

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

**Substantive Hearing
3 May 2022 – 6 May 2022**

Virtual Hearing

Name of registrant: Ann Marie Simmonds

NMC PIN: 99J0125E

Part(s) of the register: Registered Nurse - Adult (October 2002)

Area of registered address: Calverton, Nottinghamshire

Type of case: Misconduct

Panel members: Debbie Hill (Chair, Lay member)
Sandra Lamb (Registrant member)
Nicola Strother Smith (Lay member)

Legal Assessor: Graeme Sampson

Hearings Coordinator: Dilay Bekteshi

Nursing and Midwifery Council: Represented by Raj Joshi, Case Presenter

Mrs Simmonds: Not present and not represented (Day 1)
Present and not represented (Day 2, 3 and 4)

Proved by way of admissions: Charge 1)

Facts proved: Charge 3)

Facts not proved: Charges 2) and 4)

Fitness to practise: Impaired

Sanction: Suspension order (9 months)

Interim order: Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

- 1) Claimed overtime payment for one or more of the shifts set out in Schedule 1 when you were not entitled to do so. **[PROVED BY WAY OF ADMISSION]**
- 2) On one or more occasions between May 2018 and October 2018 authorised your own claims for overtime when you were not permitted to do so. **[NOT PROVED]**
- 3) Your conduct in Charge 1, above, was dishonest in that you knowingly claimed for overtime payment when you knew you were not entitled to do so. **[PROVED]**
- 4) Your conduct in Charge 2, above, was dishonest in that you knowingly authorised your own claims for overtime when you knew you were not permitted to do so. **[NOT PROVED]**

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

Schedule 1

27 May 2018	16 July 2018	31 August 2018
4 June 2018	17 July 2018	2 September 2018
5 June 2018	18 July 2018	3 September 2018
6 June 2018	19 July 2018	4 September 2018
7 June 2018	20 July 2018	5 September 2018
9 June 2018	23 July 2018	6 September 2018
11 June 2018	24 July 2018	7 September 2018
14 June 2018	25 July 2018	9 September 2018
15 June 2018	30 July 2018	12 September 2018

18 June 2018	1 August 2018	13 September 2018
20 June 2018	2 August 2018	15 September 2018
21 June 2018	4 August 2018	17 September 2018
25 June 2018	5 August 2018	18 September 2018
26 June 2018	6 August 2018	19 September 2018
27 June 2018	12 August 2018	20 September 2018
28 June 2018	13 August 2018	21 September 2018
29 June 2018	14 August 2018	22 September 2018
2 July 2018	15 August 2018	23 September 2018
3 July 2018	16 August 2018	24 September 2018
4 July 2018	20 August 2018	25 September 2018
5 July 2018	21 August 2018	27 September 2018
6 July 2018	22 August 2018	28 September 2018
7 July 2018	23 August 2018	29 September 2018
8 July 2018	24 August 2018	1 October 2018
9 July 2018	27 August 2018	2 October 2018
10 July 2018	28 August 2018	3 October 2018
11 July 2018	29 August 2018	6 October 2018
13 July 2018	30 August 2018	7 October 2018

Decision and reasons on service of Notice of Hearing (Heard and considered on day 1)

The panel was informed at the start of this hearing that Mrs Simmonds was not in attendance and that the Notice of Hearing letter had been sent to Mrs Simmonds' registered email address on 28 March 2022.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs Simmonds's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Joshi, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (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 Mrs Simmonds has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Simmonds (Heard and considered on day 1)

The panel next considered whether it should proceed in the absence of Mrs Simmonds. The panel had regard to Rule 21(2), which states:

- ‘21.—** (2) *Where the registrant fails to attend and is not represented at the hearing, the Committee—*
- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
 - (c) may adjourn the hearing and issue directions.’*

Mr Joshi referred the panel to the documentation from Mrs Simmonds and told the panel that there has been engagement between the NMC and Mrs Simmonds. He further referred the panel to an email from Mrs Simmonds which states that she had provisionally booked 4 and 5 May 2022 off work to facilitate being called to give evidence at the hearing. Mr Joshi therefore invited the panel to continue in the absence of Mrs Simmonds as she has voluntarily absented herself from the rest of the hearing.

