Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 8 - 12 August 2022
Monday 12 – 14 and 16 June 2023

Virtual Hearing

Name of registrant:	**Nicola Margaret Spruce**
NMC PIN:	08C0554E
Part(s) of the register:	Registered Nurse – Adult Nursing Effective – 18 August 2008 V300 – Nurse Independent / Supplementary Prescriber: Effective – 28 September 2015
Relevant Location:	Kidderminster
Type of case:	Misconduct
Panel members:	Anthony Griffin (Chair, Lay member) Martin Bryceland (Registrant member) David Newsham (Lay member)
Legal Assessor:	Charles Parsley (August 2022) David Swinstead (June 2023)
Hearings Coordinator:	Amanda Ansah (August 2022) Tyrena Agyemang (June 2023)
Nursing and Midwifery Council:	Represented by Conall Bailie (August 2022) Alex Radley (June 2023), Case Presenters
Mrs Spruce:	Present and represented by Jack Gilliland, of Counsel, instructed by Royal College of Nursing (RCN)
Facts proved by admission:	Charges 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14 and 15

Facts proved:	Charges 16 a and b
Facts not proved:	Charges 9, 11 a and b.
Fitness to practise:	Impaired
Sanction:	Caution order (5 years)
Interim order:	**N/a**

Details of charge – As amended

That you, a registered nurse, using a FT10 green prescription pad in the name of Dr A, and failing to include your name, independent non-medical prescriber and/or NMC PIN number contrary to prescribing protocols:

1. On 16 May 2018, issued a prescription for Amoxicillin to Patient A;

2. On 6 June 2018;

    a. Issued a prescription for Ciprofloxacin to Patient B;
    b. Issued a prescription for Doxycycline to Patient C;

3. On 13 July 2018, issued a prescription for Otomize ear spray to Patient D, who was not a registered patient at Kidderminster Medical Centre;

4. On 27 July 2018, issued a prescription for Doxycycline to Patient D who was not a registered patient at Kidderminster Medical Centre;

5. On 19 December 2018, issued a prescription for Doxycycline to Patient E who was not a registered patient at Kidderminster Medical Centre;

6. On 28 December 2018, issued a prescription for Penoxymethyl and Co-Codamol to Patient F who is a relative of yours and was not a registered patient at Kidderminster Medical Centre;

7. On 4 January 2019;

    a. Issued a prescription for Flucloxacilin and Prednisolone to Patient G but failed to make the corresponding notes on their patient record;

b. Issued a prescription for Co-Codamol to Patient H but failed to make the corresponding notes on their patient record;

8. On 19 January 2019, issued a prescription for Sando-K to Patient I but failed to make the corresponding notes on their patient record;

9. Your conduct at charges 1-8 was dishonest in that you intended anyone reading the prescriptions to believe they had been issued by Dr A or on their instructions;

10. On 8 February 2019, failed to return the FT10 green prescription pad in the name of ~~Dr GB~~ **Dr A** to Kidderminster Medical Centre;

11. Your conduct at charge ~~9~~ **10** was dishonest, in that;

    a. You knew you had to return said prescription pad;
    b. You deliberately chose to keep said prescription pad;

12. On 11 May 2019, issued a prescription for Co-Codamol when you were no longer employed by Kidderminster Medical Centre to Patient F who is a relative of yours and was not a registered patient at Kidderminster Medical Centre;

13. On 12 June 2019, issued a prescription for Otomize when you were no longer employed by Kidderminster Medical Centre to Patient J who was not a registered patient at Kidderminster Medical Centre;

14. On 8 August 2019, issued a prescription for Erythromycin when you were no longer employed by Kidderminster Medical Centre to Patient K who was not a registered patient at Kidderminster Medical Centre;

15. On 18 October 2019, issued a prescription for Nurofurantoin when you were no longer employed by Kidderminster Medical Centre to Patient L who was not a registered patient at Kidderminster Medical Centre;

16. Your conduct at charges 12-15 was dishonest, in that you were no longer employed by Kidderminster Medical Centre and intended anyone reading the prescriptions to believe that said prescriptions;

    a. were approved by Kidderminster Medical Centre;
    b. had been issued by Dr A or on their instructions;

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

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

At the outset of the hearing, Mr Gilliland, on your behalf, made a request pursuant to Rule 19 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules) that this case be held partly in private on the basis that proper exploration of your case involves some reference to your health matters. He submitted that there will be questions to witnesses in which your personal medical information, which is inherently private, may be referred to.

Mr Bailie, on behalf of the NMC, indicated that he supported the application to the extent that any reference to your health should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session as and when issues relating to your health are raised in order to maintain your privacy.

Decision and reasons on applications to amend the charges

The panel heard an application made by Mr Bailie to amend the wording of charge 11.

The proposed amendment was to change "conduct at charge 9" to "conduct at charge 10". It was submitted by Mr Bailie that the proposed amendment would remove the typographical error of charge 9 to accurately reflect the evidence:

> 11. Your conduct at charge ~~9~~ **10** was dishonest, in that;
>
> a. You knew you had to return said prescription pad;
> b. You deliberately chose to keep said prescription pad;"

Mr Bailie made a subsequent application to amend charge 10.

The proposed amendment to charge 10 currently reading "…in the name of Dr GB…" was to amend it to read "...in the name of Dr A" to reflect the anonymization of the individual instead of their identifiable initials:

> 10. On 8 February 2019, failed to return the FT10 green prescription pad in the name of ~~Dr GB~~ **Dr A** to Kidderminster Medical Centre;

In respect of each application, the panel accepted the advice of the legal assessor and had regard to Rule 28(1) of the Rules which states that:

> "*(1) At any stage before making its findings of facts, in accordance with [rule 24(5) or (11)]*[59]*, the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) [the Health Committee]*[60] *or the Conduct and Competence Committee, may amend—*
>
> *(a) the charge set out in the notice of hearing; or*

(b) the facts set out in the charge, on which the allegation is based, unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue."

