

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

**Substantive Hearing
Monday, 22 January 2024 – Wednesday, 31 January 2024**

Virtual Hearing

Name of Registrant: Lucie-Ann Blumfield

NMC PIN 0910814E

Part(s) of the register: Registered Nurse – Adult
Effective – 17 January 2010

Relevant Location: London

Type of case: Misconduct

Panel members: Judith Webb (Chair, Lay member)
Elaine Biscoe (Registrant member)
Caroline Taylor (Lay member)

Legal Assessor: Gillian Hawken

Hearings Coordinator: Amanda Ansah

Nursing and Midwifery Council: Represented by Alban Brahimi, Case Presenter

Miss Blumfield: Present and represented by Lucy Chapman,
instructed by Royal College of Nursing (RCN)

Facts proved by admission: All Charges

Fitness to practise: Impaired

Sanction: **Caution order (3 years)**

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

At the outset of the hearing, Ms Chapman, on your behalf, made a request that this case be held partially in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Brahim, on behalf of the Nursing and Midwifery Council (NMC), indicated that he did not oppose the application.

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 that it would go into private session [PRIVATE] as and when such issues are raised in order to maintain your privacy.

Details of charges

That you, a registered nurse:

1. Between 1 July 2020 and 31 August 2021, on one or more occasions as set out in Schedule 1, used a patient only taxi account for your personal use.
2. Your conduct at Charge 1 was dishonest in that:
 - a. You knew you were not permitted to use the patient only taxi account but did so anyway and/or;
 - b. You did so for financial gain.

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

SCHEDULE 1

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1 JULY 2020 – AM
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24 NOVEMBER 2020
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4 DECEMBER 2020 - AM
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21 MARCH 2021
15 APRIL 2021
16 APRIL 2021
11 MAY 2021
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21 MAY 2021
22 MAY 2021
24 MAY 2021 - PM
24 MAY 2021 – PM
25 MAY 2021
27 MAY 2021
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Background

The charges arose whilst you were employed as a Band 7 Senior Sister at the St Mary's Hospital, Emergency Department for the Urgent and Emergency Medicines Directorate of Imperial College Healthcare NHS Trust (the Trust). In June 2021, the finance department raised an alert that there had been high spending recorded on the patient-only taxi account. An audit revealed that between June 2020 and August 2021, you had used the

service 134 times for your own personal use. These bookings cost in excess of £6000, and none of them had any patient name or medical record number (MRN) number associated with them. You were listed as the only passenger. Some of the journeys were from the Hospital to your home address, but others were from your home address to pubs, spas, or other private residences. The audit revealed that several of the journeys were booked when you were not working that day.

A referral to the NMC was made by the Trust on 16 September 2021. The Trust initiated a local investigation into the concerns. At a disciplinary hearing held on 15 November 2021, you were summarily dismissed for gross misconduct.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Chapman, who informed the panel that you made full admissions to all of the charges including in relation to all of the occasions specified in schedule 1.

The panel therefore finds all charges proved in their entirety, by way of your admissions.

Having found the facts proved in this case, both parties invited the panel to make a finding in relation to one disputed piece of evidence, namely what you said to Witness 1 when you were initially informed of the allegations at the Trust on 10 September 2021. Mr Brahim explained to the panel that there was a dispute with regards to the alleged wording *“am I going to lose my job, if I ask my family to pay you back all of the money, will you make this go away?”*

Although this is not a formal charge, the panel considered all the oral and documentary evidence on this disputed wording together with the submissions made by Mr Brahim and Ms Chapman.

The panel heard live evidence from Witness 1, a Matron at the Trust, called on behalf of the NMC with regard to this disputed wording. The panel also heard evidence from you under oath.

The panel accepted the advice of the legal assessor.

Witness 1 told the panel that she recalled that you were very distressed and apologetic in this meeting and that although you initially denied the allegations, you then admitted that you had used the patient-only taxi account for personal reasons. Witness 1 said that at this short meeting, you stated, *“am I going to lose my job, if I ask my family to pay you back all of the money, will you make this go away?”* Witness 1 told the panel that she thought it was a *“sweeping statement”* from you and that you were *“very distressed at the time”*. Witness 1 also told the panel *“I didn’t really think about it, I just noted it down”* and that she wrote her local statement of that meeting *“straight away”*.

Witness 1 confirmed in her evidence that *“the words I’ve given in the statement are the words [the registrant] used”*. When asked in cross-examination whether it was possible that you wanted to *“right your wrongs”*, Witness 1 agreed that that was a possibility. Witness 1 gave evidence that you were known as a very good nurse, you were a very well-liked member of the team, and that there had been no other issues at all prior to these events.

You told the panel that you are *“pretty sure”* that you did not say these words and that it was never your intention to stop the Trust’s investigation. You said that you do not believe that you tried to bribe your way out of the situation, and that you were not expecting to *“get away with it”*. You told the panel that you had offered to pay the money back to the Trust on at least 3 occasions. You said that with regards to these specific words you truly believe that this was a misunderstanding of what you had said and noted in your evidence that you have admitted to everything else that has been alleged by the NMC.

Witness 1 made a contemporaneous record of the conversation and in it quoted your response as direct speech. The panel having heard all the evidence, was satisfied on the balance of probabilities and with particular regard to Witness 1's local statement to the Trust at the time of the initial meeting with you informing you of the allegations and investigation, that you had used these words.

The panel had regard to Mr Brahimi's submission that these words had "*the tone of a bribe*" and that you were intending to conceal your actions and stop the Trust's investigation.

Having heard from Witness 1 and from you, the panel was not satisfied that you said these words with an intention to bribe Witness 1. Witness 1 agreed that it was a possible attempt to put right your wrongdoing. In the panel's view, these words were said out of panic when you were initially faced with these allegations. It was not an attempt by you to avoid the consequences of your actions and more likely to have been an intention to put right your wrongdoing.

Although the panel was satisfied that the words were said, it was not satisfied that they were used as a calculated attempt to stop the Trust's investigation.

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 ability to practise kindly, safely, and professionally.

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

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, 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 Brahimî invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) in making its decision.

