

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

**Substantive Meeting
Wednesday, 13 March 2024 – Friday, 15 March 2024**

Virtual Meeting

Name of Registrant: Cheryl Josephine Goldsmith

NMC PIN 08A2613E

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing – 10 March 2008

Relevant Location: Newbury

Type of case: Misconduct

Panel members: Fiona Abbott (Chair, Lay member)
Susan Field (Registrant member)
Bill Matthews (Lay member)

Legal Assessor: Paul Housego

Hearings Coordinator: Stanley Udealor

Facts proved: Charges 1, 2, 3 and 4

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 Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Goldsmith's registered email address by secure email on 29 January 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, and that the meeting was to be held virtually. It informed Mrs Goldsmith that she had until 27 February 2024 to supply any additional evidence or information and that a meeting would be held on or after 4 March 2024.

The panel noted that Mrs Goldsmith has not engaged with the Nursing and Midwifery Council (NMC) since the referral was made in 2019. The panel further noted that several attempts had been made to contact Mrs Goldsmith via her registered email address and telephone but there was no response from her.

In the light of all of the information available, the panel was satisfied that Mrs Goldsmith 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, during the period 15 September 2015 to 4 December 2018:

- 1) On one or more occasions, took an unspecified amount of money belonging to the Argyles Home for your personal use.
- 2) On one or more occasions, put pressure on Colleague A to lend you money belonging to the Argyles Home and/or Colleague A.

- 3) Your actions at charges 1) and/or 2) were dishonest as you knew you were not authorised to take and/or use this money for your personal use.
- 4) Your actions at charge 2) demonstrate a lack of integrity and/or an abuse of position of trust.

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

Background

The charges arose whilst Mrs Goldsmith was employed as a Home Manager at The Argyles Care Home ('the Home'), within the Bupa Group ('Bupa'). On 27 February 2019, Mrs Goldsmith was referred to the NMC by Bupa.

Mrs Goldsmith was employed by the Home as a Deputy Home Manager from 14 September 2015 and then promoted to the Home Manager role from 6 October 2017 after acting in that role for six months. It was alleged that whilst Mrs Goldsmith was employed as the Deputy Home Manager, she began borrowing money from the residents' fund at the Home. It was alleged that Mrs Goldsmith would ask the finance administrator, ("Colleague A") to give her money, usually during the last week of the month which she then paid back when she was paid her wages. When the then Home Manager was made aware of this, she ensured this stopped.

Following Mrs Goldsmith's promotion to acting Home Manager and then as Home Manager, Mrs Goldsmith allegedly again began asking Colleague A to give her money from the Home, usually during the last week of the month and she would then pay it back when she was paid her wages. There was no record of the amount that Mrs Goldsmith borrowed nor confirmation that it was repaid, as records of the transactions were not maintained. Colleague A reported later that she would top up the money from her personal finances at the time to cover the shortfall of the cash that Mrs Goldsmith borrowed. Colleague A felt she had been put in a difficult position due to Mrs Goldsmith's position as Colleague A's line manager at the time of the incidents.

On one occasion when Colleague A was on leave, Mrs Goldsmith allegedly took £100 from the Home which she informed Colleague A of, retrospectively. Mrs Goldsmith allegedly stated that the money was taken from Colleague A's desk drawer and not the Home's safe. On that occasion, it was alleged that Mrs Goldsmith had told Colleague A that "*I don't care if you report me*". The amount that Mrs Goldsmith allegedly borrowed at any one time ranged from £20 to £150 each month.

An investigation was commenced by Bupa and during an investigation meeting on 4 December 2018, it was alleged that Mrs Goldsmith accepted that she had taken money from the Home without authorisation because of her difficult personal circumstances at that time. Mrs Goldsmith stated that although she could not remember how much she had borrowed, she insisted that she had always paid back any money borrowed from the Home.

On 10 December 2018, a disciplinary hearing was conducted by Bupa. At the conclusion of the disciplinary hearing, Mrs Goldsmith was dismissed without notice on 12 December 2018.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the written representations made by the NMC.

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 had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Regional Director of the Home and Mrs Goldsmith's line manager at the time of the incidents.

- Witness 2: Regional Director of Bupa at the time of the incidents.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

- 1) On one or more occasions, took an unspecified amount of money belonging to the Argyles Home for your personal use.

This Charge is found proved.

