

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
25-29 October 2021

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

Name of registrant:	Miss Benedicta Osarenkhoe Omoregbee
NMC PIN:	05B0191E
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing (8 February 2005) Community Nurse Prescriber (16 August 2013)
Area of Registered Address:	Kent
Type of Case:	Misconduct
Panel Members:	Darren Shenton (Chair, Lay member) Anne Witherow (Registrant member) David Anderson (Lay member)
Legal Assessor:	Nigel Ingram
Panel Secretary:	Anjeli Shah
Miss Omoregbee:	Present and represented by Hannah Thomas, counsel, instructed by the Royal College of Nursing
Nursing and Midwifery Council:	Represented by Katie Doherty, Case Presenter
No case to answer:	3, 4, 11, 12
Facts proved:	1a, 1b, 1c, 2, 5a, 5b, 6, 7a, 9, 10
Facts not proved:	5c, 7b, 7c, 7d, 8
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim Suspension Order for 18 months

Details of charge (as amended):

That you, a registered nurse,

1. *On or before 24 March 2016:*
 - a. *obtained the details of a HSBC bank card for the account of Colleague A without her consent; (proved)*
 - b. *made a purchase for £47.68 to Ali Express with Colleague A's HSBC bankcard without her consent; (proved)*
 - c. *made a purchase for £61.76 to Ali Express, with Colleague A's HSBC bankcard without her consent. (proved)*

2. *Your conduct as alleged in Charge 1 was dishonest in that you knew you did not have colleague A's consent to make the stated purchases, deliberately represented to Ali Express that you were entitled to use Colleague A's bank card and intended thereby to obtain goods or services to the value of £109.44. (proved)*

3. *Between 24 March 2016 and 12 April 2016:*
 - a. *obtained the details of a replacement HSBC bank card for the account of Colleague A without her consent; (no case to answer)*
 - b. *made a purchase for £90.31 to an online vendor with Colleague A's HSBC bankcard without her consent; (no case to answer)*
 - c. *made a purchase for £57.06 to an online vendor with Colleague A's bankcard without her consent. (no case to answer)*

4. *Your conduct as alleged in Charge 3 was dishonest in that you knew you did not have colleague A's consent to make the stated purchases, deliberately represented to the vendor/s that you were entitled to use*

Colleague A's bank card and intended thereby to obtain goods or services to the value of £90.31 and / or £57.06. (no case to answer)

5. *On or before 16 May 2016:*

- a. *you obtained the details of a National Westminster, (Natwest), visa debit bank card for the account of Colleague B without her consent; (proved)*
- b. *made a purchase for £117.85 to Garden Oasis Colleague B's Natwest Visa Debit bankcard, without her consent; (proved)*
- c. *made a purchase for £131.42 to Carpet Tiles with Colleague B's Natwest Visa Debit bankcard without her consent. (not proved)*

6. *Your conduct as alleged in Charge 5 was dishonest in that you knew you did not have colleague B's consent to make the stated purchases, deliberately represented to Garden Oasis and or Carpet Tiles that you were entitled to use Colleague B's bank card and intended thereby to obtain goods or services to the value of £117.85 and / or £131.42. (proved, in so far as the charge relates to the Garden Oasis transaction)*

7. *On or before 16 May 2016:*

- a. *you obtained the details of a National Westminster, (Natwest), Mastercard for the account of Colleague B without her consent; (proved)*
- b. *made a purchase for £124.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard, without her consent; (not proved)*
- c. *made a purchase for £124.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard, without her consent; (not proved)*

- d. *made a purchase for £69.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard without her consent. (not proved)*
8. *Your conduct as alleged in Charge 7 was dishonest in that you knew you did not have colleague B's consent to make the stated purchases, deliberately represented to Groupon that you were entitled to use Colleague B's Mastercard and intended thereby to obtain goods or services to the value of £124.98 and / or £69.98. (not proved)*
9. *On, or before 1 June 2016, made a purchase for £165.09 to Ali Express.com, with Colleague B's National Westminster, (Natwest), Mastercard without her consent. (proved)*
10. *Your conduct as alleged in Charge 9 was dishonest in that you knew you did not have colleague B's consent to make the stated purchases, deliberately represented to Ali express that you were entitled to use Colleague B's Mastercard and intended thereby to obtain goods or services to the value of £165.09. (proved)*
11. *On or before 19 May 2016,*
- a. *obtained the details of an American Express charge card, for the account of Colleague B without her consent; (no case to answer)*
- b. *made a purchase for £78.94 with Colleague B's American Express charge card without her consent. (no case to answer)*
12. *Your conduct as alleged in Charge 11 was dishonest in that you knew you did not have colleague B's consent to make the stated purchases, deliberately represented to a third party that you were entitled to use*

Colleague B's charge card and intended thereby to obtain goods or services to the value of £78.94. (no case to answer)

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Doherty, on behalf of the Nursing and Midwifery Council ("NMC"), to amend the stem of charge 3, and to add an additional sub-charge under charge 7. In relation to charge 3, Ms Doherty submitted that the documentary evidence indicated that the time period was between 24 March 2016 and 12 April 2016. She therefore applied for the stem of the charge to be amended to reflect this. In relation to charge 7, Ms Doherty submitted that the documentary evidence indicated that there was another identical transaction to that set out in charge b. She therefore applied for an additional identical sub-charge to be added, which would read as charge c, and for the current charge c to be amended to charge d.

Original charges:

3. *Between 24 March 2016 and 2 April 2016:*

7. *On or before 16 May 2016:*

- a. *you obtained the details of a National Westminster, (Natwest), Mastercard for the account of Colleague B without her consent;*
- b. *made a purchase for £124.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard, without her consent;*
- c. *made a purchase for £69.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard without her consent.*

Proposed amended charges:

3. *Between 24 March 2016 and 12 April 2016:*

7. *On or before 16 May 2016:*

- a. *you obtained the details of a National Westminster, (Natwest), Mastercard for the account of Colleague B without her consent;*
- b. *made a purchase for £124.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard, without her consent;*
- c. *made a purchase for £124.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard, without her consent;*
- d. *made a purchase for £69.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard without her consent.*

Ms Thomas, on your behalf, had no objections to the application.

The panel accepted the advice of the legal assessor.

Rule 28 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules") states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

- (2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel considered that the amendments applied for were in the interests of justice. It noted that the application was uncontested, and that the amendments would more accurately reflect the evidence and therefore provide clarity. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed.

Decision and reasons on application under Rule 19

Ms Thomas, on your behalf, made an application for parts of this hearing to be heard in private. She informed the panel that during her cross-examination of Colleague B, her questions would refer to your domestic circumstances at the time of the alleged incidents. Ms Thomas therefore applied for those parts of the evidence to be heard in private, and informed the panel that she would indicate when she would be making reference to these matters during the course of the hearing. This application was made pursuant to Rule 19 of the Rules.

Ms Doherty, on behalf of the NMC, had no objections to the application.

The panel accepted the advice of the legal assessor. While Rule 19 (1) provides, as a starting point, that hearings shall be conducted in public, Rule 19 (3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to your domestic circumstances during the course of Ms Thomas' cross examination of a witness, the panel determined to hold that part of the hearing in private. This would protect your right to privacy and confidentiality, which outweighed the public interest in such parts of the hearing being heard in public session.

Decision and reasons on application of no case to answer

The panel considered an application from Ms Thomas, on your behalf, that there is no case to answer in respect of charges 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12. This application was made under Rule 24 (7) of the Rules. This rule states:

24 (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –

(i) either upon the application of the registrant ...

the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

Ms Thomas referred the panel to the case of *R v Galbraith* [1981] 2 All ER 1060, and submitted that this application was brought under the second limb, namely that the evidence in this case was so vague and tenuous, that no reasonably informed panel could find the charges proved.

Charges 3 and 4

Ms Thomas submitted that there was nothing to link these transactions to you, and during the evidence of Colleague A, she accepted she did not know why she had attributed these transactions to you. She submitted that the items in these transactions were delivered to the area of Colleague A's address. Ms Thomas therefore submitted that there was no evidence to link these transactions back to you.

Ms Thomas submitted that there were various inconsistencies in the evidence of Colleague A. She submitted that there was a change in the amount of money Colleague A claimed to have lost. Colleague A's evidence was that the bank told her about these

fraudulent transactions, but she also accepted that this would not be possible, as it was the customer who would know whether or not they made a transaction, and not the bank. Ms Thomas submitted that Colleague A accepted that some of the dates within her witness statements were incorrect, and that one statement referred to both 12 and 13 April 2016. She also submitted that there was inconsistency in terms of how Colleague A came to notice that money was missing from her account and that she had been a victim of a fraudulent transaction.

Ms Thomas referred the panel to a letter from the CPS dated 21 January 2020, which outlined that the criminal proceedings were discontinued as it was decided that there was insufficient evidence to proceed. She invited the panel to take this document into consideration.

Ms Thomas submitted that given the inconsistencies in her evidence, and the way she answered questions, Colleague A's evidence was not credible and reliable. She submitted that this was important in deciding whether there was a case to answer in relation to charge 3, as well as the fact there was no credible link between you and the transactions. Ms Thomas submitted that as charge 4 arises out of charge 3, it would follow that there is no case to answer in respect of this charge, if the panel determined that there is no case to answer in respect of charge 3.

