

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

**Substantive Hearing
Monday, 12 February – Tuesday, 20 February 2024**

Virtual Hearing

Name of Registrant:	Moira Wilson
NMC PIN:	0311511S
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – September 2005)
Relevant Location:	Scottish Borders
Type of case:	Misconduct
Panel members:	Adrian Smith (Chair, lay member) Patience McNay (Registrant member) Matthew Wratten (Lay member)
Legal Assessor:	Trevor Jones
Hearings Coordinator:	Angela Nkansa-Dwamena (12 – 16 February 2024) Muminah Hussain (19 – 20 February 2024)
Nursing and Midwifery Council:	Represented by Matthew Kewley, Case Presenter
Miss Wilson:	Present and represented by Christie Wishart, counsel instructed by Thomsons Solicitors
Facts proved:	Charges 1(b), 2, 3 & 4 (in respect of charge 1b)
Facts proved by admission:	Charges 1(a), 1(c) & 4 (in respect of charge 1a and 1c)
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Suspension order (12 months)
Interim order:	Interim suspension order (18 months)

Decision and reasons on further redactions of the exhibit bundle

At the outset of the hearing, it was identified that extraneous material that did not form part of the charges had not been redacted from the Nursing and Midwifery Council's (NMC) Exhibit Bundle.

Mr Kewley, on behalf of the NMC, submitted that the final bundle had been agreed upon by the NMC and your representatives. He submitted that it appeared that some redactions had been missed and this error had not been picked up when the bundles were approved. Mr Kewley further submitted that the missed redactions made references to an allegation that is not being pursued by the NMC.

Mr Kewley submitted that he had discussed this matter with Ms Wishart, your representative, and the joint proposal was to ask the panel to put this extraneous matter out of its mind, similar to if it had heard hearsay evidence. He submitted that it is clear that the extraneous material should have been redacted from the bundle but now that the panel has seen it, it is capable as a professional tribunal, of disregarding this information. Mr Kewley further submitted that there was no need for further redactions to be made to the bundle as the panel had already seen the information and will know what was contained within the redactions.

Notwithstanding this, Mr Kewley submitted that if the panel feels that it is unable to proceed without having a further redacted version of the bundle, then he would be happy to assist in providing a further redacted bundle before the panel proceeds to deliberate on the facts of this case.

Ms Wishart, on your behalf, submitted that she agreed with Mr Kewley's submissions and was grateful that the issue had been identified. She submitted that the panel is a professional and experienced panel, capable of putting the extraneous matters out of its mind. She further submitted that if so desired, she did not have any difficulty in a newly redacted bundle being circulated.

The panel heard from and accepted the advice of the legal assessor who referred to the case of *Squire v Thames Valley Police & Anor (R. on the Application of)* [2016] EWCA Civ 1315, as to it being recognised that panels can be relied upon to put such extraneous material out of their mind when determining facts and suggested that in the event of an appeal, the absence of a newly redacted bundle could be cumbersome.

The panel determined that a further redacted exhibit bundle would be helpful for the avoidance of doubt. The panel considered that if this case was to be appealed, a judge would need to carefully go through the bundles and a further redacted bundle would provide clarity as to what this panel considered during these proceedings.

Accordingly, the panel made it clear it was putting such extraneous material out of its mind when hearing the case and requested a further redacted bundle to be put before it, prior to its consideration of any evidence adduced by the NMC.

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

Ms Wishart made an application for parts of this hearing to be held in private. This was on the basis that proper exploration of your case involves references to your [PRIVATE] and private life. She submitted that given the nature of the allegations and the sensitive topics that they relate to, this application was being made to protect your privacy. Ms Wishart indicated that both she and Mr Kewley had agreed to group any questions relating to your health or private life together, to avoid the inconvenience of repeatedly going in and out of private session. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Kewley indicated that he supported this application. He submitted that from reading the papers there were sensitive matters that form part of the contextual background to the allegations being considered by the panel. Mr Kewley further submitted that both he and Ms Wishart will endeavour to identify to the panel when the hearing will need to enter private session.

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 in the interests of any party or by the public interest.

The panel decided to hold parts of the hearing pertaining to your [PRIVATE] and private life in private so as to protect your right to privacy.

Details of charge

That you, a registered nurse:

1. After caring for Patient A at [PRIVATE] Hospital in August 2020:
 - a. On one or more occasions received payment for providing domestic services on a private basis to Patient A and her husband.
 - b. Shared incorrect information about your personal circumstances with Patient A and/or her husband.
 - c. Accepted a loan for £26,800 from Patient A's husband in September 2020.
2. Your actions at charge 1b above were dishonest in that you intended to obtain a personal financial gain by stating to Person A's husband that you had lost close family members in the previous two years.
3. Your actions at charge 1c above demonstrated a lack of integrity in that you accepted the loan without seeking to correct any false impression you had given about your personal circumstances.
4. Your actions at charge 1a and/or 1b and/or 1c above breached professional boundaries.