Mr Brahimî identified the specific, relevant standards where your actions amounted to misconduct and provided the following written submissions:

“The NMC submit that the remainder of proven charges amount to misconduct. The following submissions are collectively made in respect of the proved charges:

- a. The Registrant has demonstrated a breach of trust with monetary accounts within a workplace. Although this was not tangible money, the use of accounts resulted in financial loss to a Hospital Emergency Department. The improper use of taxi accounts intended for patients would be considered an act which falls short of what would be proper in the circumstances from a nurse.*

- b. The amount of financial impact that this expenditure had on an emergency hospital amounted to over £6,000 and the conduct took place over a thirteen-month period. This is a significant amount of money over a long period of time which connotes a serious breach in so far as the Registrant's fitness to practice.*
 - c. The fact that this account was intended for patients who were vulnerable at a time of crisis (Coronavirus pandemic) and was instead being used by the Registrant for unintended purposes, such as social events, would be behaviour considered as deplorable by fellow practitioners.*
 - d. The Registrant did not pay this amount back and still has not paid this amount back although it has been over 2 years since the incident unfolded. The Registrant did not come forward in respect of her conduct until she was caught and the NMC submit that this is contrary to the rules and standards required by a medical practitioner.*
- 2. The NMC say that the following parts of The Code have been breached, but of course the Panel is able to consider any other parts as it sees fit (note that it is the 2015 version of the Code that applies in this case):*
- 4 Act in the best interests of people at all times;*
 - 8 Work cooperatively;*
 - 10 Keep clear and accurate records relevant to your practice;*
 - 14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place;*
 - 19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice;*
 - 20 Uphold the reputation of your profession at all times;*
 - 21 Uphold your position as a registered nurse, midwife or nursing associate;*

25 *Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system.*

3. *Overall, the NMC further submits that the Registrant's actions as proven fall far short of what would be expected of a Registered Nurse. The public would expect that the profession will have staff that uphold a professional reputation. The Panel may find that most in breach are that of "20" and "21" above. The Registrant has clearly put into question of whether nurses can be trusted to independently operate accounts that are designed to assist patients only. The misuse of accounts may have an effect on a hospital's trust (confidence in employees), leading to the possible withdrawal of such services – which in turn impacts genuine users such as patients. The Registrant has also put her own practice into question as to whether she can be trusted with any accounts that are not intended for her use. Overall this will also have an effect on the public's trust in the medical profession.*

4. *The NMC therefore invite the Panel to find misconduct."*

Ms Chapman told the panel that it is accepted that the conduct is misconduct and is serious. She further told the panel that at the time of the misconduct, your practice was impaired on public interest grounds. However, what the panel must consider now is whether or not your fitness to practise is currently impaired.

Ms Chapman submitted that it seems to be accepted by the NMC that there is no risk to patient or public safety in this case as there are no clinical concerns as to your practice whatsoever. Therefore, you do not agree that you are in breach of the parts of the Code cited by Mr Brahimi in his submissions that fall under paragraphs relating to clinical care, namely: 8, 10, 14, 19, and 25. However, you do accept that you breached the relevant parts of the code relating to honesty and integrity, in particular paragraphs 20 and 21.

Ms Chapman referred the panel to Mr Brahimí's submissions that the risk to patients could be a scenario being that should a patient have been in urgent need of a taxi and there was none available, then this could have been as a result of your conduct. She told the panel that this is not accepted as Addison Lee is one of the largest taxi firms in the UK. She submitted that it would be implausible that that would ever be the case.

Ms Chapman submitted that this does not detract from Mr Brahimí's other point, which is entirely accepted, that using funds intended for patients causes a greater harm in terms of using resources scarcely available for the intention of their well-being. She submitted that as a further point of clarity, it is not the case that this taxi service was reserved for vulnerable patients during the pandemic, it was used as transport beyond the pandemic for patients to and from hospital. She told the panel that there is no evidence that it was designated that patients be particularly vulnerable in order to use it. Therefore, it ought not to be considered an aggravating factor.

Submissions on impairment

Mr Brahimí moved on to the issue of impairment and provided the following written submissions:

5. *'Current impairment is not defined in the Nursing and Midwifery Order of the Rules. The NMC have defined fitness to practise as the suitability to remain on the register without restriction.'*
6. *The Panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin):*

“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:

- (i) Has in the past, and/or is liable in the future to act as so as to put a resident or residents at unwarranted risk of harm;*
- (ii) Has in the past, and/or is she liable in the future to bring the profession into disrepute;*
- (iii) Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;*
- (iv) Has in the past, and/or is she liable in the future to act dishonestly.”*

7. As further stated at paragraph 74 of Grant, the Panel should:

“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.

8. The NMC say that the Registrant is impaired and that the latter 3 limbs of Grant are engaged in this case.

9. The second limb is engaged as a result of the Registrant’s behaviour, as found proven, plainly brings the profession into disrepute:

- a. The Registrant was in band 7 role and in a position of responsibility, where she is supposed to be an example to other nurses. It is unacceptable that any individual engages in such behaviour and repeats it over a period of time. Members of public may lose confidence in whether staff are genuinely using accounts within the workplace. This could lead to the employer having fear and concern of offering these accounts and*

ultimately withdraw such services. These services are provided by the government and as quickly as they are provided, risks and concerns may lead to them being quickly taken away.

10. The third limb is engaged, where the Registrant has plainly breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above, but in particular:

- a. Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place (14.2 and 14.3);*
- b. Uphold the reputation of your profession at all times (20.1 and 20.2);*
- c. Uphold your position as a registered nurse, midwife or nursing associate (21.3).*

11. The fourth limb is engaged as a result of the Registrant having been found proven of acting dishonestly. The Panel have accepted the Registrant admissions that she did not have permission to use the patient only taxi account and that it was for financial gain. This causes the following concerns (but not limited to):

- a. This kind of behaviour presents a risk to funds within the medical profession. As limited and scares as such funds are in the nursing profession (often being debated in the media, leading to strikes and campaigns) this behaviour adds to this pressure where funds were being improperly reduced by the Registrant.*
- b. The medical profession is also put into question where patients may ask whether funds intended for them are being misused by the very people they have trusted to look after them.*

12. As further stated at paragraph 74 of Grant, the Panel should:

“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.”

