Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 17 April 2023 – Wednesday, 26 April 2023

The Queens, City Square, Leeds, Yorkshire, LS1 1PJ

Name of Registrant:	**Sara Louise Sykes-Ainsworth**
NMC PIN	99I3804E
Part(s) of the register:	Registered Nurse – Adult Nursing (September 2002) Nurse Independent/Supplementary Prescriber (September 2015)
Relevant Location:	West Yorkshire
Type of case:	Misconduct
Panel members:	Dave Lancaster (Chair, lay member) Manjit Darby (Registrant member) John Kelly (Lay member)
Legal Assessor:	John Donnelly
Hearings Coordinator:	Max Buadi
Nursing and Midwifery Council:	Represented by James Edenborough, Case Presenter
Mrs Sykes-Ainsworth:	Present and represented by Neair Maqboul, (instructed by the Royal College of Nursing)
Fact proved by admission:	Charge 5 and 6d
Facts proved:	Charges 1, 2, 3, 4, 7a, 9a, 10a
Facts not proved:	Charges 6a, 6b, 6c, 7b, 8a, 8b, 9b, 10b
Fitness to practise:	Impaired

Sanction:	Striking off order
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

1. On date(s) unknown in 2016 whilst working on the Acute Admissions Ward and/or Ward 8 of Pinderfields Hospital took medication belonging to Mid- Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.

2. Your actions at charge 1 above were dishonest in that you knew the medication referred to was the property of Mid-Yorkshire Hospitals NHS Trust and that you were not entitled to take it for your own personal use.

3. On 27 September 2017, inaccurately claimed that a colleague had given you permission to take the medication referred to at charge 1 above for your own personal use.

4. Your actions at charge 3 above were dishonest in that you knew that the colleague referred to had not given you permission to take the medication.

5. On 27 July 2017, failed to visit Patient A when it was clinically necessary.

6. On 28 July 2017:

    a. having realised you had failed to visit Patient A the preceding day did not prioritise visiting her when it would have been clinically appropriate to do so.
    b. failed to conduct observations of Patient A when taking such observations was clinically indicated.
    c. cancelled visits Patient A was due to have on 29/30 July 2017 when there was no clinical justification.
    d. failed to send a sputum sample taken from Patient A for analysis.

7. On an unknown date subsequent to 27 July 2017, inaccurately recorded that you had:

    a. attended Patient A's home to visit Patient A on 27 July 2017 but been unable to make contact with her.
    b. conducted observations of Patient A on 28 July 2017.

8. Your actions at charge 7 were dishonest in that:

    a. you knew you had not attempted to visit Patient A on 27 July 2017
    b. you knew you had not, on 28 July 2017, conducted the observations of Patient A you recorded.

    and you attempted to mislead any subsequent reader of your notes into believing you had done so.

9. On 15 October 2017

    a. whilst suspended from duty, attended Ward 14/15 of Pinderfields Hospital wearing your hospital uniform
    b. took medication belonging to Mid-Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.

10. Your actions at charge 9 were dishonest in that you:

    a. knew you were suspended from duty and were seeking to mislead colleagues into believing you were present on the ward for some proper clinical reason.
    b. knew the medication referred to was the property of Mid-Yorkshire Hospitals NHS Trust and that you were not entitled to take it for your own personal use.

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

misconduct.

After the charges were read, the panel heard from Ms Maqboul, on your behalf, who informed the panel that you made full admissions to charges 1, 5 and 6d. However, subsequently the admission to charge 1 was withdrawn.

The panel therefore finds charges 5 and 6d proved in their entirety, by way of your admissions.

Background

You were employed by The Mid Yorkshire Hospitals NHS Trust ("the Trust") as a Band 6 Respiratory Assessment Nurse based in Pinderfields Hospital within the Pinderfields emergency response and resuscitation team. This involved the care of chronic respiratory patients within their own homes. Prior to being based in Pinderfields Hospital you were based in Dewsbury Hospital in a similar role until the two services were merged in July 2016.

Patient A was an Admissions Avoidance Pathway patient in your care. You visited Patient A on Wednesday 26 July 2017 and was due to visit Patient A again on Thursday 27 July 2017 but failed to do so. You later recorded in the PERT diary that you called at Patient A's home on 27 July 2017 but Patient A was not there.

You visited Patient A on Friday 28 July 2017 at around 17:00 and wrote in a number of observations in Patient A's notes in relation to this visit. In the PERT diary you crossed out visits scheduled for Patient A over the weekend of 29/30 July 2017.

It is alleged that when you visited Patient A on the 28 July 2017, you failed to properly assess Patient A and did not undertake observations despite entering these into the patient's records.

In September 2017 you admitted to taking two codeine and two paracetamol tablets from the ward stock of medication on two occasions in 2016 and/or 2017.

Ms 1, who at the time was the Clinical Nurse Specialist for Respiratory and Team Leader at the Trust, interviewed you on 7 August 2017. Ms 1 told you what Patient A had said. You maintained that you had visited Patient A on 27 July 2017 but they were not in. You also insisted that you had taken full observations and undertaken a clinical assessment on 28 July 2017. Ms 1 asked why you left visiting Patient A until the end of the day, given that you had already failed to visit them the previous day. You subsequently told Ms 1 that you decided to visit Patient A at the end of the day as you pass her house on the way home.

During an interview on 27 September 2017, you amended your account slightly. You told Ms 2 that you had forgotten to visit Patient A on 27 July 2017 and only remembered once you had got home. You called at Patient A's home first thing the following morning but no one answered. You then went to your office and phoned Patient A, apologised for forgetting to visit the previous day and told her you would visit later that day.

You were suspended from work while the Trust's investigation into your conduct regarding Patient A was ongoing. This meant you were not allowed enter Trust premises without prior permission. However, it is alleged that you stole a box of codeine from the Ward 14/15 treatment room on 15 October 2017 whilst suspended.

When interviewed about this incident as part of the Trust's investigation you admitted being on Ward 14/15 when you knew you should not have been. You admitted being in the treatment room and being in uniform. You said you were alone in the treatment room for only a very brief period. You denied taking any codeine from the drug cupboard.

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

During the cross-examination of Ms 1 Ms Maqboul, on your behalf, informed the panel that she was going to ask questions that are likely to refer to your personal life. She made a request that those parts of the cross-examination be held in private. The application was

made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Edenborough, on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported the application.

