

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

**Substantive Meeting
Friday 6 September 2024**

Virtual Meeting

Name of Registrant:	Katherine Ann Gilmour
NMC PIN	89H0270S
Part(s) of the register:	Registered Nurse – Mental Health – RN3
Relevant Location:	Scotland
Type of case:	Misconduct
Panel members:	Debbie Hill (Chair, lay member) Jonathan Coombes (Registrant member) Richard Bayly (Lay member)
Legal Assessor:	Jayne Salt
Hearings Coordinator:	Khatra Ibrahim
Consensual Panel Determination:	Accepted
Facts proved:	Charges 1 and 2
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Gilmour's registered email address by secure email on 19 August 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations, the time, date and the fact that this meeting was to be heard virtually.

In the light of all of the information available, the panel was satisfied that Mrs Gilmour has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1) On or around 14 April 2020 at Millbrae Care Home while working in your capacity as a staff nurse and Deputy Manager, took cash to the sum of £700 which:

- a) did not belong to you;**
- b) you did not have authorisation to take**

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

- a) you knew the money didn't belong to you;**
- b) you knew you did not have authorisation to take it**

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Mrs Gilmour.

The agreement, which was put before the panel, sets out Mrs Gilmour's full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Katherine Ann Gilmour ('Mrs Gilmour'), PIN 89H0270S ("the Parties") agree as follows:

1. Mrs Gilmour is content for her case to be dealt with by way of a CPD meeting, knowing that she is not required to attend and being content that matters will proceed in her absence.

2. Mrs Gilmour understands that if the panel wishes to make amendments to the provisional agreement with which she does not agree, the panel will postpone the matter for the case to be considered at a later hearing.

Preliminary issues

3. [PRIVATE]

The charges

4. Mrs Gilmour admits the following charges:

That you, a registered nurse:

1) On or around 14 April 2020 at Millbrae Care Home while working in your capacity as a staff nurse and Deputy Manager, took cash to the sum of

£700 which:

a) did not belong to you;

b) you did not have authorisation to take

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

a) you knew the money didn't belong to you;

b) you knew you did not have authorisation to take it

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

The facts

5. Mrs Gilmour appears on the register of nurses, midwives, and nursing associates maintained by the NMC as a Registered Nurse – Mental Health and has been on the NMC register since 12 December 1992.

6. Mrs Gilmour was referred to the NMC on 20 October 2020 by the Care Home

Manager at Thistle Healthcare ('the Home') [Ms 1] where Mrs Gilmour worked as a staff nurse and deputy manager for four years. One of Mrs Gilmour's duties at the Home was to manage the residents' funds.

7. The residents' funds comprised of donations, fundraising and monthly corporate contributions, for use to purchase items, outings and entertainment to enhance the lifestyle of residents living in the Home. Some monies were held on site at the Home, and some were held in a designated bank account. The bank account had two signatories i.e., Mrs Gilmour and Care Assistant [Ms 2]. Mrs Gilmour was [Ms 2]'s manager. To obtain funds from the bank account, both signatories need to attend the branch with the cheque book, and both must countersign it.

8. On an unknown date, prior to 14 April 2020, Mrs Gilmore asked [Ms 2] to sign a blank cheque for an unspecified purchase. She told [Ms 2] that she would be going to the bank whilst [Ms 2] was on shift, and therefore unable to accompany Mrs Gilmour. [Ms 2] signed the cheque as requested.

9. On 14 April 2020, Mrs Gilmour withdrew £700 from the residents' fund without authorisation from [Ms 1] and unaccompanied by [Ms 2].

10. On 08 July 2020, [Ms 1] opened mail at the Home and saw a bank statement which related to the residents' fund showing a withdrawal from the account of £700

on 14 April 2020. She checked this against the logbook and could not account for the money nor see it noted in the book. She then checked the stub within the cheque book, but it was blank.

11. On 09 July 2020 [Ms 1] asked Mrs Gilmour to assist her in going over the book and money in the tin to see if she had missed something; however, Mrs Gilmour advised 'It's all there, all the receipts are there', before leaving the office.

12. On 10 July 2020, [Ms 2] informed [Ms 1] that Mrs Gilmour had requested her to sign a blank cheque which she did, despite suspecting that something was not right. Subsequently, [Ms 1] informed her Support Manager [Ms 3] who arrived at the Home that afternoon. [Ms 3] asked Mrs Gilmour to accompany her to the office, where she and [Ms 1] asked if there were any issues with the accounts or if Mrs Gilmour knew why it was not adding up. Mrs Gilmour said she did not know and [Ms 3] advised her to go and have a think about it and come back.

