

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

**Substantive Meeting
Thursday 11 August 2022 – Friday 12 August 2022**

Nursing and Midwifery Council
Virtual Meeting

Name of registrant:	Angela Louise Cullen
NMC PIN:	97J0126W
Part(s) of the register:	Registered Nurse Children's Nursing – October 2000
Relevant Location:	Pembrokeshire
Type of case:	Misconduct
Panel members:	Adrian Smith (Chair, Lay member) Tracey Chamberlain (Registrant member) Michael Glickman (Lay member)
Legal Assessor:	Attracta Wilson
Hearings Coordinator:	Elena Nicolaou
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Miss Cullen's email address on 30 June 2022.

The panel took into account that the Notice of Meeting provided details of the allegations, and otherwise complied with the requirements of Rule 11A (2) of the Nursing and Midwifery Council (NMC) Fitness to Practise Rules 2004 (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Cullen has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Rules as amended.

Decision and reasons on decision to amend the charge

The panel decided to amend the wording of charge 1b, of its own volition.

The proposed amendment was to amend the wording of charge 1b to remove references to specific sums of money. The panel was of the view that this amendment would provide clarity and more accurately reflect the evidence.

The original charge currently reads as:

'That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

1. You breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, in that you:

b) Took sums amounting to £1700, £1500, £800 in cash and £87.50 as a card payment made on your behalf [PRIVATE];'

The proposed amendment is as follows:

'That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

1. *You breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, in that you:*

b) *Took ~~sums amounting to £1700, £1500, £800~~ **sums amounting to at least £1900** in cash and £87.50 as a card payment made on your behalf [PRIVATE]'*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel carefully considered all the information relied upon by the NMC relative to this charge. It noted evidence of large sums of money being taken by Miss Cullen from Patient A and noted evidence of a payment in the sum of £87.50 being taken as a card payment [PRIVATE]. However, the evidence in relation to the exact amounts of money taken was lacking.

In these circumstances, the panel considered whether it would be fair and appropriate to amend the charge in accordance with Rule 28 of the Rules. The panel bore in mind the need to be fair to both parties and to guard against bias in favour of either party. This is particularly important in the context that this case is being investigated by way of meeting with neither party present.

The panel had regard to the principles established in case law to include the case of *Council for the Regulation of Health Care Professionals V GMC* and *Ruscillo 2015 1 WLR 717*. It noted the comments of Lord Phillips in paragraph 30 to include *'...The disciplinary tribunal should play a more proactive role than a judge presiding over a criminal trial in making sure that the case is properly presented and that the relevant evidence is placed before it.'*

The panel took into account the statutory role of the NMC is to protect the public and the wider public interest. It is however incumbent on the NMC to frame charges so as Miss Cullen can properly understand the case against her. Miss Cullen has a right to a fair hearing and in that context a right to be able to respond to the case against her.

The panel determined that amending charge 1b) would not alter the substance of the charge and would not have adversely affected Miss Cullen's ability to understand and respond to the case against her. Further it would serve the interests of justice in the proper and expeditious investigation of this charge.

The panel noted its power to adjourn for the purposes of obtaining more precise details of the money allegedly taken by Miss Cullen. It considered the public interest in the expeditious disposal of this case and fairness to Miss Cullen. The panel determined that there would be no unfairness to Miss Cullen in proceeding with an amended charge as the substance of the charge would not be altered, and the amended sum had been admitted to by Miss Cullen during the [PRIVATE] investigation. Further in circumstances where Miss Cullen has not engaged with these proceedings to date, an adjournment would be unlikely to secure her attendance or a response to the proposed amendment. The panel also determined that there would be no injustice to the NMC in proceeding to amend as the amendment would allow the panel to carefully consider the charge in the public interest.

The panel concluded that it was therefore appropriate to make the amendment to ensure clarity and accuracy.