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

Having heard that there will be reference to your personal life, the panel determined to hold those parts of the hearing in private.

Joint Application to have your admission to charge 1 set aside

Mr Edenborough and Ms Maqboul jointly made an application to set aside your early admission to charge 1. Mr Edenborough submitted that the issue between the NMC and yourself, with regards to charge 1, is permission. He submitted that it has always been your case that you had never taken medication belonging to the Trust, for your own personal use, without permission.

Mr Edenborough drew the panel's attention to the notes of a meeting between yourself and Ms 2 held on 27 September 2017. He submitted that these notes deal with what appears to be an admission by you to taking medication on one occasion from the Acute Assessment Unit ("AAU") ward. He further submitted that there also appears to be a further admission to taking medication from ward 8.

Mr Edenborough submitted that there was questioning and an indication of the possibility of there being more occasions where you took medication without permission other than the aforementioned two occasions but there is nothing clear.

Mr Edenborough submitted that it is not in dispute that there were two occasions when you took medication, namely from AAU and ward 8. However, he submitted that you maintained that it was done on both occasions with the proper permission to do so.

Mr Edenborough submitted that your admission to this charge cannot stand because although there is no dispute about the timeframe of the allegation, namely the two occasions, there is dispute as to whether you had permission to take the medication. Ms Maqboul supported the application and submitted that the issue is with regards to permission.

In response to panel questions, Ms Maqboul confirmed that this application will not impact the evidence the panel had already heard from the witnesses.

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

The panel accepted the application.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Edenborough, on behalf of the NMC, to amend the wording of charge 1.

Mr Edenborough submitted that there were two incidents where medication was allegedly taken by you for personal use, each turning on whether you had permission to do so. He submitted that the evidence as to whether one or both incidents were in 2016 or 2017 is unclear. It was submitted by Mr Edenborough that the proposed amendment would provide clarity and more accurately reflect the evidence.

Proposed Amendment

‘That you, a registered nurse:

1. *On date(s) unknown in 2016* ***and/or 2017*** *whilst working on the Acute Admissions Ward and/or Ward 8 of Pinderfields Hospital took medication belonging to Mid- Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.’*

The panel heard submissions from Ms Maqboul who supported the proposed amendment.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. It also bore in mind that there was no objection to the application. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Details of charge (as amended)

That you, a registered nurse:

1. On date(s) unknown in 2016 and/or 2017 whilst working on the Acute Admissions Ward and/or Ward 8 of Pinderfields Hospital took medication belonging to Mid-Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.

2. Your actions at charge 1 above were dishonest in that you knew the medication referred to was the property of Mid-Yorkshire Hospitals NHS Trust and that you were not entitled to take it for your own personal use.

3. On 27 September 2017, inaccurately claimed that a colleague had given you permission to take the medication referred to at charge 1 above for your own personal use.

4. Your actions at charge 3 above were dishonest in that you knew that the colleague referred to had not given you permission to take the medication.

5. On 27 July 2017, failed to visit Patient A when it was clinically necessary.

6. On 28 July 2017:

    a. having realised you had failed to visit Patient A the preceding day did not prioritise visiting her when it would have been clinically appropriate to do so.
    b. failed to conduct observations of Patient A when taking such observations was clinically indicated.
    c. cancelled visits Patient A was due to have on 29/30 July 2017 when there was no clinical justification.
    d. failed to send a sputum sample taken from Patient A for analysis.

7. On an unknown date subsequent to 27 July 2017, inaccurately recorded that you had:

    a. attended Patient A's home to visit Patient A on 27 July 2017 but been unable to make contact with her.
    b. conducted observations of Patient A on 28 July 2017.

8. Your actions at charge 7 were dishonest in that:

    a. you knew you had not attempted to visit Patient A on 27 July 2017
    b. you knew you had not, on 28 July 2017, conducted the observations of Patient A you recorded.

and you attempted to mislead any subsequent reader of your notes into believing you had done so.

9. On 15 October 2017

    a. whilst suspended from duty, attended Ward 14/15 of Pinderfields Hospital wearing your hospital uniform
    b. took medication belonging to Mid-Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.

10. Your actions at charge 9 were dishonest in that you:

    a. knew you were suspended from duty and were seeking to mislead colleagues into believing you were present on the ward for some proper clinical reason.
    b. knew the medication referred to was the property of Mid-Yorkshire Hospitals NHS Trust and that you were not entitled to take it for your own personal use.

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

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account the oral and documentary evidence in this case together with the submissions made by Mr Edenborough on behalf of the NMC and by Ms Maqboul on your behalf.

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

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

- Ms 1: At the relevant time, Clinical Nurse Specialist for Respiratory and Team Leader at the Trust;
- Ms 2: Assistant Director of Nursing for the Division of Medicine at the Trust;
- Ms 3: Band 6 registered nurse at the Trust on the Elective Surgical Unit;
- Ms 4: Band 6 Sister at the Trust;
- Ms 5: At the relevant time, Clinical Nurse Special in respiratory;
- Ms 6: Healthcare Assistant at the Trust.

The panel also heard evidence from you under oath.

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

Charge 1

1. On date(s) unknown in 2016 and/or 2017 whilst working on the Acute Admissions Ward and/or Ward 8 of Pinderfields Hospital took medication belonging to Mid-

Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2, Ms 4 and your evidence.

The panel bore in mind that you accepted that you had taken medication belonging to the Trust on two occasions in 2016 and 2017.The contentious issue regarding this charge was whether or not you had permission to take medication belonging to the Trust.

With regards to an occasion in 2016, Ms 2 in her witness statement, reviewed your responses during earlier interviews and stated:

"…Sara explained at line 4 (page 2) of [the notes of the investigative interview with the registrant on 27 September 2017] that she had been in a car crash and had been on codeine for a long period of time. She said that on a particular day, she had forgotten her own codeine so she asked if she could have some out of a cupboard on the ward to prevent her from going off sick. That is the time she said she had taken medication from ward stock once. She did not know exactly when it was but she thought it was around 2016 and she said it was on AAU ward…At line 14 on page 2 of the notes, Sara then says she took 2 codeine and 2 paracetamol because she did not want to go off sick. At line 21 of the notes I mentioned ward 8 to Sara when reading the note made by [Ms 1], and Sara nodded. That raised my suspicions that she accessed codeine more than just once that she initially alluded to. I asked her whether it was several occasions and she said it was not as many as that, but she had she had taken them from ward 8…" [sic]

Ms 2 reiterated this in her oral evidence.

