

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

**Substantive Meeting  
Friday 13 & Monday 16 September 2024**

Virtual Meeting

**Name of registrant:** Helen Marr

**NMC PIN:** 88E1992E

**Part(s) of the register:** Nurses part of the register Sub part 1  
RN1: Adult nurse, level 1 (29 September 1991)  
Nurse independent / supplementary prescriber  
V300: (20 September 2019)

**Relevant location:** Gateshead

**Type of case:** Misconduct

**Panel members:** David Crompton (Chair, Lay member)  
Alison Thomson (Registrant member)  
Jan Bilton (Lay member)

**Legal Assessor:** John Moir (13 September 2024)  
Charles Parsley (16 September 2024)

**Hearings Coordinator:** Sherica Dosunmu

**Facts proved:** Charges 1, 2, 3(a), 3(b)

**Facts not proved:** Charge 4

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

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

## **Decision and reasons for the meeting to be held in private**

The panel of its own volition considered whether Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) should apply to the determination in this case.

The panel noted that the Nursing and Midwifery Council (NMC) had not provided written representations on a Rule 19 application.

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

As the case will include reference to matters concerning Mrs Marr's [PRIVATE], the panel determined to hold such parts of the meeting in private.

## **Decision and reasons on service of Notice of Meeting**

The panel noted that the Notice of Meeting had been sent to Mrs Marr's registered email address on 8 August 2024. The Notice of Meeting asked if Mrs Marr would prefer this case to be considered at a hearing or a meeting, to which she has not responded. The panel had regard to the fact that there has been no further correspondence from Mrs Marr to the NMC since 14 December 2023, when she communicated via email the following:

*'would you be able to send me the relevant application form to allow me to remove myself from the register as I have no intention of returning to nursing.'*

The panel took into account that the Notice of Meeting provided details of the allegations, included all of the evidence relied on by the NMC, and informed Mrs Marr that this meeting would take place on or after 13 September 2024.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Marr has been served with notice of this meeting in accordance with the requirements of Rules

11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

### **Details of charge**

That you, a registered nurse,

1. Between 1 January 2021 and 8 May 2021, on one or more occasions, took codeine from your employer for your own personal use **[PROVED]**
2. Your actions in charge 1 were dishonest because you knew you did not have permission to take codeine from your employer for your own use **[PROVED]**
3. Between 31 January 2023 and 17 May 2023 failed to cooperate with the NMC's investigation into your fitness to practise in that you:
  - a. [PRIVATE] **[PROVED]**
  - b. [PRIVATE] **[PROVED]**
4. [PRIVATE] **[NOT PROVED]**

And, in light of the above, your fitness to practise is impaired by reason of your misconduct in respect of charges 1-3 [PRIVATE].

[PRIVATE]

### **Background**

The NMC received a referral on 25 August 2022 from Gateshead Health NHS Foundation Trust (the Trust), in relation to Mrs Marr's fitness to practise. At the time of the concerns raised, Mrs Marr was employed as a Band 7 Acute Response Team Nurse at Queen Elizabeth Hospital (the Hospital), part of the Trust.

The referral alleges that concerns about Mrs Marr arose between December 2020 and February 2021, where staff working on Ward 26 (the Ward) at the Hospital noticed that codeine medication was missing from the stock in treatment rooms.

In February 2021, the Chief Pharmacist for the Ward had been asked to review the Ward stock of codeine. This review resulted in no identifiable issues. However, in March 2021, staff raised further concerns that they were ordering more codeine for the Ward, but not prescribing more for patients. The Chief Pharmacist reviewed the stock again, which showed a discrepancy, that multiple boxes of codeine were unaccounted for over a three to six-month period. Staff at the Hospital independently carried out their own unofficial audits, this included medication being counted before and after Mrs Marr entered the Ward. It is alleged that their findings showed that codeine was missing after Mrs Marr had been on the Ward. Staff recorded their findings.

On 30 April 2021, a covert surveillance camera was installed into the treatment room on the Ward. On 8 May 2021, CCTV footage showed Mrs Marr in the treatment room. Still photographs from the footage showed Mrs Marr standing at the medication trolley with her hand in the trolley and putting medication into her scrubs pocket.

The Trust conducted an investigation which included an audit of Mrs Marr's staff badge access, as a staff badge would be needed to access the treatment room. The audit did not show entries for Mrs Marr in the treatment room. However, the Trust interviewed Staff Nurse Colleague A, who confirmed that she had accessed the door to the treatment room with her own badge in order to let Mrs Marr in.

