

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

**Substantive Hearing  
Tuesday, 6 August 2024 – Friday, 9 August 2024  
Monday, 12 August 2024 – Wednesday, 14 August 2024**

Nursing and Midwifery Council  
2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of Registrant:</b>	<b>Marcia Harding</b>
<b>NMC PIN</b>	00Y0286O
<b>Part(s) of the register:</b>	Registered Nurse - Sub Part 1 RN3: Mental health nurse, level 1 (January 2000)
<b>Relevant Location:</b>	London Borough of Enfield
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Scott Handley (Chair, Lay member) Shorai Dzirambe (Registrant member) Karen Naya (Lay member)
<b>Legal Assessor:</b>	Peter Jennings
<b>Hearings Coordinator:</b>	Sherica Dosunmu (6 – 12 August 2024) Hamizah Sukiman (13 & 14 August 2024)
<b>Nursing and Midwifery Council:</b>	Represented by Selena Jones, Case Presenter
<b>Ms Harding:</b>	Present Represented by Simon Holborn (NMCWatch) from the afternoon of 7 – 14 August 2024
<b>Facts proved by admission:</b>	All
<b>Facts proved:</b>	N/A
<b>Facts not proved:</b>	N/A

**Fitness to practise:**

**Impaired**

**Sanction:**

**Suspension order (2 months)**

**Interim order:**

**No order**

## Decision and reasons on application to amend the charges

At the outset of the hearing, the panel heard an application made by Ms Jones, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of the charges in this case. She drafted proposed amendments to the charges, which she submitted better reflected the evidence. She submitted that the NMC does not seek to introduce new evidence and the amendments would not cause any prejudice to you.

### Original charges:

- 1) *On 5 December 2022, instructed a junior colleague to take £500.00 of patient petty cash money as payment towards a staff Christmas party.*
- 2) *On 5 December 2022, instructed a junior colleague:*
  - a) *to create two inaccurate payment receipts for the amounts of £250.00 each and/or;*
  - b) *to state that the £500.00 taken was used to pay for patient Christmas lunches.*
- 3) *On 12 December 2022, submitted the payment receipts referred to in charge 2 a) above for approval.*
- 4) *On dates between 7 November 2022 and 12 December 2022 collected additional monies from staff members for the Christmas party.*
- 5) *Your conduct in 3) above were dishonest in that.*
  - a) *you were seeking to mislead the managing director that the £500.00 referred to had been used for patient activities when you knew it had been paid towards a staff Christmas party.*

Proposed drafted amendments:

- 1) On 5 December 2022, ~~instructed~~ **arranged for** a junior colleague to take £500.00 of patient petty cash money as payment towards a staff Christmas party.
- 2) On 5 December 2022, ~~instructed~~ **arranged for** a junior colleague:
  - a) to create two inaccurate payment receipts for the amounts of £250.00 each and/or;
  - b) to state that the £500.00 taken was used to pay for patient Christmas lunches.
- 3) On 12 December 2022 you, ~~submitted the payment receipts referred to in charge 2 a) above for approval.~~
  - a) **informed the managing director by email that you took patients out in 2 lots to a restaurant for a Christmas meal using a petty cash card and asked for his authorisation;**
- ~~4) On dates between 7 November 2022 and 12 December 2022 collected additional monies from staff members for the Christmas party.~~
- 4) Your conduct in ~~3) above were~~ 1), 2) and / or 3) above was dishonest in that you were seeking to mislead the managing director that the £500.00 referred to had been used for patient activities when you knew it had been paid towards a staff Christmas party **which patients did not attend.**

You indicated that you did not object to this application.

The panel suggested the word 'you' and the letter 'a)' in charge 3 were removed as redundant. You and Ms Jones were in agreement with this.

The panel accepted the advice of the legal assessor with regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) and the approach it should take to the question of amendment.

The panel was of the view that the proposed amendments were in the interests of justice, clarified the case against you and were more consistent with the evidence. The panel was satisfied that there would be no prejudice to you and that no injustice would be caused to either party by the proposed amendments being allowed. The panel therefore determined that it was appropriate to make the amendments above, to ensure clarity and accuracy.