With regards to the incident involving Ms 4 in 2017, the panel also noted that Ms 4 in her witness statement stated:

> *"I did not know that she was using codeine until I returned from holiday. I never had any suspicion at all and she never asked me for any drugs at all other that patient related drugs.*
>
> *I did not give Sara permission to take codeine from ward stock. The first I heard about it was when I came back to work from leave and the codeine was locked in the control cupboard…"*

The panel also took account of the notes of the meeting, between Ms 2 and Ms 4, dated 4 October 2017, which stated:

> *"[Ms 2] Has Sara asked you for Codine?*
> *[Ms 4] No.*
> *[Ms 2] Sara said she had forgotten her Codine and was in pain.*
> *[Ms 4] No. I have heard she has forgotten hers and asked for some but she has never asked*
> *me.*
> *[Ms 2] She said she had authorisation from you.*
> *[Ms 4] No. She never had…." [sic]*

The panel noted that Ms 4 consistently stated, in her witness statement, her interview and in oral evidence that she did not give you permission to access the medication trolley. The panel also noted that Ms 2 in her witness statement stated:

> *"It is not acceptable for staff to use medication from ward stock. It may havee been acceptable practice years ago but times have changed. Certainly in my career as a nurse it has never been accepted…"*

The panel also bore in mind that both Ms 2 and Ms 4 stated in their oral evidence that it is not and, historically has not been acceptable to take medication from the mediation trolley for personal use.

The panel took account of the notes of an interview on 27 September 2017 between yourself and Ms 2. It noted that this interview initially explored an occasion in 2016, where you accepted that you had taken medication belonging to the Trust, and then moves on to another occasion in 2017. It stated:

> *SSA: Yes I hold my hands up and I did take 2 codeine and two paracetamol which is what I was prescribed because I didn't want to go off sick. I don't like being off sick. It's not me.*
> *[Ms 2]: Had you ever taken them from another ward?*
> *SSA: No…*

However, later in the same interview the panel noted you stated:

> *[Ms 2]: You've just nodded for Ward 8.*
> *SSA: Ward 8 is my old ward. I have had some off there but that's it.*
> *[Ms 2]: Previously I asked you and you said you'd only done it once and now we've got to twice.*
> *SSA: Sorry.*

Additionally the panel noted that, within the same interview, you stated:

> *[Ms 2]: So you have removed Codeine from Ward 8 at DDH.*
> *SSA: Yes.*
> *[Ms 2]: How many times?*
> *SSA: Just the once and it was the sister [Ms 4] who said I could and it was just because I was in agony.*
> *[Ms 2]: [Ms 4]?*

SSA: [Ms 4]. I'm not going to implicate myself in something. I will tell you and I'm sitting here. I wouldn't do it otherwise.
[Ms 7]: So for clarification, are you saying that [Ms 4] who was the ward sister suggested you have some Codeine?
SSA: No. I just said "My back is absolutely killing me" and she said "Have you got anything with you" and I said "No I haven't" and she said "What do you normally take" and I said "I take Codeine and Paracetamol" because it used to be combined together and the GP split it up so that I got more out through the day to do it.
[Ms 7]: So who got the drugs out of the cupboard? Was it you or [Ms 4]?
SSA: I think [Ms 4] came in with me but we were in there together. She was there with me when I got it out.

The panel noted that your account appeared to change. Initially you stated that you took medication from stock for personal use on one occasion, then later that you took it on two occasions. Even later in the same interview, having admitted that you used medication from hospital stock on two occasions, you claimed that you stated that you had permission to do so. You stated that you had permission from Ms 4 on one occasion and from an unnamed nurse who you could only describe as having blonde hair on another occasion.

The panel was of the view that had you been given permission as you claimed, then you would have mentioned this earlier in the interview when the issue of your use of hospital stock medication was first raised with you.

The panel also had regard to your interview with Ms 2 on 11 October 2017, when you were asked about whether the use of codeine was authorised, you stated *"I might not have asked her".*

The panel also noted that you have referenced an unnamed nurse who appeared to give you permission to take medication in 2016. In the notes of a meeting on 27 September 2017 between yourself and Ms 2 you stated:

SSA: No there was somebody in there with me. There was another nurse in there and then from what I can remember she was stood at the door and she pointed to the cupboard that it was in. That's all I can remember and that's the only time I've ever done it.

However, the panel was mindful that this amounted to hearsay. This unnamed nurse had not attended to give evidence at this hearing or provided a formal witness statement. As a result, there was no way to test the veracity of this claim and there is no corroborating evidence. Additionally, the panel found it implausible for an unnamed nurse who did not know you to give permission to take medication when it was clearly against the Trust's policy.

The panel was persuaded by the evidence of Ms 2 and Ms 4 who were consistent that it was not acceptable to take medication belonging to the Trust. It bore in mind that it asked you about what your understanding was of the Trust's medication policy, irrespective of whether you were given permission. You confirmed that you were aware of what was acceptable practice and that your actions contravened this.

In light of the above, the panel was of the view that, on the balance of probabilities, whilst working on the Acute Admissions Ward and/or Ward 8 of Pinderfields Hospital you took medication belonging to Mid-Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.

Therefore this charge is found proved.

Charge 2

2. Your actions at charge 1 above were dishonest in that you knew the medication referred to was the property of Mid-Yorkshire Hospitals NHS Trust and that you were not entitled to take it for your own personal use.

This charge is found proved.

The panel bore in mind that both Ms 2 and Ms 4 have stated that it has never been the policy of the Trust to take medication from the mediation trolley for personal use. You confirmed that you were aware of this at the time and were also aware that the medication belonged to the Trust.

In light of the above, the panel was of the view that your actions in charge 1 were dishonest because you knew the medication referred to was the property of Mid-Yorkshire Hospitals NHS Trust and that you were not entitled to take it for your own personal use.

The panel therefore find this charge proved.

Charge 3

3. On 27 September 2017, inaccurately claimed that a colleague had given you permission to take the medication referred to at charge 1 above for your own personal use.

This charge is found proved.

The panel reminded itself that the issue here is not whether you had permission to take medication belonging to the Trust as per Charge 1. This charge alleges you made a false representation that you had permission to do so from a colleague.

The panel bore in mind that the notes of a meeting on 27 September 2017 between yourself and Ms 2 show you as stating that an unnamed nurse had given you permission to take medication. However, the panel had already established that this was hearsay and it had no corroborating evidence.

