

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

20-21 February 2020

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

22-23 June 2020

(virtual hearing)

28-29 October 2020

(virtual hearing)

Name of registrant:	Jeannette Carol Utteridge
NMC PIN:	83H1039E
Part(s) of the register:	Registered Nurse- Sub Section 1 Adult Nursing- January 1986
Area of Registered Address:	Isle of Wight
Type of Case:	Misconduct
Panel Members:	Eileen Skinner (Chair, Lay member) Catherine Lamb (Registrant member) Emma Boothroyd (Lay member)
Legal Assessor:	Nigel Mitchell
Panel Secretary:	Roshani Wanigasinghe
Mrs Utteridge:	Present and represented by Gail Adams, instructed by Unison (20-21 February 2020) Not present and represented (22-23 June 2020) Not present and unrepresented at hearing (28-29 October 2020)
Nursing and Midwifery Council:	Dulcie Piff, Case Presenter Rakesh Sharma, Case Presenter (28-29 October 2020)
Facts proved by admission:	Charge 1
Facts proved:	Charge 2

Fitness to practise:

Impaired

Sanction:

Suspension Order for 2 months

Interim Order:

N/A

Details of charge

That you a registered nurse, when employed by the Isle of Wight NHS Trust (the 'Trust'):

- 1) Did not inform the Trust that you had been receiving an overpayment on your salary between December 2013 and September 2017. **[This charge is admitted]**
- 2) Your inaction in charge 1 above was dishonest in that you knew you were receiving an overpayment when you were not entitled to do so. **[This charge is found proved]**

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

At the outset of the hearing, the panel heard from Ms Adams, on your behalf, who informed the panel that you made full admissions to charges 1 and 2.

The panel, accepted your admission to charge 1 and finds charge 1 proved, by way of your admission.

However, in relation to charge 2, the panel noted that within your reflective account, you stated "I accept that there are no excuses for my failure to notice and report the overpayment." You confirmed when asked that you maintained the position set out in the reflective account. Ms Adams on your behalf also confirmed that this remained your position. The panel determined that in these circumstances, your admission to charge 2 was equivocal and did not meet the requirements for a finding of dishonesty. The panel therefore determined that the NMC should proceed to proof in relation to charge 2.

Application under Rule 31 for evidence via telephone link:

Ms Piff made an application for Ms 1's evidence to be heard via telephone. Ms 1 had not been expected to be called to give evidence and therefore she was carrying out her duties as a nurse in her place of employment. The application was made under Rule 31 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules). The legal assessor reminded the panel that Ms 1's evidence is contained within a written statement supported by a signed statement of truth. He stated that the length of the evidence may not make it impractical to hear her evidence by telephone.

The panel accepted the advice of the legal assessor.

Ms Adams on your behalf did not oppose the application.

The panel determined that Ms 1's evidence was clearly relevant to the charge and that in fairness to both parties and in the expeditious disposal of the case, it was appropriate and proportionate for Ms 1's evidence to be heard via telephone. The panel therefore allowed the telephone application.

Background

The NMC received a referral from the Isle of Wight NHS Trust (the Trust) in respect of you. The referral raised concerns that between December 2013 and September 2017 you received overpayments in your salary on a monthly basis to which you were not entitled.

In November 2012 you were appointed to act up into a temporary band 6 position. This position attracted a responsibility payment. In December 2013, you applied for and were successful in obtaining the band 6 role on a permanent basis. Your salary was therefore increased in line with the band 6 position. When your role became permanent, the responsibility payment

should have ceased. However, due to a payroll error you continued to receive this payment until September 2017.

In March/ April 2017, a colleague mentioned to you that she had an issue with her pay and needed to speak to the payroll department. You allegedly replied that payroll was useless and that they were still paying you an acting up payment from years ago. When asked, it is alleged that you said that you had not let payroll know and that you were still receiving this payment and said 'it's their fault'.

This colleague was concerned that you had knowingly been receiving an overpayment for a number of years without informing anyone in authority. Your colleague later reported the matter to a senior colleague.

On initial investigation by the Trust it was found that you had been receiving the responsibility payment of £153.52 since November 2012, even though it should have ceased once you secured the permanent post in December 2013. It was the NMC's case that you were overpaid £6,182.52.

