Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 4 December – Thursday 14 December 2023
Monday 29 April – Thursday 2 May 2024

Virtual Hearing

Name of Registrant:	Bharat Chauhan
NMC PIN	92I1557E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – April 2002 Nurse Independent/ Supplementary Prescriber – August 2012
Relevant Location:	Wirral
Type of case:	Misconduct
Panel members:	Penelope Titterington (Chair, Lay member) Tracey Chamberlain (Registrant member) Georgina Foster (Lay member)
Legal Assessor:	Patricia Crossin (4 – 12 December 2023) Attracta Wilson (13 – 14 December 2023; 29 April – 2 May 2024)
Hearings Coordinator:	Ruth Bass (4 – 8 December 2023) Anya Sharma (11 – 14 December 2023) Petra Bernard (29 April – 2 May 2024)
Nursing and Midwifery Council:	Represented by Alban Brahimi, Counsel instructed by the NMC
Mr Chauhan:	Present and represented by Alexander Adamou, Counsel instructed by the RCN
Facts proved (by admission):	Charges 1, 2, 4, 8a(ii) and 9a
Facts proved:	Charges 3a, 3b, 3c, 6, 7a, 7b, 8a(i), 8a(iii), 8a(iv), 8b(i), 8b(ii), 9c, 10 (in relation to 3c), 4, 6 and 7a and 11 (in relation to 9c only)

Facts not proved:	Charges 5, 9b and 10 (in relation to 1, 2, 3a, 3b, 5 and 7b) and 11 (in relation to 9b)
Fitness to practise:	**Impaired**
Sanction:	**Suspension order (12 months) with review**
Interim order:	**Interim suspension order (18 months)**

Details of charge

That you, a registered nurse, whilst working at Arrowe Park Hospital on the night shift of 20/21 June 2022, after accompanying Patient A to the disabled toilets;

1) *Stayed inside/entered the disabled toilet with Patient A.*

2) *Closed/locked the disabled toilet doors.*

3) *Asked Patient A;*

    a) *'Have you got a purse'.*

    b) *'Have you got any money'*

    c) *'Do you mind if I count the money'.*

4) *Took Patient A's money out of her purse.*

5) *Counted Patient A's money in the disabled toilet, without another nurse present.*
6) *Placed Patient A's money into your pocket.*

7) *When challenged by Patient A/asked to return the money, used words to the effect;*
    a) *'It's not yours its mine'.*

    b) *'Here, have my money'.*

8) *After returning Patient A from the disabled toilet,*

    a) *Used words to the effect;*

        i) *'You were a bit confused there'.*

ii) 'You were a bit foggy'.

iii) 'Are you going to do anything about this? I don't want to be worrying all night'.

iv) 'You're going to ruin my life, and my career'.

b) Intimidated Patient A by;

i) Placing/stretching your hands on/across Patient A's bed rails.

ii) Leaning over Patient A.

9) Following the incident with Patient A in the disabled toilets;

a) Did not escalate the allegation of theft made against you to the Shift Leader/Colleague B/ A senior member of staff.

b) Inaccurately informed Colleague B that you had recorded the incident relating to the allegation of theft in Patient A's notes.

c) Made a retrospective entry in Patient A's note at 05:47 relating to the allegation of theft.

10) Your actions in one or more of charges 1, 2, ,3 a) ,3 b), 3 c), 4, 5 ,6 ,7 a) & 7 b) were dishonest in that you stole/attempted to steal Patient A's money with an intention not to return it.

11) Your actions in one or more of charges 9 b) & 9 c) were dishonest as you sought to misrepresent that you were going to escalate the allegation of theft to Colleague B/ the Nurse in Charge/A senior member of staff.

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

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

At the outset of the hearing, Mr Brahimi informed the panel that information [PRIVATE] would be discussed during this hearing. Accordingly, he requested that those matters be heard in private pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' (the Rules).

Mr Adamou was in agreement with the application. He submitted that it would be appropriate for matters relating [PRIVATE] to be heard in private.

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.

The panel determined to hear parts of this hearing in private which relate [PRIVATE]. With regard to [PRIVATE], the panel determined that any reference to [PRIVATE] should be heard in private so as to protect their right to privacy. With regard to Patient A, the panel noted that Patient A would be giving evidence during the hearing and was of the view that [PRIVATE] was intrinsically linked to any evidence Patient A would provide. It therefore determined that all of Patient A's evidence should be heard in private so as to protect their right to privacy and also to ensure Patient A's anonymity throughout the hearing.

Background

The charges arose whilst you were employed as a registered nurse by MLS healthcare agency, working at Arrowe Park Hospital (the Hospital) on the night shift. The NMC received a referral on 30 June 2022 from a senior sister alleging that whilst on the night shift on 21 June 2022, you accompanied Patient A to the toilet in the Emergency Department of the Hospital. Whilst in the toilet, it is alleged that you removed money totalling £160 from Patient A's handbag and placed it in your pocket. Patient A reported that you had taken the money from her purse. When challenged, you initially denied that

the money belonged to Patient A before returning the money to her when challenged further.

The incident was reported to the safeguarding team and to Merseyside Police (the Police). The Police subsequently confirmed that no further action would be taken regarding the referred incident.

Area of regulatory concern:

1. Dishonesty in that you stole or attempted to steal money from Patient A

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Adamou, who informed the panel that you made admissions to charges 1), 2), 4), 8a)(ii) and 9a).

The panel therefore finds charges 1), 2), 4), 8a)(ii) and 9a) proved, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Brahimi on behalf of the NMC and by Mr Adamou 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:

- Patient A: Patient at the Hospital

- Colleague A: Band 3 Senior Clinical Support Worker at the Hospital

- Colleague B: Senior sister at the Hospital

The panel also heard evidence from you under oath.

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

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

Charge 3 (in its entirety)

3) Asked Patient A;

a) 'Have you got a purse'.

b) 'Have you got any money'

c) 'Do you mind if I count the money'.

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence and written statement of you, Patient A, Colleague A and Colleague B. It considered the documentary evidence and in particular the contemporaneous statements of Colleague A and Colleague B.

The panel noted your witness statement, in which you set out that it was Patient A who had told you that she had a purse which contained money, and that you had invited Patient A to check her money:

‘ Whilst still on the toilet, Patient A then proceeded to tell me that she actually had her purse that contained some money in it. Initially she said it was not much money but then recalled that it was about £100 or £160 and mentioned something relating to bingo. I told her that if she did stay in hospital, she should send any valuables home with relatives if possible… As Patient A had previously told me she was unsure of the amount of money she had with her I asked her if she wanted to check how much she had now, and she agreed. My rationale for suggesting she checked her money whilst in the toilet was to avoid her having to do it in the corridor in full view of other patients/people passing by.

I asked Patient A if she wanted to me to pass her handbag to her and she replied yes and asked me to get out the money that was in her purse. In full view of Patient A I got her purse out of her handbag and got the money out for her to count.’

The panel found Patient A’s evidence to be believable, that she did not appear to be confused in her recollection of the event and her evidence was clear and consistent under cross-examination. The panel noted that Patient A in her witness statement appeared to be mistaken in relation to the date of the incident, but she corrected this in her oral evidence. Overall, the panel found Patient A’s evidence to be consistent, clear and credible.

