Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday, 2 January 2024 - Monday, 8 January 2024

Virtual Hearing

Name of Registrant:	**Susanne Smith**
NMC PIN	82I3835E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – 28 June 1986 V300: Nurse Independent / Supplementary Prescriber- 13 March 2015
Relevant Location:	Oxfordshire
Type of case:	Misconduct
Panel members:	Melissa D'Mello (Chair, Lay member) Carol Porteous (Registrant member) Konrad Chrzanowski (Lay member)
Legal Assessor:	Gerard Coll
Hearings Coordinator:	Samantha Aguilar
Nursing and Midwifery Council:	Represented by Debbie Churaman, Case Presenter
Mrs Smith:	Present and represented by Jim Olphert, instructed by the Royal College of Nursing (RCN)
Facts proved by admission:	Charges 1, 2a, 2c, 3, 4a, 4c, and 5
Facts found proved:	Charges 2b, 2d, 4b, and 4d
Facts not proved:	None

Fitness to practise:	Impaired
Sanction:	**Caution order (3 years)**
Interim order:	**N/A**

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

At the outset of the hearing, Ms Churaman on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be held partially in private on the basis that proper exploration of your case involves references to [PRIVATE]. She submitted that whilst the allegations do not concern [PRIVATE], there are matters of [PRIVATE] that you may refer to. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Olphert on your behalf, indicated that he supported the application to the extent that any reference to [PRIVATE] should be heard in private. He informed the panel that he has no specific submissions in relation to this, but to an extent, elements of practicality may need to be considered. He submitted that *"given the way the case is to be framed"*, the panel may consider holding the entirety of the hearing in private.

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

The panel determined to go into private session when matters relating to [PRIVATE] are raised.

Decision and reasons on application to amend charge 1 and Schedule A

The panel identified two typographical errors in the wording of charge 1 and Schedule A. The panel invited Ms Churaman on behalf of the NMC to make an application to amend the two errors.

The panel heard an application made by Ms Churaman to amend the wording of charge 1 and Schedule A to correct the errors.

The proposed amendment for charge 1 is to correct the sentence which stated, *'On one or more occasion'*. It was submitted by Ms Churaman that the proposed amendment would provide clarity and more accurately reflect the charges put forward by the NMC.

> "That you, a registered nurse:
>
> 1. On one or more ~~occasion~~ **occasions**, between 13 December 2017 and 23 July 2019, accessed Patient A's record without clinical justification and/or prescribed medication as set out in Schedule A.
>
> 2. […] "

Ms Churaman submitted that in respect of Schedule A, it is proposed that the spelling of this medication is amended to the correct spelling of the medication.

" […] **Schedule A**

Date of issue	**Prescription**
13/12/17	[PRIVATE]
23/02/18	[PRIVATE]
01/06/18	[PRIVATE]; Sumatriptan and Hydromol ointment;
10/12/18	[PRIVATE] and Flixonase Nasules

02/04/19	[PRIVATE] and ~~Mometosone~~ **Mometasone** Nasal Spray (Nasonex)
23/07/19	[PRIVATE]

[…] “

Mr Olphert told the panel that he did not oppose the amendments, as there is no injustice caused to you in correcting the two typographical errors.

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

The panel was of the view that such amendments, as applied for, were to correct the typographical errors. 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. It was therefore appropriate to allow the amendments in order to clarify the meaning of the charge.

Details of charges (as amended)

That you, a registered nurse:

1) On one or more occasions, between 13 December 2017 and 23 July 2019, accessed Patient A's record without clinical justification and/or prescribed medication as set out in Schedule A **[FOUND PROVED BY ADMISSION]**

2) Your actions at charge 1 above were dishonest in that:
   a) You knew that the medication was not intended for Patient A; **[FOUND PROVED BY ADMISSION]**
   b) You knew that the medication was for your own personal use; **[FOUND PROVED]**
   c) You knew that you did not have Patient A's consent to issue the prescription; **[FOUND PROVED BY ADMISSION]**
   d) You intended to mislead others into believing that the medication was for Patient A **[FOUND PROVED]**

3) On 1 October 2019 you accessed Patient B's record without clinical justification and/or prescribed medication as set out in Schedule B; **[FOUND PROVED BY ADMISSION]**

4) Your actions at charge 3 above were dishonest in that:
   a) You knew that the medication was not intended for Patient B; **[FOUND PROVED BY ADMISSION]**
   b) You knew that the medication was for your own personal use; **[FOUND PROVED]**
   c) You knew that you did not have Patient B's consent to issue the prescription; **[FOUND PROVED BY ADMISSION]**
   d) You intended to mislead others into believing that the medication was for Patient B **[FOUND PROVED]**

5) By your actions at charge 1 and/or charge 3 above you breached confidentiality in that you accessed patient records without permission. **[FOUND PROVED BY ADMISSION]**

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

Schedule A

Date of issue	Prescription
13/12/17	[PRIVATE]
23/02/18	[PRIVATE]
01/06/18	[PRIVATE]; Sumatriptan and Hydromol ointment;
10/12/18	[PRIVATE] and Flixonase Nasules
02/04/19	[PRIVATE] and Mometasone Nasal Spray (Nasonex)
23/07/19	[PRIVATE]

Schedule B

Date of issue	Prescription
01/10/19	Inhaler prescriptions (x3) for Asthma and COPD

Background

You were employed as a registered nurse prescriber between 2017 and 2019 at the Rycote Practice (the Practice). You were providing nurse practitioner services in acute and chronic disease management. The charges arose in relation to the issue of prescriptions in respect of two patients registered at the Practice. It was alleged that, at the time, neither patient had knowledge of the prescriptions that were prescribed in their names and there was no clinical justification for the prescribing of these drugs.

An initial referral was sent to the NMC on 14 November 2019 by Witness 1, a General Practitioner (GP) Partner at the Practice. It was alleged that you accessed patient records without their knowledge to prescribe medication for your own use.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Olphert, who informed the panel that you made full admissions to charges 1, 2a, 2c, 3, 4a, 4c, and 5. He submitted that you gave partial admission for charge 2b in relation to [PRIVATE] only. He told the panel that you denied charges 2d, 4b, and 4d.

The panel therefore finds charges 1, 2a, 2c, 3, 4a, 4c, and 5 proved in their entirety, 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 Ms Churaman on behalf of the NMC and by Mr Olphert 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 oral evidence from the following witness called on behalf of the NMC:

- Witness 1: GP Partner, IT Lead and your former mentor at the Practice.

The panel also heard oral evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. The legal assessor referred the panel to the relevant case law, *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67, *Martin v Solicitors Regulation Authority* [2020] EWHC 3525 (Admin), and *Carmarthenshire County Council v Y* [2017] EWFC 36.

Part of the evidence on which the panel based its reasons for its decisions is recorded below.

You qualified as a registered nurse in 1986 and obtained your Nurse Prescriber qualification in 2015.

In Patient A's written statement dated 15 August 2022, she stated:

> '[…] *I got a phone call or a text message, I can't remember which, from Boots pharmacy telling me that my prescription was ready. I didn't think I had a prescription that I was waiting for so [sic] I rang Boots and I asked what the prescription was and they told me that it was for* [PRIVATE] *and that it had been collected. I had never been prescribed* [PRIVATE]. *They didn't tell me who collected it [sic] but I now understand that anyone from the practice can go and collect prescriptions on behalf of patients. I know this because I had spoken to* [Witness 1] *about it and I understood him to say that. I was asking how the prescriptions were able to be collected by someone other than me, without my authority. I didn't want to think that I was being impersonated. I hadn't had anyone from the practice collected my prescriptions for me*

before. I have regular prescriptions and I have always picked them up myself. I told them that the [PRIVATE] *wasn't mine and I just left it. I have never collected any prescription that I wasn't expecting or didn't know what it was.'*

Witness 1, who has clinical, managerial and leadership responsibilities at the Practice, made enquiries on 1 October 2019. Witness 1 and the Practice Manager found that there were multiple prescriptions prescribed by you. When initially confronted, you said that it was a mistake and that these drugs were prescribed in the wrong records.

