

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

**Substantive Hearing
31 August 2022 – 02 September 2022**

Virtual Hearing

Name of Registrant Nurse: Mr Neil Watson

NMC PIN: 82Y0354S

Part(s) of the register: Registered Adult Nurse –
RN1 Effective February 2001

Relevant Location: Fife

Type of case: Misconduct

Panel members: John Penhale (Chair, Lay member)
Beth Maryon (Registrant member)
Georgina Wilkinson (Lay member)

Legal Assessor: Attracta Wilson

Hearings Coordinator: Max Buadi

Nursing and Midwifery Council: Represented by Zahra Evans, Case Presenter

Mr Watson: Present and not represented

Facts proved by admission: Charges 1 and 2

Facts not proved: None

Fitness to practise: Impaired

Sanction: Suspension (3 months)
[Review of order not necessary in accordance
with Article 29 (8A)]

Interim order: Interim suspension order (18 months)

Details of charge

That you, a Registered Nurse:

1. On one or more occasions between July 2019 and December 2019 used your former employer's pool car for personal use.
2. Your conduct at Charge 1 was dishonest in that you knew the pool car was available to employees for work related purposes only.

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

Background

On 20 May 2020, the Nursing and Midwifery Council (NMC) received a referral about your fitness to practise from NHS Fife. At the time of the concerns, you had been working as Band 7 Senior Charge Nurse at Queen Margaret Hospital (the Hospital) which is part of NHS Fife.

On 19 December 2019, Head of Facilities at the Hospital, Mr 1, informed Ms 2, the Clinical Services Manager at the Hospital, that the pool car booking system had picked up anomalies of usage for the Enterprise Car Club in relation to you.

The Car Pool is a computer based system where a car is booked for work purposes, home visits and clinical visits. Given the role and remit of your position, the car pool usage logged was not in accordance with the information held.

On 20 December 2019, Mr 1 provided Ms 2 with a printout of the logged usage. You worked Monday to Friday and the car pool usage was said to be mainly used for the weekends.

Ms 2 contacted you by email for an explanation as to why the car had been used on the dates you had not been working. On 27 December 2019, you sent Ms 2 an email stating that the bookings identified as being for “Cares” were in fact for personal use. These accounted for 28 out of 33 journeys you had taken and the majority were booked for afternoon and evenings when you were off duty.

You immediately admitted that you had used the car pool for personal use and you knew that this was wrong.

Within an investigatory meeting on 29 January 2020, you went through your car bookings for the period from June 2019 to December 2019 and identified 1924 miles of personal car use which was calculated as amounting to a loss to your employer of £1077.44.

You resigned on 13 March 2020 indicating that you were making an application for early retirement from the NHS.

Decision and reasons on facts

At the outset of the hearing, you made full admissions to charges 1 and 2.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of your admissions.

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

Before it moved onto the misconduct stage, the panel of its own volition sought submissions as to whether this case should be held partly in private as on the basis that proper exploration of your case involves your personal circumstances. The request for submissions was made pursuant to Rule 19 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’ (the Rules).

Ms Evans, on behalf of the Nursing and Midwifery Council (NMC) indicated that she had no objection to this.

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

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

Fitness to practise

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

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

Submissions on misconduct and impairment

Ms Evans provided the panel with written submissions which the panel have read. It stated:

“Preamble

1. *The panel will be aware that in deciding whether a Registrant's fitness to practise is impaired by reason of misconduct the correct course (per Cheatle v General Medical Council [2009] EWHC 645) is to embark upon a two stage process.*

2. *First, the panel should consider whether the facts found proved amount to misconduct. Charge one and have been found proved. The panel have found that Mr Watson on one or more occasions between July 2019 and December 2019 used his former employer's pool car for personal use and that his actions were dishonest as he knew the pool car was available for employees for work related purposes only.*

3. *In determining this questions there is no burden or standard of proof, it is entirely a matter for the panel's professional judgment (per Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas [2006] EWHC 464 (Admin)).*

Misconduct

4. *It is submitted that the comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 provide 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 [nursing] practitioner in the particular circumstances'.

5. *The panel may further be assisted by the comments of Elias LJ in R (on the application of Remedy UK Ltd) v General Medical Council [2010] EWHC 1245 (Admin) who stated that misconduct must be 'sufficiently serious that it can properly be described as misconduct going to fitness to practise'.*

6. The NMC invites the panel to find that the facts amount to misconduct in that the registrant's actions fell short of what would be proper in the circumstances.