In reaching this decision, the panel took into account the Home's Investigation Notes with Mrs Goldsmith dated 4 December 2018. It noted that during the Home's investigation meeting, Mrs Goldsmith admitted that she had been borrowing money from the Home for around eight months without authorisation. She admitted that she usually borrowed around £100 to £150 from the Home without authorisation while she was working as the Home Manager. Mrs Goldsmith also accepted that she had borrowed smaller amounts from the Home without authorisation while she was the Deputy Home Manager until the then Home Manager put a stop to it. Mrs Goldsmith explained during the Home's investigation meeting that she had borrowed the money without authorisation in order to resolve personal financial difficulties she was facing at that time, but she paid back the money she had borrowed once she was paid her wages.

The panel took account of the Minutes from the Disciplinary Hearing dated 10 December 2018. It noted that during the disciplinary hearing, Mrs Goldsmith also repeated the admissions she had made during the Home's investigation meeting. Mrs Goldsmith further admitted that she used to ask Colleague A to give her money from the Home during the last week of the month and she would then pay it back when she was paid her wages. Mrs Goldsmith also accepted that she had taken the Home's summer fete money to her house

and she did not return it until the time of the Home 's investigation in December 2018, as she said, she forgot to return it.

The panel took into consideration that the Home's Investigation Notes with Mrs Goldsmith as well as the Minutes from the Disciplinary Hearing were contemporaneous records of the investigation conducted by the Home and the disciplinary hearing conducted by Bupa respectively. The panel noted that Witnesses 1 and 2 confirmed the accounts of the incidents in their witness statements dated 5 March 2021 and 15 January 2021 respectively. It also noted that Colleague A gave a similar account of the incidents in the Home's Investigation Notes dated 3 December 2018, although Colleague A insisted that Mrs Goldsmith had stated that she took the Home's summer fete money to her house in order to keep it safe. Colleague A further stated that she had reminded Mrs Goldsmith at several occasions to *'bring it in for banking but she's (Mrs Goldsmith) always been adamant it was safer with her.'*

The panel took into account that Witness 2 stated in her supplementary witness statement dated 23 March 2021 that Mrs Goldsmith's act in taking and returning money from the Home was unauthorised and not acceptable. The panel had regard to Bupa's Finance Policies which indicated that the Home's money could only be utilised in accordance with the procedures and rules laid down in the Finance Policies. The panel noted that Witness 2 further stated in her supplementary witness statement that Bupa offered an emergency loan option to its employees and that Mrs Goldsmith had stated that she did not use it because she was too embarrassed. The panel had sight of the Bupa Emergency Loan Application Form template.

Having carefully considered the evidence before it, the panel was satisfied that it was more likely than not that on one or more occasions Mrs Goldsmith took an unspecified amount of money belonging to the Argyles Home for her personal use. Accordingly, Charge 1 is found proved.

Charge 2

- 2) On one or more occasions, put pressure on Colleague A to lend you money belonging to the Argyles Home and/or Colleague A.

This Charge is found proved.

In reaching this decision, the panel took into account the Statement of Colleague A in the Home's Investigation Notes dated 3 December 2018 in which she stated:

'After...Cheryl was made acting HM she would start asking again and although I said I couldn't really she would again say it's for food, petrol etc, she would always initially ask for £80-100 but end up 'talking me down' to just letting her have £20-£50 which I would then put back into my cash tins out of my own money so in a roundabout way in my head she was borrowing off me but I didn't want her to know this, I just couldn't have the tins being short.'

'In November however, when I returned from A/L after a weekend and two days off when she (Mrs Goldsmith) came in on the Wednesday morning (21/11) the first thing she said to me was "I've taken £100 out of your safe, I didn't want to call you at home to ask or let you know because I knew you'd worry but I'll pay you back on payday. You can report me if you want." I didn't know what to do, so I did nothing...'

'I can't tell you how bad I feel about this whole thing, and I can only apologise for not speaking up sooner. I hope you can understand the position not only I, but my colleagues have been being put in when being asked for money like this off our manager.'

The panel took account of the Home's Investigation Notes with Mrs Goldsmith dated 4 December 2018. It noted that during the Home's investigation meeting, Mrs Goldsmith admitted that she placed Colleague A in an awkward situation by asking Colleague A to lend her money from the Home and she knew her action towards Colleague A was wrong.