The panel has decided to proceed in the absence of Mrs Simmonds. In reaching this decision, the panel has considered the submissions of Mr Joshi, 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 Simmonds;
- Mrs Simmonds has engaged with the NMC and therefore is aware of the proceedings;
- Mrs Simmonds has informed the NMC that she will be available on 4 and 5 May 2022 to give live evidence at the hearing;
- There is no reason to suppose that adjourning would secure her full attendance at some future date;
- Three witnesses are due to attend and give live evidence;
- Not proceeding may inconvenience the witnesses, their employers and, the clients who need their professional services;
- The charges relate to events that occurred in 2018;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Simmonds in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address. She may not be able to challenge the evidence relied upon by the NMC in person. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. The panel further noted that there is an opportunity for Mrs Simmonds to give evidence and make submissions on her own behalf on 4 and 5 May 2022.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Simmonds.

Background

Mrs Simmonds is a registered nurse and has been employed by the Priory Group since 5 December 2016. During this time Mrs Simmonds worked at two hospitals, her first role was as Hospital Director at Priory Nottingham. Mrs Simmonds was seconded to Calverton Hospital (the hospital) in February 2018 as Acting Hospital Director and then secured a permanent role at the hospital in May 2018. As part of Mrs Simmonds' induction, she took part in the eRoster training in 2017.

A referral has been received from The Priory Group alleging that Mrs Simmonds falsified overtime claims from May/June 2018 to November 2018. Accordingly, it is alleged Mrs Simmonds fraudulently claimed payment to the value of over £13,000. Mrs Simmonds was not entitled to overtime under her contract without prior agreement. It is alleged that she claimed overtime and authorised payment of the overtime. It is said she was dishonest in doing so. The matter came to light when Witness 3 visited a site at Calverton Hill Hospital on Thursday 23 November 2018 in his capacity as the Operations Director. Accordingly, Mrs Simmonds was suspended and a local investigation ensued.

Witness 1, in her capacity as the Finance Manager, was allocated to investigate the matter and a local investigation report was produced. Through this local investigation, the allegations against Mrs Simmonds was founded. The matter was to proceed to a disciplinary hearing, however, because Mrs Simmonds resigned the day before the disciplinary hearing it did not go ahead. In regard to the money being repaid, payroll have confirmed that Mrs Simmonds repaid a total of £7,094.25.

Facts

On day 2 of the hearing, Mrs Simmonds made full admissions to charge 1). The panel therefore finds charge 1) proved in its entirety, by way of Mrs Simmonds' admission.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the closing submissions made by Mr Joshi on behalf of the NMC and by Mrs Simmonds.

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

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

- Witness 1: Finance Manager at Priory Healthcare Group
- Witness 2: Managing Director at Priory Healthcare Group
- Witness 3: Operations Director at Priory Healthcare Group

Mrs Simmonds also provided oral evidence on day 2 of the hearing.

Panel's decision and reasons on facts

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 Mrs Simmonds. The panel heard and accepted the advice of the legal assessor. He referred the panel to the following case: *Ivey v Gentings Casinos (UK) Ltd* [2017] UKSC 67.

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

Charge 2)

- 2) On one or more occasions between May 2018 and October 2018 authorised your own claims for overtime when you were not permitted to do so.

This charge is found NOT proved.

In reaching this decision, the panel took into account all the documentary and oral evidence. In particular, it had regard to the eRoster report. However, the panel is not aware of any system or mechanism in place which shows how the payments were authorised. There is also no evidence that Mrs Simmonds authorised any payments.

Having regard to the evidence as a whole, the panel determined that there was no documentary evidence which shows that there is an authorisation mechanism in place. The panel considered that the NMC has not discharged its burden of proof in respect of this charge.

Charge 3)

3) Your conduct in Charge 1, above, was dishonest in that you knowingly claimed for overtime payment when you knew you were not entitled to do so.

This charge is found proved.