7. Being honest is integral to the standards expected of a registered nurse and central to the code, which this nurse has fallen seriously short of.

The Code

8. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) is, it is submitted, to be answered by reference to the Nursing and Midwifery Council's Code of Conduct .

9. It is submitted, that the following parts of the Code are engaged and have been breached by Mr Watson:

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.

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

10. The misconduct in this case concerns Mr Watson on one or more occasions between July 2019 and December 2019 that she used her former employer's pool car for personal use and that this action was dishonest as he knew the pool car was available to employees for work related purposes only.

11. *This behaviour undermines public confidence in the profession and is serious as the misconduct involved a monetary loss to the NHS and are dishonest.*

12. *Mr Watson in all the circumstances of this case, departed from good professional practice and the facts as found proved are sufficiently serious to constitute serious misconduct.*

Impairment

13. *If the panel are satisfied that the matters found proved do amount to misconduct the next matter the panel must consider is whether the Registrant's fitness to practise is currently impaired by reason of that misconduct.*

14. *Impairment is conceptually forward looking and therefore the question for the panel is whether Mr Watson is impaired as at today's date per Cohen v General Medical Council [2008] EWHC 581 (Admin) also Zgymunt v General Medical Council [2008] EWHC 2643 (Admin)).*

15. *The panel should note that, in line with rule 31(7)(b) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, a departure from the Code is not of itself sufficient to establish impairment of fitness to practise, that question, like misconduct is a matter for the panel's professional judgment.*

16. *It is submitted that the panel is likely to find the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) instructive. Those questions as are relevant in this case are:*

1. *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*

2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or
3. 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.
4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.

17. It is submitted that the above questions can be answered in the affirmative in respect of past conduct apart from the first limb.

18. 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.

19. With regard to future risk, it is submitted the panel will likely find assistance in the questions asked by Silber J in Cohen, namely, is the misconduct easily remediable, has it in fact been remedied and is it highly unlikely to be repeated.

20. The NMC guidance entitled: "can the concern be addressed?" is also likely to be of assistance:

"Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the in the case can be remedied. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious.

The first question is whether the concerns can be remedied. That is, are there steps that the nurse or midwife can take to remedy the identified problem in their practice?

It can often be very difficult, if not impossible, to put right the outcome of the clinical failing or behaviour, especially where it has resulted in harm to a patient. However, rather than focusing on whether the outcome can be put right, decision makers should assess the conduct that led to the outcome, and consider whether the conduct itself, and the risks it could pose, can be addressed by taking steps, such as completing training courses or supervised practice.

Decision makers need to be aware of our role in maintaining confidence in the professions by declaring and upholding proper standards of professional conduct. Sometimes, the conduct of a particular nurse or midwife can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse or midwife's attitude, it is less likely the nurse or midwife will be able to address their conduct by taking steps, such as completing training courses or supervised practice.

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.*

21. As to the risk of repetition, it is understood that currently Mr Watson is currently not employed in a nursing capacity. Therefore we have no recent references from current employers.

22. Due to the nature of the allegations there is a risk that there could be repetition of his actions. The allegations show a conduct that raises concerns about the registrant's professionalism and honesty. The seriousness of the misconduct are

such that it calls into question his professionalism and honesty in the workplace. This therefore has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.

23. The provisions of the code constitute fundamental tenets of the profession and Mr Watson's actions have clearly breached these in so far as they relate to upholding the reputation of the profession and Mr Watson upholding her position as a registered nurse. The dishonest actions make the concerns particularly serious.

24. The question therefore for the panel will be how a nurse did arrive at a position where he departed so comprehensively from the Code and the fundamental tenets of his profession, in respect of his dishonest actions.

25. Mr Watson provided a response within his correspondence with the NMC that he had taken early retirement and intended to not renew his NMC registration. He stated he had become extremely disillusioned and disappointed by the nursing management attitudes that are displayed especially when staff are under duress. He stated that he was unemployed and had been since retiring and that he has no intention to ever return to any kind of care work. With an absent in depth explanation as to why Mr Watson carried out these actions it may be the panel have no choice but to find that there is or may be such a risk that this behaviour will continue. Within the internal investigation he stated he was "cash strapped" "therefore unable to get his own car fixed. However when asked how he got to work every day he stated it had been "tricky " and family were helping out. We have had no further explanation provided from Mr Watson.

