

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

**Substantive Hearing
Tuesday 28 May 2024 – Tuesday 4 June 2024**

Virtual Hearing

Name of Registrant: Kelly-Anne Hayes

NMC PIN 01U0937E

Part(s) of the register: Registered Nurse - Sub Part 1
Adult Nursing (Level 1)
(22 February 2006)

Relevant Location: London

Type of case: Misconduct

Panel members: Wayne Miller (Chair, Lay Member)
Jennifer Childs (Registrant Member)
James Hurden (Lay Member)

Legal Assessor: William Hoskins

Hearings Coordinator: Maya Khan

Nursing and Midwifery Council: Represented by Mohsin Malik, Case Presenter

Miss Hayes: Not present and not represented

Facts proved: Charges 1a, 1b, 2a, 2b, 3a and 3b

Facts proved by admission: None

Facts not proved: None

Fitness to practise:

Impaired

Sanction:

Striking off order

Interim order:

Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Hayes was not in attendance and that the Notice of Hearing letter had been sent to Miss Hayes' registered email address by secure email on 22 April 2024.

Mr Malik, on behalf of the Nursing and Midwifery Council (NMC), referred the panel to the contact email address held by the NMC and which was evidenced by a screenshot in the service bundle. Mr Malik also referred the panel to the witness statement in the service bundle which confirmed that the Notice of Hearing had been sent to Miss Hayes email address on 22 April 2024.

Mr Malik submitted that the Notice of Hearing has been served in good time and the NMC has complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended ("the Rules").

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Miss Hayes

The panel next considered whether it should proceed in the absence of Miss Hayes. It had regard to Rule 21 and heard the submissions of Mr Malik who invited the panel to continue in the absence of Miss Hayes.

Mr Malik provided the panel with a 'Proceeding in Absence' (PIA) bundle including several NMC's attempts to contact Miss Hayes by email and telephone regarding her attendance to the hearing today. The PIA bundle included the following:

- Email from the NMC case officer dated 14 May 2024
- Email from the NMC case officer dated 15 May 2024
- Email from the NMC case officer dated 16 May 2024
- Email from the NMC case officer dated 20 May 2024
- NMC case officer telephones Miss Hayes, communication log dated 15 May 2024
- NMC case officer attempts to telephone Miss Hayes, communication log dated 16 May 2024
- NMC case officer attempts to telephone Miss Hayes and left a voicemail, communication log dated 23 May 2024

Mr Malik also referred the panel to an email from the Hearings Coordinator sent to Miss Hayes, dated 24 May 2024, asking her to confirm her attendance. However, there was no response from Miss Hayes. It was his submission that the NMC have exhausted all efforts to contact Miss Hayes and she has voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

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

- There is an email response from Miss Hayes to her NMC case officer dated 14 May 2024 which stated '*I'm contacting yourself to confirm that I*

saw the dates for the hearing and if you could contact me so i know what to expect. ';

- The NMC have exhausted all efforts to contact Miss Hayes;
- No application for an adjournment has been made by Miss Hayes;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There are three witnesses that are due to give live evidence in this case;
- Not proceeding may inconvenience the witnesses and their employer(s);
- The charges relate to events that occurred in 2021 and further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Hayes by proceeding in her absence. The evidence upon which the NMC relies has been sent to her. She will not be able to challenge the evidence relied upon by the NMC in person nor will she be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies.

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

Details of charge

That you, a registered nurse:

1) On one or more occasions between 31 May 2021 and 18 November 2021:

- a) Withdrew money using Resident A's credit and/or debit card that Resident A did not request;

b) Made purchases on Resident A's credit and /or debit card that Resident A did not request.

2) Your actions as specified in charge 1a) were dishonest in that:

a) You knew that you were not authorised to withdraw money that had not been requested by Resident A to be withdrawn;

b) You knew that what you were doing was wrong.

3) Your actions as specified in charge 1b) were dishonest in that:

a) You knew that you were not authorised to use Resident A's credit and/or debit card for items that had not been requested by Resident A to be purchased;

b) You knew that what you were doing was wrong.

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

Background

The NMC received a referral by Albany Nursing Home ("the Home") on 22 February 2022, regarding Miss Hayes employment as a registered nurse. The referral related to concerns that Miss Hayes was failing to act with honesty and integrity by financially abusing a vulnerable resident (Resident A) following the discovery that large sums of money were missing from Resident A's bank account.

It is alleged that Miss Hayes, when on duty on the night shift at the Home, had used Resident A's bank card and pin to access cash from a cash machine near the Home and had also made purchases for her own use.