In considering this charge and charge 4) the panel adopted the test for dishonesty as set out in the case of Ivey that states:

‘When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’

The panel took into account all the documentary and oral evidence. In particular, it had regard to the eRoster report, Mrs Simmonds payslips from May 2018 to October 2018, and the copy of Mrs Simmonds’ employment contract.

The panel took into account Mrs Simmonds’ circumstances at the time. She told the panel that she did work excessive hours and that her responsibilities as a Director were challenging. The panel noted that Mrs Simmonds’ position as a Director was among the most senior leadership roles at the hospital. She had day to day responsibility for the overall running of the hospital, was line manager to the heads of department and would be considered a role model. A senior leader in this position would be expected to have good working knowledge of the financial governance procedures in place regarding

salaries and payroll and therefore it was her responsibility to escalate to her line manager about the large amount of money that she had claimed for.

The panel considered the evidence of Witness 2 and Witness 3, who had told the panel that Mrs Simmonds never mentioned that she felt she was working too much, or that she was claiming overtime. Witness 3 stated that he had discussed the issues of commuting with Mrs Simmonds and had offered support in terms of paying overtime accommodation if needed. The panel also considered the amount of money claimed and the time over which the claims took place. It noted that Mrs Simmonds conduct continued over a period of five months.

The panel took into account Mrs Simmonds employment contract which states that she will need to seek prior agreement if she were to receive payment for over time:

“Due to operational needs and the nature of your role you will be expected to be flexible in your working hours. Working hours will be determined by the needs of the business and may vary during the course of any week. This will include nights, evening, day and weekend duties as required and your specific hours of work will be notified to you via the relevant rota.

You may from time to time be required to work beyond these hours to fully discharge your professional duties. Where additional shifts/hours are worked with prior agreement, either time off in lieu or overtime at basic rate will normally be paid.”

However, Mrs Simmonds claimed both general overtime which was paid at the standard hourly rate, and enhancements which were paid at a premium rate. The panel noted that all but five payments claimed by Mrs Simmonds were at the enhanced rate with one claim for bank holiday payments. Mrs Simmonds in her oral evidence told the panel that she knew she was inputting overtime hours and enhanced rated pay. She further told the panel that her line managers were aware that she was doing excessive hours, but

instead of informing them of her claims, she followed the process of the previous Hospital director. In addition, Mrs Simmonds told the panel that to her it was the normal process and that the previous Director had also claimed overtime, but the hospital did not look into it further. However, the panel took into account the internal investigation and it noted that it was found to have been the previous Director of Clinical Services who had claimed some overtime payments.

The panel were referred to two payslips in the bundle as being dated 28 August 2018 and 28 September 2018. It was suggested that these were identical and that was evidence that they had been the product of fraud. In fact, the panel note that these documents had been copied into the bundle in error and are the same document. Accordingly, the panel have discounted this evidence from their consideration of the issue of dishonesty.

Having regard to Mrs Simmonds' own admission at charge 1), and the evidence it considered in respect of charge 3), the panel assessed Mrs Simmonds' actual state of knowledge of belief as to the facts. The panel considered that it was more likely than not that Mrs Simmonds was dishonest in that she knowingly claimed for overtime payment when she knew she was not entitled to do so. The panel determined that ordinary decent people having knowledge of these matters, would regard Mrs Simmonds' actions in charge 3) as dishonest.

Charge 4)

4) Your conduct in Charge 2, above, was dishonest in that you knowingly authorised your own claims for overtime when you knew you were not permitted to do so.

This charge is found NOT proved.

Having found charge 2 not proved this charge fell away and could not be found 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 Mrs Simmonds' 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, Mrs Simmonds' fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

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

Mr Joshi 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.

Mr Joshi moved on to the issue of impairment and addressed the panel on the need to have regard to upholding the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He told the panel that a senior leader in Mrs Simmonds' position would be expected to have good working knowledge of the financial governance procedures regarding salaries and payroll. He submitted that it was Mrs Simmonds' responsibility to escalate to her line manager about the large amount of money that she had claimed for.

Mr Joshi therefore submitted that a member of the public would be concerned to find out that a Director at that senior role had effectively falsified the claims and was dishonest in doing so. He submitted that the charges found proved are very serious and that the professional standards and the reputation of the nursing profession are being called into disrepute.