On 17 May 2021, a Human Resources (HR) risk assessment was carried out. The Trust held a meeting with Mrs Marr who then agreed to take sick leave [PRIVATE].

On 30 September and 20 October 2021, Mrs Marr attended local investigation meetings and allegedly admitted that she had taken codeine from the Ward on 8 May 2021 and was the person shown in the CCTV footage. It is alleged that Mrs Marr also admitted to taking medication prior to this date, stating that she took one strip of approximately 28

tablets each week from the early part of 2021, but denied stealing prior to that timeframe.

[PRIVATE].

On 31 March 2021, Mrs Marr took early retirement. Mrs Marr resigned prior to the conclusion of the local investigation and disengaged with the Trust.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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 had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Investigating Officer at the Trust,  
at the relevant time;
- Witness 2: NMC Case Coordinator.

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

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

### **Charge 1**

1. Between 1 January 2021 and 8 May 2021, on one or more occasions, took codeine from your employer for your own personal use

**This charge is found proved.**

In reaching this decision the panel took into account the documentary evidence exhibited, which included the written statement of Witness 1, notes from the investigation meetings held with Mrs Marr, notes from the investigation meeting held with Colleague B (Head of Security at the Hospital), and still images from the Trust's covert surveillance camera (CCTV).

The panel noted the following evidence from Witness 1's witness statement:

*'At 23:27 hours on 08 May 2021 the CCTV footage shows Helen Marr visiting the treatment room on Ward 26.*

*Image one shows Helen Marr stood at the medication trolley.*

*Images two and three show Helen Marr with her hand in the trolley.*

*Image four shows Helen Marr putting medication into the pocket of her scrubs.*

*I will produce:*

***JC/3 Exhibit – Four Still Images taken from the CCTV footage from Gateshead Health NHS Foundation Trust Showing Helen Marr in the Treatment Room, Ward 26.***

*The whole incident happened within ten seconds. Throughout this time, Helen can be seen watching the viewing window in the door.*

*[...]*

*I interviewed Helen on 20 October 2021 and showed her the Still images (JC/3) from the CCTV footage of her taking medication from the treatment room. She immediately confirmed it was her and admitted taking the Codeine. She became very upset and said she was very sorry. Helen only admitted that she had been taking the medication from the hospital since February 2021. The ward audit taken by staff indicates that medication had been going missing for longer than that.'*

The panel found that Witness 1's witness statement was consistent with the still images taken from the Trust's CCTV on 8 May 2021, which indicated that Mrs Marr took medication from the treatment room and put it in her pocket.

In respect of the still images from the Trust's CCTV, the panel noted that Witness 1's account was corroborated by Colleague B who is the Head of Security at the Hospital. It had regard to the following notes from the Trust's investigation meeting held with Colleague B:

*'At 23:27 I observed a female member of staff that I would describe as White with black hair in a loose pony tail wearing a navy blue uniform with white piping on the sleeve and safety goggles on her head enter the treatment room. I know this member of staff to be Helen marr (sic) from the Acute response team. I observed Helen approach the drugs trolley that was situated on the left hand side of the treatment room entrance and place her bleep on the trolley.'*

Further, the panel found that this was also supported by an apparent admission by Mrs Marr in her investigation meeting with Witness 1 on 30 September 2021, in which it is stated:

*'48. [Witness 1]: So just a bit of a recap then, you started this around the February time. How many were you taking at a time and was all from one ward*

*49. HM: Yes it was all from Ward 26 and usually just a strip'*

The panel determined that there was sufficient evidence that Mrs Marr took codeine from her employer for her own personal use, between 1 January 2021 and 8 May 2021.

Accordingly, the panel found charge 1 proved.

## **Charge 2**

2. Your actions in charge 1 were dishonest because you knew you did not have permission to take codeine from your employer for your own use

**This charge is found proved.**

In reaching this decision the panel bore in mind its reasoning for charge 1, that Mrs Marr took codeine from her employer for her own personal use.

The panel had regard to Witness 1's witness statement in which she explains the Trust policies which had been breached by Mrs Marr's actions in charge 1:

*'Helen contravened the following Trust Policies by stealing drugs from Trust property and used them to supplement her regular medication from her GP:*

*MM03 Administration of medicines policy*

*MM02 Ordering Supply, transportation and storage of medication*

*PP38 Prevention of alcohol drug and substance misuse'*

The panel applied the legal test for dishonesty from the case of *Ivey v Genting Casinos [2017] UKSC 67*. It considered whether Mrs Marr knew she was not permitted to take codeine from her employer; and whether she was dishonest when she did so whilst on shift.