The panel also took into account your oral evidence in relation to this. You had explained to the panel that Patient A had started the conversation, and that she was *‘very talkative.’* You said that you told Patient A that if she was unsure of the amount of money in her purse, she may want to check her money. This conversation happened inside the toilet cubicle, and your evidence is that you thought it would be safer for Patient A to check her money there rather than checking it in the public corridor. You also stated that you did not ask Patient A if she had a purse or had any money, and that you never said anything about you counting the money.

The panel then considered the following extract from Patient A's witness statement, in which she stated that you had asked her if she had a purse, if she had any money, and if she minded if you counted the money.

> *' In answer to his question, I told the Nurse that I had my necklace, my watch, and an electronic tablet my granddaughter had put in my handbag for me. It was as I was relating this to him that he locked the toilet door. He said, "Have you got a purse?" and I told him "Yes". He then asked me, "Have you got any money". I told him "Yes" and he then asked how much. I told him that I had £160. He said that he would turn his back while I went to the toilet. I said, "Thank you for being a gentleman". At this point, he had his back facing me and my handbag had been moved to the back of the wheelchair. I got onto the toilet and pulled my dressing gown across me to protect my modesty. When I was on the toilet, the Nurse moved to the back of the wheelchair and asked me, "Do you mind if I count the money". I said, "No" as I thought he was taking an infantry. When I got back to the corridor, I thought my valuables would be placed in an envelope and put away for safe keeping.'*

The panel noted that Patient A's witness statement is supported by both Colleague A and Colleague B's accounts. The panel was of the view that Patient A gave an account shortly after the incident that was consistent with her later statement and oral evidence. This initial account was recorded by Colleague A and Colleague B, who write about it in their contemporaneous statements.

The panel considered Patient A's evidence and also the oral evidence from Colleague A and Colleague B, who were recounting what Patient A had told them on the morning of the incident, and also your position where you deny what had happened but accept that a conversation did take place in relation to what valuables Patient A had on her person.

The panel was of the view that whilst Colleague A and Colleague B may not directly quote what Patient A says, their accounts broadly support what Patient A says in her witness statement as well as her oral evidence.

The panel was of the view that Patient A's evidence was clear and consistent with the account she gave on 21 June 2022, which is reflected in the contemporaneous notes taken by Colleague A and Colleague B and provided to the panel. The panel carefully considered your evidence and noted that it now contains more significant details than the account you gave on the day of the incident. The panel considered that in view of the seriousness of the allegation, it is significant that although you gave a detailed account to the agency two days later, you did not give more of this detail when questioned at the time, that you did not provide more detail in the patient notes, and that that you did not inform others immediately following the incident.

On the balance of probabilities, the panel therefore finds this charge proved.

Charge 5)

5) *Counted Patient A's money in the disabled toilet, without another nurse present.*

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral evidence and written witness statements of both Patient A and you.

The panel considered that Patient A recalled in her oral evidence that you said, '*do you mind if I count the money'*. This is consistent with the account she gave at the time. However, Patient A did not state in her evidence, or the accounts given to Colleague A and Colleague B (which is recorded in her contemporaneous note provided to the panel), that you actually counted the money. Patient A said she saw a swift movement, and that when she looked up, she saw the money in your pocket.

The panel considered your written witness statement in which you stated, *'In full view of Patient A I got her purse out of her handbag and got the money out for her to count'.* In your oral evidence to the panel, you further explained that you did not count Patient A's money.

The panel therefore find this charge not proved on the balance of probabilities.

Charge 6)

6) *Placed Patient A's money into your pocket.*

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence and written witness statements of both Patient A and you. It also considered the contemporaneous notes provided by Colleague A and Colleague B.

The panel considered Patient A's account as set out in her oral evidence, which was that she was on the toilet and that she saw a swift movement of your hand in the corner of her eye. Patient A explained that when she got up from the toilet, she could see the money sticking out of your tunic pocket. The panel took into account that Patient A was quite specific about the type of top you were wearing, and that it had two pockets. Patient A further explained in her oral evidence that it was plastic money in your pocket, which had been taken out of her purse, and that the money was crisp and flat because she had just got it out of the bank. Patient A was very clear in her evidence that she saw money in your pocket. She was unable to say how much money or which notes. However, given the other details that she gave and the consistency of her evidence overall, together with the fact that it is supported by the evidence of Colleague A and Colleague B, the panel found Patient A's lack of detail in this regard does not undermine her evidence.

The panel noted that Patient A's oral evidence is corroborated in her written statement:

> *' It was at this time that it dawned on me what the swift movement was in the corner of my eye, it was the money being taken from my purse. The money in his pocket was new money, the plastic type. I had got the money out at the bank, so it had not been folded and was still quite pliant which made it protrude from the Nurse's pocket. Had it been the older style money, it would have laid flat. I did*

not see the Nurse physically take my money but with the swift movement and him asking to count my money, I realised what had happened.'

The panel also considered your evidence in relation to this. You told the panel that this did not happen, and that you had the money in your right hand for Patient A to count, and her purse in your left hand. You said that your scrubs were about to fall down, and you adjusted your scrub bottoms through your tunic top, pulling them up with the wrists of both your hands and that Patient A must have been mistaken that the money was in your pocket.

The panel also took into account the following extract from your witness statement in relation to this:

' I asked Patient A if she wanted to me to pass her handbag to her and she replied yes and asked me to get out the money that was in her purse. In full view of Patient A I got her purse out of her handbag and got the money out for her to count. Patient A's purse was in my left hand and all the money from inside the purse in my right hand. As I was in the process of passing the money to Patient A to count, she wobbled as she moved towards me. I leaned forward and put my arms out to assist her. Patient A remained standing and I adjusted my scrub bottoms through my tunic top, pulling them up with both hands. Patient A asked me what I was doing with her money. I showed her that the money was in my hand and I was still holding her purse. I held my hands out to show her. Patient A said I had put the money in my pocket and that she saw me. I was stunned by this comment and immediately put the money from my right hand back into her purse and handed it to her. I put the full amount of money that had originally been in her purse back in her purse.'

The panel was of the view that it preferred Patient A's evidence in relation to this charge. It considered that Patient A's account was specific, clear and detailed about the money, and that she had seen it in your pocket. Patient A's account was supported by the contemporaneous records taken by Colleagues A and B. The panel considered your evidence very carefully. You provided detail in your oral evidence which is consistent

with the account you gave two days after the incident to your employing agency. However, when you were approached by Colleague B about this incident on the night in question you did not provide any of the detail you subsequently provided to the agency or in your written witness statement provided to the agency and the NMC.

The panel also carefully considered your record of the incident in Patient A's notes. This record is consistent with the account you gave to Colleague B, but does not contain any of the detail you subsequently provided to the agency or the NMC. The panel noted the seriousness of the incident and of the allegations being made by Patient A. Taking this into account, the panel considered it significant that you did not provide a fuller account to Colleague B and within Patient A's records. The panel considered that, in all likelihood, it was clear to you from the fact that Colleague B spoke to you in a private space with a senior manager present, that the allegations being made by Patient A were extremely serious. The panel therefore considered it all the more remarkable that the account given by you to Colleague B, when compared to the account given by you to the agency later, was lacking in detail.