The panel was of the view that such amendments, as applied for, could be made without injustice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Gilliland, who informed the panel that you made full admissions to charges 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, and 15.

The panel therefore finds charges 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, and 15 proved in their entirety, by way of your admissions.

The panel received a bundle of witness statements, a bundle of evidence, and heard oral evidence from the following witnesses called on behalf of the NMC:

- Witness 2: Practice Manager at Kidderminster Medical Centre (KMC) ("the Surgery"), Waterloo Centre, Kidderminster;

- Witness 3: Counter Fraud Specialist on behalf of NHS Counter-Fraud ("NHS CF");

- Witness 4: Advanced Nurse Practitioner at the Surgery.

The panel also heard evidence from you under affirmation.

Background

The charges arose from your employment as a Registered Advanced Nurse Practitioner at the Kidderminster Medical Centre (KMC) (“the Surgery”). According to Witness 2, the manager at the Surgery, you were employed as an Advanced Nurse Practitioner (“ANP”) from February 2018 until 28 February 2019.

On 18 October 2019, Witness 1, a pharmacist, contacted the Surgery in regards to a handwritten prescription that was presented by Patient L who attended the pharmacy. The prescription was allegedly written and signed by you on a prescription pad belonging to the Surgery and Witness 1 raised concerns about the completion of the prescription. Patient L took the prescription away when presented with these questions and returned to the pharmacy with the same one containing some adjustments, but not being countersigned.

Witness 1 called the Surgery to clarify this and was told that they were not aware of a Patient L. Witness 1 offered the phone to Patient L to speak to the Surgery but they then said they had “…*made a mistake and that her auntie had made the prescription*”. Witness 1 contacted their manager who advised them to keep the prescription and alert the Surgery and NHS CF’s online system. Witness 1 was then prompted by NHS CF to report the matter to the police. The Surgery’s manager, Witness 2, then referred the matter to the NMC on 22 October 2019 when they were made aware of the issue.

Witness 3 in their statement explained that:

“*It was decided that this would be a fraud investigation as it initially looked like the Registrant could have falsified the signature on the prescription (this turned out not to be the case), there was a loss of revenue to the CCG because the prescriptions were not used in an authorised way and finally because the prescriptions were stolen there was a concern of abuse of position*.”

On 29 November 2019, Witness 3 commenced their investigation and requested all non-electronic prescriptions that had been produced under Dr A’s name and it was only then that NHS CF became aware of a further 13 prescriptions issued by you using the same prescription pad as the one you used for Patient L, over a period of 18 months.

The concerns identified in relation to the 14 prescriptions were as follows:

- eight of the 14 patients were not registered at the Surgery, so you would have been unable to access their medical history;
- all 14 prescriptions are pre-printed in the name of Dr A;
- 11 of the 14 prescriptions do not include your prescribing pin number;
- on 11 of the 14 prescriptions, the medication prescribed was never entered onto the shared patient record;
- eight of the 14 prescriptions were used to prescribe to family and friends;
- you failed to return the green FP10 prescriptions pad (pre-printed in the name of Dr A) to the Surgery after your employment ended on 28 February 2019;
- You continued to use the green FP10 prescriptions pad (pre-printed in the name of name of Dr A) after your employment ended on 28 February 2019.

On 25 November 2020, NHS CF conducted an interview with you in which you admitted that you had not followed the right process and that the signature in all 14 prescriptions was yours. When challenged on why you did not hand the prescription pad to the Surgery when you found it, you said “*I don’t know it was a stupid mistake, I don’t know, I can’t give you an account why I didn’t do it, it wasn’t because they were worth anything because I could have just put in …like I said on a piece of paper, I just had them in there, it was convenient that I used them, yes of course I should have given them back.*”

On 8 December 2020, Witness 3 wrote to you to advise that NHS CF had decided that no further action would be taken in regards to any criminal proceedings against you and that the investigation was closed. On their statement at paragraph 18, Witness 3 stated "*This decision was made because the amount of loss to the CCG was around 30 pounds and as all patients lived in Worcestershire the costs would have come back to the CCG anyway*".

Decision and reasons on application of no case to answer

The panel heard an application by Mr Gilliland on your behalf that, pursuant to Rule 24(7) that there is "no case to answer" in respect of Charges 9, 11 and 16. The rule states:

> *'24 (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –*
>
> *(i) either upon the application of the registrant …*
>
> *the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.'*

In relation to this application, Mr Gilliland submitted that there was insufficient evidence for these charges to remain before the panel.

Mr Gilliland submitted that in respect of Charge 9 in that "Your conduct at charges 1-8 was dishonest in that you intended anyone reading the prescriptions to believe they had been issued by Dr A or on their instructions", the NMC must prove that you intended anyone reading the prescriptions to believe that they had been issued by Dr A. He submitted that the NMC have not adduced any evidence of this intention or anything to indicate that this intention can be inferred. He submitted that under cross examination, Witness 2 accepted

that there is nothing wrong with handwritten prescriptions and went on to list a number of instances where they would be acceptable such as where there appears to be a weak internet signal, or for patient convenience. He added that Witness 4 could not direct the panel to any policy contradicting this position and that Witness 2 further accepted that you had been issued a prescription pad (a different pad, not the one bearing Dr A's initials) whilst you were working as a locum before commencing permanent employment.

Mr Gilliland submitted that Witness 2 accepted that a register of prescription pads issued between 2017 and 2019 had been lost and they stated that this was not relevant. Mr Gilliland submitted that this information was in fact relevant as it goes very much to the heart of the issue that the panel have been asked to decide, as none of the witnesses could state that you had not been signed out a second pad bearing Dr A's initials. The panel could not be assisted on this issue as the registers had been lost (by the Surgery). He submitted that the NMC, in light of the registers being lost, cannot prove that you were not issued with a prescription pad bearing Dr A's initials and that the issue of whether you were issued the pad is not wholly relevant given the way the charge was drafted in that you were dishonest in writing them.

