed and how a doctor found the jammed document which would have been the second prescription. She submitted that the panel

would also have IT evidence before it, as well as Mr Edwards's remarks within the investigation interviews.

Ms Butler said it was not the sole or decisive evidence in this matter as there was corroborating evidence within the bundle.

Ms Butler submitted that fairness is to be considered in admitting this hearsay documentation. She submitted that it is important that the panel have the appendices before it alongside other evidence to support that the pharmacy was presented with the prescription and that Mr Edwards is the person in the CCTV footage. She submitted that all of the witnesses, when asked to identify this person, identified Mr Edwards.

Ms Butler submitted that, when balancing fairness to the NMC and to Mr Edwards, Mr Edwards has been given the opportunity to put forward his case on the prescription form. She submitted that in the proportionality argument, given the wealth of evidence there is in relation to both the creating of the prescription and Mr Edwards's attempt to go in and fill the prescription, there is a proportionality argument around calling Doctor 1 as a witness to simply produce the appendices as exhibits or confirm their continuity.

Ms Butler submitted that these appendices are not fabricated as it is a document that all the professional witnesses recognise as a formal prescription.

The panel first considered whether it is relevant and determined that the charges in this matter relate to a fraudulent prescription, and the appendices contains a copy of this fraudulent prescription. It determined that while this is not the sole evidence in support of the charges as there is CCTV footage before the panel, emails and witness evidence, it is important.

The panel considered whether Mr Edwards would be disadvantaged by the change in the NMC's position of moving from reliance upon adducing the hearsay documentation to

evidence, the panel took into account that Mr Edwards does not deny that this is a fraudulent prescription, and only denies that it was him who forged and presented it.

The panel noted that Mr Edwards did not have prior notice of this application. However, the panel also noted that Mr Edwards's non-attendance means that he would not have the opportunity to respond to any applications.

The panel noted that the NMC did not ask Doctor 1 to attend these proceedings. However, it determined that is satisfactory as Doctor 1 has not provided a witness statement, and the relevant evidence is contained in the exhibit bundle.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay documentation but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on facts

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

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

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: National Head of Nursing at Turning-Point.
- Witness 2: Operations Manager at Turning-Point.
- Witness 3: Senior Nurse at Smithfield Detoxification Service at Turning-Point
- Witness 4: Former Regional Head of Operations at Turning Point.

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

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

Charge 1

“That you, a registered nurse, between 11th March 2022 and 13th March 2022, without authority, created a prescription for medication using the name of a person who was being treated by Turning Point – Smithfield Detoxification Centre at the time”.

This charge is found proved.

In reaching this decision, the panel took into account the live evidence of Witness 1, Witness 2, and the documentary evidence in the NMC exhibit bundle. The panel noted

from testimony from Witness 1 that Mr Edwards was the nurse in charge on the night shift for dates 11,12, and 13 March 2022. His responsibilities included holding the keys to the doctor's room and the controlled drug cupboard within it. Witness 1 and Witness 2 gave clear evidence that Mr Edwards did not have prescribing powers.

The panel took into account that the prescription that was presented at the pharmacy, who thought it was not a valid prescription. The pharmacy telephoned Smithfield, who collected the prescription and examined it. On examination, they noted that the prescription had been signed by a doctor who was on sick leave at the time. It further noted that it had been created on a night shift for an inpatient who had not been prescribed medication. The panel also took into account that the prescription was created by someone who had access to the keys to the doctor's office, the controlled drugs cupboard where blank prescriptions were kept and had knowledge of the passwords to access the Smithfield shared drive, was able to access the doctor's folder and had good knowledge of the prescription management process. Further, the prescription was created by someone who had knowledge that Doctor 2 was on leave, and where to access copies of his signature. The prescription could have only been printed from a doctor's computer as they were the only people authorised to print prescriptions.

