Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

24 July 2023 – 31 July 2023
21- 26 September 2023
19 – 23 February 2024
26 February - 1 March 2024
26 April 2024

Physical and Virtual Hearing

Name of Registrant:	Michaela Louize Moss	
NMC PIN	85J1730E	
Part(s) of the register:	RN1: Registered Nurse – (sub part 1) Adult – Level 1- 18 September 1989	
Relevant Location:	Lancashire	
Type of case:	Misconduct	
Panel members:	Tracy Stephenson Esther Craddock Elaine Biscoe	(Chair, lay member) (Registrant member) (Registrant member)
Legal Assessor:	Sanjay Lal Charles Parsley (19 February – 1 March 2024)	
Hearings Coordinator:	Opeyemi Lawal Taymika Brandy (September 2023) Catherine Acevedo (26 February – 1 March & 26 April 2024)	
Nursing and Midwifery Council:	Represented by Raj Joshi, Case Presenter & Mohsin Malik (26 April 2024)	
Ms Moss:	Present and represented by Rosalia Myttas-	

	Perris, instructed by Royal College of Nursing (RCN)
Facts proved by admission:	Charges 4, 5, 9
Facts proved:	Charges 1, 2a, 2b, 2c, 3a, 3b, 6a, 6b, 7, 8a, 8b, 8c, 10 in relation to charges 7 and 8
Facts not proved:	Charges 10 in relation to charge 9; 11
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order - 18 months

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

At the outset of the hearing, Ms Myttas-Perris made a request that this case be held entirely in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Joshi indicated that he supported the application [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 references are made to your [PRIVATE].

Details of charge

That you, a registered nurse:

1. On one or more of the dates set out in Schedule 1, worked for Pennine MSK Partnership ("MSK") whilst in receipt of Occupational Sick Pay from Tameside & Glossop Integrated NHS Foundation Trust ("the Trust")

2. Provided fit notes to the Trust that did not specify that you were fit to undertake alternative work whilst receiving Occupational Sick Pay to cover the following dates:
    a. 1 March 2018-15 March 2018
    b. 15 March 2018- 29 March 2018
    c. 29 March 2018 – 16 April 2018

3. Your conduct in respect of charges 1 and/or 2 was dishonest in that you:

a. Knew that you were not entitled to receive occupational sick pay
b. Did not disclose that you intended to continue working at MSK

4. On or around 13 May 2013 onwards, you administered anaesthesia to one or more patients.

5. On 17 January 2022 you administered anaesthesia to a patient.

6. Your conduct at charges 4 and/or 5 was outside of your scope of registration as you:
    a. Did not hold an Independent Prescriber qualification ("IP")
    b. Did not have a Patient Group Direction ("PGD") in place

7. On or around 4 March 2022 told Colleague A you could not find a copy of your IP qualification, or words to that effect.

8. On or around 4 March 2022, told Colleague B:
    a. You could not find a copy of your IP qualification, or words to that effect.
    b. You had previously shown MSK your Independent Prescriber qualification, or words to that effect
    c. You received your IP qualification from the University of Manchester over 20 years ago, or words to that effect.

9. On or around 4 June 2020 you reviewed the Service Level Agreement and confirmed that your mandatory training was up to date.

10. Your conduct at charges 7 and/or 8 and/or 9 was dishonest in that you knew you did not have an IP qualification.

11. Between 29 April 2022 and 6 July 2022 did not provide a copy of your interim conditions of practice order to Circle Health Group Alexandra Hospital.

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

Schedule 1

a. 12 March 2018
b. 9 April 2018
c. 2 July 2018
d. 16 July 2018
e. 6 August 2018
f. 10 September 2018
g. 24 September 2018
h. 15 October 2018
i. 5 November 2018

Background

Referral 1 072452

It is alleged that on multiple dates between February 2018 and January 2019, you worked for Pennine MSK Partnership (PMSK) whilst on sick leave and receiving Occupational Sick Pay from Tameside & Glossop Integrated NHS Foundation Trust.

By working for additional pay whilst covered by a GP sick note that said you were unfit for any work, it is alleged that you invalidated your eligibility to receive Occupational Sick Pay and consequently were paid a significant amount of money to which you were not entitled.

Referral 2 - 088460

You worked as a Nurse Consultant at PMSK on a visiting basis in line with a Service Level Agreement (SLA) since April 2013.

It is alleged that you performed carpal tunnel surgeries on PMSK patients which included the administration of lidocaine (local anaesthetic) as an IP.

On 17 January 2022, you injected a patient with lidocaine but could not proceed with the surgery as the tourniquet cuff failed to inflate.

