

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

**Substantive Hearing
Monday 18 December – Wednesday 20 December 2023**

Virtual Hearing

Name of Registrant: Elita Aquino

NMC PIN 04B08080

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing (Level 1) – 20 February 2004

Relevant Location: Sutton

Type of case: Misconduct

Panel members: Peter Wrench (Chair, Lay member)
Donna Hart (Registrant member)
James Hurden (Lay member)

Legal Assessor: John Bromley Davenport KC

Hearings Coordinator: Taymika Brandy

Nursing and Midwifery Council: Represented by Leeann Mohamed, Case
Presenter

Mrs Aquino: Present and represented by David Welch,
Counsel

Facts proved by admission: Charge 1

Facts proved: Charges 2)a) and 2)b)

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking- off order

Interim order: Interim suspension order (18 months)

Decision and reasons on application to amend the charge

At the outset of the hearing, the panel heard an application made by Ms Mohamed, on behalf of the Nursing and Midwifery Council (NMC) to amend the wording of charges 1) and 2)a). This application was made pursuant to Rule 28 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). Ms Mohamed submitted that the proposed amendment would properly reflect the evidence in this case which refers to a debit card, not a credit card. She submitted that this is a factual inaccuracy and to allow this application would not cause any unfairness to either party.

Original charges:

That you, a registered nurse:

- 1) *Between 15 September 2018 and 19 October 2018, you and Person A used a credit card belonging to a former patient of Person A and bought goods to the value of approximately £17,877.42*
- 2) *Your actions as specified in charge 1 were dishonest in that:*
 - a) *you knew that you were not entitled to use the credit card;*
 - b) *you knew that what you were doing was wrong*

Proposed amended charges:

That you, a registered nurse:

- 1) *Between 15 September 2018 and 19 October 2018, you and Person A used a ~~credit~~ **debit** card belonging to a former patient of Person A and bought goods to the value of approximately £17,877.42*
- 2) *Your actions as specified in charge 1 were dishonest in that:*
 - a) *you knew that you were not entitled to use the ~~credit~~ **debit** card;*
 - b) *you knew that what you were doing was wrong*

Mr Welch on your behalf, had no objections to the application.

The panel accepted the advice of the legal assessor.

The panel considered that the amendments applied for were in the interests of justice. It noted that the application was uncontested, and that the amendments would more accurately reflect the evidence and therefore provide clarity. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed.

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

During the course of your oral evidence, Ms Mohamed made an application that parts of this hearing be in private as a result of reference to [PRIVATE]. The application was made pursuant to Rule 19 of the Rules.

Mr Welch indicated that he supported the application.

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, third party or by the public interest.

Having heard there will be reference to [PRIVATE], the panel determined to go into private session as and when such matters are raised, in order to protect that third party's right to privacy.

Details of charges (as amended):

That you, a registered nurse:

- 1) Between 15 September 2018 and 19 October 2018, you and Person A used a debit card belonging to a former patient of Person A and bought goods to the value of approximately £17,877.42.

2) Your actions as specified in charge 1 were dishonest in that:

- a) you knew that you were not entitled to use the debit card;
- b) you knew that what you were doing was wrong

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

Background

The NMC received your self-referral on 24 January 2019, in relation to you being arrested for allegations of fraud by false representation on 22 November 2018. At the material time, you were employed as an Intensive Care Nurse by Spire St Anthony's Hospital. You have worked as a registered nurse in the UK since 2003.

It is alleged that you and Person A had used a debit card belonging to Patient A and bought goods to the value of approximately £17,877.42

Patient A, an elderly person, was initially admitted to St Helier Hospital (the Hospital) A&E department on 13 September 2018. They were later admitted into hospital on 14 September 2018, and on 11 October 2018 Patient A was released into a care home with an end-of-life care plan. Person A worked at the Hospital as a Health Care Assistant. Patient A was under Person A's care at the material time.