The panel also noted that you stated, during the interview with Ms 2 on 27 September 2017 and in oral evidence, that you had permission to take medication belonging to the Trust from Ms 4. In reaching this decision, the panel took account of the same evidence of Ms 4 and your evidence referred to in charge 1.

Ms 4 stated in her witness statement and the interview notes of the meeting between Ms 2 and Ms 4, dated 4 October 2017, that she did not give you permission to take the medication referred to in charge 1.

The panel noted that Ms 4 in her witness statement stated:

> *"I did not know that she was using codeine until I returned from holiday. I never had any suspicion at all and she never asked me for any drugs at all other that patient related drugs.*
>
> *I did not give Sara permission to take codeine from ward stock. The first I heard about it was when I came back to work from leave and the codeine was locked in the control cupboard…"*

The panel also took account of the notes of the meeting, between Ms 2 and Ms 4, dated 4 October 2017, which stated:

> *"[Ms 2] Has Sara asked you for Codine?*
> *[Ms 4] No.*
> *[Ms 2] Sara said she had forgotten her Codine and was in pain.*
> *[Ms 4] No. I have heard she has forgotten hers and asked for some but she has never asked*
> *me.*
> *[Ms 2] She said she had authorisation from you.*
> *[Ms 4] No. She never had…." [sic]*

The panel noted that Ms 4 in her oral evidence stated that she did not give you permission to take medication belonging to the Trust. She also stated that everybody knows that taking medication belonging to the Trust for personal use is not permitted and that she would not risk her registration by giving you permission to do so.

In the notes of a meeting on 27 September 2017 between yourself and Ms 2 you stated:

> *[Ms 7]: So who got the drugs out of the cupboard? Was it you or [Ms 4]?*
> *SSA: I think [Ms 4] came in with me but we were in there together. She was there with me when I got it out.*
> *[Ms 2]: When was that then Sarah?*
> *SSA: I don't do dates. That's why I've got diaries because I cannot remember. It will have been when I was doing a shift on there. That's all I can remember.*

The panel noted that, in describing how you were given permission to use hospital medication by Ms 4, the account above and that given by you in oral evidence did not include details of how express permission was given. The panel noted that your account above and your oral evidence suggested that Ms 4 gave you permission but you were unclear about this. It was of the view that your account was vague. It also bore in mind that in the meeting on 27 September 2017, you never brought up that you had been given permission to take the medication at the outset.

However, it bore in mind that, as with charge 1, both Ms 2 and Ms 4 stated that it was not acceptable to take medication belonging to the Trust. This supports Ms 4's account that she never gave you permission to take medication. It was of the view that Ms 4's account was sufficiently clear and consistent in her witness statement, her interview in October 2017 and with the panel. As a result, it preferred the evidence of Ms 4.

In light of the above, the panel was of the view that you inaccurately claimed that a colleague gave you permission to take the medication referred to at charge 1 above for your own personal use.

The panel therefore find this charge proved.

Charge 4

4. Your actions at charge 3 above were dishonest in that you knew that the colleague referred to had not given you permission to take the medication.

This charge is found proved.

The panel determined that you did not have permission from Ms 4 and the unnamed nurse to take the medication and were dishonest in claiming that you had. It was of the view that you would have known that it was against Trust policy to take medication belonging to the Trust for personal use and that you did not have permission to do so.

It found the evidence of Ms 4 to be credible and determined that she did not give you permission to take the medication for your personal use.

Applying the standards of ordinary decent people, the panel considered that, by taking the Trust's medication for personal use knowing it is against Trust policy and knowing that you had not been given permission, either expressly or implied, was dishonest.

The panel therefore find this charge proved.

Charge 5

5. On 27 July 2017, failed to visit Patient A when it was clinically necessary.

This charge is proved by admission

Charge 6a

6. On 28 July 2017:

    a. having realised you had failed to visit Patient A the preceding day did not prioritise visiting her when it would have been clinically appropriate to do so.

This charge is found not proved.

In reaching this decision, the panel took account of the evidence of Ms 1, Ms 5 and your evidence.

The panel bore in mind that you accepted charge 5, namely that you did not visit Patient A on 27 July 2017.

Ms 1 in her witness statement stated:

> *"Patient A said Sara came in, moaning that she was wet, and took the sputum sample. She said Sara said she felt bad it was patient A that she had forgotten the day before, but that does not matter, a patient is a patient. Patient A felt she had been disadvantaged because she knew the team well and they thought she would not say anything. I asked patient A if Sara examined her, and she said she did not and that she was not there long enough. Patient A said the visit did not happen in the way it was documented. Sara had documented that observations were taken and within normal parameters."*

The panel bore in mind that the evidence of Ms 1 is based on the information provided to her by Patient A. It also took account of the fact that Patient A has passed away and

therefore the information from Patient A is hearsay. Patient A has not provided a local statement or a formal witness statement and the panel did not see contemporaneous notes of a conversation with her. As a result, there was no way to test the veracity of her account and there is no corroborating evidence. Ms 5 accepted that she could not comment on whether you visited Patient A on 28 July 2017.

In your oral evidence, you stated that you remembered that you had not visited Patient A on 27 July 2017 and had undertaken a clinical assessment on the phone on the morning of 28 July 2017. The panel bore in mind that it had asked you about this clinical assessment, bearing in mind that you stated you knew Patient A very well. You stated that you made a clinical judgement that the visit could wait until 17:00.

The panel took account of Patient A's notes. It noted that observations had been recorded on 28 July 2017 at 17:10. It noted that a number of observations had been undertaken including, but not limited to, the heart rate, respiratory rate and blood pressure. It also noted that you have signed your name at the bottom of the observations for that date.

The panel also bore in mind that, in your oral evidence, you stated that Patient A's records were in her house. You stated that on 28 July 2017, you took Patient A's Patient Care Management Document from her house and took them to the office as you were not working the next day.

The panel concluded that having made a telephone call to Patient A around 9:00 on 28 July 2017 to carry out an assessment and apologise for your failure to attend the previous day you concluded that a personal visit was necessary that day and that it could be prioritised to be made in the afternoon.

The panel therefore found this charge not proved.

Charge 6b

6. On 28 July 2017:

    b. failed to conduct observations of Patient A when taking such observations was clinically indicated.

This charge is found not proved.