Colleague B investigated the incident and on review of the documentation she noticed that your record keeping did not meet the expected standards of an IP. Colleague B checked PMSK's records and the NMC register and could not find any evidence of your IP qualification.

You told Colleague B that you had previously shown your IP qualification to PMSK when the SLA was first agreed in 2012.

Colleague B queried this with you, and you confirmed that you did hold the relevant qualification but could not find a copy. You stated that it did not matter because you were not prescribing at PMSK. Colleague B and Colleague A said that as you were administering lidocaine to patients as part of your service, you needed to show evidence of your IP qualification.

On 4 March 2022 it is alleged that you cancelled the clinic which was scheduled for Monday 7 March 2022. In an initial telephone conversation on 4 March 2022 with Colleague A, it is alleged that you told Colleague A that you would not be able to obtain a copy of the IP qualification as you [PRIVATE] believed it to be in the loft of your previous house.

Subsequently, you told Colleague A that you had contacted the University of Manchester and that the University had confirmed that you did not have an IP qualification, but you had completed a supplementary prescriber qualification as part of your degree. You said that the University said they could not provide a copy of this qualification due to the length of time that had passed since you completed your course.

You asked if a Patient Group Direction ("PGD") could be put in place, but Colleague A advised that it would take some time to produce a PGD and the investigation would need to be completed before that could be considered.

The service was suspended and on 30 March 2022, Colleague A emailed you notifying you that PMSK was terminating the SLA as you had both failed to understand your responsibilities to work within the scope of your registration with the NMC and had been actively working outside of the scope of your registration at PMSK thereby potentially putting patients at risk of harm.

Colleague B confirmed that the SLAs did not contain express provisions for prescribing responsibilities or a requirement for you to have an IP qualification. However, both Colleague B and Colleague A said that you should not have administered anaesthesia without either the IP qualification, a supplementary prescribing qualification with patient specific clinical management plans or a PGD in place. Both Colleague B and Colleague A have confirmed that none of these were in place and that there was no provision at PMSK to support non-medical prescribers who were not employees.

Disclosure application

During day 4 of the reconvened hearing, Ms Myttas-Perris made a disclosure application. She referred the panel to the NMC guidance on Disclosure PRE-5 which allows for nurses facing a hearing to request the NMC to seek disclosure from a third party. The points to be considered are:

> *"1. Is it relevant or essential?*
>
> *2. What steps has the nurse, midwife or nursing associate taken to obtain the material themselves?*

3. Are we better placed to obtain this material from the organisation or person that holds it"

Ms Myttas-Perris said that you had been recently informed that Colleague B had been dismissed from PSMK. She submitted that you wish to ascertain the circumstances behind this as, if it was related to honesty and integrity or record keeping, it could have a bearing on the credibility of the witness. She submitted that it could however have no relevance at all but, until the information had been obtained, she could not make that assessment. This makes the disclosure relevant and essential.

Ms Myttas-Perris submitted that you or the RCN could not make this request of PMSK as it would be inappropriate but the NMC could make the request because Colleague B had been their witness and PMSK had been her employer.

Mr Joshi objected to the request. He had spoken to an NMC senior lawyer who had responded that it was not proportionate to request this information once the witness had given evidence. He submitted that the evidence from Colleague B had been tested when she gave evidence in July 2023 and there was supporting documentary evidence to support her account. He highlighted the difficulty of obtaining this information due to the confidentiality of such a sensitive matter. He concluded that this was an essentially a fishing exercise and would prolong this hearing.

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

The panel rejected the application. The request for the information arose from unsubstantiated hearsay and was not confirmed as fact. The panel concluded that Colleague B's evidence had been tested when she gave oral evidence. It did not consider it appropriate to delay the hearing any further to try and obtain the information. It considered that it was unlikely that the information would be released in response to any request and the information sought is a matter of speculation. The panel was of the view that such information would not impact on your having a fair hearing.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Myttas-Perris, who informed the panel that you made full admissions to charges 4, 5 and 9.