When considering Mrs Marr's state of mind, the panel noted the following admissions from Mrs Marr in her investigation meeting with Witness 1 on 30 September 2021, in which it is stated:

[PRIVATE]

[...]

*61. HM: no, it's not been easy but I don't want to excuse it all, [PRIVATE]'*

The panel was of the view that Mrs Marr's responses given at the local investigation meeting were indicative of her being aware that she should not have taken codeine from the Hospital. It concluded that, by the standards of ordinary and decent people, Mrs Marr's actions were dishonest.

Accordingly, the panel found charge 2 proved.

### **Charge 3**

3. Between 31 January 2023 and 17 May 2023 failed to cooperate with the NMC's investigation into your fitness to practise in that you:
  - a. [PRIVATE]
  - b. [PRIVATE]

**This charge is found proved in its entirety.**

In reaching this decision, the panel took into account the documentary evidence exhibited, which included the written statement of Witness 2 as well as the NMC's communication records with Mrs Marr. [PRIVATE].

The panel noted the following evidence from Witness 2's witness statement:

*'On 20 April 2023, [Witness 3] emailed Mrs Marr to express concern about the lack of contact thus far and attached [PRIVATE] forms for Mrs Marr's completion*

*and return. I produce at **Exhibit ML/10** a copy of this email. A hardcopy dated 04 May 2023 was posted to Mrs Marr via recorded delivery on 05 May 2023, which I produce at **Exhibit ML/11**. I produce at **Exhibit ML/11.1** an extract from the NMC's Recorded Delivery book, confirming postage, and at **Exhibit ML/11.2** proof of delivery from the Royal Mail's tracking website (tracking ref: [...]) [...]*

*On 04 June 2024, an NMC senior case coordinator, [Witness 4], contacted Mrs Marr to inform her of the NMC's position on sanction bid and to attach the [PRIVATE] forms for Mrs Marr's completion and return. I produce at **Exhibit ML/19** a copy of the correspondence from this date.*

*To date, Mrs Marr has not provided the NMC with contact details for [PRIVATE] or signed the Agreed Removal forms that have been provided to her.'*

The panel found that Witness 2's witness statement was consistent with recorded communication attempts made by the NMC to obtain [PRIVATE]. The communication attempts made by the NMC included four telephone calls made on 8, 12 December, 12 January and 30 March 2023. The NMC also sent a letter to Mrs Marr posted by recorded delivery on 31 January 2023, which stated:

[PRIVATE]

The NMC also sent a further chaser letter to Mrs Marr posted by recorded delivery on 4 May 2023, which stated:

[PRIVATE]

The panel had regard to the fact that a screenshot of the NMC's 'WISER/D365' database, with the registered contact information for Mrs Marr. It noted that the registered contact information held for Mrs Marr was consistent with the telephone number, email and postal address used by the NMC in the recorded communication attempts.

The panel determined that the NMC made reasonable attempts between 31 January and 17 May 2023 to communicate with Mrs Marr. It concluded that Mrs Marr failed to cooperate with the NMC's investigation by not providing [PRIVATE].

Accordingly, the panel found charges 3(a) and 3(b) proved.

#### **Charge 4**

4. [PRIVATE]

[PRIVATE]

**This charge is found NOT proved.**

[PRIVATE]

Therefore, in the absence of further evidence, the panel found charge 4 not 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 Mrs Marr's fitness to practise is currently impaired. [PRIVATE]. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Marr's fitness to practise is currently impaired as a result of that misconduct.

## **Representations on misconduct and impairment**

In reaching its decision, the panel considered all the documentary evidence adduced in this case together with the representations made by the NMC.

The panel had regard to the case of *Roylance v GMC (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.*'

The panel also took into account the written submissions by the NMC in respect of misconduct and impairment, which states:

### **'Misconduct**

*37. As set out in the NMC's guidance on misconduct ('FTP-2a'), the NMC will take regulatory action where there is evidence of serious professional misconduct. The NMC has also published guidance on how to determine seriousness ('FTP-3').*

*38. The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 provide some assistance when seeking to define misconduct:*

*'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily*

*required to be followed by a [nurse] practitioner in the particular circumstances’.*

39. *As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively*

*‘[Misconduct] connotes a serious breach which indicates that the doctor’s (nurse’s) fitness to practise is impaired’.*

*And*

*‘The adjective “serious” must be given its proper weight, and in other contexts*