The panel took into account that Witness 1 refers to the access of the doctor's folder in her statement, which states:

'The activity included access to the 'doctors' folder on the shared drive. There is no need for any other staff member, other than the doctor's themselves to access the 'doctors' folder. The computer activity data also confirmed access to this file was on the computer in the Doctor's office. The Doctor's office is always kept locked. Blank prescriptions are kept in the controlled drugs cupboard, again this is locked.

Access to both the controlled drug cupboard and the doctor's office is by key. Only the nurse in charge of the shift has access to the key and the key remains on their person at all times. There is only one key, and this is shared between the night at

day nurses, (sic) As Marc was on the night shift he would have been the only person to access these rooms. It is usual practice at Smithfield for one nurse to be on a night shift, along with one or two healthcare support workers.'

The panel determined that Witness 1 was clear and credible in her evidence. Witness 1 gave live evidence that Mr Edwards would have been the nurse in charge at the time that the prescription was printed, and it could be inferred that he was the only person who would have had access at the time. Witness 1's written statement says:

'Following enquiries made [...] it was established that Marc was the night nurse on shift at Smithfield on the 12 and 13 March 2022. Computer activity data was gathered and found that unusual activities first occurred on 11 March 2022 at 23:44, on March 12 2022 at 06:07 and again on 13 March 2022 from 03:52. Marc was working a night shift on these dates'.

The panel noted that the data logs over the early hours of the period of 11, 12, and 13 March 2022 contained in the exhibit bundle showed access of 166 documents including doctors' files with copies of prescription regimes, past prescriptions and detoxification information. The panel considered that this supported the conclusion that there was preparation around the time that the prescription was printed.

The panel noted that the prescription in question was made for Client A and took into account that the Smithfield Doctors List identified that Client A was an inpatient at the time. Witness 2 confirmed in his testimony that Client A was not taking OxyNorm as part of their treatment regime. In Witness 2's written statement, he expanded that this is not a medication that is used at Smithfield. OxyNorm is a strong pain relief medication containing opiates and as such could be addictive.

The panel noted that a valid prescription requires the signature of a doctor and based on the evidence before it and the fact that Doctor 2 was not in office at this time, the panel

determined that it is more likely than not that Mr Edwards created a prescription and signed it as well.

The panel took into consideration Mr Edwards's account from the investigation meetings that he knew nothing about the forged prescription.

For all of the reasons above, the panel found on the balance of probabilities that Mr Edwards, without authority to do so, created a prescription for medication using the name of a person who was being treated by Smithfield.

Charge 2

“That your actions in charge 1 were dishonest in that you:

- a. knew you did not have the authority or qualification to prescribe medication;
- b. knew that the person named on the prescription was a patient at Turning Point– Smithfield Detoxification Centre at the time;
- c. intended the medication for your own use.”

Charge 2(a),(b) and (c) are found proved.

2(a): In reaching this decision, the panel took into account live evidence from Witness 2, who it determined as a credible source of evidence. The panel noted that Mr Edwards deliberately undertook an activity that he did not have the authority to do. The forged prescription was for 56 20 mg tablets for OxyNorm, which is a Schedule 2 controlled drug. The panel determined that a registered nurse would be aware that OxyNorm is a controlled drug, and that consequentially, this was not an innocent or careless mistake.

The panel further noted that Witness 1 gave evidence stating that Mr Edwards was not authorised to prescribe within his employment terms. She confirmed that Mr Edwards was

not an independent prescriber as he had not successfully completed the V300 non-medical prescribing course to gain the qualification.

The panel determined that Mr Edward's subjective knowledge must have been that he did not have the qualifications or authority to create a legitimate prescription. Objectively, the panel determined that the reasonable member of the public would find these actions to be dishonest.

2(b): The panel took into account the doctor's list contained in the investigative report, which made it clear that Client A was an inpatient at the time, and determined that, being the registered nurse in charge when the prescription was printed, Mr Edwards would have known that Client A was an inpatient at that time.