### **Details of charge (as amended)**

That you, a registered nurse, whilst employed as the Director for Clinical Services

- 1) On 5 December 2022, arranged for a junior colleague to take £500.00 of patient petty cash money as payment towards a staff Christmas party. **[PROVED BY ADMISSION]**
- 2) On 5 December 2022, arranged for a junior colleague:
  - a) to create two inaccurate payment receipts for the amounts of £250.00 each and/or; **[PROVED BY ADMISSION]**
  - b) to state that the £500.00 taken was used to pay for patient Christmas lunches. **[PROVED BY ADMISSION]**
- 3) On 12 December 2022 informed the managing director by email that you took patients out in 2 lots to a restaurant for a Christmas meal using a petty cash card and asked for his authorisation; **[PROVED BY ADMISSION]**
- 4) Your conduct in 1), 2) and / or 3) above was dishonest in that you were seeking to mislead the managing director that the £500.00 referred to had been used for

patient activities when you knew it had been paid towards a staff Christmas party which patients did not attend. **[PROVED BY ADMISSION]**

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

## **Background**

The NMC received a referral on 6 February 2023 from Priory Group Limited (the Group), in relation to your fitness to practise. At the time of the concerns raised in the referral you were employed as the director of clinical services at Priory Hospital Avesbury House (the Hospital), a mental health rehabilitation and recovery unit.

In December 2022, as the director of clinical services, you liaised with the finance administrator (Colleague B) in order to book a venue for a staff Christmas party on 10 December 2022. The Group was willing to contribute £20 per person. The venue price per person was £42, which meant that each member of staff would have to contribute £22 towards the party.

A request was made to the Group's Treasury to pay a £1,200 deposit to the venue, and Colleague F, from treasury wired £1,200 directly to the venue. This was intended to be the deposit for 60 members of staff at £20 each.

Staff members were initially asked to contribute £25 per person towards the Christmas party. However, a verbal agreement was later made with staff that the contribution would be changed to £15 per person. In the end, the number of people who attended, and paid, was far less than the 60 envisaged and a total of £400 was collected from staff members. This created a shortfall, as the staff contribution no longer covered the difference between the venue price and the Group's contribution.

The referral alleges that on 5 December 2022, you arranged for Colleague B, the finance administrator who was a junior member of staff to you, to take £500 from the patient activity budget as payment towards the staff Christmas party, as this budget was underspent. It is alleged that this was facilitated by the creation of two inaccurate payment receipts for the amounts of £250 each, incorrectly showing that the £500 taken was used to pay for patient Christmas lunches. Both the payments for the amount of £250 were made on 5 December 2022, using the petty cash card, before the Christmas party took place.

On 12 December 2022, you allegedly contacted the managing director (Colleague C) requesting authorisation, and informed him that you took patients out in two lots to a restaurant for Christmas meals totalling £500 using the petty cash card. Colleague C asked you to provide receipts and copied in the hospital director (Colleague A), who you had not initially included in the email. Colleague A advised Colleague C not to authorise this request, apparently because Colleague B had spoken to him and explained what had taken place. On 14 December 2022, Colleague C had a one-to-one meeting with Colleague A and a discussion about these concerns was added to the agenda.

In light of the concerns raised on 14 December 2022, you were suspended on 15 December 2022 pending investigation. On this same date, you sent an email to Colleague C apologising for asking him to authorise the use of the petty cash card.

A meeting was held on 21 December 2022, where you admitted to falsifying documents along with Colleague B to obtain funds from the patient activity budget for the staff Christmas party.

On 16 January 2023, you resigned from your post with immediate effect while the investigation was still ongoing. The investigation concluded the matter should go to a disciplinary hearing which you attended on 1 February 2023. The disciplinary panel upheld the allegations, concluded that your actions amounted to gross misconduct.

## **Decision and reasons on facts**

Following the accepted amendments, you admitted to charges 1, 2(a), 2(b), 3 and 4.

