Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
1 – 3 November 2021
22 – 24 November 2021
28 February 2022
4 – 5 April 2022
25 – 27 April 2022

Virtual Hearing

Name of registrant:	**Theresa Paula Pallister**
NMC PIN:	01A0552E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – 13 May 2004
Area of registered address:	Middlesbrough
Type of case:	Misconduct
Panel members:	Derek McFaull (Chair, Lay member) Patience McNay (Registrant member) Rachel Forster (Lay member)
Legal Assessor:	Robin Ince
Hearings Coordinator:	Sophie Cubillo-Barsi
Nursing and Midwifery Council:	Represented by Ruth Alabaster, Case Presenter
Theresa Paula Pallister:	Present and represented by Paul Clark, Counsel
Facts proved by way of admission:	Charges 3, 5, 6, 8, 10, 11 (b), 12 (a) (b), 14, 15
Facts proved:	Charges 4, 11(c) (insofar as it relates to charge 10**)** 13 (insofar as it relates to charges 12 (a) and (b)
Facts not proved:	Charges 1, 2, 7, 9, 11 (a), 11 (c) insofar as it relates to charge 9, 12 (c), 13 (insofar as it relates to charge 12 (c)

Fitness to practise:	Impaired
Sanction:	Suspension order (3 months)
Interim order:	No interim order

Details of charge

That you, a registered nurse:

1) Between 1 January 2018 and 17 September 2018 recorded that you had administered a vaccine to an unknown child when you had not done so. ***No case to answer***

And

2) Your conduct as specified in charge 1 was dishonest in that you knew you had not administered the vaccine because it was not in stock. ***No case to answer***

3) In respect of your treatment of Patient 1's leg wounds in August 2018, applied compression bandages without any clinical justification for so doing so and/or without noting that there was any clinical justification for so doing. ***Found proved by way of admission***

4) Between December 2017 and May 2018 failed to escalate the worsening condition of Patient 2's leg ulcers to the GP and/or the tissue viability service. ***Found proved***

5) Between 30 March 2017 and 17 July 2017 failed to regularly record fridge temperatures. ***Found proved by way of admission***

6) Between March 2017 and September 2018 failed to maintain a sufficient stock of vaccines. ***Found proved by way of admission***

7) Between 20 August 2018 and 17 September 2018, conducted one or more new assessments of patient wounds without an opinion and/or supervision from one of the other practice nurses, when you had specifically been instructed not to do so because your training was not up to date. ***Found not proved***

8) Between 20 August 2018 and 17 September 2018, conducted one or more new smoking cessation appointments when you had specifically been instructed not to do so because you had not passed the relevant training assessment. ***Found proved by way of admission***

9) On or about 18 September 2018, told the Practice Manager that you had not conducted any new wound assessments when you had done so. ***Found not proved***

10) On or about 18 September 2018, told the Practice Manager that you had not conducted any new smoking cessation appointments when you had done so. ***Found proved by way of admission***

And

11) Your conduct as specified in charges 9 and/or 10 was dishonest in that

(a) you knew that you had conducted new wound assessments since 20 August 2018 ***Found not proved***

(b) you knew that you had conducted new smoking cessation appointments since 20 August 2018 ***Found proved by way of admission***

(c) you intended to mislead the Practice Manager into believing that you had complied with your action plan ***Found proved in relation to charge 10 only***

12) Between 31 May 2018 and 27 July 2018

(a) told the Practice Manager that you had professional indemnity insurance in place when it was not in place ***Found proved by way of admission***
(b) told the Practice Manager that there were no problems concerning professional indemnity insurance when this was not correct ***Found proved by way of admission***
(c) informed the NMC that professional indemnity insurance was in place when it was not ***Found proved***

And

13) Your conduct specified in charge 12(a) and/or 12(b) and/or 12(c) was dishonest in that

(a) you knew that you did not have professional indemnity insurance in place ***Found proved in relation to charge 12 (a) and (b) only***
(b) you knew that there were problems concerning your professional indemnity insurance ***Found proved in relation to charge 12 (a) and (b) only***

14) Between 1 January 2017 and 21 December 2018,

(a) issued prescriptions when you were not authorised to do so because you were not a nurse prescriber ***Found proved by way of admission***
(b) issued prescriptions in the name of a nurse prescriber without her knowledge ***Found proved by way of admission***
(c) completed orders for prescription only products in the name of a nurse prescriber without her knowledge ***Found proved by way of admission***

And

15) Your conduct specified in charges 14(a) and/or 14(b) were dishonest because

(a) You knew that you were not authorised to issue prescriptions ***Found proved by way of admission***
(b) You knew that it was wrong to use the name of a nurse prescriber without her knowledge ***Found proved by way of admission***
(c) You intended to mislead the pharmacy into considering that the relevant prescriptions were properly authorised prescriptions ***Found proved by way of admission***

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

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

Ms Alabaster, on behalf of the Nursing and Midwifery Council (NMC) made a request that parts of this case be held in private on the basis that proper exploration of your case involves reference to your health and/or private life. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Clark, on your behalf, indicated that he supported the application to the extent that any reference to your health and/or private life should be heard 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 rule on whether or not to go into private session in connection with your health and or private life as and when such issues are raised. The panel determined that your privacy outweighed the public interest in this regard.

Background

You commenced employment as a practice nurse at Eston Surgery (the Surgery), on a part time basis, in July 2016. You transferred to a full time role in March 2017.

In July 2018 you disclosed to Ms 1, the practice manager that you had allowed your NMC registration to lapse on 31 May 2018. The practice supported you in revalidating your registration. However, this resulted in closer supervision of your work which revealed several areas of concern in your practice.

In relation to charges 1 and 2, the Father of Child X, Father X, whose identity cannot be ascertained, contacted the Surgery and spoke with Receptionist, Ms 2. Father X informed her that he wished to enquire about a vaccination for his child, which you had been unable to administer at an earlier appointment as you had allegedly told him it was out of stock. Child X's medical records were checked and it was apparent that you had indicated that all vaccinations had been given to Child X at the appointment. Father X asked to speak with a General Practitioner (GP) and later met with Dr 1. Father X persisted in his account that a vaccination had not been given by you as it was out of stock and that you would contact Father X later to arrange the administration of this vaccination.

Dr 1 consulted Child X's medical records and noted, as Ms 2 had done, that the records indicated all vaccinations had been given during the appointment. Due to Father X's persistent claim that his child was not fully vaccinated, despite the records stating otherwise, Dr 1 commenced the procedure for vaccinating Child X again, with all the pertinent vaccinations, as he could not reliably ascertain from your records, what vaccinations had or had not been given.

In relation to charge 3, Ms 3 worked alternate days to you and would sometimes see patients who had been treated by you if the patient's appointment fell on a day that you were not in the surgery. Ms 3 met with Patient 1 and noted that Patient 1 had full compression bandages in situ on both legs. Ms 3 noted that Patient 1's medical records did not state that any compression should be applied or why such measures would be put in place. There was allegedly no evidence that a proper assessment of Patient 1's leg ulcer had been carried out before full compression bandages were applied. Ms 3 removed the bandages from Patient 1 as there was no evident clinical justification for this treatment in the medical records.

In relation to charge 4, Patient 2 had a long history of requiring treatment for leg ulcers. It is the evidence of Dr 1 that wound care and management was generally carried out by practice nurses who would arrange samples and/or swabs where necessary. Samples which confirmed infection would be actioned by prescription antibiotics, issued by Dr 1. The nurse would then be expected to monitor that the treatment was achieving an improvement. You treated Patient 2 on more than 30 occasions during the period of December 2017-May 2018. However, Patient 2's condition deteriorated to the point that, by May 2018, she required in-patient hospital care. It is alleged that you should have escalated Patient 2's ongoing poor condition to Dr 1 or a specialist team for further advice over this period when the ongoing treatment plan was not yielding results.