Charges 1-2

Ms Thomas invited the panel to assess the evidence of Colleague A, and referred to her previous submissions regarding the overall credibility and reliability of her evidence. She submitted that if the panel were to find there is no case to answer in respect of charge 3, based on the insufficiency of Colleague A's evidence, there must be no case to answer in respect of charge 1, given that it was Colleague A's evidence that supports this charge. Ms Thomas submitted that as charge 2 arises out of charge 1, it would follow that there is no case to answer in respect of this charge, if the panel determined that there is no case to answer in respect of charge 1.

Charges 7-8 and 11-12

In respect of these charges, Ms Thomas invited the panel to consider what link, if any, there was between you and those transactions. She referred to the evidence of Colleague B, who accepted that in her witness statement, she did not explain why she attributed any of the transactions to you. Ms Thomas submitted that there was no documentary evidence before the panel linking you to these transactions, and there was only a basic assumption that you had made them.

Charges 9-10

Ms Thomas submitted then when looking at Colleague B's NatWest bank statement, the transaction with Ali Express is dated 1 June 2016. She submitted that the evidence was that you did not conduct any further shifts at the Trust after 23 May 2016. Ms Thomas submitted that it made no sense for this transaction to have been conducted once you no longer worked on the Unit. She submitted that the evidence relating to how and when this transaction took place was extremely unclear, vague and tenuous, and she therefore invited the panel to find there is no case to answer in respect of charge 9. Ms Thomas submitted that as charge 10 arises out of charge 9, it would follow that there is no case to answer in respect of charge 10 if the panel determined there is no case to answer in respect of charge 9.

In concluding her submissions, Ms Thomas invited the panel to take the NMC's case at its highest, and submitted that the panel should disregard any consideration of your case, and reminded it that the burden is not upon you to prove anything. She submitted that the panel had heard from two witnesses (Colleague A and Colleague B) who both accepted in their evidence that they do not know why they linked these transactions to you. Ms Thomas submitted that the evidence was too weak, vague and tenuous for the panel to find a case to answer in respect of any of the charges she had outlined in her application.

Ms Doherty, on behalf of the NMC, submitted that there is sufficient evidence such that, taken at its highest, the panel could find all of the charges proved.

Ms Doherty submitted that the evidence was that the bank cards of Colleague A and Colleague B were never stolen, but remained in the property of these individuals. Therefore, it was concluded that someone must have accessed the bank cards in the handover room on the Unit whilst they were unattended. Ms Doherty submitted that access to the handover room was limited, with only some members of staff going in there.

Ms Doherty submitted that there had been a suggestion that Colleague A had made these transactions on your behalf, using her own bank card but also using your Ali Express account. She submitted that your delivery address, email address and mobile number were linked to these transactions. Ms Doherty invited the panel to consider whether it made sense for Colleague A to say she wanted a wig, but then to use an account belonging to someone else to purchase one. She submitted that surely Colleague A would have created her own account to make such a purchase. Ms Doherty submitted that Colleague A was surprised when she was asked in cross-examination about whether a wig was made for her. She submitted that Colleague A was clear that she had not asked you to make a wig for her, and that no such conversation had taken place between the two of you. Ms Doherty submitted that the transactions were linked to you, and you were providing a “fictional” story to explain this.

Ms Doherty submitted that the panel may draw similar conclusions for the transactions conducted using Colleague B’s bank details. In relation to the transaction with Garden Oasis, she submitted that the panel had before it an invoice, with a name and an address which was linked to you. Ms Doherty submitted that following enquiries made with the Land Registry, it was established that you were one of the owners of the address linked to this transaction. She submitted that it was clear that an item was ordered to be delivered to you, and there was a paper trail to support this. Ms Doherty

submitted that you had decided to provide another “fictional” story to explain this. In reference to your case which had been put to Colleague B during cross-examination (regarding matters of your personal life being discussed with Colleague B), she submitted that surely such a conversation, which was upsetting and personal in nature, would have been remembered by Colleague B if it occurred. Ms Doherty submitted that Colleague B disputes such conversations taking place, and she did not accept that she ordered any items on your behalf. She submitted that all of the transactions in respect of Colleague B occurred largely around the same time, within a few days of each other.

In relation to charge 9, Ms Doherty submitted that the date of 1 June 2016 for the transaction with Ali Express was the date of the refund, which is why it appeared under such a date in the NatWest bank statement. She submitted that there was no evidence regarding a date for this transaction, but the logical conclusion was that it took place prior to 23 May 2016, when you stopped working at the Trust. In any event, Ms Doherty submitted that the date of the transaction was irrelevant. She submitted that what was relevant was that you were accessing bank details and making transactions prior to the date of the refund as shown in the bank statement. Ms Doherty also invited the panel to consider that the vendor, Ali Express, was the same vendor set out in the transaction in charge 1. She submitted that neither Colleague A nor Colleague B had any knowledge of this vendor, nor did they have an account with Ali Express.

Ms Doherty submitted that there was adequate evidence in relation to the transactions said to have occurred on 24 March 2016, given that Colleague A had disputed making these transactions and the explanation she provided. She submitted that the suggestion that Colleague B made purchases on your behalf, for reasons relating to your personal life, was disputed by Colleague B. In relation to charge 3, Ms Doherty accepted that there was nothing to demonstrate these transactions were directly linked to you, however they occurred in a period where other allegedly fraudulent transactions were being made. She submitted that Colleague A stated she does not have a PayPal account, but identified fraudulent transactions relating to a PayPal account. These occurred within a week of other fraudulent transactions, and therefore occurred within

the overall period of time of identifying fraud using her bank details. Ms Doherty accepted that the factual case for charge 3 was weaker, given there was no direct link to your name, however she invited the panel to consider the context in which this occurred, and the fact that you had not provided another explanation for how this may have occurred.

Ms Doherty accepted Ms Thomas' submission that neither Colleague A nor Colleague B were able to explain why they linked these transactions to you. However, she submitted that the documentary evidence did link you to these transactions. This included the 'charge back' documents from the banks (for the refunds processed), and the enquiries made regarding the Garden Oasis transaction, which linked your name and address to the transaction. Ms Doherty submitted that your account, which had been put to the witnesses during cross-examination, was not credible.

Ms Thomas responded that any consideration of your case, at this stage, is irrelevant. She submitted that whether your account was credible, and whether a witness disputed your case put to them during cross-examination, was not a consideration for the panel at this time.

Ms Doherty submitted that what you have suggested, which was put to the witnesses during cross-examination, is relevant when assessing the strength of the evidence of the NMC's witnesses, given there was a direct conflict as to the facts.

Ms Thomas submitted that it would be wrong in law to consider your case at this stage, and it is only for the panel to consider the NMC's case.

Ms Doherty concluded that the responses given by the NMC's witnesses to questions put to them during cross-examination were part of the NMC's case and evidence for the panel to consider.

The panel accepted the advice of the legal assessor.

The panel applied the two limb test, set out in the case of *Galbraith*, which can be summarised as follows:

1. If there is no evidence against the registrant to support a particular charge then the case must be stopped in respect of that particular charge.
2. If there is tenuous evidence in that it is inherently weak or vague or inconsistent with other evidence and if the panel considers taking the NMC evidence at its highest that it could not properly find the particular charge to be proved on the balance of probabilities then the case must be stopped as far as that particular charge is concerned. However, where the NMC's evidence is such that its strength or weakness depends on the view to be taken on a witnesses reliability, or other matters which are generally speaking within the province of the panel, as judges of the facts, where on one possible view of the facts there is evidence on which the panel could properly come to the conclusion that a particular charge is proved, then the case should proceed.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel considered that there was evidence in respect of the charges it was due to consider for this application. Therefore, its assessment of this application fell under the second limb of *Galbraith*. It considered whether the evidence in respect of each of the charges under this application was sufficient in order find a case to answer.

Charges 1-2

The panel considered that in respect of charge 1, there was evidence of fraudulent transactions taking place using Colleague A's bank details. The panel noted the 'charge back' documentation from Colleague A's bank, and it noted that the money was

refunded to Colleague A. The panel noted that the transaction for the value of £47.68 with Ali Express included your name and email address. For the transaction for the value of £61.76 with Ali Express, your address and mobile number was linked to the transaction. Taking all of this into account, the panel considered that there was sufficient evidence at this stage to find a case to answer in respect of charge 1. As charge 2 arises out of charge 1, it follows that there is also a case to answer in respect of charge 2.

Charges 3-4

The panel noted that in relation to the transactions set out at charge 3, they were said to have taken place using a PayPal account. It noted Colleague A's evidence that she was not responsible for these transactions and that she does not have a PayPal account. However, the panel had no information before it in relation to this PayPal account, such as whose name was said to be on the account. Furthermore, there was no evidence before it in relation to the amended delivery address or any other details associated with these transactions. The panel therefore considered that there was a lack of documentary, or other, evidence to attribute these transactions to you. It considered that Colleague A's evidence, that she does not have a PayPal account, was evidentially insufficient to support the charge. The panel therefore considered that the evidence was insufficient in order to determine a case to answer in respect of charge 3. As charge 4 arises out of charge 3, it follows that there is no case to answer in respect of charge 4.

Charges 7-10

The panel considered charges 7-10 together, noting that all of these charges related to Colleague B's NatWest MasterCard. The panel noted that there was evidence to support fraudulent transactions having taken place on or before 16 May 2016 using Colleague B's MasterCard. The panel had regard to Colleague B's NatWest bank statement, from which it was clear that the same card had been used for the Groupon transactions set out in charge 7, and for the Ali Express transaction set out in charge 9.