13. *The NMC submit that there is a serious departure from the standards expected of a nurse and that the behaviour is incompatible with ongoing registration. The Panel should consider impairment on the following grounds:*

14. Public protection

- a. *A real risk of harm does not arise out of the Registrant’s clinical practice, but rather the possible consequences where funds and services are misused. A scenario being that should a patient have been in urgent need of a taxi and there was none available then this could have been as a result of the Registrant’s conduct. It should also be noted that funds are not unlimited and in this instance a significant amount of money was taken away which would have deprived the hospital of proper financial use and help to patients.*
- b. *The charges demonstrate there was a persistent and prolonged course of dishonesty. Therefore, there is a strong risk of repetition given there were over 100 instances of improper use over a period of 1 year. The Panel have heard from the Registrant that her financial position is not yet entirely debt-free and this presents a risk as to whether should would step into similar dishonest conduct. A further concern in this behaviour being repeated as that the Registrant behaved in this way until she was caught, therefore she did not come forward or bring her conduct to the attention of any regulatory body.*

15. Otherwise in the public interest

- a. *A member of public's confidence in the medical profession would be deeply undermined as upon learning about these charges, they would have doubts about how medical professionals behave within the workplace, in particular questioning the genuine use of accounts within a medical setting. The Registrant's behaviour suggest that there are fundamentally harmful and underlying attitudinal concerns given the extent of how much this behaviour was repeated. This conduct extends to more than just an isolated incident of dishonesty and rather, it is clear example of a prolonged breach of trust. Dishonesty is a serious concern and this breach not only undermines the trust employers extend to their employees but also raises concerns for patients, where they would question whether a nurse should be trusted in any other area of practice. Once you lose trust in a person, it is very difficult to recover from. As a result of the Registrant's abuse of position, the NMC submit that the honesty and integrity of the medical profession has been challenged and evidently been put into disrepute.*

16. As such the NMC invite the Panel to find that the Registrant is currently impaired.'

Ms Chapman submitted that limb a) of the Grant test is not engaged due to the lack of clinical concerns, however the other limbs are engaged in the past tense. Namely, the registrant having in the past brought or being liable in the future to bring the medical profession into disrepute. She submitted that your past conduct has brought the nursing profession into disrepute. In terms of whether you have in the past or are liable to in the future breach, one of the fundamental tenets of the medical profession, she submitted that it is accepted your past conduct has breached fundamental tenets of the profession, and these are honesty and integrity.

Ms Chapman submitted that in terms of whether you have in the past acted dishonestly and are liable to act dishonestly in future, it is accepted that you acted dishonestly in the

past. However, with regard to the three previous limbs, that behaviour has not continued since the period of the allegations concerned. She submitted that the incidents occurred several years ago, so it is not the present case.

Ms Chapman referred the panel to the NMC's Guidance 'Insight and Strengthened Practice' which sets out various factors for the panel to consider. It states that when assessing evidence of the nurses' insight and the steps they have taken to strengthen their practice, decision makers will need to consider the following questions:

- Can the concern be addressed?
- Has the concern been addressed?
- Is it highly unlikely that the conduct will be repeated?

Ms Chapman submitted that regarding whether the concern can be addressed, the NMC Guidance FTP-13a states that decision makers should always consider the full circumstances of the case in the round when assessing whether or not the concerns in the case can be addressed. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious. The NMC Guidance FTP-13b considers the heading has the concern been addressed and under the heading demonstrating insight, before effective steps can be taken to address the concerns, the nurse must recognise the problem that needs to be addressed.

Ms Chapman informed the panel that insight on the part of the nurse is crucially important. A nurse who shows insight will usually be able to step back from the situation and look at it objectively, recognise what went wrong, accept their role and responsibilities and how they are relevant to what happened, appreciate what could and should have been done differently, and understand how to act differently in the future to avoid similar problems happening. She submitted that you have done all of this, and it is apparent from your reflective pieces, testimonials, and most importantly, your oral evidence to the panel.

Ms Chapman referred the panel to the heading within the FTP-13b NMC Guidance assessing whether insight is sufficient, in which she drew the panel's attention to the following considerations under it:

- If they had the opportunity to do so, did the nurse cooperate with their employers or any local investigation into the concerns?
- Did the nurse accept the concerns against them when first raised by the employer?
- Does the nurse accept the substance of our regulatory concern?
- And accept responsibility for any failings or inappropriate conduct.
- Has the nurse done so since the early stages of our investigation?
- And does the nurse acknowledge any risk of harm to patients?
- Any damage to public confidence in the professions, how far their conduct or practice fell short of professional standards, their own responsibility for the problem without seeking to blame others or excuse their actions.

Ms Chapman submitted that the quality of your insight, considering all of these factors which you have addressed in both your oral and written evidence and the documents provided, is very high. She submitted that you have cooperated with the employer and the NMC throughout from the earliest opportunity and you are clear that the contextual factors you put forward, as in your personal situation at the time and what was going on at work are not excuses, but rather part of a reflective exercise in which you have clearly analysed your behaviour and reaction to the situation at the time which is necessary to manage and avoid future risk.

Ms Chapman further referred the panel to the NMC Guidance in which it goes on to address the importance of an apology. She submitted that you have apologised throughout to the Trust and to the NMC, as well as your colleagues and to this panel. Further, you have offered on multiple occasions right from the outset to repay the money and suggested that a payment plan might be a suitable way to do so. There is evidence of at least three occasions where you have done this, firstly locally to the Trust, then in your initial reflection in response to the NMC, in subsequent responses to the NMC in terms of your reflective pieces, as well as in this hearing on multiple occasions. Ms Chapman

referred to Mr Brahim's submission in which it is suggested that as you did not actually pay the money back, this ought to be held against you in some way. She submitted that this cannot possibly be an aggravating factor here as it is down to the Trust to accept your offer which to date, they have declined, and you can do nothing further in pursuit of that.

Ms Chapman submitted that you have been very remorseful throughout. At the factual stage, she submitted that the panel has already found that when you were confronted about the allegations by Witness 1, your comments were not motivated by an attempt to bribe the Trust or make the investigation go away, but were more a case of you wanting to right your wrongs.

Ms Chapman referred the panel to the heading sufficient steps to address the concern within the NMC Guidance. She noted the key considerations for decision makers in assessing the steps taken by a nurse to address concerns in their practice will be: whether the steps taken are relevant in that they are directly linked to the nature of the concerns, measurable, and effective in addressing the concerns and clearly demonstrating that past failings have been objectively understood, appreciated, and tackled. The panel will be aware that you continue to practise as a nurse in various environments, but your specialty is emergency and trauma care. You also continue to work with far higher sums of money on a regular basis, where you have direct access to cash in a pub. In terms of assessing evidence, it is noted that colleagues who have worked with you and have knowledge of the concerns carry the most weight in terms of testimonials as opposed to personal references from those that have not. However, it is submitted that sufficient weight should be attributed to all those factors being present.

Ms Chapman submitted that the final part of the NMC Guidance the panel may wish to consider is FTP-13c: is it highly unlikely that the conduct will be repeated? This part of the NMC Guidance states that when considering how likely it is that conduct will be repeated, decision makers will assess the extent of the nurse's insight into the concerns, whether the steps taken to address the concerns are sufficient, and whether the nurse is likely to repeat the conduct that caused the concerns. When doing this, the panel should consider whether the nurse practised in a similar environment to where the conduct took place. If

they have and have therefore been exposed to occasions where there was a risk of past conduct being repeated, then the absence of repetition will be significant. Ms Chapman submitted that in this case the absence of repetition is significant as you have practised without complaint since the course of the conduct that these charges arose from.