On 18 October 2018, a social worker had attended Patient A's property whilst it was being deep cleaned to obtain paperwork. Upon viewing bank statements, it is alleged that the social worker had noticed large sums of money had been taken out of Patient A's joint bank account. It is alleged that the transactions were made whilst Patient A and their partner were both in care settings and therefore, could not have made these transactions.

The Police obtained a full bank statement from their bank that contained time, dates and locations of the transactions. Patient A advised that their card had not been in their possession since attending hospital.

On 22 November 2018, you and Person A were arrested for fraud by false representation and interviewed. During the interview, you admitted using the debit card, but stated that it was a gift from Patient A to Person A. You were released the same day.

Charges were brought against you and Person A. In due course Person A was convicted in the Crown Court but the Crown Prosecution Service (CPS) offered no evidence against you.

Since 16 July 2021, you have been employed by the White House Nursing Home as a registered nurse.

Decision and reasons on facts

At the outset of the hearing, Mr Welch informed the panel that you made full admission to Charge 1) and that you made partial admissions to charges 2)a) and 2)b).

The Chair therefore announced charge 1) proved by way of your admission. The panel went on to consider the partially admitted charges, as elements of these charges remain in dispute.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Mohamed and Mr Welch.

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 NMC did not call any witnesses on its behalf.

The panel heard evidence from you under oath.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor which included reference to the judgment in *Ivey v Genting Casinos* [2017] UK SC 67S.

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

Charge 2)a)

- 2) Your actions as specified in charge 1 were dishonest in that:
 - a) you knew that you were not entitled to use the debit card;

This charge is found proved.

In reaching this decision the panel took into account your evidence and your admission to charge 1).

The panel had regard to the legal test for dishonesty as set out in *Ivey v Genting Casinos*. The panel bore in mind that it must first ascertain the actual state of the individual's knowledge or belief as to the facts. Once this has been established, the question of whether the conduct was honest or dishonest is to be determined by applying the objective standards of ordinary and decent people.

The panel considered that you accept jointly using Patient A's debit card between 15 September 2018 and 19 October 2018, to purchase goods totalling to the value of approximately £17,877.42. The panel then assessed your actual state of knowledge or belief as to the facts.

During your oral evidence, you told the panel that you knew that it was wrong and contrary to The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (“the Code”) to accept gifts from patients that are not considered trivial. You gave an example of a trivial gift being a box of chocolates, which would be shared with colleagues.

You explained that you were aware that monetary gifts should be referred to a manager and it was not appropriate to accept these. However, you said you had initially felt entitled to use Patient A’s debit card as Person A had persuaded you of this.

You also outlined the [PRIVATE] , it is your evidence that you initially believed that this card was a gift from Patient A, however you knew it was wrong to accept any such gift. You stated that you were initially ‘*excited*’ as a result of receiving this gift. However, as a result of Person A’s [PRIVATE] became suspicious within the period set out in the charge and you asked Person A to return the card and inform his employer. Furthermore, you explained that Person A had persuaded you to use the card and that he had become both forceful and threatening when you no longer wanted to use the debit card to pay for goods. It is your evidence that you believe Person A made you do this so that you were both jointly responsible.

The panel noted that Mr Welch, on your behalf, at the outset of the hearing made a partial admission, in that you realised at a point after the material time that your behaviour was dishonest. Having heard your oral evidence, Mr Welch then conceded that your realisation had come before the end of the period specified in the charge.

The panel concluded that, as an experienced registered nurse and from your oral evidence, you knew from the outset that it was wrong to accept monetary gifts from patients. Further, the panel was of the view that while you may initially have suppressed this knowledge, as a result of your [PRIVATE] at the time, you always knew you were not entitled to use Patient A’s debit card.

The panel bore in mind that as a registered nurse, you occupy a position of trust and responsibility and that you had used Patient A’s debit card for your own financial gain. In

all the circumstances, the panel concluded that you knew that you were not entitled to use the debit card; and it determined that your conduct would be regarded as dishonest according to the standards of ordinary decent people.

Accordingly, this charge is found proved.

Charge 2)b)

2) Your actions as specified in charge 1 were dishonest in that:

b) you knew that what you were doing was wrong

In reaching this decision the panel took into account your evidence and your admission to charge 1).