Subsequently, during the course of Witness 1's enquiries, he provided six prescriptions for Patient A between 13 December 2017 and 23 July 2019 which showed you as the prescriber. A further audit trail showed the issuing and the cancellations of prescriptions made by you. The system showed that Patient A did have an appointment on 13 December 2017. There were no other appointments for Patient A on any of the other dates when the prescriptions were issued.

On 1 October 2019, you accessed Patient B's record without consent and prescribed three inhalers. You maintained that these were intended for stock to be used during spirometry appointments and as trainings aids. You claimed that they were not intended for personal use.

On 9 October 2019, an Investigatory Meeting was held which was attended by Witness 1, a Managing Partner (minute taker), a representative from the Royal College of Nursing (RCN) and you. During this meeting, you admitted to prescribing [PRIVATE] [PRIVATE] and that this followed a consultation with Patient A in which [PRIVATE] was discussed. [PRIVATE]. You then spoke to [PRIVATE] and advised you to speak to [PRIVATE] and the use of [PRIVATE]. She was able to prescribe [PRIVATE]. Your friend was unable to prescribe again, as they were no longer in a role which allowed them to do so. You issued the prescription using Patient A's details and collected it from the pharmacy by giving the patient's name. You then cancelled the prescription, as it had Patient A's name on the

box. In relation to Flixonase, you said that you prescribed the drug to see what it looked like. You also stated that when Witness 1 initially discussed the [PRIVATE] prescription for Patient A being prescribed as a mistake and intended for another patient, you said that you *'panicked'*, and this is why you gave this explanation. In your reflective piece, you stated that you prescribed [PRIVATE], Hydromol ointment and Flixonase for Patient A but never intended this for Patient A. You also admitted to issuing the prescriptions for Sumatriptan and Mometasone, but you claimed that you have no recollection of prescribing these drugs.

Further analysis of the Practice's electronic record system by Witness 1 showed that three inhalers were prescribed for Patient B. These prescriptions were marked as cancelled and having been prescribed in error. Witness 1 confirmed that Patient B had no knowledge of these prescriptions, or that Patient B had a diagnosis of Chronic Obstructive Pulmonary Disease (COPD). In Witness A's written statement dated 29 July 2022, he stated:

> *'In interview she said that a second patient was never used. We didn't get a chance to ask her what they were for as she resigned. They were all asthma and COPD inhalers which are conditions the patient did not have, and as far as I am aware the registrant would not have had. The patient definitely didn't have any condition that would require an inhaler as I can see this on their records. I don't know the registrant's full medication history so I don't know if she used inhalers. When she was doing all the prescriptions it would have been within 3-4 second of issuing that she cancelled and then deleted them. We can definitely say that with patient 2 that the registrant went into the records and prescribed the drugs and then immediately cancelled the prescriptions and deleted the entry but the prescriptions were printed as I have these from the pharmacy.'*

The investigation process at the Practice ceased due to your resignation.

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

Charge 2b

2. Your actions at charge 1 above were dishonest in that:
   b) You knew that the medication was for your own personal use;

This charge is found proved.

In reaching this decision, the panel carefully considered the evidence before it and the definition of the word *'personal use',* which in the context of the charge, the panel found went further than simple personal application or consumption, as contended for by you; rather this included your personal use in any setting, including clinical practice.

The panel preferred the evidence of Witness 1 given the cogency and the consistency of their evidence. The account of Witness 1 provided in the minutes of the contemporaneous, local investigation was consistent with their investigatory report, their witness statement, other documentary evidence and their oral evidence. The panel found that Witness 1's oral evidence was reliable due to the level of detail and clarity that they provided to the panel.

Witness 1 also took the panel through the complexity of the electronic system. Witness 1 told the panel in his oral evidence that there was a two-factor security system in which an employee-specific smartcard and a personal pin is required to access the system and prescribe medication. In Witness 1's statement he stated:

> *'We were looking at this as a mistake in the system rather than a concern with the registrant. We couldn't see any explanation why they were prescribed and then cancelled on multiple occasions. I said that I would informally approach the registrant to ask what had happened. I saw her at*

the end of clinic and explained the situation. The explanation she gave didn't add up, it was something like I made a mistake and prescribed it in the wrong records. The thing that didn't add up was that it was done five times […] About thirty minutes later she then came back to me and admitted to me face to face that she had done the [PRIVATE]*.'*

Witness 1 further stated in the same witness statement:

'When we asked further questions about other medications, she admitted to prescribing some Flixonase this can be seen in the meeting minutes. She denied prescribing any other medications. […] asked if she had prescribed medication on any other patient's record which she denied. Her saying that she didn't know about other patients was false as she had accessed Patient 2's record [...]She explained that her behaviour was due to [PRIVATE]*, but this stopped making sense as she was on* [PRIVATE] *and the behaviour continued. She had continued to work throughout this period so on the one hand she would argue she was sound enough to work as an independent nurse and she had enrolled on and passed a specialist diabetes course at Warwick University at the time but she then said she wasn't of sound mind to know that prescribing for herself wasn't appropriative.'*

The panel does not refute that you may have experienced the symptoms that you referred to in your reflective piece dated 12 December 2023, and that you may have struggled during the period in question. However, the panel placed less weight on your evidence due to inconsistencies in your differing accounts to Witness 1 at the local level, your written representations and during the course of your oral evidence. For example, your evidence regarding the timeline for seeking [PRIVATE] and the associated prescriptions or medication varied somewhat. You were also unable to provide a clear explanation as from whom and when you obtained the [PRIVATE] prescription and why for 18 months you did not contact [PRIVATE]. You admitted that your behaviour was *"opportunistic"* in your oral evidence but asserted that there

was no “*malice intent”* throughout the 18-month period of when you prescribed [PRIVATE] using Patient A's details, but you also maintained the [PRIVATE] helped [PRIVATE] and that you continued your actions because of this.

The panel was satisfied that you acted deliberately. Accordingly, a reasonable and decent person would conclude that your actions were dishonest.

In light of the above, on the balance of probabilities, the panel determined that your actions at charge 1 were dishonest. You prescribed the medication listed in Schedule A for Patient A for your own personal use. Therefore, the panel found charge 2b proved in its entirety.

Charge 2d

2. Your actions at charge 1 above were dishonest in that:
   d) You intended to mislead others into believing that the medication was for Patient A.

This charge is found proved.

In reaching this decision, the panel noted the interview meeting notes which was attended by Witness 1, a Managing Partner (minute taker), your RCN representative and you. These notes were amended by your RCN representative prior to your resignation from the Practice. It stated:

> ‘*DF asked whether SS had given the patient’s name when she went to the pharmacy to collect the prescription.*
>
> *SS confirmed that she had.*

DF asked whether SS had signed the prescription form and/or ticked any of the boxes on the prescription form

SS stated that she just signed her name and didn't tick any boxes.'