You were contacted by your line manager in September 2017 and the responsibility payment was immediately stopped. It was also explained to you that advice had been sought from the Human Resources department and there was likely to be a formal investigation.

A concern was raised with NHS Fraud and discussions took place, it was decided that it should be investigated by the Trust locally to determine if you had knowingly received the extra responsibility payment, and a formal disciplinary investigation commenced on 9 November 2017.

You resigned from your post during the investigation and moved to work as a Practice Nurse (PN) in primary care. The investigation progressed to a disciplinary hearing which you declined to attend stating it had taken too long, and that you felt you had endured enough stress and anguish. You had paid the money back and you were no longer working for the Trust.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the advice of the legal assessor and the submissions made by both Miss Piff on behalf of the NMC and by Ms Adams 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 evidence from the following witness called on behalf of the NMC:

- Ms 1: Community Nurse in the North Locality of Isle of Wight. You were Ms 1's senior when she was first employed in August 2016.

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. It considered the witness and documentary evidence provided by both the NMC and you.

The panel considered the evidence of the witnesses and made the following conclusions:

Ms 1: The panel considered the evidence of Ms 1 to be credible and reliable. The panel was of the view that Ms 1 was a clear and helpful witness who tried her best to assist the panel. It noted that Ms 1 felt that she was in a difficult

position in raising this matter because you were senior to her. The panel accepted and understood the reasons Ms 1 explained as to the delay in her escalating this matter. The panel was of the view that Ms 1 did not have a personal vendetta against you and that she simply did not think what was happening was right and understood her responsibility to escalate the matter.

The panel considered your evidence to be contradictory, particularly in relation to dates and your state of knowledge at the relevant times, and therefore did not find your evidence to be credible in certain key aspects. It was unable to place reliance on your evidence. The panel acknowledged that you had been of good character prior to this matter and it noted the many positive testimonials provided by colleagues and other key health care professionals, who attested to your good character.

The panel then considered charge 2 and made the following finding.

Charge 2

- 2) Your inaction in charge 1 above was dishonest in that you knew you were receiving an overpayment when you were not entitled to do so.

This charge is found proved.

When considering this charge the panel had regard to all the oral and documentary evidence adduced.

The panel noted that from the evidence that during the period in which you were a Band 5 nurse acting up to a Band 6 temporary role, between 2012 and 2013 you were regularly keeping track of the amount that you were being paid.

You explained to the Panel that there had been problems in sorting out the correct responsibility allowance almost from the point of taking up the temporary post in November 2012 until approximately September 2013.

The panel noted from the emails sent around this period that it was evident that you were regularly checking your payslips and the amount that you were being paid. The panel saw emails dated between May and September 2013 where you had escalated that you were not getting the correct pay and in particular were being under-paid as the responsibility allowance was not correct. These emails demonstrate that you were aware of the responsibility allowance payment and you regularly checked your payslips.

During your oral evidence, in answer to panel questions, you stated that you had stopped looking at your payslips after acquiring the permanent band 6 role. When asked as to why you were confident that payroll would get your pay right this time considering all the errors in the past, you said “I don’t know. I just thought after all of this, that it would have been right this time...I didn’t check.”

The panel considered this to be implausible given the previous difficulties there had been with the responsibility allowance and your actions when your pay was not correct. The Panel did not accept that you simply stopped looking at your payslips and assumed that you would be paid the correct amount upon taking up the substantive post.

Further, the panel accepted Ms 1’s account of the conversation with you in around April 2017. The Panel considered that it was likely Ms 1 had correctly recalled that you had said “payroll were useless” and that they were still paying you an acting up payment from “years ago.”

The panel did not accept your account that the matter first came to your attention in 2017 and at that stage you queried with a colleague whether you had an amount on your payslip that should not have been there. In your oral evidence you stated that you did not consider you were receiving an overpayment until the matter was brought to your attention in September 2017. This was inconsistent with the account in your reflective statement dated February 2020 in which you stated, “I did on occasions notice that the

responsibility payment was still there but was unsure if this should be the case.”

The panel did not consider that you were uncertain about the payment or what it was for. The panel accepted Ms 1’s account of what was said by you, which was that the payment was for “acting up” from “years ago”.