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

Background

The NMC received a referral from a member of the public, Person A, on 15 November 2020, raising concerns about your conduct outside of your employment as a nurse. The charges arose whilst you were employed as a registered nurse at [PRIVATE] (the Hospital).

Person A is the relative of Patient A, a former patient who had previously been cared for by you whilst admitted on [PRIVATE]. During Patient A's stay on the ward, it is reported that you had agreed with Person A to provide housekeeping/cleaning services on a private basis to support both Patient A and Person A following Patient A's discharge.

After Patient A was discharged from the Hospital, it is said that you attended their home on a number of occasions to provide cleaning/housekeeping services, during which you divulged information about your personal and financial circumstances. It is alleged by Person A that the personal information you divulged was inaccurate.

The matter was reported by Person A to the Hospital, and you received a written warning for 12 months following a conduct hearing held by the Hospital in April 2021.

It is reported that you have repaid the loan to Person A in full.

Decision and reasons on facts

At the outset of the hearing, Ms Wishart informed the panel that you made full admissions to charges 1(a), 1(c) and charge 4 (with respect to charges 1(a) and 1(c) only).

The panel therefore finds charges 1(a), 1(c) and charge 4 (with respect to charges 1(a) and 1(c) only) proved by way of your admissions.

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 Mr Kewley, on behalf of the NMC and Ms Wishart, on your behalf.

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

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

- Witness 1: Person A, relative of Patient A.

The panel also considered the agreed written statements of:

- Witness 2: Senior Charge Nurse and Investigating Manager at the time of the incident.
- Witness 3: Clinical Manager at the time of the incident.

The panel also heard evidence from you under affirmation.

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

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

Charge 1(b)

That you, a registered nurse:

1. *After caring for Patient A at Borders General Hospital in August 2020:*

b. Shared incorrect information about your personal circumstances with Patient A and/or her husband.

This charge is found proved

In reaching this decision, the panel took into account the various local investigation documents, Witness 1's (Person A) oral evidence and written witness statement, Witness 2 and 3's written witness statements and your oral evidence. The panel also had regard to the statement of agreed facts dated 12 February 2024.

The panel noted that in Person A's initial complaint letter to the Hospital, dated 14 November 2020, he stated:

'She arrived and as we were having lunch, she started to explain what a terrible two years she had had. [PRIVATE]. She went on to say that if that was not enough [PRIVATE]...'

This was supported by his written witness statement 27 June 2022:

'... the Nurse said "oh I have had a terrible two years"...[PRIVATE]'

The panel also noted that Person A remained consistent on this point during his oral evidence.

With respect to the information you shared with Person A [PRIVATE], Person A stated the following in his complaint letter:

'She emailed me to thank me for the loan and said... I need to pay [PRIVATE].'

This was further reiterated during the local investigation meeting on 11 December 2020:

{PRIVATE}'

This was also supported by Person A's oral evidence and written witness statement:

'...the third time that the Nurse visited she explained [PRIVATE]'

During your oral evidence, you stated that whilst having lunch with Person A and Patient A on 6 September 2020, [PRIVATE].

During cross-examination, Person A had stated that it was unlikely that he had misheard 'few' years as 'two' years, [PRIVATE] in such a short time period that contributed to his decision to loan you the initial amount of £15,000. Furthermore, you ultimately accepted that your earlier evidence as to Person A sending you an unsolicited and 'controlling' amount of £15,000, as this was in conflict to your earlier written submissions given before the Trust where you set out that you had mentioned to Person A and how the sum of £15,000 may help you [PRIVATE].

In relation to the discussion about [PRIVATE], the panel had regard to your reflective statement, which you produced prior to the local investigation. It is suggested by both advocates that this may have been written in January 2021. You stated:

{PRIVATE}'

During your oral evidence, you clarified that [PRIVATE].

This was supported by the following statement made by Witness 2 in her written statement:

{PRIVATE}.'

When asked during cross-examination if Person A would have known that you were referring to [PRIVATE].

The panel considered the above evidence and decided to accept Person A's account. The panel considered that Person A's evidence had been consistent since his initial complaint, when providing further details of the same to the Trust investigator (Witness 3), in his NMC witness statement and had remained so during his oral evidence under cross examination. The panel considered that there was little for Person A to gain from being untruthful, as he stated that he was going to loan you the money anyway. In addition to this, Person A came forward with his complaint as a result of him becoming aware [PRIVATE]. He felt you had taken advantage of his general good nature and willingness to help people [PRIVATE] and because he had concerns about the possibility of you caring for Patient A in the Hospital in the future.