The Home's internal disciplinary investigation revealed that Resident A had asked Miss Hayes to do shopping with her bank card on several occasions. Miss Hayes was suspended following disciplinary interviews held on 30 November 2021. Her contract was terminated after it was established that she had failed to inform the Home's

manager that she had been shopping for Resident A and that large amounts of money had been withdrawn from Resident A's bank account.

In Miss Hayes' response to the Home's investigation, she admitted that she had used Resident A's bank card for Resident A's shopping and said she only withdrew £100. Miss Hayes also said she left receipts in the shopping bags.

The matter was referred to the police who made the decision to take no further action. The police decision was due to there being no statement from the complainant, Resident A, which met the criminal standard. Resident A has been relocated from the Home, has been in hospital since April 2022 and Resident A has no next of kin. The police were unable to progress with the case and therefore it was closed.

Decision and reasons on application to admit the hearsay evidence

The panel heard an application made by Mr Malik, under Rule 31 of the Rules, to allow the written statement by Resident A that was produced at the time of the Home's internal disciplinary investigation to be admitted into evidence and for Miss Hayes' previous convictions disclosed by the police to be admitted into evidence.

Mr Malik referred the panel to the relevant documents.

In relation to Resident A's statement, Mr Malik submitted that this statement relates directly to the charges. He told the panel that Resident A will not be attending the hearing to give evidence and did not provide the NMC with a witness statement. Mr Malik submitted that the NMC made several attempts to contact the Resident A to engage with the NMC process and provide a witness statement. Mr Malik referred the panel to the emails sent to Resident A from the NMC case officer dated 24 May 2023, 21 June 2023, 28 June 2023 and 31 July 2023. The NMC case officer also attempted to telephone Resident A on 17 April 2023. However, there was no response. On 18 April 2024, the NMC case officer took further steps to contact Resident A's social worker to see if Resident A is able to engage with the NMC process, and a letter was also sent to Resident A's social worker the next day. However, there was no response. Mr Malik submitted that the police have disclosed that during their investigation they were unable

to interview Resident A due to [PRIVATE]. Mr Malik submitted that Resident A's statement provides evidence relevant to the charges.

In relation to Miss Hayes' two previous police matters involving theft, one matter resulting in a conviction and the other resulting in a caution order, Mr Malik submitted that the nature of these matters relates to dishonesty and therefore are relevant to the charges. He submitted that this information is reliable and invited the panel to admit it into evidence as it was both fair and relevant.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The panel was referred to the guidance contained in *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

The panel considered that it would be fair and relevant to admit the hearsay evidence of Resident A's written statement. It noted that the NMC had made all reasonable efforts to secure a written statement and the attendance of Resident A. However, Resident A's reasons for not being able to assist were cogent and there would be unfairness to the NMC if this evidence was not to be admitted. On day 1 of the hearing, the panel heard from Ms 1, Lead Nurse at the Home, who confirmed that Resident A at the time of writing the statement believed it to be true and accurate. The panel considered that the hearsay evidence of Resident A was not the sole and decisive evidence for the charges as other witnesses expected to attend the hearing supported charges and the panel had, before it, contemporaneous documentary evidence produced by those witnesses.

The panel determined that it had no evidence before it to suggest that Resident A's evidence is fabricated or in any other way demonstrably unreliable.

In relation to Miss Hayes' two previous police matters involving theft, resulting in a conviction and a caution order, the panel considered that it would be fair and relevant to admit the hearsay evidence as the nature of both the conviction and caution order relate to dishonesty. It also took the view that the hearsay evidence would be useful contextual evidence about Miss Hayes attitude towards honesty. It noted that Miss Hayes has had sight of the NMC bundle and is aware that this information would be put

before the panel today. The panel considered that this hearsay evidence was not the sole and decisive evidence for the charges and that the hearsay evidence was produced by the police and therefore it was reliable.

The panel concluded that it was fair to admit the hearsay evidence. After hearing all the evidence, the panel will decide how much weight should be attached to it.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case, including Miss Hayes' responses, together with the submissions made by Mr Malik.

The panel has drawn no adverse inference from the non-attendance of Miss Hayes.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Ms 1: a Registered Nurse employed as Lead Nurse at the Home
- Ms 2: Home Manager at the Home
- Ms 3: a Registered Nurse employed as Nurse at the Home

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor, who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 67. It considered the witness and documentary evidence provided by the NMC.

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

Charge 1

That you, a registered nurse:

1) On one or more occasions between 31 May 2021 and 18 November 2021:

a) Withdrew money using Resident A's credit and/or debit card that Resident A did not request;

b) Made purchases on Resident A's credit and /or debit card that Resident A did not request.