The panel considered that Ms 1 would have no way of knowing that this was the case unless she had heard it from you. Although you had no recollection of the conversation, the Panel was satisfied that Ms 1 had heard you say these words and this was a correct reflection of the situation. In those circumstances the panel was satisfied that you were both aware of the nature of the overpayment and that it had persisted for a number of years. The panel considered that it was clear from that conversation that you knew that the payment was for “acting up” and it follows that you should have been aware that you were no longer entitled to it.

The panel determined that you were aware of the overpayments from the outset and deliberately decided not to query the overpayments or raise it with the payroll department.

The panel considers that knowingly receiving an overpayment and taking no action would be considered as dishonest by the standards of ordinary decent people.

Accordingly, the panel finds charge 2 proved.

This hearing went part-heard after handing down the decision on facts.

Service of notice of hearing for the resuming hearing on 28 October 2020

The panel was informed at the start of this hearing that Mrs Utteridge was not in attendance and that the notice of hearing had been sent electronically to Mrs Utteridge's e-mail address on 23 September 2020. The panel was informed that the notice was also sent to Mrs Adams, Mrs Utteridge's representative on the same date.

The panel noted that under the recent amendments made to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) ("the Rules") during the Covid-19 emergency period, a notice of hearing may be sent to a registrant's registered address by recorded delivery and first class post or to a suitable email address on the register.

The panel took into account that the notice of hearing provided details of the hearing, including the time and date of the hearing and the video conferencing details required to join the hearing. It also included information about Mrs Utteridge's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. The panel was also made aware that this hearing was to be held at a physical hearing, however, due to Mrs Utteridge's decision not to attend, this hearing was moved to a virtual hearing. The notice of this change had been sent to both Mrs Utteridge and her representative on 21 October 2020.

Mr Sharma, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of the Rules.

The panel accepted the advice of the legal assessor who referred it to Rule 32(3).

In the light of all of the information available, the panel was satisfied that Mrs Utteridge had been given notice of this hearing in accordance with the requirements of the Rules.

Decision and reasons on proceeding in the absence of Mrs Utteridge on 28 October 2020

The panel next considered whether it should proceed in the absence of Mrs Utteridge. It had regard to Rule 21 and heard the submissions of Mr Sharma who invited the panel to continue in the absence of Mrs Utteridge. He submitted that Mrs Utteridge had voluntarily absented herself.

Mr Sharma referred the panel to the written submission from Mrs Utteridge's representative which stated:

“As the NMC is aware Ms Utteridge is unable to attend the hearing, she has cooperated with her employer's investigation...”

Mr Sharma told the panel that the intentions of both Mrs Utteridge and her representative not attending today's hearing have been made clear.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Utteridge. In reaching this decision, the panel has considered the submissions of Mr Sharma, the written representations from Ms Adams on Mrs Utteridge's behalf, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Utteridge;
- Mrs Utteridge has informed the NMC through her representative that she will not be attending;
- Mrs Utteridge has provided written representations and other documents for the panel to consider today;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious disposal of the case.

Having regard to this correspondence between the NMC and Ms Adams and the written submissions lodged today by Ms Adams, the panel considered that Mrs Utteridge was clearly aware of today's hearing, and had been informed of her opportunity to provide submissions and documentation for the panel to consider. There had been no request for an adjournment. The panel did not consider that there was information to suggest that an adjournment would result in her attendance at a hearing on a future date.

The panel also had regard to the public interest in the expeditious disposal of this hearing. In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Utteridge.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct, and if so, whether Mrs Utteridge's fitness to practise is currently impaired by reason of her misconduct. 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 took into account all the material supplied to it at the facts stage and more recently today.

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

Submissions on misconduct and impairment

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

Mr Sharma submitted that the misconduct in this case concerns Mrs Utteridge's dishonesty in failing to notify her employer that she was receiving an additional monthly payment in her salary. He submitted that this dishonesty was not merely passing or short-term dishonesty but was carried out over a period of approximately four years. He told the panel that the amount in question was over £6,000.

Mr Sharma moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

Mr Sharma submitted that Mrs Utteridge's actions have in the past brought the nursing profession into disrepute.