The panel noted from the bank statement that a transaction for a refund for the Ali Express transaction appeared on 1 June 2016. The panel noted, in respect of charge 1 (for which it had determined that there is a case to answer), that there were other transactions with Ali Express, which were linked to your name, address, email address and mobile number. Therefore, the panel considered that the same card belonging to Colleague B was associated with the transactions set out in charge 7 and charge 9, and that the vendor in charge 9 was previously associated with you. As a result, the panel determined that is sufficient evidence to support a case to answer in respect of charge 7 and charge 9. As charges 8 and 10 arise out of charges 7 and 9, it follows that there is a case to answer in respect of charge 8 and 10.

Charges 11-12

The panel considered that there was evidence of fraudulent transactions having taken place, having regard to the evidence of Colleague B, that she did not make these transactions. However, the panel noted that it had no evidence before it in relation to the American Express charge card, namely regarding the nature of the transaction and any delivery of goods, and any other such details associated with the transaction. The panel therefore considered that there was no evidence which linked you to these transactions. The panel therefore considered that there is insufficient evidence to support a case to answer in respect of charge 11. As charge 12 arises out of charge 11, it follows that there is no case to answer in respect of charge 12.

The panel has therefore determined that there is no case to answer in respect of charges 3, 4, 11 and 12. It has found that there is a case to answer in respect of charges 1, 2, 7, 8, 9 and 10. The panel will therefore move onto consider these charges, as well as charges 5 and 6. What weight the panel gives to any evidence will be determined after it has heard all of the evidence in this case.

Background

The NMC received a referral on 7 July 2016 in respect of alleged incidents which occurred when you were employed as an agency nurse with Day Webster (“the Agency”). Between December 2015 and May 2016 you were placed by the Agency to work at West Middlesex University Hospital (“the Hospital”), which is part of The Chelsea and Westminster NHS Trust (“the Trust”), in the Paediatric Department. You worked on the Starlight Paediatric Unit (“the Unit”) as well as the Paediatric Assessment Unit (“PAU”), which were both on the same floor, within the Paediatric Department. It is alleged that during this time of working at the Hospital, you obtained the bank details for Colleague A and Colleague B without their consent, and then went on to make fraudulent transactions to purchase goods or services.

When staff attended work on the Unit, they would often place personal belongings, such as coats and bags, in the handover room, which was behind the nurse’s station. This room was accessible to members of staff, but not to patients and members of the public. The door to the room was rarely locked and normally left open. Colleague A and Colleague B were both nurses who worked on the Unit. They often left belongings in the handover room, including their purses/wallets which contained bank cards.

It is alleged that on or before 24 March 2016 you obtained the details of a HSBC bank card for the account of Colleague A without her consent, and that you made two purchases (of £47.68 and £61.76) to Ali Express, using Colleague A’s HSBC bank card, without her consent. It is alleged that this conduct was dishonest, in that you knew you did not have Colleague A’s consent to make the purchases and in that you deliberately represented to Ali Express that you were entitled to use the bank card to obtain goods or services.

Colleague A was alerted to these transactions after spotting a discrepancy in her bank balance. She contacted the bank, and cancelled her card, before obtaining a replacement card.

Colleague A was provided with documents from the bank when they were looking into these transactions. On the transactions to Ali Express, your name, home address, email address and phone number was detailed. Previous to you working at the Hospital, you had provided an address to the Agency in September 2015. Subsequent to this, you provided a signed candidate registration form dated 25 February 2016 to the Agency, which listed a different address, as well as a personal email address and mobile number. It was the latter details (address, email address and phone number) which were recorded in the documentation from HSBC bank, for the transaction to Ali Express on 24 March 2016.

It is alleged that on or before 16 May 2016, you obtained the details of a NatWest Visa Debit bank card for the account of Colleague B without her consent. It is further alleged that you made a purchase for £117.85 to Garden Oasis with Colleague B's NatWest Visa Debit bank card, without her consent and made a second purchase for £131.42 to Carpet Tiles with Colleague B's NatWest Visa Debit bankcard without her consent. It is alleged that this conduct was dishonest as you knew you did not have Colleague B's consent to make these purchases and in that you deliberately represented to Garden Oasis and Carpet Tiles that you were entitled to use Colleague B's bank card to obtain goods or services.

It is alleged that on or before 16 May 2016, you obtained the details of a NatWest MasterCard for the account of Colleague B without her consent. It is further alleged that you made two purchases of £124.98 and a purchase of £69.98 to Groupon with Colleague B's NatWest MasterCard, without her consent. It is alleged that this conduct was dishonest in that you knew you did not have Colleague B's consent to make these purchases, and in that you deliberately represented to Groupon that you were entitled to use Colleague B's MasterCard to obtain goods or services.

It is alleged that on or before 1 June 2016, you made a purchase for £165.09 to Ali Express.com, with Colleague B's NatWest MasterCard without her consent. It is alleged that this conduct was dishonest in that you knew you did not have Colleague B's

consent to make this purchase, and in that you deliberately represented to Ali Express that you were entitled to use Colleague B's MasterCard to obtain goods or services.

Colleague B was alerted to these transactions after receiving emails with regard to online purchases associated with her bank account. She checked her online bank accounts, and noted the transactions set out above. Colleague B reported these transactions to her bank and cancelled all of her cards on 17 May 2016.

The NMC conducted enquiries with the vendors for these transactions to obtain more information. An invoice was provided for the purchase with Garden Oasis, which listed a name and an address. Enquiries were then made with the Land Registry for the address provided on the invoice, and you were listed as a joint owner of the property.

Colleague A and Colleague B reported these matters to Ms 1, the Modern Matron for Paediatrics at the Trust, as well as reporting the fraudulent transactions to the police. Full refunds were provided to Colleague A and Colleague B. Following these matters being reported to the Trust, you were no longer placed to work on the Unit. Your last scheduled working day at the Trust was on 23 May 2016.

It is alleged that you accessed the card details for both Colleague A and Colleague B and that you made various fraudulent purchases without their permission or knowledge, and that this conduct was dishonest. It was said you had access to the handover room on the Unit and the property of your colleagues. Other than when at work, with belongings stored in the handover room, Colleague A and Colleague B would have their cards with them.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case. The panel heard submissions from Ms Doherty, on behalf of the NMC, and those made by Ms Thomas, on your behalf.

The panel accepted the advice of the legal assessor. As the legal assessor noted that this case particularly involved an assessment of the evidence of three registered nurses, all of whom were of good character, the legal assessor drew the panel's attention to the principle which he said emerged from the case of *R (Dutta) v GMC* [2020] EWHC 1974 (Admin). He said that in any approach to the fact finding stage care must be taken to avoid considering each part of the evidence in isolation. He told the panel to consider the reliability of the evidence as a global picture and not in isolation. He underlined that witness evidence is just one part of the evidence, it would be rare when it is only element. He went on to say that objective evidence, for example contemporaneous documents, as present in this case, should be considered first. He warned that confident delivery and demeanour of a witness' evidence is not a reliable guide to whether it is the truth. So, the important question is whether the witness is reliable, not whether they are credible.

The legal assessor reminded the panel that you are of good character and consequently (propensity) are unlikely to have committed these actions and secondly (credibility) more likely to be telling the truth than someone without such good character.

The panel is 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 the facts will be proved if the panel is satisfied that it is more likely than not that the incidents occurred as alleged.

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

- Colleague A, a Band 5 Staff Nurse at the Trust;
- Colleague B, a Junior Paediatric Sister at the Trust; and
- Ms 1, a Modern Matron at the Trust.

The panel also had before it witness statements and exhibits from the following individuals, evidence which was agreed between you and the NMC:

- Ms 2, Head of Complaints at the Agency; and
- Mr 3, at the time a Manager of the NMC's Investigation's Finisher Team.

The panel also heard oral evidence from you.

The panel considered each charge and made the following findings:

Charge 1:

That you, a registered nurse,

1. On or before 24 March 2016:
 - a. obtained the details of a HSBC bank card for the account of Colleague A without her consent;
 - b. made a purchase for £47.68 to Ali Express with Colleague A's HSBC bankcard without her consent;
 - c. made a purchase for £61.76 to Ali Express, with Colleague A's HSBC bankcard without her consent.

This charge is found proved in its entirety.

Whilst the panel has considered the sub-charges individually, it considered the evidence in relation to charge 1 as a whole, in coming to its determination on 1a), 1b) and 1c).

In reaching this decision, the panel took into account the evidence of Colleague A, your evidence, the chargeback documentation from HSBC bank for the transactions with Ali Express, the roster for the Unit between 14 December 2015 and 29 May 2016 and the schedule of Colleague A's and your shifts between 14 May 2015 and 29 May 2016.

The panel considered the charge back documentation from HSBC bank for these two transactions with Ali Express.

In respect of the transaction for £47.68 the panel noted that the chargeback document listed your name next to 'buyer name', as well as listing your email address next to 'buyer email'. The panel therefore considered that this documentary evidence linked this transaction to you.

In respect of the transaction for £61.76, the panel noted that the chargeback document listed your name next to 'buyer name', your email address next to 'buyer email' and the area of your address under 'shipping info'. The panel therefore considered that this documentary evidence linked this transaction to you.

The panel had regard to the evidence of Colleague A. It was her evidence that when checking her bank account, she noticed discrepancies in the balance, and she noticed these transactions which had not made. As a result, she immediately went to the bank and cancelled her cards.