The panel noted that Witness 2's live evidence made clear that Mr Edwards, as a registered mental health nurse in a drug rehabilitation service, would have known that inpatients would have not been prescribed that level of OxyNorm. The panel determined that Mr Edwards's subjective mind at the time of the creation of the prescription was that he knew Client A was an inpatient who would not have been prescribed that prescription, and therefore made a deliberate choice to falsify the information on the prescription, which a reasonable member of the public would find to be dishonest.

2(c): The panel adopted the advice of the legal assessor regarding the understanding of 'own use'. It took the view that 'own use' meant that Mr Edwards could use the prescribed medications in any way that he saw fit. Having established this, the panel then went onto consider the subjective mind of Mr Edwards at the time. The panel inferred from the evidence that Mr Edwards knew that this was a Schedule 2 controlled drug, that this was a prescription that he did not personally require, and that he was creating a prescription that he was not entitled to. The panel determined that a reasonable member of the public would find this dishonest.

Charge 3

“That you, a registered nurse, on 14th March 2022 presented a falsely created prescription to Victoria Chemist, Salford, in an attempt to obtain medication”.

This charge is found proved.

The panel, in reaching its decision, took into account the CCTV evidence and the evidence from live witness testimonies. It noted that Charge 1 was found proved, which establishes that the prescription was forged by Mr Edwards.

The panel took into account Witness 2’s evidence, in which Witness 2 informed the panel that he investigated the CCTV footage. The panel considered that Witness 2 recognised Mr Edwards in the footage at the chemist.

The panel accepted the advice of the legal assessor on identification and recognition.

In Witness 2’s written statement, it states:

‘It came to my attention on Monday 14 March 2022 by [the GP] who had been contacted by Victoria Pharmacy. They were querying a prescription they had received. My initial thoughts were that of confusion “how an (sic) earth did a prescription from Turning point (sic) end up in a pharmacy in Salford”.

Victoria Pharmacy is based in Salford, which is nearly 2 miles away from Smithfield. Smithfield is based in the centre of Manchester. The prescription was from Turning Point and was for 56 OxyNorm 20mg tablets.

Smithfield do not typically write prescriptions for community pharmacies. On the odd occasions that we do, we used a nearby pharmacy. We have never used Victoria Pharmacy. We usually hold stock of all medication which is required for our

clients. If it is not held by us, we will approach our usual pharmacy supplier and the medication will be delivered to us, we would not collect medication.'

The panel viewed the CCTV footage and determined that it was sufficiently clear to identify someone from their mannerisms, height and build. It took into account that Witness 2 said that in person, the recording was even more clear.

The panel noted that Witness 3's live evidence made clear that she recognised Mr Edwards in the CCTV footage, and that she was not influenced in this recognition. Witness 3 could not recall if she was told potentially who it was in the CCTV footage but stated in her oral evidence that if she had been, she would have disagreed if she felt she needed to. Therefore, Witness 3 was clear that she was not influenced by anyone else in coming to her conclusion as to who it was in the CCTV footage.

The panel also noted that the witnesses have known Mr Edward for some time and would have been familiar with him and his mannerisms. Further, when Witness 2 viewed the CCTV for the first time, they were unaware who it could potentially be.

At the investigatory meeting, Mr Edwards was asked: '*was that you in the footage?*', to which he answered '*no*'.

The panel therefore determined that on the balance of probabilities, that the person in the CCTV presenting the prescription to the pharmacy was Mr Edwards, and therefore find this charge proved.

Charge 4

"That your actions in charge 3 were dishonest because you knew the prescription was not genuine."

This charge is found proved.

The panel took into account that Mr Edwards, as a registered nurse at Smithfield, would have been familiar with Client A and would have known that they were not prescribed that medication. Further, the panel determined that Mr Edwards would have known that this was a Schedule 2 controlled drug, and that it would be highly unusual to have been prescribed it at the highest dose and this amount. However, Mr Edwards still presented this forged prescription to the pharmacist. The panel determined that his state of mind was that he was fully aware that this was not a valid prescription and should not have been presented to the pharmacist.