In relation to charge 5, in July 2017, before commencing your leave, you were asked to make sure that your fridges were fully stocked so that 'locum cover' could work effectively in your absence. The locum cover nurse reported to Ms 1 that she was having difficulty working in your room, so Ms 1 investigated. She found that you had not monitored the temperature of the fridge in your room since March 2017. The 'Refrigerator Temperature Monitoring Recording Form' and the relevant Policy states that the fridge temperature should be monitored daily. It also set out what to do if the temperatures are outside acceptable parameters. This is important as it can affect 'vaccine stability'. Vaccines which have been stored outside safe temperature ranges may not be used or should only be used with proper risk assessment. It is the NMC's case that if no temperature recordings have been taken, there is no way to know if the vaccines were being stored safely or otherwise.

In relation to charge 6, part of your role at the Surgery was to restock/order equipment and vaccine supplies, as set out in your job description. Despite this, staff members at the Surgery reported that you often had to borrow vaccines from neighbouring surgeries because you had allegedly 'run out'. Records of vaccines borrowed from other surgeries were kept in a book at the Surgery's reception. It is the NMC's case that the book allegedly demonstrates how the amount of 'borrowing' of vaccines from other surgeries dropped once you were no longer employed at the Surgery.

In relation to charges 7, 9 and 11, in the summer of 2018 it emerged that your NMC registration had lapsed earlier in the year. Following your successful readmission to the register, you were placed under greater supervision. During a supervision meeting on 15 August 2018 with Ms 1, it was noted that there was outstanding training which you were required to complete in areas key to your role, including wound management and smoking cessation. On 20 August 2018 this was formalised into an Action Plan with the same date. The Action Plan prohibited you from carrying out new wound care assessment without referring to other members of staff at the Surgery. Ms 1 returned to work on 17 September 2018 following a period of leave. She asked about your progress in relation to updated wound care training. You allegedly stated that you had completed some of the required reflective work. You also declared that you had not seen any new patients for appointments since the Action Plan was put in place. However, the following day, when preparing for a supervision meeting with you, Ms 1 noted records which demonstrated that you had seen three new patients for initial assessment of wounds whilst there were no other nurses to oversee the care plan. Further, you allegedly had not asked the patients to return for a further appointment, as required under your Action Plan.

In relation to charges 8, 10 and 11, Ms 1 enrolled you onto an online training course in relation to smoking cessation, one year before the allegations arose. You did not pass the assessment and therefore the training was not complete. You were therefore prohibited from taking 'new smoking cessation' patients until the course was passed. A meeting with Ms 1 took place on 18 September 2018 during which you declared that she had seen no new patients for appointments since the Action Plan was put in to place. However, it is the evidence of Ms 1 that you undertook new smoking cessation appointments with patients on 14 September 2018, 22 August 2018 and 24 August 2018 despite the assurances that you had given to Ms 1 that you had been complying with your Action Plan.

In relation to charges 12 and 13, once you were in full time employment at the Surgery, from approximately March 2017, you were not covered under the Surgery's 'group scheme' with regards to professional indemnity insurance (PII). This meant that you were required to take out your own PII cover. It is alleged that you knew that you were required to have your own PII cover in place. You discussed this with Ms 1 on several occasions and Ms 1 supported you in applying for PII cover. However, you were required to complete the application process yourself. You 'maintained' that you had valid insurance and at no time did you mention that there had been a problem with your application. Ms 1 requested a copy of your Medical Protection Certificate on several occasions. You did not provide the certificate, nor did you provide any explanation for why not, or indicate that there was a problem.

When the issue of the lapsed NMC registration came to light, on 24 July 2018, Ms 1 discussed your PII cover with you in relation to this and again you did not disclose that you did not have any cover. You did provide Ms 1 with a Medical Protection Certificate, and this was dated to cover 28 July 2018-27 July 2019. At a meeting on 18 September 2018, Ms 1 requested a Medical Protection Certificate to cover the period earlier than 28 July 2018. You stated that you did not have access to it and/or could not obtain it. There is no evidence that you had PII cover in place from March 2017-28 July 2018.

You applied to be readmitted to the NMC register of nurses on 24 July 2018 and during the course of your application you allegedly declared to the NMC that you held PII cover, by virtue of your employment contract. It is the NMC's case that there is no evidence that you held PII cover when you made this declaration to the NMC.

In relation to charges 14 and 15, you offered aesthetic beauty treatments to individuals on a private basis (private practice) during the time that you were employed at the Surgery. Ms 1 was aware of this and permitted the same provided the business was not conducted on the premises with any of the Surgery's patients. After you left the Surgery, Ms 1 became concerned about whether you had been acting outside your agreement not to use the Surgery to promote your private aesthetic practice. She also questioned whether you were ordering medication in the name of any of the practice doctors as you were not a qualified nurse prescriber which is protected title issued by the NMC.

Ms 1 was aware that you had historically obtained medications for your private practice via a nurse prescriber, Ms 4. Ms 1 spoke with Ms 4 who confirmed that she had not seen you for several years and no longer prescribed. Ms 4 confirmed that, around 2011, she did enter into an agreement to prescribe medications for you, and provide the appropriate oversight required of her as a nurse prescriber. Ms 4 confirmed that this arrangement continued successfully for several years however she lost contact with you and that she last prescribed for you around the end of 2016, but no later than the beginning of 2017.

You obtained medications for your private practice via a pharmacy called 'Health Xchange Pharmacy UK' ('Health Xchange'). You were entitled to set up an account with Health Xchange despite not being a registered nurse prescriber. You were also permitted to order non-prescribed products such as derma fillers. In order to obtain prescribed products, you had to nominate a registered nurse prescriber who would validate the prescribed items with prescriptions. Ms 4 contacted Health Xchange in November 2018 to inform them that she had lost contact with you and had not been prescribing for you since October 2016.

Ms 4 contacted Health Xchange around November 2018 to inform them that she had lost contact with you and had not been prescribing for you since approximately October 2016. It is the evidence of Mr 1, the Group Director of Pharmacy Services for Health Xchange, that Ms 4 was the named nurse prescriber on the account up until she informed them that she no longer prescribed for you (in November 2018). Another nurse prescriber was nominated to the account from 25 January 2019. It is the evidence of Mr 1 that multiple orders were made and despatched to you, made via your account with Health Xchange from October 2016-November 2018. Several of these orders contain prescribed medication, namely Botox, with the nominated prescriber being Ms 4, despite Ms 4's assertion that she was no longer in contact with you.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Alabaster under Rule 31 to admit the evidence pertaining to an alleged complaint of Father X against you into evidence. This evidence relates to charges 1 and 2 and comprises three local statements made by, respectively, Ms 1, Ms 2 and Dr 1 in July and August 2019. Ms Alabaster informed the panel that the NMC had been unable to identify either Child X or Father X. She invited the panel to admit the evidence on the basis that it is relevant and fair to do so.

With regards to the relevance of Father X's evidence, Ms Alabaster referred the panel to the case of *Kathryn Amanda Jordan El-Karout and Nursing and Midwifery Council [2019] EWCH 28 (Admin)*. She submitted that Father X's evidence forms the direct evidential basis for charge 1 and therefore is directly relevant to charge 2.

When addressing the panel as to the fairness of Father X's evidence, Ms Alabaster referred the panel to case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin),* in which it was held that the following key factors should be considered by a panel, specifically:

> "(*i) whether the statements were the sole or decisive evidence in support of the charges;*
> *(ii) the nature and extent of the challenge to the contents of the statements;*
> *(iii) whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
> *(iv) the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;*
> *(v) whether there was a good reason for the non-attendance of the witnesses;*
> *(vi) whether the Respondent had taken reasonable steps to secure their attendance; and*
> *(vii) the fact that the Appellant did not have prior notice that the witness statements were to be read."*

Ms Alabaster submitted that Father X's evidence is the sole and decisive evidence of charge 1 and therefore, charge 2. She invited the panel to consider the fact that Father X's evidence is 'first hand hearsay' and therefore can be considered more reliable than that of 'multiple hearsay'. Further, Ms Alabaster stated that the panel also has before it evidence that, on three separate occasions, Father X repeated his account of the key events in dispute to Ms 1, Ms 2 and Dr 1. She submitted that these accounts allow the panel the opportunity to interrogate the evidence relied upon and evaluate any consistencies and/or inconsistencies, which will allow it to properly make an assessment of reliability.