This charge is found proved.

The panel bore in mind the legal test for dishonesty set out above and considered that you accept jointly using Patient A's debit card between 15 September 2018 and 19 October 2018, to purchase goods totalling to the value of approximately £17,877.42.

Having regard to its findings at charge 2)a), and the evidence it considered in respect of that charge, the panel assessed your actual state of knowledge or belief as to the facts. The panel considered that you had accepted during your oral evidence that your actions were wrong at the time and that you were dishonest. However, you stated that you had no deliberate intention to cause harm and that your actions were not premeditated. The panel acknowledged [PRIVATE]. Notwithstanding this, the panel concluded that you had known from the outset that it was wrong to have accepted and to have used Patient A's debit card. Despite this, you had used the debit card for your own financial gain. It also determined that your conduct would be regarded as dishonest according to the standards of ordinary decent people.

Accordingly, this charge is 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 your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

Submissions on misconduct and impairment

Ms Mohamed referred the panel 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.*'

She also referred the panel to the following NMC guidance:

- Guidance on Misconduct - Ref: FTP-2a (Last Updated 29/11/2021)
- How we determine seriousness - Ref: FTP-3 (Last Updated 01/08/2023)
- Serious concerns which are more difficult to put right- Ref: FTP-3a (Last Updated 01/07/2022)

Regarding the NMC guidance entitled 'Serious concerns which are more difficult to put right', Ms Mohamed explained that this guidance identifies conduct of the same nature found proved, as difficult to remediate, namely:

'exploiting patients or abusing the position of a registered nurse, midwife or nursing associate for financial or personal gain'.

Ms Mohamed invited the panel to take the view that the facts found proved are sufficiently serious as to amount to misconduct and were in breach of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code"). She then directed the panel to specific paragraphs and standards and identified where, in the NMC's view, your actions amounted to a breach of those standards.

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

Ms Mohamed referred the panel to the NMC guidance on Impairment ref: DMA-1 (Last Updated 27/03/2023). She also referred to the cases of *Cohen v GMC* [2015] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). She submitted that limbs a), b), c) and d) of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by your past actions.

Regarding limb a), Ms Mohamed submitted that your actions caused financial harm to Patient A that had the potential to lead to emotional distress. Regarding limb b), she submitted that the total sum of money spent was large and cannot be considered trivial. She submitted that you not acted with honesty and integrity, in that you used a card belonging to Patient A for your own financial and personal gain, and therefore brought the profession into disrepute. Regarding limb c), she submitted that you have in the past breached one of fundamental tenets of the profession, particularly, upholding your position as a registered nurse and upholding the reputation of the profession at all

times. Lastly, regarding limb d), she submitted that the charges found proved relate to dishonest conduct.

In relation to remediation, Ms Mohamed submitted that dishonesty is considered attitudinal and is therefore difficult to remediate. She submitted that it is a matter for the panel as to whether you have remediated the conduct found proved and if there is a risk of repetition. She invited the panel to consider your reflections and your oral evidence. Also, how these concerns came to light, as whilst it is accepted that you did make a self-referral, she submitted that you did not attempt to rectify your position at an earlier time.

Ms Mohamed reminded the panel that it can make a finding of the current impairment solely on the grounds of public interest. However, she submitted that it is the NMC's view that there is a risk of repetition and that your fitness to practise is currently impaired on both public protection and public interest grounds.

Mr Welch submitted that you accept that your conduct in the charges found proved amounts to misconduct.

Regarding the issues of current impairment, Mr Welch submitted that you accept that these are serious failings that led to you initially being charged by the CPS, however they did not take a case forward against you. He informed the panel that Person A received a custodial sentence for his offence and submitted that it was Person A that initially took the card and persuaded you to use the card. After you told Person A to return the card and inform his manager, he subsequently put pressure on you to continue using the card.

Mr Welch submitted that these matters occurred five years ago and since July 2021, you have continued to work as a registered nurse without concern. He referred the panel to the references you have provided from your current employer and submitted that there are no issues with your clinical and professional performance. He submitted that you occupy a position of trust and that you are a valued member of staff. Further,

you were transparent and candid from the outset with your current employer about what had happened.