Mr Sharma submitted that current impairment can be found either on the basis that there is a continuing risk or that the public confidence in the nursing profession and the NMC as regulator would be undermined if such a finding were not made.

Mr Sharma submitted that Mrs Utteridge has engaged with these proceedings and she gave evidence to the panel at the facts stage. He submitted that she maintained her denial of the dishonesty, or perhaps, the extent of the dishonesty. He submitted that Mrs Utteridge's denials and the account she gave demonstrates only limited acceptance and therefore very limited insight.

Mr Sharma submitted that Mrs Utteridge's actions are so serious that a finding of current impairment is required in order to maintain public confidence in the profession and NMC and to uphold proper professional standards. He further submitted that in the absence of the insight, future impairment remains highly likely.

The panel considered the material provided by Ms Adams on Mrs Utteridge's behalf and noted that whilst Ms Adams does not directly address the issues of misconduct and impairment separately in her written submissions, she had stated:

“... she [Mrs Utteridge] has cooperated with her employer's investigation and whilst she accepted that the allegations were and are serious, she has paid the money back in full. She continued to work there whilst this took place but had already decided that she wanted to move her career in a different direction [sic].

She applied for and was offered a post in a GP surgery, she was honest with them about the allegations with her employers, the over payment and also made them aware of the NMC investigation. She has continued to keep them updated throughout this process.

Since the hearing she has continued to work throughout the pandemic, she has accepted that the allegations are serious when she gave evidence, she demonstrated genuine remorse for her actions.

Jenny is a highly regarded nurse who is highly valued at the GP practice, contained in our original submissions were a series of character reference from her employer and colleagues' people who know her well and can vouch for her character.

... We acknowledge that dishonesty engages the public interest however we would also ask that the panel consider how members of the public may feel about a nurse who made a mistake, which whilst significant has paid the money back in full and co-operated with the NMC investigation. There is and has never been any issue in relation to her clinical ability.

...

... I would ask the panel to consider this, to also take into account the numerous character references you have already had sight of but also the updated reference from Dr Want her employer "I am aware of the NMC allegations relating to Jenny, and she has been honest with me about the circumstances. She has expressed great remorse for her actions and my belief is that she has taken this very seriously and reflected on the issue of professional behaviour. I have never had any concerns about her conduct, nor her integrity, whilst working at East Cowes Medical Centre...."

The panel accepted the advice of the legal assessor.

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.

The panel was of the view that Mrs Utteridge's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. The panel agreed with the NMC's position that the following provisions of the Code apply. Specifically:

20. Uphold the reputation of your profession at all times

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the dishonesty found proved was serious and involved Mrs Utteridge failing to notify her employer that she was receiving an additional monthly payment in her salary, which continued just short of a period of four years.

The panel found that Mrs Utteridge's actions did fall seriously below what would have been proper in the circumstances and also fell below 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, Mrs Utteridge's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust,

nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in reaching its decision. In paragraph 74, she said:

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

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 found that limbs b, c and d in Grant are engaged in this case.

The panel considered that there was little, if any, risk of the dishonest conduct being repeated. This was an offence by omission and when it was brought to Mrs Utteridge's attention, she repaid all of the money. Whilst she did not accept her dishonesty when giving evidence, she has subsequently demonstrated a degree of insight by stating that she accepts the panels findings.

The panel bore in mind that the objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, to promote and maintain public confidence in the nursing and midwifery professions and to promote and maintain the proper professional standards and conduct for members of those professions.

The panel finds there is no evidence to question Mrs Utteridge's clinical practice. It noted that the concerns in this case relate solely to dishonesty in relation to the overpayment of her salary. Therefore, the panel saw no reason to find impairment on public protection grounds.

However, given the gravity of the misconduct the panel decided that a finding of impairment on public interest grounds is required to uphold proper professional standards and maintain public confidence in the nursing profession. It therefore finds Mrs Utteridge's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Utteridge's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of two months with no review. The effect of this order is that the NMC register will show that Mrs Utteridge's 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. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Sharma submitted that a suspension order for three months, without a review could be considered appropriate and proportionate to address the issues which led to this referral. He submitted that whilst it will be a matter for the panel to determine whether the dishonesty is a deep rooted problem which would be more difficult to remediate, he reminded the panel to take note of Mrs Utteridge's long and previously untainted career. He submitted that a relatively short suspension order would adequately protect public confidence in the profession.