In reaching this decision, the panel took account of the evidence of Ms 1 and your evidence.

You did attend on 28 July 2017 and took a sputum sample and took Patient A's records back to the office. Having failed to attend on 27 July 2017 through your own error, the panel considered it implausible that you would attend on 28 July 2017 and not take full observations as you claim. In addition, the record of observations in Patient A's notes for 28 July 2017 offer support to your account that full observations were taken.

Furthermore, the panel noted that Patient A was unreliable in her reported claim that you did not undertake full observations given that she denied she had Chronic obstructive pulmonary disease and denied that this visit had taken place at all.

The panel therefore concluded, on the balance of probabilities, that the evidence adduced by the NMC was insufficient to establish that, on 28 July 2017, you failed to conduct observations of Patient A when taking such observations was clinically indicated.

The panel therefore find this charge not proved.

Charge 6c

6. On 28 July 2017:

c. cancelled visits Patient A was due to have on 29/30 July 2017 when there was no clinical justification.

This charge is found not proved.

In reaching this decision, the panel took account of the evidence of Ms 1 and your evidence.

The panel heard evidence that there was a lack of Standard Operating Procedures across the two sites. It noted that Dewsbury's way of operating was different to the way Pinderfields operated prior to their merger. This was because Pinderfields dealt with more complex cases.

In your evidence you stated that prior to the amalgamated Pinderfields and Dewsbury PERT service, for patients newly enrolled onto the admission avoidance scheme your base at Dewsbury undertook 2 visits of their patients, which could be followed up with a telephone call on the weekend. Weekend visits on the Dewsbury site did not happen unless there was a clinical need. Ms 1 confirmed this proposition in her own evidence. By contrast, Pinderfields patients enrolled onto the scheme were visited on their first three days, including weekend visits after which telephone consultations would be considered depending on progress. Ms 1 also confirmed there had been no updated Standard Operating Procedure or policy document to confirm what the new process would be.

In your oral evidence, you stated that after you visited Patient A on the 28 July 2017 you made a clinical judgment that Patient A was well enough for telephone observations on the 29/30 July 2017 as opposed to physical visits on those dates.

The panel bore in mind that the charge specifies "visits" as opposed to phone calls. It therefore concluded, on the balance of probabilities, that the evidence adduced by the

NMC was insufficient to establish that, on 28 July 2017, cancelled visits Patient A was due to have on 29/30 July 2017 when there was no clinical justification.

The panel therefore find this charge not proved.

Charge 6d

6. On 28 July 2017:
   d. failed to send a sputum sample taken from Patient A for analysis.

This charge is proved by admission.

Charge 7a

7. On an unknown date subsequent to 27 July 2017, inaccurately recorded that you had:

    a. attended Patient A's home to visit Patient A on 27 July 2017 but been unable to make contact with her.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2 and your evidence.

Ms 2 in her witness statement stated:

> *"Paragraphs 11 to 15 of my original statement detail the incident where Sara is alleged to have failed to visit [Patient A] and subsequently falsified Patient A's records….*

I produce…a copy of pages PERT diary showing entries for 26 July 2017 to 30 July 2017…

On the page for 27 July 2017, Patient A's name has an annotation beside it which reads 'V2 not in √ '."

The panel had sight of an unredacted copy of the PERT diary which corroborated what Ms 2 had stated in her witness statement.

You were also shown the unredacted PERT diary entry and, in your oral evidence, confirmed that this was your handwriting and that you had ticked this indicating you had visited Patient A on 27 July 2017. However, you stated that you had ticked this in error and the tick would have been for another patient.

The panel bore in mind that you had already admitted you did not visit Patient A on 27 July 2017.

In light of the above, the panel was of the view that on an unknown date subsequent to 27 July 2017, you inaccurately recorded that you had attended Patient A's home to visit Patient A on 27 July 2017 but been unable to make contact with her.

The panel therefore find this charge proved.

Charge 7b

7. On an unknown date subsequent to 27 July 2017, inaccurately recorded that you had:

b. conducted observations of Patient A on 28 July 2017.

This charge is found not proved.

The panel bore in mind that it had found charge 6a and 6b not proved as it had already determined that you had undertaken observations for Patient A on 28 July 2017.

The panel therefore find this charge not proved.

Charge 8a

8. Your actions at charge 7 were dishonest in that:

    a. you knew you had not attempted to visit Patient A on 27 July 2017

    and you attempted to mislead any subsequent reader of your notes into believing you had done so.

This charge is found not proved.

The panel bore in mind that it had found that you had indicated in the PERT diary that you had visited Patient A on 27 July 2017. It also noted that this diary is accessible to the whole team.

The panel also bore in mind that you stated that you recorded this in error. It was of the view that the NMC had not provided the panel with sufficient evidence to suggest that this was not the case.

The panel therefore concluded, on the balance of probabilities, that the evidence adduced by the NMC was insufficient to establish that you knew you had not attempted to visit

Patient A on 27 July 2017 and you attempted to mislead any subsequent reader of your notes into believing you had done so.

The panel therefore find this charge not proved.

Charge 8b

8. Your actions at charge 7 were dishonest in that:

    b. you knew you had not, on 28 July 2017, conducted the observations of Patient A you recorded.

    and you attempted to mislead any subsequent reader of your notes into believing you had done so.

This charge is found not proved.

The panel had already determined that charge 7b was not proved. Therefore, this charge falls away.

The panel therefore find this charge not proved.

Charge 9a

9. On 15 October 2017

    a. whilst suspended from duty, attended Ward 14/15 of Pinderfields Hospital wearing your hospital uniform

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 3, Ms 4 and Ms 6 and your evidence.

Ms 3 in her witness statement stated:

> *"On 15 October 2017 I was the band 6 nurse on duty and was acting as the team leader. I do not know if Sara was on duty but she had a uniform top on. I later found out she was not on duty but at the time I presumed she was at work. I was not aware she was suspended until after the event."*

Ms 3 in her local statement, dated 15 October 2017, confirmed that she had seen you on that day. In her oral evidence to the panel stated that you were had a nursing top on.

Ms 4 in her witness statement stated:

> *"[Ms 3], another nurse came and asked to speak to me privately. She asked me if I was aware that Sara was on the ward. At that point I had already spoken to Sara…"*

Ms 4 in her local statement, dated 15 October 2017, confirmed that she had seen you on the ward that day. In her oral evidence to the panel stated that you were in your Pinderfields uniform.