Mr Welch submitted that your remediation is demonstrated by the good work you have done, your reflections and the evidence of relevant training undertaken following the events and more recently. He submitted that it is evident from your reflections and evidence that you have read NMC guidance and taken note of what has been said at the various courses you have attended.

Mr Welch outlined the financial and reputational impact that a finding of current impairment may have on you and submitted that you understand your behaviour was unacceptably wrong.

Regarding public protection, Mr Welch invited the panel to consider the current risk. He submitted that there have been no concerns since the initial allegations and that there does not remain a risk of repetition, as you would not put your career or registration at risk again. He submitted that the public do not need to be protected as you have sufficiently demonstrated that you can be trusted.

The panel accepted the advice of the legal assessor which included reference to the relevant cases of *Meadows v GMC* [2006] EWCA Civ 1390, *Grant, Cohen* and *Roylance*.

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, in reaching its decision, had regard to the protection of the public and the wider public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that your actions amounted to a breach of the Code.
Specifically:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

...

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

...

20 Uphold the reputation of your profession at all times

To achieve this, you must:

...

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

...

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

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

To achieve this, you must:

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel bore in mind the NMC guidance entitled: 'Guidance on Misconduct' and 'Serious concerns which are more difficult to put right'.

The panel considered that your actions involved dishonestly using Patient A's debit card to purchase goods totalling to a value of approximately £17,877.42. The panel did not consider this to be an isolated action, and it was of the view that you engaged in this dishonesty for a period of over four weeks without making any attempt to escalate your concerns to the appropriate authorities. The panel considered that patients, fellow practitioners, and members of the public expect nurses to act with honesty and integrity at all times and that your conduct in exploiting Patient A for your own financial gain was at the higher end when considering seriousness. It was of the view that your actions amounted to an abuse of your position of trust as a registered nurse and therefore breached a fundamental tenet of the nursing profession.

The panel concluded that your actions fell far below such standards expected of a registered nurse, and that members of the public and fellow professionals would consider your behaviour deplorable. The panel, therefore, determined that your actions at charges 1),2)a) and 2)b) breached the Code and were sufficiently serious to amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if, as a result of this 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. Nurses 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 *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 limbs a, b, c and d of the above test were engaged by your past actions. The panel considered that you caused financial harm to Patient A, that had the potential to cause emotional distress, and therefore put them at an unwarranted risk of harm. The panel considered that honesty and integrity are fundamental tenets of the nursing profession and that patients, fellow professionals and members of the public expect nurses to act with honesty and integrity at all times. It considered that your actions, in dishonestly using Patient A's debit card over a period of time, clearly breached fundamental tenets of the nursing profession and brought the nursing profession into disrepute.

The panel are aware that this is a forward-looking exercise, and accordingly it went on to consider whether your misconduct was remediable and whether it had been remediated.

Having regard to the case of *Cohen*, the panel accepted that dishonesty is difficult to remediate, but considered that the actions in this case were capable of remediation.

The panel then went on to consider any evidence of insight and remediation and whether you remained liable to act in a way to put patients at risk of harm, to bring the profession into disrepute to breach fundamental tenets of the profession and act dishonestly in the future.

Regarding insight, the panel noted that you had self-referred to the NMC, admitted charge 1) and had accepted that the charges found proved amount to misconduct. The panel acknowledged the training you had undertaken noting that it was relevant to the concerns found proved. However, it was of the view that you had not fully demonstrated what you had learnt from this training or how you would put the theory of this training into practice.

The panel also noted that you had provided a number of reflections. In your most recent reflection, you state:

[PRIVATE]

The panel considered that although you had made admitted charge 1), your use of the passive voice was an example of your efforts to minimise your personal responsibility, rather than fully acknowledging what you had personally done wrong. Further, the panel noted that you had not acted to prevent use of the card. In all the circumstances, the panel concluded you had taken limited accountability for your actions and that you had not fully acknowledged how your actions impacted upon Patient A, their family, colleagues and on public trust in the nursing profession. Therefore, it determined that you have limited insight into your actions.