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence from three witnesses, Resident A's written statement, the police report and the bank statements.

Ms 2 told the panel that during Miss Hayes' interview, as part of the Home's internal disciplinary investigation, Miss Hayes accepted that she had access to Resident A's credit and/or debit card and PIN. Ms 2 told the panel that during the interview, Miss Hayes said she had only withdrawn £100 and made purchases solely for Resident A. The panel heard evidence from both Ms 2 and Ms 3 explaining that the Home's policy and procedures do not allow nurses to have access to residents' credit and/or debit cards. Ms 2 explained that if a resident requested shopping, a nurse must notify the Home Manager and administration. Ms 2 and Ms 3 told the panel that it is standard practice within the Home for a nurse to spend their own money when a resident requests purchases and then provide the receipts to the Home Manager and administration for a reimbursement.

The panel had sight of the bank statements showing the cash withdrawals from cash points. During Ms 2's oral evidence, she explained that she had cross referenced the dates of cash withdrawals from the bank statements with Miss Hayes' shifts at the Home. Ms 2 told the panel that cash withdrawals from Resident A's credit and/or bank card only took place whilst Miss Hayes was working. Ms 2 referred the panel to the date 20 September 2021 on Resident A's bank statement which stated that there had been a purchase for "Grill and Spice". Ms 2 said that Resident A had a simple diet of English food and would never make this purchase.

The panel considered Resident A's written statement, produced by an interview conducted by Ms 2. It stated:

"I asked [Resident A] if she remembers giving her card to anyone. She mentioned that she gave her card long time back to [Colleague A] to buy some goods for her and also asked [Colleague A] to get mini statements from the cash machine. I asked if she remembers anyone else who she gave the card to. She said Kelly has been doing the shopping for her in the evenings when she is working. But the shopping was only for crisps, biscuits and some Lucozade. Then, we asked her if she gave the PIN number as well or just the card. She said that she gave the PIN number as well. [Ms 3] asked Resident A if she asked Kelly to do the shopping or Kelly offered to do it for her? Resident A replied that she was having a casual conversation with Kelly when she mentioned that she had to ask others to buy things for her and Kelly volunteered to do the shopping for her. I asked her if she remembers the date...Resident A said it was during the evenings when [Kelly] was working, that Resident A used to give her card to Kelly. [Ms 3] asked if the card was returned to her on the same day? She replied, "[Kelly] usually takes the card around 11pm and returns it back after midnight as she works nights and takes her break around that time."

...I asked her if she thinks or suspects anyone might have taken her card from her handbag without her noticing it and used it? She replied, "I am very much careful with my card and handbag. I always keep it near me and I am awake even if somebody lights the corridor light, so no one would have come to my room to get the card only".

The panel considered that all three witnesses, during their oral evidence, told the panel that Resident A had only ever asked Miss Hayes to make small purchases consisting of “*crisps, biscuits and Lucozade*”. Ms 2 told the panel that nearly £2000 worth of purchases within a six-month period were made with Resident A’s card, and it was impossible that purchases of “*crisps, biscuits and Lucozade*” would cost this much. Ms 2 also told the panel that Resident A’s meals and living is provided for by the Home and therefore Resident A does not have large expenses. Ms 3 told the panel that Resident A had a small room with a mini fridge and no visitors and therefore it was impossible to hide large purchases.

The panel considered Ms 2’s oral evidence, she said it was impossible for Resident A to use her own credit and/or debit card to make cash withdrawals as Resident A uses a Zimmer frame, requires escorting and the Home’s door entrance has a security code which Resident A did not have. Ms 3 also told the panel that Resident A always kept her credit and/or bank card with her in a purse at all times.

The panel considered that Resident A never authorised Miss Hayes to make any cash withdrawals. It noted the geographical location between the Home, cash point and the shops which were approximately between three- and five-minutes’ walk of each other. It concluded it was possible for Miss Hayes to make cash withdrawals and purchases not requested by Resident A. The panel considered that Miss Hayes never informed the Home Manager or administration about her use of Resident A’s credit and/or debit card. It also considered Ms 3’s oral evidence that Resident A was very shocked when Resident A saw the bank statement with the cash withdrawals.

The panel considered the reference to the CCTV footage within the police report. This footage was not seen by the panel but within the police report it states that it shows female matching the description of Miss Hayes withdrawing cash from the machine on 16 November 2021 at 22:27 hours. The panel had regard to the bank statements exhibited by Ms 2 and noted that there were two cash point withdrawals of £250 each correlating to this date and time.