The panel was mindful of your previous good character and has been careful to assess the evidence in light of any challenges to the evidence led by both parties to these proceedings and has been at pains not to rely upon the manner in which evidence was given in terms of demeanour.

Whilst the panel acknowledged that you were emotional throughout your testimony, and this may have had an impact on your evidence. The panel found your oral evidence was inconsistent at times and you often stated that you could not recall certain aspects.

Notwithstanding this and making all due allowance, the panel noted that there were a number of inconsistencies in the following areas.

Your relationship with Person A

The panel noted that throughout the local investigation and during your oral evidence, you sought to describe Person A as overbearing, controlling and persuasive and you felt pressured to take the loan. However, your text message and email communications with Person A seemed to undermine this:

Sent (24 September 2020 at 09:58)

'To advice hot line!

Wires crossed confused.com!

Thanks for reply

Will discuss sunday in conversation shed!

Regards

One confused [bunny emoji] bunny xx'

Sent (28 September 2020 at 10:07)

'It's fine [Person A] just sent it when your [sic] home if it's ok xxx...

Was still in bed when you called am [sic] just up as that the first good sleep in ages xx don't feel anxious now x thanks for your help xxx'

The panel noted that there did not appear to be any obvious discomfort from your responses in the texts and emails. The panel acknowledged that whilst there were numerous 'kisses (x)' within the communications, there was no suggestion by you or Person A that there was an inappropriate relationship, and the panel did not read into this as anything other than common use of social communication.

Receiving advice from Person A

During your oral evidence, you told the panel that Person A was not someone you would go to for advice as you did not know him very well. However, when probed by Mr Kewley during cross-examination and referred to various emails, you stated that Person A would call himself the 'Advice Hotline' and you would seek advice on [PRIVATE], as evidenced in the email below:

'Looking for advice (NOT FOR YOU TO HELP)... [PRIVATE] ...can you advise how this is I am no good with this'

The panel noted that the initial account you gave was inconsistent with the email communications you had with Person A.

[PRIVATE].

[PRIVATE].

[PRIVATE].

[PRIVATE].

[PRIVATE].

In light of the above, the panel determined that you had shared incorrect information about your personal circumstances with Person A and Patient A.

Accordingly, the panel found charge 1(b) proved on the balance of probabilities.

Charge 2

2. *Your actions at charge 1b above were dishonest in that you* [PRIVATE].

This charge is found proved

The panel first considered its previous findings with respect to charge 1(b).

The panel then went on to consider whether your actions in relation to charge 1(b) were dishonest. It had regard to the test set out in *Ivey v Genting Casinos* [2017] UKSC 67 which outlines the following:

- What was the defendant's actual state of knowledge or belief as to the facts;
and
- Was the conduct dishonest by the standards of ordinary decent people?

The panel also had regard to the NMC guidance entitled '*Making decisions on dishonesty charges*' (reference DMA-7) dated 12 October 2018. Within this

guidance, Fitness to Practise Committee (FtPC) panels are advised to decide whether the conduct indeed took place and if so, what was the registrant's state of mind at the time. Panels are reminded to consider the following:

- *'What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*
- *Whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or*
- *Whether there is evidence of alternative explanations, and which is more likely.'*

In reviewing the evidence, the panel considered your oral evidence. You stated that during the Sunday lunch, you had reluctantly told Person A and Patient A about your personal family circumstances and financial difficulties upon Person A's persistence. You told the panel that you did not recall stating that [PRIVATE]. You told the panel that it was likely that Person A misheard you say 'few' years as 'two' years.

However, as previously outlined in charge 1(b), the panel did not accept your account in relation to this conversation. [PRIVATE].

The panel determined that you knew that you had given incorrect information to Person A regarding that the time period in which [PRIVATE]. The panel explored other reasonable explanations for you providing incorrect information and determined that even if Person A had misheard you, you did not attempt to correct the misapprehension as there was an intention to mislead for [PRIVATE].

The panel determined that in light of this, your actions in relation to charge 1(b) would be regarded as dishonest by the standards of ordinary decent people and it was therefore satisfied that you were dishonest in your actions.

Accordingly, the panel found that your actions at charge 1(b) were dishonest in that you intended to obtain a personal financial gain [PRIVATE].

The panel therefore found Charge 2 proved on the balance of probabilities.

Charge 3

3. *Your actions at charge 1c above demonstrated a lack of integrity in that you accepted the loan without seeking to correct any false impression you had given about your personal circumstances.*

This charge is found proved.

In reaching this decision, the panel considered its findings in relation to charge 1(b) and charge 2 in that you provided incorrect information to Person A to create a false impression.

The Oxford dictionary defines integrity as:

'the quality of being honest and having strong moral principles.'

The panel considered that by not seeking to correct the false impression that you gave to Person A, you had demonstrated a lack of integrity as a registered professional. The panel concluded that you sought to mislead Person A in order to obtain a personal financial gain.