13. Approximately 30 minutes later Mrs Gilmour returned to the office and admitted that she had taken the £700. Mrs Gilmour was suspended immediately pending further investigation.

14. At an investigation meeting on 17 July 2020, Mrs Gilmour stated that she had taken the £700 to pay [PRIVATE] and thought she would have been able to pay it back before anyone noticed it had been taken.

15. On 29 July 2020 Mrs Gilmour attended a disciplinary meeting, at which she was summarily dismissed for gross misconduct.

16. The matter was also reported to the police. On 27 July 2020, Mrs Gilmour was cautioned and charged with the following:

'That on 14 April 2020 at Millbrae Care Home, Coatbridge, you did while working in your capacity as Staff Nurse and Deputy Manager of Millbrae Care Home, Woodside Street, Coatbridge embezzle cash to the sum of £700.'

17. A hearing was set for 16 August 2021. However, Mrs Gilmour emailed the court that day to advise that she would not be attending the hearing, but that she was pleading guilty. She wrote:

“at the time I had justified it to myself that it was borrowing as I had every intention of paying the money back. [PRIVATE].”

18. *On 17 August 2021 Mrs Gilmour was convicted at Airdrie Sherrif Court, which under Scottish law constituted the “pleading diet” where a guilty plea was entered by Mrs Gilmour in writing. Sentencing was set for 07 September 2021, but Mrs Gilmour did not attend. On 21 September 2021 the Court issued a warrant for Mrs Gilmour’s arrest for her failure to appear.*

19. *On 30 March 2023 the Court informed the NMC that although Mrs Gilmour had pleaded guilty to the offence, an extract of conviction could only be provided once the case had been disposed of. Since there was currently an outstanding warrant for Mrs Gilmour, and a sentence hearing had not yet been held, an extract of conviction was not available.*

20. *On 22 May 2024, Mrs Gilmour emailed the NMC admitting the charges and accepting current impairment.*

Misconduct

21. *In the absence of a certified certificate of conviction there is no conclusive proof that Mrs Gilmour has been convicted of a crime. Nonetheless it is agreed that the facts amount to misconduct.*

22. *The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC*

16 may provide some assistance when seeking to define misconduct:

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

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

23. As may the comments of Jackson J in R (Calhaem) v General Medical Council [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin) respectively:

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

And

‘The adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner’.

24. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council’s Code of Conduct (‘the Code’).

25. At all relevant times, Mrs Gilmour was subject to the provisions of the Code. The Code sets out the professional standards that nurses must uphold. These are the standards that patients and members of the public expect from health professionals. On the basis of the charges alleged, the Parties agree the following provisions of the Code have been breached in this case;

Promote professionalism and trust.

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...

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.*

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

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.*

*26. It is acknowledged that not every breach of the Code will result in a finding of
misconduct; however, the misconduct as set out in the charges amounts to serious
professional misconduct. Mrs Gilmour has stolen funds from residents of the
Home and has then been dishonest in order to cover up her behaviour and
suppress the truth.*

Impairment

*27. The Parties agree that Mrs Gilmour's fitness to practise is currently impaired by
reason of her misconduct.*

*28. The NMC's guidance explains that impairment is not defined in legislation but is
a matter for the Fitness to Practise Committee to decide. 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?"*

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

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

31. *The Parties agree that consideration of the nature of the concern involves looking at the factors outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)). Those questions were:*

a) has [the Registrant] in the past acted and/or is liable in the future to act as so

to put a patient or patients at unwarranted risk of harm; and/or

b) has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or

c) has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or

d) has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.