Mr Gilliland went on to add that Witness 2 gave evidence that you were a *"lady of integrity"* and a *"valued member of the team"* with no previous concerns being raised about your practice, and when asked whether there appeared to be any intention of you attempting to disguise your identity, Witness 2 answered *"No"*. Witness 2 stated that they immediately recognised your signature on every prescription and your identity would further be recognised or identified using your PIN where records were made. Mr Gilliland submitted that given the serious nature of a dishonesty charge and Witness 2's evidence regarding an absence of dishonesty concerns, there is no case to answer on this charge.

Mr Gilliland submitted that to prove Charge 11, the NMC must first prove you had a positive duty upon you to return the pad bearing Dr A's initials, had knowledge of this duty, and then deliberately chose not to do so. He submitted that the NMC must prove the duty to which dishonesty relates to but have not provided any evidence of this nor have they

provided any evidence of you being expressly asked to return the pads, as stated in the opening of its case. He submitted that both Witness 2 and Witness 4 accepted that they did not know whether you had signed the competency form which might have enabled the panel to infer that you had knowledge of any underlying policy. Witness 4 made it clear that they had found no evidence of you being appraised or aware of this policy and there was inconsistencies between this evidence and the evidence Witness 2 provided regarding the procedure. Witness 2 described a decentralised process and Witness 4 described a more centralised process in that the form would be issued then returned to your line manager (who may have been Witness 2), before being returned to the Herefordshire and Worcestershire Clinical Commissioning Group ("CCG"). Mr Gilliland submitted that this inconsistency illustrated a haphazard approach at the Surgery to policy implementation, recordkeeping, and prescription security.

Mr Gilliland further submitted that Witness 2 accepted the inconsistencies in procedure in that locums must sign out prescription pads at the start and end of each shift, when in fact, they are routinely signed out for much longer periods. Witness 2 further accepted that prescription writing between colleagues happens at the Surgery and, contrary to their written evidence in that pads are kept under lock and key, stated under cross examination that pads were in fact left at different places in the Surgery.

Mr Gilliland submitted that Witness 2 was enthusiastic about your integrity and was surprised at the concerns raised. He submitted that your honesty can further be inferred by other evidence such as when you were requested to return all equipment you did so promptly. He submitted that you were not expressly asked to return the pad and had you been told to you would have done so. Witness 2 stated that there was no reason in their mind that you would not have done so and Mr Gilliland submitted that your good character is strong evidence mitigating against any dishonesty in this instance. He submitted that you had no proven duty as you were not asked to return the pad and this coupled with your good character, supports his submission that you have no case to answer in respect of this charge.

Mr Gilliland lastly submitted that in regards to Charge 16, in order to prove that your conduct at charges 12 to 15 was dishonest, the NMC must prove that you intended to be dishonest. He referred the panel to the same submissions he made regarding Charge 9 and added that regarding Charge 16a, the NMC have not adduced any evidence showing that the Surgery's approval was necessary to issue a prescription. He referred the panel to Paragraph 12 of the CCG Non-Medical Prescribing Policy and Procedures: "each non-Medical Prescriber has *personal accountability and responsibility* for their own prescribing practice". He submitted that this was the thrust of Witness 4's evidence, namely that authority, accountability, and responsibility is vested wholly in the individual. Witness 4 described the "legal entitlement to prescribe" as resting with the individual. Mr Gilliland submitted that it is wholly implausible for you to have intended dishonesty in the way alleged by the NMC and it has not proved this intention, nor is there evidence from which this intention can be inferred. He submitted that there is no case to answer in respect of this charge.

Mr Bailie submitted that at this stage the panel need to consider whether on the evidence taken at its highest, it could make a finding of dishonesty and that it is not coming to a final conclusion. He submitted that the test for dishonesty is objective and the charges are whether, objectively you were dishonest as to how you presented the prescriptions and your subjective view to whether you were dishonest, is irrelevant.

He submitted that although there is no direct evidence of dishonesty, it can be inferred from the circumstances of the case. He submitted that all charges are mutually supportive of one another and the reality is that they all stand or fall together. Mr Bailie submitted that this is not a case about financial benefit or whether the pad was given to you it is about how prescriptions were presented and the pad's use. Firstly, there were fourteen prescriptions over 17 months, demonstrating a sustained and persistent pattern of behaviour that would not have been uncovered if not for Witness 1 querying the prescription presented at the pharmacy.

Mr Bailie went on to submit that regarding Charge 9, there is nothing wrong with handwriting prescriptions but the issue here is how you went about it and there should not be any misconception that this case is in any way about the issuing of the pad to you. In regards to Charge 11, he submitted that you had to return the pad because you were asked to return all the equipment by 28 February 2019 and although Mr Gilliland did not submit that you did not have a duty to return it, only that there was no itemised request for it, this can satisfy the suggestion that you accept that the Surgery would have expected the pad to be returned. He submitted that the use of the prescription pad for 9 months after having left the Surgery further illustrates dishonesty as although you were not expressly asked to return it, it is common sense that after having left a place of employment one must return all the equipment associated with it, which you accepted at your interview under caution with NHS CF.

Mr Bailie further submitted that you used the pad for your family members without setting out the rationale or need and there was no medical history provided for the majority of the prescriptions. He submitted that your conduct would have likely continued had it not been for Witness 1's intervention and that regarding Charge 16, although there is no need for 'approval' from the Surgery, the charge is centred on the risk that others would believe the prescriptions were issued by someone who worked there and no one else would know that the prescriptions were not signed by a Doctor. Mr Bailie submitted that the identity details as required by the CCG Policy and the NMC policy (as reflected in the NMC Code) were not provided and the only person who recognised your signature was Witness 2. He submitted that all the prescriptions were from the same pad and sequential with the exception of two, indicating it was not a working pad. It was used exclusively over 17 months for personal prescriptions, all of which bar three, did not have the identifying PIN as required.

Mr Bailie summarised that for Charge 9 it was a misconception that there was anything wrong with handwriting prescriptions, it was how you went about it. Whether the prescription pad was issued or not is a red herring.