Witness 1 further alluded to your intention to *'mislead'* in his statement dated 29 July 2022:

'The audits show the days when she accessed the record, and the only reason the record was accessed on that day was to make a prescription as there were no appointments for the patients that day.

[…]

If a prescription has been printed it would still be valid if it was signed. Once a prescription has been deleted the only way to see if it was ever in the patient notes would be through an audit [..]They were issued so the prescription was printed and then she deleted it but because the prescription was printed it was able to be used. Cancelling or deleting the prescription on the system has no impact on the validity of the prescription once it has been printed. A drug prescribed and deleted in this way effectively becomes invisible. You can only see it in the audit trail which my practice manager has access to.'

Witness 1 told the panel that both patients had electronic prescribing set up in their electronic medical system and both, prior to and after the dates in question, had been receiving their prescriptions electronically.

The panel accepted your evidence that, in deleting the entries, you were trying to ensure that clinical colleagues did not retain the impression that Patient A had been taking these medications. However, in the panel's view, the evidence from your

local interview and your oral evidence does demonstrate that you intended to '*mislead'* the pharmacy that the medication was prescribed for Patient A.

The panel was satisfied that you acted with the intention to '*mislead*'. Accordingly, a reasonable and decent person would conclude that your actions were dishonest.

Therefore, the panel found that on the balance of probabilities, you intended to *'mislead'* others into believing that the medication was prescribed for Patient A and therefore found this charge proved.

Charge 4b

4. Your actions at charge 3 above were dishonest in that:
    b) You knew that the medication was for your own personal use;

This charge is found proved.

In reaching this decision, the panel bore in mind the definition of *'personal'* as it did when considering charge 2b. It saw no reason for the need to further distinguish the approach that it adopted as above.

The panel noted Witness 1's written evidence in which he stated:

> *'In interview she said that a second patient was never used. We didn't get a chance to ask her what they were for as she resigned. They were all asthma and COPD inhalers which are conditions the patient did not have, and as far as I am aware the registrant would not have had. The patient definitely didn't have any condition that would require an inhaler as I can see this on their records. I don't know the registrant's full medication history so I don't know if she used inhalers. When she was doing all the prescriptions it would have been within 3-4 second of issuing that she cancelled and then deleted them.*

We can definitely say that with patient 2 that the registrant went into the records and prescribed the drugs and then immediately cancelled the prescriptions and deleted the entry but the prescriptions were printed as I have these from the pharmacy.'

The panel was of the view that Witness 1's account was further supported by the prescriptions indexed in the exhibit bundle submitted by the NMC.

During the course of Witness 1's local investigation into your conduct, he stated:

'[…] We know they hadn't been collected as they were recorded as Thursday collect which was written on the prescriptions and I personally went into the chemist and asked for the prescriptions to be surrendered and they gave me the prescriptions'

The panel determined that, given the cogency and consistency of Witness 1's written and oral evidence, you knowingly prescribed the medications as set out in Schedule B for your own personal use.

The panel was satisfied that you acted deliberately. Accordingly, a reasonable and decent person would conclude that your actions were '*dishonest*'.

The panel determined that on the balance of probabilities, you prescribed the medication to Patient B knowing that the medication was for your own personal use. As such, the panel found this charge proved.

Charge 4d

4. Your actions at charge 3 above were dishonest in that:
   d) You intended to mislead others into believing that the medication was for Patient B

This charge is found proved.

In reaching this decision, the panel had regard to the prescriptions contained within the bundle, which further supported the fact that you prescribed the medication detailed in Schedule B.

The panel had regard to Witness 1's written statement, in which he also confirmed during his oral evidence that he was acquainted with Patient B and confirmed that electronic prescribing was only in force at the Practice since 2016. He told the panel that both patients had electronic prescribing set up in their electronic medical system and prior to and after the dates in question, both had been receiving their prescriptions electronically.

Witness 1 stated:

> '*Patient 2 for which the respiratory drugs were prescribed, the registrant had informed Boots that she would pick up the prescription. I know this because I went into Boots and spoke to the pharmacist myself and they said that she told them that she would pick it up on Thursday and that's what was written on the prescription.* […] *We cross checked that this wasn't the patient who did this and the patient had no knowledge of this at all. It's not an abnormal thing for nurses to pick up prescriptions for patients, district nurses would normally pick up scripts to take to people's houses, but the registrant wouldn't have needed to do this as she saw patients at the practice.'*

Similar to the panel's findings in charge 2d, the panel accepted your explanation that you did not intend to *'mislead'* your work colleagues viewing Patient B's medical record, however, you did intend to *'mislead'* the pharmacy.

The panel was satisfied that you acted with the intention to *'mislead'*. Accordingly, a reasonable and decent person would conclude that your actions were dishonest.

Based on the evidence before it, the panel determined, on the balance of probabilities, that you intended to *'mislead'* others that the medication prescribed by you was intended for Patient B. The panel therefore found this charge 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.

Submissions on misconduct

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

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

Ms Churaman identified the specific, relevant standards where your actions amounted to misconduct; 4.2, 5.1, 5.2, 5.4, 10.3, 14.1, 14.2, 18.1, 18.5, 20.1, 20.2, 20.3, 20.4, 20.8, 20.10. She submitted that the misconduct in the charges found proved are serious:

> *'Deliberate acts to create prescriptions for patients without clinical justification, not intended for those patients named on the prescriptions to facilitate personal use must be considered to be an act which falls far short of what would be proper in the circumstances and deplorable.*
>
> *These acts breached patients' confidentiality and disregarded their lack of consent to the issue of the prescriptions in their name.*
>
> *The conduct was dishonest and abused her position as a nurse prescriber. The medication was for her personal use and should not have been ordered in the names of patients for whom they were not intended or indeed for whom there was no clinical justification.*
>
> *The Registrant's efforts to conceal her actions by cancelling or deleting the prescriptions, effecting entries of "error" or "wrong person" were all ineffective in concealing her actions. However these actions demonstrate further dishonest conduct which had the effect of misleading the chemists into believing that the drugs were prescribed to those patients. These acts of concealing her actions and misleading others were further advanced by printing prescriptions and collecting them from the chemist.'*

Mr Olphert set out his submissions in respect of misconduct:

' […]

5. *It is accepted that personal mitigation is, as a general rule, not something to which the panel should have regard when considering misconduct or current impairment as indicated by the Court of Appeal in R o.a.o Campbell v General Medical Council [2005] 1 W.L.R 3488. However, this is to be distinguished from that evidence which is directly relevant to the particular circumstances in which the Registrant found themselves in at the time. In this case,* [PRIVATE]. *As are the references which set out that Ms Smith is a very able and competent clinician, and there have been no concerns about her propriety and conduct before or since.*

6. *The Registrant's case on the question of misconduct is fairly and squarely captured, the panel may think, in her reflection (Exhibit 4) at Section E, pages 12-14. Within that section, Ms Smith has set out, in detailed terms the ways in which she recognises she has fallen far below the standards expected of her.*

7. *As Ms Smith herself says in her reflection on this issue of the code's guidance on promoting professionalism and trust:*

> *"This is the crux of my case. It is central to my expected commitment to the required standards of practice and behaviour set out in the Code, which I have not upheld. I have failed to be a model of integrity and am ashamed of the example that I have shown to patients, colleagues and the public. Dishonesty undermines the trust the public places in me as a nurse and I am very aware of this, having re read the Code several times over the past three years. The patients whom I affected were vulnerable. I have distressed and upset them through my thoughtlessness and self-centred behaviour, which I deeply regret"*