The panel considered that the oral evidence of all three witnesses was consistent.

Having regard to the evidence, the panel was satisfied that on one or more occasions between 31 May 2021 and 18 November 2021, Miss Hayes withdrew money using Resident A's credit and/or debit card that Resident A did not request and made purchases on Resident A's credit and /or debit card that Resident A did not request. Accordingly, the panel found Charge 1a and Charge 1b proved on the balance of probabilities.

Charge 2

2) Your actions as specified in charge 1a) were dishonest in that:

- a) You knew that you were not authorised to withdraw money that had not been requested by Resident A to be withdrawn;
- b) You knew that what you were doing was wrong

This charge is found proved.

The panel first considered its previous findings with respect to Charge 1a and 1b.

The panel then went on to consider whether your actions in relation to Charge 1a were dishonest. It had regard to the test set out in *Ivey v Genting Casinos* which outlines the following:

- What was the defendant's actual state of knowledge or belief as to the facts; and
- Was the conduct dishonest by the standards of ordinary decent people?

The panel also had regard to the NMC guidance entitled '*Making decisions on dishonesty charges*' (reference DMA 8) updated on 27 Feb 2024. Within this guidance, Fitness to Practise Committee (FtPC) panels are advised to decide whether the conduct indeed took place and if so, what was the registrant's state of mind at the time. Panels are reminded to consider the following:

- *'What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*

- *Whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or*
- *Whether there is evidence of alternative explanations, and which is more likely.'*

The panel is satisfied that Miss Hayes was dishonest in her actions. In reviewing the evidence in relation to charge 2a, the panel considered the oral and written evidence from Ms 2 and Ms 3.

During Ms 3's oral evidence, she told the panel about the Home's policy and procedure in relation to using credit and/or debit cards of residents. Ms 3 said that nurses are not allowed to use the credit and/or debit card of any residents in any circumstances. She said that when a resident requests purchases or cash withdrawals, the nurse must notify the Home Manager and administration.

Ms 2 told the panel that all nurses receive an induction pack with instructions on how to manage the financial process in the circumstances that a resident, even a resident with capacity, requests purchases or cash withdrawals. Ms 2 told the panel that nurses are not allowed to have access to a resident's credit and/or debit card and Miss Hayes is expected to be aware of this as there are meetings and emails sent out regularly about policy and procedure.

The panel considered Resident A's written statement, produced by an interview conducted by Ms 2. It stated:

'I asked [Resident A] when did she realise that the money was missing from [her] account? She replied, 'There was a time when she knew that she had £22000 and some hundreds in her account, which by the following would be £23000 and some hundreds as her pension allowances would have been deposited into her account. But when I got the mini statement the following week, it only had some odd £18,000 in the account, [Ms 3] asked, if [Resident A] mentioned about the missing money to anyone? [Resident A] said, 'No, as I was moving to my new flat, I thought I will sort it out later'...'

In relation to charge 2b, the panel considered that Miss Hayes was a nurse in a position of trust and would have been expected to know that withdrawing substantial amounts of

money, including £500 per day, using a vulnerable resident's credit and/or debit card was wrong. The panel considered that these substantial amounts of money would not be required by Resident A as her meals and accommodation were provided for.

The panel considered that Miss Hayes was expected to be aware of policy and procedure as Ms 2 told the panel that there are regular emails sent out to staff members. The panel also considered the oral evidence of Ms 3 who told the panel that when she asked Miss Hayes what money she was using for purchases for Resident A, Miss Hayes said she was using her own money and did not disclose that she had access to Resident A's credit and/or debit card.

The panel heard from Ms 2 that when Resident A realised money was missing from her bank account, Resident A raised the concerns with Miss Hayes, and she did not escalate it to the Home Manager or administration as required which is indicative of her state of mind to conceal her dishonesty and activity.

The previous matters that consist of one conviction and one caution were considered by the panel as supplementary evidence. The panel considered that these matters demonstrated Miss Hayes' propensity to commit dishonest acts.

Having regard to all the evidence, the panel determined, Miss Hayes' actions in relation to Charge 1a would be regarded as dishonest by the standards of ordinary decent people and it was therefore satisfied that Miss Hayes was dishonest in her actions.

Accordingly, the panel found that Miss Hayes' actions at Charge 1a were dishonest in that she knew that she was not authorised to withdraw money that had not been requested by Resident A to be withdrawn and she knew that what she was doing was wrong.

The panel therefore found Charge 2a and 2b proved on the balance of probabilities.