In respect of Charge 11, there was an explicit request for return of equipment. There is more than enough evidence that you had such an obligation. The letter asking you to return all the Surgery's equipment must be taken to include the prescription pad. You ought to have returned the pad rather than use it for 9 months. Mr Gilliland ignored your interview under caution in which you stated *"Yeah, I should have given them back absolutely."*

In respect of Charge 16, there was no need for approval from the Surgery. However, there was a risk of perception that others could believe that the prescription was written by someone working at the Surgery.

He submitted that in light of all this, the panel has enough credible evidence to find a case to answer on these charges, and the application does not meet the high threshold required before such a submission can be accepted.

Panel's decision

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

The panel considered the application carefully in respect of each of the charges. The panel had regard to all the evidence adduced by the NMC both written and oral, and the submissions of Mr Gilliland and Mr Baillie. The panel was mindful of the test in considering such applications, as set out in the judgment of Lord Lane LCJ in *R v Galbraith [1981] 1WLR 1039* and of the NMC guidance on No case to answer (DMA-5).

The legal assessor referred the panel to the two-limbed test laid down in *Galbraith*. In relation to these proceedings the test can be put as follows:

1. If there is no evidence against the registrant to support a particular charge, then the case must be stopped in respect of that particular charge.

2. If there is tenuous evidence in that it is inherently weak or vague or inconsistent with other evidence and if the panel considers taking the NMC evidence at its highest that it could not properly find the particular charge to be proved on the balance of probabilities, then the case must be stopped as far as that particular charge is concerned. However, where the NMC's evidence is such that its strength or weakness depends on the view to be taken on a witness's reliability, or other matters which are generally speaking within the province of the panel, as judges of the facts, where on one possible view of the facts there is evidence on which the panel could properly come to the conclusion that a particular charge is proved, then the case should proceed.

The disputed charges all involve allegations of dishonesty. The panel had regard to the test for determining allegations of dishonesty as set out by Lord Hughes at paragraph 74 of the judgment in *Ivey v Genting Casinos (UK) Ltd. t/a Crockfords [2017] UKSC 67* and, in doing so, noted that the evidence had to be capable of supporting a finding that your actual state of mind as to your knowledge of belief as to the facts alleged in the admitted charges was such as could lead to the conclusion that your conduct was dishonest by the standards of ordinary, decent people.

The panel was mindful that it was not deciding whether any of the disputed charges was proved, only whether, applying the *Galbraith* test to the NMC evidence, it could find the charges proved. It kept in mind the burden and standard of proof required for it to be able to do so, and your previous good character both personally and professionally.

The panel noted that the stem of all the charges is "That you, a Registered Nurse, using an FT10 green prescription pad in the name of Dr A, and failing to include your name, independent non-medical prescriber and/or NMC PIN number contrary to prescribing protocols."

Charge 9 – Your conduct at charges 1-8 was dishonest in that you intended anyone reading the prescriptions to believe they had been issued by Dr A or on their instructions;

There is a case to answer for this charge.

You have admitted the facts in Charges 1-8 which identify specific prescriptions signed by you over a number of months whilst you were working at the Surgery. The panel was provided in Exhibit 2 of the NMC documentation copies of various prescriptions relating to Charges 1-8. These were signed by you on a pad apparently belonging to Dr A and did not contain any of the other identifiers such as your name, independent non-medical prescriber, and/or NMC PIN, to indicate that you were an independent prescriber. In various ways these prescriptions were not in accordance with protocol in that where they were issued for colleagues or family, the justification was not noted; where the prescriptions were issued to patients registered at the Surgery, their patient notes were not updated or they were issued to patients not registered at the Surgery. Somebody such as a dispensing pharmacist reading those prescriptions could have been led to believe that they'd been issued by Dr A or on their instructions. The panel considered that on the evidence this could lead to a finding that you intended the person reading the prescriptions to reach that conclusion and in doing so that you were dishonest.

Charge 11. Your conduct at charge 10 was dishonest, in that;

a. You knew you had to return said prescription pad;
b. You deliberately chose to keep said prescription pad;

There is a case to answer for this charge.

The panel noted that you admitted Charge 10 which indicates that you recognise you had an obligation to return the prescription pad at the end of your employment with the Surgery. The letter from the Practice Manager dated 7 February 2019 requesting that "you return *all* the equipment" could reasonably be read as including prescription pads. During your interview with NHS CF, when asked about your retention of the prescription pad you stated *"Yeah, I should have given them back absolutely."* The evidence is you

kept the prescription pad until the concerns came to light. The panel is satisfied that there is therefore evidence that you knew you should have returned the prescription pad and that it could be inferred that your failure to do so was a deliberate choice. An "honest and decent" person could conclude that by retaining the prescription pad in those circumstances you were dishonest. Accordingly, the panel finds there is a case to answer on Charge 11.

Charge 16 – Your conduct at charges 12-15 was dishonest, in that you were no longer employed by Kidderminster Medical Centre and intended anyone reading the prescriptions to believe that said prescriptions;

a. were approved by Kidderminster Medical Centre;
b. had been issued by Dr A or on their instructions;

There is a case to answer for this charge.

You ceased to be employed by the Surgery in February 2019. You have admitted Charges 12 – 15 which allege that when you were no longer employed by the Surgery, on 4 occasions between 11 May and 18 October 2019, you issued prescriptions to 4 persons who were not registered patients at the Surgery. These prescriptions were written on Dr A's NHS prescription pad, and in the case of Patient L, at least the prescription was presented to a pharmacy for dispensing as a NHS prescription issued from the Surgery. There is also evidence that the other prescriptions were presented in the same way. The evidence of Witness 1 is that they read the prescription as emanating legitimately from the Surgery as shown by the line of their subsequent enquiries. The panel consider that it could reasonably be inferred that using Dr A's NHS prescription pad to issue prescriptions in such circumstances, when you were no longer employed by the Surgery and when there is no evidence to indicate how you regarded it as legitimate to do so, could be regarded as dishonest. Accordingly, the panel find that there is a case to answer on Charge 16.