32. *The Parties agree that limbs (a) to (d) can be answered in the affirmative in this case. Taking each of the limbs in turn:*

Limb a)

33. *Mrs Gilmour's conduct is serious and caused financial harm. Stealing money belonging to residents could have also caused emotional harm to the patient or their relatives.*

34. *Mrs Gilmour's actions resulted in a breach of trust and fell short of nursing standards.*

Limb b)

35. *Honesty is a fundamental tenet of the profession and is often described as the bedrock of the profession. The public has the right to expect high standards of registered professionals. Registered professionals occupy a position of trust and must, at all times, act with and promote honesty. Mrs Gilmour has clearly brought the nursing profession into disrepute by dishonestly taking money meant for vulnerable residents. The public would be extremely concerned to hear that in the course of her work as a registered staff nurse and deputy manager, Mrs Gilmour took money from the residents' fund account. The seriousness of the misconduct not only brings the profession into disrepute but calls into question Mrs Gilmour's professionalism and trustworthiness in the workplace, as her actions were an abuse of her position of authority.*

Limb c)

36. *The Parties agree that the relevant sections of the Code set out above have been breached in this case and these breaches relate to fundamental tenets of the profession, which consequently undermines or completely erodes public trust and confidence in the profession. Whilst dishonesty is difficult to remediate, Mrs Gilmour has failed to address and put right the issues raised. Her failure to attend Court suggests that she does not appreciate the seriousness of her conduct. It is therefore agreed that the panel cannot be assured that the behaviour will not reoccur in the future and thus a high risk of repetition remains.*

Limb d)

37. *Taking money without consent is dishonest by its very nature.*

38. *Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions:*

- (i) whether the concern is easily remediable;*
- (ii) whether it has in fact been remedied; and*
- (iii) whether it is highly unlikely to be repeated.*

Limb (i)

39. *The NMC's guidance entitled 'Serious concerns which are more difficult to put right' provides that some concerns are so serious it may be less easy for the registered professional to put right the conduct or an aspect of their attitude which led to the incident(s) happening. One criterion that causes a concern to qualify as such is 'exploiting patients or abusing the position of a registered nurse, midwife or nursing associate for financial or personal gain.' The Parties agree that this case falls within this category.*

40. *The Parties agree that there are underlying attitudinal issues. The Parties have considered the NMC guidance entitled: Can the concern be addressed? (Reference: FTP-14a), which provides that attitudinal concerns cannot be addressed by training or supervision. The guidance indicates that dishonesty may not be possible to address, particularly if it was serious and sustained over a period of time or was directly linked to the nurse, midwife or nursing associate's practice. The Code requires all nurses, midwives and nursing associates to act with honesty and integrity at all times and Mrs Gilmour's actions were a significant departure from the standards expected.*

41. Her conduct as a nurse falls so far short of the standards the public expect of professionals caring for them, that public confidence in the nursing and midwifery professions is undermined. Although the incident was a one off, it does indicate that Mrs Gilmour has a deep-seated attitudinal issue. The act of taking money from the residents' fund brings into question Mrs Gilmour's professionalism and trustworthiness in the workplace. She also abused her position of power by asking a junior member of staff (whom she managed) to sign a blank cheque in order to take monies from vulnerable residents.

Limb (ii)

42. The Parties have considered the NMC guidance 'Has the concern been addressed?' (FTP-14b). Whilst dishonesty is difficult to remediate, it is agreed that Mrs Gilmour has not provided evidence to suggest that she has taken any steps to address the concerns. Mrs Gilmour pleaded guilty to the criminal charge however, she has failed to make herself available for sentencing, resulting in a warrant for her arrest. Again, this calls her trustworthiness into question.

Limb (iii)

43. The Parties have considered the NMC guidance 'Is it highly unlikely that the conduct will be repeated?' (FTP-14c). As mentioned, Mrs Gilmour has shown limited remorse or demonstrated insight into the seriousness of her actions leading to her conviction. In her submissions to the NMC, Mrs Gilmour maintains that she did not see her actions as taking money but rather as "borrowing the money". Therefore, in the absence of an understanding of the significance of her actions, it is agreed that there is a significant risk of the conduct being repeated.

Remorse, reflection, insight, remediation

44. It is agreed that Mrs Gilmour has not demonstrated sufficient remorse or insight in relation to her actions. In her reflective accounts form, provided to the NMC on 16 October 2020, she wrote:

'At the time i was fearful and desperate and felt i had nowhere or anyone to turn to. I did think i would have had time to put it back and had every intention of doing so. Staff, residents and relatives were unaware of what i had done at the time. I understand and appreciate that had they known they would have been disappointed in my actions and lost trust and faith in me. I think this incident happened due to a major lapse in judgment... If I was in a similar situation again I would not do the same thing...[PRIVATE].'

45. In her email to the NMC dated 26 January 2021 she wrote:

"At the time i saw it as borrowing the money as i had every intention of paying it back. [PRIVATE] Management had said at the time if i admitted it they would provide help and support. This never happened. [PRIVATE] I was never given the opportunity to pay back the money which i had offered. [PRIVATE]."