Charge 3

Your actions as specified in charge 1b) were dishonest in that:

a) You knew that you were not authorised to use Resident A's credit and/or debit card for items that had not been requested by Resident A to be purchased;

b) You knew that what you were doing was wrong.

This charge is found proved.

In reaching this decision, the panel considered its findings in relation to Charge 1 and Charge 2.

The panel is satisfied that Miss Hayes was dishonest in her actions. In reviewing the evidence in relation to charge 3a, the panel considered the oral and written evidence from all three witnesses.

During Ms 3's oral evidence, she told the panel about the Home's policy and procedure in relation to using credit and/or debit cards of residents and purchase requests. She told the panel that when a resident has capacity, the nurse must notify the Home Manager and administration, a nurse or carer is assigned to accompany the resident to the shop and the resident uses their own credit and/or debit card. Ms 3 told the panel that nurses are not allowed to use the credit and/or debit card of any residents in any circumstances. She said that when a resident does not have capacity or a resident requests food or purchases outside of kitchen hours, the nurse can order food online and provide a receipt to the Home Manager and administration for a reimbursement. Ms 3 told the panel whilst working on a night shift with Miss Hayes, she told Ms 3 that she was going to the shops with her own money to make purchases for Resident A however she failed to produce any receipts and said the machine was broken or the shopkeeper did not give her a receipt.

Ms 2 told the panel that Miss Hayes did not follow the Home's policy and procedure as she did not provide the Home Manager or administration with receipts from the purchases. She told the panel that all nurses receive an induction pack with instructions on how to manage the financial process in the circumstances that a resident, even a resident with capacity, requests purchases. Ms 2 told the panel that nurses are not allowed to have access to a resident's credit and/or debit card and Miss Hayes is

expected to be aware of this as there are meetings and emails sent out regularly about policy and procedure.

The panel considered Resident A's written statement, produced by an interview conducted by Ms 2. It stated:

'I asked Resident A if [Colleague A] and Kelly brought the receipts when they used the card? She replied, "[Colleague A] brought the receipt and mini statement but that was a long time ago and I don't remember the date. But, Kelly never brought the receipt and mostly said that the printer in the shop was broken or the shopkeeper did not give the receipt. She mentioned to me once that there were a few youngsters, teenagers who followed her and she had to rush as she was scared.'"

The panel considered that Miss Hayes was expected to be aware of policy and procedure as Ms 2 told the panel that there are regular emails sent out to staff members. The panel considered a purchase made on 17 November 2021 for furniture on Resident A's bank statement, Ms 2 told the panel that a receipt was produced for the furniture purchase made on Resident A's behalf by Miss Hayes. The panel took the view that this demonstrates that Miss Hayes is aware of the policy and procedure as she produced a receipt for this furniture purchase, however, she did not do so on other occasions, giving instead a wide variety of excuses why no receipt was available. The panel also considered the oral evidence of Ms 3 who told the panel that when she asked Miss Hayes what money she was using for purchases for Resident A, Miss Hayes said she was using her own money and did not disclose that she had access to Resident A's credit and/or debit card.

The panel noted the bank statement produced in evidence by Ms 2, who highlighted on a number of occasions where two purchases were made at the same time and location. The panel determined that it was more likely than not that Miss Hayes used Resident A's card twice in one location, making one purchase for the Resident and then a second purchase for herself. This was the opinion evidence of Ms 2 and the panel agreed with the logic of this in the context of this case.

The previous matters that consist of one conviction and one caution were considered by the panel as supplementary evidence. The panel considered that these matters demonstrated Miss Hayes' propensity to commit dishonest acts.

The panel determined that Miss Hayes did not provide any receipts in order to conceal her dishonesty and activity.

Having regard to all the evidence, the panel determined, Miss Hayes' actions in relation to Charge 1b would be regarded as dishonest by the standards of ordinary decent people and it was therefore satisfied that Miss Hayes was dishonest in her actions.

Accordingly, the panel found that Miss Hayes' actions at 1b were dishonest in that she knew that she was not authorised to use Resident A's credit and/or debit card for items that had not been requested by Resident A to be purchased and she knew that what she was doing was wrong.

The panel therefore found Charge 3a and 3b proved on the balance of probabilities.

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 Miss Hayes' fitness to practise is currently impaired.

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, Miss Hayes' 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 Malik invited the panel to take the view that the facts found proved amount to misconduct. He identified the specific, relevant standards where your actions amounted to misconduct. He drew the panel’s attention to a number of sections of the Code that he said had been breached.

Mr Malik submitted that Miss Hayes’ actions demonstrate a pattern of sustained dishonest and unprofessional behaviour. He submitted that Miss Hayes was a nurse in a position of trust and was aware that withdrawing substantial amounts of money and using a vulnerable resident’s credit and/or debit card was wrong and unacceptable.