Further, in considering your account, the panel did not find it to be plausible. The panel considered that there was no reason for you to get the money out of Patient A's purse for her to count. You could have simply passed Patient A her handbag or purse, as there was no reason she could not get it out herself. You said that Patient A told you that you could get the money out, but the panel found that doing so, in a locked toilet when alone with a patient, was crossing a line. The panel was of the view that as an experienced nurse, you would have been aware of this. The panel also found that it did not make sense that you would pass Patient A her money to count while she was standing as you said in your evidence. You said that Patient A's health and safety was your main concern at that time and you had been concerned about her being unsteady on her feet and had been assisting her. The panel find it unlikely that in those circumstances you would have passed Patient A her money to count while she was standing, rather than waiting for her to sit back in the wheelchair.

The panel therefore find this charge proved on the balance of probabilities.

Charge 7)

7) *When challenged by Patient A/asked to return the money, used words to the effect;*
   a) *'It's not yours its mine'.*

   b) *'Here, have my money'.*

This charge is found proved (in its entirety).

In reaching this decision, the panel took into account the oral evidence and written witness statements of you, Patient A, Colleague A and Colleague B. It considered the documentary evidence and in particular the contemporaneous statements of Colleague A and Colleague B.

The panel considered the following extract of your witness statement, which sets out your version of events:

> *' Patient A said to me again that the money was in my pocket. I reassured her that it was not and showed her my pockets, taking out the contents which was a folded piece of paper and some tape, but no money. Patient A then pointed towards my side and asked me what was in my back pocket. I turned and showed her what was in my back pockets - my ID, bank card, driving licence and two receipts. I did not have any cash on me at the time and did not produce any money from my pockets.'*

The panel noted that your oral evidence to the panel corroborates what you had said in your witness statement, in that there was no money in your pockets.

The panel also took into account Patient A's witness statement in relation to this charge:

> *' I said to the Nurse, "Can I have my money back that you have in your pocket". In response he said, "It's not yours, it's mine". I said to him again, "Can I have my money back that you have in your pocket". He then repeated, "It's not yours, it's*

mine". I said to him, "It's alright, we'll call someone to sort it out". I went to walk over to the emergency console to pull the cord, but I do not walk very fast, and the Nurse said, "I'll do that for you" and put his hand on the facia of the console. I know for a fact that you have to pull the cord for a response. I was getting scared; I was locked in and knew I could not get out as he had got to the door first.

I went back to the wheelchair and stood by it. The Nurse came with me and was pushing the money from his top pocket into his back right pocket. I said to him, "I'd like my money that you've now put in your back pocket". He again said, "It's not yours, it's mine". I said again, "I'd like my money that you've now put in your back pocket". He then said, "Here, have my money". I said to him, "No, you keep your money, I will keep what's left in my purse and we will get someone to sort it out". He handed me the money and I sat down in the wheelchair because I could not stand anymore but managed to keep myself as calm as possible.'

The panel took into account that Colleague A was not a direct witness to the events, but that her version of events in her handwritten statement dated 21 June 2022 broadly corroborates the evidence of Patient A as set out in her account at the time and her witness statement. Patient A's evidence has been consistent throughout.

The panel determined that it preferred the evidence of Patient A. The panel already found it proved on the balance of probabilities that you placed Patient A's money in your pocket. For the same reasons given at charge 6, the panel preferred the account of Patient A. Patient A's account of you saying the words outlined in the charge is consistent with you having placed her money in your pocket, as you attempt to pass off as your own. The panel therefore found it proved on the balance of probabilities that this conversation took place in accordance with Patient A's account.

The panel noted the conversation between you and Patient A during which your [PRIVATE] was discussed. Patient A states that after you had returned the money to her, whilst inside the toilet cubicle, she asked [PRIVATE]. Patient A says she was scared and felt vulnerable and was trying to establish a reason for your behaviour. Patient A

says it is at this point, you told her of [PRIVATE]. It is your evidence that this conversation took place earlier in the corridor in a different context. The panel find it more likely that this conversation took place as an explanation for you taking the money, as outlined by Patient A, rather than '*small talk'* on a busy corridor as you say in your evidence. The panel find that this further supports the credibility of Patient A's account about the conversations that took place after you put the money in your pocket.

The panel therefore find this charge proved on the balance of probabilities.

Charge 8a)

8) After returning Patient A from the disabled toilet,

a) Used words to the effect;

i) 'You were a bit confused there'.

ii) …

iii) 'Are you going to do anything about this? I don't want to be worrying all night'.

iv) 'You're going to ruin my life, and my career'.

This charge is found proved (in its entirety).

In reaching this decision, the panel took into account the oral evidence and written statement of you, Patient A and Colleague A. It also considered the documentary evidence provided by you and the NMC.

The panel considered your account of what was said. You have admitted in response to charge 8(a)(ii) that you said words to the effect that "*you were a bit foggy",* but you deny saying "*you were a bit confused there"*

The panel noted Patient A's nursing notes and your entry *"Pt a little vague at times".*

The panel considered your admission to using the words *'you were a bit foggy'* and your entry in Patient A's patient notes *'Pt a little vague at times'* to be consistent with you having said words to the effect *'you were a bit confused there'* and therefore find on the balance of probabilities that you did say words to this effect and so find charge 8a(ii) proved.

The panel then moved to consider whether you said words to the effect:

iii) *'Are you going to do anything about this? I don't want to be worrying all night'.*

iv) *'You're going to ruin my life, and my career'.*

The panel had sight of your witness statement, in which you explained that you asked Patient A several times if she wanted to speak to someone about what had happened, but that Patient A declined each time. However, you denied asking Patient A whether she was going to do anything about the incident or saying that she was going to ruin your career. It is your evidence that Patient A was confused in her account which you attribute to her being off oxygen longer than anticipated.

The panel noted the following extracts from your witness statement:

> *' I returned Patient A to the trolley in the hallway and was concerned about her breathing and blinking behaviour earlier and was conscious that her nasal oxygen had been off longer than originally anticipated. I assisted Patient A back on to the trolley, reattached the nasal oxygen and also got her a hot drink. I left Patient A to settle further and when I could see if she was visibly more composed, I asked her again if she wanted me to get someone for her to speak to and she again declined.*
>
> *I then spoke to Patient A explaining to her that I would need to report what had happened earlier. Patient A became visibly upset and emotional, and she then said she was vulnerable now. I reassured her that there was nothing for her to be*

concerned about. I briefly documented this within her notes with a view to speaking to the Emergency Department Team Leader.'

The panel was of the view that Patient A was very coherent and clear in her evidence. Patient A in her evidence does not mention being confused, having breathing issues or blinking episodes. The panel considered that whilst you give evidence of Patient A's behaviour, you do not record this in her patient notes. Rather, in your record keeping at 05:23 you described Patient A as *'[Patient A] a little vague at times'*, which is inconsistent with the account in your oral evidence because it did not represent the seriousness or even the proper nature of the seven-to-eight-minute episode in the toilet you later refer to. Further, the panel note that at the time of this episode, you neither called for assistance or notified other colleagues, which the panel find is not consistent with witnessing an episode of this kind.

