

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

**Substantive Hearing**  
**Thursday 11 November 2021 – Thursday 18 November 2021**  
**Monday 14 March 2022 – Thursday 17 March 2022**  
**Monday 21 March 2022 – Thursday 24 March 2022**

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

**Name of registrant:** Pamela Ann Gardner

**NMC PIN:** 86Y0231E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Learning Disabilities Nursing – (November 1989)  
Children’s Nursing – (January 2000)

**Area of registered address:** Hampshire

**Type of case:** Misconduct

**Panel members:** Philip Sayce (Chair, registrant member)  
Jonathan Coombes (Registrant member)  
Barry Greene (Lay member)

**Legal Assessor:** Ben Stephenson

**Hearings Coordinator:** Anjeli Shah (11 – 18 November 2021)  
Charis Benefo (14 – 24 March 2022)

**Nursing and Midwifery Council:** Represented by Shanice Mahmud, Case Presenter (11 – 18 November 2021)  
Represented by Alfred Underwood, Case Presenter (14 – 24 March 2022)

**Mrs Gardner:** Not present and not represented

**Facts proved:** Charges 1, 2a, 2b, 2c, 2e, 2f, 2g, 2h, 3a, 3b, 3c, 3d, 3f, 3g, 3h, 3i, 4a, 4b, 4c, 5a, 5b, 5c, 5d, 5e, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 7, 8a, 8b, 8c, 8d, 8e, 8f, 8g, 8h, 8i, 8j, 8k, 8l, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 11g, 11h, 11i, 11j, 11k, 11l, 11m, 11n, 11o, 11p, 11q, 11r, 11s, 11t, 11u, 12, 13, 14 and 15

**Facts not proved:** Charge 2d, 3e

**Fitness to practise:**

Impaired

**Sanction:**

**Striking-off order**

**Interim order:**

**Interim suspension order (18 months)**

### **Decision on service of notice of hearing (Day 1)**

The panel was informed at the start of this hearing that Mrs Gardner was not in attendance and that written notice of this hearing had been sent to Mrs Gardner's registered email address on 29 September 2021. Further, the panel noted that notice of this hearing was also sent to Mrs Gardner's former representative at the Royal College of Nursing (RCN) by email on 29 September 2021.

The panel took into account that the notice letter provided details of the allegations, the time, dates and venue of the hearing and, amongst other things, information about Mrs Gardner's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Mahmud, on behalf of the Nursing and Midwifery Council (NMC) submitted it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel noted that under the amendments made to the Rules during the COVID-19 emergency period, notice of hearing can be sent to a postal address held for the registrant on the register, or an email address the registrant has notified the NMC of for the purposes of communication.

In the light of all of the information available, the panel was satisfied that Mrs Gardner has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

### **Decision on proceeding in the absence of the registrant (Day 1)**

The panel next considered whether it should proceed in the absence of Mrs Gardner.

The panel had regard to Rule 21 (2) which states:

*(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—*

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*
- (c) may adjourn the hearing and issue directions.'*

Ms Mahmud, on behalf of the NMC, referred the panel to an email from the Mrs Gardner's representative at the RCN dated 4 November 2021, which stated that Mrs Gardner would not be attending the hearing and that she would not be represented in her absence. The RCN went on to state that they intended to send in written submissions in advance of the hearing.

Ms Mahmud also referred the panel to written submissions from the RCN dated 10 November 2021, which stated that Mrs Gardner would not be present or represented at the hearing. It was stated that no disrespect was intended, and that this decision had been made due to Mrs Gardner's health and personal circumstances. It was further stated that Mrs Gardner had resigned from her nursing role, that she did not intend to nurse again, that she was not requesting an adjournment and that she was content for the hearing to proceed in her absence.

Ms Mahmud submitted that there had been a clear confirmation that Mrs Gardner would not be attending and that neither would her representative on her behalf. She submitted that there was a unanimous position between Mrs Gardner, her representative and the NMC that the hearing should proceed in her absence. Ms Mahmud submitted that the notice of hearing had been served in accordance with the Rules. She submitted that there was no evidence to suggest that an adjournment would result in Mrs Gardner's attendance on a future date. Ms Mahmud submitted that Mrs Gardner had voluntarily absented herself.

Ms Mahmud submitted that the matters in this case had been investigated back in 2019. She submitted that there were six witnesses due to attend to give evidence, with one witness being present to give evidence in person on day one of the hearing (11 November 2021). Ms Mahmud submitted that there was a public interest in the matter proceeding, and being dealt with expeditiously. In these circumstances, she invited the panel to proceed in the absence of Mrs Gardner.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)*, (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Gardner. In reaching this decision, the panel has considered the submissions of Ms Mahmud and the advice of the legal assessor. The panel had regard to the overall interests of justice and fairness to all parties. The panel considered that:

- Mrs Gardner's RCN representative has provided clear written submissions to indicate that she will not be attending the hearing and that she will not be represented in her absence;
- Whilst the written submissions indicate that Mrs Gardner is unable to attend due to her health and personal circumstances, she has not provided an indication as to whether these circumstances are short or longer term. Mrs Gardner has indicated that she does not intend to nurse in the future and that she is content for the hearing to proceed in her absence;
- No application for an adjournment has been made by Mrs Gardner;
- There is no reason to suppose that adjourning would secure Mrs Gardner's attendance at some future date;
- Mrs Gardner has voluntarily absented herself from this hearing;

- Six witnesses have had arrangements made to attend this hearing to give oral evidence;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in care work, the clients who need their professional services;
- The charges relate to events that occurred between 2014 and 2018;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Gardner in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Gardner, she will not be able to challenge the evidence relied upon by the NMC and she will not be able to give evidence on her own behalf. However, in the panel's judgment, this can be mitigated. The RCN have provided written submissions, on Mrs Gardner's behalf, which outline her position in relation to the charges. The panel can take these submissions into account during the course of its decision making. The panel can also make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. The panel can also put Mrs Gardner's account, as provided within the written submissions, to the witnesses when asking questions. Furthermore, the disadvantage is the consequence of Mrs Gardner's decision to absent herself from the hearing, waive her right to attend and/or be represented and to not provide evidence.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Gardner. The panel will draw no adverse inference from Mrs Gardner's absence in its findings of fact.

### **Decision and reasons on application pursuant to Rule 31**

The panel heard an application made by Ms Mahmud, on behalf of the NMC, under Rule 31, for four witnesses (Ms 4, Ms 6, Ms 3 and Ms 5) to give evidence by video-link.

#### Ms 4

Ms Mahmud applied for Ms 4 to give evidence by video-link. She submitted that Ms 4 had had difficulties making appropriate childcare arrangements to enable her to travel to London. Ms Mahmud referred the panel to an email correspondence from Ms 4 which set out those difficulties. Ms 4 was subsequently asked whether she could make childcare arrangements which the NMC could reimburse the cost for. Ms 4 responded to indicate that she had difficulties in making further childcare arrangements, having asked family members, who were unavailable in order to accommodate childcare for the time she would need to travel to London. Ms 4 had also indicated that her husband worked away from home, causing further difficulties for her.

### Ms 6

Ms Mahmud applied for Ms 6 to give evidence by video-link. She referred to email correspondence from Ms 6 dated 29 October 2021. This email stated that Ms 6 had personal concerns regarding travelling to London (with no further details provided). Ms 6 also stated that there were current staffing pressures, and that being away from the home she was working in for a full day would compromise the operation of the unit, as well as placing additional demand on her on her return to work.