Findings on the Facts

The panel took account of all the evidence it had received including the testimonial evidence to which it was directed and the submissions of Mr Radley on behalf of the NMC and those of Mr Gilliland on your behalf.

The panel accepted the advice of the legal assessor which included references to relevant case law, namely, *Ivey v Genting Casinos (UK) Ltd Trading as Crockfords* [2017] UKSC 67, *GMC v Krishnan* [2017] EWHC 2892 (Admin) and *ES v Chesterfield and North Derbyshire Royal Hospital NHS Trust,* [2003] EWCA Civ 1284. The panel then went on to consider each of the disputed charges and it made the following findings.

Charge 9

9. Your conduct at charges 1-8 was dishonest in that you intended anyone reading the prescriptions to believe they had been issued by Dr A or on their instructions;

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral evidence and witness statements from Witnesses 2, 3, 4 and from yourself.

The panel referred to the evidence before it, which detailed that as a prescribing nurse practitioner, you were provided with a prescription pad by Kidderminster Medical Centre (KMC) in order to prescribe medication to the Centre's patients.

The panel noted that during the period detailed in charges namely, between 16 May 2018 and 19 January 2019, you were employed by KMC.

The panel heard in evidence that the prescription pad you were provided with, were prepopulated with a Dr A's name and that you were authorised and entitled to issue these prescriptions as part of your role at KMC. The panel acknowledged that any nurse carrying out your role at KMC would have also been provided with a prepopulated prescription pad.

The panel noted that three of the 14 prescriptions put before it, were documented with your PIN in order to identify you as the prescriber. The panel heard and accepted mitigating evidence from Witness 2 and from you, that you were under a considerable amount of pressure from your heavy workload. [PRIVATE]. This, you told the panel, was why there were a number of prescriptions not correctly completed and why you made mistakes at the time.

The panel also noted the evidence of Witness 2, who exhibited a form showing you were issued with the prescription pad.

Based on all the evidence before it, the panel determined that your conduct at charge 1-8 was not dishonest and that you did not intend for anyone reading the prescriptions to believe they had been issued by Dr A or on their instructions. This charge is found not proved.

Charge 11a and 11b

Your conduct at charge 10 was dishonest, in that;

a. You knew you had to return said prescription pad;
b. You deliberately chose to keep said prescription pad;

These charges are found NOT proved.

In reaching this decision, the panel carefully examined all the evidence in relation to these charges.

The panel first considered charge 11a and it noted the date on your resignation letter, 28 January 2019, it noted the date on Witness 2's termination letter, 7 February 2019 and that you were given the date of 28 February 2019, at the latest as the deadline for returning your work equipment. The panel noted that although this letter specifies your key fob and any room/cupboard keys, and does not list the prescription pad you had been issued with, you would have also been required to return this to the centre as it was a legal document belonging to KMC. You would have also been aware of this requirement as a result of your training as an independent prescriber.

The panel considered that although you left the practice on 28 January 2019, you did not have a duty to return the prescription pad until 28 February 2019 at the latest, as per Witness 2's termination letter.

The panel acknowledged your acceptance that you did not return the prescription pad by the 28 February 2019.

In relation to charge 11b, the panel took particular note of the date as specified in charge 10 as 8 February 2019. [PRIVATE]. It considered that you were overwhelmed and were not in the right frame of mind and that the prescription pad was inside your Filofax, which was inside a work bag and not immediately visible. It considered that as an experienced nurse you would have been aware that you were required to return the prescription pad [PRIVATE] you did not form a dishonest intention to deliberately keep it.

Therefore, the panel finds these charges not proved.

Charge 16a and 16b

16. Your conduct at charges 12-15 was dishonest, in that you were no longer employed by Kidderminster Medical Centre and intended anyone reading the prescriptions to believe that said prescriptions;

    a. were approved by Kidderminster Medical Centre;
    b. had been issued by Dr A or on their instructions;

These charges are found proved.

In reaching this decision, the panel carefully examined all the evidence in relation to these charges.

The panel first considered charge 16a and noted the prescriptions issued during the time period of charges 12-15 were all missing your PIN, which meant that it would have been more difficult for the prescriptions to be traced back to you. The panel heard in evidence that a member of staff at KMC recognised your signature and it was only this that led to the prescriptions being traced back to you.

The panel considered that you would have known at the time of issuing the prescriptions, that they had the KMC's name documented on them and that they would have been charged to KMC. You would have also been aware as an experienced independent nurse prescriber that the prescription pad was the property of KMC and should have been returned at the end of your employment with KMC.

The panel considered that although you had signed your name and there was no financial gain to you using the prescription pad, that your acts were dishonest, as you should have returned the pad as soon as you realised you still had it and should not have used the prescriptions as you did.

The panel considered that by not documenting your PIN on the prescriptions and/or not crossing out the doctor's name that anyone reading the prescriptions would have believed the prescriptions were approved by KMC.

The panel considered, in relation to charge 16b, that without documenting your PIN on the prescriptions that there was no way to identify where the prescriptions came from apart from KMC. The panel considered that you would have been aware that any prescriptions issued by you required both your PIN and your signature.

The panel determined that you knew as you were no longer employed by KMC, you should have returned the prescription pad, instead of issuing further prescriptions. In your oral evidence, you told the panel that you accepted you should have returned it, but you never got round to it, you also told the panel that you were "*still on good terms with the Practice Manager, I just didn't [return it]*". The panel was of the view that you had ample opportunities to return the prescription pad and that by omitting your PIN from the prescriptions you intended that anyone reading the prescription to believe they were issued by Dr A or on their instructions.

The panel therefore finds these charges 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 your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no

burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

Mr Radley invited the panel to take the view that the facts found proved amount to misconduct. He submitted that your failings were in relation to your clinical practice, thus they amount to serious professional misconduct because, these issues relate to your role as a registered professional and the potential impact on your area of practice and the profession as a whole.

Mr Radley submitted that charges 16 a and b particularly raise serious concerns, as they are not simply breaches of a local disciplinary policy or minor concerns. These are matters, he submitted, at the heart of and are fundamental to a professional nurse's practice. He submitted that it is a serious concern at the heart of a caring profession and directly relating to your practice.