The panel also took into account Colleague A's evidence in relation to this, which supports Patient A's account of what happened. Colleague A's witness statement sets out that Patient A said to her that *'the nurse then asked her if she wanted to do anything about the incident in the toilet and told her that it would 'wreck my life'. Patient A told me that she had felt that upset and vulnerable, and that she did not want to talk to the nurse.'*

The panel considered that Colleague A's evidence is consistent with Patient A's written witness statement and her oral evidence. Colleague A completed a contemporaneous record recording Patient A's oral account. The panel therefore preferred Patient A's evidence in relation to this charge.

The panel is satisfied that on the balance of probabilities your evidence regarding Patient A's level of confusion which you attribute to her being off oxygen was exaggerated so as to cover your tracks, because in all likelihood you were concerned about Patient A reporting the incident and that in such circumstances your career would be in jeopardy.

The panel is therefore satisfied that on the balance of probabilities you did say words to the effect that:

i) *'Are you going to do anything about this? I don't want to be worrying all night'.*
ii) *'You're going to ruin my life, and my career'.*

Charge 8b)

8) After returning Patient A from the disabled toilet,
b) Intimidated Patient A by;

i) Placing/stretching your hands on/across Patient A's bed rails.

ii) Leaning over Patient A.

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of you and Patient A. The panel also took into account the documentary evidence from the NMC and you.

The panel first considered Patient A's written statement, which states *'every time the Nurse came back to me, he put his hands on the rails at the side of the bed, stretching them out across the length of the rails and was towering over me which was quite intimidating.'*

In both Patient A's oral evidence and written witness statement, she set out that she was intimidated by you, and in her oral evidence she stated that it was *'quite menacing really'*. The panel noted that your behaviour as described by Patient A was not mentioned by her during her conversations with Colleague A and Colleague B. However, Patient A described feelings of intimidation and gave a compelling account of your physical actions. The panel noted that Patient A's overall account is corroborated, and her oral evidence is detailed, consistent and generally compelling. The panel is

therefore satisfied that the fact that this behaviour is not mentioned in the contemporaneous accounts of Colleague A and Colleague B is in all likelihood an omission which does not detract from the reliability of Patient A's account in this regard.

The panel found Patient A's evidence to be clear and consistent. She is clear in her description of your behaviour and of her feelings of intimidation by your actions. Patient A further describes being in shock at this point and wanting to get away from you.

You maintained that Patient A was unclear in her evidence because it would be difficult or impossible to lean across Patient A's body on both rails given the location of the bed against the wall. The panel did not find Patient A to be unclear in this respect and found that she was clear in both her statement and her oral evidence that she was describing you leaning over the side with both arms on the one bed rail.

On the balance of probabilities, the panel finds this charge proved.

Charge 9b)

9) *Following the incident with Patient A in the disabled toilets;*

    b) *Inaccurately informed Colleague B that you had recorded the incident relating to the allegation of theft in Patient A's notes.*

This charge is found NOT proved.

The panel considered the evidence of Colleague B, who explained in her original statement dated 21 June 2022 that you had informed her that you had documented the allegation of theft in the patient notes. The panel also noted Colleague B's witness statement dated 7 November 2022, in which it states that you had documented what happened.

The panel considered your record in the patient notes at 05:47 for Patient A dated 21 June 2022 and although not descriptive, there is a brief mention of the allegation of theft

put forward by Patient A. The panel accepted Colleague B's evidence that the time stamp cannot be amended and that this was the time that you made that record.

The panel was of the view that although Colleague B was not aware of your record when she spoke to you, none of the timelines before it suggest that you had not made this record at the time that you spoke to Colleague B and therefore you did not inaccurately inform her that you had recorded the incident.

The panel therefore finds this charge not proved.

Charge 9c)

9) *Following the incident with Patient A in the disabled toilets;*

c) Made a retrospective entry in Patient A's note at 05:47 relating to the allegation of theft.

This charge is found proved.

In reaching its decision in relation to charge 9c), the panel accepted your admission in relation to charge 9a).

The panel note there are different timelines for the events of the night but even on your own timeline you returned from taking Patient A from the toilet at around 04:45 on 21 June 2022. You then made entries in Patient A's notes at 05:23 and 05:47 that morning. The panel took into account that you said in your own evidence that the 05:47 entry was retrospective, and that the 05:23 and 05:47 entries relate to the same incident. The panel find that recording or reporting an allegation of this nature, even if resolved as you say, would have taken priority, as you said yourself it was your livelihood on the line. The panel would have expected you to do your best to record as much detail about the incident as possible at the first opportunity. You told the panel during your evidence that you were very busy after returning from the toilet with patient A and had three other

patients. You were accepting patients from the ambulance crew and patients were moving down the corridor.

The panel considered that despite you being busy, you had found time to make an entry on the patient notes at 05:23. You told the panel that observations are charted separately so the note you made at 05:23 was an additional record. You did not make an entry giving details about the incident until 05:47 despite having time to make an entry at 05:23. The panel accept that all notes will be retrospective to some degree but find that the nature of this incident and the importance of making a record would make the 05:47 entry, at least an hour later, a retrospective entry.

The panel find that, in the circumstances, as you found time to make a note at 05:23 you could have been expected to document the incident at that time. Therefore, the record made at 05:47 was retrospective. The panel also noted that even though you completed this record at least an hour after returning from the toilet you did not make it clear that the entry was retrospective, which you should have done.

The panel therefore find this charge proved.

Charge 10)

10) *Your actions in one or more of charges 1, 2, ,3,a) ,3 b), 3 c), 4, 5 ,6 ,7 a) & 7 b) were dishonest in that you stole/attempted to steal Patient A's money with an intention not to return it.*

This charge is found proved in relation to charges 3c), 4, 6 and 7a).

In reaching this decision, the panel took into account its findings in relation to charges 1, 2, ,3,a) ,3 b), 3 c), 4, 5 ,6 and 7 a). The panel also considered the guidance in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfields (Res) 2017 UKSC 67* and the following extract in particular:

"when dishonesty is in question, the fact finding tribunal must assess (1) the actual state of the individual's knowledge (subjective) or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief but it is not an additional requirement that his belief must be reasonable; the question is it genuinely held? When his state of mind as to knowledge or belief as to facts is established, (2)the question as to whether his conduct was honest or dishonest is to be determined using objective standards of ordinary decent people.

The panel also considered the extensive positive references and testimonials from colleagues to your good character and your trustworthiness. The panel also took into account that Colleague B gave oral evidence in relation to your clinical competence. Colleague B spoke of the high esteem in which she held you and gave evidence that although you were an agency nurse, you had been trained by the Trust so that you had your own login enabling you to access Trust documentation, which was unusual.

The panel was aware that a charge of dishonesty is a very serious matter, and whilst the burden or standard of proof does not change, the evidence requires particularly careful scrutiny.

Charge 10 in relation to Charge 1

This charge is found NOT proved.

The panel was of the view that there was a reasonable explanation for you taking Patient A to the toilet, in that Patient A had asked you to take her to the toilet. The panel is satisfied that as the nurse on duty, it was appropriate for you to do. The panel therefore is not satisfied that there any dishonesty or contemplation of dishonesty on your part in taking Patient A to the toilet.

In relation to charge 10 as it relates to charge 1, the panel found dishonesty is not proved on the balance of probabilities.

Charge 10 in relation to Charge 2

This charge is found NOT proved.