### Ms 3

Ms Mahmud applied for Ms 3 to give evidence by video-link. She referred to email correspondence from Ms 3, where Ms 3 stated she had recently been diagnosed with a health condition, which had created significant difficulties in terms of physical movement, and would therefore impact on her travelling to London. Ms 3 stated that travelling to London would be too much for her own health but she was happy to attend by video-link.

### Ms 5

Ms Mahmud applied for Ms 5 to give evidence by video-link. She informed the panel that there was no specific information as to why Ms 5 wished to give evidence by video-link. Ms Mahmud informed the panel that an email had been sent to Mrs

Gardner's RCN representative to notify them of the NMC's intention for Ms 5 to give evidence remotely, to which the RCN responded stating that they had no instructions in relation to this issue.

In respect of the application for these four witnesses to give evidence by video-link, Ms Mahmud submitted that Mrs Gardner had originally indicated that she intended to attend this hearing in person and that she required the witnesses to attend in person. However, that position had now changed with Mrs Gardner having made clear that she did not intend to attend the hearing. Ms Mahmud submitted that there would be little unfairness or prejudice to Mrs Gardner by the application being granted. She submitted that the witnesses would still be present to give evidence, and could be appropriately questioned by herself and the panel. Ms Mahmud also submitted that it would appear that there would be no difficulties in terms of the panel being able to see and hear the witnesses clearly over the video-link.

The panel accepted the advice of legal assessor.

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.

The panel had regard to the evidence of Ms 4, Ms 6, Ms 3 and Ms 5, which it considered to be relevant to the allegations in this case.

The panel went on to consider whether it would be fair for Ms 4, Ms 6, Ms 3 and Ms 5 to give evidence by video-link.

The panel noted that Mrs Gardner was not in attendance and she was not represented at this hearing. It noted that on 1 November 2021 the NMC emailed Mrs Gardner's RCN representative indicating that Ms 4, Ms 6 and Ms 3 were requesting to give their evidence remotely. The RCN representative responded on 4 November 2021, indicating that Mrs Gardner would not be in attendance and represented at the hearing, that they would be making written submissions in due course but that they had no other observations or submissions at the time. In respect of Ms 5, the panel noted that the NMC emailed Mrs Gardner's RCN representative on 10 November 2021 (the date



before the start of the hearing), indicating that the NMC would be applying for Ms 5 to give evidence remotely. The RCN representative responded on 10 November 2021, providing written submissions on behalf of Mrs Gardner in respect of this hearing, but stating that they had no instructions in respect of Ms 5.

The panel therefore considered that Mrs Gardner had been notified of the NMC's intention to make applications for Ms 4, Ms 6, Ms 3 and Ms 5 to give evidence by video-link, with the opportunity to make observations or object to this course of action. The RCN had responded, indicating that there were no observations or objections in respect of this proposed course of action. The panel further noted that Mrs Gardner and her representative would not be in attendance at this hearing. Therefore, they would not be in a position to cross-examine the witnesses in any event. The panel would still be able to see and hear the witnesses, if they give evidence by video-link, and to test their evidence. The panel therefore considered that there would be no prejudice arising to Mrs Gardner if it were to allow the witnesses to give evidence by video-link.

The panel went on to consider the reasons for the witnesses being unable to attend the hearing in person.

The panel noted that Ms 3 had health difficulties which impacted on her ability to travel to London. The panel noted that Ms 4 had made substantial efforts to make arrangements to enable her to attend the hearing in person, but was presented with significant difficulties in doing so. In respect of Ms 4 and Ms 3, the panel was satisfied that sufficient reasons had been given for them being unable to attend the hearing in person.

The panel was satisfied that the evidence of Ms 4 and Ms 3 was relevant, and that for the reasons outlined above, it would be fair for them to give evidence at this hearing by video-link. The panel therefore granted the application in respect of Ms 4 and Ms 3.

In respect of Ms 6, the panel noted that in her correspondence with the NMC, Ms 6 had stated that she had personal concerns regarding travelling to London, however no further detail had been provided in respect of those concerns (nor did there appear to

be any attempt by the NMC to obtain further detail). Ms 6 went on to state that her absence from her workplace for a full day would compromise the operation of the unit and place additional demand on her return the following day. The panel expressed disappointment as to the detail in terms of the reasoning given by Ms 6 for her inability to attend the hearing in person. It appreciated her concerns regarding the staffing pressures at her unit, but also considered that as a witness who had produced a signed statement for the purpose of this hearing, she would have been fully aware of the expectation for her to attend to give evidence. Indeed, Ms 6's witness statement was signed by her on 22 July 2020, and contained the following statement:

*'I confirm that I am willing to attend a hearing and give evidence before a Committee of the NMC if required to do so.'*

The panel balanced this with the fact that there appeared to be further personal reasons impacting on Ms 6's attendance at the hearing in person, of which it had no further detail. The panel considered that it would have been preferable for it to have received full detail as to the reasons impacting on Ms 6's ability to attend the hearing in person. However, the panel balanced this consideration with its earlier observations, that Mrs Gardner and her representative had been notified of the NMC's intention to apply for Ms 6 to give evidence by video-link, and that they had made no objections or observations in respect of this. Mrs Gardner was not present at this hearing, nor was she represented, and therefore would not be in a position to cross-examine Ms 6 in any event. If Ms 6 were to give evidence by video-link, the panel would still be able to see and hear the witness, and to test her evidence. This would limit any prejudice arising to Mrs Gardner. Therefore, whilst the panel had some reservations about the sufficiency of reasoning given by Ms 6 for her non-attendance at this hearing in person, it balanced this with the fact that her evidence was clearly relevant to the allegations, and that overall, it considered it would be fair for her to give evidence by video-link. The panel therefore granted the application in respect of Ms 6.

In respect of Ms 5, the panel was not satisfied that any reason had been provided for her being unable to attend the hearing in person. The panel therefore reserved judgement in respect of the application for Ms 5 to give evidence by video-link, until it had received further information, after making enquiries of Ms Mahmud.

Ms Mahmud took instructions and then made further submissions in respect of Ms 5. She informed the panel that the application for Ms 5 to give evidence by video-link was one the NMC made on Ms 5's behalf. Ms Mahmud said that Ms 5 had not outlined specific difficulties with attending the hearing in person. She submitted that the RCN indicated, a week prior to the hearing that Mrs Gardner would not be attending the hearing nor represented. Ms Mahmud submitted that it had been Mrs Gardner's request for this hearing to take place physically, with the witnesses attending in person. This request had been made in advance of the hearing, prior to her indication the week before the hearing that she would no longer be in attendance. She submitted that a week prior to the hearing, with the RCN indicating that Mrs Gardner and her representative would not be attending the hearing, the nature of the case had changed. This necessitated an assessment of whether witnesses should still be required to travel to London, given that Mrs Gardner was no longer attending the hearing. Ms Mahmud submitted that the NMC was required to consider the fairness of any disruption caused to witnesses in these circumstances. It was therefore on 10 November 2021 when the NMC emailed the RCN to indicate its intention to apply for Ms 5 to give evidence by video-link. Ms Mahmud informed the panel that by this time, the NMC had already made arrangements for two witnesses to attend in person, and had put the RCN on notice (by email on 1 November 2021) of its intention to apply for three other witnesses to give evidence by video-link.

It was in these circumstances that Ms Mahmud maintained her application for Ms 5 to give evidence by video-link. She submitted that Ms 5 gave evidence to specific issues in this case, and that her evidence was valuable as to context and dealt with matters also covered in Ms 3 and Ms 4's evidence. Ms Mahmud also submitted that Ms 5 gave evidence as to the general working of the procurement card and petty cash systems. Furthermore, Ms 5 gave evidence as to an incident in December 2016, when she went to do a food shop at Tesco with Mrs Gardner, and there was a subsequent query she made about Mrs Gardner allegedly claiming money back through petty cash system for the purchases she made on the procurement card. Ms Mahmud submitted that Ms 5 had confirmed her availability to give evidence, and that her evidence was relevant, and formed part of the NMC's overall case.