The panel therefore finds charges 1, 2(a), 2(b), 3 and 4 proved, by way of your admissions.

## **Representation and Adjournment**

The panel was aware that prior to the start of the substantive hearing you were represented. However, your representative was not available for the dates of the hearing and came off the record shortly before the start of these proceedings. You informed the NMC that you wished the hearing to proceed and did not seek an adjournment.

However, on 7 August 2024, before your submissions on misconduct and impairment, the panel was notified that during a preliminary discussion you indicated that you now wished to have legal representation for the remainder of the hearing but had not had enough time to arrange it.

The panel allowed you the opportunity to make further enquiries about representation and you were able to retain Mr Holborn to represent you. On the afternoon of 7 August 2024, following submissions from the parties, the panel considered whether to adjourn the hearing until 9 August 2024 so that Mr Holborn could familiarise himself with the case and the material and obtain your full instructions.

The panel was informed of Mr Holborn's other commitments during the next week or so. It was of the view that these could be accommodated without adversely affecting the progress of this hearing.

In these circumstances, the panel regarded an adjournment as fair and in the interest of justice and granted an adjournment until Friday, 9 August 2024.



On 9 August 2024, the panel heard submissions from Mr Holborn. The panel requested some further documentation in relation to the training courses and counselling referred to by Mr Holborn and, at his request, adjourned the hearing to Monday, 12 August 2024 to afford you and Mr Holborn the opportunity to obtain this information.

### **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 amounted to misconduct. Secondly, only if the facts found proved amounted 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**

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

Ms Jones invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of '*The Code: Professional standards of practice and behaviour for nurses and midwives 2015*' (the Code). She identified the specific, relevant standards where she submitted your actions amounted to misconduct. In particular, she stated that you have breached the following sections of the Code, 20 and 20.1.

Mr Holborn submitted that you accept that your actions constitute misconduct. He submitted that, at the time, your intention was to uplift staff morale during a challenging period, but you now understand that your approach was misguided and unethical. He submitted that you realise you have let your colleagues, patients, employer and profession down by your actions and you are clear that you were wrong, bear the blame and will not repeat these actions.

Mr Holborn submitted that you deeply regret your actions and the impact they have had on the trust placed in you as a nurse. He stated that you sincerely apologise for the dishonesty and misuse of patient funds.

### **Submissions on impairment**

Ms Jones addressed the panel on the issue of impairment and reminded the panel 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. She made reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Ms Jones submitted that your fitness to practise is currently impaired. She submitted that there has been no evidence of remediation, which is particularly important in the context of this case as your actions arise from matters that are attitudinal in nature. She submitted that the testimonials you have provided do little to assist you on current impairment.

In respect of the testimonials, Ms Jones highlighted that some are over a year old, and one unsigned and undated. She referred to the testimonial provided by Colleague G, who worked with you at the Hospital, and indicated that there is a paragraph within this testimonial where your colleague refers to the circumstances of the dishonesty charged in this matter. She submitted that this section of the testimonial should be disregarded as it is not a matter for your referee to address and her account is also inconsistent with your admissions made at the facts stage.

Ms Jones submitted that nurses occupy a position of privilege and trust in society and the concerns in this case are so serious that a finding of impairment is required to maintain public confidence in the profession. She invited the panel to find your fitness to practise impaired on public interest grounds.

Mr Holborn informed the panel that you have been a nurse for 28 years, after first qualifying in Barbados, and you have been registered in the UK since 2000. He stated that you have served as a nurse in various capacities, most recently for the Prison Service (ongoing via the Belmont Recruitment Agency) and formerly as the director of clinical services at the Hospital. He submitted that prior to this incident you have been a dedicated dependable nurse and, in the period following this incident, you have acted accordingly, with your testimonials and reflections attesting to this.

Mr Holborn submitted that following the incident, you made early admissions and have dedicated yourself to reflecting on your actions and understanding the underlying causes of your behaviour. He stated that you have come to realise that your actions stemmed from a place of desperation to improve staff morale, but you acknowledge that this does not excuse the breach of trust and professional standards that occurred. He submitted that you have reflected on this in your ongoing practice.