Mr Radley submitted that the panel would be aware that seriousness is an important concept which informs various stages of the NMC's regulatory process. The public's trust and confidence in all nurses, demonstrating the behaviour found proved must, he

submitted, amount to a serious misconduct. He further submitted that there is a dishonest act, directly relating to your practice.

Mr Radley submitted that when considering the seriousness of the misconduct, the panel will take into account evidence of any relevant contextual factors. Mr Radley referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision. Mr Radley identified the specific, relevant standards where your actions amounted to misconduct.

Mr Radley submitted that the panel heard from you regarding your reflection on the concerns and the opportunities you have taken to show insight into what happened. He told the panel that you have attended the hearing, and you accepted and made admissions to a substantial number of allegations. He also told the panel that you have submitted a reflective piece and other supporting work to demonstrate your strengthening of practice, remorse and remediation.

Mr Gilliland referred the panel to relevant case law which included: *Roylance v GMC* (No 2) [2001] 1 AC 311), *R (on the application of Calhaem) v General Medical Council* [2007] EWHC 2606, *Meadow v General Medical Council* [2007] 1 All ER 1, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) and *R (Remedy UK Ltd) v. GMC* [2010] EWHC 1245 (Admin).

Mr Gilliland also referred to the cases of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin), *Cohen v GMC* [2008] EWHC 581 (Admin) and *GMC v Chaudhary* [2017] EWHC 2561 (Admin) which are relevant to the impairment stage.

Mr Gilliland referred the panel to your remediation bundles, which included an additional further reflective piece dated 14 June 2023. Mr Gilliland first conceded that facts found proved in relation to charges 12-16 do amount to misconduct. He submitted that the same concession is not made with respect to the other remaining charges.

Mr Gilliland submitted, whether the remaining charges, all admitted, amount to serious misconduct requires a sober judgement by the panel. The panel, he submitted must not aggregate the charges, which means each charge must be considered in turn.

Mr Gilliland submitted that the conduct admitted in these charges is not conduct that would be described as *"deplorable"* by your fellow practitioners. These incidents, he submitted betray poor judgement and/or negligence (and, in any event, *mistakes* acknowledged by you in your evidence), and by themselves do not provide sufficient basis for a finding of serious misconduct.

Submissions on impairment

Mr Radley 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) and *Yeong v GMC* [2009] EWHC 1923 (Admin).

Mr Radley submitted that your fitness to practise is impaired based particularly but, not solely on your dishonesty at charges 16 a and b. He submitted that the breaches of the Code involve breaching a fundamental tenet of the nursing profession. Accordingly, the Panel would be entitled to conclude that a finding of impairment is required in this case.

The finding of impairment, Mr Radley submitted, is required to mark your unacceptable behaviour, emphasise the importance of the fundamental tenets breached and to reaffirm proper standards or behaviour. He invited the panel to consider the context in which the events took place, [PRIVATE], the period of time over which the incidents took place, whether there was a risk to patients and whether the panel is satisfied you have shown remorse.

Mr Radley submitted these factors affect the professional's ability to practice professionally and as a consequence would the professional be able to demonstrate that they are currently able to practise kindly, safely and professionally.

The panel then heard further evidence from you under affirmation. In answer to questions from Mr Gilliland you told the panel that you accept the panel's findings and that as the proceedings have been ongoing for some time that you now have an understanding of the dishonesty test that has been referred to.

You told the panel you acknowledge the public may have viewed your behaviour as dishonest. With this in mind you explained to the panel the steps you have taken to strengthening your practice and remediate. You outlined a number of courses you have self-funded and undertaken as well as your mandatory training, specifically highlight a course entitled: *How to Ensure a similar Mistake or Misconduct will not be repeated in Future,* completed on 14 February 2022. You told the panel that as a registered nurse you are held to a higher standard and that your honesty and integrity has never been questioned before these incidents.

You outlined your current roles to the panel and explained that both were obtained through an agency. In your first role you have a virtual clinic where you assess and examine patients remotely. You told the panel that this involves prescribing medication to patients, but this is generally done electronically and there is a more robust system in place with your prescriptions to avoid mistakes and errors. You told the panel that your other role is working in an accident and emergency department and that you have been in these roles for the last four years. You told the panel that you still issue handwritten prescriptions, but there have been no concerns or issues raised with your practice in this regard. You told the panel that you try to avoid issuing handwritten prescriptions where possible and that you now have a stamp with your PIN, name and signature to ensure all the relevant information is documented on the prescription.

In answer to questions about your reflection, you told the panel that it has been ongoing for a number of years and you would not repeat your past mistakes of prescribing to family or friends or carrying out anything that could be seen as unethical, unless in case of an emergency.

You told the panel that you would avoid prescribing to a family or friend or if it were appropriate due to exceptional circumstances, you would use a private prescription.

You told the panel that you were open and honest with your managers and with your colleagues even though this is not a requirement, as you wanted to be honest about your mistakes. You explained that your colleagues understood the struggles you were facing and it was often a good way to off load and receive support. You told the panel that if you had any concerns in the future, you turn to your managers and colleagues.

[PRIVATE].

In answer to questions from the panel you stated that you have done a lot of reading, talking to colleagues and undertaken training. As a result, you have changed your practice and it has made you a better nurse.

Mr Gilliland went on to set out his submissions on impairment for the panel. He submitted that you did not admit you are impaired.

Mr Gilliland submitted that in relation to your risk to patients that you have demonstrated meaningful insight into the failures that led to these proceedings. This insight he submitted is evidenced by your admissions to all but three of the charges at the outset of the regulatory process; your acceptance at the facts stage that you could see how an ordinary person might regard your behaviour as dishonest and your purposeful and constructive retraining in areas of prescribing practice. [PRIVATE], you have demonstrated remorse and have fully engaged with this process, indicating an understanding of the seriousness of the importance of the regulator and seriousness of the proceedings.