The panel accepted the further advice of the legal assessor.

The panel accepted the reasons given by Ms Mahmud, in terms of why the application was being made by the NMC for Ms 5 to give evidence by video-link. Whilst there had not been a reason given for Ms 5 being unable to attend the hearing in person, it accepted the explanation regarding the history of this matter, which resulted in a change in the NMC's assessment of how witnesses should give their evidence. The panel noted that on 10 November 2021 the NMC emailed the RCN, indicating its intention to apply for Ms 5 to give evidence by video-link. The panel noted that the RCN responded on the same date, indicating that they had no instructions in respect of Ms 5. The panel reminded itself of its earlier observations in respect of all of the witnesses who the NMC was making this application in respect of. It considered that Ms 5's evidence was clearly relevant to the factual issues in this case. The panel considered that Mrs Gardner was not in attendance, nor represented, and therefore would not be in a position to cross-examine Ms 5 in any event. The panel would still be able to see and hear Ms 5 if she gave evidence by video-link and to test her evidence. The panel therefore considered that there would be no prejudice to Mrs Gardner if Ms 5 were to give evidence by video-link. The panel considered that it would be fair for Ms 5 to give evidence in this manner. In these circumstances, the panel granted the application in respect of Ms 5.

The panel therefore approved the application for Ms 4, Ms 6, Ms 3 and Ms 5 to give evidence by video-link. The panel will give their evidence what it deems appropriate weight once it has heard and evaluated all the evidence before it.

### **Adjournment and interim order**

The hearing then adjourned part-heard due to insufficient time to conclude within the allocated time. At the time of adjourning, the panel considered whether an interim order was required in this case.

Under Article 31 of the Nursing and Midwifery Order 2001 (the Order), the panel considered whether an interim order should be imposed in this case. A panel may only

make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant's own interests.

Ms Mahmud, on behalf of the NMC, did not make an application for an interim order. She submitted that there had been no change in risk in this case, nor had any further information been received by the NMC to necessitate an interim order.

The panel accepted the advice of the legal assessor.

The panel considered that there had been no change in circumstances which would indicate that there had been a change in risk in this case. It noted that it had not yet reached the stage of fact finding. The panel did not consider that an interim order is necessary to protect the public, is otherwise in the public interest or is in Mrs Gardner's own interests. The panel therefore decided not to impose an interim order at this stage.

The hearing then adjourned. It will resume on 14 March 2022.

That concludes this determination.

This decision will be confirmed to Mrs Gardner in writing.

**This panel started its deliberations on the facts on 14 March 2022.**

**The hearing resumed on 22 March 2022.**

### **Decision and reasons on service of Notice of the resumed hearing**

The panel was informed at the start of this hearing that Mrs Gardner was not in attendance and that the Notice of Hearing letter had been sent to Mrs Gardner's registered email address on 31 January 2022.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Gardner's representative at the RCN on 31 January 2022.

Mr Underwood, on behalf of the NMC, submitted that it had complied with the requirements of Rules 11 and 34.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs Gardner's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Gardner has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

### **Decision and reasons on proceeding in the absence of Mrs Gardner**

The panel next considered whether it should proceed in the absence of Mrs Gardner. It had regard to Rule 21 and heard the submissions of Mr Underwood who invited the panel to continue in the absence of Mrs Gardner.

Mr Underwood referred the panel to the email from Mrs Gardner's representative dated 2 March 2022 which stated:

*'Thank you for confirming. The position has not changed since we provided our written submissions; neither Ms Gardner nor her representative will attend. We will not be providing any further representations. We have no objections to the panel proceeding in her absence.'*

Mr Underwood submitted that Mrs Gardner had indicated that she has no intention to attend the hearing, which was her position for the initial hearing in November 2021. He submitted that there would be no undue prejudice to Mrs Gardner by proceeding in her absence, and that it would be in the public interest to proceed in her absence.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R v Jones*.

The panel has decided to proceed in the absence of Mrs Gardner. In reaching this decision, the panel has considered the submissions of Mr Underwood, the written representations made on Mrs Gardner's behalf, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mrs Gardner's RCN representative has provided clear written submissions to indicate that she will not be attending the hearing and that she will not be represented in her absence and furthermore there is no objection to the case proceeding in her absence;
- Mrs Gardner has voluntarily absented herself from this hearing;
- No application for an adjournment has been made by Mrs Gardner;

- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

The panel noted the RCN's representation dated 2 March 2022 that '*We will not be providing any further representations. We have no objections to the panel proceeding in her absence.*' The panel determined in these circumstances, that it is fair, appropriate and proportionate to proceed in the absence of Mrs Gardner. The panel will draw no adverse inference from Mrs Gardner's absence.

### **Decision and reasons on application to amend the charge**

The panel on its own volition, and during its deliberations on the facts, invited Mr Underwood to consider a small number of arithmetical and typographical amendments.

The panel heard an application made by Mr Underwood to amend the wording of charges 2a, 4c, 6a, 6h, 8c, 8k, 10, 11k, 11m, 11o and 13.

Mr Underwood referred the panel to his written submissions dated 17 March 2022, which stated as follows:

*'1. This is an application by the NMC under Rule 28 of the FTP Rules to amend the following charges:*

*"That you, a registered nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one or more of the following duplicate petty cash claims:*

*a) Wyewale Garden Centre £37.48"*

*4. Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims:*

*c) Office World Stationery £137.83"*



6. *Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

- a) *Sainsbury's, women's clothing at £50.00"*
- h) *Morrisons, Thornton's chocolates at £20.00, Amazon Gift Card at £20.00 and Gift Card at £50"*

8. *Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card.*

- c) *Boots, Perfume at £30.00, Shampoo at £11.98"*
- k) *John Lewis, skincare gift sets at £106.26*

10. *Between 1 April 2016 and 31 March 2017 wrote "xmas cards, paper, gifts for pass the parcel - cleaning products" on a receipt for £106.26 for a purchase from John Lewis for skincare."*

11. *Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

- k) *Sainsburys, Clothing and Flask at £58.50"*
- m) *Sainsburys, Unknown item at £52.00*
- o) *Sainsburys, Clothing and hand cream at £31.75*

13. *Between 1 April 2017 and 31 January 2018 wrote "pans, cutlery, plates " on a receipt for a handbag from TK Maxx at £103.04"*

2. *The NMC apply to amend the charges so that they read as follows:*

*"That you, a registered nurse:*

2. *Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

- a) *Wyevale Garden Centre £37.48"*

4. *Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims:*

- c) *Office Outlet £137.83"*

6. *Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

a) *Sainsbury's, women's clothing at £48.00"*

h) *Morrisons, Thornton's chocolates at £8.00, Amazon Gift Card at £20.00 and Gift Card at £50"*

8. *Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card.*

c) *Boots, Perfume at £37.00, Shampoo at £11.98"*

k) *John Lewis, skincare gift sets at £106.25*

10. *Between 1 April 2016 and 31 March 2017 wrote "xmas cards, paper, gifts for pass the parcel - cleaning products" on a receipt for £106.25 for a purchase from John Lewis for skincare."*

11. *Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

k) *Sainsburys, Clothing and Flask at £50.00"*

m) *Sainsburys, clothing at £52.00*

o) *Sainsburys, Clothing and hand cream at £27.25*

13. *Between 1 April 2017 and 31 January 2018 wrote "pans, cutlery, plates " on a receipt for a handbag from TK Maxx at £129.99"*