26. Insight is an important concept when considering impairment. Mr Watson has provided no analysis as to what steps he has taken personally and professionally to ensure that similar behaviour would not be repeated. It therefore cannot be said that Mr Watson has full insight or has fully reflected on the impact that her actions have had.

27. Also relevant are 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 regulator and in the profession would be undermined if a finding of impairment of fitness to practice were not made in the circumstances of this case.”

28. For all the reasons detailed above, whatever the panel decide in respect of future risk, it is submitted that, Mr Watson’s actions are so serious that a finding of current impairment is required in order to maintain public confidence in the professions and NMC and to uphold proper professional standards. The public confidence in the profession and the NMC as its regulator would be undermined if that behaviour was allowed to pass effectively unremarked.

29. Accordingly, this is a matter in which a finding of impairment is required on public interest grounds only.”

Ms Evans also made brief oral submissions. She submitted that your reflective piece does not explain why you used the employer’s car for personal use. She submitted that you have emerging insight as the reflective piece explores the impact the concerns raised had on you and your family but not on NHS Fife.

You gave evidence under affirmation.

You said that you understand the insult NHS Fife must have felt. You said that the concerns do not show nursing in a good light as standards are extremely high and are there to protect the public, patients and staff.

You accept that more reflection is needed on how you feel about your former employer as it is currently quite negative and cynical. You said that you are well aware of the working culture of senior management which was negative and bullying but you stated that this was not a defence for your actions.

You said that you were “all over the place” at the time and colleagues would ask you, in a supportive manner, how you were doing. However, you stated that this did not register with you or alert you to the potential of something being wrong.

You said that you have more insight now.

You stated that you understand the NMC’s point about public protection. You said that it is right that enquires are made public and transparent. You said that you know what you can still offer the nursing profession and what skills you bring to patients and families.

You said that you now feel more like yourself than you have done in while. You said that the period of the coronavirus pandemic was frustrating. You said that you were about to see if you could assist with NHS Fife during this time. However, you said that you knew this was not going to happen. You said that NHS Fife have made it quite clear that any reference it provides for you would be negative due to the misuse of the car pool. You said that this has made you “untouchable”.

Regarding the concerns, you said that looking back now you see how your actions were “absolutely ridiculous” and understood why NHS Fife raised this concern with the NMC.

You said that this made you realise how much you could lose and stated that you were “stupid” not to get help when you should have done. You stated that you now cannot help people in the way you know you can.

You said that you sometimes feel that the only reassurance you can give that this would not happen again is your word. You said that you hope the forthcoming testimonials demonstrate the effect you could have on clinical care and provide more reassurances.

[PRIVATE] You said that nobody made you do this and you take full responsibility.

You said that on three separate occasions, you offered to repay the costs incurred. You said that one occasion was to Ms 2 when the concerns came to light, the next was when you were suspended and the last was during a meeting with Ms 2 and HR. You said that you did not receive a response.

Ms Evans referred you to part of Ms 2's witness statement which stated that you indicated you thought you would have been asked to pay it back if you had been caught. You said that you do not recall saying "if you had been caught".

[PRIVATE]. You also said that you applied unsuccessfully for another role in Scotland as a support worker for autism but that a negative reference from NHS Fife had made this not possible.

Before the panel could ask its questions, Ms Evans referred the panel to an email, dated 1 September 2022, from Ms 2 which stated:

"He never offered to pay the money back, throughout the investigation [PRIVATE] when asked at the investigatory hearing on 29th January 2020 he indicated that "I thought there might be a big bill coming and that he had asked me how he could pay the money back. Given that this was the investigatory stage of this process I was unable to advise. If this had progressed to the disciplinary then that may have been a consideration by the panel however Neil resigned and submitted his retirement papers.

While this was discussed on a single occasion it was after the evidence was provided by the facilities department and the allegation had been put to Neil the booking of the car was ongoing at this point...”

In response, you said that you stand by your version of events.

In response to panel questions you said that you have been undertaking mindfulness [PRIVATE]. You said that this has been one of things you would use going forward and you have found it to be extremely helpful.

[PRIVATE]

Regarding your decision making process at the concerning time, you said that there seemed to be an opportunity in which you took advantage. You said that you should not have done this however, you cannot recall what was going through your mind when you did this.