The panel noted that it was evident from the Statement of Colleague A that Mrs Goldsmith had utilised her position as Colleague A's manager to put pressure on Colleague A to lend her money from the Home despite Colleague A not being comfortable with her action. However, there was no evidence to demonstrate that Mrs Goldsmith had put pressure on Colleague A to lend her money belonging to Colleague A. Colleague A had clearly stated

in the Home's Investigation Notes dated 3 December 2018 that she had used her personal money to replace the money that Mrs Goldsmith borrowed from the Home, without Mrs Goldsmith being aware of such replacement.

Having carefully considered the evidence before it, the panel was satisfied that it was more likely than not that on one or more occasions Mrs Goldsmith had put pressure on Colleague A to lend her money belonging to the Argyles Home. Accordingly, Charge 2 is found proved.

Charge 3

- 3) Your actions at charges 1) and/or 2) were dishonest as you knew you were not authorised to take and/or use this money for your personal use.

This Charge is found proved.

Having found Charges 1 and 2 proved, the panel went on to consider whether Mrs Goldsmith's actions in Charges 1 and 2 were dishonest. In considering whether Mrs Goldsmith's actions were dishonest, the panel had regard to the NMC Guidance on Making decisions on dishonesty charges, (DMA-7). It also had regard to the test laid down in the case of *Ivey v Genting Casinos UK Limited* [2017] UKSC 67 which provides:

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

In applying the first limb of the test to this case, the panel was of the view that given Mrs Goldsmith's role as the Home Manager at the time of the incidents, she would have been aware of Bupa's Finance Policies which indicated that the Home's money could only be utilised in accordance with the procedures and rules laid down in the Finance Policies. The panel took into account that in the Home's Investigation Notes dated 4 December 2018 and the Minutes from the Disciplinary Hearing dated 10 December 2018 respectively, Mrs Goldsmith had admitted that she had taken the money from the Home at various

occasions for her personal use to resolve her personal financial difficulties. Mrs Goldsmith also accepted that she knew her actions were wrong and unauthorised as she had told Colleague A to report her if she wanted. On the basis of all the evidence before it, the panel was satisfied that Mrs Goldsmith knew that she was not authorised to take and/or use money from the Home for her personal use.

In applying the second limb of the test to this case, the panel was of the view that Mrs Goldsmith's conduct in taking money from the Home without authorisation for her personal use demonstrated a lack of transparency. It noted that Mrs Goldsmith had on one occasion taken the Home's summer fete money to her house and only returned it during the investigation in December 2018. Her actions were in contravention of Bupa's Finance Policies. She had not used Bupa's loan procedure. She had no authority to use the Home's money for her personal use. Therefore, the panel was satisfied that Mrs Goldsmith's actions in Charge 1 would be considered dishonest by ordinary decent people.

With respect to Charge 2, the panel was satisfied that Mrs Goldsmith's conduct in using Colleague A as a conduit through which she obtained money from the Home without authorisation, would be considered dishonest by ordinary decent people.

Accordingly, the panel determined that Mrs Goldsmith's actions in Charges 1 and 2 were dishonest, therefore, Charge 3 is found proved.

Charge 4

- 4) Your actions at charge 2) demonstrate a lack of integrity and/or an abuse of position of trust.

This Charge is found proved.

Having found that Mrs Goldsmith's actions in Charge 2 were dishonest, the panel was in no doubt that her actions in Charge 2 demonstrated a lack of integrity on her part. The panel noted that Mrs Goldsmith was the manager of Colleague A at the time of the incidents and it had found that she had put pressure on Colleague A to lend her money

belonging to the Home. The panel took into account the Statement of Colleague A in the Home's Investigation Notes dated 3 December 2018 in which she stated:

'I can't tell you how bad I feel about this whole thing, and I can only apologise for not speaking up sooner. I hope you can understand the position not only I, but my colleagues have been being put in when being asked for money like this off our manager.'

These actions abused the trust placed in her by Bupa as Home Manager and as Colleague A's line manager. Accordingly, Charge 4 is found proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Goldsmith's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Goldsmith's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct

In its written representations, the NMC submitted that:

'Misconduct

10. *Whilst a matter for the Panel's professional judgment, the NMC submits that the Registrant's failings are so serious that they amount to misconduct. The Registrant dishonest actions over a very long period of time and the abuse of her position against a junior colleague represent a serious falling short of what would be proper in the circumstances. Fellow practitioners would also consider her actions deplorable.*

11. *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'.