Ms 6 in her witness statement stated:

> *"…On the day of the incident I first went into the treatment room to ask for pain relief. We all came out of the treatment room and as I went back in Sara was stood near the treatment room…"*

Ms 6 in her local statement, dated 15 October 2017, confirmed that she had seen you on the ward that day. In her oral evidence to the panel stated that you had a nursing top with jeans.

In your oral evidence you confirmed that you were suspended and were aware of the terms of that suspension. You also stated that you were on the ward to collect payslips. You also stated that you were in the middle of moving house and was going shopping for a sofa. You denied attending the ward wearing uniform.

The panel took account of the notes of the investigation meeting with you on 2 November 2017:

> *[Ms 2]: I had a two minute conversation with [Ms 4]. This included asking her if she was working at Mid Yorks as she had a Mid Yorks Sister's tunic on under her coat which was open".*
> *SSA: It wasn't. I didn't have the full uniform on at all.*
> *[Ms 2]: Did you have your Mid Yorks uniform on?*
> *SSA: I had my blue uniform on yes.*
> *[Ms 2]: So you are now saying that you were wearing your Sister's blue uniform top.*
> *SSA: It was a blue tunic yes.*
> *[Ms 2]: Was it the Mid Yorks one?*
> *SSA: It was just a plain blue one.*
> *[Ms 2]: You've just said yes you had but previously before that you've just said no it was one that you'd had from agency.*
> *SSA: I have got some from agency as well.*
> *[Ms 2]: Which one is it Sarah?*
> *SSA: It's the blue one. My Mid Yorks one.*
> *[Ms 2]: Your blue Mid Yorks one?*
> *SSA: Yes it will have been.*
> *[Ms 2]: So you were wearing your blue Mid Yorks Sister's uniform that you would wear Monday to Friday.*
> *SSA: But I didn't have the trousers on. It was just the top and I had it covered with my jacket.*

The panel noted that you appear to accept that you had a hospital uniform under your coat on the day of the incident. Additionally, the local statement and witness statements of Ms 3, Ms 4 and Ms 6 are all consistent and corroborative with each other. They all state that they saw you on the 15 October with some form of hospital uniform on.

In light of the above, the panel was of the view that on 15 October 2017, whilst suspended from duty, you attended Ward 14/15 of Pinderfields Hospital wearing your hospital uniform.

The panel therefore find this charge proved.

Charge 9b

9. On 15 October 2017

    c. took medication belonging to Mid-Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so.

This charge is found not proved.

In reaching this decision, the panel took account of the evidence of Ms 3, Ms 6 and your evidence.

Ms 6, in her oral evidence clarified her witness statement. She stated that she entered and left the treatment room four times around the time that you were present on the ward. She stated that on the first two occasions that she went into the treatment room you were present. On the second occasion, you were alone in the treatment room. However, on third occasion it was empty. On the fourth occasion she entered the room, along with Ms 3, she noted that the medication cabinet was open. At that point, Ms 3 carried out a count of the codeine stock and found there to be only five boxes.

Ms 3 in her witness statement stated:

> *"…when I went in, she was in the treatment room and I counted the codeine… Intuition made me count the codeine…When I counted the codeine I would sign the check….I counted six boxes…[Ms 6] reported to me that she did not know how many times Sara went I, but the last time she went in Sara was not in there anymore. The next time I entered the treatment room, I think with [Ms 6], the medicine cupboard was ajar. That is when I counted the codeine boxes again and counted there were five."*

In your oral evidence, you stated that you were only in the treatment room as you had nowhere else to wait to speak to Ms 4. You also stated that you wanted to fix your glasses and did not want to wait on the main ward.

In light of this, the panel reminded itself that it is for the NMC to prove the charge. It noted that there appeared to be several people coming in and out of the treatment room which had two entrances given that it spanned two wards. Additionally, the medication cupboard had a defective lock which meant that it could be pulled open without the need for a key.

The panel reminded itself that the NMC relied solely on the evidence of Ms 2 and Ms 6. However, the panel noted that the NMC had not provided the panel with direct information to demonstrate that on 15 October 2017, you took medication belonging to Mid-Yorkshire Hospitals NHS Trust for your own personal use when you did not have permission to do so. This charge is not supported by any other documentation before the panel.

The panel therefore find this charge not proved.

Charge 10a

10. Your actions at charge 9 were dishonest in that you:

a. knew you were suspended from duty and were seeking to mislead colleagues into believing you were present on the ward for some proper clinical reason.

This charge is found proved.

The panel bore in mind that you stated that you knew that you had been suspended, knew the terms of the suspension and that by being on Ward 14/15 of Pinderfields Hospital Ward on 15 October 2017 was a breach of the terms of this suspension.

The panel also bore in mind that it found charge 9a proved, in that you attended the ward in your hospital uniform. During your oral evidence, you maintained that you had been working non-uniform clothes when you visited the ward. In light of this, the panel could find no plausible reason for attending the ward in your uniform whilst suspended.

The panel was of the view that you attended the ward in your uniform to give the impression that you were entitled to be there.

The panel therefore find this charge proved.

Charge 10b

10. Your actions at charge 9 were dishonest in that you:

b. knew the medication referred to was the property of Mid-Yorkshire Hospitals NHS Trust and that you were not entitled to take it for your own personal use.

This charge is found not proved.

The panel found charge 9b not proved therefore this charge falls away.

The panel therefore find this charge not proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether 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.

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

Mr Edenborough's submissions on impairment and misconduct

Mr Edenborough drew the panel's attention to a letter sent by the NMC to you, dated 17 January 2020, relating to previous fitness to practice findings on a different matter. He submitted that this is relevant because without it, the panel would not know that a previous finding of misconduct had been found against you. He informed the panel that the case related to medication but the circumstances were somewhat different to this case.

Mr Edenborough informed the panel that, although some facts were proved, impairment was not found by the panel in January 2020 and the incidents occurred after the matters being considered by this panel. He also informed the panel that you were working as a Healthcare Assistant at the time. He submitted that the panel will be looking at impairment should it find misconduct, will wish to consider what progress has been made.

[PRIVATE] He submitted that it may not be of fundamental importance in that whilst there is a degree of mitigation you have made the choice to be dishonest. The panel may wish to consider this.