Details of charge (as amended)

That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

1. You breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, in that you: **[Proved in its entirety]**
 - a) On at least three occasions contacted Patient A asking for large sums of money to [PRIVATE];

- b) Took sums amounting to at least £1900 in cash and £87.50 as a card payment made on your behalf [PRIVATE];
 - c) You were critical of Patient A for telling your colleagues that you owed him money.
2. Between 20 July 2020 and 18 February 2021, in the course of your employers investigation into your borrowing money from Patient A denied that you had done so. **[Proved]**
3. Your actions at charge 2 were dishonest in that you knew you had borrowed from Patient A and were seeking to conceal this from your employer. **[Proved]**
4. On 20 July 2020, in response to Patient A's suggestions he had loaned you money, said to your employer, Patient A was: **[Proved in its entirety]**
- i. [PRIVATE];
 - ii. [PRIVATE],
 - iii. [PRIVATE].

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

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made in writing by the NMC and the email response provided by Miss Cullen.

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

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

- Patient A
- Witness 2: Assistant Practice Manager; the Surgery
- Witness 3: Social Worker; Pembrokeshire County Council
- Witness 4: Lead Adult [PRIVATE] Practitioner; Hywel Dda University Board

The panel also had regard to a written response via email from Miss Cullen.

Background

The charges arose whilst Miss Cullen was employed as a Senior Practice Nurse by Saundersfoot Medical Centre (the Surgery). On 17 February 2021, the NMC received a referral from a member of the public and [PRIVATE].

It is alleged that Miss Cullen borrowed large sums of money from Patient A on three occasions [PRIVATE].

Miss Cullen allegedly communicated with Patient A that she intended to repay him. On the basis of the evidence available, she has repaid £200 to Patient A in two payments of £100 each, made on 7 May 2020 and 10 July 2020.

After the Surgery received an anonymous letter on 15 July 2020, informing them of these loans, Miss Cullen was initially suspended from her role pending a local investigation, and subsequently reinstated when the Surgery concluded there was no case to answer.

An [PRIVATE] was made in respect of Patient A and Miss Cullen's behaviour towards him in seeking to borrow money. Miss Cullen was again suspended and questioned as part of the [PRIVATE] investigation. Although initially denying borrowing more than about £80 from Patient A, she eventually admitted that she had lied about the amount of money Patient A had lent her. She also admitted that everything that had been reported by Patient

A was the truth and that she had asked him to [PRIVATE] on three separate occasions but could not recall the dates or the exact sums involved.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by both the NMC and registrant.

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

Charge 1a

That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

1. You breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, in that you:
 - a) On at least three occasions contacted Patient A asking for large sums of money to [PRIVATE];

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it.

In Witness 3's statement, she said:

'She initially denied that there was any wrongdoing on her part. When she realised the evidence we had was strong [PRIVATE] and showed some insight. She admitted that she had, on 3 occasions obtained money from the Patient. [Miss Cullen] was unsure of the dates'.

The panel also considered the [PRIVATE] investigation interview notes, dated 18 February 2021, in that Miss Cullen initially denied the amounts of money she had received and claimed that it was only £80. In the notes, Miss Cullen later admitted:

“he’s right, it’s all right, the three time, he did pay”

[Miss Cullen] confirmed that on three separate occasions that [Patient A] had paid [PRIVATE] on her behalf.’

The panel considered that there is clear evidence that Miss Cullen had admitted to taking money from Patient A on three separate occasions, and the panel was satisfied on the balance of probabilities that she did contact Patient A on all three occasions to request the money.

The panel also had regard to the bank pay-in slips provided by Patient A, which appeared to indicate that Miss Cullen had made two payments of £100 each. It considered this to be consistent with a sum in excess of £80 having been asked for by Miss Cullen, and the panel is therefore satisfied on the balance of probabilities that large amounts of money were sought.

The panel concluded that approaching a patient for a loan of money is a clear breach of professional boundaries. It further concluded that Miss Cullen breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, on at least three occasions, when she contacted him asking for large sums of money [PRIVATE] .

The panel therefore find charge 1a proved.

Charge 1b

That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

1. You breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, in that you:

b) Took sums amounting to at least £1900 in cash and £87.50 as a card payment made on your behalf [PRIVATE];

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it.