The panel therefore finds charges 4, 5 and 9 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 Mr Joshi on behalf of the NMC and by Ms Myttas-Perris 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 witnesses called on behalf of the NMC:

- Colleague B: Consultant Nurse Rheumatology and Director for Service Improvement at Pennine MSK Partnership

- Colleague A: Founding Partner of Pennine MSK Partnership and Executive Director of PMSK

- Ms 1: Interim Service Director and Associate Director of Nursing for Intermediate Tier Services at

Tameside and Glossop Integrated Care NHS Foundation Trust

- Mr 2: Local Counter Fraud Specialist
- Ms 3: Finance and Business Director at PMSK
- Mr 4: HR Business Partner at the Trust
- Ms 5: Deputy Theatre Manager at Alexandra Hospital
- Ms 6: Payroll Manager at the Trust
- Ms 7 Assistant Director of Human Resources at the Trust

The panel also heard evidence under affirmation from you and from the following witnesses who you called:

- Ms 8: Surgical Care Practitioner and Registered Nurse
- Ms 9 Previously a Band 6 nurse employed by the Trust
- Mr 10 General Medical Practitioner
- Mr 11 Consultant Orthopaedic hand and wrist Surgeon

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

On one or more of the dates set out in Schedule 1, worked for Pennine MSK Partnership ("MSK") whilst in receipt of Occupational Sick Pay from Tameside & Glossop Integrated NMS Foundation Trust ("the Trust")

Schedule 1

a. 12 March 2018
b. 9 April 2018
c. 2 July 2018
d. 16 July 2018
e. 6 August 2018
f. 10 September 2018
g. 24 September 2018
h. 15 October 2018
i. 5 November 2018

This charge is found proved.

The panel took into account that it was not disputed that you worked for PMSK on all the dates in Schedule 1.

The panel also had sight of your contract in respect of sickness absence which confirmed that *"occupational sick pay is available from the commencement of employment and is based on reckonable service;… after five years' service, for the first six months whilst off sick, you would be entitled to full pay following which you would receive half pay".*

The panel had sight of your fit notes which certified you unfit to work for the period of 1 March – 16 April 2018. You also agreed in oral evidence that you were off sick from 29 June 2018 until 13 January 2019. The panel noted the return to work interview clarifying these dates and has also had sight of some of the fit notes covering this period. The panel also had sight of your personal roster which showed that you were off sick for the periods corresponding to your fit notes and return to work interview.

The panel took into account the fit notes submitted by you to the Trust which clearly stated that you were unfit for work. Although the fit notes contained provision for specifying any alternative work which you might undertake, in none of the fit notes was there any entry to that effect.

In your oral evidence you said that you had spoken to your GP by telephone or in person on each occasion that you obtained the fit notes.

The panel also had sight of your payslips and accepted the evidence of the payroll manager confirming that your pay during those sick periods would have been made up of Occupational Sick Pay which would show as your full basic pay until such time as you went on to half pay when statutory sick pay would have been implemented and visible on the payslip.

The panel did not find credible your oral evidence that your manager had not activated your sick notes in March and that you had continued to work. You referred to entries in your personal diary which purported to show that it had snowed at the end of February 2018 and the beginning of March 2018. You said you were given ‘snow days’ and denied being off sick. However, the fit notes had been submitted by you to the Trust and you were in receipt of Occupational Sick Pay as confirmed by the pay roll manager. Further, the panel did not find your evidence plausible that, having gone into work for the purpose of handing in your fit notes, you then proceeded to work at the request of your manager.

The panel did not find credible the evidence of Ms 9 that she could recall after six years the exact dates she might have seen you at work in March 2018.

You did not offer this explanation during the internal investigation, nor was it put to any of the NMC witnesses who gave evidence in respect of this and was only advanced when you came to give oral evidence.

The panel concluded that on one or more of the dates set out in Schedule 1, you worked for PMSK whilst in receipt of Occupational Sick Pay from the Trust. The panel therefore found charge 1 proved.

Charge 2a, b and c

> Provided fit notes to the Trust that did not specify that you were fit to undertake alternative work whilst receiving Occupational Sick Pay to cover the following dates:
>
> a. 1 March 2018-15 March 2018
> b. 15 March 2018- 29 March 2018
> c. 29 March 2018 – 16 April 2018

This charge is found proved.

For the same reasons as set out in charge 1, the panel has accepted that you were in receipt of Occupational Sick Pay for the three periods set out in this charge. It is not disputed that you had provided fit notes to the Trust to cover those periods and they did not specify that you were fit to undertake alternative work. The panel therefore found charge 2a, 2b and 2c proved.

Charge 3

> Your conduct in respect of charges 1 and/or 2 was dishonest in that you:
>
> a. Knew that you were not entitled to receive occupational sick pay
> b. Did not disclose that you intended to continue working at MSK

This charge is found proved.

The panel noted that you are a nurse of over 30 years' experience, and had achieved significant seniority and you had accepted in your oral evidence that you were aware of the Attendance Management Policy.