Ms Chapman told the panel that the NMC Guidance goes on to state that decision makers can also consider the full circumstances of the case, and the likelihood of the conduct being repeated in the future may be reduced where the nurse has demonstrated sufficient insight and taken appropriate steps to address any concerns arising from the allegations. She submitted that the behaviour in question arose in unique circumstances. Although the NMC Guidance does not excuse this behaviour, it suggests that the risk of repetition in the future is reduced in these circumstances.

Ms Chapman referred the panel to the other considerations outlined in the NMC Guidance such as if the nurse has an otherwise unblemished and positive professional record, including an absence of any other concerns from past or current employers, and of any action by the NMC or another regulatory body, and the nurse has engaged throughout the process. She submitted that all of these factors are present in this case. Further, the panel will be aware that there is no interim order in this case, and in fact one was not even proposed by the NMC. She submitted that you have an exemplary record with no concerns past or present except this course of conduct.

In terms of whether the finding of impairment is needed on public protection grounds, Ms Chapman submitted that there is no suggestion that this is the case. She submitted that key to the panel's consideration will be whether a finding of impairment is needed in the public interest. She said that the panel should be dissuaded from the position that as the misconduct was serious, it automatically justifies a finding of impairment on public interest grounds to mark the conduct as unacceptable. She submitted that if this were the correct approach to take, there would be no requirement for the panel to consider the present position and this would simply be an exercise looking at the misconduct at the time and making a judgement purely on that basis.

Ms Chapman submitted that with regards to the NMC's position that there is a high public interest in a finding of impairment, an interim order would have been, and ought to have been sought to address the public interest at the time this matter was referred. Instead, for the last 3 years you have been practising without restriction and although the public interest is engaged, it does not warrant a finding of impairment at this time. She further submitted that when this referral was initially made, the public interest factors present which may have warranted a restriction on your practice, would be far higher than they are now given the passage of time and what has transpired since. It is not denied that a reasonable member of the public, would have been shocked and disapproved of your conduct at the time. She submitted that misuse of public funds reserved for patients to the level you misused them, is inexcusable despite any mitigation present. However, were that member of the public fully appraised of the factors to be addressed, she suggested that they would not think on balance that a finding of impairment and therefore a restriction on your practice is unwarranted at this time.

Ms Chapman reminded the panel that it will need to balance the public interest in a finding of impairment in order to mark the conduct as unacceptable, with a very competent and excellent nurse such as yourself, in a field which is severely limited by lack of such trained and competent nurses being able to practise without restriction. She submitted that this is the time in general of a severe shortage of nurses and the panel should bear this in mind.

Ms Chapman further reminded the panel that as per the NMC Guidance, it must consider all the circumstances and that starts with your personal situation at the time of the conduct. [PRIVATE]. Your actions were incredibly out of character, as has been noted by Witness 1 and the other testimonials received.

Ms Chapman informed the panel that you have been nursing since you were 17 years old with an impeccable career until this point. Witness 1 gave evidence on how shocking it was to find out that you had behaved in this way, given how highly thought of you were, and this is a recurring theme throughout the testimonials received. [PRIVATE]

Ms Chapman submitted that in terms of what you have done since these incidents, during the investigation itself at the referring Trust, you were trusted with arranging the staff Christmas party. As part of that, you were managing and having access to staff and hospital funds. This was with the Trust knowing full well the extent of your dishonesty and you having made admissions to it. Despite that, you were still entrusted with this task and no repetition occurred.

Ms Chapman informed the panel that the agency you currently work for is fully aware of the NMC's case against you and have not deemed it fit to impose any restrictions on your practice. She told the panel that you work in a variety of work environments and there has been no repetition of the sort of conduct alleged or any concerns with your practice at all. In addition, you also work in a pub and the landlady, your manager, has provided you with a reference. Although this position is unrelated to clinical practice or practice as a nurse, it is a consideration that, as part of this role, you are given access to money in stock on a daily basis. You explained in evidence the amount of money you are accounting for at the end of each day and gave an estimate for a weekly daily taking at the weekend when it is busier and in the week. It is suggested that the approximate amount of money you are dealing with on a weekly basis is about £15,000 to £18,000 pounds. This is far more than the amount you misused on the taxi account, and you have far more access to that money directly, yet there has been no risk of repetition in that scenario.

Ms Chapman informed the panel that the reference from your manager at the pub is clear and there are no concerns as to your honesty and integrity. In fact, you are commended on the same. The reference goes on to state that you are left in sole charge of the pub dealing with money and stock alone. Yet, there has been no repeat of dishonesty or any misappropriation of anything for your own financial gain. Your manager states that they are aware of the charges and the case against you and trust you, nonetheless.

Ms Chapman referred to Mr Brahimi's submission that you are working part-time at the moment and submitted that this is incorrect as you have 2 jobs, one of around 3 shifts a week in the pub, and the other as an agency nurse where you work between 12-36 hours a week on average, which is 1 to 3 shifts. [PRIVATE]

Ms Chapman addressed the panel in terms of what your colleagues think about these allegations and what they would think if you were permitted to practise unrestricted, and whether they think you can practise safely, kindly, and professionally. There are a number of testimonials you have provided from nurse colleagues who worked either under you or over you as your senior over several years at the Trust and over the material period the misconduct occurred. She submitted that the panel may think, as you acknowledge, that these colleagues could be outraged by your conduct and the possibility you would be able to practise again. However, that is not the case at all as all of the testimonials are very supportive of you and recognise the situation in context, as a terrible lapse in judgement in what was a very difficult period. Overall, they urge the panel not to deprive patients and the nursing profession of such an excellent nurse.

Ms Chapman referred the panel to the testimonials in your remediation bundle and submitted that they provide evidence not only of your honesty in discussing the situation, being frank with these members of staff about it, but of your apology to them and your remorse. She referred the panel to positive comments from junior members of staff within the testimonials such as *“the nursing profession would be at a great loss if [you] were to lose [your] registration.”* as you are *“kind and compassionate towards [your] patients”* you treat everyone with respect and you are *“able to adapt [your] nursing skills to the individual's needs.”*

Ms Chapman further referred the panel to testimonials from a Band 5 nurse, a senior sister, and the site nurse practitioner from the clinical site manager team who was in a position senior to you as a Band 8 to 9 manager. All of these references and testimonials gave account of your work ethic and your positive impact on the profession. Further, they described how amazing you are not only as a nurse, but as a mentor, colleague, team player and patient advocate that goes above and beyond for patients. They give account of your ability to work well under pressure and when faced with challenging patients who sometimes verbally and physically assault you. They further describe your commitment to nursing and that when one thinks about how a nurse, especially an emergency nurse should be, you are the epitome of that, and they have no reason to believe that you are unfit to practise.