46. The nature of the misconduct, particularly the dishonesty elements means that it cannot be addressed through training.

47. Mrs Gilmour has not worked as a nurse since her dismissal from the Home on 29 July 2020 and the imposition of an interim suspension order on 17 November 2020.

48. It is therefore agreed that in the absence of remorse and sufficient insight, the risk of repetition remains.

Public protection impairment

49. *The Parties agree that a finding of impairment is necessary on public protection grounds.*

50. *Mrs Gilmour's failings fall seriously below the standards expected of a nurse. She has not provided sufficient evidence to address the concerns and she has failed to attend court for her sentencing, thus remains a financial and emotional risk to the public. A finding of impairment is therefore required for the protection of the public.*

Public interest impairment

51. *A finding of impairment is necessary on public interest grounds.*

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

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

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

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

55. 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.

56. The Parties agree that there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour and to maintain confidence in the profession and the NMC as a regulator. Mrs Gilmour acted in a way that other colleagues would find deplorable. Her actions raise fundamental concerns about her attitude, trustworthiness and constitute a serious breach of her position as a registered professional.

57. It is therefore agreed that Mrs Gilmour's fitness to practise is impaired on both public protection and public interest grounds.

Sanction

58. In consideration of the NMC's sanctions guidance it is agreed that a striking-off order is the appropriate and proportionate sanction in this case.

59. The Parties agree the following to be aggravating and mitigating factors:

Aggravating factors:

- *Dishonest conduct directly linked to her work as a nurse, constituting an abuse of trust, resulting in financial harm.*
- *Lack of insight*
- *Failure to attend at Court*

Mitigating factors:

- *This was an isolated incident.*

60. Considering each of the available sanctions in ascending order the parties agree that:

60.1. The NMC Sanctions Guidance (“the Guidance”) states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of Mrs Gilmour’s misconduct means that taking no action would not be appropriate. A caution order would also not be appropriate as this would not mark the seriousness of the concerns and the case is not at the lower end of the spectrum of impaired fitness to practise, due to the public protection concerns identified. Additionally, neither sanction would restrict Mrs Gilmour from practising.

60.2. A conditions of practice order would be inappropriate. The Guidance (SAN-3c) says that a conditions of practice order is appropriate when the concerns can easily be remediated and when conditions can be put in place that will be sufficient to protect the public and address the areas of concern to uphold public confidence. In this case, a conditions of practice order would not be sufficient to protect the public and would not be in the public interest. There are no conditions which can be formulated to address taking money for the use of residents. Mrs Gilmour submitted an Agreed Removal

application, expressing a desire to be removed from the register, which suggests she no longer wants to work in a healthcare setting. Suitable and workable conditions can therefore not be formulated. Moreover, a conditions of practice order would not be sufficient to mark the seriousness of the misconduct.

60.3. With reference to the NMC Guidance (SAN-3d), a suspension order would be inappropriate because there is clear evidence of harmful deep-seated personality and attitudinal problems when analysing Mrs Gilmour's actions, even if it is a one-off incident. Mrs Gilmour has demonstrated limited insight into her actions of taking money without consent from her place of work and the impact of her actions on the wider nursing profession. There is therefore a high risk that she will repeat such conduct, in the absence of any meaningful insight or remediation. Mrs Gilmour has brought the nursing profession into disrepute and trust and confidence in the profession is likely to be seriously eroded by her actions. Her actions are fundamentally incompatible with being a registered professional. Taking into account the nature and seriousness of the conduct, temporary suspension would not be enough to address the concerns.

60.4. A striking-off order is the appropriate sanction in this case. With regard to the guidance at SAN-3e, it is agreed that the misconduct was serious and is fundamentally incompatible with ongoing registration. The taking of monies without consent involves a serious breach of trust, abuse of authority, and public safety concerns. Mrs Gilmour's actions raise fundamental concerns around her professionalism and trustworthiness. The seriousness of the misconduct outweighs any personal mitigation offered by Mrs Gilmour. Public confidence in the profession cannot be maintained unless Mrs Gilmour is removed from the register. It is the only sanction which will be sufficient to protect patients, members of the public and maintain professional standards.