The panel therefore determined that Mr Edwards was acting in a way that was dishonest against the standards of a reasonable person.

Charge 5

“That you, a registered nurse, on or around 10th March 2022 breached data protection by emailing confidential information about patient(s) to a personal email account.”

This charge is found proved.

In reaching its decision, the panel took into account that confidential documents were sent to his own personal outlook address, and that Mr Edwards acknowledged this through his own admissions. The panel noted that Mr Edwards was sent a letter, which the panel had sight of, which acknowledged his admission and contained next steps to ensure the security of the information sent to the outlook address.

The panel took into account Witness 2's written statement which states:

‘Due to the breach of data Turning Point were (sic) required to make contact with each client who was impacted to advise them of the breach. Some data breach included

high level client information, and some were low level, just names, nevertheless we approached all clients to share this with them, we were transparent and open about this.

The information referred to in Witness 2's statement relating to high level client information included: reasons for admission and treatment, client discharge summaries, medication regimes and handover sheets.

The panel also noted the interview with Mr Edwards where he admitted to using his own laptop. The transcript of the interview states:

'JW- Okay coming back to the emails. On the 10 March you send 3 e-mails to your personal email- can you talk this through for me again explaining in detail why you did it and what exactly it was for and why you chose to send them to your personal emails.

ME- It was for the doctors' handover and discharge; they would've been blank. I brought personal laptop in to use that night. Had 3 Turning Point laptops upstairs. 1 had office on but couldn't use it, no word of office on it. Student had [one] and [Ms 1] had [one].'

Witness 1 and Witness 4 both confirmed that employees were not to send confidential documents to their personal email addresses. Witness 1 confirmed that this was in breach of their policy and regulations.

Therefore, for the reasons above, the panel found this charge proved.

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 Mr Edwards'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, Mr Edwards's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Butler 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 Butler identified the specific, relevant standards where Mr Edwards's actions amounted to misconduct.

Ms Butler submitted that there is misconduct given the nature of the concerns in this matter. She submitted that Mr Edward's conduct was dishonest, and that the data breach is not remediable and that therefore, there is a high risk of repetition.

Ms Butler submitted that the attitude of Mr Edwards was to disengage rather than demonstrate remorse or attempt to remedy the concerns. She submitted that this, compounded with the level of planning which went into the charges suggests that Mr Edwards may be liable in the future to repeat these actions.

Ms Butler submitted that Mr Edward's actions have brought the nursing profession into disrepute. She submitted that he has gone outside of the bounds of professional conduct expected by a nurse. She further submitted that the matters for which he was charged, having created a fraudulent prescription using Client A's name and attempting to obtain OxyNorm, amounted to deliberate and dishonest conduct. She submitted that these actions could have a significant impact on the reputation of the profession as a whole. Ms Butler submitted that this impact is further aggravated by the illegality of what was done as Mr Edwards acted outside of his scope of practice, forged Doctor 2's signature and attempted to fill a fraudulent prescription of OxyNorm. She submitted that this conduct is very serious.

Ms Butler submitted that Mr Edwards's conduct falls significantly below the standards of the Code, namely:

[2015 Code]

'5 *Respect people's right to privacy and confidentiality*

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

5.3 Respect that a person's right to privacy and confidentiality continues after they have died

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.*

- 18.1 *Prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*
- 18.2 *Keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs*
- 18.5 *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

- 20.1 *Keep to and uphold the standards and values set out in the Code*
- 20.2 *Act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*
- 20.3 *Be aware at all times of how your behaviour can affect and influence the behaviour of other people*
- 20.4 *Keep to the laws of the country in which you are practising*
- 20.6 *Stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers*
- 20.8 *Act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

21 Uphold your position as a registered nurse, midwife or nursing associate

23 Cooperate with all investigations and audits

24 Respond to any complaints made against you professionally'

Ms Butler submitted that it is integral that there be trust in nurses and the profession. She submitted that the nursing profession would be undermined if misconduct was not found in these circumstances.