Ms Chapman submitted that most of these references were from colleagues who worked with you first hand and are informed members of the public given that they are aware of the concerns. She asked the panel to consider these testimonials very carefully and consider them as having significant weight as they are first-hand accounts of the opinion of colleagues reacting to your misconduct.

Ms Chapman submitted that regarding the quality of your insight and remediation, you have explained how you have maintained your nursing practice and worked in a variety of different posts through the agency in that time. You have continued practising as a nurse without restriction and without any further issues arising. The panel are also aware that you were previously of good character, you were not referred to the NMC or the subject of any concerns from your employers, past or present. You have kept up to date with your clinical practice and there is no reason to think you would not continue to practise safely, kindly, and professionally as you have done so since the misconduct occurred.

Ms Chapman reminded the panel that you explained in evidence that you have completed yearly mandatory training through the agency. She submitted that there is no need for all of the certificates to be put before the panel as you would not be able to practise if they were not completed and your competencies signed off each year. You have provided evidence of work you have undertaken to address your past misconduct and you have explained the reading and research you have done, providing a selection of the certificates you obtained that you feel are most relevant to the concerns before the panel.

Ms Chapman submitted that you have also provided reflective pieces and objectively looked at the situation. You do not seek to excuse your behaviour, but you have analysed why you did what you did and have come up with a selection of factors you think contributed to your deficit in thinking at the time and exceedingly poor judgement. You have clearly laid out for the panel how and why those things came to be and how you will handle those same situations differently in future.

Ms Chapman submitted that this has not been a vague exercise and a mere "*it won't happen again*" response, but you have instead come up with a tangible list of things you

would practically do to prevent any reoccurrence, including work you have done on yourself personally, and to better your situation. The effects of these charges and your misconduct on yourself have been life changing. None of the focus of anything you said in your reflection has been on yourself, but it has addressed the impact of the misconduct on you, which has caused you to lose your dream job, your reputation and possibly your career.

Ms Chapman reminded the panel that it should consider in the circumstances, whether it is at all likely that you would repeat the conduct in question and submitted that it is not. You have lost everything, including your self-respect through your misconduct. Initially, you stated that one of the things that prevented you from for asking for help and making your employer aware of what you were going through, was shame at the situation you found yourself in. Ms Chapman submitted that the shame you have felt has been at least tenfold since then and in future you would be taking the steps you have outlined to deal with such problems to avoid finding yourself in this position ever again.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*_(No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Grant, Cohen v General Medical Council* [2008] [EWHC] 581 (Admin), and *GMC v Chaudhary* [2017] EWHC 2561 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel was mindful that you accept that your conduct was serious enough to amount to misconduct, but this was a matter for the panel's own judgement.

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

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....

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

To achieve this, you must:

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. However, the panel was of the view that your actions in using the patient only taxi account for your personal use during the times set out in Schedule 1 were serious because of the dishonesty element. It was a prolonged deception and dishonesty over a thirteen-month period.

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

Decision and reasons on impairment

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

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

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

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

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

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

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

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

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

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

The panel finds that patients were not put at risk and were not caused physical or emotional harm as a result of your misconduct. However, your misconduct in the past had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. When considering the NMC Guidance on seriousness, the panel finds that your actions fall into serious concerns more difficult to put right because of the level of dishonesty. Your behaviour damaged the confidence in the nursing profession. Your conduct in the repeat dishonesty over the thirteen-month period and the misuse of the NHS funds intended for patient use falls sufficiently below the standard of a registered nurse. It 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 acknowledged that you made early admissions to the charges and demonstrated an understanding of why what you did was wrong and how your actions impacted negatively on the reputation of the nursing profession. The panel noted that your actions occurred over a thirteen-month period and included over one hundred journeys. The panel determined that this could not amount to a lapse of judgement as it was a course of conduct over a prolonged period of time. However, you

apologised to the panel for your misconduct and described how you would handle the situation differently in the future.

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 considered your reflective piece and your oral evidence addressing your behaviour and how you will ensure this conduct does not repeat itself. It noted that you had undertaken a reflective training course on fraud and other mandatory training. You have remained working as a nurse without restriction. The panel noted that you had on multiple occasions attempted to pay the money back and right this wrong, and the numerous positive testimonials from your colleagues about these concerns being out of your character.

The panel is of the view that there is a low risk of repetition based on your developed level of insight, together with your improved financial situation, and the support you are receiving from your new partner and your family. Given the submissions made by Ms Chapman with regards to the background and context to the misconduct, the panel was satisfied that the triggers that contributed to your actions are currently being managed effectively. The panel noted that in your other current employment, you often handle cash and there has been no concerns of you mismanaging the funds for your own benefit. The panel was of the opinion that if there is any temptation to take money to support oneself, there is no easier way to do this than with a cash balance and you have been trusted with this for over two years. In light of all of these factors and given that the concerns in this case are not related to your clinical practice, the panel determined that a finding of impairment is not required on the grounds of public protection.

The panel next considered whether a finding of impairment on public interest grounds alone is required to uphold proper professional standards and confidence in the NMC as a regulator. 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 considered the NMC Guidance DMA-1 with regards to finding impairment on public interest grounds which states the following:

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

The panel was of the view that the misconduct in this case is so serious that it needs to be marked given the way you used the taxi account for your personal use, not just to and from work, but also for social journeys. The amount of money you misused in doing so amounted to over £6000 for more than one hundred and twenty five individual journeys over a period of thirteen months. Notwithstanding your insight, the work you have done since the concerns occurred, the positive testimonials from your junior and senior colleagues and your current employer, and your improved personal and financial situations, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public interest grounds only.

Sanction

The panel considered this case carefully and decided to make a caution order for a period of 3 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 had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions NMC Guidance (SG) published by the NMC particularly SAN-2, Considering sanctions for serious cases, specifically the section on dishonesty.