Ms Alabaster reminded the panel that Mr Clark has had the opportunity to cross-examine all three witnesses who gave evidence in relation to the conversations that they had with Father X, including probing whether there was any possibility of a misunderstanding due to language or emotional issues.

Ms Alabaster submitted that it is highly unlikely that Father X had fabricated his allegation or been mistaken about something as serious as his child's health. She referred the panel to Dr 1's evidence in this regard, specifically that Dr 1 could not be sure what vaccinations had been given to Child X. Consequently, Child X was assumed to be unimmunised and therefore had to have a full course of catch-up immunisations, meaning that Child X '*had more needles than necessary.'* Ms Alabaster asked the panel to consider the seriousness of charges 1 and 2 and the potential dishonesty, which if proved, may have an adverse impact upon your career as a registered nurse.

In relation to Father X's non-attendance, Ms Alabaster told the panel that neither Ms 1, Ms 2 nor Dr 1 were able to provide any information which would have assisted the NMC in identifying the witness. She told the panel that all records relating to Child X were no longer available and/or had been destroyed. In light of this, Ms Alabaster submitted that the NMC has taken all reasonable steps to attempt to identify Child X and/or Father X and that failure to identify a witness is a 'good and cogent' reason as to why the witness cannot attend the hearing.

Ms Alabaster told the panel that the NMC informed you, via your legal representation, that it intended to seek a statement from Father X as part of its 'post investigation work'. You were subsequently informed, on 24 September 2021 that the NMC had been unable to do so. Therefore, Ms Alabaster submitted that this is not a case whereby the NMC has served a witness statement but not been able to secure that witness at the hearing. There has never been a witness statement from Father X. Ms Alabaster submitted that, consequently, you would not have formed a legitimate expectation that direct evidence would be given by Father X and that in these circumstances, you have received adequate notice of the NMC's position in relation to Father X, in order for you and Mr Clark to properly prepare your case.

Mr Clark opposed the NMC's application. He accepted that Father X's evidence is relevant to charges 1 and 2. However, he asked the panel to carefully assess the fairness of allowing the evidence relating to Father X to be admitted and referred the panel to the factors set out in the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin).* Mr Clark submitted that there is no legal authority which states that the seven factors, as set out in *Thorneycroft,* should be considered equally. He referred the panel to the case of *R (Bonhoeffer) v GMC (2012) IRLR 37* in which it was held that some of the principles set out in *Thorneycroft* should be given more weight than others.

Mr Clark accepted that Father X's evidence is the sole and decisive evidence in relation to charges 1 and 2. However, he asked the panel to consider the reliability of the witness statements of Ms 1, Ms 2 and Dr 1. Mr Clark reminded the panel that all three statements were made 'several months' after the alleged event. He submitted that it is not known when the phone conversation took place with Father X, nor is it known when Father X met with Dr 1. Mr Clark submitted that it cannot be said that the witness statements are contemporaneous. You were dismissed on 21 September 2018 and the witness statements are dated in July and August 2019.

Mr Clark invited the panel to consider the fact that there is no documentary record of any conversation and/or meeting with Father X, despite Ms 2 describing her conversation with Father X as a 'significant event'. Mr Clark further invited the panel to consider the fact that Ms 1 did not meet with Father X. Ms 1's witness statement details the conversation which was had between Ms 2 and Father X, which Mr Clark submitted is 'second hand hearsay'.

Mr Clark reminded the panel that during Ms 1's oral evidence, she stated that she did speak with Father X. However, this event was not recorded in her witness statement and therefore her oral evidence should be given the appropriate weight.

In relation to the extent of the challenge to the evidence of Father X, Mr Clark reiterated the fact that you deny charges 1 and 2 and that you do not have any recollection of the alleged events. Mr Clark reminded the panel that there was no investigation by the surgery in relation to this alleged incident. Mr Clark asked the panel to consider carefully whether Father X may have been mistaken in his allegation. It was the evidence of both Ms 2 and Dr 1 that Child X's medication record indicated that all vaccines had been administered. In relation to Dr 1 and Ms 1's witness statements, Mr Clark highlighted that those statements were compiled nine months after the alleged events. Mr Clark submitted that, at the point when the witness statements were made, it had already been decided by Ms 1 and Dr 1 that you were dishonest and could not be trusted.

Mr Clark acknowledged the seriousness of charges 1 and 2 and in this regard referred the panel to the case of *R (Bonhoeffer) v GMC (2012) IRLR 37.* He further acknowledged that reasonable steps were taken by the NMC to identify Father X and/or Child X. However, Mr Clark stated that it seems inconceivable that the surgery did not have some separate documentary record of the event or of the conversations with Father X, particularly when the incident was described by Ms 2 as 'significant'.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. He also referred the panel to cases of *NMC v Eunice Ogbonna [2010 EWCA Civ 1216]* and *R (Bonhoeffer) v GMC (2012) IRLR 37*.

The panel decided to reject the NMC's application.

The panel carefully considered the key factors set out in the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin).*

The panel first considered the issue of relevance. It determined that Father X's evidence is relevant, as it is the primary evidence in support of charges 1 and 2.

The panel next considered the fairness of admitting the evidence of Father X. It determined that Father X's evidence is the sole and decisive evidence in support of charges 1 and 2. The panel had no information before it to suggest that Father X had fabricated the allegations. Further, the panel was of the view that reasonable efforts had been made by the NMC to identify Father X. It determined that the failure to identify Father X was hindered by the apparent poor record keeping of the surgery.

However, the panel acknowledged that you deny charges 1 and 2 and that there is a conflict of evidence in that, contrary to Father X's assertions, the medical records of Child X, which Ms 2 and Dr 1 say they saw at the time, allegedly indicated that Child X was fully vaccinated. It is your case that you do not have any recollection of the alleged events. The panel determined that as neither Father X nor Child X have been identified, the nature of the challenge is restricted to Ms 1, Ms 2 and Dr 1's limited conversations with him. The panel noted the fact that despite such a 'significant' event, it had no documentary evidence before it supporting Father X's allegation. Further, the panel acknowledged that all three witness statements with regards to this incident were made possibly some nine months after the alleged event.

The panel determined that charges 1 and 2 are serious and involve dishonesty, which if found proved, could significantly affect your career as a registered nurse. In light of this, the panel determined that it must proceed with the utmost caution.

In conclusion, the panel considered that, if the evidence relating to Father X was admitted, you would be required to answer an allegation that, at an unknown time, you dishonestly recorded in an unknown child's medical records (which cannot be found) that you had administered an unknown vaccine to that child. In addition, no documentation relating to the subsequent investigation by the surgery of what was described as a 'significant' event has been produced to assist you in identifying the nature of the allegation you face. Moreover, the panel heard evidence that when examination of records (which are no longer available) took place, these indicated that you did fully vaccinate Child X. In addition, the panel notes that Ms 1 (in paragraph 20 of her first witness statement) accepted that, during the surgery's overall investigation, no other specific incidents of 'incorrect record keeping' were found. Against that

background, the panel concluded that it would be particularly unfair to admit the evidence relating to Father X since it would be virtually impossible for you to begin to defend an allegation based on such sparse details.

The panel therefore concluded that it would not be fair to you to admit the evidence of Father X and therefore rejects the application.

Decision and reasons on application to offer no evidence

The panel considered an application from Ms Alabaster to offer no evidence in relation to charges 1 and 2, specifically:

"1) Between 1 January 2018 and 17 September 2018 recorded that you had administered a vaccine to an unknown child when you had not done so.