Mr Malik submitted that the previous matters that consist of one conviction and one caution, demonstrate Miss Hayes’ propensity to commit dishonest acts. He submitted that dishonest conduct goes against the NMC code and can be difficult to remediate.

Mr Malik submitted that the misconduct is a serious departure from the Code, and fellow practitioners would consider such a departure deplorable. He submitted that the misconduct is serious because honesty and integrity are fundamental tenets of the profession. He submitted that the public expect nurses to be trustworthy and not to make unauthorised transactions by using the credit and/or debit card of a person in their care.

Submissions on impairment

Mr Malik moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2)*

and Grant [2011] EWHC 927 (Admin). In paragraph 76 of *CHRE v NMC and Grant*, 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.'*

Mr Malik submitted that all four limbs of *Grant* are engaged. In relation to the first limb, Mr Malik submitted that losing a considerable amount of money could have caused psychological harm and distress to Resident A. He submitted that the panel heard Ms 2's oral evidence in which she said Resident A was angry and shocked when the missing money was discovered. He submitted that Ms 2 also told the panel during her oral evidence that nurses were not allowed to leave the building at night and could have caused potential harm to patients if she was not available at the Home. He submitted that in the absence of full insight and remediation the risk of repetition and future harm remains.

In relation to the second and third limb, Mr Malik submitted that Miss Hayes' actions have brought the nursing profession into disrepute, and she has breached fundamental tenets of the nursing profession by failing to promote professionalism and trust and acting in a thoroughly dishonest manner.

Mr Malik submitted that registered professionals occupy a position of trust in society. He submitted that the public expects nurses to provide safe and effective care and conduct themselves in a way that promotes trust and confidence. He submitted that the conduct in this case undermines the public's trust and confidence in the profession and could result in patients, and members of the public, being deterred from seeking nursing assistance when needed.

In relation to the fourth limb, Mr Malik submitted that the NMC considers there to be a continuing risk to both public protection and the wider public interest due to Miss Hayes' actions which are directly linked to her clinical practice and dishonesty. It was his submission that Miss Hayes taking advantage of a vulnerable resident raises fundamental concerns about her attitude as a registered professional as she demonstrated a serious breach of trust and abuse of authority.

Mr Malik submitted that Miss Hayes deceived her colleague (Ms 3) when she was asked how she was paying for the shopping of Resident A. Miss Hayes said she was using her own money to shop for Resident A when in fact it was clear that she was not. Mr Malik submitted that the misconduct is not easily remediable as Miss Hayes breached the professional duty of candour. Mr Malik submitted that the concerns have not been remediated and are therefore highly likely to be repeated should Miss Hayes be permitted to practise as a nurse again.

Mr Malik invited the panel to find impairment on the ground of public protection. He submitted that dishonesty is difficult to remediate. He submitted that Miss Hayes has not submitted a reflection statement to the panel, she failed to attend this hearing, she denied all the charges and there is no evidence that she has addressed any concerns or risks identified in the case and therefore there remains a risk of repetition of the relevant misconduct.

Mr Malik also invited the panel to find impairment on the ground of public interest. He submitted that Miss Hayes breaching the professional duty of candour by covering up what she had done is deplorable and amounts to serious misconduct. The conduct of Miss Hayes has brought the nursing profession into disrepute and served to undermine public confidence and trust in the profession. He submitted that Miss Hayes' conduct raises fundamental questions about her integrity and trustworthiness as a registered

professional and seriously undermines public trust in nurses, midwives and nursing associates.

The panel accepted the advice of the legal assessor which included reference to the principles contained in *Grant and Cohen v General Medical Council* [2008] EWHC 581 (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 also had regard to the NMC's guidance on misconduct (*reference*: FTP-2a) and the guidance on seriousness, with particular regard to dishonesty (*reference*: FTP-3). The panel also bore in mind the context in which these charges arose, pursuant to the guidance.

The panel considered the 'Introduction' section of the Code, which outlined:

'The values and principles set out in the Code can be applied in a range of different practice settings, but they are not negotiable or discretionary.'

The panel was of the view that Miss Hayes' 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:

You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved, and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld...

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

20.4 keep to the laws of the country in which you are practising

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

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, including people in your care

The panel found that Miss Hayes' actions did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct. The panel determined that honesty is a fundamental tenet of nursing, and Miss Hayes' dishonest conduct was deliberate and repeated over a six-month period.