The panel noted that you have worked as a nurse since July 2021 and that you have provided positive references. The panel noted that in a reference dated 15 December 2023 from the Registered Manager at the Home, it states:

'Families and Friends have complimented EA on her honest and transparent communication about their loved ones. EA has a very kind and empathetic approach when sharing sensitive information ... Her sense of humour always makes the family feel better and comfortable.'

The panel noted that whilst the other references were positive, they did not specifically address your integrity, which is relevant to the matters found proved.

The panel noted that, during the course of your oral evidence, your account differed from that given to Police during your interview and you put forward that you were under duress from Person A to use the debit card. The panel noted that this was the first time that you had made any mention of this as a factor; it was not referred to in any of the documents you have previously supplied including your reflective pieces. Whilst the panel acknowledges the difficulty faced by people giving evidence in these proceedings and of the type you have put forward, the panel considered that the late mention of this factor, which was only introduced toward the end of your evidence to the panel, undermined the credibility of the evidence you gave to the panel.

The panel bore in mind its findings regarding your dishonest behaviour and your limited insight, and the panel could not be fully satisfied of your ability to act honestly in the

future. The panel acknowledged that you are unlikely to repeat the matters found proved, however, given that honesty is central to nursing practice, the panel considered that patients could be placed at real risk of harm in the future if you were to behave dishonestly when [PRIVATE]. As such, the panel considered that there is a risk of repetition and that you remained liable to act in a way which could place patients at risk of harm, bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly in the future. The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession.

The panel considered that patients, fellow practitioners and members of the public expect nurses to act with honesty at all times. It considered that such individuals would be extremely concerned to hear about the behaviour of a nurse, who used the bank card of a patient over a period of over four weeks to dishonestly make unauthorised transactions. The panel considered that confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made in the circumstances. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

Having regard to all of the above, the panel was satisfied that your 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 you off the register. The effect of this order is that the NMC register will show that you have 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.

Submissions on sanction

Ms Mohamed submitted that the appropriate and proportionate sanction in this case is striking-off order. She outlined the aggravating and mitigating features in this case and referred the panel to the SG.

Ms Mohamed invited the panel to consider the sanctions in ascending order, and to have regard to the public protection and public interest issues in deciding on the most appropriate and proportionate sanction. She submitted that taking no action would not address the public protection and public interest issues identified, and that a caution order would not be appropriate, as this case did not involve misconduct at the lower end of the spectrum of impaired fitness to practise.

Regarding a conditions of practice order, Ms Mohamed reminded the panel that any conditions imposed must be relevant, proportionate, measurable and workable. She submitted that the misconduct in this case does not relate to clinical concerns and given the nature of the facts found proved, there are no workable conditions that could be formulated to mitigate the risks identified. For these reasons, she submitted that a conditions of practice order would not be appropriate or sufficient to maintain public confidence in the profession and to protect the public.

Ms Mohamed submitted that a suspension order would not be appropriate or proportionate in the circumstances of this case given your limited insight, the risk of repetition identified and that the misconduct found proved spanned a period of approximately four weeks.

In addressing the panel on a striking- off order, Ms Mohamed referred the panel to the SG and the NMC guidance entitled 'Considering sanctions for serious cases' Ref: SAN-2 (Last Updated 11/12/2023). Specifically:

[...] 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, [...] longstanding deception'*

Ms Mohamed submitted that the dishonesty in this case is at the higher end of the spectrum of impaired fitness to practise and seriousness and therefore, a striking-off order is the only appropriate and proportionate order in all the circumstances. She referred the panel to the judgement in the case of *Bolton v Law Society* [1994] 1 WLR, in which Sir Thomas Bingham states: "*the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price*".

Mr Welch informed the panel that he would not be making submissions regarding the imposition of no order, a caution order or a conditions of practice order, as it is accepted that your misconduct was serious. He reminded the panel that any sanction imposed must not unduly punitive.