The panel noted the oral evidence of Ms 1 who said *"It was perfectly reasonable for people to have second jobs. The matter was that work was undertaken whilst you were absent from work".*

You explained that you were not rostered to work one Monday a month to allow you to work at PMSK. You claimed that this was by way of an agreement with the Trust. There was no evidence that this was a formal agreement. The panel does not accept that such an arrangement would continue to apply when you were certified as off sick. There was no evidence you had any discussion with a manager to inform them that you were continuing to work at PMSK whilst off sick. When interviewed during the internal investigation you initially denied working at PMSK, then admitted to working two days during the sick period before admitting the full extent of your working when confronted by evidence of the invoices.

The panel also noted that you did not submit only one fit note, but you submitted a number or fit notes repeatedly between March 2018 and April 2018 and June 2018 and January 2019.

The panel did not accept that you genuinely believed it was acceptable to submit fit notes stating you were unfit for work and to receive Occupational Sick Pay whilst working elsewhere.

The panel was of the view that as a nurse of your standing you were fully aware that when continuing to submit the fit notes which did not state that you were fit to undertake any work, you would not then be entitled to receive Occupational Sick Pay. The panel has concluded that ordinary decent people would regard it as dishonest to receive Occupational Sick Pay to which you well knew you were not entitled.

The panel was also of the view that your initial evasiveness about your continuing to work at PMSK while in receipt of Occupational Sick Pay was indicative of your knowing that you were not entitled to do so.

The panel concluded that your conduct in respect of charges 1 and 2 was dishonest in that you knew that you were not entitled to receive occupational sick pay and you did not disclose that you intended to continue working at PMSK. The panel therefore found charges 3a and 3b proved.

Charge 6

> Your conduct at charges 4 and/or 5 was outside of your scope of registration as you:
>
> a. Did not hold an Independent Prescriber qualification ("IP")
> b. Did not have a Patient Group Direction ("PGD") in place

This charge is found proved.

In reaching this decision, the panel took into account your evidence and the evidence of Colleague A and Colleague B.

The panel accepted the evidence of Colleague A and B and was satisfied that a legal framework was required for a nurse to administer lidocaine. This was in the form of an IP qualification, supplementary prescriber qualifications with clinical management plans in place or a PGD. Ms 8 also gave evidence which supported the need for a legal mechanism.

You accepted during your oral evidence that you do not hold an IP qualification and there was no PGD in place at PMSK. You said that you held a supplementary prescriber qualification, and that this gave you the legal framework. In your oral evidence you also

stated that the SLA gave you authorisation to administer the four medications named within it as a result of the pathway you had completed. When this was put to Colleague B, she agreed that that may be the case but there would still need to be a legal framework for the supply and administration of those medications.

The panel also had sight of your application form for a nurse position. In the section ‘any question asked by candidate’, the panel noted that it stated *“? nurse prescribing”.* The panel interpreted this as you indicating an interest in undertaking the nurse prescribing qualification. You would not have done this if you genuinely believed yourself to already have this qualification.

The panel found your oral evidence to be unclear as to the date or year you obtained your degree or this supplementary prescribing qualification which you said was a module of your degree. You said that you obtained this qualification as part of your master’s degree but the dates you put forward preceded the date when the supplementary prescribing qualification came into being in 2003 as confirmed by Ms 8 in oral evidence. The panel also considered that your understanding of how a supplementary prescribing qualification works was limited.

Additionally, the panel noted that within your application form for a sister’s/charge nurse post, you did not indicate that you had a supplementary prescriber qualification nor a master’s degree which the panel considered to be significant qualifications to enter on an application form, yet you noted qualifications which were less relevant to a nursing post.

When asked about the arrangement for each patient to have a clinical management plan, which is a requirement for supplementary prescribing, you stated that the GP who made the referrals to you prescribed the lidocaine. However, the panel was of the view that it was implausible that each referring GP, of which there were likely to be many, would prescribe the use of lidocaine for their respective individual patients when they were not involved in the procedure or in the vicinity of the surgery. The panel considered that the

GPs would expect PMSK who was providing the service to have a suitable legal framework in place to deal with such matters.

The panel had no evidence that you raised the issue of having the supplementary qualification and the GPs prescribing the lidocaine with Colleague A or Colleague B in detail at the time of the local investigation and was not put to these witnesses at this hearing.