8. *It is clear that Ms Smith accepts that her behaviour fell below the standards expected of her. It is clear that she recognises that by reference to the code she has not adhered to the requirements of her as a nurse, and it is clear that she accepts that her conduct at the time would doubtless be viewed by fellow practitioners as deplorable.*

9. *For these reasons, whilst it is ultimately the panel's decision as to whether misconduct is made out, no submissions to the contrary are advanced by me on her behalf.'*

Submissions on impairment

Ms Churaman moved on to the issue of impairment and addressed the panel on 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Churaman submitted that all four limbs of Grant are engaged. In addressing limb A, she submitted:

> *'Her actions put patients in her care at risk. The prescriptions were issued without clinical justification, were misleading and inaccurate in that they showed that a number of medications were prescribed to both of these patients when they had not been. These actions created a risk to the patients that other clinicians would view their past drugs history and act on a false basis in making further decisions and exposing the patients to risk. Future – the conduct took place over a period of 18 months, was repeated, was not confined to one drug or one instance. The many initial acts of dishonesty in creating these prescriptions were accompanied on each*

occasion by attempts to conceal her actions to avoid detection. When Mrs Smith was initially challenged by [Witness 1] *she maintained her dishonest position that the drug was issued to the wrong patient and when interviewed days later, she did not give a full account of her actions despite her stated intention to do so. In cross examination she stated that she did not give a full account because the other prescriptions were not mentioned by* [Witness 1]*. Her response to questions on harm to patients in cross examination was also significant as whilst she maintained throughout the hearing that she recognised the effect of her actions on the patients, she stated that no harm was caused by her actions, quickly correcting herself. These responses in cross examination demonstrate that her insight is limited. A person who recognises the risk of harm to patients and is truly sorry would give a full account at the time and not hold back a part, further would appreciate at this stage that holding back a part of the explanation was not candid and not truly remorseful and that harm was caused.'*

Ms Churaman addressed limb B:

'These acts were fundamental breaches of the Code reflecting on her honesty and her abuse of position as a nurse prescriber. Such conduct is likely to bring the profession into disrepute. Her reflection account describes the measures she has taken to remediate the conduct, [PRIVATE]. *Her insight is limited despite her attempts to address the issues. Her limited insight is reflected in her responses in cross examination to the limited disclosures she made in the investigatory meeting on 9 October 2019, her sustained conduct over an 18 month period particularly in relation to the fact that for 18 months she did not seek* [PRIVATE] *resorting to acts of dishonesty instead.'*

Ms Churaman submitted that as in limb C:

'Honesty is a fundamental tenet of the profession and acting as a nurse prescriber honestly. Repeated dishonesty, abuse of her position as a nurse prescriber and the limited insight shown, all demonstrate that she is liable to breach fundamental tenets of the profession.'

Ms Churaman addressed limb D:

'The acts were dishonest. She states that she did know that her actions at the time were dishonest and continued these actions over a sustained period of time. Her insight is limited and so she is liable in the future to act dishonestly.'

Ms Churaman submitted that you are currently impaired on public protection grounds.

Ms Churaman also submitted that you are currently impaired on public interest grounds. Your conduct undermined the professional standards and the public confidence, and a finding of impairment is necessary to maintain both.

Mr Olphert submitted the following in respect of your current impairment:

'Risk to the Public

13. *Impairment, as the panel will know, is something which is to be assessed contemporaneously. The question is whether the Registrant is currently impaired, not whether she was impaired at the time of the allegations. Were the latter the case, I have no doubt that Ms Smith would tell you that she believed her practice to be impaired. You heard words to that effect from her, that is why she resigned and removed herself from the Register.*

14. *The charges which have been found proved start in 2017, a little over 6 years ago. Ms Smith left the practice and shortly thereafter resigned her registration in late-2019, some 4 years ago. She has spent, I would suggest,*

nearly every day of those last 4 years reflecting on her conduct and making efforts to remediate it. […]

15. *In that time the Registrant has not been subject to any further investigations nor have any clinical issues arisen. Ms Smith has worked her way back initially as a HCA-type role and back up to her present role dealing with acute patients in an urgent care setting. She has, it is submitted, demonstrated that she is fit to practise as a nurse, and an advanced nurse practitioner and to practise well.*

16. *The panel have seen in the Defence Bundle at Exhibit 5 references supplied from line-managers, fellow nurses, doctors and other staff who have been willing to speak to her professionalism, compassion and dedication to his clinical work. Those professional references deal directly with the overarching risks which the panel are bound to have in mind when considering the issue of public protection and risk.*

17. *There are though, two other elements of the bundle which in my submission can give the panel significant confidence that Ms Smith is doing more than just talking the talk, but actually taking action. The first are those comments from patients in the Fourteen Fish report (p.78 Exhibit 5). They speak of confidence in her as a practitioner, and the fact that she made them feel comfortable and relaxed.*

18. *The second is the audit work undertaken at her current place of work, […] In his testimonial he says:*

    "I specifically undertook an audit of her prescribing as part of this testimonial, to establish whether there was a pattern that reflected the allegations against her. The outcome of this detailed audit, from the 1300 prescriptions generated during her time with us, is that I have no indication either of inappropriate prescribing or failure to

follow prescribing protocols."

19. *Ms Smith has, additionally, demonstrated real and developed remorse into the issues before the panel and, it is submitted, has also demonstrated insight into how and when things went wrong. Of particular significance in this regard is the clear progression in her reflective work up to her 22-page reflection (Exhibit 4) now before the panel. It is evident from this progress that she has (a) a clear insight into her conduct; and (b) has spent no shortage of time considering what has occurred. She has taken agency and responsibility for that.*

20. *Further, that Ms Smith denied 4 sub-particulars within the charge does not undermine her developed insight. In the recent authorities of Motala v GMC [2017] EWHC 2923 (Admin) and Yusuff v GMC [2018] EWHC 13 (Admin) Yip J explored the interrelated issue of denials at the facts stage, and demonstrating insight. In those cases the Registrants continued to vehemently deny the conduct. Yip J concluded that admitting the misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it. It is those factors which must be paramount in the panel's mind – that Ms Smith understands the gravity of the conduct, and that it will not be repeated. It is submitted that both apply here.*

21. *In the present case, it is submitted, the position is to be distinguished somewhat from the authorities because the Registrant has acknowledged her actions, and the denials were predicated on a particular interpretation of the charges, which the panel have considered in a different way. The underlying behaviours are, and always have been, admitted and deeply reflected upon.*

22. *There is, above and beyond this, a significant volume of material on remediation, not just in in the reflective piece (Exhibit 4) but also in the bundle of material (Exhibit 5). These include extensive document and article reviews, course attendances, reflections on those course attendances, and demonstratable changes to her working practice as a result. Nowhere is this clearer than in the Development and Restoration Plan which Ms Smith has prepared (pp. 87-96 Exhibit 5) which demonstrates what she has done, what she continues to do and to whom she is accountable for those actions.*

23. *It is recognised on Ms Smith's behalf that dishonesty is not easily remediable, but, it is submitted that Ms Smith has done a remarkable and substantial amount of work to attempt to remediate what has happened. As a result, it is submitted, the panel can have significant confidence that there is no risk of repetition in the present case.*

Public Interest

24. *In respect of the public element of an assessment of impairment, the Registrant submits that an objective observer in possession of all the material facts would not, in this case conclude that a finding of impairment was required.*

25. *Whilst the panel will be keenly aware of this element of impairment in a case of dishonesty – as indeed Ms Smith is, if one looks at her reflection on the impact on the public and public confidence – it is nonetheless submitted that given the passage of time, and the significant work which Ms Smith has undertaken a member of a the public, as Ms Smith's colleagues have been, would be reassured that there was not a continuing need for regulatory intervention.*

26. As set out above, the allegations date back some significant time, and Ms Smith has worked since and demonstrated candour, care and good clinical skill. I would ask again that the panel reflect on the references at this point.