The panel considered Miss Hayes' action in that she repeatedly left the Home as the night nurse on duty to make cash withdrawals or purchases for her own benefit using a vulnerable resident's credit and/or debit card. The panel considered that Miss Hayes was in a position of trust and noted that her unacceptable conduct occurred within the workplace environment. It took account of Ms 3's oral evidence when she told the panel that when questioning Miss Hayes about the money used to make purchases for Resident A, Miss Hayes was dishonest by saying that she was using her own money instead of Resident A's credit and/or debit card.

The panel considered Ms 2's oral evidence where she told the panel that no nurses were allowed to leave during the night and determined that Miss Hayes had repeatedly

put residents at risk of harm by leaving the Home understaffed to commit her dishonest acts.

The panel considered the NMC guidance (*reference: SAN-2*) on ‘*Cases involving dishonesty*’. It considered the following to be engaged in this case:

- 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

For the reasons above, the panel concluded that Miss Hayes’ actions amounted to misconduct.

Decision and reasons on impairment

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

The panel were aware that there is no statutory guidance on what constitutes impairment. However, it was guided by NMC Guidance and the leading Case of *Grant*.

In paragraph 76 of *CHRE v NMC and Grant*, 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:

- e) *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*
- f) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- g) *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*
- h) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

With regard to the first limb, the panel determined that patients were put at risk of harm as a result of Miss Hayes misconduct. The panel had regard to the evidence of Ms 1 and Ms 2 about the response of Resident A to being informed of the money being taken from her account. They described her as “shocked” and “angry”. The panel determined that this evidence, from two clinicians with knowledge of and involved in the care of Resident A, was sufficient for it to find that Resident A was caused psychological harm and distress by Miss Hayes actions. The panel heard evidence from Ms 2, the Home Manager, stating that night nurses were not allowed to leave the Home. Ms Hayes was a night nurse, she left the Home repeatedly to visit the cash point for withdrawals or make purchases for her own benefit, putting residents at risk of harm in the event of an emergency situation.

With regard to the second and third limbs, Miss Hayes’ misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that it is a fundamental tenet of nursing for a registrant to be open and honest, and to act with integrity. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find that Miss Hayes’ misconduct was a breach of a fundamental tenet of the profession.

With regard to the fourth limb, the panel had found that Miss Hayes had been dishonest on a number of occasions over a sustained period of time. It took account that Miss Hayes did not admit the allegations at the Home’s internal disciplinary investigation interview and she stated “no comment” throughout the police interview. The panel also

considered that Miss Hayes had two previous matters involving dishonest acts resulting in a conviction and a caution order. As a result, the panel is not satisfied that the conduct would not be repeated.

The panel considered the nature of the charges found proved and considered that an opportunity arose, and Miss Hayes exploited it. Miss Hayes volunteered to do shopping for a vulnerable resident in her care, knowing this was against the Home's policy, and used the credit and/or debit card of that vulnerable resident for her own financial gain. The panel considered that Resident A, who was vulnerable, had trusted Miss Hayes and that she betrayed that trust by acting outside of what was expected of her as a nurse.

With regard to future risk, the panel considered the comments of Silber J in *Cohen v General Medical Council* [2008] EWHC 581 (Admin) namely (i) *whether the concerns are easily remediable*; (ii) *whether they have in fact been remedied*; and (iii) *whether they are highly unlikely to be repeated*.

The panel was not satisfied that the misconduct in this case is capable of being easily addressed. It took account of Miss Hayes' denial of the allegations when the matter was investigated by her employer and the fact that no reflective statement has been produced to show that she acknowledges the harm and distress that she has caused to Resident A or how she would act in the future. The panel determined that Miss Hayes' past conviction and caution is indicative of deep-seated personality issues and noted that her actions only stopped at the Home because she was caught. It determined that, in light of these circumstances, the concerns in this case would be extremely difficult to remediate.

Regarding insight, the panel considered that Miss Hayes did not provide any evidence to the panel that she had remediated the concerns raised. It took account of Miss Hayes' failure to fill in the NMC's case management form and her failure to provide any responses to the charges against her.

The panel did not have sight of any evidence of contextual factors that adversely effected Miss Hayes' ability to practise safely and professionally.