Accordingly, the panel found that your actions at charge 1(c) demonstrated a lack of integrity in that you accepted the loan without seeking to correct any false impression you had given about your personal circumstances.

The panel therefore found charge 3 proved on the balance of probabilities.

Charge 4 (with respect to Charge 1(b) only)

4. *Your actions at charge 1a and/or 1b and/or 1c above breached professional boundaries.*

This charge is found proved.

In reaching this decision, the panel took into account Person A's documentary and oral evidence, and your oral and documentary evidence. It also took into account the written witness statements of Witness 2 and 3, dated 13 April 2022 and 30 June 2022 respectively.

The panel considered whether your actions in charge 1(b) constituted a breach of professional boundaries. The panel took into account its findings in relation to charge 1(b).

The panel noted that you had admitted to providing private domestic services to Person A and Patient A and had accepted an interest free loan totalling £26,800 from Person A. The panel also noted that you divulged information about your personal family circumstances and financial situation to Person A. This was supported by Person A's accounts.

The panel considered Witness 2's witness statement in which she stated:

'I felt that the Nurse made unprofessional and erratic decisions in relation to their relationship development with [Person A]

...

There was a clear breach of the NMC Code...'

Witness 3 had made a similar comment within her witness statement:

'The Nurse's duty is to never form a relationship with an ex-patient or their family. It is a breach of the NMC Code...

The Nurse had accepted a loan from [Person A], which is a breach of the code and of professional boundaries...

As a professional, you adhere to the Code and should never disclose any personal information regarding yourself.'

The panel considered the above statements made by Witness 2 and Witness 3, and determined that your actions in charge 1(b) was wholly inappropriate and had breached professional boundaries. The panel considered that divulging personal information about your personal circumstances is not expected from a professional and the boundary between a nurse, their patient and their family members had been crossed.

In light of the above, the panel found that your actions at charge 1(b) breached professional boundaries. The panel noted that you had previously made admissions to charge 4 in relation to charges 1(a) and 1(c).

The panel therefore finds charge 4 (in respect of charge 1(b) only) 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 ability to practise kindly, safely and professionally.

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.

Your oral evidence

Ms Wishart called upon you to give live evidence and the panel heard from you under affirmation.

You told the panel that you have been registered with the NMC as a registered nurse since 2005 and have worked at the Hospital since 1997, where you initially worked as an auxiliary nurse prior to becoming a nurse. You stated that you have worked in care settings since you were 16 years old, and it is all you have ever known. You informed the panel that you did your nursing training through your employer and obtained a nursing role once you had qualified. You expressed that working as a nurse is a rewarding job and you are proud to be a nurse.

You informed the panel that the motivation behind assisting Patient A and Person A with private domestic services was that you wanted to work in a different role that would assist you financially. You told the panel that you now recognise that you had made a '*stupid decision*'. You said that if you were to be approached by a patient's family member who required similar assistance in the future, you would not make the same decision again as this has been the '*worst decision*' you have made in your life.

You accepted that by taking on the role of providing private domestic services to Person A and Patient A, there had been a breach in professional boundaries, and you were sorry for that. When asked how you felt about taking the loan from Person A now, you stated that you had let yourself down and made the wrong decision. You said that you felt totally worthless and you punish yourself every single day for what you did.

When asked about your motivation behind accepting the loan from Person A, you stated that it was the financial difficulties that you were experiencing at the time that caused you to accept the loan. With the benefit of hindsight, you said that you never

should have contacted Person A to offer your services. Again, you accepted accepting a loan from Person A was a breach of professional boundaries. You said that you wanted to tell Person A and Patient A that you are truly sorry to for all the upset you had caused them.

You stated that you have been a failure both to the Hospital and the NMC. You said that you were proud to be a nurse and proud to promote your regulator but, your actions have brought shame, and you are sorry for that. You told the panel that you are a good nurse who has so much to give, and you put your all into your work. You explained to the panel that it is rewarding to be part of every aspect of a patient's care and to be with someone when they are in their final days.

You told the panel that would never discuss your personal circumstances with a patient or their family again and you would never put yourself in that position in the future. [PRIVATE]. You also accepted that discussing your personal circumstances with a patient was a breach of professional boundaries and how not correcting a false impression would show a lack of integrity.

You told the panel that you were not in a good place, mentally, at the time of the incident and you had been on medication for your mental health. You stated that this had an impact on your decision making but this was not an excuse for the decisions you made.

You informed the panel that you believe that you are still fit to practise as a nurse. You said that you love your job as a nurse and it is one of the reasons you get up in the morning because it gives you a purpose. You told the panel that if you were to lose your job as a nurse, it would be totally devastating as you work very hard and you have so much to give to patients.