27. It is contended that in determining the public interest it may be helpful to consider this rhetorical question – what would a member of the public think if, in possession of all of the facts, of this case? Would they conclude that the Registrant could rightly and properly continue to practise without restriction? It is submitted that in this case, given the particular circumstances both in respect of Ms Smith's conduct and her subsequent employment and dedication to care for her patients and clinical work, a fully informed member of the public could and would conclude that Ms Smith could practise free from restriction.'

The panel accepted the advice of the legal assessor. This included reference to: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *GMC V Chaudhary* [2017] EWHC 2561 (Admin) and *PSA v (1) GMC (2) Uppal [2015]* EWHC 1304.

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 breaches 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

4 ***Act in the best interests of people at all times***

To achieve this, you must:

4.2 Make sure that you get properly informed consent and document it before carrying out any action.

5 Respect people’s right to privacy and confidentiality

To achieve this, you must:

5.1 Respect a person’s right to privacy in all aspects of their care

5.2 Make sure that people are informed about how and why information is used and shared by those who will be providing care.

10 Keep clear and accurate records relevant to your practice

To achieve this, you must:

10.3 Complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.3 Ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence.

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place.

To achieve this, you must:

14.1 Act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm.

14.2 Explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers.

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

18.1 Prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs.

18.3 Make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines.

18.5 Wherever possible, avoid prescribing for yourself or for anyone with whom you have a close personal relationship.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 Keep to and uphold the standards and values set out in the Code.

20.2 Act with honesty and integrity at all times, treating people fairly […]

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

20.4 Keep to the laws of the country in which you are practising.

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

20.9 Maintain the level of health you need to carry out your professional role.'

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 you deliberately created prescriptions for Patient A and Patient B for '*personal use'* and without clinical justification. The panel considered the seriousness of the matters and the relevant NMC guidance (Reference: SAN-2 and Reference: FTP-3a). It identified the following points when considering the seriousness of your case:

- Misuse of power.
- Vulnerable victims.
- Breaching the professional duty of candour to be open and honest when things go wrong, including covering up, falsifying records.
- Exploiting patients or abusing the position of a registered nurse for personal gain
- Being directly responsible […] for exposing patients to potential harm, especially where the evidence shows the nurse […] putting their own priorities before their professional duty to ensure patient safety and dignity.
- Systematic and long-standing deception.

The panel considered that the dishonesty in your actions was very serious and involved taking advantage of vulnerable patients. You deliberately breached your position as a nurse prescriber by accessing Patient A and Patient B's details without clinical justification and prescribed medication to facilitate your personal use. The panel further noted that you made efforts to conceal your actions by *'cancelling'* or *'deleting'* the prescriptions and citing *'error'* or claiming it was prescribed to the *'wrong person'* when confronted about

your actions. You advanced your dishonest conduct by printing the prescriptions and collecting the medication from the Pharmacy, and as admitted by you during your oral evidence, you told the panel that you used the Pharmacy's familiarity with you and the Practice, as well as provide the details of Patient A to collect the medication.

Accordingly, the panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct and that your actions and behaviour would be considered deplorable by fellow practitioners.

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.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not 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 found that Patient A was concerned that her records has been inappropriately accessed by you and that your misconduct may have caused a possible risk of emotional harm to Patient B. Your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that you had acted dishonestly.

The panel considered that all four limbs of Grant were engaged in respect of your past conduct. Your misconduct placed patients in your care at potential risk of harm. The prescriptions were issued without clinical justification, misleading and inaccurate in that they showed that a number of medications were prescribed to Patient A and Patient B when they had not been. Your actions created a potential risk to the patients that other clinicians would view their past medical history and medically treat the patients based on the medication that you had prescribed for your own use and exposing the patients to risk.

The panel also considered that your actions had the potential to bring the nursing profession into disrepute. Your dishonesty was a significant breach of the fundamental tenets of the nursing profession, and an abuse of your position as a nurse prescriber. When initially confronted and at the local investigation, you failed to disclose your actions by claiming that it was medication prescribed to the wrong patient. You repeatedly prescribed [PRIVATE] using Patient A's details and using this for personal use for a period of 18-months. You failed to disclose your inappropriate prescribing of Sumatriptan, Hydromol ointment, Mometasone Nasal Spray and inhaler prescriptions (x3) for asthma and COPD.

The panel bore in mind *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin) and carefully considered whether your actions were easily remediable, whether it has been in fact remedied and whether it is highly unlikely to be repeated. The panel was of the view that your misconduct was serious and sustained for a period of 18 months.

The panel found that you directly used your position as a nurse prescriber to obtain these medications, and in principle, it may be difficult to remediate. However, taking account of the extensive remediation evidence before it, and given that the conduct took place six years ago, and that you have been practising safely as a nurse in the last four years (since your actions were discovered by the Practice), it was satisfied that you have been able to demonstrate that you are capable of practising safely and that, in the particular circumstances of this case, the misconduct in this case is capable of being addressed.

The panel then considered whether you have taken sufficient steps to address the concerns and bore in mind the NMC's guidance (Reference: FtP13b). You have worked in various roles after taking a short break since the allegations came to light. The panel had regard to your defence bundle which included your various reflective accounts, testimonial letters and training courses.

In particular, the Practice Manager from Hollow Way Medical Centre provided the following testimonial dated 8 November 2023:

> *'I have known Susanne since April 2021, when she started to provide cover in our acute clinic, assisting the duty doctor with the diagnosis and management of emergency undifferentiated primary care presentations. She has also assisted with the COVID-19 vaccination programme and has worked on a weight management project for the surgery […]*
>
> *Susanne's interactions with the surgery team have been extremely positive. Initially the GP partners took a little time to understand Susanne's competencies, because we have never engaged an ANP: We are now enthusiastic supporters of this position chiefly because of Susanne's involvement […]*
>
> *Nothing during Susanne's time with Hollow Way Medical Centre has given me any reason to doubt her honesty and integrity in all areas of her work. In*

addition to no complaints reported about Susanne, a recent feedback survey (Fourteen Fish) performed independently has revealed exemplary standards of care to patients and being highly respected and valued by her colleagues.

I specifically undertook the audit of her prescribing as part of this testimonial, to establish whether there was a pattern that reflected the allegations against her. The outcome of this detailed audit, from the 1300 prescriptions generated during her time with us, is that I have no indication either of inappropriate prescribing or failure to follow prescribing protocols.

As part of the audit, I explicitly checked prescribing [PRIVATE] and could find no evidence of inappropriate prescribing.'

The panel noted that in your role as a Locum Advanced Nurse Practitioner (ANP), a testimonial from a GP Principal at Hollow Way Medical Centre dated 20 November 2023 stated:

'Susanne made the GP partners and practice manager aware of the allegations against her right at the start of her time working with us. She was candid with us and showed good insight into the seriousness and implications of what had happened. She recognises that she fell short of the professional standards expected of her and clearly regrets her action.

I have had no concerns regarding Susanne's professionalism and patient care, during her time at Hollow Way Medical Centre. From my own observations and conversations with other members of the team and conversations with Susanne, I believe that she is very competent to fulfil her role. She is aware of the limits of her competence and will seek advice from guidance where she is unsure […] Susanne is aware of confidentiality issues and takes all appropriate steps to maintain patient confidentiality.'