Mrs Simmonds did not provide any further evidence at this stage.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. This included: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin)

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 and the need to protect the public and uphold the wider public interest. The panel accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel considered whether the allegations which were found proved amounted to misconduct. It determined that your actions fell significantly short of the standards expected of a registered nurse. Your actions amounted to a breach of the Code. The panel considered that the following section of the Code was engaged in this case:

8 Work co-operatively

To achieve this, you must:

8.2 *maintain effective communication with colleagues*

8.6 *share information to identify and reduce risk*

10 Keep clear and accurate records relevant to your practice

To achieve this, you must:

10.3 *maintain effective communication with colleagues*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 *act with honesty and integrity at all times...*

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

20.8 *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

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

To achieve this, you must:

21.3 *act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with...*

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

The panel found that your actions as set out in charges 1 and 3 fell seriously short of the 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 Simmonds'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 *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) ...

- 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 noted that there were no concerns with Mrs Simmonds' clinical practice and the charges found proved relate solely to her claiming overtime without prior agreement and acting dishonestly in doing so. It was therefore of the view that a finding of impairment on public protection grounds is not necessary.

The panel found that Mrs Simmonds' misconduct had breached the fundamental tenets of the nursing profession and also brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel took into account Mrs Simmonds' documentary and oral evidence. It noted that Mrs Simmonds is currently employed as a Registered Home Manager. A positive employment reference has been received detailing that: *"there have been no issues or concerns raised in regards to Mrs Simmonds' honesty and integrity and indeed with financial management of the service."* The panel further noted that Mrs Simmonds has engaged with the NMC's investigation and has provided an account of the incidents where she had initially denied all but charge 1).

The panel went on to consider whether Mrs Simmonds has shown sufficient insight into her misconduct. It noted that in Mrs Simmonds' documentary and oral evidence, it

focussed on the personal impact on Mrs Simmonds without any indication of what she would do differently in the future or, any appreciation of the effects of her actions on the hospital, her colleagues or the reputation of the nursing profession. The panel also noted Mrs Simmonds' attempts to shift blame and to minimise her own actions and responsibility. Therefore, the panel determined that there is no sufficient information before it to suggest that Mrs Simmonds has reflected on her actions and developed insight.

The panel noted that Mrs Simmonds had repaid a total of £7,094.25 (out of the £13,000+ initially claimed). However, the panel was of the view that a finding of no impairment would fail to declare and uphold standards and would undermine public confidence in the nursing profession. The overarching objectives of the NMC are; 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. As public confidence in the profession would be undermined if a finding of impairment were not made in this case, the panel therefore finds that your fitness to practise is impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Simmonds' 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 nine months. The effect of this order is that the NMC register will show that Mrs Simmonds'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.

Mrs Simmonds' evidence on day 4 of the hearing

Mrs Simmonds' told the panel that she has learnt a valuable life lesson from the events that occurred in 2018. She told the panel that there was no intention of dishonesty and an error of judgement was made, but that she accepts the panel's decision. Mrs Simmonds told the panel that since 2018, she has undergone training on accountabilities and responsibilities that she covers in her role. She told the panel that she stepped down from the Director's role and moved back into the elderly care sector where she is more comfortable and familiar.

Mrs Simmonds told the panel that she has worked diligently through the pandemic and worked excessive hours. She said that she had never thought about claiming overtime since. She told the panel that she has shown commitment and dedication to her profession and has acted as a role model. She said that to suspend her PIN number would impact on her employment, her contributions to the nursing profession and would also impact on how colleagues would perceive her at work.

Mrs Simmonds told the panel that it would be a harsh punishment to remove her PIN number from the register, but she would respect any decision that the panel make. She asked the panel for a short a period as possible if it considers a suspension order. Mrs Simmonds told the panel that she has effectively shown that she is a professional, hardworking, committed and loyal member of the profession and that she has worked diligently as a role model for the past three years.

In cross examination, Mrs Simmonds told the panel that the meaning of dishonesty is one of personal opinion, however, she accepts that her actions have been perceived by the panel as dishonest. She told the panel that she made poor judgments and that she followed a process she thought to be correct. Mrs Simmonds further told the panel that she had no dishonest intention and that she only submitted claims for the hours of work she had done.