Mr Holborn stated that you acknowledge that at the time of the incidents, your fitness to practise was impaired. He submitted that your actions demonstrate a significant lapse in

judgment, but this was a one-off discrete event and in no way represents your normal manner of working.

Mr Holborn submitted that your fitness to practise is no longer impaired. He submitted that in addition to an acceptance of responsibility for your actions, you have since undertaken definite steps to address and remediate your behaviour. He submitted that this has included reflective practice, additional training in courses such as ethics and financial management, as well as undertaking counselling to manage stress. He also referred to the positive testimonials provided from colleagues and supervisors, which he submitted provide a fuller picture of your character and demonstrate that the incident was an isolated lapse in an otherwise exemplary career.

Mr Holborn submitted that taking into account the comprehensive measures you have undertaken, the risk of repetition is minimal to non-existent. He submitted that you are committed to applying the lessons you have learned to provide the highest standard of care to your patients and to support your colleagues in their professional development. He submitted that you would like the opportunity to demonstrate through your actions that you are capable of upholding the principles of honesty, integrity, and excellence that are central to nursing.

In response to questions from the panel, Mr Holborn stated that you have a growing realisation of the work that “*needs to be done*”, which is an ongoing process. However, he submitted that if the test of impairment is the ability to work without supervision, then you are not currently impaired.

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

## **Decision and reasons on misconduct**

In reaching its decision, the panel took account of all of the evidence and submissions.

When determining whether the facts found proved amounted to misconduct, the panel had regard to the terms of 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:

***'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.*

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

*21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, ...'*

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 the charges individually and collectively as well as the circumstances of the case as a whole.

The panel bore in mind that your actions did not arise from a wish to make a personal profit. You were trying to extricate yourself from a situation which arose because the contributions from those who attended the staff party fell short of the outstanding sum due to the venue. However, in diverting funds from the patient activities budget and seeking the managing director's authorisation for this on a false basis, you acted dishonestly.

The panel considered that in charges 1, 2(a), 2(b) and 3 you misdirected funds allocated to patient activities, by arranging with a junior member of staff for £500 to be extracted

from the Group's patient budget and to be used towards a staff Christmas party. The panel was of the view that this is an unacceptably low standard of professional practice. It found your actions in charges 1 to 2b exacerbated by your further dishonesty in charge 3, whereby you sought to conceal your actions by attempting to mislead your managing director that the funds had been used towards patient activities. It reminded itself that honesty and integrity are fundamental to the nursing profession, and determined that your actions individually and collectively would be considered deplorable by fellow practitioners and damaging to the trust that the public places in the profession.

The panel therefore concluded that your actions in charges 1 to 4 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, your fitness to practise is currently impaired. It again took account of all of the evidence, including your reflective pieces and the testimonials and other documents submitted on your behalf, and the submissions of Ms Jones and Mr Holborn.

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 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... 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 bore in mind that the concerns in this case did not directly relate to patient care or your clinical practice. Taking into account all of the evidence adduced in this matter, it was not satisfied that your actions placed patients at unwarranted risk of harm and therefore determined that limb 'a' of the 'test' was not engaged.

However, the panel was satisfied that your misconduct did engage limbs 'b', 'c' and 'd' of the 'test'. Having found that you misdirected funds from a patient budget and dishonestly

attempted to conceal this, it determined that your misconduct had breached the fundamental professional tenets of honesty and probity and brought the nursing profession into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not regard findings of dishonesty as extremely serious.

The panel next went on to consider the matter of insight. It acknowledged that you immediately admitted to your actions, apologised and offered to pay the sum back at an early stage. It also noted that you have provided a written reflection in which you demonstrated an understanding of what you did wrong and an acceptance of the seriousness of your actions. The panel was, however, of the view that the evidence of the impact of your reflection on your current thinking was incomplete and that you have not fully developed your insight to demonstrate how you would manage similar situations in the future.