In response to a panel question, you said that if you were in the same position again, you would go to your family for assistance. You stated that you would not discuss your personal circumstances with patients, their families or your colleagues and if needed, you would seek legal advice. You also said that you would reach out to

support services offered by your employer to help with your situation but, you hope to never be in this situation again.

You told the panel that you currently work as a full-time agency nurse in mostly acute hospital settings. You stated that palliative care is your passion, and you want to continue to try and make a difference in people's lives. You said that you are dedicated to your job and you do it to the best of your ability.

Mr Kewley's submissions on misconduct and impairment

Misconduct

Mr Kewley submitted that misconduct is ultimately a serious falling short of the standards expected of a nurse. He drew the panel's attention to the following sections of *'The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates'* (2018) (the Code):

'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

...

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

...

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

To achieve this, you must:

...

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

Mr Kewley highlighted that section 20.6 of the Code refers to also having boundaries with the families of patients. He submitted that this provision has been drafted widely to reflect the fact that boundary breaches can arise with people who have been patients in the past and also to their family members.

Mr Kewley submitted that there were a number of features in this case that make the breaches of professional boundaries serious. Firstly, you had a direct role in treating Patient A whilst she was an inpatient at the Hospital. This is demonstrated by the written clinical notes which show that you had an active role in her care. Secondly, the breach in professional boundaries occurred very close to the time that Patient A had been in your care, as opposed to a few years. Thirdly, the breach in itself involved the acceptance of a paid role, divulging personal and sensitive information and accepting a large loan. Mr Kewley highlighted that the sum of the loan you accepted, was equal to or more than a year's salary for some nurses.

Mr Kewley submitted that although you have paid back the loan in full, by accepting the loan in the first instance was a direct contravention of the Code. He submitted that your conduct was driven by financial gain in which you obtained a paid cleaning role and a large interest free loan. Mr Kewley submitted that your conduct derived from an abuse of your position as a nurse, as you had only come into contact with Patient A and Person A through working as a nurse at the hospital.

Mr Kewley submitted that you saw an opportunity for financial gain, and you pursued it with vigour. He submitted that this is a particularly serious case of professional boundary breaches and one that overwhelmingly crosses the threshold of serious misconduct.

In relation to the matters of dishonesty and lack of integrity, Mr Kewley submitted that when you place dishonesty and lack of integrity in the context of this case, they are plainly sufficient to amount to misconduct. He invited the panel to find that all of the charges do amount to misconduct.

Impairment

Mr Kewley referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) in which 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.'*

Mr Kewley submitted that all four limbs of this test are engaged in this case. He submitted that this is not a clinical risk type of case and there is no suggestion that there are concerns with your clinical practice. However, the risk of harm referred to in this case is in relation to emotional harm, upset and distress. Mr Kewley drew the panel's attention to the following statement within Person A's written witness statement:

'This does not relate to the money which I feel has been coerced out of me by the Nurse by way of the loan, as I felt that the Nurse had spun me a great tale, maybe wrongly. The Nurse was helping Patient A and therefore anything

I could do to help the Nurse, I was only too pleased to do. Although later thinking this, I was led up the garden path... The Nurse conned me and was proficient in what she was doing.'

Mr Kewley referred the panel to NMC guidance namely, *FTP 3a* and *FTP 3b* in relation to concerns that are more difficult to put right. He submitted that the facts of this case which involve dishonesty, lack of integrity and boundary breaches clearly fall into the category of concern that are difficult to put right.

In relation to insight and remediation, Mr Kewley submitted that your insight is limited. He submitted that what is absent is any meaningful engagement with the central issue, the impact of the breaches of professional boundaries, episodes of dishonesty and lack of integrity and their impact on public confidence and why they erode public trust and confidence in the nursing profession.

Mr Kewley submitted that the panel also does not have a detailed reflective analysis before it. He submitted that the only reflective piece before the panel is a short reflection, which is limited in nature and was prepared a few years ago for the purpose of the local investigation. Mr Kewley submitted that there is nothing within this reflection that is relevant or recent in relation to the concerns of this case and at best your insight is limited.

With regards to remediation, Mr Kewley submitted that there is no suggestion that you have undertaken any online training courses in relation to professional ethics, boundaries or probity, and there is no evidence of you carrying out any reading in relation to these areas. He submitted that there is ample, accessible material in relation to the topics engaged in this case and it is not clear to what extent any insight or reflection has been developed since the matters first arose in 2020. Mr Kewley submitted that the concerns in this case could be found to be attitudinal in nature and much more is needed from you to demonstrate that the concerns have been put right.

Mr Kewley submitted that as a consequence of your lack of insight and remediation, there is a risk of these matters occurring in the future and this is something that

raises public protection concerns. Mr Kewley invited the panel to find that your fitness to practise is impaired on the grounds of public protection.