3. *It is submitted that the charges ought to be amended in this way to correct typographical mistakes or small errors in value or description so that the charges accurately reflect the evidence as presented in Appendices E and F.*

4. *Under Rule 28 the NMC may apply - and the panel may exercise its discretion - to amend charges at any point prior to the panel making its findings of fact. When doing so it must consider fairness to both parties and any potential injustice in allowing an amendment.*

*5. It would not be in the interests of fairness to prevent the proposed amendments, as they are very minor in nature and are made purely to correct small errors. It would not be in the public interest for facts in a serious regulatory hearing not to be found proved solely on the basis of typographical or minor errors of transposition, where the evidence exists, as the NMC says it does, to support the underlying concern, which is that the registrant acted dishonestly for her own gain.*

*6. Conversely it would not amount to a substantial injustice upon the registrant to amend the charges as set out above, even though this application is made at such a late stage, as the amendments do not in any significant way alter the NMC's case against her. The most significant error corrected above, in monetary terms, is to adjust the value of chocolates in charge "6h" down from £20 to £6. Other amendments relate to the spelling of the names of shops and adding the description of "clothing" to items previously particularised as "unknown". Such amendments do not substantially prejudice the registrant, as they are based upon evidence previously served in Appendices E and F as part of the NMC case.*

*7. For all these reasons we invite the panel to amend the charges as proposed under Rule 28 of the FTP Rules.'*

In an email dated 21 March 2022, the RCN indicated that it had no observations about the NMC's application to amend the charges.

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

The panel was of the view that such amendments, as applied for, were in the interest of justice. The panel was satisfied that there would be no prejudice to Mrs Gardner and no injustice would be caused to either Mrs Gardner or the NMC by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Charges 2a, 4c, 6a, 6h, 8c, 8k, 10, 11k, 11m, 11o and 13 now read as follows:

### Charge 2a)

“That you, a registered nurse:

1. Between 1 April 2015 and 31 March 2016 made one or more of the following duplicate petty cash claims:

a) ~~Wyewale~~ **Wyevale** Garden Centre £37.48”

### Charge 4c)

“That you, a registered nurse:

4. Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims:

c) Office ~~World Stationery~~ **Outlet** £137.83”

### Charge 6a)

“That you, a registered nurse:

6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:

a) Sainsbury’s, women’s clothing at ~~£50.00~~ **£48.00**”

### Charge 6h)

“That you, a registered nurse:

6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:

h) Morrisons, Thornton's chocolates at ~~£20.00~~ **£8.00**, Amazon Gift Card at £20.00 and Gift Card at £50"

#### **Charge 8c)**

"That you, a registered nurse:

8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card.

c) Boots, Perfume at ~~£30.00~~ **£37.00**, Shampoo at £11.98"

#### **Charge 8k)**

"That you, a registered nurse:

8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card.

k) John Lewis, skincare gift sets at ~~£106.26~~ **£106.25"**

#### **Charge 10**

"That you, a registered nurse:

Between 1 April 2016 and 31 March 2017 wrote "xmas cards, paper, gifts for pass the parcel - cleaning products" on a receipt for ~~£106.26~~ **£106.25** for a purchase from John Lewis for skincare."

#### **Charge 11k)**

"That you, a registered nurse:

11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:

k) Sainsburys, Clothing and Flask at ~~£58.50~~ **£50.00**"

**Charge 11m)**

"That you, a registered nurse:

11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:

m) Sainsburys, ~~Unknown item~~ **Clothing** at £52.00"

**Charge 11o)**

"That you, a registered nurse:

11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:

o) Sainsburys, Clothing and hand cream at ~~£31.75~~ **£27.25**"

**Charge 13**

"That you, a registered nurse:

12. Between 1 April 2017 and 31 January 2018 wrote "pans, cutlery, plates " on a receipt for a handbag from TK Maxx at ~~£103.04~~ **£129.99.**"

**Details of charges (as amended):**

That you, a Registered Nurse:

1. From the 1 April 2014 to the 31 March 2018 did not ensure that the purchasing card and PIN were kept safely.
  
2. Between 1 April 2015 and 31 March 2016 made one or more of the following duplicate petty cash claims:
  - a) Wyevale Garden Centre £37.48
  - b) Marwell £30.88
  - c) Birdworld £54.55
  - d) Finkley Down Farm £37.35
  - e) Home Bargains £42.50
  - f) McDonalds £35.73
  - g) Morrisons £40.92
  - h) Staples £27.57
  
3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:
  - a) Asda £33.06
  - b) Morrisons £31.26
  - c) McDonalds £35.53
  - d) Staples £27.46
  - e) Staples £24.99
  - f) Staples £24.99
  - g) Longleat £101.85
  - h) Longleat £101.85
  - i) Chessington £158.68
  
4. Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims:

- a) Craft Items for Christmas £66.20
  - b) Cards and Paper £33.00
  - c) Office Outlet £137.83
5. Between 1 April 2014 and 31 March 2015 made one or more of the following purchases on the procurement card:
- a) Marks and Spencer, 6 plain polo shirts at £105.00
  - b) Sports Direct, 4 plain polo shirts at £19.00
  - c) Body Shop, toiletries at £48.00
  - d) Body shop, mini manicure gift sets at £24.00
  - e) Sainsburys, Clothing at £26.00
6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:
- a) Sainsbury's, women's clothing at £48.00
  - b) Asda, Women's clothing at £36.00
  - c) Sainsbury's, replacement clothes for a child at £62.25
  - d) Boots, Celeb Slim new pack at £29.99
  - e) Tesco, Women's knitwear at £30.00
  - f) Sainsbury's, trousers/jeans at £18.00
  - g) Bodyshop, two gifts sets at £36.00
  - h) Morrisons, Thornton's chocolates at £8.00, Amazon Gift Card at £20.00 and Gift Card at £50
7. Between 1 April 2015 and 31 March 2016 wrote "bats and balls" on a receipt for £36.00 of women's clothing from Asda.
8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card.
- a) Boots, No.7 beauty products and make up at £61.40



- b) TK Maxx, Sunglasses at £14.99
  - c) Boots, Perfume at £37.00, Shampoo at £11.98
  - d) Ryman, Filofax at £75.00
  - e) B&M, double duvet at £12.99
  - f) Tesco, blouse at £12.00
  - g) Body shop, toiletries at £22.05
  - h) Body shop, toiletries at £16.05
  - i) Sainsburys Women's clothing, Jewellery, shoes and deodorant at £103.70
  - j) Sainsburys, chocolates, clothing, mug at £43.00
  - k) John Lewis, skincare gift sets at £106.25
  - l) Sainsburys, women's deodorant at £13.05
9. Between 1 April 2016 and 31 March 2017 wrote " food " on a receipt for £43.00 for a purchase from Sainsbury's for chocolates, clothing and a mug.
10. Between 1 April 2016 and 31 March 2017 wrote "xmas cards, paper, gifts for pass the parcel - cleaning products" on a receipt for £106.25 for a purchase from John Lewis for skincare.
11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:
- a) Tesco, Clothing at £100
  - b) Mole Valley, Pet food container and two large bags of pet food at £30.97
  - c) Marks and Spencer, Joggers at £62.55
  - d) Primark, Jumpers at £33.00
  - e) Boots, Perfume and Make Up at £135.16
  - f) Sainsbury's, Women's clothing at £134.00
  - g) Asda, Clothing at £140.16
  - h) TK Maxx, Handbag at £129.99
  - i) Sainsburys, Clothing at £36.00
  - j) Lakeland, Confectionery at £26.50
  - k) Sainsburys, Clothing and Flask at £50.00

- l) TK Maxx, Plus Women clothing at £80.04
- m) Sainsburys, Clothing at £52.00
- n) Boots, Beauty products at £ 114.99
- o) Sainsburys, Clothing and hand cream at £27.25
- p) Primark, Clothing at £16.00
- q) Sainsburys, Clothing at £53.50
- r) Boots, Perfume at £59.50
- s) Boots, Beauty and dental at £22.44
- t) Tesco, Lady shaver at £24.00
- u) Amazon, Kipling laptop bag at £73.49

12. Between 1 April 2017 and 31 January 2018 wrote “ hairdryer, brushes, toiletries and sun cream ” on a receipt for Perfume and Make Up from Boots at £135.16

13. Between 1 April 2017 and 31 January 2018 wrote “pans, cutlery, plates “ on a receipt for a handbag from TK Maxx at £129.99.