Mr Sharma submitted that whilst the dishonesty is serious, a striking off order may be seen as a disproportionate and unnecessary sanction against a nurse with 37 years experience. The behavior was reprehensible and requires a suitably serious sanction to protect public confidence however he submitted that a sanction of striking off is not necessary.

Ms Adams in her written submissions stated:

“She [Mrs Utteridge] applied for and was offered a post in a GP surgery, she was honest with them about the allegations with her employers, the over payment and also made them aware of the NMC investigation. She has continued to keep them updated throughout this process.

Since the hearing she has continued to work throughout the pandemic, she has accepted that the allegations are serious when she gave evidence, she demonstrated genuine remorse for her actions. Jenny is a highly regarded nurse who is highly valued at the GP practice, contained in our original submissions were a series of character reference from her employer and colleagues’ people who know her well and can vouch for her character.

Her specialist skills have been invaluable and if she were suspended even for a short period of time this would have a huge impact on the practice and population it serves. We acknowledge that dishonesty engages the public interest however we would also ask that the panel consider how members of the public may feel about a nurse who made a mistake, which whilst significant has paid the money back in full and co-operated with the NMC investigation. There is and has never been any issue in relation to her clinical ability.

I believe that a strike off order would be disproportionate in another wise unblemished career. This would also have a devastating impact on her surgery, who would lose her highly specialised skills. Whilst it could be argued that a suspension order would satisfy the public interest, it would still have a huge impact on her employer at a time when they have been and need to continue to focus on the pandemic. It could be considered that the public interest could be achieved with a caution order, longer in nature to reflect the facts proved but balanced against another wise unblemished career. I would ask the panel to consider this, to also take into account the numerous character references you have already had sight of but also the updated

reference from Dr Want her employer “I am aware of the NMC allegations relating to Jenny, and she has been honest with me about the circumstances. She has expressed great remorse for her actions and my belief is that she has taken this very seriously and reflected on the issue of professional behaviour. I have never had any concerns about her conduct, nor her integrity, whilst working at East Cowes Medical Centre.” Dr Want goes on to say “Jenny is a vital team member and has worked extremely hard for our patients, particularly during the covid-19 pandemic. Jenny is our only trained cervical smear-taker. To lose her would be to deprive our small practice nursing team, and our registered patients, of a highly skilled professional. [sic]”

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- The protracted period of time over which the dishonesty was perpetuated (3 years 9 months);
- The relatively large sum of money involved (over £6,000);
- Mrs Utteridge had an opportunity to end the dishonest conduct every month when she received her pay slip but did not.

The panel also took into account the following mitigating features:

- A long career of 37 years with no previous issues of concern;

- Multiple positive references from her employers and colleagues as to her competence and dedication;
- The total amount of money was paid back as soon as it was notified to her.

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 dishonesty, and the public interest issues identified, an order that does not restrict Mrs Utteridge's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Utteridge's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the dishonesty identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Utteridge's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Such an order is often appropriate where there are identifiable areas of practice in need of assessment or retraining. It considered that the misconduct identified in this case related to dishonesty and not to her clinical skills. In these circumstances, the panel determined that it would not be possible to draft meaningful conditions. The panel decided that the public interest concerns relating to upholding the reputation of the profession could not be adequately addressed through a conditions of practice order.

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

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

The panel decided that although there had been clear breaches of fundamental tenets of the nursing profession and breaches of the Code, there are some mitigating circumstances.

The panel noted that whilst Mrs Utteridge's dishonesty was serious, it happened by reasons of a mistake made by the payroll department, which she subsequently failed to rectify. The panel recognised that Mrs Utteridge did not actively set out to be dishonest in these circumstances. It was a single episode, albeit over a protected period of time. The panel noted that whilst dishonest acts can often be difficult to remediate, they may nonetheless be capable of remediation. To this end, Mrs Utteridge had paid back the full amount as soon as it was raised with her and she has subsequently reflected at length upon her conduct. The panel was satisfied that Mrs Utteridge has shown insight and remorse.