Mr Kewley submitted that if the panel finds that there are no public protection issues and that you have shown full insight and remediation into this issue, this is clearly a case where there is a requirement to find your fitness to practise impaired on the grounds of otherwise in the public interest. He submitted that the nature of the misconduct in this case involves things that strike at the heart of good nursing practice such as being honest, acting with integrity, keeping boundaries and not abusing your position for financial gain. He submitted that the type of misconduct in this case has the potential to erode the public's confidence in the nursing profession and this is a case which calls for impairment to be found on public interest grounds.

Ms Wishart's submissions on misconduct and impairment

Ms Wishart submitted that the charges in this case surround a relatively short period of time in your lengthy career. You accepted the role to provide private domestic services to Patient A and Person A in September 2020 and attended their property between four to eight times before withdrawing your services a month later.

Ms Wishart submitted that your conduct has not been repeated since the incident and you are accepting of your shortcomings. She submitted that your behaviour did not adhere to the Code, and it was not conduct that was acceptable of a nurse. Ms Wishart submitted that you accept that taking a loan from a patient's family member is a serious breach of professional boundaries.

Ms Wishart submitted that the panel have heard about your personal circumstances at the time of the incident and the financial difficulties you were experiencing and how this was detrimental to you. She submitted that the incident was isolated and took place over four weeks. There was no pattern of this behaviour and it has not been repeated since. Ms Wishart further submitted that you have paid back the loan in full, and you have taken full accountability of your actions to date.

Ms Wishart submitted that from the outset, you never sought to hide your behaviour. You were open and honest with your employer, and you have been open and honest at each stage of the NMC proceedings. Ms Wishart submitted that you accept that any discussion with Person A about your family and financial circumstances, accepting a role of providing domestic services and accepting a loan were all a breach of professional boundaries. She further submitted that you have apologised unreservedly to not just the NMC and your former employer, but to Person A and Patient A. You have been racked with remorse over your actions in 2020 and it was totally out of character.

Ms Wishart submitted that you accept that not seeking to correct a false impression illustrates a lack of integrity, and you have outlined what you would do differently in the future.

Ms Wishart submitted that impairment should be considered at the time of the hearing and the purpose of these proceedings is to facilitate a registrant's safe return to practise, rather than punishing them. She submitted that breaches of the Code do not automatically mean that a registrant is currently impaired, although you do not deny that you have breached the Code.

Ms Wishart submitted that at the time, you were working full time, and this was still [PRIVATE]. At the same time, you were dealing with other personal circumstances, and it is hard to imagine the headspace you were in at the time or the decisions that you made. Ms Wishart further submitted that 2020 was the '*perfect storm*' of circumstances for you to make the wrong choices, but you will never be in the same circumstances again and you would never make the same decisions again, so the panel, NMC and public can rest easy knowing that your behaviour will not be repeated.

Ms Wishart submitted that a reasonable member of the public, when faced with all the facts in this case, would be satisfied that your fitness to practise is not impaired. It is accepted that there is a public interest aspect to these proceedings, but your engagement and attendance with the NMC along with the panel's finding of the facts in this case would satisfy the public interest. Ms Wishart submitted your continued

period of safe practise can also give some comfort to the panel and the remorse you have shown for your actions can give further comfort. Ms Wishart further submitted that this case has been thoroughly investigated and any decision will be published publicly on the NMC's website.

In terms of public protection, Ms Wishart submitted that there have been no further allegations and no previous allegations of this nature made against you. This was an isolated incident over a short period in a lengthy nursing career and a lengthy career in a care setting. Ms Wishart submitted that although your actions were not those that are expected of a registered nurse, no patients were directly harmed. Ms Wishart submitted that you were supported by your employer, who handed down a warning following the local investigation and the reason you left the Hospital was entirely of your own volition. You now work as a bank nurse in an agency, and you have had a significant period of continued safe practise since these allegations.

Ms Wishart submitted that you have had no previous dealings with the NMC and no subsequent allegations. You are a passionate and talented nurse and you have illustrated to the panel how much your job means to you. She further submitted that you are proud to be registered with the NMC and that you would do anything to retain your registration. Ms Wishart submitted that given your continued period of safe practise, your extensive insight, which was been illustrated during your oral evidence, your fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments including, *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *Grant, Cheatle v GMC* [2009] EWHC 645 (Admin) and NMC guidance, namely *FTP 2a*, *FTP 3* and *DMA1*.