The panel is of the view that there is a risk of repetition based on the facts found proved in this case and that this was not a one-off incident albeit the events were repeated over

a six-month period. It considered that Miss Hayes' dishonesty, in a case such as this, was not easy to remediate and she failed to demonstrate any insight and remediation. It reminded itself of the NMC guidance (*reference: SAN-2*) on '*Cases involving dishonesty*' and determined that Miss Hayes' deliberately breached the professional duty of candour by covering up when things have gone wrong. She was in a position of power and misused the trust placed in her by a vulnerable resident for personal financial gain. It determined that Miss Hayes' dishonesty was premeditated, systematic and longstanding deception. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because a fully informed member of the public would be concerned to find allegations of this nature, which are serious, would not amount to impairment given the repeated history of dishonest acts.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Hayes fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Hayes off the register. The effect of this order is that the NMC register will show that Miss Hayes has been struck-off the register.

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

Submissions on sanction

Mr Malik informed the panel that in the Notice of Hearing, dated 22 April 2024, the NMC had advised Miss Hayes that it would seek the imposition of a striking off order if the panel found her fitness to practise currently impaired. He submitted that a striking-off order is the only order that would maintain public confidence in the profession and uphold the proper standards. He submitted that a striking-off order is proportionate to the findings in respect of the charges and the subsequent decision in respect of impairment and misconduct.

Mr Malik outlined the aggravating and mitigating features in this case. He submitted that the alternative sanctions the panel has the power to consider would not sufficiently protect the public as Miss Hayes' dishonest behaviour in this case indicates deep seated personality issues or an attitudinal problem. He further submitted that Miss Hayes' misconduct involving repeated theft from a vulnerable resident in her care carried out for personal financial gain raises fundamental questions about her professionalism and the basic tenets of integrity and trust. He submitted that the panel has no evidence of remediation or insight from Miss Hayes and therefore she remains a risk to public safety.

Mr Malik submitted that Miss Hayes' dishonesty was so extensive that to allow her to continue practising would undermine public confidence in the profession and the NMC as regulator. Mr Malik asked the panel to consider a striking-off order to mark the importance of protecting the public and to maintain public confidence in the profession.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found that Miss Hayes' fitness to practise is currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel bore in mind that any sanction imposed must be appropriate and proportionate and, although

not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the NMC's guidance on '*Considering sanctions for serious cases*' (reference: SAN-2). In examining the factors in '*Cases involving dishonesty*', the panel found that none of the factors at the less serious end of the spectrum were engaged. By contrast, it considered that all of the serious factors were engaged, these included:

- '*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*
- *premeditated, systematic or longstanding deception*'

The panel considered that Miss Hayes' was in a position of power and misused the trust placed in her by a vulnerable resident for personal financial gain over a long period of time. The panel determined that these factors placed Miss Hayes' dishonesty towards the upper end of the spectrum of seriousness.

The panel took into account the following aggravating features:

- There was a pattern of misconduct over a significant period of time;
- Miss Hayes' misconduct put residents at a risk of harm;
- A vulnerable resident suffered significant financial loss and emotional distress whilst in direct care of Miss Hayes;
- Miss Hayes abused her position of trust;
- The misconduct indicates serious attitudinal issues;
- Dishonesty is always serious and this was towards the higher end of the spectrum; and

- No evidence of remorse, insight or the effect of dishonesty on the reputation of the profession.

The panel could not identify any mitigating features in this case.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Hayes' practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Hayes' misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing a conditions of practice order on Miss Hayes' registration would be a sufficient and appropriate response. The panel determined that there are no practicable or workable conditions that could be formulated, given the nature and seriousness of the charges in this case. The misconduct identified in this case was attitudinal in nature and therefore not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Hayes' registration would not adequately address the seriousness of her misconduct and would not protect the public.

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

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- ...
- ...

The panel considered that Miss Hayes' misconduct consisted of repeated instances of dishonesty which occurred over a considerable period of time. It took the view that Miss Hayes' dishonesty is at the higher end of the spectrum and is indicative of a deep-seated attitudinal problem. The panel also bore in mind that it had no evidence of remorse or insight before it from Miss Hayes. Therefore, it found a consequent risk of repetition.

The panel considered that Miss Hayes' misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Miss Hayes' actions is fundamentally incompatible with her remaining on the register as a nurse.

The panel therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction in her case.

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

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

The panel considered that Miss Hayes' actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her

remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Hayes' actions were serious and to allow her to continue practising put patients at risk and would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Hayes' actions in bringing the profession into disrepute by adversely affecting the public's view of how registered nurses should conduct themselves, the panel has concluded that nothing short of a striking-off order would be sufficient in this case.

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

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, 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 in your own interests until the suspension sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Mr Malik. He invited the panel to make an interim suspension order for a period of 18 months to cover any appeal period until the substantive striking-off order takes effect.

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

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months as it concluded that to do otherwise would be incompatible with its earlier findings. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.

This will be confirmed to Miss Hayes in writing.