The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Brahimi provided the following written submissions in respect of the NMC's sanction bid:

1. *"The Panel should therefore consider what sanction is appropriate to address:*
 - a. *The proven charges which includes findings of dishonesty.*
2. *The Panel should first take into account relevant factors before deciding on sanction, as set out by the NMC Fitness to Practice Library NMC Guidance SAN-1:*
3. *Proportionality*
 - a. *Finding a fair balance between Registrant's rights and the overarching objective of public protection;*
 - b. *To not go further than it needs to, the Panel should think about what action it needs to take to tackle the reasons why the Registrant is not currently fit to practise;*
 - c. *The Panel should consider whether the sanction with the least impact on the nurse practise would be enough to achieve public protection, looking at the reasons why the nurse isn't currently fit to practise and any aggravating or mitigating features.*

4. *Aggravating features*

- a. *Band 7 senior position of responsibility;*
- b. *Abuse of position of trust;*
- c. *Multiple acts of dishonesty;*
- d. *Significant period of time of dishonesty;*
- e. *Conduct deprived hospital of funds;*
- f. *Initial denial of dishonesty.*

5. *Mitigating features*

- a. *First and only referral to the NMC;*
- b. *Registrant has been qualified for a number of years;*
- c. *Early admissions to dishonesty.*

6. *Previous interim order and their effect on sanctions*

- a. *The Registrant has not been subject to an Interim Order.*

7. *Previous fitness to practice history*

- a. *None.*

Sanctions available

8. *NMC submit that taking no action and a caution order are not suitable options for this case due to the number and variety of concerns. NMC Guidance is found at SAN-3a and 3b.*

- a. *Taking no action: this would not be an appropriate course of action as the regulatory concern of dishonest behaviour is serious. The public protection and public interest elements in this case are such that taking no action would not be the appropriate response;*

- b. *Caution Order: similarly, a Caution Order is also not suitable as this is a sanction aimed at misconduct that is at the lower end of the spectrum. In this case the concern involved multiple forms of dishonesty. Given the concerns, a more effective sanction is required.*
9. *With regards to a conditions of practice order (COPO), the NMC submit that this option does not adequately address and reflect upon the number of breaches in this case. NMC Guidance is found at reference SAN-3c.*
- a. *It is always difficult to formulate or consider such conditions that effectively deal with dishonest behaviour, which is an attitudinal problem in this case.*
- b. *The level of concern in this case would require a higher level of sanction than a COPO. The guidelines refer to “When conditions of practice are appropriate” and the Panel may find that these conditions are not met.*
- c. *Measurable, workable and appropriate conditions can be put into place to address instances such as clinical failures, however, a COPO would not suitably address dishonesty charges or the attitudinal and behavioural concerns that were demonstrated over a significant period of time.*
10. *The NMC submit the Registrant’s actions do warrant a suspension order (SO) but this would not be sufficient. Suspension NMC Guidance is found at reference SAN-3d, and includes some of the following (but not limited to):*
- a. *“Key things to weigh up before imposing this order include:*
- *whether the seriousness of the case require temporary removal from the register?*

b. *“Use the checklist below as a guide to help decide whether it’s appropriate or not. This list is not exhaustive:*

- *a single instance of misconduct but where a lesser sanction is not sufficient”*

c. *The seriousness of the regulatory concerns does warrant a temporary removal from the Register; however, the Registrant’s actions are not isolated but in fact a pattern of misconduct where she initially sought deny her conduct until she was made aware that a formal investigation had been launched.*

d. *A suspension order will not address the concerns in this case or proportionately provide for an appropriate response to such serious charges.*

11. *The NMC submit that a striking off order is appropriate in this case. The Panel may be assisted by NMC Guidance provided at reference SAN-3e. The NMC make the following submissions in response to the NMC Guidance:*

a. *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*

i. *The NMC submit that yes, they do. The charges found proven are those in the higher category of seriousness as per the NMC Guidance. There has been insight into these incidents but the wrongdoing was so deliberate, that it calls into question as to the level of care the Registrant had shown during this conduct.*

b. *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*

- e. *The NMC submit that the Registrant has not yet fully remediated the concerns raised. [PRIVATE]. The Registrant has also not yet paid back the money owed to the hospital. In respect of the Registrant's bundle – the bulk of this material contains evidence to support the difficulties with her car and character references. There are only two certificates of training that the Registrant has engaged in to address the issue of dishonesty and these were completed in 2022, expiring in 2023. The character references are around 2 years old and the only up to date material is the pub reference from this month. There does not appear to be an up to date reference from the agency nurse shifts that the Registrant has said she is taking.*

- f. *The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk of being removed from the register. The actions of the Registrant are an abuse of trust. She had engaged in this conduct until she was caught and would have most likely continued to do so. As submitted previously, there may thoughts as to the possible removal of such patient services due to the risks associated around misuse, which in turn affects the service to the public.*

- g. *A striking off order should then be considered proportionate as the misconduct will raise fundamental questions surrounding the Registrant's trustworthiness and professionalism. Ultimately her actions (prolonged dishonesty of thirteen months) will be considered incompatible with continued registration.*

Sanction request:

- 12. *The concerns in this case may be described as being attitudinal in nature. For all the reasons previously argued, the NMC submit that the appropriate sanction in this case is a:*

Striking-off Order

- 13. *The NMC have sought to assist the Panel by going through each of the possible*

sanctions and when weighing the evidence against the set NMC Guidance, it is justified that there be a striking-off order. Dishonesty is behaviour that is difficult to remediate. Although the Registrant has provided a character references, this is an attitudinal concern where she should have provided significant, up-to-date and persuasive material showing that she has recognised her errors and corrected them. This sanction would reflect that the conduct of the Registrant has been properly addressed and maintain trust with the public that the NMC do take such allegations seriously and will take swift and appropriate action.

14. *The NMC respect that the Panel is entirely at liberty to proceed as they deem most suitable for this case.”*

The panel also bore in mind Ms Chapman’s submissions on sanction. She referred the panel to the NMC’s submissions in respect of aggravating features and told the panel that it is agreed these features are present, with the exception of the initial denial of dishonesty. She reminded the panel of its findings in respect of this and the fact that it had sight of the conversation between you and Witness 1, and at the outset you admitted dishonesty within a few moments during that meeting. She submitted that this was the first time this was raised with you, and it was the first opportunity for you to admit dishonesty therefore it cannot possibly be an aggravating feature.

Ms Chapman submitted that in respect of the NMC’s submission that you initially sought to deny your misconduct until you were made aware that a formal investigation had been launched, you cannot deny something that is not raised with you, therefore this submission should be disregarded. With regards to the NMC’s submission that you deliberately breached the professional duty of candour, Ms Chapman submitted that this is clearly not present in this case. She submitted that this would relate primarily to clinical concerns, and there is no evidence that you covered things up. On the contrary, you have been open since your misconduct was brought to your attention.