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:

20 Uphold the reputation of your profession at all times

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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

21 Uphold your position as a registered nurse or midwife

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

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions in relation to breaching professional boundaries lacking integrity and acting dishonesty were extremely serious both individually and collectively. The panel took into account that your breaches of professionalism were directly linked to your position as a registered nurse and involved two vulnerable people. It concluded that this was not a one-off incident albeit the events occurred within a month at most of each other in an

otherwise lengthy unblemished career. The panel considered that an ordinary member of the public would be concerned if allegations of this nature did not amount to misconduct.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, 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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

The panel finds all four limbs of the Dame Janet Smith "test" are engaged. The panel finds that Patient A and Person A were put at risk and were caused emotional harm as a result of your misconduct. The panel reminded itself of the witness statement of Witness 2 which reads:

'... The Nurse was helping Patient A and therefore anything I could do to help the Nurse, I was only too pleased to do. Although later thinking of this, I was led up the garden path. I would have not been the first and I will not be the last. The Nurse knew what she was doing and the response that she was likely to get from me. The Nurse conned me and was proficient in what she was doing.

To say that the above described incidents have been a detriment to Patient A's health is an understatement.'

Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if this panel did not find charges in this case relating to dishonesty extremely serious.

The panel considered the nature of the charges found proved, and considered that an opportunity arose and you exploited it. [PRIVATE]. It noted that Patient A and Person A, who it considered to be vulnerable, had trusted you, and that you betrayed that trust by acting outside of what was expected of you as a nurse.

Regarding insight, the panel considered that during the course of your evidence, you had shown some remorse for your actions and how this impacted negatively on the reputation of the nursing profession. The panel took fully into account that these proceedings and your giving evidence at this stage would indeed be stressful and emotionally charged for you, and sought to make every allowance in that regard when carrying out its assessment of your evidence. It considered that you had apologised to Patient A and Person A during the hearing when prompted to. However, it considered that your insight is limited in that you had accepted issues around professional boundaries, but had not fully appreciated the impact that your actions had on Patient A and Person A, or the profession as a whole.

The panel was not satisfied that the misconduct in this case is capable of being easily addressed. It carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel was of the view that a recent reflective statement and testimonials from current employers might have assisted when thinking about insight and remediation. It noted that there was nothing to suggest that you had undertaken any training on boundaries and ethical issues.

The panel is of the view that there is a risk of repetition based on the facts found proved in this case and that this was not a one-off incident albeit the events occurred within a month at most of each other in an otherwise lengthy unblemished career. It considered that your dishonesty, in a case such as this, was not easy to remediate, and that your evidence, although emotionally charged, failed to demonstrate

sufficient insight and remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because a well-informed member of the public would be concerned to find allegations of this nature, which are serious, would not amount to impairment given the lack of insight you have demonstrated.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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 suspension order for a period of 12 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

Mr Kewley informed the panel that in the Notice of Hearing, dated 20 December 2023, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired. During his submissions on sanction, Mr Kewley informed the panel that this sanction is still sought by the NMC.

Mr Kewley drew the panel to five aggravating features of the case:

- The misconduct involved multiple breaches of professional boundaries in the sense that the breach consisted of accepting a job role for the family, providing sensitive and personal information to the family, and the acceptance of the large loan.
- The breach of boundaries concerned individuals who have been found to be vulnerable in the circumstances – Patient A who was recently discharged from the Hospital, and Person A.
- Dishonesty and lack of integrity were concerned with personal financial gain.
- This case involved an abuse of position of trust in that you only came into contact with Patient A by virtue of being involved in her care as a registered nurse whilst she was at the hospital.
- Your lack of insight which feeds into the ongoing risk of repetition.

Mr Kewley asked the panel to consider the SG which deals with sanctions in what is described as serious cases. He submitted that there is a particular section dealing with cases involving dishonesty, and opined that honesty is of central importance to a nurses practice, such that dishonesty allegations will always be serious and a nurse will always be at risk of being removed from the register in dishonesty cases.

Mr Kewley informed the panel that the guidance gives some examples of types of dishonesty cases, which may call into question whether a nurse ought to be allowed to remain on the register, and one of those concerns is cases of a personal financial gain resulting from a breach of trust. He submitted that you were invited to the family home, carried out work for them, saw the opportunity and pursued it.

Mr Kewley submitted that in terms of taking no actions, imposing a caution order or imposing conditions, those sanctions would be insufficient to protect the public and would be insufficient to maintain public confidence in the profession. He submitted that the misconduct in this case is far too serious to be addressed through the imposition of any of those options.

Mr Kewley further submitted that a period of suspension would be insufficient. He informed the panel that the misconduct in this case is multifaceted in nature and involves different issues. He outlined the background of the case which is that it involves a breach of boundaries which led you to being in the family home, you saw [PRIVATE], you engaged dishonestly to pursue the opportunity, and this was followed by your lack of integrity by not correcting the false information you had given to Person A. Mr Kewley submitted that these concerns are of a kind which are less easy to remediate and have not, in fact, been remediated despite the passage of time.

Mr Kewley submitted that there is an ongoing risk of repetition which is borne out by the lack of insight and remediation, and ultimately that this conduct has a real potential to damage public confidence in the nursing profession as a whole. Mr Kewley submitted that a suspension order on the particular facts of this case would not be sufficient to protect the public or maintain public confidence in the profession.