[PRIVATE] During the concerning time, you said that there were regular team meetings, some with Ms 2. You said that you may have disclosed aspects of your family life but were very guarded about everything else including professional disengagement.

[PRIVATE]

You said that there was no clinical supervision process available until Ms 2 became the team leader. You said that you participated with this monthly. You said that you do not know what prevented you from raising your circumstances at the time. You said that you tried to appear as if everything was normal when it was not.

The panel noted that you had stated that you wished to retire from nursing prior to the hearing and now you appear to have changed your stance. In response you stated that the coronavirus pandemic changed your mind regarding this. [PRIVATE]. You said that

you have seen nurses doing their best and nurses that can do better. You stated that you believe you can help influence this.

You said since the age of 17 all you have wanted to do is help.

The panel accepted the advice of the legal assessor which included guidance from a number of relevant judgments.

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

Decision and reasons on misconduct

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

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

Specifically:

10 Keep clear and accurate records relevant to your practice

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

To achieve this, you must:

10.3 complete records accurately and without any falsification...

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

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 charges found proved in this case did fall significantly short of the conduct and standards expected of nurse and were so serious as to amount to misconduct.

With regards to charge 1, the panel noted that you used your former employers car for personal use over a six month period. It considered that you would have been aware that the car was for work purposes only. It concluded that your actions in respect of this charge amounted to misconduct.

With regards to charge 2, the panel was of the view that honesty is integral to the nursing profession and was of the view that your dishonesty undermines the public confidence in the profession. As a registered nurse, you would have known what was required of you in such circumstances. The panel was of the view that your actions in respect of charge 2 were serious and amount misconduct.

Having considered the proven charges individually, the panel then stepped back and viewed them collectively. It therefore considered that charges 1 and 2 amounted to a sufficiently serious departure from the appropriate standards expected and regarded as misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

For reasons already set out above in relation to misconduct, the panel considered that parts b, c and d were engaged by your misconduct in this case.

The panel accepted that there is no evidence of harm caused in this particular case. However, it concluded that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. In the panel's judgement, the public do not expect a nurse to act as you did as they require nurses to adhere at all times to the appropriate professional standards and to act with honesty and integrity. It was also satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel however recognised that it had to make a current assessment of your fitness to practice, which involved not only taking account of past misconduct but also what has happened since the misconduct came to light. The panel had regard to the case of *Cohen* and considered whether the concerns identified were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether you had provided evidence of insight and remorse.

Regarding insight the panel had regard to the fact that you had made immediate admissions when challenged by NHS Fife about the allegations and always accepted your wrongdoing. You also subsequently made admissions to charges 1 and 2 at the outset of the hearing. The panel noted that in your reflective statement and subsequently in your

oral evidence, at the time of the concerns your state of mind was adversely affected by your personal and financial circumstances.

The panel noted that you described your actions as “absolutely ridiculous”. It noted that you were ashamed of your actions and considered that you have demonstrated genuine remorse and identified how your failures impacted on your employers and the nursing profession.

The panel also took account of how you now appreciate what you could have done differently at the time by utilising the support provided by NHS Fife. It also noted your response to how you would recognise if you needed help in the future which included you [PRIVATE] and support from your family. Furthermore, you described to the panel the steps you would take in the future if you were able to return to nursing. You stated that it would be important to you that there would be a supportive process in place in any future workplace and that you would not hesitate to make use of this support to share any concerns rather than keep it to yourself as you had done in the past.

In light of your oral evidence and reflective statement the panel was satisfied that you have demonstrated a good level of insight and remorse.

The panel was satisfied that the concern arising from your misconduct in charge 1 was capable of remediation. Therefore the panel carefully considered the evidence before it in determining whether or not you had remedied this concern.

The panel noted that in your oral evidence you stated you offered to repay the amount incurred on three separate occasions. It also bore in mind the email sent by Ms 2, dated 1 September 2022. It particularly noted that:

“He never offered to pay the money back, throughout the investigation [PRIVATE] when asked at the investigatory hearing on 29th January 2020 he indicated that “I thought there might be a big bill coming and that he had asked me how he could

pay the money back. Given that this was the investigatory stage of this process I was unable to advise. If this had progressed to the disciplinary then that may have been a consideration by the panel however Neil resigned and submitted his retirement papers.

While this was discussed on a single occasion it was after the evidence was provided by the facilities department and the allegation had been put to Neil the booking of the car was ongoing at this point...”