The panel accepted your admission in relation to charge 2. The panel did not find your actions in relation to charge 2 dishonest and therefore this charge is not proved.

The panel noted that it is not in dispute that you closed/locked the door and given that Patient A was about to use the toilet, the panel is not satisfied that you had a dishonest motive in doing so. It considered that on the balance of probabilities the conversation between you and Patient A regarding the amount of money she had with her started when she was already in the toilet cubicle with the door closed/locked and therefore the panel find that there was no dishonest intent on your part prior to her disclosing the amount of money she had.

In relation to charge 10 as it relates to charge 2, the panel found dishonesty is not proved on the balance of probabilities.

Charge 10) in relation to Charges 3a) and 3b)

The panel found these charges NOT proved.

The panel noted that Patient A asked you whether to take her handbag with her to the toilet. The panel found it reasonable that you told Patient A that she should take her handbag, because she would have otherwise left it in a public corridor.

The panel determined that the questions charged were asked in this context and is not satisfied that in asking these questions there was any dishonest intent on your part.

In relation to charge 10 as it relates to charges 3a) and 3b), the panel therefore find dishonesty not proved on the balance of probabilities.

Charge 10) in relation to Charge 3c)

The panel found this charge proved.

The panel find on the balance of probabilities that your comments in relation to counting the money in the toilet is evidence of dishonest intent. It noted that at this stage, Patient A had told you about the money she had in her handbag. The panel accepts Patient A's evidence because of the detail she provided about the manner in which she organised her purse and managed her pension. The panel was of the view that there was no reasonable explanation for either you or Patient A to count her money.

The panel determined that as an experienced nurse you would have known that counting money in a locked toilet was inappropriate whether or not this scenario was covered by a policy. You also accepted that you were aware of the policies regarding patient money. The panel find that you would therefore have understood the reasons why it was not appropriate to count a patients money when locked in a toilet with them alone.

The panel was therefore of the view that at this stage you had dishonest intent to steal or attempt to steal Patient A's money and therefore were dishonest when judged by the standards of ordinary decent people.

In relation to charge 10 as it relates to charge 3c), the panel therefore find dishonesty proved on the balance of probabilities.

Charge 10) in relation to Charge 4)

The panel find this charge proved.

The panel considered that your action was inappropriate and completely unnecessary as had Patient A any concerns about her money, she could have taken the money out her handbag and purse herself.

The panel determined that as an experienced nurse, you would have known that handling a patient's money when you could have simply passed Patient A her handbag was inappropriate, and this is heightened by the fact that you were in a locked toilet alone with Patient A.

The panel finds there was no innocent explanation in these circumstances and concludes on the balance of probabilities that your actions were motivated by dishonest intent to steal Patient A's money. The panel is further satisfied that an ordinary member of the public would consider this to be the case and regard your actions as dishonest.

In relation to charge 10 as it relates to charge 4), the panel therefore find dishonesty proved on the balance of probabilities.

Charge 10) in relation to Charge 6)

The panel found this charge proved.

The panel considered its findings in relation to charge 6), i.e., that on the balance of probabilities it found that you placed Patient A's money into your pocket. It determined that there is no reasonable explanation for placing Patient A's money into your pocket and that on the balance of probabilities it was your intention to steal it and that this act is therefore dishonest. The panel was also satisfied that an ordinary member of the public would regard your actions as dishonest.

In relation to charge 10) as it relates charge 6), the panel therefore find dishonesty proved on the balance of probabilities.

Charge 10) in relation to Charge 7a)

The panel found this charge proved.

The panel find that in saying the words *'it's not yours it's mine'* you were attempting to pass off Patient A's money as your own having stolen it from her purse and intended not

to return it. You knew it was not your money because you had taken it out of her purse and put it in your pocket. You were attempting to cover up the fact that you had done this when challenged. The Panel find this to be dishonest by the standards of ordinary people.

In relation to charge 10) as it relates to charge 7a), the panel therefore find dishonesty proved on the balance of probabilities.

Charge 10) in relation to Charge 7b)

The panel found this charge NOT proved.

The panel determined that this is not dishonest. It considered that the words *'here, have my money'* indicates an intention to return the money to Patient A. The panel found that you tried to diffuse the situation.

In relation to charge 7b), the panel therefore find dishonesty not proved on the balance of probabilities.

Charge 11) in relation to charge 9c)

11) *Your actions in one or more of charges 9 b) & 9 c) were dishonest as you sought to misrepresent that you were going to escalate the allegation of theft to Colleague B/ the Nurse in Charge/A senior member of staff.*

This charge is found proved in relation to charge 9c) only.

In reaching this decision, the panel took into account its findings in relation to 9b) (not proved) and 9c) (proved).

The panel considered that you did not escalate the allegation of theft, and that you instead wrote in Patient A's notes that you would do so, but you did not. The panel noted that you explained in your oral evidence that when you were first asked about the

incident, you did not know what Colleague B and the Hospital Coordinator were speaking about.

The panel noted your witness statement in relation to this:

> *‘ At approximately 06:15 on 21 June 2020, [Colleague B] and the Hospital Coordinator … , asked if they could have a private word with me. I went with them both into a room. … Colleague B asked me if I knew why they had asked to speak to me. I said I did not. She told me that an allegation had been made against me and asked me if I wanted to share anything with them. I was surprised by this, but I did not link this with the incident with Patient A because I thought that had been resolved. I was informed that there had been an allegation made against me of theft of money from a patient in the toilet. I gave them a brief account of Patient A’s confusion and said that I thought the matter had been resolved. I was asked why I did not escalate the incident to Colleague B straight away. I confirmed that I had intended to report it, had made a note in her records, but we were very busy at the time all moving patients down the corridors and I was taking new patients and handovers from the ambulance crews so they could be released.’*

The panel do not find it plausible that, despite your evidence that you said to Patient A that you had to report the incident because it was your livelihood on the line, less than two hours later you do not think of it when you are asked by Colleague B if there is anything that you want to share. The panel find that it is significant that you record in Patient A’s patient notes that you are going to report this incident to the nurse in charge, when available. The nurse in charge was Colleague B.

The panel find that, on the balance of probabilities, you did not have an intention to escalate the incident because you did not mention it when directly asked by Colleague B. The panel found in that all likelihood, you recorded an intention to report the incident to cover yourself in the event that an allegation was made, but otherwise you had no intention to escalate the incident yourself. Therefore, when you recorded that you were going to escalate the incident you were dishonest in that you sought to misrepresent

that you were going to escalate the allegation of theft to Colleague B/the nurse in charge/a senior member of staff.

In relation to charge 11) as it relates to charge 9c), the panel therefore find dishonesty in accordance with the *Ivey* test proved on the balance of probabilities.

The hearing was adjourned on 14 December 2023 and resumed on 29 April 2024.

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.

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.

Submissions on misconduct

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

Mr Brahimi provided the panel with written submissions and made brief oral submissions therefrom.

Mr Brahimi 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"). He referred the panel to the following specific, relevant standards and identified where, in the NMC's view, your actions amounted to a breach of those standards: 1; 4; 5; 10; 20; 21; and 25.