And

2) Your conduct as specified in charge 1 was dishonest in that you knew you had not administered the vaccine because it was not in stock."

This application was made pursuant to Rule 24.

Ms Alabaster referred the panel to the case of *PSA v NMC and X [2018] EWHC 70 (Admin)*. She submitted that, in light of the panel's decision in relation to the hearsay application and the evidence of Father X, the NMC no longer has a reasonable prospect of proving the facts of charges 1 and 2. Ms Alabaster further submitted that it is not in the public interest to pursue these charges. She stated that this application is supported by the NMC's guidance in relation to offering no evidence, specifically:

"No realistic prospect of proving the facts of the case

It's not in the public interest for us to pursue factual charges against a nurse, midwife or nursing associate if there isn't enough evidence to prove them. Offering no evidence because there isn't enough evidence to prove the facts, so that there's no longer a realistic prospect, will only be appropriate if:

- *…*
- *…*
- *the charge relies on the evidence of a witness who cannot attend a hearing, and an application to rely on their statement as hearsay evidence has been rejected*
- *…."*

Ms Alabaster also informed the panel that, in the current circumstances, there is no requirement for an adjournment in order to inform the referrer regarding this application.

Mr Clark did not oppose the application.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage.

The panel decided to accept the submissions of Ms Alabaster and the NMC's position in respect of offering no evidence for charges 1 and 2. The panel also considered whether to adjourn the case to determine if further efforts could be made to trace Father X but reminded itself of the fact that Father X had previously refused to cooperate with the Surgery's investigation. The panel was therefore satisfied that there was insufficient evidence before it to go on to find charges 1 and 2 proved, particularly when considering its previous decision in relation to the hearsay evidence of Father X. The

panel therefore decided to allow the application to offer no evidence in respect of charges 1 and 2.

The panel was satisfied, that at this time, there was no requirement for the NMC to immediately inform the referrer of this decision as this determination has been made during the course of the hearing.

Decision and reasons on an application to withdraw the admission to charge 12(c) – 24 November 2021

At the conclusion of the presentation of the evidence from both parties, but prior to hearing final submissions on the facts, Ms Alabaster made an agreed application on behalf of both parties to allow you to withdraw your admission to charge 12 (c), which reads:

"[The Registrant] informed the NMC that professional indemnity insurance was in place when it was not".

Ms Alabaster invited the panel to look at the declaration on the form completed by you on 24 June 2018 (which the NMC had used to support this charge). The wording of the declaration (to which you answered "*Yes*") was:

"*Professional indemnity arrangement: I declare that I hold or* [the panel's emphasis] *will hold when I begin practicing appropriate cover under an indemnity arrangement in relation to my practice*."

Ms Alabaster submitted that, as this declaration posited two alternatives, it could not realistically be argued by the NMC that answering "*yes*" unequivocally meant that you were stating that you had PII in place. Moreover, your oral evidence on the point indicated that it was not your intention to declare that you had indemnity insurance when you did not but that it would be held when you started practising, which made your admission to the charge equivocal in any event. Consequently, Ms Alabaster confirmed that the parties were united that the right thing to do was to allow you to withdraw the

admission and to have the charge put to you again, it being understood that you would not admit it.

Ms Alabaster further submitted that, although there was no specific part of the rules dealing with vacation of a plea, the panel did have inherent powers of case management under Rule 24. Rule 24 (i) states: "*Unless the Committee determines otherwise* [the panel's emphasis] *the initial hearing of an allegation shall be conducted in the following stages*." Ms Alabaster maintained that this gave panels inherent powers to deal with matters not mentioned in the rules in order to ensure that proceedings were conducted fairly.

Ms Alabaster then moved on to what she described as a "*secondary matter*" which arose from how the NMC's case was put to you in cross-examination. The initial declaration set out above had been followed by a further declaration, which read as follows:

"*I declare that my professional indemnity arrangement is by virtue of…*" to which you had selected the answer "*Employment contract(s)*".

Ms Alabaster submitted that, during cross-examination, on behalf of the NMC she had raised queries over the honesty of this second declaration in that you had indicated that your PII arrangement was going to be by virtue of your "*employment contract*", which was not the case. Ms 1 had confirmed in her evidence that, although you were initially covered by the GP practice's insurance policy prior to being offered a permanent contract of employment, once you were on a permanent contract (from around March 2017) you were obliged to arrange your own PII cover. This nuance was, however, not part of the NMC's case as currently pleaded. Accordingly, the panel would have to consider the possibility that, if charge 12(c) was reopened, as currently worded that charge (and therefore the accompanying part of charge 13, which alleged dishonesty) might no longer be capable of being proved. In such circumstances, the panel might think that there would be nothing before it that addressed your alleged dishonesty arising out of your declarations to the NMC.

However, Ms Alabaster argued that, if the panel considered that the "*full seriousness of the regulatory concern*" was not properly before it, then it did have the power to address such concerns by amending a charge at any stage before it made its finding of facts under Rule 28, as discussed in the case of *Jozi* [CITATION]. Ms Alabaster reminded the panel that *Jozi* related to a case where the High Court was critical of a panel because (i) the NMC had undercharged in that particular case but that panel had not addressed such an issue but (ii) nonetheless, it was incumbent on that panel, if it found that the NMC had not properly put a charge in front of it that it considered the NMC ought to have done, to have taken matters into its own hands and added such a charge.

In summary, therefore, Ms Alabaster maintained that, if the panel considered that not addressing the "*employment contract*" issue meant that the full seriousness of the regulatory concern was not before it, then it should consider exercising its power to add further charges to reflect this so that it was before it.

Having said that, Ms Alabaster reminded the panel that, when making such a decision, it should take account of the following matters:

(i) it already had several dishonesty charges before it (some of which had already been admitted) so if the regulatory concern was dishonesty, the panel might think that such an issue was already sufficiently before it;

(ii) Rule 28 provides that a panel could only make an amendment if it could be done without injustice to the Registrant. Accordingly, if a charge relating to the "*employment contract*" issue was added, there was the possibility that further steps would have to be taken in order to remedy any unfairness to the Registrant (for instance it might be necessary: for the NMC to recall previous witnesses; for the NMC to obtain further evidence as to what were the options when completing the form; or for the Registrant to give evidence again). There could also be additional delay in resolving the case.

On your behalf, Mr Clarke agreed that it would not be just for you to be held to an admission where the "*overwhelming evidence*" pointed in the other direction and that you should be allowed to withdraw your initial plea since "*the charge basically doesn't stand*".

In relation to the second issue of potential under-prosecution, Mr Clark reminded the panel that, if it was felt that, for the "*overwhelming regulatory effect*", there would need to be an additional charge in relation to the second declaration, there was already a significant amount of information before the panel touching upon that subject. For instance, the copy of the Registrant's contract of employment stated: "*The Practice will annually pay you (or direct to your Medical Defence Union) to renew your membership subscription to the Medical Defence Union for the duration of your employment*" and the letter to you accompanying the contract stated that: "*The Practice will pay you for your insurance either by reimbursement to you on receipt of your certificate or by arrangement of a direct debit directly to the company.*"

Accordingly, there was within the contract an obligation on behalf of the GP surgery to pay or reimburse the Registrant in respect of PII. Mr Clarke accepted that this did not mean that the Registrant was not personally responsible for having PII in place, but there may have been some confusion about how the PII would be arranged or put in place, since the employment contract and the covering letter referred very clearly to it being paid for by the employer, in this case the GP surgery. Mr Clarke therefore confirmed that, if such a charge was added, on behalf of the Registrant he believed that you would have a defence to that charge and that it would not be a charge which would be admitted.

The panel's decision

The panel took account of the submissions of both parties and noted the advice of the legal assessor (who confirmed that Ms Alabaster's summary of the various legal issues was entirely correct).