The panel took into account the Root Cause Analysis Investigation Report from Colleague B which stated:

> *"(3) Was the supply and administration of lidocaine within scope of practice for the nurse consultant?*
> *The nurse consultant does not hold an independent prescribing qualification. The supply and administration of lidocaine would not be covered if she is was able to evidence a Supplementary Prescribing qualification as there was no agreed patient specific clinical management plan agreed with a doctor. The organisation has not drawn up or agreed a Patient Group Direction to cover the administration of lidocaine as pre-operative aesthesia for this cohort or patients".*

The panel requested information from the NMC regarding the different nurse prescribing qualifications. The NMC produced a "response on prescriber qualification" which stated:

> *"In order to be able to register with us as a prescriber they would need to successfully complete an NMC approved prescribing programme at an NMC approved education institution. This can either by a community practitioner nurse prescriber programme or an independent/supplementary nurse prescriber programme. Once they have registered the qualification with us, then and only then can they legally prescribe – obtaining the qualification is not enough, it must be registered with us before they can prescribe. They have a maximum of 5 years to register the qualification with us after successful completion".*

The panel noted that there is no such qualification under your name on the register.

The panel concluded that your conduct at charges 4 and 5 was outside of your scope of registration as you did not hold an IP qualification and there was no PGD in place. The panel had no evidence that alternatively you held a supplementary prescribing qualification and had agreed patient-specific clinical management plans in partnership with an independent prescriber. It therefore found charges 6a and 6b proved.

Charge 7

> On or around 4 March 2022 told Colleague A you could not find a copy of your IP qualification, or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A, Colleague B and your evidence.

You said during your evidence that Colleague A was mistaken or lying in his evidence that you made the alleged statements in the charge. You said that you never said you could not find a copy of your IP qualification as you did not have one but you may have said that you were an independent practitioner.

Colleague A stated in his statement for the local investigation *"Louize then rang me at 13.01 on 4th March. In this call that lasted 5 minutes Louize said that when she had spoken to [Colleague B] she had been told that if she couldn't produce a copy of her qualification today the clinic on Monday would have to be cancelled. She said that she would not be able to find it today".*

The panel noted that this conversation would have had the sole purpose of obtaining confirmation that you had the IP qualification necessary for you to carry out the procedure.

Colleague A and Colleague B were aware that there was no PGD or clinical management plans in place which was a requirement of the supplementary prescribing qualification.

The panel noted that Colleague A and Colleague B were aware of PMSK's organisational oversight in not requesting evidence of an IP qualification at the time of your recruitment, the absence of which exposed a failure of their governance processes.

Colleague A's local statement is dated 9 March 2022 when the telephone conversation would have been fresh in his memory. The panel did not consider it was plausible that Colleague A was confused about the type of prescribing qualification to which you were referring. The panel considered that Colleague A demonstrated a clear understanding of the legal requirement and he wanted to give you every opportunity to produce the necessary document as it was in his interest to do so.

The panel found Colleague A's evidence to be credible and consistent. It preferred his account of the conversation to your account. The panel determined on the balance of probabilities that you did tell Colleague A you could not find a copy of your IP qualification. The panel therefore found charge 7 proved.

Charge 8

On or around 4 March 2022, told Colleague B:

a. You could not find a copy of your IP qualification, or words to that effect.
b. You had previously shown MSK your Independent Prescriber qualification, or words to that effect
c. You received your IP qualification from the University of Manchester over 20 years ago, or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and your evidence.

Your oral evidence about this conversation was inconsistent in that you denied that it took place but also stated that you might have said Independent Practitioner instead of prescriber.

The panel was of the view that it was not plausible that Colleague B who was herself an IP would not be aware of the distinction between the terms ‘prescriber’ and ‘practitioner’. Colleague B was clear in her evidence about what qualification was required by you and the conversation was specifically about your prescribing qualification because she could find no record of it.

In Colleague B’s witness statement she said “*I called Louize in the morning on Friday 4 March 2022 to follow up with her and she told me that she could not find a copy of her qualification as she had undertaken the qualification years ago. Louize asserted that she had already shown me evidence of her qualification when she started at PMSK. I do not recall ever seeing Louize’s qualification and it would not normally fall within my remit to verify qualifications”.*

Colleague B wrote a statement for the local investigation dated 9 March 2022 when the telephone conversation would have been fresh in her memory and was consistent with her written and oral evidence.

The panel found Colleague B’s evidence to be credible and consistent. It preferred her account of the conversation to your account. The panel determined on the balance of probabilities that you did make each of the statements to Colleague B which are set out in charge 8.

The panel therefore found charges 8a, 8b and 8c proved.

Charge 10

> Your conduct at charges 7 and/or 8 and/or 9 was dishonest in that you knew you did not have an IP qualification.

This charge is found proved in relation to charges 7 and 8.

Having found that you did make to Colleague A and B the statements which are alleged in charges 7 and 8, the panel considered your state of mind in making those statements. The panel considered that it was not plausible that a nurse of your seniority and experience in carpel tunnel surgeries as an independent practitioner with your own company would have genuinely believed yourself to have the IP qualification when you did not. If you knew that you did not have that qualification, you would also have known that you could not produce a copy of it or could not have previously shown it to PMSK, and that you had not received the qualification from the University of Manchester.