Mr Welch submitted that you have worked as a registered nurse since July 2021 with honesty and integrity and you haven obtained several positive references. He submitted that if you were suspended you would be unable to work and that you have demonstrated your ability to practice safely and effectively. Regarding the panel's finding of limited insight, he submitted that you have taken positive steps to gain insight and that this is part of your journey. He submitted that you have undertaken various courses both online and in person.

In relation to a suspension order, Mr Welch submitted that it is accepted that your behaviour can be identified as a single course of conduct. He invited the panel to consider Person A's involvement in initially obtaining and using the card. Also, that you are previously of good character and that you have been a nurse for 26 years, (20 years as a registered nurse in the UK). He submitted that there is no evidence that the public would be at risk if you were permitted to practise. However, he submitted that if the panel were minded to impose a suspension order, he would invite it to consider the mitigating features in this case prior to the concerns put forward at this hearing, including [PRIVATE]. Further, he submitted that a short period of suspension would mark the seriousness of these matters and allow you to continue working on your insight and remediation.

Regarding a striking- off order, Mr Welch submitted this order should not be the default position for dishonesty cases. He submitted that this would be a catastrophic event for you, which would bring your nursing career to an end. He acknowledged that you would be able to re-apply to the register in five years' time, however given your age and the stage in your career, he submitted that this would be unlikely. He submitted that a reasonable and fully informed member of the public would take into account your previous good character, your self-referral, the mitigating features in this case and the length of your previously unblemished nursing career. In addition, the evidence of insight and evidence of you trying to put matters at the material time.

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 NMC's published guidance on sanctions. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following to be aggravating features in this case:

- Your actions involved a continuing deception over a period of more than four weeks, using Patient A's debit card totalling to a significant spend of approximately £17,877.42. The panel considered that this constituted a course of conduct;
- You only admitted to having behaved dishonestly at the material time when challenged during your oral evidence. Your admission was qualified and you sought to minimise your role by shifting blame to Person A;
- Your delay in acting to prevent financial harm caused to Patient A and their family and your failure to challenge dishonesty as a registered nurse in a position of trust. The panel considered that as a result, you placed the financial gains of you and Person A before the safety and wellbeing of Patient A;
- Your actions caused significant financial harm to Patient A and their family; and
- You have demonstrated limited insight into the actual harm caused and the panel considered that your reflections have been superficial.

The panel considered the following to be mitigating features in this case:

- Your actions were an isolated course of conduct; and
- Your previous good character, with no regulatory findings against you, and no evidence of repetition of similar behaviour or any other concerns since these incidents.

Prior to considering the sanctions in ascending order, the panel had regard to the NMC's guidance on considering sanctions for serious cases and assessed the

dishonesty in this case. It noted that the most serious forms of dishonesty, which are most likely to question whether a nurse should be allowed to remain on the register, often 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*
- *[...] longstanding deception*

The panel noted that dishonesty will be generally considered less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *no risk to patients*
- *incidents in private life of nurse, midwife or nursing associate'*

Having regard to this case, the panel considered that there was deception over a period of several weeks and that your dishonest actions involved an abuse of your position as a registered nurse, for personal financial gain. Whilst this occurred over a single period of time, the panel considered that it did not involve a one-off incident, but a number of repeated actions over a period of time, forming a course of conduct. Balancing these factors as a whole, the panel considered that the dishonesty in this case was at the upper end of the spectrum of seriousness.

The panel then went onto consider what action, if any, to take 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 misconduct. The panel decided that

taking no action would not protect the public and it would not satisfy the wider public interest.