The panel had regard to your evidence. It was your evidence that you often wore different wigs to work, and your colleagues would comment on this. It was during such a discussion with Colleague A that she expressed interest in having a wig made for her, and you offered to make a wig for her. Your evidence was that you had an Ali Express account, through which you could obtain bonuses and discounts. You had previously used this account to make purchases. You told the panel that you could use the website without an account, but it encouraged users to make an account in order to receive the bonuses and discounts.

You said you browsed the online catalogue of Ali Express together with Colleague A to purchase hair pieces, in order to make a wig for her, with Colleague A using your account and inputting her card details in the payment information. It was your evidence that upon you receiving the items at your address, you then made the wig and brought

this to work and gave it to Colleague A. When she tried it on she did not like the wig, and asked for a refund of the money used to buy the hair pieces. You said this would not be possible, as changes had been made to the items used to produce the wig, and therefore it was not possible to return them.

The panel had regard to Colleague A's evidence when your account was put to her in cross-examination. Colleague A accepted that you often wore different wigs to work, and that this would be a topic of discussion amongst colleagues on the ward. However, she denied ever having a conversation with you where she expressed her own interest in having a wig, and asking you to make such a wig for her. Colleague A had no knowledge of Ali Express, and had no knowledge of these transactions that were made using her HSBC bank card.

The panel assessed the reliability of the evidence of Colleague A and your evidence. The panel considered that it was both your evidence and that of Colleague A that you both had a professional relationship. You both described each other as colleagues, not as friends, and you would not talk or socialise outside of the workplace. The panel bore in mind that other than your oral evidence, no other evidence was presented, on your behalf, electronic or otherwise, to support your account. The panel therefore considered the account given by you, of offering to make Colleague A a wig, with her purchasing the items using your Ali Express account first, to be unlikely.

The panel had regard to Colleague A's actions following identifying these unknown transactions on her bank account. Colleague A immediately went to the bank to report the transactions, she cancelled her cards and soon after she reported the matter to the police. Colleague A made three witness statements to the police, which she signed attesting to their accuracy and acknowledging that she would be liable to prosecution if she included any content that she knew to be false.

The panel, in testing your account, that you had made Colleague A a wig with the items purchased by her using your Ali Express account, considered it was implausible that not

liking the wig, and not being able to receive a refund, that Colleague A would then go to the bank to report fraudulent activity on her account and cancel her cards. This was an action which would put Colleague A at unnecessary inconvenience, and the panel considered it unlikely that she would have taken such action had she been the individual who made these transactions. Furthermore, the panel also considered it implausible that Colleague A would take the matter further by reporting it to the police, and providing three witness statements in respect of the case, knowing full well the implications of not telling the truth in criminal proceedings.

For these reasons, the panel preferred the account given by Colleague A. The panel considered that this evidence was supported by the documentary evidence, namely the chargeback documentation from HSBC, which linked you in name and in details to the two transactions with Ali Express. The panel also had regard to the three witness statements given by Colleague A to the police, again reminding itself that she had signed these attesting to their accuracy, and knowing that she was liable to prosecution if they contained any false information. For these reasons, the panel considered that the evidence of Colleague A was credible and reliable.

The panel also had regard to the evidence it had heard in this case regarding the workings of the Paediatric Department of the Hospital, and where staff would store belongings whilst working on the Unit and the PAU. It had regard to the roster for the Unit between 14 December 2015 and 29 May 2016, as well as the schedule of Colleague A's and your shifts between the same dates. The panel considered that this indicated there were days when you worked the same shift patterns as Colleague A, as well as days where there would be an overlap from her shift ending, and you coming onto night duty. The panel therefore considered that there was ample opportunity for you to access the handover room on the Unit, where the personal belongings of Colleague A would have been stored whilst she was on shift.

Having regard to this evidence as a whole, the panel considered that it was more likely than not that on or before 24 March 2016, you obtained the details of a HSBC bank card

for the account of Colleague A without her consent. Charge 1a) is therefore found proved.

Having regard to this evidence as a whole, the panel considered that it was more likely than not that you made purchases for £47.68 and £61.76 to Ali Express with Colleague A's HSBC bank card without her consent. Charges 1b) and 1c) are therefore found proved.

The panel therefore found charge 1 proved in its entirety.

Charge 2:

That you, a registered nurse,

2. Your conduct as alleged in Charge 1 was dishonest in that you knew you did not have colleague A's consent to make the stated purchases, deliberately represented to Ali Express that you were entitled to use Colleague A's bank card and intended thereby to obtain goods or services to the value of £109.44.

This charge is found proved.

In reaching its decision, the panel applied the legal test for dishonesty, as set out in the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67, which was set out to the panel by the legal assessor and can be summarised as follows:

The panel must first ascertain the actual state of the individual's knowledge or belief as to the facts. Once this has been established, the question of whether the conduct was honest or dishonest is to be determined by applying the standards of ordinary decent people.

Having regard to its findings at charge 1, and the evidence it considered in respect of that charge, the panel assessed your actual state of knowledge of belief as to the facts. The panel considered that it was more likely than not that you knew you did not have Colleague A's consent to make the purchases to Ali Express. The panel therefore considered that it was more likely than not that you deliberately represented to Ali Express that you were entitled to use Colleague A's bank card, with the intention of obtaining goods to the value of £109.44.

The panel considered that this conduct would be regarded as dishonest according to the standards of ordinary decent people.

The panel therefore found charge 2 proved.

Charge 5a):

That you, a registered nurse,

5. On or before 16 May 2016:

- a. you obtained the details of a National Westminster, (Natwest), visa debit bank card for the account of Colleague B without her consent;
- b. made a purchase for £117.85 to Garden Oasis Colleague B's Natwest Visa Debit bankcard, without her consent;
- c. made a purchase for £131.42 to Carpet Tiles with Colleague B's Natwest Visa Debit bankcard without her consent.

Charges 5a) and 5b) are found proved. Charge 5c) is found not proved.

Whilst the panel has considered the sub-charges individually, it considered the evidence in relation to charge 5 as a whole, in coming to its determination on 5a), 5b) and 5c).

In reaching this decision, the panel took into account the evidence of Colleague B, your evidence, the invoice from Garden Oasis dated 16 May 2016, an extract from the Land

Registry, an email from Mr 3 to the police dated 25 September 2017, the roster for the Unit between 14 December 2015 and 29 May 2016 and the schedule of Colleague B's and your shifts between 14 May 2015 and 29 May 2016.

The panel considered the documentary evidence in relation to the transaction for £117.85 with Garden Oasis and the transaction for £131.42 with Carpet Tiles.

The panel had regard to the invoice for Garden Oasis. The panel noted that under 'delivery address' there was a name listed. It was your evidence that this is your mother's name. An address was also listed under 'delivery address'. The panel had regard to the extract from the Land Registry, where you were listed as one of the registered owners of the property. The panel had regard to your evidence that this is your mother's address, and you are one of the joint owners of the property. At the time (in 2016) there were two joint owners (and your mother was not an owner). You told the panel that at present your mother is a joint owner, as well as you and another individual. Having regard to your mother's name and address being on the invoice, the panel considered that there was documentary evidence linking you to the transaction with Garden Oasis.

The panel then assessed the documentary evidence in relation to the transaction with Carpet Tiles. The panel had regard to an email from Mr 3 to the police dated 25 September 2017, which set out information Mr 3 had obtained following making enquires with a number of vendors. In relation to the Carpet Tiles transaction, the email stated that Mr 3 had telephoned this company to find out if there were any details for a payment of £131.42 in 2016. It was confirmed that no such payment was made on 16 May 2016 and there were no details for Colleague B. Apart from this email, the panel had no documentary evidence in relation to the transaction with Carpet Tiles, such as an invoice which could provide any further details. The panel therefore had insufficient evidence before it to link the transaction for £131.42 with Carpet Tiles to you.

The panel had regard to the evidence of Colleague B. It was her evidence that on 17 May 2016 she received three emails about one-time access codes, which indicated that there were online purchases associated with her NatWest debit card. Upon checking her online banking, Colleague B identified two purchases (to Garden Oasis and Carpet Tiles) which she had not made, nor had she provided permission to anyone else to make these purchases. Colleague B reported these unauthorised transactions to her bank and cancelled her NatWest debit card.

The panel had regard to your evidence. It was your evidence that at the time when you were working at the Hospital, you were experiencing difficult personal circumstances, and you confided in Colleague B about these. [PRIVATE]. It was your evidence that Colleague B offered to make purchases for you using her bank cards, and you would reimburse her with cash.

The panel had regard to Colleague B's evidence when your account was put to her in cross-examination. Colleague B denied ever having such a discussion regarding your personal circumstances, as well as ever offering to and making purchases on your behalf, which she would then be reimbursed with in cash.

The panel assessed the reliability of the evidence of Colleague B and your evidence. The panel considered that had you had such a discussion with Colleague B about your difficult personal circumstances, it was likely that she would have recalled this, given the nature of the situation which you were confiding in her about. Colleague B was clear in her evidence that no such discussion had ever taken place. The panel also bore in mind that other than your oral evidence, no other evidence was presented, on your behalf, electronic or otherwise, to support your account.

The panel also had regard to the evidence regarding Colleague B's actions following identifying fraudulent activity on her bank account. This included reporting the fraudulent activity to her bank and cancelling her cards. The panel considered that if Colleague B had made purchases on your behalf using her debit card, she would not have been

likely to report such purchases as fraudulent activity and cancelled her bank cards, thereby causing her unnecessary inconvenience.