The panel took into account the notes from the [PRIVATE] investigation interview, dated 18 February 2021, that stated:

'[Miss Cullen] had her head in her hands and stated "he's right, it's all right, the three time, he did pay"

[Miss Cullen] confirmed that on three separate occasions that [Patient A] had paid [PRIVATE] on her behalf. That she was unsure of the dates but thought the first occasion was in 2019, [PRIVATE], that she contacted [Patient A] and he paid she thinks around £900

On the second occasion, [Miss Cullen] unsure when, thought it was around beginning of 2020, [Patient A] paid around £600

On 3rd occasion, which was around March, she accepted the receipt shown on [Patient A] phone was she thought accurate, [Patient A] paid approx. £400 in cash and £87 on his card.'

The panel noted that these amounts added up to £1900 in cash. The panel also had regard to the screenshot of the receipt, provided by Patient A, that indicated £87.50 was paid by him [PRIVATE] by card.

The panel considered that there is clear evidence before it and admissions made by Miss Cullen that she breached professional boundaries with Patient A, in or around January

2019 to 19 March 2021, in that she took sums amounting to at least £1900 in cash and £87.50 as a card payment made on her behalf [PRIVATE].

The panel therefore finds charge 1b proved.

Charge 1c

That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

1. You breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, in that you:
 - c) You were critical of Patient A for telling your colleagues that you owed him money.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it.

The panel considered the text messages that were sent by Miss Cullen to Patient A, in which she stated:

[PRIVATE]

The panel also considered the text message directly under the one above, which stated:

[PRIVATE]

The panel also considered the notes from the [PRIVATE] investigation interview, dated 18 February 2021, in which Miss Cullen was confronted with these text messages and she did not deny sending them.

The panel concluded that Miss Cullen breached professional boundaries with Patient A, in or around January 2019 to 19 March 2021, in that she was critical of Patient A for telling her colleagues that she owed him money. This implicated a [PRIVATE] patient in Miss Cullen's deception [PRIVATE].

The panel therefore finds charge 1c proved.

Charge 2

That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

2. Between 20 July 2020 and 18 February 2021, in the course of your employers investigation into your borrowing money from Patient A denied that you had done so.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it.

The panel considered that, during the exploratory meeting carried out by the Surgery, on 20 July 2020, Miss Cullen stated:

[Miss Cullen] stated "he paid £80 [PRIVATE]", "I have not taken a penny".

...

[Practice Manager] asked if there was any truth in the letter. [Miss Cullen] stated "no".

[Practice Manager] asked if [Miss Cullen] has borrowed any money off the patient. [Miss Cullen] stated "No. [PRIVATE] he insisted that he pay the £80. He paid on his card".'

The panel also considered the record of the [PRIVATE] investigation interview, on 18 February 2021, in which it stated:

'[Miss Cullen] acknowledged that lying when she was asked in the Exploratory meeting on the 20th July had not helped, that she didn't know what to do.'

The panel concluded that there was clear evidence before it that Miss Cullen repeatedly denied taking money from Patient A during the investigation. It concluded that, between 20 July 2020 and 18 February 2021, in the course of the investigation into Miss Cullen having borrowed money from Patient A, she denied that she had done so.

The panel therefore finds charge 2 proved.

Charge 3

That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

3. Your actions at charge 2 were dishonest in that you knew you had borrowed from Patient A and were seeking to conceal this from your employer.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it and applied the test in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.

The panel considered that Miss Cullen admitted, during the [PRIVATE] investigation, to lying about having borrowed money from Patient A.

For the reasons outlined in charge 2, the panel found that Miss Cullen's actions at charge 2 were dishonest in that she knew she had borrowed from Patient A and was seeking to conceal this from her employer.

The panel therefore finds charge 3 proved.

Charge 4

That you, a Registered Nurse, whilst employed as Practice Nurse at Saundersfoot Medical Centre:

4. On 20 July 2020, in response to Patient A's suggestions he had loaned you money, said to your employer, Patient A was:
 - i. [PRIVATE];
 - ii. [PRIVATE],
 - iii. [PRIVATE].