Mr Brahimi submitted that it is the NMC's position that your actions as proved fall far short of what would be expected of a registered nurse. The public would expect that the profession will have staff that uphold its professional reputation. He submitted that the panel may find that most breaches are in sections 4 and 20 of the Code as above. He submitted that you have put into question whether nurses can be trusted around vulnerable patients, so as not to take advantage of them.

Mr Brahimi submitted that your dishonest behaviour of stealing money, inside a locked toilet, is wholly unacceptable behaviour. Taken much further, there is evidence of intimidating behaviour and covering up your tracks through retrospective notes. He submitted that such behaviour will also affect the public's trust in the nursing profession.

Mr Brahimi invited the panel to take the view that the facts found proved amount to misconduct.

Mr Adamou submitted, on your behalf, that you respect the factual findings of the panel and accept that they would amount to misconduct. In these circumstances, and on the basis that the panel have found an element of dishonesty in your actions, as well as an element of intimidation in relation to a service user.

Mr Adamou submitted that a finding of misconduct is not inevitable. He submitted that it is your position that it is open to the panel in to make a finding of misconduct and he accepts that there is on the basis of the facts, grounds for that finding.

Submissions on impairment

In his written submissions, Mr Brahimi addressed the panel on impairment. He submitted that the panel 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. He referred to the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin):

'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, and/or is liable in the future to act as so as to put a resident or residents at unwarranted risk of harm;*
>
> *(b) Has in the past, and/or is she liable in the future to bring the profession into disrepute;*
>
> *(c) Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;*
>
> *(d) Has in the past, and/or is she liable in the future to act dishonestly.'*

He submitted that you are impaired and limbs b), c), and d) are engaged, however the panel are at liberty to also consider limb a).

Mr Brahimi submitted that limb a) is engaged as a result of your behaviour, as found proved, plainly brings the profession into disrepute; limb b) is engaged, as you have breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above.

The fourth limb is engaged as a result of you having been found proved of acting dishonestly.

Mr Brahimi submitted that your actions were a serious departure from the standards expected of a nurse and that the behaviour is incompatible with ongoing registration.

Mr Brahimi submitted that there are consequences as to a patient's emotional wellbeing. He submitted that there are psychological impacts to experiencing incidents such as the toilet/intimidation incident. It was unwelcome and not in accordance with any care required for the patient. The act of deliberately trying to confuse the patient *"it's not yours it's mine"* is at least unkind and certainly improper. He submitted that there is a risk of repetition where after the conduct in the toilets, you attempted to initially intimidate the patient and then to make retrospective entries. Although these are different sets of conduct, they are all intrinsically linked to the threaded theme of dishonesty, this being the taking of money. Naturally, any individual would be made to feel uncomfortable, particularly a vulnerable patient, where a grown man is displaying intimidating behaviour not long after a connected incident.

Mr Brahimi submitted that a finding of impairment is also otherwise in the public interest as your behaviour will undeniably have an impact on the public confidence towards the [nursing] profession. Your behaviour goes completely against public interest, and the NMC submit that members of public's view of nurses in general would be deeply undermined. He submitted that dishonesty is a serious concern and this breach not only undermines the trust that patients extend to nurses by admitting themselves into a hospital but also raises concerns for the wider family, where they would question whether a nurse can be trusted in properly looking after their family member. He submitted that as a result of your abuse of your position, the NMC submit that the honesty and integrity of the [nursing] profession has been challenged and evidently been put into disrepute.

Mr Brahimi invited the panel to find that you are currently impaired.

Mr Adamou submitted that, prior to and since these incidents, there had not been any findings or regulatory concerns against you. He submitted that you were of good character and had decades of experience. He submitted that because you have done something in the past that has a negative consequence, does not mean by definition you are liable to repeat those actions or do so again in the future.

Mr Adamou referred the panel to your reflective piece and the numerous glowing testimonials that support your character and trustworthiness. He submitted that you have provided reasons as to your [PRIVATE] and the reasons why at the time you experienced [PRIVATE].

In relation to whether you are liable to repeat any actions found proved in the future, he reminded the panel to consider that not all of the elements were considered to be dishonest. He submitted that it does not automatically follow that every individual circumstance will give rise to a finding of misconduct. He submitted that even if such a finding does raise an issue of misconduct it does not follow that there will automatically be a finding of impairment. He submitted that that you are not liable in the future to bring the profession into disrepute on the basis of the circumstances set out.

In relation to breaching one of the fundamental tenets of the profession he invited the panel to consider the actions found proved and weigh them against your considerable history of good practice. He submitted that the panel may consider that, on the facts found proved, your actions were a one-off and may in some circumstances, be described as an opportunistic issue. He submitted that this may be relevant to how the panel connotes seriousness as this was not a circumstance of significant individual benefit or gain.

In relation to whether in the past you have acted dishonestly or are liable to be dishonest in the future, Mr Adamou submitted that there must be a significant division between past findings and future prospects. He submitted that it is for the panel to weigh up those factors and consider whether, on the whole, you currently or continue to present a risk to members of the public. He submitted that you do not currently hold a role and that your revalidation has lapsed pending the outcome of these proceedings.

He submitted that in this case, the past is not a predictor of the future and in these circumstances you are not a registrant that is currently impaired.

Mr Adamou referred the panel to your bundle of documents including: training undertaken to ensure that their clinical skills are up to date; elements of powerful honesty, superior communication skills; duty of candour; safeguarding a vulnerable adult; responsibilities following an adverse incident; risks and responsibilities; patient moving and handling and equality diversity in human rights. He submitted that you have significant insight and it is a developing and continuing process.

Mr Adamou submitted that you accept that matters could and should have been done differently that you have expressed a degree of remorse. He submitted that it is not the case that you have a serious or substantial attitudinal problem.

He submitted that It can be shown that your reputation and work ethic are matters that are of great pride to you, and these are matters that the panel may wish to consider when assessing all of these points and assessing whether you are currently impaired.

Mr Adamou invited the panel to consider that you are not currently impaired, at least on the public protection component of impairment. In relation to the public interest component, he submitted that a well-informed and reasonable member of the public aware of the key facts of the case, the steps you have taken, the views of colleagues and other staff that have been set out in your testimonials would not expect a finding of impairment, however, it is a matter for the panel.

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

Decision and reasons on misconduct

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

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

'1 Treat people as individuals and uphold their dignity
To achieve this, you must:
1.1 treat people with kindness, respect and compassion
1.5 respect and uphold people's human rights

4 Act in the best interests of people at all times

10 Keep clear and accurate records relevant to your practice
10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event
10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need
10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

20 Uphold the reputation of your profession at all times
To achieve this, you must:
20.1 keep to and uphold the standards and values set out in the Code
20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
20.4 keep to the laws of the country in which you are practising
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers
20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

21 Uphold your position as a registered nurse, midwife or nursing associate
To achieve this, you must:
21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care'

The panel found that this incident was opportunistic, you did not form an intention to steal until you were in the toilet and you knew how much money Patient A had. The panel found that although entering and remaining in the toilet with Patient A having locked the door, asking her about her purse and money was not in line with best practice, it is not in itself serious enough to amount to misconduct. So the panel was of the view Charges 1, 2, 3a and 3b did not amount to misconduct.