The panel determined that the misconduct in this case evidenced behaviour that is inherently more difficult to put right and it regarded the concerns as attitudinal in nature. However, the panel was of the view that your initial awareness of what you have done wrong and your expressions of genuine remorse, alongside the background that the misconduct related to an isolated episode, indicated that you did not have deep seated attitudinal issues.

The panel carefully considered the evidence before it in determining whether or not you have taken appropriate steps to strengthen your practice. The panel acknowledged that you have completed some training relevant to the concerns in this case, such as the Counter Fraud course on 21 January 2023. However, it determined that the evidence you have provided demonstrates your awareness of your wrongdoing, though it provides perhaps rather less evidence of your current ability to manage similar circumstances differently.

In spite of those matters, the panel was of the view that the risk of repetition in your case is minimal. The situation arose not because of any greed on your part, but because of the



need to deal with the difficulty that there was an outstanding sum due to the venue not covered by the contribution of those who had attended. You have assured the panel, firstly, that you would not put yourself in a similar situation again; and secondly, that if some difficulty did arise, you would approach the management and explain the situation. The panel was satisfied that you are not an inherently dishonest person and it accepts that you have shown remorse, for example by resigning your position and offering to repay the money. Although the panel has regarded your insight as incomplete, it is nonetheless of the view that any repetition of your misconduct is extremely unlikely.

In the light of those matters, the panel does not find that your fitness to practise is impaired on public protection grounds.

However, the panel bore in mind that the overarching objectives of the NMC are not only to protect, promote and maintain the health, safety, and well-being of the public and patients, but also to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

The panel considered that your proven misconduct in misdirecting funds from the patient activity budget and dishonestly attempting to conceal your actions, raises concerns about your integrity as a nurse. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore found your fitness to practise impaired 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, but on public interest grounds alone.

## **Sanction**

The panel has considered all the information before it very carefully and decided to make a suspension order without a review for a period of two months. As a result of this order, the NMC register will show that your registration has been suspended.

### **Submissions on sanction**

Ms Jones reminded the panel that, in light of the panel's findings on impairment, it should consider the principles of proportionality and weigh the interests of all parties, including yours, in its decision on sanction. She submitted that the panel is entitled to give greater weight to the public interest in this exercise.

Ms Jones further submitted that no conditions of practice can be imposed to maintain the public confidence. She submitted that, as the breaches were serious and relate to dishonesty, public confidence in the nursing profession and the NMC as its regulator would be seriously diminished if you were allowed to remain on the nursing register. She invited the panel to make a striking-off order.

The panel considered the written submissions provided by Mr Holborn in relation to possible sanctions in light of its findings on impairment:

*“Conditions of Practice provide a less severe, yet effective, means of addressing the misconduct while protecting the public and maintaining confidence in the profession. This sanction can be tailored to address the specific concerns raised by this case, ensuring that The Registrant’s future practice meets the highest standards.”*

The panel had regard for the conditions proposed by Mr Holborn, namely:

1. *“Supervision: The Registrant should work under the close supervision of a senior nurse or manager for a period of 12 months, with regular reviews and feedback provided to the NMC.*
2. *Ethics and Financial Management Training: The Registrant should complete additional training in ethics, integrity, and financial management, with evidence of completion submitted to the NMC within six months.*
3. *Reporting Requirements: The Registrant should provide quarterly reports to the NMC from her supervisor, confirming her adherence to professional standards and her progress in the areas of concern.*
4. *Restriction on Financial Management: The Registrant should be restricted from handling or managing patient or institutional finances for a period **of 12 months.**”*

In addition to his written submissions, Mr Holborn submitted orally that the misconduct was a one-off event and out of character, and he reminded the panel that you admitted your wrongdoing at an early stage. He invited the panel to consider your long career in nursing, and the close support you have received from your colleagues. He submitted that public confidence could be maintained with the imposition of a conditions of practice order, and submitted that his suggested conditions are rehabilitative and would satisfy the public interest.

In response to questions asked by the panel, Mr Holborn confirmed that you are currently working for the prison service as a first-line nurse. He told the panel that you have worked in this role since September 2023, and you obtained the contract via an agency. You told the panel that this role is full-time.