In a separate current employment as a Bank ANP in an Urgent Care Centre for FedBucks, you received an audit feedback letter dated January 2022. You explained in your oral evidence that as part of the service that you provided in your role as an ANP, each call was audited which provided a feedback scoring matrix with consultations with patients. It provided percentage marks in ten different areas, and you scored over 90% and consistently received outstanding feedback between October 2020 and July 2022.

In a testimonial from a retired GP and Director of the '*Fast 800 Weight loss and Diabetes Remission Programme*', the author of this testimonial confirmed your employment as Clinical Lead between April 2020 and September 2023. The author confirmed that they were aware of the allegations and stated the following:

> *'I have no concerns about Susanne's understanding of the need for consent and confidentiality accessing records. She has been involved in many trials that we were running, recruiting patients from several different GP practices and following them up. This also required access to confidential patient records. Susanne had to gain each patient's consent before any commercial data was shared and to ensure their data was kept safe and confidential. I witnessed first-hand for example, the databases she devised and her use of non-identifiable data. This is important as this area of health is very emotive (weight loss). Susanne was very aware of the vulnerability of patients and managed and acknowledged this sensitively. Susanne carefully and diligently managed the onboarding, considering the complex needs of the patients, answering questions they might have and offering support and encouragement.'*

In considering the detail of your employer testimonials, the panel noted that each author had confirmed their full knowledge of the NMC's allegations against you.

The panel also had regard to your numerous reflective pieces over the last three years and your oral evidence in which you apologised for your actions and expressed remorse

which the panel considered to be genuine. In these written reflections, you identified each area of regulatory concern, you reflected upon how these may have arisen and analysed the associated triggers, you described how this impacted on the different stakeholders and what you had done to prevent similar occurrences in the future. The panel took into account that you had considered the impact of your actions on the patients, your employer, your colleagues, the nursing profession, the pharmacy and the general public. In your reflective statement dated 12 December 2023, you said:

> *'As a professional nurse, bound by the NMC Code, I take full responsibility for my dishonest prescribing of [PRIVATE] for* [PRIVATE]*, obtaining stock and training medication in an inappropriate way, and in doing so accessing patients' notes without their consent. I accept that this was unjustified and harmful.*
>
> *I am deeply sorry for my actions and the effect that they have had on patients A and B, the GP who discovered my aberrant behaviour and my colleagues. I also deeply regret and am saddened by the negative impact my actions may have had on the wider public's perception of the nursing profession. I understand the imperative to be honest, trustworthy, up to date and work within my competencies as a nurse prescriber.'*

The panel accepted that you had reinforced your learning by attending training courses and by targeted reading. For example, the panel noted your attendance at several in-person courses including a Probity and Ethics course and a Carry on Prescribing Course, both in October 2023. The panel also noted your August 2023 online Data Awareness Training Course which covered issues relating to consent, confidentiality and data sharing. The panel took into account your reading of the NMC documentation on *'Dishonesty'* and *'Insight'*, 'a *Defining Insight'* paper by Brown & McAvoy and Prescribing by the Royal Pharmaceutical Society. The panel took into account that you have identified three learning points (as relevant to your misconduct) for each piece of training or reading that you have undertaken.

In addition to your learning, you have provided comprehensive written reflections of what you have learned, and what you continue to learn. In addressing the charges found proved, you have set up an action grid and described what action you have taken for each course undertaken, in particular, for the concerns relating to '*Dishonesty- prescribing for self*' and *'Accessing Patient A and B's notes without consent-confidentiality breach'.*

The panel were particularly impressed by your *'Development and Restoration Plan: A framework to demonstrate remediation in relation to professionalism'* which began in January 2020. It demonstrated your commitment to your ongoing personal development.

In your reflective statement dated 12 December 2023, you stated:

> *'I have undertaken detailed remediation over the past three years: I have worked under supervision, employed a mentor, well-being guide and support, attended courses, sought feedback, listened to TED talks and undertaken reflections on all the above. Through regular review and discussion with my mentors, I have gained insights into my patterns of thinking and behaviour and their impacts. Despite the tensions and discomfort this process has created within me at times, I am relieved and most grateful for the opportunity it has given me to grow professionally and personally. I believe I have changed for the better.*
>
> *Faced with a future scenario, where my ethical or moral framework is challenged, or if I am unclear regarding a process, I feel better equipped to step back, articulate my concerns, share my vulnerabilities appropriately, seek a wider perspective and in doing so gain insights from others, refer to the NMC code, and consider the impacts of different options. I understand the imperative to recognise and escalate serious situations appropriately, including concerns about my own health, performance, or integrity.*

Through my remediation process, I feel my problem-solving strategies have matured. I feel my judgement has improved as was demonstrated recently by a difficult and challenging scenario. In my current work I feel well supported. I have been pleased and relieved to adopt the practice's established open, non-judgemental, healthy collaborative problem-solving approach.

I have developed as a nurse, and as a person through this fitness to practice process. [PRIVATE]*, insight and self-worth have all improved. By addressing my failings and remediating I believe I have evolved to minimise the risk of anything like this ever happening again.*

I feel privileged to work as a registered nurse, and care for patients facing a wide range of issues. I have worked hard to enhance and develop my skills through training during my thirty-year career, and I would like the opportunity to continue to practice. Finally, I would like to say I am sorry for what I have done.'

The panel had regard to the NMC Guidance (Reference FTP13c). It noted your positive engagement throughout the process and the steps that you have taken to remediate your actions, developed your insight and strengthened your practice. You accepted that dishonesty is attitudinal in nature and therefore the remediation of this conduct is an ongoing process.

The panel determined that you had developed sufficient insight and that, in the light of the detailed, positive feedback about your progress over the last four years in addressing the different areas of your misconduct, that you had fully remediated any public protection concerns regarding dishonesty, inappropriately accessing patient records and fraudulent prescribing.

Given the above, the panel was satisfied that your misconduct is unlikely to be repeated. The panel determined that, based on your in-depth and extensive process of remediation,

the detailed, positive employer testimonials which relate to the specific areas of concerns and comprehensive written reflection that you have provided to the panel, that the limbs of Grant are not engaged in respect of the '*future'* considerations.

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

The panel acknowledged that you were a nurse of good standing with a nursing career which spanned over 30 years, and that no similar incidents had been raised regarding your practice and that, at the time of your proven misconduct (2017-2019), you were a newly qualified nurse prescriber (2015). However, given that the dishonesty occurred over an 18-month period and your previous unblemished record consisting of a 37-year nursing career, the panel determined that a finding of impairment on public interest grounds is required because the breadth, depth and longevity of dishonesty would otherwise diminish public confidence. A well-informed member of the public would have found your actions deplorable. The charges found proved only came to light because Patient A reported it. Had Patient A not done so, your actions may have continued unabated. Therefore, 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 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 on wider public interest grounds only.

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of three years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

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. The legal assessor referred the panel to the following case law which included *Bolton v The Law Society* [1994] WLR 512 and *Lusinga v Nursing Midwifery Council (NMC)* [2017] EWHC 1458 (Admin).

Submissions on sanction

Ms Churaman provided written and oral submissions. She informed the panel that in the Notice of Hearing, dated 14 November 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.

Ms Churaman highlighted the aggravating features:

- Repeated conduct over a lengthy period
- Abuse of her position as a nurse prescriber
- Risk of harm to patients

Ms Churaman outlined the mitigating features:

- [PRIVATE].