The panel did not consider that Ms 2's account conflicted with your evidence. It bore in mind that Ms 2 was not present at this stage of the hearing for this evidence to be tested. It noted that you provided your account under affirmation which presented an opportunity for it to be cross examined. As a result, the panel found your evidence to be compelling and was persuaded by your version of events.

In light of the above, the panel is of the view that the risk of repetition is low with regards to your actions in charge 1.

Misconduct involving dishonesty is often said to be less easily remediable than other kinds of misconduct. However in the panel's judgment, evidence of insight, remorse and reflection together with evidence of subsequent and previous integrity are all highly relevant to any consideration of the risk of repetition, as is the nature and duration of the dishonesty itself.

The panel reminded itself that honesty is integral to the nursing profession and considered that your dishonesty in this case was a serious act that undermined the public confidence in the profession.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public

confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

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

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

The panel was satisfied that having regard to the nature of the misconduct in this case including the dishonesty, "the need to uphold proper professional standards and public confidence in the profession would be undermined" if a finding of current impairment were not made. It was of the view that a fully informed member of the public would be seriously concerned by your professional conduct in being dishonest.

For all the above reasons the panel decided that your fitness to practise is currently impaired by reason of misconduct on public interest grounds.

Sanction

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

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

Submissions on sanction

Ms Evans provided the panel with written submissions which it has read. It stated:

“The position of the NMC in regards to the sanction bid at this stage of the proceedings is that of a 6 months suspension order with review.

The sanction bid has been considered by the NMC and in my submission is the only suitable sanction to address the regulatory concerns.

The sanction guidance contained in the fitness to practise library provides that the purpose of a sanction is to maintain public confidence, this is made clear in the NMCs overriding objectives contained in the statutory framework. Any sanction decision is of course subject to the test of proportionality.

At this stage in the proceedings where the registrant’s fitness to practice has been found impaired on grounds Public Interest, other factors should also be taken into consideration.

The aggravating factors in this case include:

- 1) An informed member of the public would interpret Mr Watson’s actions as unacceptable.*
- 2) Breach of Trust*
- 3) No financial gain but did enjoy the use of employers car for “ no charge “*
- 4) Dishonesty over a prolonged period of time*
- 5) Mr Watson’s conduct caused a loss to public funds*

6) *His conduct was only discovered when an audit was carried out and it was continuing up to the date of the discovery.*

The mitigating factors

- 1) *No patient risk.*
- 2) *The Registrant has shown evidence of insight or remorse into his actions.*
- 3) *Mr Watson admitted his actions immediately when he was confronted by his employers.*
- 4) *Personal mitigation put forward by Mr Watson*

SANCTIONS IN ASCENDING ORDER

As you know, the panel must deal with the appropriate sanctions in ascending order of seriousness.

Taking no further action is used only in rare cases. This sanction would not secure the trust of the public.

A caution order is in effect used to address concerns at the lower end of the spectrum and therefore not a suitable sanction in this case.

A conditions of practice order is usually put in to place to address specific concerns and must be measurable workable and proportionate. In my submission there are no workable conditions which could address the registrant's actions. There are also no workable conditions which could regulate the public interest concerns in this case.

The panel have found that Mr Watson has shown a good level of insight and remorse in relation to his actions.

Turning to a suspension order. This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent:

There is evidence of harmful of attitudinal problems. This is evident in the actions that Mr Watson took to use his employer's pool car. Within paragraph 15 [Ms 2] stated that he thought he would have been asked to pay back the loss if he was caught.

We have seen no evidence of repetition of the failures since Mr Watson left the Trust. However I am mindful that Mr Watson is currently not working as a Nurse.

In relation to the committee being satisfied that Mr Watson does not pose a significant risk of repeating behaviour. The panel have the view that the risk of repetition is low with regards to his actions in Charge 1.

It is my submission that the public would be concerned if Mr Watson was allowed to continue to practise even with conditions.

Mr Watson's actions found proved in charge 1 and 2 in my submission are actions that this panel may consider as being concerning. The actions are aggravated by the fact that he was a registered professional using a vehicle that was to be used for NHS purposes not for his own personal travel. It is a breach of the level of trust and professionalism expected of him as a registered nurse. It is important for a nurse to be honest, therefore dishonest actions will always be serious. The dishonest actions continued up to the point he was spoken to about the vehicle use by his employers.