The panel noted that it had received submissions from Ms Doherty and Ms Thomas regarding the cross-admissibility of evidence. There had been a suggestion from Ms Thomas of the possibility of contamination of evidence between Colleague A and Colleague B, with there being discussion of these incidents of fraudulent activity at work. However, the panel had regard to Colleague B's subsequent reporting of these matters to Action Fraud and to the NMC. Having regard to her NMC witness statement dated 10 September 2016 and the Action Fraud report, the panel noted that Colleague B did not attribute these fraudulent transactions to you, or any other individual. She was simply clear that she had not made these purchases. Taking this into account, the panel considered that there was nothing to suggest a possibility of collusion between Colleague A and Colleague B, and therefore any possibility of contamination of evidence.

Taking all of this into account, the panel preferred the account given by Colleague B. Whilst the panel had no reason to doubt your upsetting and difficult personal circumstances at the time of these incidents, it did not consider it likely that Colleague B had offered to make purchases on your behalf. The panel also considered that Colleague B's evidence was supported by the documentary evidence. It was her evidence that these were transactions which she had no knowledge of. The invoice from Garden Oasis, which contained your mother's details under the delivery information, linked the transaction of £117.85 to you. Taking all of these circumstances into account, the panel considered that the evidence of Colleague B was credible and reliable.

The panel also had regard to the evidence it had heard in this case regarding workings of the Paediatric Department of the Hospital, and where staff would store belongings whilst working on the Unit and the PAU. It had regard to the roster for the Unit between 14 December 2015 and 29 May 2016, as well as the schedule of Colleague B's and your shifts between the same dates. The panel considered that this indicated there were

days when you worked the same shift patterns as Colleague B, as well as days where there would be an overlap from her shift ending, and you coming onto night duty. The panel therefore considered that there was ample opportunity for you to access the handover room on the Unit, where the personal belongings of Colleague B would have been stored whilst she was on shift.

Having regard to this evidence as a whole, the panel considered that it was more likely than not that on or before 16 May 2016, you obtained the details of a NatWest visa debit bank card for the account of Colleague B without her consent.

Having regard to the evidence as a whole, in particular the evidence of Colleague B, and the supporting documentary evidence, the panel considered that it was more likely than not that you made a purchase for £117.85 you Garden Oasis using Colleague B's NatWest visa debit bank card without her consent.

Having regard to the evidence as a whole, the panel noted that there was no documentary evidence linking you to the transaction for £131.42 with Carpet Tiles. The panel considered that the NMC has not discharged its burden of proof in respect of this charge.

The panel therefore found charges 5a) and 5b) proved and charge 5c) not proved.

Charge 6:

That you, a registered nurse,

6. Your conduct as alleged in Charge 5 was dishonest in that you knew you did not have colleague B's consent to make the stated purchases, deliberately represented to Garden Oasis and or Carpet Tiles that you were entitled to use Colleague B's bank card and intended thereby to obtain goods or services to the value of £117.85 and / or £131.42.

This charge is found proved in so far as it relates to the purchase of £117.85 with Garden Oasis.

In reaching its decision, the panel applied the legal test for dishonesty, as set out previously.

Having regard to its findings at charge 5, and the evidence it considered in respect of that charge, the panel assessed your actual state of knowledge of belief as to the facts. The panel considered that it was more likely than not that you knew you did not have Colleague B's consent to make the purchase of £117.85 with Garden Oasis. The panel considered that it was more likely than not that you deliberately represented to Garden Oasis that you were entitled to use Colleague B's bank card, with the intention of obtaining goods to the value of £117.85.

The panel considered that this conduct would be regarded as dishonest according to the standards of ordinary decent people.

Having found charge 5c not proved, the panel did not consider that on the balance of probabilities, you deliberately represented to you Carpet Tiles that you were entitled to use Colleague B's bank card with the intention of obtaining goods or services to the value of £131.42.

The panel therefore found charge 6 proved only in respect of the transaction with Garden Oasis.

Charge 7a):

That you, a registered nurse,

7. On or before 16 May 2016:

- a. you obtained the details of a National Westminster, (Natwest), Mastercard for the account of Colleague B without her consent;

- b. made a purchase for £124.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard, without her consent;
- c. made a purchase for £124.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard, without her consent;
- d. made a purchase for £69.98 to Groupon with Colleague B's National Westminster, (Natwest), Mastercard without her consent.

Charge 7a) is found proved. Charges 7b), 7c) and 7d) are found not proved.

Whilst the panel has considered the sub-charges individually, it considered the evidence in relation to charge 7 as a whole, in coming to its determination on 7a), 7b) and 7c) and 7d).

In reaching this decision, the panel took into account the evidence of Colleague B, your evidence, Colleague B's NatWest MasterCard statement between 10 May 2016 and 9 June 2016, the roster for the Unit between 14 December 2015 and 29 May 2016 and the schedule of Colleague B's and your shifts between 14 May 2015 and 29 May 2016.

The panel had regard to the evidence of Colleague B. It was her evidence that on 17 May 2016 she received three emails about one-time access codes, which indicated that there were online purchases associated with her NatWest debit card. Upon checking her online banking, she discovered purchases on her debit card which she had not made. She also checked her credit card statement, which showed purchases made on 16 May 2016 to Groupon. There were two transactions for £124.98 and one transaction for £69.98. It was Colleague B's evidence that none of these transactions were made by her or with her knowledge or permission. As a result, Colleague B contacted NatWest to report the unauthorised usage of her credit card, and she cancelled her credit card.

The panel had regard to Colleague B's NatWest MasterCard statement between 10 May 2016 and 9 June 2016. The statement listed these three transactions with

Groupon, and also showed that they were refunded by the bank to Colleague B's account.

The panel considered from this evidence it was clear that there had been fraudulent transactions on Colleague B's MasterCard, and that these were refunded by the bank.

The panel however had no documentary evidence in relation to these transactions with Groupon. It therefore had nothing to indicate any buyer information or shipping details. The panel had regard to your evidence, noting that you said you had no knowledge of these transactions with Groupon. The panel therefore considered that there was no documentary evidence to link you to these transactions. As a result, the panel considered that the NMC has not discharged its burden of proof in respect of the two transactions for £124.98 and the transaction for £69.98 to Groupon.

The panel considered whether it was more likely than not that you obtained the details of Colleague B's MasterCard without her consent.

The panel had regard to the roster for the Unit between 14 December 2015 and 29 May 2016, as well as the schedule of Colleague A, Colleague B and your shifts between the same dates. The panel considered that this indicated there were days when you worked the same shift patterns as Colleague B, as well as days where there would be an overlap from her shift ending, and you coming onto night duty. The panel therefore considered that there was opportunity for you to access the handover room on the Unit, where the personal belongings of Colleague B would have been stored whilst she was on shift.

The panel also had regard to the evidence of Colleague B, who indicated that she would store a bag in the handover room when she was working on the Unit, which contained a purse, where three of her bank cards were stored. This included a NatWest debit card, a NatWest MasterCard and an American Express charge card.

The panel had previously found that it was more likely than not that you obtained the details of Colleague B's NatWest debit card without her consent, and that you used this card to make a purchase with Garden Oasis, without Colleague B's consent. It noted that this debit card was stored in the same purse as Colleague B's NatWest MasterCard. Given that you were said to have accessed Colleague B's debit card on or before 16 May 2016 to make an unauthorised purchase, the panel considered that it was more likely than not that you also accessed her MasterCard around the same time. It noted that you would have had the opportunity to do so, with access to the handover room whilst working on the Unit.

The panel therefore considered that it was more likely than not that on or before 16 May 2016 you accessed the details of a NatWest MasterCard for the account of Colleague B without her consent.

The panel considered that it was more likely than not that on or before 16 May 2016 you did not make two purchases of £124.98 and one purchase of £69.98 to Groupon with Colleague B's NatWest MasterCard without her consent.

The panel therefore found charge 7a) proved and charges 7b), 7c) and 7d) not proved.

Charge 8:

That you, a registered nurse,

8. Your conduct as alleged in Charge 7 was dishonest in that you knew you did not have colleague B's consent to make the stated purchases, deliberately represented to Groupon that you were entitled to use Colleague B's Mastercard and intended thereby to obtain goods or services to the value of £124.98 and / or £69.98.

This charge is found not proved.

In reaching this decision, the panel had regard to the wording of this charge, which alleged dishonesty on the basis of knowing you did not have Colleague B's consent to make the three purchases with Groupon and deliberately representing to Groupon that you were entitled to use Colleague B's MasterCard with the intention of obtaining goods or services. The panel had regard to its determination at charge 7, where it had found charges 7b), 7c) and 7d), which related to these three transactions with Groupon, not proved. As a result, charge 8 is found not proved.

Charge 9:

That you, a registered nurse,

9. On, or before 1 June 2016, made a purchase for £165.09 to Ali Express.com, with Colleague B's National Westminster, (Natwest), Mastercard without her consent.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B, your evidence and Colleague B's NatWest MasterCard statement between 10 May 2016 and 9 June 2016.

The panel had regard to Colleague B's NatWest MasterCard statement between 10 May 2016 and 9 June 2016. This detailed that a refund was provided on 1 June 2016 for a transaction of £165.09 with Ali Express. The panel considered that self-evidently if a refund was provided, there would have been a transaction for this purchase prior to 1 June 2016.

The panel had regard to the evidence of Colleague B. It was her evidence that this was an unauthorised transaction. The panel therefore determined that the evidence clearly showed that this transaction was made prior to 1 June 2016 and it was a fraudulent transaction.