Ms Butler submitted that dishonesty is difficult to remediate, and that in Mr Edwards's case, his dishonest conduct was intentional and deliberate. Mr Edwards not only falsified a document and forged a doctor's signature; he accused a patient of falsifying the document.

Submissions on impairment

Ms Butler moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). Ms Butler submitted that all four limbs of the Dame Janet Smith test were engaged in this matter.

Ms Butler submitted that Mr Edwards took advantage of the lack of supervision and oversight at his work environment and took advantage of the fact that he was the sole key holder to the doctor's office and controlled drugs cabinet at the material time. She submitted that, as a registered nurse at a drug rehabilitation unit, he willingly fraudulently procured and presented a prescription for a controlled drug. She submitted that Mr Edwards abused his position, especially given that as a registered nurse in charge, he ought to have known the risks in relation to OxyNorm.

Ms Butler submitted that Mr Edwards has not offered any explanation and has chosen to absent himself from these proceedings. She submitted that by doing this, he has chosen to deny the panel the opportunity to consider or know his personal mitigating factors, if there are any.

Ms Butler submitted that there is no evidence of Mr Edwards's learning, insight or steps taken to strengthen his practice. She submitted that this creates a risk of repetition and therefore, a risk of harm to the public remains. Ms Butler submitted that a finding of impairment is thereby necessary on the ground of public protection.

Ms Butler submitted that with regards to the public interest in this matter, given the seriousness and dishonesty relating to this fraudulent prescription, as well as the data protection issue in this case, a reasonable and well-informed member of the public fully apprised of the evidence would be concerned if Mr Edwards were to practise without restriction. She submitted that there are significant attitudinal concerns in this matter, and fundamental tenets of the nursing profession have been breached.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

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 Mr Edwards's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Edwards's actions amounted to a breach of the Code. Specifically:

[2015 Code]

'5 *Respect people's right to privacy and confidentiality*

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

10 *Keep clear and accurate records relevant to your practice*

10.5 *Take all steps to make sure that records are kept securely*

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.*

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

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

18.5 *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*

20.1 *Keep to and uphold the standards and values set out in the Code*

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that creating a fraudulent prescription was dishonest and amounted to serious misconduct.

In considering misconduct in Charge 1, the panel took into account that Mr Edwards took a series of steps in order to create a fraudulent prescription. Consequentially, his actions

were premeditated and deliberate. Furthermore, this was not a single, isolated incident and was instead, a chain of deliberate and dishonest events which involved preparation, planning and deception intended to result in him illegally obtaining 56, 20mg OxyNorm capsules.

The panel considered misconduct in Charge 2. It noted that Mr Edwards's actions were not in keeping with the laws of the country in which he was practising and did not have the authority or qualification to prescribe. The panel also took into account that there were several stages throughout Mr Edwards's conduct in which he could have considered whether his actions were ethical. The panel was of the view that his failure to reflect, and that he continued his course of dishonest action shows that the issues present are attitudinal. The panel determined that Mr Edwards's misconduct is serious and that his dishonesty is on the higher end of the spectrum.

In relation to Charge 3, the panel noted that the misconduct was sufficiently serious given the nature of the prescription being a fraudulent document which Mr Edwards intentionally created. Mr Edwards took the deliberate decision to continue the act of dishonesty from the creation of the prescription through to the presenting of the prescription. The panel noted that Mr Edwards prioritised his own gain over his position of trust as the registered nurse in charge.