*there has been reference to conduct which would be regarded as deplorable by*

*fellow practitioner’.*

40. *Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council’s Code of Conduct. Whilst breaches of the Code will not be conclusive as to the issue of misconduct, these are basic and fundamental requirements for the nursing profession.*

41. *At the material time, Mrs Marr was subject to the provisions of **The Code: Professional standards of practice and behaviour for nurses and midwives 2015** (“the Code”). Based on the charges, it is submitted that the following parts of the Code have been breached in this case:*

*“18 Advise on, prescribe, supply, dispense or administer medicines within the*

*limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations*

*To achieve this, you must:*

*18.4 take all steps to keep medicines stored securely*

*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.*

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

*20.9 maintain the level of health you need to carry out your professional role*

*23 Cooperate with all investigations and audits. This includes investigations or audits either against you or relating to others, whether individuals or organisation.*

*To achieve this, you must:*

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

*42. At the relevant time, Mrs Marr was as senior nurse working at the Hospital on nights. Mrs Marr had an authorised staff badge, which permitted access to all areas of the Hospital. Mrs Marr admitted at the local level, that she had taken codeine (a controlled drug) for her personal use since February 2021. Mrs Marr admitted that she is the person shown in the still images taken from CCTV footage, as in the statement of [Witness 1] and her exhibit JC/3. [Witness 1] also sets out at paragraphs 16-17 of her statement, her concern that Mrs Marr had deceived another staff member in order to access the treatment room.*

*43. The NMC invites the Panel to consider Mrs Marr’s behaviour amounts to misconduct and involved a significant and serious level of dishonesty. This is because the misconduct relates to the theft of a controlled drug from Mrs Marr’s employer, Mrs Marr’s behaviour required a level of premeditation and planning and appears to have involved the deception of at least one colleague. Mrs Marr*

*has also admitted the act of taking codeine from her Employer was not isolated, occurring over a prolonged period of time. Mrs Marr did not come forward regarding her dishonesty, and the Employer had to install a surveillance system in order for Mrs Marr to be detected and confronted.*

*44. The NMC submits that Mrs Marr's actions demonstrate a potential risk of harm to patients. By dishonestly taking controlled drugs for her own personal use, Mrs Marr compromised the security of the controlled drugs that were being stored on the Ward. Given Mrs Marr's admissions about the amount of codeine she was taking from the Ward, there is a risk to patients given the depletion of stock at the Hospital. Mrs Marr's consumption of codeine and her admissions regarding her reliance on codeine also represents a risk to patient safety, as it may have compromised her professional judgement at work given the amount of codeine she admitted to taking for personal use. Mrs Marr's taking of codeine for her own personal use also indicates that there is a harmful attitudinal issue, where Mrs Marr prioritised her own needs above her professional duties and standards, patients and colleagues.*

*45. Mrs Marr also put the professional reputation and career of at least one colleague in jeopardy, by prioritising her personal use of codeine and reportedly deceiving a colleague to gain access undetected.*

*46. Mrs Marr's misconduct also includes a failure to cooperate with the NMC investigation. The Panel are invited to consider that by not sharing information regarding her health, or consent to medical assessment, Mrs Marr has not demonstrated a reflective or cooperative approach to the concerns of this case. The Panel are invited to consider that this leaves fundamental questions regarding Mrs Marr's attitude towards these proceedings and her regulator.*

*47. The NMC invites the Panel to consider Mrs Marr's conduct separate to health concerns. As Mrs Marr has not cooperated with a full investigation in to how her health influenced her behaviour at the time of the conduct there is insufficient*

*evidence on which the Panel can make a finding that [PRIVATE] misconduct [PRIVATE] deliberate, long-standing and premeditated dishonesty.*

*48. The NMC invites the Panel to conclude that Mrs Marr's conduct seriously calls into question her trustworthiness and represents a clear breach of the fundamental tenets of the profession, and departure from the conduct expected of a registered professional.*

*49. The NMC invites the Panel to conclude that Mrs Marr's conduct has fallen significantly short of the standards expected of a registered nurse and amounts to misconduct which is serious in nature.*

*[...]*

### ***Impairment***

*56. On the basis of Mrs Marr's misconduct [PRIVATE], the NMC invites the Panel to make a finding of impairment.*

*57. The NMC submits that Mrs Marr is impaired on both public protection and public interest grounds.*

*58. The NMC guidance on impairment ("DMA-1") explains that it is a matter for the Fitness to Practise Committee to decide whether a Registrant is impaired. Although there is no statutory definition for impairment, there are a number of factors set out in the guidance which a Panel should consider when looking at impairment.*