In relation to the first issue, namely whether the Registrant was to be allowed to withdraw her initial admission to charge 12 (c), the panel agreed with both parties that, given the specific wording of the declaration on the NMC form, which posited two alternative scenarios, together with the Registrant's oral evidence, the admission was equivocal and therefore could not stand. The panel therefore granted the joint application to allow the Registrant to withdraw her admission to change 12 (c).

In relation to the second issue, namely the possibility of amending the change so as to reflect the possibility that the Registrant had been dishonest by stating that her PII was in place by virtue of her employment contract, the panel decided that no further action was necessary.

The panel appreciated that, potentially, it was arguable that the Registrant had been dishonest in giving the impression that her PII cover was/would be in place under her contract of employment, but it also noted that there was significant potential for confusion about the issue due to the employer's obligation to reimburse her PII premiums, which could in itself potentially give rise to a defence to the charge.

Furthermore, the panel was also aware of the evidence that, some four days after completing the form, PII cover was issued on 28 June 2018 to the Registrant in her own name, which the panel considered could arguably be a significant indication about the Registrant's true intentions as at 24 June 2018 about obtaining PII cover herself, which could potentially counter any suggestion of dishonesty.

The panel determined that as a professional, the onus was upon you to secure the professional indemnity insurance, which the panel accepts is an essential requirement of a nurse. The panel noted your evidence regarding your poor state of mind at the relevant times. It further noted that your NMC registration had lapsed on 24 July 2018 and concluded that, at the relevant time, it was more likely than not that your insurance provider would have advised you about this and therefore that you would have been aware there were issues with your insurance. The panel did not have any cogent innocent and/or negligent explanation before it to explain your conduct. It determined that a person who submits to her employer that she holds valid insurance, when she

knows that she does not, would be considered dishonest by ordinary standards. The panel therefore concluded that you did act dishonestly in relation to charges 12(a) and (b) only and therefore charges 13(a) and (b) are found proved.

Submissions on interim order

At the end of day six of your hearing, before adjourning part heard, the panel took account of the submissions made by Ms Alabaster who reminded the panel that it had to consider whether an interim order should be imposed in your case. Ms Alabaster indicated that the NMC did not consider that an application for an interim order was necessary.

Mr Clark indicated that he had no submissions to make since the NMC was not applying for an interim order.

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

Decision and reasons on interim order

The panel was satisfied that, at this time, there was no necessity for an interim order on public protection grounds. Further it determined that an interim order was not required in the public interest and was not in your own interests. The panel has not been advised that there is any existing interim order and took account of the fact that the NMC was not applying for any such order, notwithstanding that you have made some admissions to the allegations. The panel concluded that there had been no material change in the circumstances of your case to justify the making of an interim order.

Accordingly, the panel makes no interim order in your case.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Clark, who informed the panel that you made full admissions to charges numbered 3, 5, 6, 8, 10, 11(b), 12(a), 12(b), 14(a), 14(b), 14(c), 15(a), 15(b) and 15(c).

The panel therefore finds those charges 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 Alabaster and those made by Mr Clark.

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:

- Ms 1: The Practice Manager;
- Ms 2: Receptionist at the Practice;
- Ms 3: A Nurse at the Practice; and
- Dr 1: A General Practitioner at the Practice;

The panel also heard evidence from you under affirmation.

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

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

Charge 4

4) Between December 2017 and May 2018 failed to escalate the worsening condition of Patient 2's leg ulcers to the GP and/or the tissue viability service.

This charge is found proved

When making a decision in relation to this charge, the panel had before it Patient 2's medical records. The records evidence that between December 2017 and May 2018, you provided treatment to Patient 2 on more than 30 occasions. The panel also had before it the Surgery's guidance that patients should be referred to the 'foot care team' if there are symptoms of infection or urgent medical opinion should be sought if there is a lack of response to antibiotics.

It is your case that Patient 2's medical records indicate that Patient 2's wounds were healing at times during the period of December 2017 and May 2018. You told the panel that you did escalate the worsening condition of Patient 2's leg ulcers to Dr 1 by taking regular skin swabs in accordance with the care plan. It is your case that as the clinical lead, Dr 1 was ultimately responsible for Patient 2's condition and that he was aware, or ought to have been aware, of Patient 2's worsening condition.

The panel first considered whether you had a duty to escalate worsening patient conditions and made reference to your job description in this regard, which states:

> *"…providing advice, consultation and information about a range of health conditions, and minor ailments, referring to other members of the practice team as necessary."*

And,

> *"Following agreed clinical guidelines with referral to Nurse Practitioner or GPs as appropriate."*

In light of this information, the panel determined that you did have your own and separate duty to escalate Patient 2's worsening conditions.

The panel next considered the fact that you were the only nurse to provide care to Patient 2. It noted that you took swabs from Patient 2. However, the panel determined that you should have assessed Patient 2's presentation and noted that the repeat prescription of antibiotics was not resulting in an adequate response with regards to healing. Under cross-examination, you accepted that you should have escalated Patient 2's condition to Dr 1 and/or a tissue viability service. The panel determined that you did not engage with the responsibilities required of you within your job description. The panel therefore concluded that as Patient 2's primary carer, between December 2017 and May 2018 you did fail to escalate the worsening condition of Patient 2's leg ulcers to the GP and/or the tissue viability service.

Charge 7

7) Between 20 August 2018 and 17 September 2018, conducted one or more new assessments of patient wounds without an opinion and/or supervision from one of the other practice nurses, when you had specifically been instructed not to do so because your training was not up to date.

This charge is found NOT proved

When considering this charge, the panel had before it your Action Plan, which was formalised on 20 August 2018. Within the Action Plan it is stated that:

> *"2. No new assessments followed by plan* [the panel's emphasis] *without opinion from Ms 3…*
> *3. Where the wound already has a plan in place, continue with plan and follow the plan to the letter. Any detrimental changes or wound not getting better after 1st follow up refer to Ms 3…"*

The panel also had before it a copy of your assessments of three patients carried out on 4 September 2018, 29 August 2018 and 5 September 2018.

It is your case that all three of these patients were not 'new assessments' as they already had a care plan in place and therefore, you acted in accordance with your Action Plan.

The panel heard evidence from Ms 1 that she met with you on 20 August 2018 to discuss the Action Plan and that during the meeting you consented to the Action Plan. The panel was therefore satisfied that you had been instructed not to carry out any new assessments.

The panel carefully considered the patient's records. It noted that on 4 September 2018, the patient had a post operation wound on the elbow which was infected. You took a swab of the area to send off for analysis. The panel determined that in respect of this patient, you continued to follow the care plan already in place and provided by the hospital when discharging the patient. The panel considered that the taking of a swab in this case is not a 'new assessment'.

On 29 August 2018, you cleaned a post operation wound on the patient's chest. The panel determined that cleaning an existing wound could not be considered as a 'new assessment' as you were following a care plan, provided by the hospital when discharging the patient, which was already in place.

On 5 September 2018, you cleaned a wound on a patient's leg. This patient was a returning patient to the surgery and already had a care plan in place. The patient's notes confirmed that the wound was healing well. The panel determined that cleaning an existing wound could not be considered as a 'new assessment' as you were following a care plan which was already in place.

The panel rejected the evidence that the assessments carried out on the above dates, were 'new assessments'. Whilst the panel noted that taking a swab of a wound for analysis could have potentially triggered the beginning of a new care plan, there is no evidence before it that this occurred. Therefore, the panel concluded that between 20 August 2018 and 17 September 2018, you did not conduct one or more new assessments of patient wounds without an opinion and/or supervision from one of the other practice nurses.

Charge 9

9) On or about 18 September 2018, told the Practice Manager that you had not conducted any new wound assessments when you had done so.

This charge is found NOT proved

In light of the panel's determination at Charge 7, specifically that you did not conduct any new wound assessments, this charge falls and is therefore found not proved.