Mr Gilliland referred the panel to your reflective piece dated 14 June 2023, in which you identify a number of changes you have made to your practice. These, he told the panel include your personal decision not to prescribe for family, friends and colleagues; having a personalised stamp made for use with handwritten prescriptions; [PRIVATE].

Mr Gilliland submitted that your numerous testimonials refer to your honesty and integrity. Witness 2, the Practice Manager at the Kidderminster Medical Centre, said that she had no concerns about your integrity. This evidence, he submitted supports a view that your dishonesty, as found by the panel, and accepted by you, was exceptional and not attitudinal.

Mr Gilliland told the panel that your record keeping and clinical performance since these allegations has been highly praised. You have continued to work in a prescribing role during the five years since the date of the first allegation and there have been no concerns raised about your clinical ability. He also told the panel that you are a valued and trusted member of your current team.

Mr Gilliland submitted that the period of and subsequent delay in these proceedings has allowed considerable time for you to reflect on your behaviour, including how others might perceive your behaviour. Considering your insight, meaningful remediation, and the lack of repetition since 2019, the risk of future repetition and future risk to patients is very low.

Mr Gilliland submitted that charges 12-15 are isolated and therefore out-of-character incidents in the context of your career as a whole, in which you have never been subject to any disciplinary or regulatory proceedings. He submitted that you have worked continuously throughout this period and since the date of the first incident on 16 May 2018. He told the panel that there have been no concerns whatsoever raised locally, or by your regulator, during this period. In other words, there has been no repetition in over five years.

Mr Gilliland told the panel that you have strengthened your practice in numerous ways, in that you were candid about the different approach you now take to your work and you are conscious of the indicators of when your workload becomes too much. [PRIVATE].

Mr Gilliland submitted that if a finding of impairment is made, it should be on public interest grounds alone. Mr Gilliland highlighted that it is relevant, that the NMC have never sought any interim restriction on your registration and the irresistible inference must be that the NMC themselves identified no risk to patient safety arising from your conduct.

Mr Gilliland submitted in respect of the public interest that a member of the public, with knowledge of all the facts in this case, would appreciate that a caring and well-intentioned nurse can make mistakes and learn from them to the extent that they have fully reformed their practice.

Mr Gilliland submitted that the dishonesty in this case falls at the lowest end of the spectrum in that there was no gain, there was no denial of primary facts, there was no attempt to disguise, there was no sophistication, there was no evolution or increase in its severity, the option was always available to you to write the same prescriptions using a private prescription, and, crucially, there is no evidence of a deeper motive. The public would identify your dishonesty in its proper context and conclude, he submitted, that this is not a case requiring a finding of impairment.

[PRIVATE].

Lastly Mr Gilliland submitted that there is a public interest allowing nurses like you to continue to serve the public. You are a nurse, he submitted, who has dedicated your life to this profession. You are a compassionate and caring lady who accepts responsibility for your mistakes. He told the panel that your love for your profession and patients is heartfelt. Accordingly, he submitted that there is an overwhelming public interest in allowing you to continue with your vocation.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin), *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Doughty v GDC* [1988] AC 164 PC, *General Medical Council v Meadow* [2007] QB 462 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). The legal assessor also drew the panel's attention to the four tenets set out in Dame Janet Smith's Fifth Shipman Report.

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: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code).

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your 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

To achieve this, you must:

> *18.1 prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*
>
> *18.3 make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines*

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, when considering the charges, the panel determined the following, with regard to whether they amounted to serious misconduct.

The panel first considered charges 1-8. The panel considered each of the charges individually and determined that the conduct alleged was negligent, but in each case, it did not pass the threshold of seriousness to warrant a finding of misconduct.

The panel then went on to consider charge 10, which it determined although you made an admission to this charge, the panel could not find that there was any duty upon you to return the prescription pad by the date alleged in the charge. The panel considered that although you should have returned the prescription pad with all your other work equipment when you left your employment, you were asked to return it by 28 February 2019 at the latest and not by 8 February 2019.

In relation to charges 12-15, the panel accept you acknowledged that your conduct did amount to misconduct. The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel determined that in each of those incidents, you did intend for anyone reading the prescriptions to believe that said prescriptions were approved by Kidderminster Medical

Centre and had been issued by Dr A or on their instructions. The panel determined that this is deception which amounts to dishonesty.

The panel when considering charge 16, determined that your actions were dishonest and would be considered as deplorable by fellow nursing professionals and accordingly amounts to serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your 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 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) …*
>
> *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 limbs b, c and d were engaged in this case. The panel founds that although no patients were put at risk, caused physical or emotional harm as a result of your misconduct; your conduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered your reflective piece dated 14 June 2023, in which you explain the circumstances around the use of the KMC prescription pad during your employment and also when you failed to return the pad on leaving that centre.

The panel noted the reasons for your actions regarding the issuing of the prescriptions and how members of the public may see your actions as dishonest. It also noted that you have shared the concerns in relation to your practice with your work colleagues and you have taken part in other patient support initiatives.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took account of the changes you have implemented to your practice, your personal action plan, the mandatory and self-funded training you have undertaken, the additional detailed education and work-based activities, and thus strengthened your practice to ensure there is no such repeat of the issues detailed within the charges.

The panel acknowledged that you have been working as a nurse prescriber for the last four years in both your roles and not only are you consistently scored highly for your service, but you have regularly received positive patient feedback.

The panel considered your denial of dishonesty which you have outlined in your most recent reflective piece. The panel particularly noted the following:

> *"At no point did I ever intend to be deceitful or to deliberately mislead. I have never been calculated in my actions or have planned them to 'get away with it'. All I ever did was to do my best by my patients and refuse to accept that I had worked with anything but my best intentions and full integrity."*

In light of all the above, the panel is of the view that the risk of repetition is low based on your remorse, the mitigation you put forward, your strengthened practice, completed training and [PRIVATE]. The panel therefore decided that a finding of impairment is not necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required as a member of the public, aware of the circumstances in this case would be concerned if a nurse with these concerns which include dishonesty, was allowed to practise unrestricted.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case, thereby enabling you to practise unrestricted. The panel therefore also finds your fitness to practise impaired solely on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of five years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

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

Mr Radley submitted that the panel would seek to find a fair balance between your rights and the NMC's overarching objective of public protection. He referred the panel to the case of *Huang v Secretary of State for the Home Department* [2007] UKHL 11 and submitted that in this case the panel can justifiably impose the sanction of strike off.