60.5. The Parties have considered and rely on cases such as Ige v Nursing and Midwifery Council [2011] EWHC 3721 to support the decision of a striking off order despite there being no concerns around Mrs Gilmour's clinical skills. The case of Ige is an example which displays the courts supporting decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills. Striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions. Similarly, in this case, although there were no concerns around Mrs Gilmour's clinical skills, dishonesty of such severity significantly undermines the public's trust and confidence in the profession.

60.6. Moreover, and as per the NMC's guidance, the Parties rely on the case of Bolton v Law Society [1994] 1 WLR 512 which illustrates the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Here, and as mentioned above, although there were no concerns around Mrs Gilmour's clinical skills, it is agreed that a striking-off order is still appropriate because this is the 'price' you pay for being a registered professional and maintaining the reputation of the profession. Mrs Gilmour's actions raise fundamental concerns about her professionalism and public confidence in nurses cannot be maintained if she is not removed from the register. A striking-off order is the only sanction which will be sufficient to protect patients, members of the public, maintain professional standards and address the public interest in this case.

Maker of allegation comments

61. On 06 June 2024 the NMC wrote to [Ms 1] for her comments on the agreed sanction. To date a response is yet to be received.

Interim order

62. An 18-month interim order is required in this case to cover the eventuality of an appeal by Mrs Gilmour. The substantive order will not come into effect until some 28 days after the hearing and should Mrs Gilmour lodge an appeal within the relevant period, the substantive order would not come into effect pending a resolution of the appeal. This would permit Mrs Gilmour to practise without restriction during this time and would therefore fail to provide protection for the public or take account of public interest considerations. It is agreed that an interim suspension order is required for a period of 18 months because it is likely to take that amount of time for the appeal to be heard.

63. The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on facts, impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Mrs Gilmour. The provisional CPD agreement was signed by Mrs Gilmour and the NMC on 4 July 2024 and 17 August 2024.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice, who referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. They reminded the panel that the panel could accept, amend or outright

reject the provisional CPD agreement reached between the NMC and Mrs Gilmour. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mrs Gilmour admitted the facts of the charges. Accordingly the panel was satisfied that the charges are found proved by way of Mrs Gilmour's admissions as set out in the signed provisional CPD agreement.

Decision and reasons on misconduct and impairment

In respect of misconduct, the panel determined that in absence of a certified certificate of conviction there is no conclusive proof that Mrs Gilmour has been convicted of a crime. Nonetheless it is agreed that the facts amount to misconduct.

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

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

As may the comments of *Jackson J in R (Calhaem) v General Medical Council [2007] EWHC 2606 (Admin)* and *Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin)* respectively:

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

And

‘The adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner’.

Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council’s Code of Conduct (‘the Code’). At all relevant times, Mrs Gilmour was subject to the provisions of the Code. The Code sets out the professional standards that nurses must uphold. These are the standards that patients and members of the public expect from health professionals. On the basis of the charges alleged, the Parties agree the following provisions of the Code have been breached in this case;

Promote professionalism and trust.

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...

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.

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

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.

It is acknowledged that not every breach of the Code will result in a finding of misconduct; however, the misconduct as set out in the charges amounts to serious professional misconduct. Mrs Gilmour has stolen funds from residents of the Home and has then been dishonest in order to cover up her behaviour and suppress the truth.

In this respect, the panel endorsed paragraphs 21 to 26 of the provisional CPD agreement in respect of misconduct.

The panel then went on to consider whether Mrs Gilmour's fitness to practise is currently impaired, by reasons of misconduct. Whilst acknowledging the agreement between the NMC and Mrs Gilmour, the panel has exercised its own independent judgement in reaching its decision on impairment.

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.'

The panel determined that Mrs Gilmour's fitness to practise is currently impaired. In this respect the panel endorsed paragraphs 23 to 57 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mrs Gilmour's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Dishonest conduct directly linked to her work as a nurse, constituting an abuse of trust, resulting in financial harm;
- Lack of insight; and
- Failure to attend at Court.

The panel also took into account the following mitigating feature:

- This was an isolated incident.

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 Mrs Gilmour's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Gilmour's misconduct was not at the lower end of the spectrum and that a caution order would be

inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Gilmour's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Gilmour's registration would not adequately address the seriousness of this case 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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

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

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

Mrs Gilmour's 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 Mrs Gilmour's actions were serious and to allow her to continue practising 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 agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Gilmour's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

Decision and reasons on interim order

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 Mrs Gilmour's own interest. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interests. 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 agreed with the CPD that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to account for the possible appeal period.

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

That concludes this determination.