*59. 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?" Answering this question involves a consideration of both the nature of the concern and the public interest.*

*60. In determining impairment, the questions outlined by Dame Janet Smith in the 5<sup>th</sup> Shipman Report (as endorsed in the case of Council for Healthcare*



*Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) are instructive. Those questions were:*

- 1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- 2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- 3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- 4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

*61. The NMC submit that all questions a – d can be answered in the affirmative in this case. This is because:*

*52.1 In relation to the first question, Mrs Marr put patients and colleagues at an unwarranted risk of harm by taking controlled drugs medication from the Hospital. Mrs Marr has admitted the prolonged and repeated nature of her behaviour. Her conduct indicates an attitudinal issue in that she has prioritised her own personal needs above patients, colleagues and professional reputations. Mrs Marr has not provided reflection or evidence to suggest that she is unlikely to repeat her actions and is therefore liable to put patients at an unwarranted risk of harm in future.*

*52.2 In relation to the second question, Mrs Marr's behaviour is deplorable and by its very nature brings disrepute to the profession. Mrs Marr acted dishonestly in taking medication from the Ward, deceiving at least one colleague and jeopardising others colleagues reputation by taking medication to the extent that the Employer had to install covert surveillance to identify Mrs Marr as responsible. Mrs Marr has admitted the prolonged*

*and repeated nature of her behaviour. The NMC submits this is indicative of an attitudinal issue in that Mrs Marr has repeatedly prioritised her own personal needs above patients, colleagues and professional reputations. Given the lack of reflection or engagement in these proceedings, Mrs Marr is liable to bring the profession into disrepute in future.*

*52.3 In relation to the third question, Mrs Marr's conduct clearly breached one or more of the fundamental tenets of the profession as enshrined in the Code and set out above at paragraph [41]. Mrs Marr has admitted the prolonged and repeated nature of her behaviour. Her conduct indicates an attitudinal issue in that she has repeatedly prioritised her own personal needs above patients, colleagues and professional reputations. Mrs Marr has not provided reflection or evidence to suggest that she is unlikely to repeat her actions, and is liable to breach fundamental tenets of the profession in future.*

*52.4 In relation to the fourth question, Mrs Marr has acted dishonestly. Mrs Marr has admitted the prolonged and repeated nature of her behaviour. Her conduct indicates an attitudinal issue in that she has repeatedly prioritised her own personal needs above patients, colleagues, and professional reputations. Given the lack of engagement, reflection and cooperation with these proceedings, the NMC submits that Mrs Marr is liable to act dishonestly again in the future.*

*62. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at [74] Cox J commented that:*

*“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.”*

63. *The consideration of impairment as outlined in this case can be broadly split into two distinct questions:*

- a. Whether Mrs Marr poses a current risk to the public through her practice (public protection); and*
- b. Whether a finding of impairment is needed to maintain public confidence in the profession and uphold professional standards (public interest).*

*Public protection*

64. *Impairment is a forward-thinking exercise which looks at the risk Mrs Marr's unrestricted practice would pose in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

65. *The NMC submits that Mrs Marr poses a real and serious future risk to patients and to colleagues if permitted to practice unrestricted. This is because Mrs Marr's conduct included a high level of dishonesty by taking controlled drugs (codeine) from her Employer. Mrs Marr admitted that she took codeine from the Ward to supplement her own GP prescription for codeine. Mrs Marr's conduct was not isolated in that she has admitted she took codeine from the Employer over a prolonged period. Mrs Marr did not come forward regarding her behaviour and had to be detected by cover surveillance and confronted.*

66. *Mrs Marr acted in a way that prioritised her own needs above patients, colleagues, and the professional reputation. Her actions call into question her trustworthiness, integrity and decision making. The Panel is invited to consider that Mrs Marr put patients and colleagues at risk of harm as set out in paragraphs [44] – [45].*

67. Although Mrs Marr has indicated that she does not wish to practice in the profession any longer, the NMC submit that there is currently a serious risk and real future risk to the public because there is insufficient evidence to indicate full insight, reflection or remorse regarding her dishonesty, misconduct or how she is presently managing her health and personal circumstances. In addition, there has been no remediation through relevant training or demonstrating strengthened practice relevant to the concerns of this case.

68. Given these factors, the NMC submits that Mrs Marr poses a current and serious future risk to patients and colleagues.

#### *Public interest*

69. Consideration of the public interest requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.

70. In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which has not been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.