## **Decision and reasons on sanction**

Having found your fitness to practise currently impaired on public interest grounds alone, 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 decision on sanction is a matter for the panel independently exercising its own judgement.

In reaching this decision, the panel considered all the evidence that has been adduced in this case, as well as the submissions made by Ms Jones and Mr Holborn. The panel had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel heard and accepted the advice of the legal assessor concerning its powers and the principles which it should take into account in making its decision on sanction.

The panel took into account the following aggravating feature:

- Abuse of a position of trust, namely your managerial role.

The panel also took into account the following mitigating features:

- Early admissions to the facts;
- Evidence of insight, such as the acknowledgement of your wrongdoing and completing relevant training;
- The remorse you have shown, both referred to in the testimonials you have provided and within your written reflections, and evidenced by your apology offered to your manager, your offer to pay the money back and your resignation following the incident;
- Personal circumstances, namely that you [PRIVATE] and received limited support within your working environment;

- Almost two years have passed since your misconduct and there has been no repetition of the incident;
- You have kept up to date with your nursing practice in the time since the incident; and
- You are held in high esteem by professional colleagues, and you adduced a number of testimonials in these proceedings indicating your general character, including your professionalism and caring nature.

The panel also had regard to your previous good character and your long history of safe and effective practice.

The panel then considered the seriousness of your case. It had regard to the NMC Guidance entitled “*Considering sanctions for serious cases*” (SAN-2), with specific reference to the guidance on cases involving dishonesty.

The panel had regard to the considerations set out in the guidance which outlined more serious instances of dishonesty, namely:

- Deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care;
- Misuse of power;
- Vulnerable victims;
- Personal financial gain from a breach of trust;
- Direct risk to people receiving care; and
- Premeditated, systematic or longstanding deception.

The panel was satisfied that, of the above, only the misuse of power applied. The panel considered that you were in the position to misdirect the funds, in the first place, due to your managerial position.

In the panel's view, your email to your managing director formed part of the deception, rather than being a cover-up of the sort that would be described as a breach of the duty of candour. It was satisfied that you admitted your wrongdoing when the investigation against you commenced. Accordingly, it determined that the first consideration does not apply. The panel was also of the view that none of the remaining considerations applied in this case.

The panel also had regard to the considerations which outlined less serious instances of dishonesty, namely:

- One-off incidents;
- Opportunistic or spontaneous conduct;
- No direct personal gain; and
- Incidents outside professional practice.

Whilst the episode was not in a clinical context, it did occur within your professional practice. The panel was, however, satisfied that the remaining three of the above considerations applied in this case. The panel had regard to its earlier findings and was satisfied that this was a one-off incident which arose as a spontaneous reaction to a difficult set of circumstances, rather than for your direct personal gain.

The panel noted that cases involving dishonesty are always regarded as serious. However, on balance, the panel determined that your case involved several of the considerations which places it at the lower end of the seriousness spectrum, and only one of the considerations which would place it at the upper end. Accordingly, the panel was satisfied that your case is towards the lower end of seriousness on the spectrum of cases involving dishonesty.

The panel bore this in mind when determining what sanction, if any, should be imposed.

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 noted its decision on seriousness. It was of the view that, whilst it is at the lower end of seriousness, as a case involving dishonesty it is inherently serious. Accordingly, the panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order. The panel noted that it has found that there are no public protection issues, and your fitness to practise is impaired on public interest grounds only. It considered the public interest in marking the seriousness of your misconduct, in light of your level of insight. The panel concluded that a caution order would not sufficiently mark the seriousness of the misconduct and address the public interest concerns identified.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that, whilst some of the considerations above are present in this case, no practical or workable conditions could be formulated which would be appropriate to the specific public interest concerns identified. For the reasons set out in its determination on impairment, it was satisfied that the risk of repetition of your misconduct is minimal. Conditions of the sort suggested by Mr Holborn, requiring supervision, reporting, further training and a prohibition on managing finances are in the panel's view neither necessary nor appropriate. Furthermore, the panel concluded that, in any event,

the placing of conditions on your registration would not adequately mark the seriousness of this case and sufficiently meet 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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel was satisfied that each of those considerations applied in your case.