14. Your actions in charges 2 to 13 caused a financial loss to Firvale Respite Unit.

15. Your actions in charges 2 to 13 were dishonest in that you misappropriated funds for your own personal gain.

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

### **Decision and reasons on facts**

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 Mahmud on behalf of the NMC and the written submissions from Mrs Gardner’s representative at the RCN.

The panel has drawn no adverse inference from the non-attendance of Mrs Gardner.

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:

- Mr 1: A Service Manager at Hampshire County Council (the Council) at the time;
- Ms 2: An Audit Manager at Southern Internal Audit Partnership (SIAP).
- Ms 3: A Care Worker at Firvale Children's Respite Unit (the Unit) at the time;
- Ms 4: A Care Worker at the Unit;
- Ms 5: A Cook at Firvale the Unit at the time;
- Ms 6: A Team Supervisor and formerly a Care Worker at the Unit at the time.

## **Background**

The NMC received a referral in respect of Mrs Gardner on 8 February 2019. Mrs Gardner first entered onto the NMC's register, as a learning disabilities nurse, on 12 November 1989. She subsequently registered as a children's nurse on 3 January 2000.

The allegations in this case arose when Mrs Gardner was working as the Registered Manager at the Unit, which is part of Hampshire Hospital (the Hospital). The Unit was run by the Council with input from the Hospital for clinical matters only. Mrs Gardner began working at the Hospital in February 2006. On 1 April 2008 Mrs Gardner was appointed as the Registered Manager of the Unit.

The children who stayed on the Unit were primarily aged between 10 and 18 years old, and had particular needs, including learning disabilities and other health requirements. The children would have overnight stays on the Unit from time to time in order to support their continued care in the community.

One of Mrs Gardner's main responsibilities as the Registered Manager was management and allocation of resources, including budgetary control which, involved the management and oversight of petty cash, as well as managing the procurement card system. The Unit had one procurement card, which was issued to Mrs Gardner in her capacity as the Registered Manager. Mrs Gardner was the individual with sole responsibility for the procurement card and therefore the only person with authorisation to have access to it and its PIN number and associated account details, including online passwords. The Unit also had a petty cash system in place, for members of staff to obtain cash advances for the ad-hoc purchase of items for the Unit. The procurement card and petty cash systems were in place to ensure expenditure for items such as linen, general kitchen, office items, and the occasional outings for the children was accounted for. Exceptionally, items such as toiletries and clothing were purchased for the children who stayed at the Unit, who either did not have these items or had run out of them.

As the Registered Manager with responsibility for managing the petty cash and procurement card systems, as well as the management and allocation of resources, Mrs Gardner had completed financial skills for managers training (on 12 September 2008) and petty cash training (on 16 April 2008). This ensured she was authorised to conduct and had knowledge of the various financial responsibilities allocated to her within the role.

In January 2018 an anonymous caller contacted Mr 1, the Service Manager at the Council, raising concerns about the Unit's procurement card being used to purchase items, and subsequent petty cash claims being submitted for those purchases. Mr 1 asked the caller to put the allegations in writing. The written allegations and information were received by Mr 1 on 12 January 2018, following which he commenced a preliminary investigation, and found a number of irregularities in Mrs Gardner's management of the petty cash and procurement card system.

Mr 1 then commenced a formal investigation, with the assistance of SIAP. Ms 2, an audit manager from SIAP, was allocated to assist Mr 1 with the investigation. Ms 2 undertook an analysis of the transactions and purchases made through the Unit's petty cash and procurement card systems under Mrs Gardner's management. She reviewed the financial information for the Unit and found a number of irregularities. Ms 2 found numerous examples of purchases being made using the procurement card, with subsequent petty cash claims for the same purchases, with Mrs Gardner being named as the cardholder, and the signatory on the petty cash docket. There were also examples of the procurement card and its PIN number being given to members of staff at the Unit, when according to the Council's policy, those details should not have been disclosed by Mrs Gardner. Ms 2 also found receipts that related to expenditure on items such as handbags and perfume, which were not suitable for the children at the Unit. Ms 2 also found some of these receipts had been tampered with and some details were missing from them or obscured. Furthermore, the log-in details for the Council's 'SAP system', which was a platform delivered by the Royal Bank of Scotland (RBS) as part of the financial management at the Unit, had been made available to members of staff when they were not authorised to have that information.

Following the investigation, during which Mrs Gardner and other members of staff at the Unit were interviewed, a disciplinary hearing was held in November 2018. The outcome of the hearing was Mrs Gardner's dismissal from the Unit.

It is alleged that there were various forms of financial mismanagement by Mrs Gardner during her time as the Registered Manager of the Unit:

- It is alleged that Mrs Gardner did not ensure that the Unit's procurement card was kept securely and the PIN number kept confidential.
- It is alleged that purchases were made using the procurement card and that duplicated claims were submitted through the petty cash by Mrs Gardner.
- It is alleged that Mrs Gardner made inappropriate purchases using the procurement card for personal items, for her own benefit.
- It is alleged that there were edits or tampering of receipts by Mrs Gardner which were submitted into the financial system of the Unit.
- It is alleged that these actions by Mrs Gardner caused financial loss to the Unit, and that they were dishonest, in that Mrs Gardner misappropriated funds for her own personal gain.

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 Mrs Gardner.

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

### **Charge 1**

*That you, a Registered Nurse:*

*1. From the 1 April 2014 to the 31 March 2018 did not ensure that the purchasing card and PIN were kept safely.*

**This charge is found proved.**

In reaching this decision, the panel took into account the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021, the witness statement of Mr 1, the notes of the internal misconduct meeting on 8 November 2018 and the Council's Purchasing and Embedded Card Policy.

The panel accepted Mr 1's written evidence that part of Mrs Gardner's role was to *'manage the petty cash systems at Firvale, both of which she was solely responsible for'*. This was supported by the Council's Purchasing and Embedded Card Policy, which indicated that *'purchasing cards are issued in the name of an individual and must only be used by them. Under no circumstances should a PIN number or online password be revealed to any other person.'* The panel was satisfied that there was clear guidance on how the card and PIN were to be kept by Mrs Gardner, who had the sole responsibility of managing the card.

The panel took into account Mrs Gardner's written submission that *'she allowed others to use the card, and gave out the PIN, which she should not have done.'* It noted Mrs Gardner's submissions in the notes of the internal misconduct meeting on 8 November 2018, that:

*'The card is kept at Firvale, so staff are able to access the card, as I am not always around.'*

*If staff have the card and I have gone home and there are no senior staff around, staff will hide it in my office and leave a note of where it is'.*

The panel further noted Mrs Gardner's responses to questions in the notes of the internal misconduct meeting on 8 November 2018, where she accepted giving the card and PIN number to members of staff. Mrs Gardner also accepted that this was against the Council's policy.