71. However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.

72. The NMC submit that Mrs Marr's misconduct and health engage a significant level of public interest and a finding of impairment is required. This is because of the serious nature and extent of the misconduct, which includes a prolonged period of dishonesty (taking controlled drugs from the Employer) and failing to

*cooperate with the Regulators investigation and requests for information. Due to Mrs Marr's failure to cooperate with the Regulators investigation, there is no information to confirm that [PRIVATE]. Patients who had attended the Hospital, and colleagues at the Hospital would be shocked if there was no finding of impairment, as Mrs Marr put patients and colleagues at risk of potential harm. Patients and colleagues are entitled to have trust and confidence in the profession, in that they should be able to rely upon Mrs Marr to uphold professional standards of honesty and integrity, and maintaining her health to ensure that it does not put them at an unwarranted risk of harm.*

*73. The NMC submits that there would be increased public interest in a finding of impairment due to Mrs Marr's lack of engagement, insight or remorse, and no evidence of remediation and steps taken to address misconduct [PRIVATE]concerns.*

*74. The NMC submit that a finding of impairment should be made in this case to declare and uphold proper standards of conduct.'*

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

***'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***

*18.4 take all steps to keep medicines stored securely*

***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.*

*20.4 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*

***23 Cooperate with all investigations and audits. This includes investigations or audits either against you or relating to others, whether individuals or organisation.***

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered each charge individually as well as the circumstances of the case as a whole.

Mrs Marr took codeine from her employer for her own personal use on more than one occasion. The panel considered that in light of her admissions [PRIVATE] her consumption in excess of the prescribed dosage may have affected her judgement and clinical decision making which would have been a potential risk to patients. The panel considered that Mrs Marr created a risk of deficit in the medication available for patient care, thereby presenting a risk to patient safety. It was of the view that Mrs Marr prioritised herself above patient care and demonstrated failings in fundamental aspects of nursing which amounted to misconduct.

The panel found Mrs Marr's actions in charge 1 were compounded by her dishonesty in charge 2. The panel was of the view that honesty and integrity are fundamental to the nursing profession and to deliberately steal medication from her employer for personal use, creates a harmful environment for patients and Mrs Marr's colleagues. The panel determined that Mrs Marr's actions in charge 1 and 2 would be considered deplorable by fellow practitioners and damaging to the trust that the public places in the profession.

The panel noted that in charge 3(a) and 3(b), Mrs Marr failed to cooperate with the NMC's investigation by not providing [PRIVATE] form. The panel was of the view that whilst her actions in these charges were breaches of the Code, Mrs Marr's omissions in respect of charge 3(a) and 3(b) in and of itself did not meet the threshold to constitute misconduct.

The panel therefore concluded that Mrs Marr's actions in charges 1 and 2 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, Mrs Marr's fitness to practise is currently 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. 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 in the above test were engaged in this case.

Taking into account all of the evidence adduced in this matter, the panel found that patients were put at risk of harm as a result of Mrs Marr's misconduct. The panel determined that Mrs Marr's misconduct had breached the fundamental tenets of the



nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel next went on to consider the matter of insight. It noted that whilst Mrs Marr had made some early admissions at the local level investigation, it was not presented with sufficient evidence of insight or remorse. The panel considered that it had not received any evidence to suggest that Mrs Marr has demonstrated an understanding of how her actions had put patients at a risk of harm, how this impacted negatively on the reputation of the nursing profession and how she would handle situations differently in the future. It determined that Mrs Marr demonstrated very limited insight and remorse.

The panel determined that the misconduct in this case evidenced behaviour that is inherently more difficult to put right, since it relates to dishonesty and attitudinal concerns. It carefully considered the evidence before it in determining whether or not Mrs Marr has taken appropriate steps to strengthen her practice. However, the panel has not received any information to suggest that Mrs Marr has taken any steps to address the specific concerns raised about her practice, such as reflection on the consequences of her actions.

The panel was of the view that due to the lack of insight, remorse and evidence of strengthened practice, there remains a high risk of repetition. It found that Mrs Marr's actions set out in the charges found proved, which included dishonesty, were indicative of deep-seated attitudinal problems. The panel was of the view that by deliberately and dishonestly taking medication from her employer, Mrs Marr's actions could have placed patients at a risk of harm. On the basis of all the information before it, the panel decided that there would be a risk to the public if Mrs Marr was allowed to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

In considering the question that the NMC guidance on impairment suggests a panel should ask itself '*can the nurse practise safely, kindly, and professionally*', the panel determined that it could only answer that question in the negative.

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

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

Having regard to all of the above, the panel was satisfied that Mrs Marr'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 Mrs Marr off the register. The effect of this order is that the NMC register will show that Mrs Marr 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.