This charge is found proved in its entirety.

In reaching this decision, the panel took into account all of the evidence before it.

The panel considered notes of the exploratory meeting at the Surgery, that took place on 20 July 2020, in which Miss Cullen stated:

'[PRIVATE]'

The panel considered that this meeting was held by professionals, within a professional context, and that they would have no reason to fabricate or embellish the comments made. It concluded that it could rely on the evidence of these professionals. It noted that these statements made by Miss Cullen were also in quotes, indicating that it was most likely a verbatim quote from her.

The panel concluded that, on 20 July 2020, in response to Patient A's suggestions he had loaned Miss Cullen money, she said to her employer that Patient A was [PRIVATE].

The panel therefore finds charge 4 proved.

Fitness to practise

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

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

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

Representations on misconduct and impairment

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

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code") in making its decision.

The NMC identified the specific, relevant standards where Miss Cullen's actions amounted to misconduct. The NMC stated:

'The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:

'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin):

'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'

And

'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.

Where the acts or omissions of a registered professional are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the NMC's Code of Conduct.

At the relevant time, Miss Cullen was subject to the provision of The Code: Professional standards of practice and behavior for nurses and midwives (2015) ("the Code"). We consider the following provisions of the Code have been breached in this case;

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

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

20.5 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

20.10 use all forms of spoken, ~~written and digital~~ communication (including social media and networking sites) responsibly, ~~respecting the right to privacy of others at all times~~

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

To achieve this, you must:

21.2 never ask for or accept loans from anyone in your care or anyone close to them

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

We consider the misconduct serious because Miss Cullen failed in her duty of care and breached professional boundaries in relation to Patient A. In failing to be open and honest about the nature of her relationship with Patient A and the extent of her borrowing from him, Miss Cullen has demonstrated behaviour which raises fundamental concerns about her trustworthiness.

The conduct of Miss Cullen falls short of what would have been expected of a registered professional.'

With regard to impairment, the NMC submitted:

'Impairment

Impairment needs to be considered as of today's date, i.e. whether Miss Cullen's fitness to practice is currently impaired as a result of misconduct. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction. There is no burden or standard of proof to apply as this is a matter for the fitness to practice panel's own professional judgement.

*We consider the following questions from the case of **Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) ("Grant")** are relevant in all cases when assessing past conduct and future risk:*

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

Ms Cullen's conduct has engaged limbs b, c and d. Dealing with each one in turn:

- Miss Cullen exploited Patient A in abusing her position as a nurse for her own personal and financial gain. Patients are reliant on nurses for their basic care needs and acting in such a way is likely to deter people from seeking help in the future. Miss Cullen's dishonesty raises fundamental concerns about her attitude and trustworthiness of a registered professional, which brings the profession into disrepute.*
- The nursing profession is a caring profession, to abuse position of power is a breach of this most fundamental tenet.*

- *Miss Cullen's actions were dishonest in that she denied asking Patient A for loans. She was also dishonest regarding the nature of her relationship with Patient A.*

The panel should also consider the comments of Cox J in Grant at paragraph 101:

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case".

Miss Cullen has clearly brought the profession into disrepute by the very nature of the conduct displayed. Nurses occupy a position of trust and must act and promote integrity at all times, which have been breached in this case. The public has the right to expect high standards of registered professionals.

*With regard to future risk it may assist to consider the comments of **Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin)** namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.*

The NMC's guidance entitled "Can the concern be addressed?" FTP-13a, states as follows:

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

[...]

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

Miss Cullen's actions were dishonest, and dishonesty is difficult, to remediate. It is submitted that the public would be concerned to know that a registered professional was deliberately dishonest.

On 15 March 2021, Miss Cullen emailed the NMC admitting that she did borrow money from Patient A [PRIVATE].

In March 2021, Miss Cullen stated:

"[PRIVATE]"

It should be noted that there has been no evidence of any concerns about Miss Cullen's nursing practice. A former employer has spoken highly of her practice and contribution to the team.