Charge 11(a)

11) Your conduct as specified in charges 9 and/or 10 was dishonest in that

(a) you knew that you had conducted new wound assessments since 20 August 2018

This charge is found NOT proved

In light of the panel's determination at Charge 7, and as the charge only relates to 'new wound assessments', this charge falls and is therefore found not proved.

Charge 11(c)

11 (c) you intended to mislead the Practice Manager into believing that you had complied with your action plan

This charge is found proved in relation to charge 10 only.

When making a decision in relation to charge 11(c), the panel noted your admission to charge 10, specifically that on or about 18 September 2018, you told the Practice Manager that you had not conducted any new smoking cessation appointments when you had done so.

Despite your admission, it is your case that you genuinely believed that you had complied with your Action Plan and there was no reason for you to misrepresent the situation.

The panel considered whether you intended to mislead Ms 1 and in doing so it had regard to the test for dishonesty set out by Lord Hughes in paragraph 74 of *Ivey v Genting Casinos UK Ltd t/a Crockfords* [2017] UKSC 67:

> *"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts…. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

The panel heard and read evidence from you and others that, at the relevant time, there were issues surrounding your state of mind and mitigating factors in your personal life which you believe made you behave in such a way. However, the panel had no medical evidence before it to indicate that it was likely that such issues resulted in you acting in the way alleged with Ms 1 during that specific discussion. Further, the panel heard no other evidence from you as to why you had answered in this way. The panel therefore determined that it had not been provided with any innocent and/or negligent reason as to why you lied to Ms 1. Moreover, it was satisfied that, in the absence of any such innocent/negligent explanation, the only other remaining and logical reason for your actions was to mislead Ms 1 in the way alleged. It further determined that an ordinary, decent person would consider your conduct as dishonest. The panel therefore concluded that you intended to mislead the Practice Manager into believing that you had complied with your Action Plan and this charge is therefore found proved.

Charge 12(c)

12) Between 31 May 2018 and 27 July 2018

(c) informed the NMC that professional indemnity insurance was in place when it was not

This charge is found NOT proved

When determining this charge, the panel had before it your declaration to the NMC that states:

> *"Professional indemnity arrangement, I declare that I hold, or will hold when I begin practising* [the panel's emphasis]*, appropriate cover under an indemnity arrangement in relation to my practice; Yes."*

It is your case that the above declaration could be provided without PII being in place provided that it was in place when you subsequently began practising as a nurse, which was your intention.

The NMC accepts that at the time of the declaration, your registration had lapsed and you were therefore not practising.

The panel carefully considered the wording of the declaration, which allows for a Registrant to declare that she 'does' hold the relevant policy or that she 'will' hold the relevant policy when she commences practising. The panel noted that there is no requirement within the declaration to specify which option you were declaring. In light of the wording of the declaration, the panel concluded that between 31 May 2018 and 27 July 2018 you did not inform the NMC that PII was in place when it was not and this charge is therefore found not proved.

Charge 13(a) and 13(b)

13) Your conduct specified in charge 12(a) and/or 12(b) and/or 12(c) was dishonest in that

(a) you knew that you did not have professional indemnity insurance in place

(b) you knew that there were problems concerning your professional indemnity insurance

Found proved in relation to charge 12(a) and (b) only

Found NOT proved in relation to charge 12 (c) which itself was found NOT proved

When considering this charge, the panel reminded itself that you made admissions to charges 12(a) and (b), specifically that you told Ms 1 that you had PII in placed when it was not in place and that you told Ms 1 that there were no problems concerning your PII, when this was not correct.

The panel had before it the evidence of Ms 1 who told the panel that once you commenced your full-time role at the Surgery, you were required to have the policy in place as you were no longer covered by the 'group policy'. It is the evidence of Ms 1 that she sat down with you and assisted you in completing the policy application form. The panel had before it evidence of the application form dated 13 March 2017. The panel also had before it the email from Ms 1 to the application team at Medical Protection, dated 13 March 2017. This email was sent to you at the same time. Within

the email Ms 1 informs you that you will be contacted by the provider once the application has been processed/approved.

The panel had no evidence before it that following the email on 13 March 2017, you took any further steps to complete the process of applying for professional indemnity insurance (PII). In her oral evidence Ms 1 stated that she asked about your policy on several occasions and was led to believe there were no problems regarding your application and therefore you had insurance in place. However, at no stage did you supply Ms 1 with a copy of any PII certificate for the period 13 March 2017 to 28 July 2018. The only PII certification you provided was for the period of 28 July 2018 to 27 July 2019.

The panel further notes that it is not disputed that your NMC registration lapsed on 31 May 2018 and that this fact was discovered on 24 July 2018. The panel also took into account the evidence of Ms 1 who stated that she "*specifically*" remembered advising you on that day, to telephone and inform your Medical Protection provider of the lapse to see if there would be any problems regarding your insurance cover, to ask what you needed to do and also to see if there would be a problem with you working under Dr Chatterjee's vicarious liability as a Health Care Assistant. Ms 1 went on to say that, later that day, you told her that you had telephoned your provider to inform it that your NMC registration had lapsed and that you "identified no problems" from that provider when she asked you on that, and on "several further occasions".

In her oral evidence Ms 1 confirmed that:

(i) she had, overall, asked you for your PPI certificate some 6 to 10 times;
(ii) on 24 July 2018, "*I asked her, had she contacted her medical defence organisation, and she said, 'Yes'. And that was in front of witnesses; she said, yes, she had contacted them and there were no problems*"; and
(iii)"*I pressed her and pressed her and she finally rang the insurance company, which again leads me back to her original defence that she'd rang the insurance company on 24th – when her insurance had lapsed – and she'd had a conversation with them. So either she was lying when she rang them, and she didn't ring them. I can't imagine*

them lying and saying, 'Yes, there's no problem with your insurance'. So either she was lying when she rang them, lying to me and saying there was no problem, or at later date, when she rang them. It doesn't add up, unfortunately; the timeline doesn't add up".

The panel also notes your oral evidence on the point and to the following exchange between you and Ms Alabaster about what happened subsequent to your telephone call to your insurance provider on 24 July 2018:

> "*Q. Can I suggest to you that that is what – well, that that is what happened and eventually MPS did tell you that, 'You don't have a policy with us', and you were thinking, 'How on earth will I now go to [Ms 1] who's angry with me anyway? I've just told her I don't have a PIN, I've just told her that everything is fine with my policy, now I have to go to her again and say actually don't even have a PII policy.' Is that actually – that's what's going through your head and you thought, 'I can't deal with that at the moment, I'm just going to tell [Ms 1] it's fine and I will deal with this in my own way.' Is that what happened?*
>
> *A. I could say yes because you know we're going back three and a half years. I know that I wasn't thinking straight. But whether I thought that, I don't know. I can't go back to thoughts three and a half years ago. But I don't know. All I would say is during that period I just wasn't thinking straight. I can't remember a great deal. There were certain times throughout this where things were a lot worse at home than others. So I don't know. I'm sorry for going long winded, but I can't say that's correct when in actual fact I don't know.*"

Essentially the panel notes that it is your case that you were not aware that there was no policy in place, nor that there were any problems concerning your policy. You stated that you were genuinely mistaken. You told the panel that your mistake may have been because of your state of mind at the relevant time and the difficult personal circumstances you were experiencing. [PRIVATE]

Further, it considers that the evidence of Ms 1 as to what occurred on 24 July 2018 was clear and credible and therefore the panel places greater weight upon Ms 1's evidence, in particular that after you had telephoned your insurance provider, you indicated that there were no problems with your insurance. The panel agrees with Ms 1's analysis at (iii) above as to the conclusions to be drawn from your assertion on 24 July 2018 that there were no problems with your insurance, and with the suggested reasons put forward by Ms Alabaster as to why you did not then tell Ms 1 that you were uninsured. The panel does not accept that, if you were uninsured as at 24 July 2018, your insurance provider would have told you during that telephone call that there were "no problems" with your insurance. The panel considers that this would be highly unlikely, especially given that you subsequently applied for insurance cover which was granted four days later on 28 July 2018. The panel is therefore led to the conclusion that you knew this when subsequently telling Ms 1 about the absence of any problems with your insurance cover.