Ms Chapman refuted the NMC's submissions that you have not yet fully remediated the concerns, noting that the panel has already considered all of the evidence in its findings on impairment and has found to the contrary.

Ms Chapman referred the panel to the proportionality heading within the NMC Guidance on sanctions. She reminded the panel that it needs to choose a sanction that does not go further than needed to meet this objective, and that reflects the idea of right-touch regulation.

Ms Chapman reminded the panel that there are no public protection issues in this case and impairment was found on public interest grounds only. You were found to have good insight and to have practised safely and effectively since this incident, with the risk of repetition being low especially as over the last three years you have worked continuously with large amounts of money and worked as a nurse without restriction. She submitted that with regards to the panel's consideration on aggravating and mitigating features, you have already accepted that the majority of the NMC's submissions on the aggravating features are present except the denial of dishonesty, which there is no evidence for.

Ms Chapman reminded the panel that in terms of mitigating features, the NMC's submission is that this is your first and only referral to the NMC. She submitted that this can be taken further in that you have been qualified for the entirety of your adult life. Further, there were early admissions to dishonesty, and you have not been subject to an interim order and there is no previous fitness to practice history. She submitted that these are all relevant mitigating factors but there are also more personal ones the panel should consider.

[PRIVATE]

Ms Chapman further reminded the panel that in addition to early admissions of dishonesty, it is also entitled to consider that there have been admissions throughout not only the regulatory process, but also the employer's process and there have been attempts to

remediate the conduct by frequent offers to pay back the money. Your significant level of insight and remediation and safe practice to date should all be considered as mitigating features.

Ms Chapman referred the panel to the mitigation features heading under the NMC Guidance on sanctions in which it states that mitigation can be considered in three categories. She submitted that in your case there are no concerns regarding your practice, and you continue to practise in the area you did previously without further concern. In respect of personal mitigation, she submitted that this is present and has previously been addressed at the impairment stage.

Ms Chapman noted that the panel will consider the NMC Guidance SAN-2 on considering sanctions for serious cases when making its deliberations. She submitted that you have been clear throughout this case that you accept that these are serious concerns. Under the heading “how we determine seriousness”, Ms Chapman highlighted the following point *“in cases involving dishonesty...it is likely we would need to take action to uphold public confidence in nurses or to promote proper professional standards.”* She noted that the NMC Guidance does not say that it is necessary in *all* cases and although you accept, given the finding of impairment in order to mark the conduct as falling far below what is appropriate, the panel should bear in mind that it is under no obligation to do so.

Ms Chapman further highlighted that within this NMC Guidance, under the heading cases involving dishonesty, *“it is noted that a nurse... who has acted dishonestly will always be at some risk of being removed from the register”*, but that's not a foregone conclusion. It goes on to say, *“nurses who have behaved dishonestly can engage with the fitness to practice committee to show that they feel remorse and they realise they have acted in a dishonest way and tell the panel it won't happen again.”* Ms Chapman submitted that this is the case with you as the panel has made positive findings as to your reaction, insight, remediation, and the risk of repetition. She noted that the NMC Guidance continues: *“it is not the case that the fitness to practice committee only has a choice between suspending a nurse or removing them from the register in cases about dishonesty. It is vital that like in*

any other case, the fitness to practice committee should consider the sanctions in ascending order of seriousness and work upwards to the next most serious sanction if it needs to." Ms Chapman submitted that the NMC Guidance is clear that the panel are not required to make either a suspension or strike-off order in this case, and it is a matter for its discretion.

Ms Chapman went on to submit that in terms of the sanctions available to the panel, it will firstly consider whether no further action is appropriate. She submitted that it is accepted on your behalf that the panel may think this is not a case where taking no further action is suitable given the finding of impairment on public interest grounds and the seriousness of the concerns. It is of course, an option that is open to the panel, but where there has been a finding of impairment, the panel may think that it is not an appropriate course of action.

Ms Chapman reminded the panel that in turning to a caution order, the NMC Guidance states the following: *"a caution order is only appropriate if the Fitness to Practise Committee has decided there is no risk to the public or to patients requiring the nurse's practice to be restricted, meaning cases at the lower end of the spectrum of impaired fitness to practise. However, the Fitness to Practise Committee wants to mark the behaviour as unacceptable and must not happen again."* She submitted that although these are serious concerns, the NMC Guidance refers specifically to the lower end of the spectrum of impaired fitness to practise, and that is the situation in this case. The panel will be looking at how impaired you are, and she submitted that your level of impairment is low despite the seriousness of the concerns. She reminded the panel that the NMC Guidance goes on to state: *"because a caution order does not affect a nurse's right to practise, the Committee will always need to ask itself if a decision about the nurse's fitness to practise indicated any risk to patient safety. A caution order can be ordered to run between one and five years. It is recorded on the Register and published on the website and disclosed to anyone inquiring about the nurse's fitness to practice history."*

Ms Chapman submitted that although the concerns are serious, a caution order could be a suitable, appropriate, and proportionate sanction in this case. As found by the panel, the

reason for impairment is purely to mark the seriousness of the conduct and public interest concerns and there are no issues regarding remediation and insights and no public protection concerns. Given that, the panel may therefore think that a higher sanction would serve no useful purpose, and a caution order would mark the conduct and address the public interest. It would be open to the panel to impose this for a lengthy period of up to five years, the longest period so it is visible on the register, remains visible on the register, and the nature of the concerns can be made available to anyone inquiring. This would allow you to practise but make the public aware of the fact that there has been serious misconduct, and this also would have a dissuasive effect for other practitioners. She submitted that you understand this would be an unusual course of action in a case of serious dishonesty. However, given the findings on impairment, it is an option that is open for the panel in what Ms Chapman submitted are the “*unique circumstances*” of this case.

Ms Chapman submitted that should the panel disagree with this sanction, then it should go on to consider a conditions of practice order. She referred the panel to NMC Guidance SAN-3c which states: “*conditions of practice [orders] keep[s] patients safe by addressing the concerns that led to the panel deciding the nurse’s fitness to practise is currently impaired, but also allow the nurse to continue to work.*” Under the heading when conditions of practice are appropriate, the key consideration stated for the panel to consider before imposing this order is “*whether conditions can be put in place that will be sufficient to protect patients or service users, and if necessary, address any concerns about public confidence or proper professional standards in conduct.*” The NMC Guidance states that conditions may be appropriate when some of the following factors are apparent: “*there’s no evidence of general incompetence, there’s potential and willingness to respond positively to retraining, patients will not be put in danger either directly or indirectly, as a result of the conditions, the conditions will protect patients during the period they’re in force and conditions can be created that can be monitored and assessed.*” She submitted that anything the panel thinks you ought to do to make this right, you are more than willing to do, and you are eager to prove yourself as trustworthy.