The panel was satisfied that whilst Mrs Gardner had not made a formal admission to charge 1, the information provided in her written submissions dated 10 November 2021 accorded with the witness and documentary evidence before the panel, that other members of staff were able to access the card that Mrs Gardner had sole responsibility for. The panel therefore concluded that Mrs Gardner did not ensure that the card and PIN were kept safely and found charge 1 proved.

## Charge 2

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one or more of the following duplicate petty cash claims*

In reaching its decision for the sub-charges 2a-h, the panel took into account the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021, together with the relevant witness statements and oral evidence of the witnesses. The panel also had regard to the Duplicate Petty Cash Payments Analysis from the Council's investigation of the Unit, which was supported by copies of the petty cash dockets, and procurement card sales receipts or entries on the Council's 'SAP system'.

Overall, the panel accepted Ms 2's evidence that she saw the original copies of the sales receipts and dockets first hand during the course of her investigation and her assertion as to the correctness of the petty cash payment analysis. The panel determined that it saw no reason to doubt Ms 2's competence and capability in dealing with documents of this nature. It was satisfied that Ms 2 worked independently and had completed a factual and comprehensive review of the documentation. The panel identified a small number of arithmetical and typographical errors within the SIAP report and for these charges the panel relied on the description of the purchases and the dates on the sales receipts and/or the Council's 'SAP system'.

The panel determined that each of the sub-charges 2a-h fell within the dates of the charges.

The panel took particular note of the written submissions from the RCN on Mrs Gardner's behalf, which invited the panel to consider whether it is more likely than not:

*'a. that duplicate petty cash claims were in fact made (and it is submitted that the panel must take particular care with non-expert opinions about the cause for alleged fading or tearing of aged receipts);*



*b. that the claims were in fact duplicates, rather than 2 separate instances of purchases for the same value;*

*c. that Ms Gardner was the person who made the claim, rather than somebody else – whether such third party is innocent or culpable’.*

### **Charge 2a)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

*a) Wyevale Garden Centre £37.48*

### **This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £37.48 to Wyevale Garden Centre.

The panel considered the petty cash docket dated 13 May 2015, which was signed by Mrs Gardner and indicated a value of cash payment of £37.48. This amount was also reflected on the card sales receipt from Wyevale Garden Centre dated 29 April 2015.

The panel determined that on the balance of probabilities, it is more likely than not that the transactions recorded on the petty cash dockets and the card sales receipt related to the same transaction. It was satisfied that the claim was in fact a duplicate rather than a separate instance of a purchase for the same value.

In the notes of the internal investigation interview on 5 March 2018, Mrs Gardner confirmed that she reviewed card purchases on the Council’s ‘SAP system’, and would check ‘*date, who with, receipt matches, click button to input GL code.*’ Mrs Gardner also confirmed that she would reconcile each card purchase on the Council’s ‘SAP system’.

The panel had regard to the Council's Purchasing and Embedded Card Policy, which stated:

*'All staff holding a purchasing card are responsible for confirming that the expenditure on their statement is accurate and has been incurred in accordance with the scheme.*

*Staff designated as authorisers are required to log onto the card providers web site and approve those cardholder's statements they are responsible for.'*

The panel also had regard to the notes of the misconduct meeting on 8 November 2018 where Mrs Gardner was asked whether she was the only person at the Unit responsible for logging on to the Council's 'SAP system' to review purchases. Mrs Gardner stated in response:

*'Yes, there is a log in and password. Password is stored in a book. Most of the time the book is with me but when I go out of the office there are people who do have access. I would not give out my log in details.'*

The panel took the view that the possibility of others using Mrs Gardner's log-in details over a sustained period covering 1 April 2014 to 31 March 2018, with such frequency, and without her knowledge was implausible. The panel found that Mrs Gardner was solely responsible for reconciling card purchases on the Council's 'SAP system' which provided the appropriate accounting entries. The panel was of the view that in reconciling card purchases, Mrs Gardner had a responsibility to query any transactions she did not recognise.

In considering whether Mrs Gardner had made duplicate claims through the petty cash system, the panel, in those instances where Mrs Gardner had signed the docket, decided on the balance of probabilities, that she was the person that made the claim.

The panel concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Wyevale Garden Centre of £37.48. It therefore found charge 2a proved.

## **Charge 2b)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

*b) Marwell £30.88*

### **This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed the payment of £30.88 to Marwell.

The panel considered the petty cash docket dated 19 August 2015, which was signed by Mrs Gardner and indicated a value of cash payment of £30.88. This amount was also reflected on the sales receipt from Marwell dated 6 August 2015.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Marwell of £30.88. It therefore found charge 2b proved.

## **Charge 2c)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

*c) Birdworld £54.55*

### **This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed the payment of £54.55 to Birdworld.

The panel considered the petty cash docket dated 21 August 2015, which was signed by Mrs Gardner and indicated a value of cash payment of £54.55. This amount was also reflected on the sales receipt from Birdworld dated 5 August 2015.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Birdworld of £54.55. It therefore found charge 2c proved.

### **Charge 2d)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

*d) Finkley Down Farm £37.35*

### **This charge is found not proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed the payment of £37.35 to Finkley Down Farm.

The panel considered the petty cash docket dated 26 October 2015, indicating a value of cash payment of £37.35. This amount was also reflected on the sales receipt from Finkley Down Farm dated 20 October 2015.

The panel determined that on the balance of probabilities, it is more likely than not that the transactions recorded on the petty cash dockets and the sales receipt related to the same transaction. It was satisfied that the claim was in fact a duplicate rather than a separate instance of a purchase for the same value.

The panel took into account that Mrs Gardner had control of the procurement card. However, it noted that the signature on the petty cash docket did not appear to belong to Mrs Gardner. Further, the panel noted the observation from the internal investigation report in relation to this charge that *'this petty cash reimbursement form has not been submitted by Pam'*. The panel therefore determined that there was insufficient evidence

to suggest that Mrs Gardner signed the petty cash docket and made the petty cash claim.

Accordingly, on the balance of probabilities, the panel found charge 2d not proved.

### **Charge 2e)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

*e) Home Bargains £42.50*

**This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed the payment of £42.50 to Home Bargains.

The panel considered the petty cash docket dated 23 February 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £42.50. This amount was also reflected on the sales receipt from Home Bargains dated 23 February 2016.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Home Bargains of £42.50. It therefore found charge 2e proved.

### **Charge 2f)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

*f) McDonalds £35.73*

**This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed the payment of £35.73 to McDonalds.

The panel considered the petty cash docket dated 22 February 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £35.73. This amount was also reflected on the entry from the Council's 'SAP system' dated 17 February 2016 for a transaction at McDonalds on 16 February 2016.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at McDonalds of £35.73. It therefore found charge 2f proved.

### **Charge 2g)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one of more of the following duplicate petty cash claims:*

*g) Morrisons £40.92*

### **This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed the payment of £40.92 to Morrisons.

The panel considered the petty cash docket dated 23 March 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £40.92. This amount was also reflected on the sales receipt from Morrisons dated 17 March 2016.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Morrisons of £40.92. It therefore found charge 2g proved.

## **Charge 2h)**

*That you, a Registered Nurse:*

*2. Between 1 April 2015 and 31 March 2016 made one or more of the following duplicate petty cash claims:*

*h) Staples £27.57*

### **This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed the payment of £27.57 to Staples.

The panel considered the petty cash docket dated 23 March 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £27.57. This amount was also reflected on the sales receipt from Staples dated 23 February 2016.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Staples of £27.57. It therefore found charge 2h proved.