The panel next considered whether a caution order would be appropriate in the circumstances. The panel took into account the SG, which states that a caution order may be appropriate where:

“...the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise Committee wants 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 of impaired fitness to practise, given that it involved dishonestly using Patient A's debit card to spend a significant amount of money, approximately £17,877.42. The panel was of the view that this was a dishonest course of conduct which involved a number of instances of dishonest behaviour over a period of time. A caution order would fail to place any restrictions on your practice. The panel therefore considered that a caution order would not protect the public. Furthermore, it would not address the seriousness of this misconduct, and the public interest, in maintaining confidence in the nursing profession and in the NMC as a regulator.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be appropriate, proportionate, measurable and workable. The panel had regard to the fact that the misconduct in this case did not involve concerns about your clinical practice. However, it involved a number of instances of dishonest behaviour over a period of time. The panel did not consider that it was possible to identify workable, measurable and practicable conditions of practice to address this type of behaviour. Furthermore, the panel considered that a conditions of practice order would not mark the seriousness of your misconduct, or address the wider public interest in maintaining confidence in the nursing profession and in the NMC as a regulator.

The panel went on to consider whether to impose a suspension order. The panel had regard to the SG, which states that a suspension order may be appropriate where 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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*

The panel considered that whilst the incidents in this case occurred in an isolated period of time in your career as a nurse, they did not involve a single instance of misconduct. They involved a number of instances of dishonest behaviour over a period of four weeks. The panel considered this to have been a serious and sustained deception. The panel considered there was some evidence of attitudinal problems in this case, noting your superficial reflection. The panel found that your oral evidence relating your state of mind at the material time had been inconsistent and lacked credibility.

The panel acknowledged that there was no evidence to suggest you had repeated the behaviour since the incidents in 2018, having continued practising as a registered nurse from July 2021. However, the panel determined that in the intervening five years since your behaviour and your appearance before the panel, you have failed to develop full insight into the importance of honesty and integrity to the role of a Registered Nurse. Consequently, the panel considered that there remains a risk of you repeating the behaviour.

The panel noted that you had provided a number of positive references from your current employer, however these did not comment on your integrity, and only commented on your honesty in relation to your communication. As such, the panel was only able to place limited weight on this documentation.

The panel reminded itself of its findings at the impairment stage. Whilst you had accepted the factual findings of the panel, that the charges found proved amount to

misconduct, the panel was not satisfied that you had taken full responsibility for your actions and shown a deep understanding of why they were wrong. The panel concluded that you had demonstrated insufficient remorse and concern for Patient A and their family; nor have you demonstrated your understanding of how your actions impacted on your colleagues and on public trust in the nursing profession.

Taking all of this into account, given the serious level of dishonesty in this case and the lack of sufficient evidence of insight and remorse, the panel did not consider that a period of suspension would be sufficient to protect patients and public confidence in nurses and to maintain professional standards.

The panel went on to consider whether to impose a striking-off order. The panel had regard to the SG which states that:

This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

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

The panel considered that your behaviour, which involved dishonestly using Patient A's debit card was a sustained deception over a period exceeding four weeks for the purpose of personal financial gain. The panel was of the view that you knew you were not entitled to Patient A's debit card and that your behaviour was wrong from the outset. The panel concluded that this was fundamentally incompatible with being a registered professional. The panel reminded itself that honesty and integrity are fundamental

tenets of the nursing profession, and it considered that your behaviour did raise fundamental questions about your professionalism. Given your level of dishonest behaviour, and the lack of evidence of any compelling insight on your part, the panel considered that public confidence in nurses would not be maintained unless you were permanently removed from the register. It considered that a striking-off order is the only sanction sufficient to protect patients and members of the public and to maintain public confidence in the profession.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the nursing profession a clear message about the standard of behaviour required of a professional and a registered nurse.

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 your own interest until the striking-off sanction takes effect.

Submissions on interim order

Ms Mohamed submitted that an interim suspension order was necessary for the protection of the public and is otherwise in public interest. She relied on the panel's earlier findings to support that submission. She therefore invited the panel to impose an interim suspension order for a period of 18 months to cover the 28-day appeal period and for any potential appeal to be lodged and considered.

Mr Welch did not object to this application.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

Having regard to the findings in this case, the panel did consider that an interim order is necessary to protect the public and is otherwise in the public interest. Having regard to the seriousness of the misconduct in this case and the reasoning for its decision to impose a striking-off order, the panel considered that to not impose an interim order would be incompatible with its previous findings.

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

That concludes this determination.

This will be confirmed to you in writing.