His actions raise fundamental concerns regarding his honesty in this line of work - The panel may consider there is no level of remediation insight or remorse which could address such actions –accepting the fact the panel have received evidence of insight and remorse.

The seriousness of the allegations and their duration, combined with evidence of insight or remediation lead to the conclusion that the appropriate sanction is of a

suspension. The law about healthcare regulation is clear that a nurse who has acted dishonestly will always be at risk of being removed from the register.

In my submission public confidence in the profession and the NMC's roles as an effective regulator would not be maintained if a suspension order was not made here today."

You stated that you accept your actions. You respectfully reminded the panel that the concerns identified occurred over a small period of time over a long career as a registered nurse.

You said that you have insight into your failings. You reminded the panel of the reflective piece you had provided and the reference. You said that you had asked two other people for references. You said that one declined, and you have not heard from the other.

You also said that the panel is aware of your personal mitigation during the relevant period.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust as a Senior Charge Nurse;
- Pattern of misconduct which spanned over a period of 6 months;

The panel also took into account the following mitigating features:

- Made immediate admissions as soon as you were confronted by NHS Fife and at the outset of this hearing;
- Difficult personal circumstances experienced at the time of the misconduct;
- Demonstrated evidence of good insight and remorse into your actions;

The panel first considered whether to take no action but concluded that this would be inappropriate due to the misconduct identified and dishonesty associated. 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 misconduct identified and dishonesty associated, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the misconduct and 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 your registration would be a sufficient and appropriate response. However, having already determined that there are no public protection issues, it concluded that no useful purpose would be served by 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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

Whereas this was not a single instance of misconduct it related to a continuation of the same behaviour over a single period. The panel found no evidence of personality or attitudinal problems. There has been no repetition of the behaviour since the incident and the panel was satisfied that you demonstrated good insight and remorse into your misconduct and that the likelihood of repetition is low.

The panel considered that the misconduct and the dishonesty associated with it represented a serious departure from the standards expected of registered nurses and impacted on the reputation of the profession. However, it bore in mind that you made early admission to NHS Fife and at the outset of this hearing. It also considered the personal circumstances you experienced at the time of the concerns. Further, it also bore in mind that you have demonstrated good insight, regret and remorse for your actions and have shown a greater understanding of your personal circumstances at the time. The panel is satisfied that were you to find yourself in a similar situation you would now act differently, be more open about your circumstances and seek appropriate help and support.

In light of the above, the panel considered that your misconduct was not fundamentally incompatible with remaining on the register and that the public interest could be marked by a suspension order.

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. Whilst the panel acknowledges that a

suspension may have a punitive effect, it would be unduly punitive in your 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 you. 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 determined that a suspension order for a period of three months was appropriate in this case to mark the seriousness of the misconduct and the dishonesty associated with it. It would achieve a balance between the interest of the NMC in maintaining confidence in the nursing profession and your own interest in maintaining your registration and returning to nursing practice. The panel considered that your competence as a nurse is not in question and bore in mind that it is in the public interest to return good nurses to the Register.

Having found that your fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision.

In accordance with Article 29 (8A) of the Order the panel considered its discretionary power to determine whether a review of the substantive order will be necessary upon its expiry.

The panel was satisfied that a review hearing prior to the expiry of this order is not required. The panel determined that you have developed good insight into your failings such that the risk of repetition is low. The panel further determined that there are no public

protection concerns in this case and is satisfied that a suspension order without review 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.

The panel therefore decided to exercise its powers under Article 29(8A) of the Nursing and Midwifery Order 2001 and direct that the 3 month suspension order be allowed to expire without a further review hearing.

This will be confirmed to you 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.

Submissions on interim order

The panel took account of the submissions made by Ms Evans. She submitted that an interim order should be made in order to allow for the possibility of an appeal to be made and determined. She submitted that an interim suspension order for a period of 18 months should be made on the grounds that it is in the public interest.

You made no comments in regard to the interim order application.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel is aware that the threshold for an interim order to be imposed solely on the grounds that it is in the public interest is high. However, it was satisfied that an interim order is in the public interest. The panel had regard to the seriousness of the misconduct, the dishonesty associated and the reasons set out in its decision for the substantive order. It was of the view that an informed member of the public would be concerned if no interim order was imposed in light of its findings. Therefore the panel concluded that the high threshold for making an order on public interest grounds alone had been met.

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

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

That concludes this determination.