Mr Kewley submitted that a striking-off order is the only sanction that adequately protects the public and deals with the significant public interest considerations that arise in this case.

Ms Wishart informed the panel that there has been a lengthy period of continued employment by you with no further concerns raised, and you have had a lengthy career in nursing, having been registered in 2005 with no previous issues. She submitted that your actions were out of character and were a result of your personal difficult circumstances and your mental health at the time. Ms Wishart submitted that the conduct was relatively isolated and it took place over four weeks in a lengthy career, and that is it not likely to be repeated. Ms Wishart submitted that you have

outlined to the panel that you deeply regret this conduct and have apologised for your lapse in judgement.

Ms Wishart drew the panel to the aggravating features:

- If there are no previous regulatory or disciplinary findings, which there aren't in this case, you are of previous good character.
- You accept that this was an abuse of position of trust as a nurse, but you have highlighted the unique and personal circumstances that you were faced with at the time.
- A lack of insight into your failings. You have highlighted the remorse you have felt, have apologised unreservedly, [PRIVATE].
- Whether or not it was a pattern of misconduct over time. This was a relatively isolated incident in quite a lengthy career.
- You accept that Patient A and Person A suffered harm in the wake of you [PRIVATE] and your conduct. [PRIVATE].

Ms Wishart outlined the mitigating factors:

- You have shown insight in this hearing. You have not sought to hide your conduct and have been open and honest. You have apologised to your employer, the NMC, and Patient A and Person A.
- You are still practising as a bank nurse. You have had a lengthy period of subsequent good practice with no further issues raised.
- You will suffer a huge financial detriment if you lose your employment.

Ms Wishart submitted that you may have been impaired at the time of the allegations, but have started to show insight and have made efforts to illustrate that this does not remain the case. Ms Wishart outlined that you have remained professional, you admitted the allegations from the outset of the hearing, and have been honest throughout these proceedings.

Ms Wishart informed the panel that given the personal circumstances you were facing at the time, your mindset is extremely unlikely to be repeated. You have apologised to the panel, the NMC, Patient A and Person A. Ms Wishart submitted that if the wider public were aware of these circumstances, a suspension order would be deemed the appropriate outcome.

Ms Wishart submitted that a suspension with a review prior to expiry would allow you further time to reflect, develop more insight, and to illustrate to the panel that you can practise safely. She submitted that the overarching objective is public protection, and a suspension order would adequately achieve this.

Ms Wishart informed the panel that you are a great nurse who has been faced with horrendous family circumstances, and you have done all you can to illustrate remorse for the conduct, and you have highlighted you would do anything to keep your NMC PIN. She informed the panel that you have only ever known nursing, and have worked in a care based sector since the age of 16. You have shown that you love your job, and are now looking to show the panel that you are able to return to practice safely, therefore a suspension is the most appropriate outcome in this case.

When asked by the panel if you had apologised to the hospital and Patient A and her husband directly, Ms Wishart informed the panel that you had apologised to your workplace during its investigation, and had apologised to Patient A and Person A during this hearing.

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 in that you gained employment as a result of being a registered nurse, and was able to receive a loan.
- Conduct which put patients at risk of emotional harm.
- Personal financial gain.
- The breach of boundaries concerned individuals who have been found to be vulnerable in the circumstances – Patient A who was recently discharged from the Hospital, and Person A.

The panel also took into account the following mitigating features:

- Previous good character and history.
- Personal mitigation including personal hardship over a lengthy period of time and financial hardship.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, 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 issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of general incompetence;*
- ...
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- ...

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

It did go on to give serious consideration as to 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 that you have been a registered nurse for a long period of time and had an unblemished career before these allegations. The panel noted that you had limited but developing insight and there have been no new concerns within your practice, since these matters came to light. It determined that a suspension order would give you time to reflect on your misconduct and undertake relevant training to strengthen your practise.

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 12 months was appropriate in this case to mark the seriousness of the misconduct.

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

Any future panel reviewing this case would be assisted by:

- A well thought out written reflection taking full account of this panel's findings and the impact your misconduct had on the profession, and on the patient and her family.
- Evidence of training that you had read up on, and training certificates relevant to your misconduct.
- Testimonials and references from your current and future managers and colleagues, with particular reference to your honesty and integrity (this can be from paid or unpaid positions of work).

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 interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Kewley. He submitted that an interim suspension order for 18 months is necessary for the protection of the public and is otherwise in the public interest.

The panel also took into account the submissions of Ms Wishart. She submitted that you have a significant period of continued practise with no further issues, and the 28 day appeal period would allow you to get your affairs in order before the start of the substantive suspension order.

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

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the

panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to protect the public and determined that it would otherwise be in the public interest.

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.