The panel considered a number of positive references provided on Mrs Utteridge's behalf. It noted that her current employer stated in her letter dated 16 October 2020:

“I am familiar with Jenny in a clinical capacity, working alongside her, and also as her current employer. I am aware of the NMC allegations relating to Jenny, and she has been honest with me about the circumstances. She has expressed great remorse for her actions and my belief is that she has taken this very seriously and reflected on the issue of professional behaviour. I have never had any concerns about her conduct, nor her integrity, whilst working at ... Medical Centre.

Jenny is a diligent, caring and conscientious nurse. She is reliable and clinically competent. Jenny is a vital team member and has worked extremely hard for our patients, particularly during the covid19 pandemic. Jenny is our only trained cervical smear-taker. To lose her would be to deprive our small practice nursing team, and our registered patients, of a highly skilled professional.”

The panel further bore in mind details of a reference dated 29 September 2020 provided by one of Mrs Utteridge’s colleagues at her current employment. She stated:

“...Jenny has been an invaluable source of knowledge and skills while I have been working in the team with her. She is well respected within the team and also by the patients in her care. She is very approachable, compassionate, professional and cheerful as one of our highly valued practice nurses. She has an extensive knowledge and skills base and I have called on her expertise many times in support of patients I have been treating myself”

A further reference provided on 9 October 2020 stated:

“Jeanette has worked and supported [the] Medical Team tremendously through difficult times during the Covid -19 pandemic. She has worked and given her all in contributing to patient care and provided this at the highest quality in difficult situations when we have been working at reduced capacity in the nursing team. Jeanette is a highly valued member of our team and we would not have been able to continue to

provide the service to patients without her dedication...Without Jeanette in the nursing team the patients' care and the team would be detrimentally impacted due to the loss of provision in asthma and cervical screening services."

The panel considered very carefully the submissions by Mr Sharma and Ms Adams. It took account of the Appraisal Form dated 15 October 2020 in which Mrs Utteridge had said:

"I have also acknowledged my failings with much remorse this having led me to be heard by the NMC. I have strived to learn from this situation and improve not only myself but also the service I provide to the local community. I have found the support of the surgery has helped me with this. I have and will continue to reflect on this matter. This has, I believe helped me become a better nurse to help support my community especially at times when they have needed our service."

And further she also stated:

"I take full responsibility for my actions and will fully support the decisions made by the NMC and learn from this."

The panel considered that Mrs Utteridge was a valued member of staff and had much to offer the profession. However, her dishonesty was serious and even these very positive references were not sufficient to persuade the panel that, balancing her interests with the public interest, a suspension order was not the appropriate outcome in this case.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the

mitigation provided, the panel concluded that it would be disproportionate. Given that Mrs Utteridge has shown insight and remorse, the panel was of the view that the lesser sanction of suspension would satisfy the public interest. Furthermore, the panel decided that public confidence in the nursing profession and the NMC can be maintained by the imposition of a short suspension order. The panel bore in mind the public interest in the retention of an experienced nurse and had particular regard to the information contained in the references provided by her employers and colleagues with regard to her key role as a nurse at the GP practice. The panel decided that Mrs Utteridge's misconduct is not fundamentally incompatible with continuing to be a registered nurse and that the public interest can be satisfied by a less severe outcome than permanent removal from the register.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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

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 panel noted that the NMC's sanction bid was a suspension for a period of three months with no review. However, the panel reminded itself of the significant positive references provided on Mrs Utteridge's behalf and the insight and low risk of repetition Mrs Utteridge presented and determined that in her particular case the public interest could still be properly satisfied by a suspension order of two months.

The panel therefore determined that a suspension order for a period of two months was appropriate in this case to mark the seriousness of the

misconduct.

The panel had particular regard to its earlier determination that a finding of impairment was necessary on public interest grounds alone and therefore concluded that a review of this order prior to its expiry was not necessary. The panel therefore exercised its power under Article 29 (8A) of the Order to decide that Article 30 (1) does not apply to this order.

The panel was satisfied that the suspension order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the suspension order will declare and uphold proper professional standards. Accordingly, the current suspension order will expire, without review.

This will be confirmed to Mrs Utteridge in writing.

That concludes this determination.