The panel considered that other than the MasterCard statement, there was no documentary evidence in respect of this transaction. There was nothing detailing any buyer information, shipping details or any other such information. The panel noted that there was no documentary evidence linking this transaction to you.

Whilst this was the case, the panel had regard to its finding that it was more likely than not that you had previously accessed the details of Colleague B's MasterCard without her consent. The panel noted that this transaction (to Ali Express for £165.09) was refunded to Colleague B on 1 June 2016, and therefore the purchase would have been made prior to this date. The panel also had regard to your evidence that you had an Ali Express account, which you had previously used to make purchases. In your evidence you advanced no explanation for this transaction. Taking all of this into account, the panel considered that it was more likely than not that on or before 1 June 2016, you made a purchase of £165.09 to Ali Express with Colleague B's NatWest MasterCard without her consent.

The panel therefore found charge 9 proved.

Charge 10:

That you, a registered nurse,

10. Your conduct as alleged in Charge 9 was dishonest in that you knew you did not have colleague B's consent to make the stated purchases, deliberately represented to Ali express that you were entitled to use Colleague B's Mastercard and intended thereby to obtain goods or services to the value of £165.09.

This charge is found proved.

In reaching its decision, the panel applied the legal test for dishonesty, as set out previously.

Having regard to its findings at charge 9, and the evidence it considered in respect of that charge, the panel assessed your actual state of knowledge of belief as to the facts. The panel considered that it was more likely than not that you knew you did not have Colleague B's consent to make the purchase with Ali Express. The panel considered that it was more likely than not that you deliberately represented to Ali Express that you were entitled to use Colleague B's MasterCard, with the intention of obtaining goods or services to the value of £165.09.

The panel considered that this conduct would be regarded as dishonest according to the standards of ordinary decent people.

The panel therefore found charge 10 proved.

Submissions on misconduct and impairment:

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

Ms Doherty, on behalf of the NMC, referred the panel to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a "word of general effect, involving some act or omission which falls short of what would be proper in the circumstances".

Ms Doherty invited the panel to take the view that your actions amount to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* ("the Code"). She then directed the panel to specific standards and identified where, in the NMC's view, your actions amounted to a breach of those standards.

Ms Doherty submitted that accessing a restricted area for members of staff when you were in a position of trust, and taking the financial details of colleagues, and using those details for monetary or other gain, was an entirely dishonest way to behave. She submitted that this could be considered to amount to criminal offending, although she accepted that the criminal proceedings in this case were discontinued. Ms Doherty submitted that in any event this was not proper behaviour for a registered nurse and amounted to misconduct.

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

Council (2) Grant [2011] EWHC 927 (Admin). She submitted that limbs b, c and d of Dame Janet Smith's test, as set out in the Fifth Report from Shipman, were engaged in this case.

Ms Doherty submitted that the charges of dishonesty were repeated over several occasions and over a significant period of time. She submitted that this was not a case of the charges arising over the course of a few days, or being down to a lapse in judgement. They took place over a period of a few months, and were serious enough that the Trust felt you should no longer be placed to work with them. Ms Doherty submitted that the risk posed by you to colleagues was a financial and emotional one, given the uncertainty and stress arising from what happened. She submitted that the knowledge this was happening at work by another member of staff in a position of trust could lead colleagues to feel insecure and financially unsafe whilst at work.

Ms Doherty accepted that these actions occurred over four years ago, but submitted that there is a continued risk to members of the public, namely colleagues. She also submitted that there was a risk to anyone with personal property in the hospital which could be accessed and misused. Ms Doherty submitted that the fact that Colleague A and Colleague B received refunds from their banks did not mean that the level of harm caused was any less, or that the incidents were any less serious.

Ms Doherty submitted, notwithstanding that you had not yet had an opportunity to address this point, that there had been no evidence of remorse or insight. She submitted that you had not demonstrated an understanding of your actions, nor had you provided any evidence of remediation to address the dishonesty. Ms Doherty further submitted that no apology had been made. Ms Doherty submitted that dishonesty is not easily remediable, and accepted it was difficult to demonstrate in circumstances where charges are denied. She submitted that remediation in these circumstances could involve looking at the incident objectively, recognising what has gone wrong and accepting your role and responsibilities within the incident. Ms Doherty submitted that

on the present information before the panel, there was nothing to suggest any of this had been considered by you.

Ms Doherty submitted that there was no evidence of any mitigating circumstances to explain why you behaved in this way. In response to a question from the chair, Ms Doherty submitted that the NMC did not seek to suggest that your personal situation at the time was not true, however it was not known whether this was a true motivation for your actions, and whether your actions could be attributed to your personal circumstances.

Ms Doherty submitted that your level of dishonesty was opposite to the standards expected of a registered nurse. She submitted that your actions are likely to negatively impact how the nursing profession is viewed by the public, particularly if no regulatory action was to be taken. Ms Doherty invited the panel to make a finding of current impairment on public protection and public interest grounds.

Ms Thomas submitted, on your behalf, that you accept the factual findings made by the panel. She submitted that you accept that the charges found proved do amount to misconduct, and that the public interest requires a finding of impairment. Ms Thomas did not accept that public protection grounds were engaged in this case.

The panel accepted the advice of the legal assessor which included reference to the cases of: *Roylance, Nandi v GMC* [2004] EWHC 2317 (Admin), *Cohen v GMC* [2008] EWHC 581 (Admin) and *Grant*.

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

Decision on misconduct

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

The panel, in reaching its decision, had regard to the protection of the public and the wider public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that your actions fell significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. The panel considered that the following sections of the Code were engaged in this case:

“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...”

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

The panel considered that your actions involved dishonestly accessing the property of your colleagues, obtaining their card details without their consent, and using that information to make a number of transactions without their consent. The panel did not consider this to be an isolated action, but more a number of repeated instances of dishonesty, over a period of a few months whilst you were working at the Hospital. The panel considered that patients, fellow practitioners and members of the public expect

nurses to act with honesty and integrity at all times. The panel considered that your actions fell far below such standards expected of a registered nurse, and that members of the public and fellow professionals would be consider your behaviour deplorable. The panel considered that your actions amounted to an abuse of your position of trust as a registered nurse, and this was reflected in the police witness statement of Colleague A, dated 23 September 2017:

“...Benedicta has betrayed my trust and friendship, as well as taking criminal advantage of the position of trust she held as a nurse working at the West Middlesex University Hospital.”

The panel determined that your actions fell seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.”

Mrs Justice Cox went on to say in Paragraph 76:

“I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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

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

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”

The panel considered that limbs b, c and d of the above test were engaged by your past actions. The panel considered that honesty and integrity are fundamental tenets of the nursing profession and that patients, fellow professionals and members of the public expect nurses to act with honesty and integrity at all times. It considered that your actions, in dishonestly accessing the card details of Colleague A and Colleague B and using them to make unauthorised transactions over a period of time, clearly breached fundamental tenets of the nursing profession and brought the nursing profession into disrepute.

The panel had regard to limb a of the above test. It considered that there was no evidence before it to suggest that your past behaviour put patients at risk of harm at the time of occurrence.

The panel went on to consider whether you were liable to act in a way to put patients at risk of harm in the future, to bring the nursing profession into disrepute, to breach fundamental tenets of the nursing profession and to behave dishonestly in the future. In doing so, the panel assessed whether there was any evidence of insight and remediation.

In considering whether your actions had been remediated, the panel applied the three stage test set out in the case of *Cohen*.

The panel considered whether your actions were capable of remediation. The panel accepted that dishonesty is difficult to remediate, but considered that the actions in this case were capable of remediation. It considered remediation could have been demonstrated through acceptance of what went wrong, through showing an understanding how the actions impacted on colleagues and the reputation of the

nursing profession, through demonstration of apology and remorse and through demonstrating steps taken to ensure the behaviour would not be repeated in the future.

The panel then considered whether these actions had been remediated. The panel noted that you did accept the panel's factual findings, that the charges found proved amount to misconduct, and that the public interest requires a finding of impairment. Despite this acceptance, the panel did not have any evidence before it to demonstrate insight into your actions. The panel did not consider that you had demonstrated any acceptance of your actions and why they were wrong, any remorse for your actions, any concern for your colleagues and any understanding of how your actions impacted upon colleagues and on public trust in the nursing profession.

The panel noted from your evidence given at the factual stage of these proceedings that you have remained working as a nurse since these incidents occurred. However, the panel had no information or documentation before it in relation to such work, either by way of testimonials or references from colleagues, or any other information relating to your practice as a nurse. Whilst there was no evidence before the panel to indicate that these actions had been repeated since, the panel did not have any information attesting to the issue of your honesty and integrity in clinical practice since these incidents.

Taking this into account, the panel considered that your actions had not been remediated, and given this and the lack of evidence of insight, it considered that they had the potential for repetition.

The panel bore in mind that these incidents arose in a clinical environment, namely in a hospital where you accessed the personal property of your colleagues, which was stored in a room for use by members of staff. The panel considered that whilst there was no evidence to suggest that this behaviour had placed patients at risk of harm at the time, or that there were any concerns involving your clinical practice, it considered that honesty is a bedrock of nursing practice. Given the findings regarding your dishonest behaviour, and the lack of evidence to suggest that this dishonesty has been

addressed by you since, the panel had concerns regarding your ability to act honestly in the future. Given that honesty is central to nursing practice, the panel considered that patients could be placed at real risk of harm in the future if you were to behave dishonestly, and if you were to access the property of individuals in a clinical environment (whether belonging to colleagues or patients and other members of the public) without their consent. As such, whilst the panel did not find limb a of Dame Janet Smith's test engaged by your past actions, but it did find that you are liable to place patients at risk of harm in the future.