Mr Radley submitted that the panel will consider whether the sanction with the least impact on the nurse's practice that would be enough to satisfy the public interest, whilst addressing the reasons why the nurse in this case, currently has impaired practice and any aggravating or mitigating features. He further submitted that the sanctions will of course be considered from the least serious to the most serious to satisfy the public interest.

Mr Radley suggested some aggravating and mitigating features for the panel to consider. He submitted that the NMC have considered the gravity of the findings, particularly the finding of dishonesty and given the seriousness and number of charges the most suitable and appropriate sanction is that of a strike off.

The panel also bore in mind Mr Gilliland's submissions. He told the panel that in contrast to Mr Radley's submissions he will attempt to persuade the panel to allow you to keep practising and remain on the NMC register.

Mr Gilliland expressed some surprise at hearing the regulator make submissions to the panel that the misconduct in this matter was worthy of the most restrictive sanction.

Mr Gilliland submitted that you accept the facts found and that you are impaired, which is a tarnish on your otherwise unblemished career. He told the panel that you have practised safely and without any further dishonesty or concerns in the last four years. He

referred the panel to the numerous examples of positive feedback you had presented and the references and testimonials from your colleagues and patients.

Mr Gilliland submitted that a member of the public furnished with all the facts of the case, would wish to have this nurse treating them. He submitted that you have re-earnt the public's trust.

Mr Gilliland submitted that the panel has evidence and heard that you have engaged with the NMC process, reflected and been open and honest. You have shown insight and not avoided the difficult questions put to you. He told the panel that you have been candid about difficult decisions you made.

Mr Gilliland submitted that you have accepted the panel's decisions at every stage and you also accept your conduct was deplorable. He argued that you demonstrate a level of humility that does not come naturally to all professionals. He submitted that there will be no repetition of your mistakes and in particular the dishonesty. This he submitted would have still been the case, even if charge 16 was not found proved.

Mr Gilliland submitted that the misconduct found in charges 12-16 occurred over a period of 4 to 5 months and were born out of your belief that you were not acting dishonestly. He invited the panel to consider that there are numerous mitigating features in this case, namely your insight, the steps you have taken to embrace the principle of good practice, the training you have undertaken, often self-funded and the discussions you have had with your colleagues as you told the panel you want to be open with them.

[PRIVATE]. He also outlined your family circumstances and the impact a striking off order would have on you and your family.

Mr Gilliland submitted that the NMC's overarching objective is not achieved by restricting you so that you are unable to practice as a registered nurse. He stated that public protection would be achieved by allowing a good nurse to continue to treat patients.

The panel accepted the advice of the legal assessor, which included the reference to the case of *Giele v GMC* [2005] EWHC 2143 (Admin).

Decision and reasons on sanction

Having found your 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 feature:

- Your use of the prescription pad four times over a period of 6 months and when you realised you still had it, you chose not to return the pad but to use it instead.

The panel also took into account the following mitigating features:

- Large number of positive references and testimonials from patients and colleagues;
- [PRIVATE];
- Early admissions in relation to the majority of the concerns;
- Significant amount of evidence of further training that directly addresses the areas of concerns;
- No further incidents since 2019, whilst you have still been in a prescribing role;
- Has developed sufficient insight; and
- You misconduct was at the lower end of the dishonesty spectrum.

The panel referred to the NMC guidance on *Considering sanctions for serious cases*. It considered that none of the aggravating factors with regard to dishonest were present in your case and that your dishonest conduct was considered to be less serious in nature due to the following factors being present:

- opportunistic or spontaneous conduct
- no direct personal gain
- no risk to patients

The panel then went on to determine the appropriate sanction in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the dishonesty established. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 noted that you have shown sufficiently developed insight into your conduct. The panel noted that you made admissions to the majority of the charges and apologised to this panel for your misconduct, showing evidence of genuine remorse. You have engaged with the NMC since referral. The panel has been told that there have been no adverse findings in relation to your practice either before or since these events.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel acknowledged the numerous amounts of relevant training you have undertaken and that as the concerns are not clinical it would be difficult to formulate conditions that would address the dishonesty.

The panel concluded that no useful purpose would be served by a conditions of practice order. It would not be necessary to protect the public and would not assist your return to nursing practice. The panel further considered that a suspension order would be wholly disproportionate in this case.

The panel has decided that a caution order would adequately address the public interest. For the next five years, your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to this sanction.

The panel then considered your evidence when you told the panel that you love nursing and that you would be devastated if you were struck off. You also explained about the financial impact a striking off order would have on you and your family. You stated that given the opportunity you are willing to work with the NMC to ensure you can still practise as a nurse.

In making this decision, the panel carefully considered the submissions of Mr Radley in relation to the sanction that the NMC was seeking in this case. However, the panel considered that given the length of time it has taken for the case to be heard, you have used this time to effectively strengthen and amend your practice, retrain, reflect and develop insight into your failings. The panel also considered that there was no aggravating dishonesty, no risk to any patients and that you have worked for four years since these events without any concerns. The panel was of the view that a more restrictive sanction would be punitive in the circumstances.

The panel was aware that in most dishonesty cases a caution order would not be an appropriate sanction to impose but in the unusual circumstances of this case and as set out above, the panel determined that a caution order for a period of five years is the appropriate sanction to impose. The panel referred to the case of *Giele* and was of the view that the public would not be surprised or disappointed with the decision of the panel

and further, the public would consider that it would benefit from having a very competent nurse with your experience and background remaining on the NMC register.

The panel noted Mr Gilliland's submission concerning the NMC's decision not to impose an interim order on your practice when you were first referred.

Taking this into account and having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of five years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.