### **Representations on sanction**

The panel took into account the NMC written submissions in respect of sanction, which states:

#### **'Sanction**

75. The NMC submits that the appropriate and proportionate sanction in this case is striking-off order.

76. The NMC has identified some mitigating factors in this case:

a. Admissions at local level investigation after detection.

77. The NMC has identified the following aggravating features of the case:

a. Potential risk of harm to patients in depleting the stock of codeine

b. Potential risk of harm to patients given the admitted significance of codeine consumption which may have compromised clinical decision-making and patient safety

c. Potential risk of harm to colleagues in jeopardising their professional reputation, including the deception of at least one colleague to allow Mrs Marr access to treatment room.

d. Conduct difficult to put right involving a high level of dishonesty. In particular, Mrs Marr's conduct involved a level of premeditation, planning and persistent taking of controlled drugs from Mrs Marr's Employer over a prolonged period.

e. Lack of engagement with proceedings, in particular the failure to co-operate with the Regulator by not providing [PRIVATE].

f. Insufficient evidence of full insight or genuine remorse.

g. No evidence of remediation, or steps taken to address conduct, [PRIVATE].

78. Considering the facts of this case in line with the available sanctions in ascending order of seriousness:

Taking no further action

79. The NMC's guidance on taking no further action ('SAN-3a') indicates that a panel has a discretion to take no further action after a finding of impairment but will only use that discretion rarely. It is submitted the nature of this case is not exceptional and that taking no action would not be sufficient to protect the public, maintain standards, or maintain confidence in the profession and the NMC as a regulator.

### Caution Order

80. The NMC's guidance on caution orders ('SAN-3b') indicates that a caution order is only appropriate if there's no risk to the public or patients and the case is at the lower end of the spectrum of impaired fitness to practise. Mrs Marr's conduct is extremely serious, involving actual harm to a service user and potential harm to colleagues and service users. The case also relates to dishonesty, in that Mrs Marr took medication from her Employer and on one occasion, appears to have deceived her colleague to do so. A Caution Order would therefore not be sufficient to protect members of the public and would not meet the wider public interest considerations.

### Conditions of Practice Order

81. The NMC's guidance on conditions of practice orders ('SAN-3c') sets out that conditions may be appropriate where among other factors:

- a. No evidence of harmful deep-seated personality or attitudinal problems;
- b. There are identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining;
- c. Potential and willingness to respond positively to retraining;
- d. The nurse has insight into any health problems and is prepared to agree or abide by conditions on medical condition, treatment or supervision;
- e. Patients will not be put in danger either directly or indirectly as a result of the conditions,
- f. The conditions will protect patients during the period they are in force;
- g. Conditions can be created that can be monitored and assessed.

82. The guidance also sets out that conditions should be proportionate, workable, and measurable.

83. The NMC submits that Mr Marr's conduct cannot be addressed by conditions. There is no evidence to suggest that Mrs Marr would engage with conditions for example, to attend relevant training on dishonesty, medication storage and security, obligations as a registered nurse to cooperate with the Regulator. There

*is also no evidence to indicate that Mrs Marr was not aware that her behaviour was dishonest, or unaware of the professional obligations regarding medication storage and security and cooperation with the Regulator. There is evidence that Mrs Marr prioritised herself over patients and colleagues, by dishonestly deceiving and taking controlled drugs from her Employer for her personal use. Mrs Marr has also failed to cooperate with the Regulators investigations by not returning [PRIVATE].*

*84. The NMC submits that this information indicates that Mrs Marr has a deep-seated and harmful attitude where she prioritised her personal needs and has not developed full insight or reflection into her misconduct and health. There is insufficient information to suggest that she has full insight [PRIVATE] and that she is prepared to abide by conditions, treatment, or supervision.*

*85. In addition, Mrs Marr's conduct would be difficult to monitor particularly given the level of her dishonesty, and that she managed to avoid detection while taking controlled drugs from her Employer. The NMC submits that conditions for supervision and monitoring would be difficult to monitor and assess. The NMC submits that Conditions of Practice would expose patients and colleagues to an unnecessary risk of harm.*

*86. The NMC therefore submits that Conditions of Practice would be wholly insufficient, and fail to address issues of public protection, public confidence in the profession and the NMC as a regulator.*

#### Suspension Order

*87. The NMC's guidance on suspension orders ('SAN-3d') outlines that a suspension order may be appropriate in cases "where the misconduct isn't fundamentally incompatible with the nurse, midwife or nursing associate continuing to be a registered professional, and [the NMC's] overarching objective may be satisfied by a less severe outcome than permanent removal from the register."*