However, Miss Cullen has displayed limited insight and there is no evidence that her actions will not be repeated. Miss Cullen has not made any attempt to reflect, show insight, or take steps to put her alleged conduct right, by the very fact that Miss Cullen is yet to repay the money she borrowed.

Therefore, the NMC considers that there is a continuing risk to the public due to Miss Cullen's lack of full insight. We consider there is a public protection and public interest requirement in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior.'

The panel reminded itself of the NMC's overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments, including *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311.

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 Miss Cullen's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Cullen's 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

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

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

16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern

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...

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

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

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

To achieve this, you must:

21.2 never ask for or accept loans from anyone in your care or anyone close to them

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

The panel considered that there were multiple serious breaches of the Code by Miss Cullen. It considered that all of the charges found proved amounted to misconduct, as these were serious actions involving a [PRIVATE] patient and for Miss Cullen's own personal financial gain. This case also involves dishonesty.

The panel found that Miss Cullen's 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, Miss Cullen'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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust,

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

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

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

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

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

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

The panel considered that all four limbs of *Grant* are engaged in this case.

It finds that Patient A was put at risk and was caused [PRIVATE] as a result of Miss Cullen's misconduct. [PRIVATE].

The panel also considered that Miss Cullen's actions did bring the profession into disrepute. Miss Cullen took money from Patient A and repeatedly denied it during the investigation process. In attempting to exonerate herself, she accused Patient A of [PRIVATE].

The panel considered Miss Cullen did breach fundamental tenets of the profession and that her actions were very serious.

The panel also considered the dishonesty in this case, and that Miss Cullen repeatedly denied taking money from Patient A during the investigation process. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not take findings of dishonesty extremely seriously.

The panel noted that there is no evidence from Miss Cullen that indicates she has addressed the concerns, or paid back more than £200 to Patient A. It considered that, other than a brief email from Miss Cullen dated 15 March 2021, there has been no further responses or information from her. This email included an apology by Miss Cullen, although it was very vague and does not appear to address her actions or the impact it could have had on patients, colleagues, the public and the wider profession. It appears that Miss Cullen has very limited insight and there is no evidence to suggest she has made any efforts to address the concerns. There have also been no reflective pieces from Miss Cullen.

The panel considered Witness 3's statement, in which she said:

'There was a lack of empathy that she had done anything wrong to the Patient. She was more concerned about her job and her NMC PIN. She had made no effort to pay him back. There was a lack of respect for the Patient and his money.'

The panel considered that dishonesty is difficult to remedy, but there has been no evidence that Miss Cullen has made any attempt to do so.

The panel concluded that there remains a risk of harm to the public and a risk of repetition, as there is no evidence that anything has changed in respect of Miss Cullen's mindset, and she has not addressed her actions. The panel also acknowledged the impact Miss Cullen's actions have had on [PRIVATE]. 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 well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required due to the importance of upholding professional standards. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Cullen's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel had regard to the written submissions by the NMC, which are as follows:

'The NMC considers the following sanction is proportionate:

- *Striking-off order*

With regard to the NMC Sanctions Guidance ("the Guidance") the following aspects have led us to this conclusion:

The aggravating factors in this case included:

- *[PRIVATE]*
- *Persistently denied the allegations*
- *Failed to repay the debt*

The NMC considers that there are no mitigating factors in this case.

Taking the least serious sanctions first, it is submitted that taking no action and a caution order would not be appropriate in this case. The Guidance (Reference: SAN-3a and SAN-3b) states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be appropriate as this would not mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.

The Guidance (Reference: SAN-3c) states that a conditions of practice order may be appropriate when there is no evidence of harmful deep-seated personality or attitudinal problems; there are identifiable areas of the registered professionals practice in need of assessment and/or retraining; and there is no evidence of general incompetence. In this case the conduct of Miss Cullen raises significant attitudinal concerns. Conditions of practice would not be appropriate because this case involves attitudinal problems relating to dishonesty which are more difficult to rectify and therefore difficult to manage

and assess in a conditions of practice order. There are also very serious dishonesty concerns involving breach of professional boundaries for own financial use. This case concerns a series of incidents over a long period of time and towards a [PRIVATE] patient. There are no conditions that would adequately address the concerns in this case.