The panel found that the remaining charges found proved did amount to misconduct because it involved an act of dishonesty, for personal gain, in a clinical setting, towards a vulnerable patient in a particularly vulnerable situation. The seriousness of your behaviour was then compounded when you went on to suggest to Patient A that it was her that was confused. You then made use of the medical notes to make a record to assist you in covering up the incident and further suggesting that Patient A was confused when she had not been. You then attempted to manipulate her into not making a complaint, and your actions involved intimidation. This compounded the dishonesty in that you took advantage of a vulnerable patient. Your dishonesty then continued when you failed to be upfront about the incident when questioned about it.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse 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 and to maintain professional boundaries. Patients and their families must be able to trust nurses/midwives with their lives and the lives of their loved ones. To justify that trust, nurses/midwives must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ 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 determined that all limbs of the above test are engaged by your misconduct.

The panel considered that honesty and integrity are fundamental tenets of the nursing profession and 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 toward a vulnerable patient in a vulnerable situation. The panel was of the view that a well-informed and reasonable member of the public would consider your dishonesty to be compounded by your attempts to cover it up, combined with your efforts to manipulate and intimidate Patient A, a vulnerable elderly patient, into thinking that she was confused to save your own skin. The panel determined that members of the public would consider your behaviour to be deplorable. The panel considered that confidence in the nursing profession and in the NMC as its regulator would be undermined if a finding of current impairment were not made in these circumstances.

The panel finds that Patient A was put at risk and was caused psychological and emotional harm as a result of your misconduct. The panel considered the evidence of Patient A in relation to the emotional impact this incident had on her. It noted that that she said in evidence that she no longer trusts health professionals.

Your misconduct had breached the fundamental tenets of the nursing profession 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 was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice.

The panel took account of the numerous favourable testimonials provided and several training courses you have undertaken in the intervening period. It also noted your difficult personal circumstances at the time. However, the panel determined that it has been a few years since these incidents and you have not provided sufficient evidence to show the level of insight required to ensure that an incident such as this, would not happen again in the future.

The panel considered that you have not provided an updated reflective piece or anything to address the panel's findings since the last hearing. The panel determined that you have shown insufficient insight and on that basis your behaviour is likely to be repeated.

Whilst there was no evidence before the panel to indicate that these actions have been repeated since, the panel noted that there has been a period of several months since the findings of facts were handed down. The panel would have expected you to provide evidence of updated reflections and insight that specifically address the facts in this case. Without this information the panel do not have evidence of sufficient insight to show that there is not a likelihood of repetition.

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 there to be a risk of repetition.

The panel therefore decided that a finding of current 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 wellbeing of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel therefore determined that a finding of current impairment is also necessary on public interest grounds to mark your behaviour as unacceptable and significantly below the very lowest standards one expects of a registered nurse.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on both public protection and also in the public interest.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that your registration has been suspended.

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. It took account of all the submissions of Mr Brahimi and those of Mr Adamou. The panel received no further evidence from anyone at this stage.

The panel accepted the advice of the legal assessor who made reference to legal case, *Parkinson v NMC* [2010] EWHC 1898 (Admin); *Atkinson v GMC* [2009] EWHC 3626 (Admin); *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34 Privy Council appeal no 67 of 2002; *Nicholas-Pillai v GMC* [2009] EWHC 1048 (Admin).

Submissions on sanction

Mr Brahimi provided the panel with written submissions. He informed the panel that the NMC is seeking the imposition of a striking-off order.

Mr Brahimi submitted that the following aggravating factors are applicable in this case:

- Abuse of position of trust;
- Band 5 *[senior]* position of responsibility;
  Further observations:
    - Vulnerable patient;
    - Dishonesty linked directly to Registrant's clinical practice;
    - Attempt to make personal financial gain from a breach of trust;
    - Elements of planning in the dishonest act;
    - Attempt to shift blame onto patient.

And the following mitigating features:

- First and only referral to the NMC;
- Registrant has been qualified since 2002;
- Some charges were admitted;
- Engagement with the NMC.

Mr Brahimi referred to the Sanctions Guidance (the SG) in the NMC Fitness to Practise library.

Mr Brahimi submitted that making no order or imposing a caution order would not be suitable due to the variety of concerns of this case. He submitted that a conditions of practice order does not adequately address and reflect upon the number of breaches in this case. He submitted that a suspension order would not be sufficient as the seriousness of the regulatory concerns does warrant a temporary removal from the register; however, your actions were not isolated given that there are stages of escalation. Even if the Panel were to consider this a single instance, it is not one where

a suspension would be appropriate. A suspension order will not address the concerns in this case or proportionately provide for an appropriate response to such serious charges. He submitted that your conduct raises fundamental questions about your professionalism, and a striking-off order is the only appropriate sanction given the charges involve dishonesty, the level of risk identified and to maintain public confidence in the profession. He submitted that a striking off order should be considered proportionate as the misconduct will raise fundamental questions surrounding your trustworthiness and dishonesty involving conduct against a vulnerable patient. He submitted that it will be considered incompatible with continued registration.

Mr Adamou reminded the panel of the purpose of these proceedings is not to punish you but to protect members of the public. It is incumbent upon the panel to take the minimum action required to safeguard and ensure those goals.

He submitted that it may be a relevant factor for this panel to consider that you have been on an interim suspension order for a significant period of time. He submitted that it is accepted that there are a number of aggravating features in this case, including an abuse of trust, but those are outweighed and mitigated or in some way negated by the present mitigating factors. He submitted that putting patients at a risk of suffering harm is the only aggravating features in this case.

He submitted that this is not a case where you lack insight and whilst the panel have made a decision that there was not sufficient insight so as to find against making a finding of impairment, it does not deny or negate the fact that insight is available and present.

He submitted that insight is something that progresses and does develop over time.

Mr Adamou submitted that this is not a case where there is a pattern of misconduct. He submitted that this is the one and only referral you have had in over 20 years of service.

Mr Adamou submitted that you accept quite properly, that it would be insufficient and inappropriate to take no action or impose a caution order. He invited the panel to

consider that there may be some merit in a conditions of practice order. He submitted that there is little to no evidence of a harmful deep seated personality or attitudinal problem. He submitted that you have engaged in the internal disciplinary proceedings, the NMC proceedings and there have not been any breaches of the interim order imposed.

In terms of you requiring any retraining in areas such as the handling of personal or valuable items, taking of patients to the toilet, and in particular the interactions with vulnerable patients, he submitted that these are areas in which workable, manageable, measurable, and proportionate conditions could be put in place. He submitted that there is no evidence in this case of general incompetence and that you are willing to respond positively to retraining. He submitted that with appropriate conditions, patients would not be directly or indirectly put at risk of danger. He submitted that conditions would protect patients during the period they are in force and could be monitored and assessed. He suggested that conditions stating that you are not to handle any valuables until you been assessed as competent by a supervisor or line manager and have been retrained in those elements of practice. The panel could also impose a level of supervision for a period of time until you are deemed competent to attend a vulnerable patient on your own, particularly if you were to assist them to the toilet, or any conditions which the panel may see fit to put in place in order to protect the public, whilst also addressing any concerns the panel may have about your behaviour.

Mr Adamou submitted that if the panel is not with him on imposing a conditions of practice order, then the alternative submission would be that of a suspension order for a period of 12 months would be appropriate to reflect the seriousness in this case. He submitted that this was a single instance of misconduct but where a lesser sanction is not sufficient. He submitted that if the panel were not with him on the appropriateness of a conditions of practice order, then this clearly falls or is captured under a suspension order. There has been no evidence of a repetition of your behaviour since the incident and whilst the panel did find that there is a risk of repetition, it cannot be said that there has been repetition.