12. *As may the comments of Jackson J in Calheam (sic) v GMC [2007] EWHC 2606 (Admin): '[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*

13. *And the comments of Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin):*

'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'.

14. *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 NMC Code

15. *The NMC consider the following provisions of **The Code: Professional standards of practice and behavior for nurses and midwives (2015)** (“the Code”) have been breached in this case:*

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 [...]

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people.

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

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with [...]

16. The NMC considers the misconduct serious. Honesty and integrity are the cornerstones of the nursing profession and the Registrant’s continuous course of dishonest conduct is a significant departure from the standards expected of a registered nurse. The Registrant’s actions put a junior colleague in a very difficult position, and she took advantage of her role as Colleague A’s line manager. Colleague A found it difficult to refuse the Registrant’s requests which occurred every month and did not speak up due to the pressure she felt. This was unacceptable behaviour.

17. The Registrant’s behaviour raises grave concerns about her integrity as a registered professional. The Registrant’s conduct both in respect of the dishonesty, her lack of integrity and abuse of trust fall so far below the standards expected of a nurse that it amounts to misconduct.’

Representations on impairment

In its written representations, the NMC submitted that:

'Impairment

18. *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?"

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

20. *Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.*

21. *When determining whether the Registrant's fitness to practise is impaired, the questions 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)) are instructive. Those questions were:*

- 1) *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*
- 2) *has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- 3) *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*
- 4) *has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

22. *It is the submission of the NMC that questions 2, 3 and 4 can be answered in the affirmative in this case.*
23. *The Registrant's actions brought the nursing profession into disrepute and breached fundamental tenets of the profession. Significantly the dishonest conduct over a prolonged period of time whilst in a position of trust highlight the risk that the Registrant poses and the likelihood that the dishonest conduct would be repeated again.*
24. *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 whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*
25. *The Registrant admitted to the allegations at a local level. However, she failed to engage with the NMC and therefore we are unable to assess this remorse or insight. Her insight at local level appeared to be very limited and poor and did not fully consider the implications of her actions on her colleagues or on the nursing profession. The Registrant appeared to offer excuses for her actions .*
26. *When considering the level of future risk it is important for us to review the full circumstances of the case. The first question to consider is whether the concerns can be addressed. The NMC's guidance 'Can the concern be addressed' (FTP-13a) states that:*

"Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

- dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to the nurse, midwife or nursing associate's practice*

27. *In this case, the dishonest conduct would be difficult to address especially given the serious level of dishonesty in this case.*
28. *The second question to ask is whether the concern has been addressed. The NMC must not only consider whether the Registrant has shown any insight but the need to assess the quality and nature of the insight.*
29. *The Registrant has not engaged with the NMC nor taken any actions to demonstrate her remorse or insight to allay the concerns that the conduct would not be repeated. Whilst reflection and training may not fully remediate the situation due to the serious dishonesty involved, it can provide evidence of remorse and the willingness of a registrant to remedy the concerns which the panel can then use to assess risk and the issue of impairment. In this case other than the brief admissions made at the local level, there is no other evidence put forward by the Registrant. Therefore, the concerns remain and the panel are left with very limited information to assess impairment.*
30. *The final question to ask is whether it is unlikely that the conduct will be repeated. Given the circumstances in this case and the lack of insight, there remains a high risk that the Registrant's conduct is likely to be repeated if restrictions are not placed on her practice. The Registrant recognized that she was committing wrongdoing but carried on regardless, even telling Colleague a to report her if she needed to.*
31. *The NMC considers there is a continuing risk to the public due to the Registrant's lack of insight and the very serious nature of her dishonesty and abuse of trust. We consider there is a public protection and public interest requirement in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour*

Public interest

32. 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.”

32. 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.

33. 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.

34. 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.

35. It is the NMC's case that a finding of impairment on public interest grounds must be made due to the type of misconduct. The actions of the Registrant are a serious departure from the standards expected of a registered nurse particularly

in light of the repeated dishonest conduct over a long period of time. The public must be able to trust a nursing professional and this type of misconduct reflects badly on the nursing profession.'