Mr Edenborough submitted that with regards to charges 1 to 4, where dishonesty relates to inappropriate use of hospital medication it is further compounded by the further dishonesty you displayed by claiming that you had permission. Therefore, the panel may consider that this is sufficiently serious and a finding of misconduct is required on public protection and public interest grounds.

With regards to charge 5, Mr Edenborough submitted that this involved a vulnerable patient and should not have happened. It could be seen as a patient safety issue and could be considered a serious matter.

With regards to charge 6d, Mr Edenborough submitted that this is not a matter that featured prominently in this case and is not disputed. As a general matter he said a failure to properly submit samples for analysis must create a risk for patients.

With regards to 7a, Mr Edenborough submitted that this is a matter regarding the record of care of a patient that needs to be accurate. He submitted it is a serious matter if there are errors in recording as anybody looking at this patient record would be mislead by your error.

With regards to 9a and 10a, Mr Edenborough submitted that the panel may find this to be misconduct irrespective the motivation.

Mr Edenborough directed the panel to specific paragraphs within ’The Code: Professional standards of practice and behaviour for nurses and midwives 2015’ (the Code) and identified where, in the NMC’s view, your actions amounted to misconduct.

With regards to impairment, Mr Edenborough submitted that the panel may have concerns regarding your insight into its findings of dishonesty. With respect to the wider public interest, he submitted that a finding of impairment is necessary in this case. He submitted that this is required to maintain confidence in the profession.

Ms Maqboul's submissions on impairment and misconduct

Ms Maqboul submitted that you concede both misconduct and impairment but will leave the panel to determine these matters.

Ms Maqboul submitted that you recognise that you are "treading very rocky terrain". She submitted that you have acknowledged the panel's decision on the facts of the case and know that it has a very difficult decision to make particularly in light of the finding in relation to dishonesty.

Ms Maqboul reminded the panel of the difficult circumstances you were facing during this isolated period within your career. She submitted that you found every aspect of your life difficult during this time.

Ms Maqboul submitted that the panel's serious findings relate to an isolated period within your career. She submitted that you recognise that all the matters admitted and found proved individually and collectively amount to misconduct.

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

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 and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code and the NMC guidance on impairment.

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. Specifically:

> ***1 Treat people as individuals and uphold their dignity***
>
> *To achieve this, you must:*
>
> *1.2 make sure you deliver the fundamentals of care effectively*
>
> *1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*
>
> ***Practise effectively***
>
> *You assess need and deliver or advise on treatment, or give help (including preventative or rehabilitative care) without too much delay and to the best of your abilities, on the basis of the best evidence available and best practice. You communicate effectively, keeping clear and accurate records and sharing skills, knowledge and experience where appropriate. You reflect and act on any feedback you receive to improve your practice.*

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff

8.5 work with colleagues to preserve the safety of those receiving care

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

16 Act without delay if you believe that there is a risk to patient safety or public protection
To achieve this, you must:

16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards, taking prompt action to tackle the causes of concern if you can

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times…

20.9 maintain the level of health you need to carry out your professional role

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It bore in mind that the areas of concern related to the theft of medication, your further dishonesty in giving misleading accounts and failures relating to visits to Patient A.

While the panel bore in mind that these occurred over a relatively short period of time, it was of the view that your actions covered a range of unacceptable behaviours that breached multiple aspects of the code, particularly, promoting professionalism and trust. It was of the view that your actions would be considered deplorable by fellow practitioners.

In light of the above the panel determined that the charges admitted and found proved individually and collectively amounted to a serious departure from appropriate standards expected and amounted to misconduct.

Decision and reasons on impairment

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

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 paragraph 76, of the case of *Grant*, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

For reasons already set out above in relation to misconduct, the panel determined that limbs a, b, c and d were engaged by your misconduct.

The panel finds that Patient A was put at a potential risk of significant harm. It bore in mind that she was in an acute phase of illness and you had forgotten to visit her for an observation on 27 July 2017 during a critical clinical time. Further, there was a delay in progress in the investigation relating to Patient A's clinical diagnosis and ensuring that she received the correct medical treatment due to the delay with the sputum sample.

The panel also found that your inaccurate record keeping in relation to Patient A was also a patient safety issue. While these can be considered isolated incidents, they occurred three times over a period of time.

The panel determined that your misconduct had breached fundamental tenets of the nursing profession, particularly relating to promoting professionalism and trust and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel recognised that it must make an assessment of your fitness to practise as of today. This involves not only taking account of past misconduct but also what has happened since the misconduct came to light and whether you would pose a risk of repeating the misconduct in the future.

The panel had regard to the principles set out in the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and considered whether the concerns identified in your nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether you have provided evidence of insight and remorse.

The panel bore in mind that between the early stages of the Trust investigation and this NMC hearing you gave inconsistent evidence. It recognised your right to contest the charges and noted that upon reading the panel's determination regarding facts, you accept the matters of misconduct and impairment.

Regarding insight, the panel considered that you demonstrated some understanding regarding some aspects of the case. The panel noted that you were able to explain how your personal circumstances affected your actions. However, you have not been able to demonstrate how your personal circumstances led to your professional failings. You failed to recognise what your responsibilities as a registered nurse was and how you failed in these responsibilities.

There was limited recognition of the impact your misconduct had on patients, colleagues and the nursing profession. Additionally, you gave some examples of how you would approach similar circumstances in the future. However, this was limited.

The panel also noted that while you appeared to show some remorse towards Patient A, there was no remorse for taking the Trust's medication for personal use.

In light of the above, the panel determined that you had developing but limited insight. The panel was satisfied that the misconduct in this case is capable of being addressed. Misconduct involving dishonesty is often said to be less easily remediable than other kinds of misconduct. However, in the panel's judgment, evidence of insight, remorse and reflection together with evidence of subsequent and previous integrity are all relevant in considering the risk of repetition, as is the nature and duration of the dishonesty itself.

The panel considered that your dishonesty in relation to the theft of the Trust's medication was serious because it was taken while you were in a position of trust and your attempts to conceal your actions. Additionally, you falsely claimed that Ms 4 had given you

permission to take the medication when you knew she had not done so, which could have unfairly compromised her.

The panel took account of the NMC's previous findings, in the letter dated January 2020, and noted that the concerns raised post-date these matters. It also recognised that you were working as a healthcare assistant and the matters are not directly related to today's matters. It also noted that impairment was not found. It bore in mind that you explained to that panel the same personal circumstances as you have told today's panel.