The panel also considered that given the lack of evidence of insight and remediation, you remain liable to act in a way to bring the nursing profession into disrepute, to breach fundamental tenets of the nursing profession and to act dishonestly in the future.

The panel therefore determined that a finding of impairment is 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession.

The panel considered that patients, fellow practitioners and members of the public expect nurses to act with honesty at all times. It considered that such individuals would be extremely concerned to hear about the behaviour of a nurse, who accessed the bank details of their colleagues without their consent, and used those details to dishonestly make unauthorised transactions. The panel considered that confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made in the circumstances. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

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

Determination on sanction:

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

In reaching this decision, the panel has had regard to all the evidence in this case. The panel heard submissions from Ms Doherty, on behalf of the NMC, and those made by Ms Thomas, on your behalf. The panel accepted the advice of the legal assessor, who referred to the cases of *Parkinson v NMC* [2010] EWHC 1898 (Admin) and *Atkinson v GMC* [2009] EWHC 3636 (Admin). The panel bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

At this stage, the panel was provided with the following documentation:

- A character reference from a colleague dated 3 February 2019;
- A certificate of appreciation and accompanying letter for exceptional service during the COVID-19 pandemic dated December 2020; and
- A certificate of appreciation for being an outstanding professional, dated 12 May 2021.

Ms Doherty, on behalf of the NMC, outlined the sanction bid for a striking-off order. She referred the panel to the case of *Parkinson* and the principles outlined within that case. Ms Doherty referred the panel to the NMC’s SG in respect of imposing a striking-off order. She submitted that such an order was likely to be appropriate when the actions are fundamentally incompatible with being a registered professional. Ms Doherty submitted that there was no clinical concerns about your work, and it was to your credit that witnesses had commented positively about your practice. Colleague B stated that you were clearly experienced and able to cope well with caring for sick children, and Ms

1 stated that you displayed good competency in your role. Notwithstanding this, she submitted that your conduct involved a lack of probity, honesty and trustworthiness, and therefore was fundamentally incompatible with being a registered professional.

Ms Doherty referred the panel to the NMC's SG in relation to considering sanctions for serious cases. She invited the panel to consider the type of dishonest conduct, and submitted that the most serious cases of dishonesty would involve a misuse of power, personal financial gain from a breach of trust and premeditated, systemic or long standing deception. Ms Doherty submitted that this case involved a serious level of dishonesty, which was effectively theft from colleagues. She submitted that using your role as a nurse to access a private staff area, in order to obtain the card details of other registered professionals, was a breach of trust. Ms Doherty also submitted that, to a degree, this was planned conduct as it was repeated behaviour over a protracted period of time. She also submitted that you were not only dishonest in your actions, but the panel had not accepted the assertions in your evidence that these transactions were made with consent. Ms Doherty submitted that such assertions implicated your colleagues, as it suggested they gave inaccurate information to the police and the NMC.

Ms Doherty accepted that this conduct occurred some time ago, in 2016. However, she submitted that despite its age, there continued to be a risk to members of the public, mainly colleagues who may have personal property in and around a hospital environment which could be accessed for misuse.

Ms Doherty submitted that the key consideration in this case was the public interest. She submitted that members of the public would be shocked to learn of a nurse, engaging in this type of behaviour, being able to continue to practise. Ms Doherty submitted that honesty and integrity are key to the role of caring for members of the public.

Ms Doherty submitted that, at present, there were no mitigating factors, although it may be that these are raised in due course. She submitted that, at present, there was no

evidence of insight and remediation, apart from your acceptance, through Ms Thomas, of impairment. Ms Doherty submitted that the most proportionate sanction would be that of a striking-off order, and that this was a necessary sanction to protect the public, uphold standards and the reputation of the nursing profession and maintain public confidence. She submitted that if the panel felt a lesser sanction was appropriate, anything less than a suspension order would not address the risks in this case.

Ms Thomas submitted that there had been no concerns about your conduct and professionalism since 2016, and that this was a single period of misconduct in an otherwise unblemished career spanning 16 years. She accepted that two colleagues were affected over a period of two months, however submitted that the series of transactions were in an isolated period of time, and therefore a one-off in that regard. Ms Thomas also submitted that there was evidence that you were clearly facing a difficult personal situation at the time, and such extraneous factors may have played a role in your behaviour. She submitted that this conduct was out of character for you, which can be seen by the lack of any further concerns and by the character reference provided, dated 3 February 2019.

Ms Thomas submitted that the difficult personal situation which you faced at the time has now been resolved, [PRIVATE]. Therefore, to the extent that this was affecting your behaviour, this factor was now removed. She submitted that this case was now five years old, the delay with these proceedings being no fault of your own. Throughout that time, you have carried on practising as a nurse, with no breaks in practice. Ms Thomas submitted that the NMC did not apply for an interim order in this case, and therefore did not assess the risk you posed to be so high that such an order was required. She also highlighted that for five years, this case has been “hanging over your head”, and that could be seen as a punishment in terms of waiting for an outcome.

Ms Thomas submitted that you were clearly otherwise a good nurse, with no concerns regarding your competence, and in fact positive evidence of your competency, for example, with you having conducted night shifts on PAU, with only one other doctor.

She also referred the panel to the certificates provided, for being an outstanding professional (dated May 2021) and for exceptional service during the COVID-19 pandemic (dated December 2020). Ms Thomas submitted that you do not have to have accepted the charges from the outset in order for the panel to find evidence of insight and remediation. She submitted that evidence of insight and remorse can be demonstrated by your acceptance of the panel's factual findings and of misconduct and impairment.

Ms Thomas accepted that the conduct was so serious, and required a sanction, and that anything less than a suspension order would not be appropriate. However, she submitted that a striking-off order would be disproportionate. Ms Thomas invited the panel to impose a suspension order, for a length which it deemed appropriate. She submitted that given the unusual circumstances involving a delay in this case, and the fact that you had not repeated similar behaviour since, your actions are not fundamentally incompatible with remaining on the register. Ms Thomas accepted that dishonesty is serious, but submitted that not every case involving dishonesty required a striking-off order to be imposed.

Ms Thomas submitted that the public interest was a balancing act, and that it was in the public interest to have good, competent nurses working, particularly in the current climate of the COVID-19 pandemic, and with the pressure the NHS is under. She submitted that a suspension order would mark the seriousness of the case, and demonstrate to members of the public that action is being taken against you, whilst also keeping a nurse in practice (in the future) to help members of the public.

Ms Thomas referred the panel to the NMC's SG in relation to imposing a suspension order, and outlined factors which may make a suspension order appropriate, which she submitted were applicable in this case. She submitted that whilst the conduct was over a period of few months, this was an isolated period, and therefore it was a single instance of misconduct. Ms Thomas submitted that there was no evidence of harmful

deep-seated personality or attitudinal problems. She submitted that you do have insight, given your acceptance of misconduct and impairment.

Ms Thomas submitted that the delay in this case puts the panel in an unusual position, as there was evidence of remediation, given there was a five year period where nothing like this has happened again. She submitted that there was evidence of not persistently engaging in this type of behaviour. Ms Thomas therefore submitted that, on balance, you would not do this again. She referred the panel to the character reference dated 3 February 2019, which gave examples of you having opportunities to commit this type of conduct again (where you would have been working in a hospital with access to the property of your colleagues), but where you did not.

Ms Thomas also referred the panel to the NMC's SG in relation to imposing a striking-off order. She submitted that given this conduct occurred over an isolated period, the panel cannot be satisfied that the regulatory concerns raise serious questions about your professionalism. Ms Thomas submitted that the public interest in nurses could be maintained if you were not permanently removed from the register, and that a striking-off order was not the only sanction sufficient to uphold public confidence. She submitted that a member of the public would not consider that a striking-off order is required, noting the five years you have remained working where similar behaviour has not been repeated and the evidence of remediation.

In reference to the NMC's SG on considering sanctions for the most serious cases, Ms Thomas submitted that the most serious instances of dishonesty involved a deliberate breach of the professional duty of candour, which was not applicable in this case. She therefore submitted that, by the NMC's definition, this was not the most serious type of dishonesty.

Ms Thomas invited the panel to have regard to the principle of proportionality, and the effect any sanction may have on you. She submitted that nursing is your life, and you did not know anything else. Ms Thomas submitted that it was a protective factor for you

during a difficult time in your life, noting that people with happy personal lives do not undertake constant night shifts. She submitted that you love nursing and caring for people, and that a striking-off order would take away the only thing you know how to do, which would have a significant effect on your life.

In response to a question from the legal assessor about what you would do for work during a period of suspension, if this were to be imposed, Ms Thomas informed the panel that you would seek employment in a non-nursing role in the health sector, for example in phlebotomy. This would allow you to keep up your clinical skills and continue working in a patient facing role, which was important to you. She said that you would also like to study, and are looking to progress to a more senior and managerial role within a hospital, and you could undertake training for this whilst suspended.

The panel first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Aggravating factors:

- Your actions involved theft from colleagues;
- Your actions involved premeditated and systematic deception over a period of two to three months, with a number of actions in order to obtain bank details and make transactions using the bank cards of colleagues without their consent. The panel considered that this constituted a course of conduct;
- Your actions involved a breach of your position of trust as a registered nurse; and
- You have not demonstrated any evidence of insight.