The only conclusion that ordinary decent people could reach is that in making these statements, which you could not have believed to be true, you were dishonest.

It therefore found charge 10 in relation to charges 7 and 8 proved.

The panel did not find charge 10 proved as it applies to charge 9. It determined that because a prescribing qualification is not generally accepted to be included in mandatory training your statement that your mandatory training was up to date was not dishonest.

Charge 11

> Between 29 April 2022 and 6 July 2022 did not provide a copy of your interim conditions of practice order to Circle Health Group Alexandra Hospital.

This charge is found not proved.

In reaching this decision, the panel took into account the evidence of Ms 5.

Ms 5 said in her oral evidence that you had provided her, via your mobile phone with the details of your interim conditions of practice order and that this had occurred on 3 May 2022. The panel noted that this was within the time frame specified in the charge.

Ms 5 was clear that when she made her original statement, she had made an error and in her oral evidence accepted that as soon as you met Ms 5 on your first day you spoke to her and you were able to show her the interim conditions of practice order on your phone.

The panel accepted Ms 5's oral evidence that you had provided a copy of your interim conditions of practice order within the time brackets set out in the charge and therefore found charge 11 not 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 and impairment

The panel heard from two witnesses called on your behalf. Ms 5 is the Deputy Theatre Manager and Ms 12 is your supervisor at the Alexandra Hospital where you have worked since May 2022. Both witnesses attested to your positive nursing skills and professionalism and gave examples of incidents where you have demonstrated honesty and integrity in the workplace. Both witnesses informed the panel that they were aware of the charges being brought against you.

Mr Joshi invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where the NMC say your actions amounted to misconduct.

Mr Joshi 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Joshi referred the panel to the NMC guidance on impairment. He submitted that the panel must consider whether you have in the past acted and or are liable in the future to act dishonestly. He submitted that your reflection statement does not demonstrate insight or address the issues. He submitted there is no acknowledgement of why what you did was wrong.

Mr Joshi also referred the panel to the NMC guidance 'Considering sanctions for serious

cases' particularly to the question of how to approach cases involving dishonesty. He submitted the charges found proved were not one-off incidents but something that occurred over months and there is no acknowledgement of this in your written reflection or oral evidence. He submitted that your dishonesty can be considered to be more serious because it involved personal financial gain, a breach of trust and was also a premeditated and longstanding deception.

Mr Joshi submitted that you suggested that witnesses were either mistaken or lying and there was a deliberate breaching of the professional duty of candour by covering up your actions. Mr Joshi referred the panel to the oral evidence of two character witnesses called on your behalf. He submitted that most of what the panel has heard from these witnesses was simply about your clinical practice. He submitted that this is not a case where there are issues in relation to the way you carry out your duties as a nurse.

Mr Joshi therefore invited the panel to find your fitness to practise is currently impaired.

Ms Myttas-Perris asked the panel to consider that you are someone who has done their best to learn from this process, you have demonstrated insight in your reflective piece and have admitted that the charges proved amount to misconduct.

Ms Myttas-Perris asked the panel to take into account the evidence of those who know you best; nurses and doctors with unblemished records who have seen you working day to day in your current role. She submitted that witnesses Ms 5 and Ms 12 said they were aware of the allegations, and both witnesses were clear that the allegations related to dishonesty. She therefore submitted that the panel can place great weight on their evidence not only in a clinical setting but also as a professional to work with. Both witnesses gave examples of your honesty in a nursing environment.

Ms Myttas-Perris submitted that you are someone who has learned from your mistakes and are able to take those lessons and put them into action going forward. She submitted that since this incident, you have demonstrated that you are a professional. She referred

the panel to the numerous positive testimonials which speak of your ability to put patients at ease and your emphasis on patient care.

Ms Myttas-Perris submitted that dishonesty is always serious, but your case does not involve the most serious misconduct. She submitted that an informed and reasonable member of the public who is aware of all of the circumstances of the case would not be concerned with a finding of no impairment. She submitted that there is public interest in allowing a good nurse who has demonstrated she can practice kindly, safely and professionally, to continue to practice.

Ms Myttas-Perris submitted that all those who know you personally and professionally, describe you as an excellent nurse with all the relevant attributes. You have contributed a huge amount to the profession and are highly regarded by those who have worked with you and the panel can be satisfied that there is no risk of repetition. There has been no repetition of the issues since the referral and your current manager and colleagues have no concerns with you. Ms Myttas-Perris submitted that the mistakes that you recognise you made were in failing to reacquaint yourself with policies and procedures and failing to check requirements of your employer and your regulator. You also recognise that you failed to communicate clearly to avoid similar situations arising.