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

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mrs Goldsmith's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Goldsmith's actions amounted to a breach of the Code. Specifically:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

20.3 *be aware at all times of how your behaviour can affect and influence the behaviour of other people*

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

To achieve this, you must:

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

With respect to Charge 1, the panel took into account that Mrs Goldsmith took money belonging to the Home without authorisation for her personal use on multiple occasions over an extended period of time. Although Mrs Goldsmith stated that she paid back the money to the Home, the panel considered Mrs Goldsmith's actions to be extremely unprofessional, and that they would be seen as deplorable by other members of the profession and members of the public. The panel therefore found Mrs Goldsmith's actions to be extremely serious and that they constituted a serious breach of fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain. Accordingly, the panel determined that Mrs Goldsmith's actions in Charge 1 amount to misconduct.

In relation to Charge 2, the panel was of the view that Mrs Goldsmith's actions in this charge amounted to an abuse of position of authority. The panel took into account that Mrs Goldsmith's actions placed Colleague A in a difficult situation as she had to use her personal money to replace the money she had taken from the Home. It noted that Mrs Goldsmith's conduct in asking Colleague A to lend her money belonging to the Home without authorisation, would have potentially placed Colleague A's career at the Home in jeopardy. The panel was concerned that Mrs Goldsmith had set a bad example and failed to uphold the standards and values of the nursing profession, thereby bringing the reputation of the nursing profession into disrepute. Accordingly, the panel determined that Mrs Goldsmith's actions in Charge 2 amount to misconduct.

With regards to Charges 3 and 4, the panel was of the view that Mrs Goldsmith's actions in Charges 1 and 2 demonstrated a lack of accountability and transparency on her part and constituted a breach of duty of candour in that she was not open and honest when taking the money. The panel considers honesty, integrity and trustworthiness to be the bedrock of the nursing profession and, in being dishonest, it found Mrs Goldsmith to have breached a fundamental tenet of the nursing profession and brought the reputation of the nursing profession into disrepute. The panel considered that to characterise Mrs Goldsmith's actions as anything other than misconduct would undermine public confidence in the

nursing profession. Therefore, the panel was in no doubt that Mrs Goldsmith's actions in Charges 3 and 4 amount to misconduct.

Consequently, having considered the proven charges individually and as a whole, the panel determined that Mrs Goldsmith's actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

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

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

The panel found that limbs b, c and d of the *Grant* test are engaged in the case. The panel determined that Mrs Goldsmith’s actions constituted a serious breach of the fundamental tenets of the nursing profession as she failed to uphold the standards and values of the nursing profession, thereby bringing the reputation of the profession into disrepute. Furthermore, it found that Mrs Goldsmith had acted dishonestly. However, the panel considered that limb a of the *Grant* test is not engaged in this case as Mrs Goldsmith’s actions did not place patients at unwarranted risk of harm.

The panel had regard to the NMC Guidance on Impairment especially the question which states:

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

The panel is aware that this is a forward-looking exercise and, accordingly, it went on to consider whether Mrs Goldsmith’s misconduct is remediable and whether it has been remedied.

The panel had regard to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), where the court addressed the issue of impairment with regard to the following three considerations:

- a. *'Is the conduct that led to the charge easily remediable?*
- b. *Has it in fact been remedied?*
- c. *Is it highly unlikely to be repeated?'*

The panel considered whether Mrs Goldsmith's actions as found in the charges proved are easily remediable. It was of the view that the concerns are very difficult to remediate due to their serious nature. Such persistent and premeditated dishonesty is, in the view of the panel, suggestive of deep-seated attitudinal concerns which are difficult to remediate.

Nevertheless, the panel went on to consider the efforts Mrs Goldsmith had made to remediate. Regarding insight, the panel was of the view that Mrs Goldsmith has failed to show insight into her conduct. The panel noted that whilst Mrs Goldsmith had shown remorse and apologised for her actions during the Home's investigation and disciplinary hearing, she had not engaged with the NMC proceedings. The panel determined that due to Mrs Goldsmith's lack of engagement, there was no evidence of insight on the impact of her conduct on Colleague A, the Home, the nursing profession and the wider public. It was concerned that Mrs Goldsmith did not demonstrate any understanding of the seriousness of her misconduct, nor did she provide any information about detailed steps she would take to prevent such a situation re-occurring in the future.