Ms Churaman submitted that the misconduct in your case is so serious that it is incompatible with being on the register. She referred the panel to the NMC's guidance on *'Serious concerns which are more difficult to put right'* (Reference: FTP3a) and highlighted the three key points:

'These include:

- *breaching the professional duty of candour to be open and honest when things go wrong, including covering up, falsifying records, obstructing, victimising or hindering a colleague or member of staff or patient who wants to raise a concern, encouraging others not to tell the truth, or otherwise contributing to a culture which suppresses openness about the safety of care.*
- *exploiting patients or abusing the position of a registered nurse, midwife or nursing associate for financial or personal gain.*
- *being directly responsible (such as through management of a service or setting) for exposing patients or service users to harm or neglect, especially where the evidence shows the nurse, midwife or nursing associate putting their own priorities, or those of the organisation they work for, before their professional duty to ensure patient safety and dignity.'*

Ms Churaman submitted that in terms of dishonesty, she submitted the following:

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

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients.*
- *misuse of power.*
- *direct risk to patients.*
- *vulnerable victims.*

- *premeditated, systematic or longstanding deception.*

  The NMC submits that honesty is central to the practice of a nurse and such a flagrant breach is at the most serious end of the scale.'

Ms Churaman submitted that the conduct is too serious not to take further action and given that the panel has found that you were impaired on the grounds of the wider public interest, then no action is not appropriate. In whether a caution order is appropriate, Ms Churaman submitted that the case has to be at the lower end of the spectrum and that there is no risk to the public or to patients which require the nurse's practice to be restricted. In addressing a Conditions of Practice Order, Ms Churaman submitted that the misconduct identified does not raise concerns about your clinical abilities, and the guidance states that this may be appropriate where there are identifiable areas of the nurse's practice which is in need of assessment and or retraining. Ms Churaman submitted given the repeated conduct, the length of time over which it took place, and the seriousness of the conduct, a Suspension Order is not appropriate.

Ms Churaman submitted that a Striking-Off Order is likely to be appropriate when the nurse's actions are fundamentally incompatible with remaining on the register. She invited the panel to take the following into account:

'[…]

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*

  The NMC submit that they raise questions about her honesty, her abuse of her position, that she put her own interests before those of patients exposing them to risk of harm.

- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*

  The NMC submit that Mrs Smith's conduct undermines professional standards and public confidence. Restriction from the register by striking off is required to maintain confidence in both the profession and the regulatory function.

- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

  The NMC submit that a lesser sanction than striking off would not protect the public and maintain professional standards.'

Mr Olphert provide written and oral submissions. Mr Olphert reminded the panel of the relevant NMC guidance and the panel's approach when considering sanction. He submitted that:

> *'4. […] the mere fact that dishonesty has been found proved and is admitted here, does not mean, as it once did, that strike off must follow. Indeed, the present incarnation of the guidance document incorporates a number of points raised in appeals from the NMC to the High Court which deal with the issue of dishonesty where the Court endorsed the need for a nuanced approach, and for personal mitigation to be given proper and significant weight in determining whether the ultimate penalty of strike off was necessary in a given case.'*

Mr Olphert referred the panel to the relevant case law, *Lusinga v Nursing Midwifery Council (NMC)*, following *O v Nursing Midwifery Council (NMC)* [2015] EWHC 2949 and *Wisniewska v Nursing Midwifery Council (NMC)* [2016] EWHC 2672 (Admin).

'[…]

6. *As an aside, before dealing with the substance of the mitigation - Kerr J noted in Lusinga - dishonest conduct can take various forms; some criminal, some not; some destroying trust instantly, others merely undermining it to a greater or lesser extent.*

7. *This comment came before the amendments to SAN-2, and reflects the Court's increasing misgivings about a 'black and white' approach to sanction in dishonesty cases and a move away from the traditionally strict position of regulators following, amongst other authorities, that of Bolton.*

8. *Given the significant volume of material which Ms Smith has placed before the panel, and in particular the work she has done and the wealth of glowing references, it is submitted that there is a more than ordinary need to assess the weight to be placed on mitigation here.'*

Mr Olphert drew the panel's attention to the number of positive testimonials from your colleagues. He invited the panel to consider the "*wealth of mitigating features"* and stated the following:

' 11. […] the panel will need to balance their findings that Ms Smith has fully remediated the conduct at the core of this case with the need to uphold the public interest. The panel are reminded again of the guidance in SAN-1. The purpose of a sanction is not to be punitive, and the purpose is to reflect the risk in any case.

12. In the present case, given the panel's clear findings on impairment in respect of public protection, it is submitted on Ms Smith's behalf that that risk is, as the panel have themselves identified:

"Given the above, the panel was satisfied that your misconduct is unlikely to be repeated. The panel determined that, based on your in-depth and extensive process of remediation, the detailed, positive employer testimonials which relate to the specific areas of concerns and comprehensive written reflection that you have provided to the panel, that the limbs of Grant are not engaged in respect of the future."

13. *Even were the panel to conclude that the default starting point in dishonesty cases was one of strike off, it is submitted that the references provided in support of Ms Smith, the work which she has ably conducted in the years since the incident, and the wealth of personal reflection, is exceptional.*

14. *When read through the lens of Ms Smith's personal life, as someone who during the currency of the offending conduct, but also during the process of this matter coming to be heard* [PRIVATE] *which were at least in part the root cause of some of this conduct, and has also managed her complex* [PRIVATE]*, this is all the more telling.*

15. *For all these reasons, and given the clear mitigation, it is submitted that the panel can alight from the sanctions ladder below strike off and proportionately balance the public interest and Ms Smith's ongoing practice as a nurse.'*

Mr Olphert concluded his submissions and further reinforced that you felt *"deeply sorry"* about what happened and that you wished to offer your continued apologies to the Practice, to the patients and to the wider public overall.

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 your position as Nurse Prescriber.
- A pattern of misconduct over a period of time.
- Conduct which put patients at potential risk of suffering harm.

The panel also took into account the following mitigating features:

- Apologised to those affected by your conduct.
- Admitted the majority of the objective facts at the outset of the hearing, including dishonesty.
- Fully remediated the public protection aspects of the charges found proved.
- Good insight.
- Extensive development in terms of reflective practice, training and targeted reading and excellent positive testimonials and unsolicited and anonymous feedback deriving from patients as part of the online feedback (via Fourteen Fish), colleagues and management.
- Evidence of continued strengthened practice.
- Personal mitigating circumstances:
    - Level of experience at the time in question: you had recently qualified as a Nurse Prescriber in 2015 and joined a new workplace (the Practice) in 2017 when undertaking this new prescribing role.

- [PRIVATE].

The panel noted your circa 37-year career as a Registered Nurse. It had regard to the fact that there were no regulatory findings prior to the current charges found proved and that there had been no further regulatory referrals since that time.

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 the public interest consideration in this case is too great given the aggravating features identified. As such, it would be neither proportionate nor in the public interest to take no further action.

Next, in considering 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 *'a Fitness to Practice Committee has decided there's no risk to the public or to patients […] and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel noted that you have shown significant insight into your conduct. The panel noted that you made admissions to the majority of the objected facts and sincerely apologised to this panel for your misconduct, showing evidence of your genuine remorse. You have engaged with the NMC throughout its investigation.