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

Decision and reasons 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.'*

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:

> *"6 Always practise in line with the best available evidence*
> *To achieve this, you must:*
>
> > *6.2 maintain the knowledge and skills you need for safe and effective practice*
>
> *8 Work cooperatively*
> *To achieve this, you must:*
>
> > *8.2 maintain effective communication with colleagues*
> > *8.5 work with colleagues to preserve the safety of those receiving care*
>
> *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*
> > *13.5 complete the necessary training before carrying out a new role*
>
> *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*
>
> *20 Uphold the reputation of your profession at all times*
> *To achieve this, you must:*
>
> > *20.1 keep to and uphold the standards and values set out in the Code*
> > *20.2 act with honesty and integrity at all times…*
> > *20.4 keep to the laws of the country in which you are practising"*

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

The panel considered that your actions at charge 1 and 2 and the related dishonesty at charge 3 were particularly serious because they involved personal financial gain and a premeditated pattern of dishonest conduct over a sustained period. The panel considered that you knew you were in receipt of money that you were not entitled to and were dishonest. The panel considered that your actions at these charges fell far below the standards expected, particularly of a nurse with your experience and standing, and amounted to misconduct.

The panel considered that your actions at charges 4 and 5 when taken in isolation did not amount to misconduct. However, when taken in relation to charge 6 that you acted outside of your scope of practice, the panel considered that your actions were serious and put patients at risk of harm because you did not have the relevant qualification that legally authorised you to administer the local anaesthesia. The panel considered that your actions were also serious because it involved a pattern of conduct over an extended period. The panel determined that your actions at these charges fell far below the standards expected, particularly of a nurse with your experience, and amounted to misconduct.

The panel considered that your actions at charges 7 and 8, when taken in isolation, did not amount to misconduct. However, when taken in relation to charge 10 that you acted dishonestly, the panel considered that your actions were serious and put patients at risk of harm. You were aware that you did not have a copy of your IP qualification because it did not exist but you made it appear to Colleague A and Colleague B that it was simply a matter of you being unable to find it. The panel considered that your actions at these charges fell far below the standards expected, particularly of a nurse with your experience, and amounted to misconduct.

The panel considered that, when taken in isolation, charge 9 did not amount to misconduct. The panel saw no evidence that your mandatory training was not up to date and the panel found no misconduct in respect of this charge.

The panel therefore found that your actions at charges 1, 2, 3, 4, 5, 6, 7, 8 and 10 fell 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.

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. 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 limbs a, b, c and d in the *Grant* test were engaged. The panel found that, although no patients were harmed, they were put at risk of harm by you administering medication you knew was outside your scope of practise to prescribe. The panel found that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel also found that you had acted

dishonestly when you worked for one employer whilst in receipt of sick pay from another and when you purported to hold a qualification that you knew you did not have. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel noted that throughout your oral evidence you made excuses for your actions and sought to undermine the evidence of Colleague A and Colleague B.

The panel noted the guidance regarding finding insight where a registrant had denied the charges as set out in the case of *Sawati v GMC* 2022 EWHC 283 (Admin) that:

> *'It is wrong to equate maintenance of innocence with lack of insight. Denial of misconduct is not an absolute bar to a finding of insight…*
> *However, attitude to the underlying allegation is properly to be taken into account when weighing up insight. Where the registrant continues to deny impropriety, that makes it more difficult for him to demonstrate insight.'*

The panel also noted your reflective statement. However, the panel was of the view that this did not sufficiently address the charges found proved. It noted that you have maintained that charges 1 -3 related to a communication issue. In relation to the charges relating to prescribing, the panel saw no acknowledgment about the need for a legal framework and how the absence of this put your colleagues and employer at risk. You have not demonstrated a full understanding of how working outside of your scope of practice put patients at a risk of harm. The nature of your evidence undermined the panel's confidence in the genuineness of your insight as set out in your reflective piece.

The panel considered that, although you have expressed some remorse for your misconduct, you have not demonstrated that you understand that what was found proved was wrong and how this impacted negatively on the reputation of the nursing profession. The panel was of the view that you had not sufficiently demonstrated how you would handle a similar situation differently in the future.

The panel considered whether the misconduct in this case is capable of being addressed, whether you have addressed it and whether it is highly unlikely to be repeated.

The panel was mindful that dishonesty is more difficult to address particularly when it is not an isolated incident but when in your case that dishonesty was repeated in different contexts. The circumstances of your case gives rise to concerns about attitudinal issues.