In considering whether Mrs Goldsmith had addressed her failings, the panel noted that there was no evidence before it to indicate that Mrs Goldsmith had addressed her misconduct. Mrs Goldsmith has not provided any evidence of training nor testimonials to demonstrate any positive steps she had taken to remediate her misconduct.

In light of this, the panel determined that there is a high risk of repetition of Mrs Goldsmith's misconduct. Nevertheless, the panel noted that Mrs Goldsmith's actions did not place patients at unwarranted risk of harm and therefore, it concluded a finding of impairment is not necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are 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 had regard to the serious nature of Mrs Goldsmith's misconduct and determined that public confidence in the profession, particularly as it involved dishonest conduct in a clinical setting, would be undermined if a finding of impairment were not made in this case. It was of the view that a fully informed member of the public, aware of the proven charges in this case, would be very concerned if Mrs Goldsmith were permitted to practise as a registered nurse without restriction. For this reason, the panel determined that a finding of current impairment on public interest grounds is required. It decided that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold the proper professional standards for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that Mrs Goldsmith's fitness to practise is currently impaired on public interest grounds.

Sanction

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

Representations on sanction

The panel took into account the NMC's written representations on sanction, which stated:

'Sanction

37. *All NMC guidance in relation to sanctions has been considered before submitting that the appropriate and proportionate sanction in this case is one of a striking-off order.*
38. *In respect of SAN-1 the NMC would cite “a pattern of misconduct over a period of time” as an aggravating feature together with a “lack of insight into failings”. In limited mitigation the Registrant did admit her dishonesty at the local level.*
39. *SAN-2 makes it clear that a nurse who has acted dishonestly will always be at some risk of being removed from the register. The NMC sanctions guidance on dishonesty is relevant here. It notes that concerns will be particularly serious if there is a direct risk to patients. It also goes on to say that the level of risk to patients will be an important factor, but a panel of the Fitness to Practise Committee ('FtPC') should also consider that generally, dishonesty will always be serious because of the importance of honesty to a nurse.*
40. *San-2 further lists forms of dishonesty which are more likely to call into question whether a nurse should be allowed to stay on the register. These include:*
- *misuse of power*
 - *vulnerable victim*
 - *personal financial gain from a breach of trust*
41. *The NMC has considered the available sanctions in ascending order of seriousness.*

No action or a caution order

42. *Taking into account our sanction guidance SAN-3a and SAN-3b, these sanctions are inappropriate because (1) there is a need to secure public trust in nurses and to promote and maintain proper professional standards and conduct and (2) the case is not at the lower end of the spectrum of impaired fitness to practise.*

Conditions of practice

43. *With reference to SAN-3c the NMC's sanctions guidance states that a conditions of practice order may be appropriate when there is no evidence of harmful deep-seated personality or attitudinal problems; there are identifiable areas of the registered professionals practice in need of assessment and/or retraining; and conditions can be created that can be monitored and assessed. It is submitted that a conditions of practice order would not be appropriate to address the concerns given that the concerns relate to dishonesty and not an area of the Registrant's clinical practice which could be remedied. It is difficult to address the dishonesty, through re-training or assessment. It is submitted that it would be difficult to formulate workable conditions of practice which would address the concerns raised.*

A suspension order

44. *Taking into account our sanction guidance SAN-3d, a suspension order is appropriate where a registrant has insight and does not pose a risk of repeating behaviour. In this case there is some evidence of attitudinal problems due to the repeated nature of the dishonest conduct. The Registrant was asked to stop this conduct previously by the then Home Manager but following her promotion to the role, the Registrant repeated this dishonest conduct. This would demonstrate an attitudinal or behavioural issue.*

45. *A period of suspension would not reflect the gravity and seriousness of the Registrant's actions This reflects badly on the nursing profession as a whole and undermines public trust. A suspension order would not be commensurate with the seriousness of the situation and restore confidence in the profession.*

A striking off order

46. *As per NMC guidance SAN-3e , a striking off order is likely to be appropriate when what a registrant has done is fundamentally incompatible with being a registered professional. The allegations are very serious and relate to significant failings conduct over a long period of time. This raises fundamental questions*

about the registrant's professionalism and damages public confidence in the profession. In light of the seriousness of the concerns, a striking off order is the only sanction which will sufficiently address the public interest concerns in this case as the Registrant's actions are fundamentally incompatible with ongoing registration.'