## **Charge 3**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims*

In reaching its decision for the sub-charges 3a-i, the panel relied on its reasoning for charge 2.

### **Charge 3a)**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

a) Asda £33.06

**This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £33.06 to Asda.

The panel considered the petty cash docket dated 25 April 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £33.06. This amount was also reflected on the entry from the Council's 'SAP system' dated 14 April 2016 for a transaction at Asda on 13 April 2016.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Asda of £33.06. It therefore found charge 3a proved.

**Charge 3b)**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

*b) Morrisons £31.26*

**This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £31.26 to Morrisons.

The panel considered the petty cash docket dated 25 April 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £31.26. This amount was also reflected on the entry from the Council's 'SAP system' dated 18 April 2016 for a transaction at Morrisons on 15 April 2016.



The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Morrisons of £31.26. It therefore found charge 3b proved.

### **Charge 3c)**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

*c) McDonalds £35.53*

**This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £35.53 to McDonalds.

The panel considered the petty cash docket dated 6 May 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £35.53. This amount was also reflected on the card sales receipt from McDonalds dated 6 May 2016.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at McDonalds of £35.53. It therefore found charge 3c proved.

### **Charge 3d)**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

*d) Staples £27.46*

**This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £27.46 to Staples.

The panel considered the petty cash docket dated 6 May 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £27.46. This amount was also reflected on the card sales receipt from Staples dated 14 April 2016.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Staples of £27.46. It therefore found charge 3d proved.

### **Charge 3e)**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

*e) Staples £24.99*

### **This charge is found not proved.**

The panel considered the petty cash docket dated 1 June 2016, indicating a value of cash payment of £24.99. It noted that the signature on the petty cash docket did not appear to belong to Mrs Gardner. The panel also had sight of the Duplicate Petty Cash Payments Analysis entry which detailed this payment of £24.99 to Staples. The entry confirmed that this petty cash reimbursement was not claimed by Mrs Gardner.

The panel therefore determined that there was no evidence to suggest that Mrs Gardner signed the petty cash docket and made the petty cash claim.

Accordingly, on the balance of probabilities, the panel found charge 3e not proved.

### **Charge 3f)**

*That you, a Registered Nurse:*

3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:

f) Staples £24.99

**This charge is found proved.**

The panel considered the petty cash docket dated 29 July 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £24.99. This amount was also reflected on the attached sales receipt.

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed a payment of £24.99 to Staples. This was listed in addition to the Duplicate Petty Cash Payments Analysis entry related to charge 3e for the same amount.

The Council's investigation report indicated that the sales receipt appeared to have been initially attached to the petty cash docket dated 1 June 2016, which was signed by another member of staff. It observed that:

*'At the point it was submitted it had a receipt attached, as can be evidenced by the staple at the top left hand side and also by the snip of paper (with some red ink) caught under the staple.'*

The panel took into account the suggestion that on observation, the sales receipt was removed from this petty cash docket and subsequently reattached to the petty cash docket dated 29 July 2016, which was signed by Mrs Gardner for the same amount.

The Council's investigation report observed that:

*'Towards the top left of the receipt can be seen hole where a part of the receipt has become torn away. This is the part that is retained on the earlier claim. [sic]'*

However, the panel was satisfied that it is more likely than not that the sales receipt from Staples of a transaction amounting to £24.99 was originally submitted with the petty cash docket dated 1 June 2016, which was signed by another member of staff.

Further, it was satisfied that the petty cash docket dated 29 July 2016, which was signed by Mrs Gardner, related to that same transaction because the sales receipt was attached to it.

The panel concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Staples of £24.99. It therefore found charge 3f proved.

### **Charge 3g)**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

*g) Longleat £101.85*

### **This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed a payment of £101.85 to Longleat.

The panel considered the petty cash docket dated 6 June 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £101.85.

The Council's investigation report observed that:

*'This is the first of 2 false petty cash claims submitted for the June 2016 trip to Longleat. There is no receipt attached to this claim, but the staple at the top left indicated a receipt was originally attached. Likely this has been removed to be used for the second false claim.'*

The panel had regard to the card sales receipt from Longleat dated 3 June 2016 for a transaction of £101.85.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Longleat of £101.85. It therefore found charge 3g proved.

### **Charge 3h)**

*That you, a Registered Nurse:*

*3. Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

*h) Longleat £101.85*

### **This charge is found proved.**

The panel had sight of the Duplicate Petty Cash Payments Analysis entry which detailed a payment of £101.85 to Longleat. This was listed in addition to the Duplicate Petty Cash Payments Analysis entry related to charge 3g for the same amount.

The panel considered the petty cash docket dated 29 July 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £101.85.

The Council's investigation report observed that:

*'This is the documentation for the second petty cash false claim. Receipt attached to this claim. This receipt has been tampered with in an attempt to erase the date on the receipt.'*

However, the panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a second duplicate petty cash claim for the transaction at Longleat of £101.85. It therefore found charge 3h proved.

### **Charge 3i)**

*That you, a Registered Nurse:*

3. *Between 1 April 2016 and 31 March 2017 made one or more of the following duplicate petty cash claims:*

i) *Chessington £158.68*

**This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £158.68 to Chessington.

The panel considered the petty cash docket dated 1 September 2016, which was signed by Mrs Gardner and indicated a value of cash payment of £158.68.

The card sales receipt from Chessington dated 31 August 2016 indicated a transaction of £190.40.

The Council's investigation report observed that:

*'The amount on this petty cash reimbursement differs to the purchase on the procurement card as the VAT has been ommitted. [sic]'*

The panel was satisfied that the difference in values on the petty cash docket and the card sales receipt was as a result of the removal of the VAT amount on the receipt attached to the petty cash docket.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Chessington of £158.68. It therefore found charge 3i proved.

#### **Charge 4**

*That you, a Registered Nurse:*

4. *Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims*

In reaching its decision for the sub-charges 4a-c, the panel relied on its reasoning for charge 2.

#### **Charge 4a)**

*That you, a Registered Nurse:*

*4. Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims:*

*a) Craft Items for Christmas £66.20*

#### **This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £66.20 for Craft Items for Christmas.

The panel considered the petty cash docket dated 20 November 2017, which was signed by Mrs Gardner and indicated a value of cash payment of £66.20. This amount was also reflected on the card sales receipt from Tiger dated 26 October 2017.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction on Craft Items for Christmas of £66.20. It therefore found charge 4a proved.

#### **Charge 4b)**

*That you, a Registered Nurse:*

*4. Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims:*

*b) Cards and Paper £33.00*

#### **This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £33.00 for Cards and Paper.

The panel considered the petty cash docket dated 27 November 2017, which was signed by Mrs Gardner and indicated a value of cash payment of £33.00. This amount was also reflected on the card sales receipt dated 26 November 2017.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction on Cards and Paper of £33.00. It therefore found charge 4b proved.

### **Charge 4c)**

*That you, a Registered Nurse:*

*4. Between 1 April 2017 and 31 January 2018 made one or more of the following duplicate petty cash claims:*

*c) Office Outlet £137.83*

### **This charge is found proved.**

The panel had sight of the duplicate Petty Cash Payments Analysis entry which detailed the payment of £137.83 for a transaction at Office Outlet.

The panel considered the petty cash docket dated 28 December 2017, which was signed by Mrs Gardner and indicated a value of cash payment of £137.83. This amount was also reflected on the card sales receipt dated 30 October 2017.