Mr Adamou submitted that a suspension order would be appropriate given the length of time that you have already been suspended,

In relation to a striking off order, Mr Adamou referred the panel to the three questions raised in the SG Reference: SAN-3e:

- 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?

He submitted that the panel may consider that dishonesty, particularly in relation to a vulnerable patient, may raise a fundamental question of your professionalism so as to you remaining on the register as incompatible. He submitted that in this case it does not. He submitted that public confidence in nurses can be maintained. He submitted that this is a profession that prides itself on its capacity for learning and development. He submitted that in relation to public confidence a reasonably well informed member of the public, when put against the backdrop of their years of service and good practice, would say that a strike off is not inevitable and not the ultimate outcome. He submitted this was in was an opportunistic one off circumstance placed in the context already described.

Mr Adamou referred the panel to the cases of *Bijl v General Medical Council* [2001] UKPC 42 and *Giele v General Medical Council (GMC)* [2005] EWHC 2143 (Admin) (2005). The case of *Bijl* related to a surgeon found guilty of serious professional misconduct where the allegation against him involved an error of judgement and it was unlikely the error would be repeated in this case, Mr Bijl, a consultant urologist, appealed against the decision of the Professional Conduct Committee to erase his name from the Medical Register. Mr Bijl argued that his actions were unlikely to be repeated. In allowing the appeal, it was held that it was inappropriate to impose the

maximum sentence. In essence, the court came to the view that there was some merit in keeping an otherwise competent professional on the register, even in circumstances of serious professional misconduct.

In the case of *Giele,* the appellant was a consultant plastic surgeon who appealed against his erasure from the register by the General Medical Council (GMC) for serious professional misconduct. In this case, the fitness to practise panel had accepted allegations that Mr Giele had engaged in a sexual relationship with a vulnerable patient. In this case there are a number of testimonials from colleagues and nurses that described Mr Giele's expertise as outstanding and irreplaceable. He submitted that it was held, in allowing the appeal, that a doctor who had engaged in an improper relationship with a patient did risk erasure from the register, but it was not the inevitable sanction. In this case, the GMC's sanctions guidance on erasure was appropriate where it was the only means of protecting patients or maintaining public confidence in the profession. Mr Adamou submitted that whilst it is not the GMC in this present hearing, the panel may see parallels or similarities in the level of gravity and seriousness required to be met. There was no suggestion that patients would be endangered if *Giele* continued to practise and the public interest in maintaining confidence in the profession had to be weighed against the interest of existing and potential patients in having access to what was, in this case, an outstanding surgeon. Although *Giele's* conduct could have merited erasure, the testimonials may have tipped the balance against it. *Giele* was not erased from the register and received a 12 month suspension for having a relationship with a patient that he knew was particularly vulnerable.

Mr Adamou submitted that whilst it is not for this panel to adopt or supplant decisions of other tribunals as their own, or to simply make a flat comparison, he highlighted the above two cases to impress upon the panel the level of severity for a strike off order.

Mr Adamou submitted that in light of all of his submissions above and when considering the context and facts of this case, he submitted that the inevitable answer is that a striking off order is not appropriate.

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 found the following aggravating features:

- Abuse of position of trust of a very vulnerable patient
- Dishonesty in the workplace in a clinical setting within your role as a nurse
- Attempt to make personal financial gain from a breach of trust
- Multiple elements to the dishonest act
- Attempt to shift blame onto patient
- Evidence of intimidation

The panel also found the following mitigating features:

- Your actions were opportunistic rather than pre-planned
- Your challenging personal circumstances
- Positive testimonials from former colleagues expressing confidence in you
- Positive comments from NMC witnesses about your nursing practice
- Your substantial contribution to the nursing profession
- Your years of tenure in the nursing profession having qualified in 2002

The panel also bore in mind your previous unblemished record.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the serious regulatory concerns including dishonest behaviour of the case. The panel decided that it would neither be proportionate nor in the public interest to take no 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 and public interest 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.'* In this case the regulatory concerns involved acts of dishonesty during and after the incident. Given the seriousness of the concerns in this case, the panel determined that a more effective sanction is required. The panel was of the view that your misconduct was not at the lower end of the spectrum. It determined that it would neither be appropriate nor proportionate in the public interest to impose a caution order that does not restrict your practice in these circumstances.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel considered Mr Adamou's suggestions for conditions of practice, but was of the mind that handling

patient's valuables, taking patients to the toilets and caring for vulnerable patients is so fundamental to nursing that to impose these conditions would be tantamount to suspension. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel determined that a suspension order for a period of 12 months with review was appropriate in this case to mark the seriousness of the misconduct. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel considered that this order is 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. The conduct involved was very serious, involving significant and varied acts of dishonesty and intimidation, causing harm to a vulnerable victim.

The panel considered its findings at impairment stage that you have shown insufficient insight and on that basis your behaviour is likely to be repeated. However, the panel find that public would be sufficiently protected and the public interest appropriately

addressed by this lengthy suspension with a review, as it would give you time to further reflect and fully develop insight so as to address the risk of repetition.

The panel noted the hardship such an order may inevitably cause you. However this is outweighed by the public interest in this case.

In making this decision, the panel carefully considered the submissions of Mr Brahimi in relation to the striking off order that the NMC was seeking in this case. However, the panel took account of oral evidence of NMC witnesses who were senior nurses and former colleagues of yours who attested to your nursing abilities, that they had held you in high regard and were always pleased to see you on shift with them. The panel heard evidence that you had been trusted with having your own log in to the computer system, which was not the case for the other agency nurses. The panel also considered your numerous glowing testimonials and your many years in practice, The panel took into account that this incident was opportunistic and occurred at a time when you were under significant [PRIVATE]. The panel is satisfied that although your dishonesty escalated throughout the shift, the panel find that it was a one off incident as it all happened within one shift. There is no other evidence of similar behaviour in your many years of positively contributing to the nursing profession.

The panel did consider imposing a striking-off order very carefully given the serious nature of your conduct. However, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order given that this is a one-off incident occurring in a wider context of difficult time within a long and positive career.

The panel has concluded that a suspension order is the appropriate and proportionate sanction.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A reflective piece demonstrating evidence of fully developed insight and remorse focussing on the impact of the particular actions found proved by the panel on public protection and the wider public interest
- Included in the reflective piece a reflection on your misconduct as found proved and assurance of what steps you would take to prevent a repetition of this behaviour in the future
- Evidence of updated testimonials attesting to your honesty and character
- Evidence of keeping up with nursing practices

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the suspension sanction takes effect. 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 Brahimi. He submitted that an 18-month interim suspension order is appropriate and proportionate in this case given the panel's determination on sanction.

Mr Adamou did not oppose the application but reminded the panel to take into consideration that an interim order can only be imposed if the panel finds it necessary to do so. He also submitted that the panel should give separate consideration to the duration of any order it decides to impose, bearing in mind your current circumstances.

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 on the basis that the appeal process, if commenced by you, might last for that period of time.

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

This will be confirmed to you in writing.

That concludes this determination.