Under the heading “*being fair and protecting the public*” the NMC Guidance states that conditions ought to be relevant, proportionate, workable, and measurable. In terms of relevance, conditions should relate to and address the concerns that led the panel in deciding that the nurse’s fitness to practise is impaired and the conditions should address the public interest. In terms of proportionate, meaning no more restrictive than necessary to protect the public and uphold confidence in the profession. The NMC Guidance also states that panels must strike a fair balance between the interests of the nurse and the public interest, which includes public protection and also public confidence.

Ms Chapman reminded the panel that there is also a public interest in nurses being allowed to practise their profession in a safe manner and although it may be unusual where there are no public protection concerns, she submitted that in the event the panel thinks a caution order is not enough to mark the seriousness of the conduct and address the public interest concerns, a conditions of practice order would do so sufficiently. Ms Chapman further submitted that there are no conditions needed to protect the public, but it may be suitable to put in place the usual reporting conditions and a disclosure provision whereby you would need to disclose the findings of the panel on the facts of the case to all prospective employers at the point of application. This would be going far enough to mark the conduct and still allow you to practise.

Ms Chapman next addressed the panel in relation to a suspension order and the NMC Guidance SAN-3d. It states that “*this order suspends the nurse for a period of up to one year and may be appropriate in cases where the misconduct isn’t fundamentally incompatible with the nurse continuing to be a registered professional and the overarching objective may be satisfied by a less severe outcome than permanent removal on the register.*” She submitted that this is the case in your circumstances and under key things to weigh up before imposing this order are: whether the seriousness of the case requires temporary removal from the register and whether a period of suspension will be sufficient to protect patients and public confidence in nurses or professional standards.

From the checklist to help decide whether or not a suspension order is appropriate, Ms Chapman referred the panel to the following points: no evidence of harmful deep-seated personality or attitudinal problems. She submitted that although this is a dishonesty case, there is no evidence that there are current attitudinal issues, or that those issues persist, so they cannot be said to be deep seated and there is no evidence of them having done so for the past three years of safe and effective practice. The list goes on: no evidence of repetition of behaviour since the incident, and the committee is satisfied that the nurse has insight and does not pose a significant risk of repeating behaviour. She submitted that the panel have already made findings on both of these matters particularly the low risk of repetition.

The NMC Guidance continues by stating that *“when considering seriousness, the Fitness to Practice Committee will look at how far the nurse fell short of the standard expected of them. It will consider the risk to patients and to the factors above and the other particular concerns it considers relevant on each case”*. Ms Chapman invited the panel to place weight on its own findings as to the advanced state of your insight, remediation, remorse, and the unique situation you found yourself in at the time. She suggested that suspending you would be going further than necessary to address the public interest and that needs to be weighed up not only against your interests, but the public interest in deprivation from practice of such an excellent nurse at a time when your specialism is in demand. She submitted that removal from the register either on a temporary or permanent basis, would put the public at a significant detriment, and would likely cause more harm proportionately than the misconduct in question. She referred the panel to all the previous points she made in support of this within her submissions on impairment and submitted that if the panel decides to impose a conditions of practice order or a suspension order, then the shortest time commensurate is made in recognition that there are no public protection concerns and this is to mark the seriousness of the conduct and maintain professional standards.

Ms Chapman referred the panel to the NMC Guidance SAN-3e with regards to striking-off orders, which is the sanction the NMC are seeking. The NMC Guidance states that *“this*

sanction is likely to be appropriate when what the nurse has done is fundamentally incompatible with being a registered professional.” Ms Chapman stated that before imposing this sanction, key considerations the panel will take into account include “*do the regulatory concerns about the nurse raise fundamental questions about their professionalism.*” Ms Chapman submitted that in response to that, in the past they did at the time of these events, but those are not continuing or present concerns. Secondly, “*can public confidence in nurses be maintained if the nurse is not removed from the register?*” She submitted that this can be answered in the affirmative, as you have been practising without an interim order or any restriction for three years. As noted in her previous submissions on impairment, Ms Chapman highlighted the public interest decreases as opposed to increasing in that time and during this time, you have proven yourself as having corrected the misconduct as far as possible and practised without similar events since.

Ms Chapman referred the panel again to the public interest consideration of a nurse of your experience and skill being able to remain on the register to be of service to the public and how that would be overall a stronger consideration when weighed up in the public interest of restricting you permanently. Thirdly, is striking off the only sanction which will be sufficient to protect patients, members of the public or maintain professional standards. She submitted that this is purely a public interest matter and there are less severe sanctions than a strike-off that would more than adequately address these concerns.

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 considered the following aggravating features:

- Repeated dishonesty over a thirteen-month period
- Misuse of NHS funds intended for patients for your personal financial gain.
- You were working as an experienced Band 7 senior nurse.

The panel also considered the following mitigating features:

- Your insight, remediation, and practice to date
- Your personal and financial circumstances at that time
- Your repeated offers to repay the money and put right your wrongs.

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

Next, in considering whether a caution order would be appropriate in the circumstances, the panel considered 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 a good level of insight into your conduct. The panel further noted that you had acknowledged your conduct and dishonesty at an early stage and apologised, showing evidence of genuine remorse. You have engaged with the NMC since the referral and the panel has been told that there have been no adverse findings in relation to your practice either before or since these incidents occurred. However, the panel concluded that this misconduct occurred over thirteen months and you had deliberately misused NHS funds intended for patient use. These are serious concerns that included dishonesty and need to be marked in the public interest. The panel determined that a caution order is sufficient to mark the seriousness of the concerns.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel noted your matter was serious and related to dishonesty, rather than any alleged deficiency in your clinical practice. As such, a conditions of practice order would not be appropriate, and it would be difficult to formulate workable conditions in relation to the identified misconduct. The panel concluded that no useful purpose would be served by a conditions of practice order.

The panel further considered that a suspension order would be disproportionate in the specific context of this case. The panel has decided that a caution order would adequately address the public interest concerns in this case given the strength of your insight, that there is no evidence of repetition and that you have been practising since then without restriction.

The panel has determined that to impose a caution order for a period of three years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession and the regulator, but also send the public and the profession a clear message about the standards required of a registered nurse. For the next three 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.

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 it.

This decision will be confirmed to you in writing.

That concludes this determination.