When determining whether you acted dishonestly, the panel again referred to the case of *Ivey v Genting Casinos UK Ltd t/a Crockfords* [2017] UKSC 67.

The panel determined that as a professional, the onus was upon you to secure the PII, which the panel accepts is an essential requirement of a nurse. The panel noted your evidence regarding your poor state of mind at the relevant times. It further noted that your NMC registration had lapsed on 24 July 2018 and at that time, it is more likely than not that your insurance provider would have advised you about this and therefore that you would have been aware there were issues with your insurance. The panel did not have any cogent innocent and/or negligent explanation before it to explain your conduct. It determined that a person who submits to her employer that she holds valid insurance, when she does not, would be considered dishonest by ordinary standards. The panel therefore concluded that you did act dishonestly in relation to charges 12(a) and (b) only and therefore charges 13(a) and (b) are found proved.

Fitness to practise

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

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

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

At this stage the panel had before it an additional character testimonial, dated 16 February 2022 and an updated Performance Appraisal, dated 25 January 2022, both of which were submitted by you.

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 Alabaster 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 Alabaster drew the panel's attention to the specific and relevant standards within the Code where your actions amounted to misconduct.

Ms Alabaster submitted that each and every charge, whether found proved or admitted, can be considered as serious failings which fall far short of the standards expected of a registered nurse and amount to misconduct. She reminded the panel that matters of purely personal mitigation ought not to be taken into account at this stage.

Submissions on impairment

Ms Alabaster then 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 judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). 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.'*

Ms Alabaster invited the panel to find that all four limbs are engaged in your case. She submitted that your actions placed patients at unwarranted risk of harm. Ms Alabaster asked the panel to consider the fact that you were in a position of responsibility at a busy surgery at the relevant time period and as a consequence, your failings had the potential to place a large number of patients at risk of harm. Ms Alabaster further submitted that your actions have brought the medical profession into disrepute, particularly in relation to the charges relating to your failure to respect the basic professional requirements of a registered nurse, namely ensuring that you have PII and the correct qualifications to undertake the tasks allocated to you. Ms Alabaster submitted that an ordinary member of the public would be seriously concerned should a nurse not have the necessary insurance in place and this would subsequently affect their trust of nurses caring for them. Ms Alabaster further submitted that the facts found

proved have breached the fundamental tenets of the nursing profession. She stated that the issue of honesty is the ‘bedrock’ of the health care profession and therefore, dishonesty can be considered a breach of a fundamental tenet.

In relation to dishonesty, Ms Alabaster stated that the dishonesty found proved can be considered towards the more serious end of the spectrum. She reminded the panel that your dishonesty related to your clinical practice, occurred on repeated occasions and was motivated by personal financial gain and/or an avoidance of taking responsibilities for your actions and/or failings.

Looking forward, Ms Alabaster referred the panel to the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) which addresses the issue of remediation. Ms Alabaster submitted that some elements of your misconduct will be less easy to remediate, specifically your apparent attitudinal issues. She asked the panel to consider the context and circumstances of your misconduct carefully, whilst assessing your insight and whether your failings are indicative of an underlying attitudinal tendency to be dishonest.

Ms Alabaster referred to your mitigation that at the time the charges arose, you were encountering difficult personal circumstances. Whilst the NMC accepts your evidence, Ms Alabaster submitted that those circumstances should not exonerate you from all of the matters found proved and/or admitted and that the public confidence would be undermined should a finding of current impairment not be made.

Mr Clark asked the panel to carefully consider your reflective piece in which you look back on your actions, your personal circumstances and how those factors ‘tarnished your career’. Mr Clark informed the panel that you have continued to work since the allegations arose, receiving overwhelming praise from colleagues and management in relation to the care you provide. He reminded the panel that you have not been subject to an interim order during this regulatory process.

Mr Clark referred the panel to the professional development you have undertaken including training in relation to risk management, infection control, medicines management and record keeping. He asked the panel to consider your development alongside the positive appraisals it has before it.

Mr Clark submitted that you have not sought to deny any misconduct and that you have made a number of admissions in relation to your serious failings. He stated that you have not tried to cover up your wrongdoings and that you have apologised for your dishonesty.

Mr Clark reminded the panel that it did not have any evidence before it of actual patient harm. In relation to charge 4, Mr Clark submitted that the harm caused to the patient was 'relatively low' and that you were not solely culpable.

Mr Clark stated that over three years have passed since the allegations arose and that during that time you have developed on a personal level whilst continuing to provide a committed service to nursing. Mr Clark told the panel that there is evidence before it from your current employer indicating that you are trusted implicitly and that no concerns have been raised regarding your honesty or trust. He told the panel that you are now living a rather 'sheltered life', focusing on your job as a nurse.

In relation to the test set out in *CHRE v NMC and Grant,* Mr Clark invited the panel to find that your misconduct fulfils the criteria in relation to the past only. He submitted that it is highly unlikely that there would be a repetition of the actions found proved. Mr Clark told the panel that the misconduct arose in a unique set of circumstances in your life and that the likelihood of those circumstances arising again is highly unlikely to 'completely unlikely'.

Mr Clark submitted that whilst you accept your fitness to practise was impaired in 2017 to 2018, you are no longer impaired. Mr Clark invited the panel to find that all the evidence before it demonstrates that you are a competent and trustworthy nurse. He submitted that you are highly unlikely to present a risk now, or in the future, to patients and/or service users and that a finding of no impairment would not undermine the public

confidence. Mr Clark reiterated that you have expressed remorse, and, in your evidence, you have shown the necessary level of insight. He submitted that it would be a reasonable conclusion to determine that you are not impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

> ***"1 Treat people as individuals and uphold their dignity***
> *To achieve this, you must:*
>
> *1.2 make sure you deliver the fundamentals of care effectively*
>
> *1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay 1.5 respect and uphold people's human rights*
>
> ***6 Always practise in line with the best available evidence***
> *To achieve this, you must:*
>
> *6.1 make sure that any information or advice given is evidence based including information relating to using any health and care products or services*

8 Work co-operatively

To achieve this, you must:

8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate

8.2 maintain effective communication with colleagues

8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff

8.5 work with colleagues to preserve the safety of those receiving care

12 Have in place an indemnity arrangement which provides appropriate cover for any practice you take on as a nurse, midwife or nursing associate in the United Kingdom

To achieve this, you must:

12.1 make sure that you have an appropriate indemnity arrangement in place relevant to your scope of practice

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

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

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

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…

20.9 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 determined that your failings were serious, occurring over a prolonged period of time and had the potential to cause patient harm. Whilst the panel has heard evidence in relation to some personal mitigation, it determined that when considering the charges both individually and collectively, a member of the nursing profession would consider your actions as deplorable. The panel therefore found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. It determined that all four limbs of the test are engaged in your case. Specifically, that your actions have in the past placed patients at an unwarranted risk of harm and subsequently brought the nursing profession into disrepute. The panel further determined that your misconduct, including repeated dishonesty, has breached fundamental tenets of the nursing profession. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Looking forward, and when considering the case of *Cohen* [2008] EWHC 581 (Admin), the panel determined that some of the misconduct found proved is capable of remediation, but that dishonesty can be inherently difficult to remediate.

The panel considered that, during this hearing, you have been open and honest, providing it with details of your difficult personal circumstances at the time the allegations arose. You have taken steps to address those issues in order to prevent the situation arising again. Further, within your reflective statement you recognise your failings and how your actions impacted upon your colleagues, patients and the reputation of the nursing profession.