The panel was of the view that you are fundamentally dishonest, and this was a one-off, out-of-character incident for which you have shown remorse. Accordingly, the panel concluded that the misconduct was not fundamentally incompatible with remaining on the register.

Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction. The panel noted the hardship such an order will inevitably cause you, personally and financially. However, in the panel's view, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to declare to the public and the profession the standard of behaviour required of a registered nurse.

The panel did consider whether a striking-off order would be proportionate, and it had regard to Miss Jones' submissions on the striking-off order the NMC was seeking.



However, taking account of all the information before it and of the mitigation provided, the panel concluded that this would be disproportionate. The panel also bore in mind the benefit to the public of retaining the services of a valued and caring nurse. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be disproportionate and unduly punitive in your case to impose a striking-off order.

The panel determined that a suspension order for a period of two months was appropriate in this case to mark the seriousness of the misconduct. The panel was satisfied that this order, for this period is the least restrictive sanction which balances the public interest with your interests and that it is the proportionate order to make in this case.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel bore in mind that it determined there were no public protection concerns arising from its findings and that it found your fitness to practise impaired on the grounds of public interest alone.

The panel was satisfied that the substantive suspension order will satisfy the public interest in this case and will maintain public confidence in the nursing profession as well as the NMC as the regulator. Further, the suspension order will declare and uphold proper professional standards. Accordingly, the current suspension order will expire, without review, at the end of the two-month period.

This will be confirmed to you in writing.

### **Interim order**

As the suspension order cannot take effect until the end of the 28-day appeal period, or the determination of an appeal, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is

satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in your own interests.

### **Submissions on interim order**

Ms Jones invited the panel to impose an interim suspension order to cover period until the substantive order comes into effect, to mirror the panel's decision on the substantive sanction. She submitted that this would cause no prejudice to you, and that an interim order is necessary on both public protection and public interest grounds.

In response to questions asked by the panel, she submitted that an interim order is necessary given the panel's findings on dishonesty. She further submitted that, although the panel has imposed a short substantive suspension, it would be appropriate to impose an interim order which mirrors the substantive sanction. She told the panel that the NMC is unsure if you would appeal the decision, but she submitted that this is not a precursor to whether an interim order should be made. She reiterated that this is a decision for the panel.

Mr Holborn informed the panel that, as you are currently working, you may need time to make the appropriate arrangements prior to the imposition of the suspension order. He told the panel that, presently, you have not given him instructions on a potential appeal.

Mr Holborn submitted that the panel has found that there is no risk of repetition, and no public protection concerns have been identified. Consequently, he submitted that an interim order would not be necessary.

The panel heard and accepted the advice of the legal assessor concerning the powers and the principles to which it should have regard.

## **Decision and reasons on interim order**

In reaching its decision, the panel took into account all the information before it, including submissions from Ms Jones and Mr Holborn, and the NMC guidance on interim orders (INT-1). The panel also bore in mind its decision on the substantive sanction.

The panel considered that it found no public protection concerns in this case. Accordingly, the panel was satisfied that an interim order is not necessary on public protection grounds. The panel also considered that there is no indication of any matters which would suggest that an interim order would be in your interest, and it determined that an interim order is not needed on this ground.

The panel noted its finding of impairment on public interest grounds, and considered whether an interim order would be otherwise in the public interest, in order to maintain confidence in the profession and to uphold standards, even though it is not necessary for public protection. It bore in mind that the threshold for making an order on this ground alone is a high one. The panel was of the view that the public interest in marking the seriousness of your misconduct can be satisfied by the substantive suspension order taking effect in due course.

The panel also took into account that if an interim suspension order were imposed, this would have the effect that you could be subject to an order for what may be a significant period of time in addition to the two months' suspension which the panel has decided is proportionate.

In these circumstances, and in light of the high bar to impose an interim order on public interest grounds alone, the panel was not persuaded that an interim order is either required or proportionate in this case.

That concludes this determination.