The panel carefully considered the wider public interest. It had regard to the NMC guidance (Reference: SAN1):

> *'Being proportionate means finding a fair balance between the nurse, midwife or nursing associate's rights and our overarching objective of public protection. We need to choose a sanction that doesn't go further than we need to meet this objective. This reflects the idea of right-touch regulation, where the right amount of 'regulatory force' is applied to deal with the target risk, but no more.*

The Fitness to Practise Committee has to be proportionate when making decisions about sanctions. It's under a legal duty to make sure that any decisions to restrict a nurse, midwife or nursing associate's right to practise as a registered professional are justified.

To be proportionate, and not go further than it needs to, the Committee should think about what action it needs to take to protect the public and address the reasons why the nurse, midwife or nursing associate is not currently fit to practise.

They should consider whether the sanction with the least impact on the nurse, midwife or nursing associate's practice would be enough to achieve public protection, looking at the reasons why the nurse, midwife or nursing associate isn't currently fit to practise and any aggravating or mitigating features.'

The panel took into account the testimonials provided on your behalf, which were comprehensive and well-considered references that highlighted your practitioner skills, your value to the respective practices and emphasised that there were no ongoing concerns about your honesty and integrity.

In a testimonial from a GP Colleague at Hollow Way Medical Centre dated 20 November 2023, it stated:

'In my opinion, Susanne is fit to practice as a registered nurse without restriction and would be an asset to any organisation. I believe it would be a great loss to Hollow Way Medical Centre and indeed to the whole profession if her name were to be removed from the Register.'

Another GP colleague from your current employer, in his testimonial dated November 2023, stated:

> *'In summary Susanne is a highly regarded member of the team. Her work is of a very high standard. She has an excellent attitude towards patients and her colleagues. I believe she is fit to practice without restriction. I have no reservations about her continuing to work at Hollow Way Medical Centre.'*

In a further testimonial dated November 2023, the Practice Manager at your current employer, stated:

> *'I have thoroughly […] audited Susanne's record access and have found no inappropriate access to patient records […].*
>
> *In summary, it is my opinion that Susanne is fit to practise as a registered nurse without restriction. It would be a significant loss to the profession for Susanne's name to be removed from the Register. I will have no reservations about continuing to employ her without any restrictions in the future if she remains on the NMC register.'*

The panel also took into account the anonymous feedback from your colleagues through the online platform '*Fourteen Fish'* in October 2023 which included:

'[…]

- *Your presence on our team is a true pleasure. Your knowledge, helpfulness, caring, and friendly nature make a significant impact. Thank you for being an outstanding colleague.*
- *A kind and efficient person, a pleasure to work with her*
- *A very supportive and knowledgeable colleague.*
- *It is always a pleasure to work with Suzanne. She is always keen to help me and will always say to not hesitate to ask if needed.*

- *Susanne works well with patients and staff.*
- *very knowledgeable, nice to work with, very caring and professional.*
- *works well with the team.*
- *Hard working, flexible it is pleasure to work with Susanne.*
- *Our Gps* [sic] *highly value her work and commitment to our patients.*
- *Professional courteous and Great Team member.*
- *Very professional and courteous towards me on my first day at the practice and went out of her way to help me when needed.*
- *Susanne is a valued member of our team both for her clinical expertise and her personal skills. She is not afraid to speak up when she observes where improvements can be made and brings personality and warmth to our working environment.*
- *Susanne has provided valuable support to the Duty Doctor at Hollow Way Medical Centre. Her clinical skills are very good, and she has grown in confidence in this role during her time. In particular she made a diagnosis of malaria and advised the patient to immediately attend the local emergency department. Her timely intervention and clear instructions ensured that the patient was in a safe location to receive urgent medical care which she needed as her condition deteriorated shortly afterwards.*
- *Susanne is trustworthy and always ready to step in when we are short-staffed. her attitude towards her work and patients is excellent.*
- *She is thoroughly honest and trustworthy. She tries hard to prescribe effectively and use best practice guidelines. She is keen to maintain patient confidentiality at all times. I would be pleased if she could stay full time'*

The panel also had regard to the anonymous and unsolicited feedback from your patients through the online platform '*Fourteen Fish'* in which they stated that you were *'invaluable'* and *'someone who is clearly passionate about [your] work'.* In further comments from patients, they described their experience of your clinical practice, which included:

'[…]

- *I hope this nurse will be a permanent fixture at the surgery.*
- *The best nurse ive* [sic] *ever experienced. She made me feel extremely comfortable and relaxed. Susan is definitely my preferred nurse. Shes* [sic] *someone who is clearly passionate about her work and you feel how genuine and caring she is towards you and that goes a long way.*
- *Suzanne was extremely caring I have every confidence in her.*
- *Please stay in Holloway. Joy to see, you are invaluable.*
- *The nurse welcomed me, and I was comfortable with her knowledge to remedy my situation and confident her medical professionalism to listen and ask the right questions and clarity with next step plan made understanding me happier and better.*
- *Susanne - this nurse was kind, attentive & listened to me. She came up with a diagnosis, treatment plan. I am totally happy & confident in her assessment, would be keen to see her again. I was impressed she checked my identity & asked my consent before assessing me.*
- *You feel how genuine and caring she is towards you and that goes a long way' and cannot think of anyone more helpful. I have full trust in her. Fully helpful. Quick diagnosis & extremely competent trustworthy & asked my permission to examine me. I am fully thankful to this nurse. I feel she saved my life.'*

The panel was of the view that your case was exceptional by virtue of the completeness of your remediation and the full confidence in your probity and honesty expressed by your current professional colleagues who are aware of these circumstances of your admitted dishonesty.

The panel was told that even after the referral, no restrictions were put in place to limit your nursing practice, which therefore allowed you to remain working as a nurse. The panel acknowledged that you then took this period, starting from January 2020, to compile and show evidence of your ongoing remediation, and this was further supported by your

various reflective pieces, your training and the positive feedback and testimonials from your patients, colleagues, mentor and management.

The panel next considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel noted that there are no concerns regarding your clinical practice, and as such, there are no areas of concern that would require retraining. The panel concluded that no useful purpose would be served by a conditions of practice order. It is not necessary to protect the public and would not assist your return to nursing practice.

The panel considered in detail, as to whether a suspension order would be proportionate in this case particularly as the concerns identified in this case relate to dishonesty. However, the panel decided that your misconduct was not attitudinal in nature, but that it took place at a time when you asserted that [PRIVATE]. The panel has not found that this excused your behaviour, rather, it considered that you should have removed yourself from the workplace at the time [PRIVATE]. Notwithstanding, bearing in mind the factors identified above which the panel deemed were exceptional circumstances, it was of the view that a Suspension Order was not proportionate.

In the view of the panel, the evidence of your complete remediation and the responses from the current patients and colleagues in respect of your care means that any period of suspension from practice would have the effect of depriving the public of an otherwise safe and effective practitioner. This would be in conflict now with the overarching objective. The public would, in the panel's view, be better protected by having available to it, your fully remediated professional services.

The panel has decided that a caution order would satisfy the wider public consideration of this case. For the next three years, your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a

caution order for a period of three years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

In making this decision, the panel carefully considered the submissions of Ms Churaman in relation to the sanction that the NMC was seeking in this case. However, the panel considered that whilst it acknowledges the seriousness of the charges found proved, you have provided the panel with comprehensive evidence that you have fully remediated your misconduct. The panel also noted that you have been able to practise without restrictions for at least three years. You have been audited extensively in your prescribing of medication and your medical practice. It was of the view that a striking off order would be highly punitive, and it would be wholly disproportionate for you to be removed from the register.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding, and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.