Mitigating factors:

- Your previous good character, with no previous convictions or regulatory findings against you, and no evidence of repetition of similar behaviour or any other concerns since these incidents;
- The evidence that you are otherwise a good, competent nurse; and
- Your difficult personal circumstances at the time.

Prior to considering the sanctions in ascending order, the panel had regard to the NMC's guidance on considering sanctions for serious cases, and assessed the dishonesty in this case. It noted that the most serious forms of dishonesty, which are most likely to question whether a nurse should be allowed to remain on the register, often involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power*
- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to patients*
- *premeditated, systematic or longstanding deception*

The panel noted that dishonesty will be generally considered less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *no risk to patients*
- *incidents in private life of nurse, midwife or nursing associate*

Having regard to this case, the panel considered that your dishonest actions involved an abuse of your position as a registered nurse, personal financial gain from a breach of trust and there was premeditated and systemic deception. Whilst this occurred over a single period of time, it did not involve a one-off incident, but a number of repeated actions over a period of time. The panel considered that there was no direct risk to patients, but there was personal gain. Balancing these factors as a whole, the panel considered that the dishonesty in this case was at the upper end of the spectrum of seriousness.

The panel then went onto consider what action, if any, to take in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the misconduct. The panel decided that taking no action would not protect the public and it would not satisfy the wider public interest.

The panel next considered whether a caution order would be appropriate in the circumstances. The panel took into account the SG, which states that a caution order may be appropriate where:

“...the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise Committee wants to mark that the behaviour was unacceptable and must not happen again.”

The panel considered that your misconduct was not at the lower end of the spectrum of impaired fitness to practise, given that it involved dishonestly accessing the card details of colleagues and using them to make unauthorised transactions without their consent. This involved a number of instances of dishonest behaviour over a period of time. A caution order would fail to place any restrictions on your practice. The panel therefore considered that a caution order would not protect the public. Furthermore, it would not address the seriousness of this misconduct, and the public interest, in maintaining confidence in the nursing profession and in the NMC as a regulator.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable.

The panel had regard to the fact that the misconduct in this case did not involve concerns about your clinical practice. However, it involved a number of instances of dishonest behaviour over a period of time. The panel did not consider that it was possible to identify workable, measurable and practicable conditions of practice to

address this type of behaviour. Furthermore, the panel considered that a conditions of practice order would not mark the seriousness of your misconduct, and therefore address the wider public interest in maintaining confidence in the nursing profession and in the NMC as a regulator.

The panel went on to consider whether to impose a suspension order. The panel had regard to the SG, which states that a suspension order may be appropriate where 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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*

The panel considered that whilst the incidents in this case occurred in an isolated period of time in your career as a nurse, they did not involve a single instance of misconduct. They involved a number of instances of dishonest behaviour over a period of two to three months. The panel considered them to involve premeditated and systematic deception. The panel accepted that there was no evidence of harmful-deep seated personality or attitudinal problems in this case, and it noted that there was no evidence to suggest you had repeated the behaviour since the incidents in 2016, having continued practising as a registered nurse since. However, the panel did not consider that you had demonstrated any evidence of insight. Consequently, the panel considered that you did pose a risk of repeating the behaviour.

The panel had regard to the documentation put before it at this stage. It noted that the character reference spoke positively regarding your practice as a nurse, whilst also commenting on your honesty. It also spoke of the fact that whilst you have remained working as a nurse, there were opportunities for you to commit similar types of behaviour (by accessing the property belonging to patients), but this has not occurred.

The panel noted that this reference was dated 3 February 2019. There were no other recent, up to date character references before the panel, which attested to your honesty and integrity as a nurse. The panel also noted that it had received two certificates regarding outstanding performance, dated December 2020 and May 2021, however these did not comment on your honesty and integrity, which were the central concerns in this case. As such, the panel was only able to place limited weight on this documentation.

The panel had regard to the advice given by the legal assessor, and the principles outlined in the cases of *Parkinson* and *Atkinson*. It was said in the case of *Parkinson*, that a nurse found to have acted dishonestly is always at serious risk of erasure from the register. This was balanced with the principle outlined in the case of *Atkinson*, that a striking-off order was not inevitable in all cases involving dishonesty, however there would need to be compelling evidence of insight in order for a panel not to impose the most severe sanction.

The panel found that there was no compelling evidence of insight in this case.

The panel reminded itself of its findings at the impairment stage. Whilst you had accepted the factual findings of the panel, that the charges found proved amount to misconduct and impairment, the panel had determined that there was no evidence of insight. The panel bore in mind Ms Thomas' submissions that your acceptance of the factual findings of the panel, and of misconduct and impairment, amounted to insight. Furthermore, she had submitted that your continued working as a nurse over the last five years amounted to evidence of remediation. The panel did not accept that these factors demonstrated evidence of insight and remediation. The panel considered that there was no evidence before it, for example by way of a reflective piece or further oral evidence from you, that you had accepted your actions and shown an understanding of why they were wrong, that you had demonstrated remorse and concern for your colleagues or that you had demonstrated your understanding of how your actions impacted on colleagues and on public trust in the nursing profession. Whilst the panel

accepted that the charges were denied from the outset, as it was your right to do so, there was nothing before it to demonstrate a theoretical understanding of why your actions were unacceptable and damaging to the nursing profession.

Taking all of this into account, given the serious level of dishonesty in this case, which the panel had determined to be at the higher end of the spectrum of seriousness, and the lack of any compelling evidence of insight, the panel did not consider that a period of suspension would be sufficient to protect patients and public confidence in nurses and to maintain professional standards.

The panel went on to consider whether to impose a striking-off order. The panel had regard to the SG which states that:

This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate 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 also took into account the NMC's guidance on aims and principles for fitness to practise, and in particular:

11. Some regulatory concerns, particularly if they raise fundamental concerns about the nurse, midwife or nursing associate's professionalism, can't be addressed and require restrictive regulatory action.

Conduct that calls into question the basics of someone's professionalism raises concerns about whether they are a suitable person to remain on a register of professionals. It's more difficult for nurses, midwives or nursing associates to be able to address concerns of this kind, and where they cannot, it will be difficult to justify them keeping their registered status.

The panel considered that your behaviour, which involved theft from your colleagues, systematic and premeditated deception, for the purpose of personal and financial gain, was fundamentally incompatible with being a registered professional. The panel reminded itself that honesty and integrity are fundamental tenets of the nursing profession, and it considered that your behaviour did raise fundamental questions about your professionalism. Given your level of dishonest behaviour, and the lack of evidence of any compelling insight on your part, the panel considered that public confidence in nurses would not be maintained unless you were permanently removed from the register. It considered that a striking-off order is the only sanction sufficient to protect patients and members of the public and to maintain professional standards.

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 nursing profession a clear message about the standard of behaviour required of a professional and a registered nurse.

Determination on Interim Order

Under Article 31 of the Nursing and Midwifery Order 2001 (“the Order”), the panel considered whether an interim order should be imposed in this case. A panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant’s own interests.

Ms Doherty submitted, on behalf of the NMC, that an interim suspension order for a period of 18 months should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest, in order to cover any appeal period. She submitted that to do otherwise would be incompatible with the seriousness of the facts found proved.

Ms Thomas, on your behalf, opposed the application for an interim order. She referred to the NMC’s guidance on interim orders, and submitted that an interim order was not an automatic outcome following the imposition of a striking-off order. Ms Thomas submitted that you were entitled to consider whether you would like to appeal the panel’s decision, and if an interim order was imposed, you would not be able to work during the period of concluding an appeal. She submitted that if an appeal results in the panel’s findings being overturned, with an interim order imposed for the duration of the appeal period, irreparable damage would have been done to your life and career. Ms Thomas submitted that you have been working unrestricted as a nurse since 2016. She submitted that the NMC did not originally apply for an interim order, and you have not betrayed the trust placed in you by virtue of that. Ms Thomas submitted that there was no reason for the panel to think you would revert to any similar behaviour during any appeal period.

The panel accepted the advice of the legal assessor.

The panel had regard to the submissions made by Ms Doherty and Ms Thomas. The panel had regard to the seriousness of the facts found proved. Given the panel had

found that this case involved a level of dishonesty which was at the higher end of the spectrum of seriousness, and the lack of evidence of insight, it had decided to impose the most severe sanction of a striking-off order. The panel had considered this sanction was necessary, and the only sanction sufficient to protect patients, to maintain confidence in nurses and to uphold professional standards. The panel accepted that the NMC had not originally applied for an interim order in your case. However, it also considered that such a consideration would have been a risk assessment, in an early stage of the proceedings, whilst the case was under investigation. The case was now at a stage where findings of fact had been made, as well as a finding of misconduct and impairment on both public protection and public interest grounds, and a sanction had been imposed. Therefore, the fact that an interim order had not been imposed at an earlier stage of the proceedings, did not preclude this panel from imposing one.

Having regard to the findings in this case, the panel did consider that an interim order is necessary to protect the public, and is otherwise in the public interest. Having regard to the seriousness of the facts found proved, which amounted to misconduct, and the reasoning for its decision to impose a striking-off order, the panel considered that to not impose an interim order would be incompatible with its previous findings.

Having regard to its previous findings, and the decision to impose a striking-off order, the panel determined that an interim conditions of practice order would not be appropriate, proportionate or workable. The panel therefore determined to impose an interim suspension order. The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.