Decision and reasons on sanction

Having found Mrs Goldsmith'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 for personal gain.
- Abuse of a position of trust.
- A pattern of misconduct over a period of time
- Mrs Goldsmith's dishonest conduct was premeditated, systematic and longstanding.
- No evidence of insight and remediation.

The panel also took into account the following mitigating features:

- Mrs Goldsmith stated that she paid back the money taken from the Home.
- Mrs Goldsmith stated that she was facing personal difficult circumstances at the time of the incidents.

The panel had regard to the NMC Guidance on 'Considering sanctions for serious cases', in particular, 'Cases involving dishonesty', SAN-2. The panel found that Mrs Goldsmith's conduct was not a one-off incident nor was it a spontaneous action, but instead a premeditated and systematic course of conduct involving multiple dishonest acts over an extended period of time. The panel considered that Mrs Goldsmith's dishonest conduct

demonstrated the misuse of power and an abuse of position of trust in her position as the Home Manager in which she used Colleague A as a conduit to take money from the Home for her personal gain. It was a longstanding deception in which Mrs Goldsmith sought to cover up her dishonest acts thereby breaching her professional duty of candour.

The panel therefore found the dishonesty in this case to be serious and at the higher end of the spectrum of dishonesty cases.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. It had found that Mrs Goldsmith had breached fundamental tenets of the nursing profession, and her misconduct would undermine the public's confidence in the nursing profession if she were allowed to practise without restriction. 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, an order that does not restrict Mrs Goldsmith's nursing 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 Goldsmith'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 Goldsmith's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular the following:

'Conditions may be appropriate when some or all of the following factors are apparent:

- *no evidence of harmful deep-seated personality or attitudinal problems;*

- *identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *no evidence of general incompetence;*
- *potential and willingness to respond positively to retraining;*
- *.....;*
- *patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *the conditions will protect patients during the period they are in force;*
and
- *conditions can be created that can be monitored and assessed.'*

The panel was of the view that Mrs Goldsmith's actions identified in this case could not be addressed through retraining and were difficult to remediate. The panel had also identified deep-seated attitudinal problems in this case on Mrs Goldsmith's part. It determined that, given the seriousness of the concerns, the deep-seated attitudinal problems and Mrs Goldsmith's lack of insight into the impact of her actions on Colleague A, the Home, the nursing profession and the public, there are no practicable or workable conditions that could be formulated. Accordingly, a conditions of practice order would not address the high risk of repetition. Consequently, the panel decided that any conditions of practice order would not be proportionate nor be in the public interest.

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

- *'A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *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 this was not an isolated incident but rather a sustained pattern of behaviour over a long period of time. It found that although Mrs Goldsmith had demonstrated remorse during the Home's investigation and disciplinary hearing, she has failed to demonstrate insight into the impact of her conduct on Colleague A, the Home, the nursing profession and the public. The panel found that her actions are suggestive of deep-seated attitudinal concerns which heightens the significant risk of repetition. It noted the legal advice of the legal assessor who referred the panel to the case of *Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Administration) where the Court stated:

'18. A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure...'

Therefore, the panel was not satisfied that a period of suspension would serve any useful purpose. Consequently, the panel determined that a suspension order would not be a sufficient or proportionate sanction, nor would it satisfy the public interest consideration in this 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 was of the view that all of the criteria as set out above are met in this case.

The panel determined that Mrs Goldsmith's actions constituted a serious breach of fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain. The panel found that Mrs Goldsmith's actions were significant departures from the standards expected of a registered nurse.

The panel concluded that the serious breach of fundamental tenets of the profession, evidenced by Mrs Goldsmith's actions and dishonest conduct, is fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case raises serious and significant questions about Mrs Goldsmith's professionalism 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, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mrs Goldsmith's actions in bringing the nursing 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 a striking-off order 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 standards of behaviour expected and required of a registered nurse.

This will be confirmed to Mrs Goldsmith in writing.

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 Mrs Goldsmith's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC which stated:

'If a finding is made that the registrant's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.'

'If a finding is made that the registrant's fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible with continued registrant we consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest.'

Decision and reasons on interim order

The panel was satisfied that an interim order is 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 in order to uphold the public interest, during any potential appeal period. The panel determined that not to impose an interim order would be inconsistent with its earlier decisions.

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

That concludes this determination.