The panel was encouraged by the professional development you have undertaken over the past three years. Further, it noted that during this time you have continued to practise as a nurse without restriction and have been promoted to a supervisory role within your current employment. The panel had before it a number of positive testimonials attesting to your character and clinical practice. When considering your reflection and the assessment of your practice, the panel determined that it is highly unlikely that the misconduct found proved would be repeated. [PRIVATE] This indicated to the panel not only an eventual realisation by you of how those domestic issues had impacted upon your professional situation but also a determination to address them, which the panel took as an indicator of how you might deal with similar circumstances in the future. The panel finds that, although your fitness to practise may have been impaired at the time of the incidents, given all of the above, your fitness to practise is not currently impaired on public protection grounds.

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

The panel determined that a finding of impairment on public interest grounds is required, not only because of the cumulative number of failings found proved, but also because of the particular seriousness of the findings regarding dishonesty and of prescribing when not authorised to do so. It determined that the public would be concerned should a finding of impairment not be made and that the public interest is such that your misconduct needs to be marked by a finding of current impairment on public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public interest grounds only.

Sanction

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

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

Evidence and Submissions on sanction

At this stage, you gave evidence to the panel under affirmation. You acknowledged the panel's decision in relation to your current impairment. You told the panel that you feel remorseful and acknowledged that you have embarrassed yourself and the profession. You stated that you want to prove that you are a good and effective nurse should you be given the opportunity to continue practising. When questioned, you informed the panel that should you be suspended, your employer would not be able to hold your job open until the suspension ended. You stated that your employer has indicated that should conditions be placed on your practice, they would be supportive. You asked the panel to have faith and confidence in you.

Ms Alabaster invited the panel to impose either a suspension order or a striking off order. She provided the panel with what the NMC determines are mitigating and aggravating features in your case. Ms Alabaster acknowledged that you do not have any previous regulatory concerns. However, she referred the panel to the NMC's guidance in this regard, specifically:

> *"Sometimes, the nurse, midwife or nursing associate's conduct may be so serious that it is fundamentally incompatible with continuing to be a registered professional. If this is the case, the fact that the nurse, midwife or nursing associate does not have any fitness to practise history cannot change the fact that what they have done cannot sit with them remaining on our register.*

For these reasons, panels should bear in mind there will usually be only limited circumstances where the concept of a 'previously unblemished career'[3] will be a relevant consideration when they are deciding which sanction is needed, or in giving their reasons."

Ms Alabaster submitted that given the serious nature of your misconduct and dishonesty, neither taking no further action nor imposing a caution order would be appropriate to mark the public interest identified in your case. She stated that should the panel be minded to impose a caution order, the order should be made for the maximum period of five years. Ms Alabaster further stated that a conditions of practice order would not be suitable in this case as such an order is designed for cases relating to clinical deficiencies.

Mr Clark asked the panel to carefully balance the public interest against your own interests. He submitted that a considerable period of time has passed since the allegations arose during which you have become an asset to your current employer. Mr Clark stated that a suspension order would deny your employer and patients a committed and trustworthy nurse.

Mr Clark reminded the panel that the misconduct occurred over a limited time period, [PRIVATE], Mr Clark stated that you demonstrated insight at an early stage, making admissions to several serious charges.

Mr Clark accepted that taking no further action is not appropriate. He submitted that a lengthy caution order would be more proportionate, and a period of five years would satisfy the public interest. Mr Clark further submitted that a conditions of practice order would allow you to reflect, over a period of time, on your practice in relation to the impairment found by the panel, whilst continuing to improve your professional development. Mr Clark stated that both a striking off order or a suspension order would be disproportionate and indeed a striking off order would bring to an end the career of a valuable nurse and deprive the public of your services.

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:

- Your misconduct occurred over a prolonged period of time, demonstrating a pattern of dishonest behaviour in relation to three distinct areas of your practice; and
- Your misconduct had the potential to place patients at an unwarranted risk of harm and on one occasion, caused actual harm.

The panel also took into account the following mitigating features:

- You have demonstrated insight into your failings, which included early admissions to some of the charges and genuine remorse, such that the panel found that the likelihood of repetition was highly unlikely;
- You have maintained your professional practice throughout these proceedings;
- [PRIVATE].
- There have been no previous regulatory concerns in your otherwise unblemished career since 2004, nor any repetition of your misconduct; and
- At the time the allegations arose you were experiencing particularly difficult personal circumstances.

The panel carefully considered the NMC's guidance on cases involving dishonesty. It determined that your dishonesty did breach the professional duty of candour. Whilst there was some personal gain resulting from your dishonesty, particularly in relation to the prescribing of Botox when you were not authorised to do so, the panel acknowledged that, arguably, there were mitigating circumstances surrounding this issue [PRIVATE].

The panel next determined whether your dishonesty involved premeditated, systematic or longstanding deception. It was of the view that the charges relating to prescribing Botox involved a degree of premeditation and that the deception regarding that issue was longstanding and repetitive, in relation to the dishonesty regarding the PII and the smoking cessation issues, the panel concluded that at the relevant times, you did not have a clear mind and were acting in a 'reactive way'. Moreover, in relation to the PII issue, although you lied to Ms 1 about the PII being in place, you swiftly remedied the situation within four days. However, overall, your dishonesty was not a one off incident, nor was it spontaneous or opportunistic, but neither, in the panel's judgement, is it the most serious example of dishonesty.

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 therefore 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 your repeated dishonesty, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel therefore 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. It is mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be formulated, especially given that impairment was found on public interest grounds only, you are having remediated your failings in respect of the clinical concerns in your practice.

Accordingly, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not address the public interest concerns identified.

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 *"the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour".*

The panel was satisfied that, in this case, your misconduct was not fundamentally incompatible with remaining on the register. Whilst it appreciated Ms Alabaster's argument that "a pathway" to striking off could be identified, and that the nature of your misconduct (involving three areas of dishonesty and unauthorised prescribing) was particularly serious, it also took account of the mitigating features of your case, [PRIVATE].

In addition, the panel accepts that you have reflected considerably about your failings, and continue to do so, so much so that: you appreciate that what you have done was wrong; are fully aware of the effects of your actions; and are determined to ensure that such misconduct never re-occurs. The panel is also satisfied that you have developed appropriate strategies to cope with similar situations in the future.

Accordingly, notwithstanding the seriousness of your misconduct, given the unusual context of your actions and the significant remediation that you have undertaken, the panel concludes that the public interest would be satisfied by a period of suspension, which would be sufficient to mark the seriousness of your misconduct and send out a message to the profession and to the public that such actions will not be tolerated.

The panel next considered what would be the appropriate length of such a suspension. It has taken account of the aggravating and mitigating factors and, in addition to the current appraisals and the positive testimonials from your current place of work, notes the argument of Mr Clark that it would be in the public interest to minimise the absence from practice of an otherwise good and valued nurse. Taking all these factors into account, the panel concluded that a short three month suspension would be appropriate in the particular circumstances of your case. Noting your evidence about the adverse effect that any suspension would have upon your current employment, the panel is satisfied that such a period of suspension would nonetheless be a significant reminder to you of the unacceptability of your actions and would send an appropriate message to the rest of the profession and to the public that such behaviour will result, at a minimum, in a nurse's suspension from practice.

The panel did, as suggested by Ms Alabaster, go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

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

The panel determined that a suspension order for a period of three months was appropriate in this case to mark the seriousness of the misconduct and your repeated dishonesty.

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

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel was satisfied that the suspension order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the suspension order will declare and uphold proper professional standards. Accordingly, the current suspension order will expire without review.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

Due to the panel's findings that your fitness to practise is impaired on public interest grounds only, Ms Alabaster submitted that it is a matter for the panel to determine whether an interim order needs to be put in place.

Mr Clark submitted that an interim order is not necessary. He stated that an interim order would deny you time to get your 'affairs in order' before the substantive order takes effect.

Decision and reasons on interim order

The panel was satisfied that imposing an interim order is not necessary. There are no public protection concerns in your case and the panel determined that the public interest would not be undermined by not imposing an interim order.

That concludes this determination.