[PRIVATE]

The panel bore in mind that in your oral evidence you identified that you were at a very low point in your life. You also accepted that you had a long way to go but had made some progress with regards to your personal life.

However, the panel noted that you had not presented any evidence of the progress you have made or to demonstrate steps taken to strengthen your practice and remedy the concerns identified in relation to the matters in this hearing.

The panel concluded that that while your insight is limited but developing, it considered that your lack of remediation means there remains a risk of repetition of the misconduct found proved. 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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

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

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

The panel was satisfied that, having regard to the nature of the misconduct in this case, "the need to uphold proper professional standards and public confidence in the profession would be undermined" if a finding of current impairment were not made. It was of the view that a reasonable, informed member of the public would be very concerned if your fitness to practise were not found to be impaired.

For all the above reasons the panel determined that a finding of impairment on public interest grounds is required.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike 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 that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Edenborough submitted that the matters in this case are so serious that the imposition of a striking off order is necessary. He submitted this whilst acknowledging the panel found that, in principle, the matters found proved are capable of remediation.

Mr Edenborough submitted that, notwithstanding your insight may develop further, there is no indication that it has since the incident subject to this hearing. He submitted that in any event, a striking off order is required to maintain confidence in the nursing profession.

Mr Edenborough took the panel through the aggravating and mitigating factors he considered to be engaged in this case. He also drew the panel's attention to the NMC Guidance entitled "Considering sanctions for serious cases".

Mr Edenborough invited the panel to impose a striking off order.

Ms Maqboul submitted that you recognise the precarious position that you find yourself in. She submitted that you accept the panel will be considering the more serious end of sanction. She invited the panel to impose a suspension order for the maximum period.

Ms Maqboul reminded the panel that you had considerable drive and determination to become a registered nurse despite facing personal challenges. She submitted that you excelled within the position of a nurse until you had to deal with your personal circumstances. She reminded the panel that you held a senior position at Dewsbury. She further submitted that you had to deal with personal issues while dealing with the day to day responsibilities of being a nurse.

Ms Maqboul conceded that the significant elements of your dishonesty in this case cannot be ignored due to the impact they will have on public protection and, more so, the reputation of the nursing profession.

Ms Maqboul submitted that the panel should consider the aspects of your evidence where you stated that you were able to recognise the triggers in your life. She submitted that as a result, you are able to live a more structured way of life.

Regarding your lack of remediation, Ms Maqboul informed the panel that you have been the subject of an interim suspension order since 2018. She submitted that you have not had opportunity to demonstrate remediation particularly in the area of dishonesty. She submitted that you would like the opportunity to demonstrate to the panel and to the public that your dishonesty does not define you.

Ms Maqboul submitted that you are placing yourself at the mercy of the panel and wants the opportunity to prove yourself. She reminded the panel that you accepted misconduct and impairment.

Ms Maqboul invited the panel to impose a suspension order to allow you to demonstrate remediation, undertake training courses and reflect further and develop your insight and consider those affected by your actions.

Ms Maqboul submitted that the panel may consider that you have had the opportunity to do this between the time the concerns were raised and this hearing. She submitted that you have worked to deal with one issue at a time and wants these substantive matters resolved so you can focus on your insight and remediating the concerns.

Ms Maqboul drew the panel’s attention to the documentation you provided, all of which she acknowledged are historic. She submitted that you have not had the opportunity to get updated references. She submitted that all the authors of the testimonials apart from one

are aware of the allegations. She submitted that the outstanding author is aware of the referral but not the details.

Ms Maqboul submitted that one of the documents reference the fact that you were shortlisted for an award that celebrated excellence.

Ms Maqboul submitted that you are someone who has tried to work through the difficulties you have faced. She invited the panel to allow you the opportunity to put things right. She submitted that you are willing and prepared to take any assistance provided.

Ms Maqboul invited the panel to impose a suspension order for a period of 12 months.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Your previous regulatory findings;
- Abuse of a position of trust as you were in a senior position and took hospital medication when you were not entitled to do so;
- Lack of insight into your failings;
- Charges in this case relate to more than one incident albeit over a relatively short period of time;
- Your conduct put Patient A at risk of suffering harm;
- You deliberately attended work in uniform whilst suspended;

- Your conduct in seeking to cover up your dishonesty and deflect attention onto colleagues who you alleged gave you permission to use hospital medication could have compromised them.

The panel also took into account the following mitigating features:

- Your personal circumstances;
- You made some admissions to the charges;

The panel noted that in your oral evidence, you provided the panel with information pertaining to your personal circumstances. However, it bore in mind that you did not provide any independent supportive evidence such as information from your GP, the police or counsellor. Nevertheless, it noted that the NMC did not challenge this and further noted that some of the NMC witnesses appeared to support some of the information you provided.

The panel also took into account the references you provided which stated that you were a good and committed nurse prior to these incidents. It also took account of the dates you were subject to an interim suspension order.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate

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

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

The panel bore in mind that it found that you had limited insight and it had no evidence of remediation. It was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Additionally, the panel was of the view that the dishonesty identified in this case was not something that can be addressed through retraining. The panel concluded that placing conditions on your registration would not adequately address the seriousness of this case, would not protect the public nor meet the public interest.

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

- a single instance of misconduct but where a lesser sanction is not sufficient;
- no evidence of harmful deep-seated personality or attitudinal problems;
- no evidence of repetition of behaviour since the incident;
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.

The aggravating factors that the panel took into account were that the misconduct found proved was not an isolated incident. It occurred multiple times within a relatively short period of time. It covered many instances and different types of misconduct, which in one instance placed Patient A at risk of harm. Further, your misconduct included a number of acts of dishonesty.

The panel also took account of the lack of progress you have made in remediating the concerns raised.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse.

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

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

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

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel also took account of the NMC Guidance “Considering sanctions for serious cases” which stated:

Cases involving dishonesty

The most serious kind of dishonesty is when a nurse, midwife or nursing associate deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone's care.

However, because of the importance of honesty to a nurse, midwife or nursing associate's practice, dishonesty will always be serious.

In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will 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 was satisfied that all but the final bullet point were engaged in this case.

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

The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

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

This will be confirmed to you in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Edenborough. Given the panel's findings in relation to sanction he submitted that only an interim suspension order for a period of 18 months will be appropriate. He also submitted that an interim order should be made to allow for the possibility of an appeal to be lodged and determined.

Ms Maqboul did not oppose the application.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.