Submissions on sanction

Mr Joshi informed the panel that the NMC would seek the imposition of a suspension order for a period of six months.

Mr Joshi submitted that in cross examination, Mrs Simmonds stated that dishonesty is a matter of “personal opinion”. He told the panel that Mrs Simmonds clearly recognises that there has been a finding of misconduct, but that she does not want to acknowledge that she has been dishonest. He submitted that the issue of dishonesty was initially denied and even after the proceedings and the panel’s findings, we are still faced with the issue of Mrs Simmonds’ limited insight into her misconduct.

Mr Joshi submitted that Mrs Simmonds has abused her position of trust. He told the panel that this is not a case of financial irregularities that was spontaneous, but it was opportunistic. He submitted that Mrs Simmonds as the Director of the hospital should have been aware of the rules and the regulations. He submitted that not making further claims since the incidents in 2018 is not in itself dealing with the issue of dishonesty. He further submitted that Mrs Simmonds’ misconduct continued over a period of five months and at no point did she ask her line manager or colleagues whether she could claim overtime.

Mr Joshi therefore submitted that due to Mrs Simmonds lack of insight into her misconduct a suspension order would be appropriate in this case.

Decision and reasons on sanction

The panel received an employer statement provided by Mrs Simmonds at the sanction stage. However, the panel attached limited weight to this given that it inappropriately expresses views on the proceedings.

Having found Mrs Simmonds' 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:

- Miss Simmonds' abuse of a position of trust
- Opportunistic financial gain with no attempt to highlight over payments received by her, to her line manager or payroll until challenged
- Lack of insight into her failings
- A pattern of misconduct over a period of five months
- The amount of money claimed over that period of time

The panel also took into account the following mitigating features:

- Some insight and attempts to address her misconduct
- Previous good character
- Mrs Simmonds' clinical practice is not in question
- There was no actual harm caused to patients

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict Mrs Simmonds' 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 Simmonds' misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues 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 Simmonds' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case did not relate to Mrs Simmonds' clinical practice and was not something that can be addressed by retraining or the imposition of conditions. Furthermore, the panel concluded that the placing of conditions on Mrs Simmonds' registration would not adequately address the seriousness of this case or mark the public interest of 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 determined that Mrs Simmonds' conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Her misconduct was not a single instance but rather took place over a period of five months and that resulted in significant personal financial gain without any prior agreement. She abused the trust of colleagues and her employer and has demonstrated very little insight into her misconduct. The panel considered that Mrs Simmonds' dishonesty did not appear to be premeditated and instead was opportunistic. The panel was therefore satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It 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. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Simmonds' case to impose a striking-off order.

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 Simmonds. 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 was

of the view that any case involving the dishonesty of a nurse could erode the public's confidence in the nursing profession

The panel determined that a suspension order for a period of nine months was appropriate in this case to mark the seriousness of the misconduct and would give Mrs Simmonds sufficient time to engage further with the NMC and provide full evidence of her insight into her misconduct.

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

Any future panel reviewing this case would be assisted by:

- Mrs Simmonds attendance
- A reflective piece to the NMC prior to the review of this case. This reflective piece must discuss Mrs Simmonds misconduct, with particular regard to:
 - The importance of honesty in the nursing profession;
 - How her actions have damaged the reputation of the nursing profession and the hospital;
 - How she would act differently in the future, if placed in a similar situation.
- Any up to date reference or testimonials, from any senior colleague, attesting to her conduct in the workplace with specific reference to her honesty; and
- Evidence of training around financial governance.

This will be confirmed to Mrs Simmonds in writing.

Interim order

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

The panel considered the submissions made by Mr Joshi on behalf of the NMC. He invited the panel to impose an interim suspension order for a period of 18 months to cover any appeal period.

Mrs Simmonds told the panel that she is not a risk to the public and that she intends to appeal the length of the suspension order. She made no further submissions in respect of the interim order.

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

The panel was satisfied that an interim suspension order is necessary in the wider 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.