The NMC guidance (SAN-2) says:

“The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk being removed from the register.”

And

“Nurses, midwives and nursing associates who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again.”

It also goes on to say:

“Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

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

Miss Cullen has not shown remorse for her actions as she has not repaid Patient A. Furthermore she misused her power as a nurse. This was also not a one-off incident.

According to the Guidance (Reference: SAN-d), a suspension order may be appropriate when the registered professional has shown insight and does not pose a significant risk of repeating the behaviour. However, as Miss Cullen has not shown any real insight into the concerns raised or reassurance that the behaviour will not be repeated, a suspension order would not be sufficient or protect the public.

Dishonesty is always serious, particularly when a registered professional misuses their position of authority, and will often require erasure in order to protect the public and uphold public confidence in the profession. The concerns in this case raise fundamental concerns about Miss Cullen's professionalism which have not been addressed in the absence of any real insight or assurance that the behaviour will not be repeated. In the circumstances, public confidence in the profession could not be maintained if Miss Cullen were not removed from the register. Therefore, a striking off order is the only order that would protect the public and maintain public confidence in the profession by marking her behaviour as unacceptable.'

Decision and reasons on sanction

Having found Miss Cullen'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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Actions involving a [PRIVATE] patient;
- Repeated denial from Miss Cullen about borrowing money;
- Attempts to deflect blame onto Patient A;
- Failure to repay amounts borrowed;
- Deliberately breaching her professional duty of candour by covering up when things went wrong; and
- Personal financial gain.

The panel considered that there were no mitigating features in this case.

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

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Cullen'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 Miss Cullen's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order, nor would it protect patients and the public.

The panel next considered whether placing conditions of practice on Miss Cullen's registration would be a sufficient and appropriate response. The panel considered that there are no clinical issues in this case and the misconduct identified in this case was not something that can be addressed through retraining. The panel is of the view that there are no practical or workable conditions that could be formulated that would address the concerns, given the nature of the charges in this case. There is evidence of deep-seated personality and attitudinal concerns as Miss Cullen sought to blame others for her actions and denied taking money from Patient A. Furthermore, the panel concluded that the placing of conditions on Miss Cullen's registration would not adequately address the seriousness of this case and would not protect the public. Miss Cullen has also not meaningfully engaged with the NMC, and so the panel concluded that conditions of practice would not be appropriate in this case.

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

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

The panel considered that Miss Cullen's actions were not a single incident of misconduct or a one-off incident, and that there is evidence suggesting deep-seated attitudinal concerns considering the elements of dishonesty in this case. Although there is no evidence of repetition since the incidents occurred, the panel has no information about Miss Cullen's current employment. It considered that Miss Cullen has not provided any information or evidence that indicates she has any insight into her actions (apart from her brief email to the NMC) or the impact that they could have had on colleagues, patients, the public and the wider profession. There is nothing before the panel that demonstrates that Miss Cullen has addressed the concerns, and it has received no reflective pieces from her. There are also elements of personal financial gain in this case.

The panel considered that dishonesty is difficult to remedy, however it also noted that there has been no evidence that Miss Cullen has made any efforts to do so.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Cullen's actions is fundamentally incompatible with her remaining on the register.

The panel therefore determined that in this particular case, a suspension order would not be a sufficient, appropriate or proportionate sanction, nor would it address the wider public interest.

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

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

The panel considered that a striking-off order was the only appropriate sanction that would protect the public and maintain public confidence in the profession, in this case. For the reasons outlined above, a suspension order would not be sufficient to address the concerns.

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

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. The panel considered that this order was necessary both to protect the public and to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Miss Cullen in writing.

Interim order

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

Representations on interim order

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

'If a finding is made that Miss Cullen's fitness to practise is impaired on a public protection basis and a restrictive sanction is imposed we consider an 18 months interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.'

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 to cover the 28-day appeal period.

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

That concludes this determination.