In relation to Charge 4, the panel took into account that the drug that Mr Edwards was attempting to obtain was a Schedule 2 controlled drug of a high dose. It determined that Mr Edwards, as a registered mental health nurse working at the detoxification service, was fully aware of the harmful effects of this medication. Further, the panel took into account that Mr Edwards deliberately used Client A's name to create the prescription, demonstrating an absence of respect for Client A's privacy in relation to their personal details and their current treatment at Smithfield. Further, this was a continued act of dishonesty having created a fraudulent prescription and then presenting it as if it were genuine. The panel determined that this sufficiently amounted to serious misconduct.

In relation to Charge 5, the panel was satisfied that this sufficiently amounted to serious misconduct. The charge related to the confidential health records of patients at Smithfield, which are protected by law under GDPR. The panel took into account that the information was sensitive data which needed to be kept in a controlled way and in compliance with Smithfield's policies. Mr Edwards did not email this information from one work email to another, but instead, knowingly and willingly forwarded this sensitive information to his personal email address which was not controlled by Smithfield. The panel determined that the nature of the data makes this charge serious. It noted that there was some explanation provided in the internal investigation interview, where Mr Edwards states in relation to the breach that:

'It was for doctors' handover and discharge; they would've been blank. I brought personal laptop in to use that night. Had 3 Turning Point laptops upstairs. 1 had office on but couldn't use it, no word of office on it. Student had one and [Ms 1] had 1'.

However, the panel took the view that this explanation was not sufficient or plausible in light of the serious nature of the breach. It therefore determined that this charge sufficiently amounted to serious misconduct.

The panel found that Mr Edwards's actions fell 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, Mr Edwards'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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that all four limbs of the Dame Janet Smith test are engaged.

The panel determined that Mr Edwards has, in the past, acted in a way which puts patients at unwarranted risk of harm through using their information to create a fraudulent prescription. The panel then considered whether his actions put patients at risk of harm and concluded that Mr Edwards had sought to obtain OxyNorm which, as a Schedule 2 controlled drug, has significant risks of addiction and overdose. Further, the panel determined that by attempting to obtain tablets that he did not need, Mr Edwards put others at risk of not obtaining their own prescriptions. The panel determined that the data breach put patients at harm as the breach relates to high level and sensitive information relating to their health which should have been kept private.

The panel was satisfied that the actions of Mr Edwards clearly brought the medical profession into disrepute by not only his actions being fraudulent but also by using his personal email for work purposes without authorisation to do so.

The panel determined that Mr Edwards's misconduct had breached the fundamental tenets of the nursing profession through his dishonest actions and through his breach of confidential data.

The panel, having found that Mr Edwards had acted dishonestly in Charges 2 and 4, found in relation to these charges, that he had also acted dishonestly in the past.

In determining whether a finding of impairment is necessary on the ground of public protection, the panel considered whether Mr Edwards is liable to repeat charges of the kind found proved. The panel noted that within the investigatory interviews, Mr Edwards did not appear to demonstrate any remorse in relation to the data breach. Further Mr Edwards denied the accusation that it was him that created and therefore presented the prescription, and hence did not show any remorse in the investigatory interview in relation to those charges. The panel did not have any further evidence from Mr Edwards demonstrating remorse in relation to the charges.

The panel recognised that data breaches are remediable but found that there is no evidence of any strengthening of practice from Mr Edwards. Mr Edwards has not put before the panel any evidence of insight, remorse, or remediation in relation to any of the charges found proved. Further, in relation to the fraudulent prescription, Mr Edwards sought to blame an inpatient, thus, in the panels view showed a complete lack of insight or remorse. As a result, the panel find there is a high risk of repetition. Consequently, the panel found that Mr Edwards is therefore liable in the future to repeat the misconduct, and therefore liable in the future to repeat the limbs engaged in the charges found proved. The panel found that a finding of impairment is therefore necessary on the ground of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public

confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required as a reasonable and well-informed member of the public would be very concerned if a nurse with charges relating to dishonesty and abuse of a position of trust were allowed to practise as a registered nurse without restriction.