88. *The NMC's guidance also sets out that a suspension order may be appropriate where among other factors:*

- a. There is a single instance of misconduct, where a lesser sanction is not sufficient.*
- b. There is no evidence of harmful deep-seated personality or attitudinal problems.*
- c. No evidence of repetition of behaviour since the incident.*
- d. The Panel is satisfied that there is insight, and the Registrant does not pose a significant risk of repeating behaviour.*
- e. Where matters only relate to the issue of health, there is a risk of patient safety if allowed to practice even with conditions.*

89. *The NMC submits that this is not a single instance of misconduct, and that Mrs Marr has admitted that the dishonest taking of controlled drugs from the Employer occurred over a prolonged period of time from February 2021. This required premeditated, systematic deception of her Employer and colleagues. Mrs Marr has admitted that she took codeine from the Ward for her personal gain, taking approximately 28 tablets once a week [PRIVATE]. The facts of this case indicate that there is a harmful attitudinal issue where Mrs Marr has prioritised her personal use of codeine over patients and colleagues, and on one occasion deceived her colleague.*

90. *Such conduct will always be serious, as out in the NMC's guidance 'Considering sanctions for serious cases' (SAN-2) and the guidance notes that cases involving dishonesty are likely to call in to question whether a registrant should remain on the register.*

91. *Mrs Marr's engagement with NMC proceedings has been extremely limited and she has not taken the opportunity to engage with proceedings to assist the Panel to better understand the circumstances in which her dishonest conduct arose. The NMC submits that Mrs Marr has not persuaded the Panel that she would not act similarly again.'*

## **Decision and reasons on sanction**

Having found Mrs Marr'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:

- Potential risk of harm to patients in depleting the stock of codeine;
- Potential risk of harm to patients given her admission of excessive codeine consumption, which may have compromised clinical decision-making and patient safety;
- Potential risk of harm to colleagues in jeopardising their professional reputation, including the deception of at least one colleague to allow Mrs Marr access to treatment room;
- Conduct difficult to put right involving a high level of dishonesty. In particular, Mrs Marr's conduct involved a level of premeditation, planning and persistent taking of drugs from Mrs Marr's employer over a prolonged period;
- Insufficient evidence of full insight or genuine remorse;
- No evidence of remediation, or steps taken to address conduct.

The panel also took into account the following mitigating features:

- Early admissions made at local level investigation.

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.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Marr practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Marr'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 Mrs Marr'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, given the nature of the charges in this case. It determined that the misconduct identified in this case, which includes dishonesty was not something that can be addressed through retraining and/or supervision. The panel concluded that the placing of conditions on Mrs Marr's registration would not adequately protect the public or satisfy the public interest.

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 considered that the concerns in this case do not relate to an isolated incident and found that the misconduct occurred over a prolonged period. It was of the view that



the repeated misconduct in this case reflected deep-seated attitudinal problems. The panel acknowledged that it has not been presented with any evidence of repetition of similar behaviour since the referral. However, the panel took into account it had very limited evidence of insight and remorse, and therefore found a consequent risk of repetition.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Marr's actions is fundamentally incompatible with her remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel noted that Mrs Marr has demonstrated very limited insight and remorse into her misconduct. In addition, the panel has had no information to indicate that Mrs Marr has done anything to strengthen her practice. It considered that Mrs Marr has not demonstrated that she can be trusted as a registered nurse to act with care and integrity. It was of the view that the findings in this particular case demonstrate that Mrs Marr's actions were serious and to allow her to continue practising would put patients at serious risk of harm.

The panel determined that the nature and seriousness of Mrs Marr's breaches of professional and clinical protocols, raises fundamental questions about her

professionalism. It reached the conclusion that public confidence in the profession would not be maintained if Mrs Marr remained on the register. Taking account of the SG, the panel could not be satisfied that anything less than a striking-off order would maintain professional standards, keep the public protected and address the public interest in Mrs Marr's case.

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 Mrs Marr's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mrs Marr in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period or the conclusion of an appeal, the panel has considered whether an interim order, until the striking-off order takes effect, 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 is in Mrs Marr's own interests.

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

### **Representations on interim order**

The panel took account of the representations made by the NMC that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. The NMC invited the panel to impose an interim suspension order for a period of 18 months for the reasons stated in the panel's findings.

### **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 Mrs Marr is sent the decision of this hearing in writing.

That concludes this determination.