The panel carefully considered the evidence before it in determining whether or not you have taken steps to address the concerns. The panel took into account the testimonials and oral evidence it heard from two witnesses. It noted that the testimonials all spoke highly of you in a predominantly clinical capacity. However, it noted that although the witnesses stated that they were aware of the charges against you, they were unaware of the full extent of the findings of this panel. It noted that in their oral evidence, Ms 5 alluded to her understanding that you are a supplementary prescriber. As you have stated you never registered the supplementary prescriber qualification, the inference is that this is something you told her after you started working at the Alexandra Hospital in 2022. Ms 12 stated *“The allegations against her are totally and unbelievably untrue”* after the panel had already found all but two of the charges proved.

Whilst the panel accepted the evidence of Ms 5 and Ms 12 about your clinical abilities, it was of the view that they were not fully cognisant of the facts found proved and it therefore placed limited reliance on the evidence of these witnesses and the written testimonials.

The panel noted the many certificates provided but it was of the view that they were not relevant to the concerns found proved.

In the light of the above, the panel considered the question “*Can the nurse, midwife or nursing associate practise kindly, safely and professionally?”.* The panel concluded that you could not practise safely and professionally.

The panel is of the view that there is a risk of repetition based on the limited insight and the lack of evidence that you have addressed the concerns. 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also found 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 striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

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

Submissions on sanction

Mr Malik informed the panel that in the Notice of Hearing, 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. He submitted that a striking-off order is the appropriate and proportionate sanction in this case. He outlined to the panel what the NMC considered to be the aggravating and mitigating features of the case.

Mr Malik submitted that to take no action or to impose a caution order would not be appropriate or proportionate due to the seriousness of the case. He submitted that dishonesty is a serious matter, and this case is not at the lower end of the spectrum of seriousness.

Mr Malik submitted that, in terms of a conditions of practice order, there was a pattern of misconduct that included repeated acts of dishonesty and a conditions of practice order would not be appropriate as there are no areas of practice in need of assessment or training. He submitted that the matter is too serious and there are no workable conditions that could be formulated to deal with the regulatory concern.

Mr Malik referred the panel to NMC guidance SAN 3d. He submitted that in relation to a suspension order, the concerns raised are serious and highlight a deep-seated attitudinal issue. He submitted that this was not an isolated one-off event, your insight is very limited and there remains a risk of repetition. He submitted that a suspension order is therefore not appropriate as the conduct in this case is incompatible with continued registration.

Mr Malik submitted that trust and confidence in the profession can only be maintained.
by the imposition of a striking-off order and, in all the circumstances, a striking-off order. is the only appropriate and proportionate order.

Ms Myttas-Perris submitted that you have stated all that you wish to say in your recent reflection. She submitted that the panel has heard and received testimonials from professional colleagues, doctors, nurses and line managers.

Ms Myttas-Perris submitted that there can be absolutely no doubt that you are and have

been an excellent nurse; colleagues have looked forward to working with you and you demonstrate excellent patient care skills.

Ms Myttas-Perris submitted that sanction is a matter for the panel.

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 and in particular NMC Guidance SAN 2 Considering sanctions for serious cases. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Your misconduct was a breach of trust.
- You have demonstrated an absence of insight into your failings.
- You have demonstrated patterns of dishonest behaviour over a period of time in two different sets of circumstances.
- Your conduct put patients and colleagues at risk.
- Your actions were deliberate.
- Your misconduct resulted in personal financial gain.

The panel also took into account the following mitigating features:

- [PRIVATE].

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 seriousness of the case. 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 of the view that there are no practical or workable conditions that could be formulated, given that the charges in this case do not relate to your clinical practice. The dishonesty and deep-seated attitudinal concerns identified in this case cannot be easily 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 suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel considered that there was no evidence that you had repeated your misconduct. You sought to blame others instead of taking responsibility for your actions. You have not acknowledged how your misconduct could have caused risk of harm to patients nor how it could negatively impact the public's perception of the nursing profession. However, it considered your recent reflective statement and found that although you have had two months to consider its decision and reflect on your conduct, your level of insight has not developed. It was therefore satisfied that there was a risk of your repeating your misconduct. The panel was of the view that this was evidence of harmful deep-seated attitudinal problems.

[PRIVATE].

The panel therefore determined that the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

The panel determined that your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

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

This decision will be confirmed to you in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the striking-off 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 Malik. He submitted that an interim order was necessary on the grounds of public protection and in the wider public interest. He invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period.

Ms Myttas-Perris made no submissions on the application.

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.

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

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

That concludes this determination.