Having regard to all of the above, the panel was satisfied that Mr Edwards'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 Mr Edwards off the register. The effect of this order is that the NMC register will show that Mr Edwards has been struck-off the register.

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

Submissions on sanction

Ms Butler informed the panel that in the Notice of Hearing, the NMC had advised Mr Edwards that it would seek the imposition of a striking off order if it found Mr Edwards's fitness to practise currently impaired.

Ms Butler submitted that Mr Edwards's misconduct is very serious and relates to dishonest conduct in the course of personal gain. She submitted that Mr Edwards had abused his position of power and trust placed in him. She submitted that this is a case of

premeditated and planned misconduct which is indicative of harmful, deep-seated personality and attitudinal problems.

Ms Butler submitted that a striking-off order is the most appropriate and proportionate order as it properly addresses the impairments and serious misconduct found in this matter. She submitted that it serves the dual purpose of public protection and serves the public interest.

Ms Butler submitted that Mr Edwards has demonstrated absolutely no remediation of the risk of harm and repetition. She submitted that Mr Edwards has offered no reasons and explanations for the misconduct.

Ms Butler submitted that Mr Edwards's conduct is sufficiently serious that to retain his registration is fundamentally incompatible with continuing to be a registered nursing professional.

Ms Butler submitted that a striking off order will maintain public confidence in the NMC while upholding the proper standards of professional conduct.

Decision and reasons on sanction

Having found Mr Edwards'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:

- Mr Edwards's level of dishonesty
- Mr Edwards's premeditated abuse of his position of trust for personal gain
- The nature of the medication which Mr Edwards attempted to obtain
- Mr Edwards's lack of insight and accountability for his serious failings
- A course of misconduct over some days
- Conduct which put patients and the public at risk of potential harm.

The panel also took into account the following mitigating features:

- [PRIVATE]

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, that this matter relates to dishonesty and serious misconduct, the public protection issues identified, and the high risk of repetition, an order that does not restrict Mr Edwards'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 Mr Edwards'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 Mr Edwards's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated to remediate dishonesty, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining as it relates to a chain

of deliberate and dishonest actions. Furthermore, the panel concluded that the placing of conditions on Mr Edwards's registration would not adequately address the seriousness of this case and would not protect the public and there is no indication that Mr Edwards would engage with them.

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

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

The conduct, as highlighted by the facts found proved, 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 Mr Edwards's actions is fundamentally incompatible with Mr Edwards remaining on the register. The panel did not have before it any evidence of Mr Edwards's insight or strengthening of practice. The panel also found that this was in fact a course of conduct from preparing to make the prescription, through to presenting it at the pharmacy, and therefore was not a single, one-off incident. The panel was also concerned about Mr Edwards's attitude towards the charges, as noted within the investigatory interviews, and his failure to engage with proceedings.

Therefore, 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?*

Mr Edwards's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Edwards's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel took into account that Mr Edwards's misconduct was an intentional, premeditated and dishonest course of action, which involved the presentation of a fraudulent prescription for a Schedule 2 controlled drug at a pharmacist. It also considered the intentional breach of confidentiality of patients in Mr Edwards's care, in particular, Client A. It noted that Mr Edwards was a registered nurse in charge at a rehabilitation and detoxification centre and abused this position of trust in the course of personal gain. The panel considered whether public confidence in the professions could be maintained if Mr Edwards is not removed from the nursing register and determined that it would not. It further took into account the high risk of repetition in this matter, as Mr Edwards has not provided sufficient insight, reflection and remorse into his misconduct. It also noted that Mr Edwards has not demonstrated any strengthening of practice.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Edwards's actions in bringing the

profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, 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.

This will be confirmed to Mr Edwards in writing.

Decision and reasons on 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 due to the seriousness identified in this matter, to protect the public from the risk of harm and to meet the public interest.

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

That concludes this determination.