The panel relied on its reasoning as outlined in charge 2 and 2a when considering this charge and concluded that Mrs Gardner made a duplicate petty cash claim for the transaction at Office Outlet of £137.83. It therefore found charge 4c proved.

### **Charge 5**

*That you, a Registered Nurse:*

*5. Between 1 April 2014 and 31 March 2015 made one or more of the following purchases on the procurement card*



In reaching its decision for the sub-charges 5a-e, the panel took into account the written submissions from the RCN on Mrs Gardner's behalf, together with the relevant witness statements and oral evidence of the witnesses. The panel also had regard to the 'Questionable Purchase' section of the Procurement Card Analysis from the Council's investigation of the Unit and the procurement card sales receipts.

The panel determined that each of the sub-charges 5a-e fell within the dates of the charges.

The panel took particular note of the written submissions from the RCN on Mrs Gardner's behalf, which invited the panel to consider whether it is more likely than not:

*'a. That the purchases were in fact made as alleged; again, particularly where the copies are of poor quality;*

*b. That Ms Gardner made the purchases rather than somebody else – bearing in mind she admits that she (wrongly) allowed others to access the card'.*

Overall, the panel accepted Ms 2's evidence that she saw the original copies of the sales receipts and dockets first hand during the course of her investigation and her assertion as to the correctness of the petty cash payment analysis. The panel determined that it saw no reason to doubt Ms 2's competence and capability in dealing with documents of this nature. It was satisfied that Ms 2 worked independently and had completed a factual and comprehensive review of the documentation. The panel identified a small number of arithmetical and typographical errors within the SIAP report and for these charges the panel relied on the description of the purchases and the dates on the sales receipts and/or the Council's 'SAP system'.

The panel's relied on its reasoning in charge 1 and took into account Mrs Gardner's responses in the notes of the internal investigation interview on 5 March 2018. Mrs Gardner was questioned on how she controlled who she gave the procurement card to and what they bought. She stated that:

*'Staff come and say what they want to buy and I give them the card. Receipts are returned, I don't automatically look at them when they come back, my fault this is what I should do.'*

The panel had regard to Mr 1's questions to Mrs Gardner in the notes of the internal follow up investigation interview on 17 August 2018. He stated that:

*'In their meetings staff provided similar responses to the question; "what sort of things are purchased for the children using a purchase card?". There is no account that raised concern for the investigating officer in terms of appropriate end use. This is not consistent with the examples we have gone through with you around the spend on the purchase card...[sic]'*

When provided the opportunity to do so, Mrs Gardner did not make further comment on Mr 1's remarks about the type of purchases made on the card and the end use.

Further, in the notes of the internal investigation interview on 5 March 2018, Mrs Gardner confirmed that she reviewed card purchases on the Council's 'SAP system', and would check *'date, who with, receipt matches, click button to input GL code.'* Mrs Gardner also confirmed that she had to reconcile card purchases on the Council's 'SAP system'.

### **Charge 5a)**

*That you, a Registered Nurse:*

*5. Between 1 April 2014 and 31 March 2015 made one or more of the following purchases on the procurement card:*

- a) Marks and Spencer, 6 plain polo shirts at £105.00*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of six plain polo shirts for £105.00 at Marks and

Spencer in May 2014. The panel was satisfied that this purchase was in fact made as alleged.

The panel noted that Mrs Gardner was the named cardholder and the only person authorised to use the procurement card. It also took into account that Mrs Gardner was responsible for reconciling card purchases on the Council's 'SAP system'. The panel was of the view that in reconciling card purchases on the Council's 'SAP system', Mrs Gardner had a responsibility to query any transactions she did not recognise. There is little or no evidence that Mrs Gardner queried any transactions. The panel took the view that the possibility of others using the procurement card and accessing the 'SAP system' log-in details over a sustained period covering 1 April 2014 to 31 March 2018, with such frequency, and without Mrs Gardner's knowledge was implausible.

When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Marks and Spencer of £105.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Marks and Spencer of £105.00.

### **Charge 5b)**

*That you, a Registered Nurse:*

*5. Between 1 April 2014 and 31 March 2015 made one or more of the following purchases on the procurement card:*

*b) Sports Direct, 4 plain polo shirts at £19.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of four plain polo shirts for £19.00 at Sports Direct in July 2014. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it

that someone else made the card purchase at Sports Direct of £19.00. The panel determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sports Direct of £19.00.

### **Charge 5c)**

*That you, a Registered Nurse:*

*5. Between 1 April 2014 and 31 March 2015 made one or more of the following purchases on the procurement card:*

*c) Body Shop, toiletries at £48.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of toiletries for £48.00 at the Body Shop in August 2014. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at the Body Shop of £48.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at the Body Shop of £48.00.

### **Charge 5d)**

*That you, a Registered Nurse:*

*5. Between 1 April 2014 and 31 March 2015 made one or more of the following purchases on the procurement card:*

*d) Body shop, mini manicure gift sets at £24.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of mini manicure gift sets for £24.00 at the Body

Shop in December 2014. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at the Body Shop of £24.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at the Body Shop of £24.00.

### **Charge 5e)**

*That you, a Registered Nurse:*

*5. Between 1 April 2014 and 31 March 2015 made one or more of the following purchases on the procurement card:*

*e) Sainsburys, Clothing at £26.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of clothing for £26.00 at Sainsbury's in December 2014. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included two items of clothing that totalled £26.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included two items of clothing that totalled £26.00.

### **Charge 6**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card*

In reaching its decision for the sub-charges 6a-h, the panel relied on its reasoning for charge 5.

**Charge 6a)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

- a) Sainsbury's, women's clothing at £48.00*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of women's clothing at Sainsbury's in May 2015. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included three items of women's clothing that totalled £48.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included three items of women's clothing that totalled £48.00.

**Charge 6b)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

- b) Asda, Women's clothing at £36.00*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of women's clothing for £36.00 at Asda in July 2015.

The panel considered the card sales receipt dated 3 July 2015, which indicated a total value of £36.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Asda of £36.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Asda of £36.00.

#### **Charge 6c)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

*c) Sainsbury's, replacement clothes for a child at £62.25*

#### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of women's clothing for £62.25 at Sainsbury's in July 2015. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's of £62.25. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's of £62.25.

#### **Charge 6d)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

*d) Boots, Celeb Slim new pack at £29.99*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of Celeb Slim new pack for £29.99 at Boots in August 2015.

The panel considered the card sales receipt dated 18 August 2015, which indicated a total value of £29.99. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Boots of £29.99. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Boots of £29.99.

**Charge 6e)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

*e) Tesco, Women's knitwear at £30.00*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of women's knitwear for £30.00 at Tesco in August 2015.



The panel considered the card sales receipt dated 11 August 2015, which included three items of women's clothing totalling £30.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Tesco which included three items of women's clothing that totalled £30.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Tesco which included three items of women's clothing that totalled £30.00.

#### **Charge 6f)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

*f) Sainsbury's, trousers/jeans at £18.00*

#### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of trousers/jeans for £18.00 at Sainsbury's in September 2015. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included one pair of jeans at £18.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included one pair of jeans at £18.00.

### **Charge 6g)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

*g) Bodyshop, two gifts sets at £36.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of two gift sets for £36.00 at the Body Shop in November 2015. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at the Body Shop of £36.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at the Body Shop of £36.00.

### **Charge 6h)**

*That you, a Registered Nurse:*

*6. Between 1 April 2015 and 31 March 2016 made one or more of the following purchases on the procurement card:*

*h) Morrisons, Thornton's chocolates at £8.00, Amazon Gift Card at £20.00 and Gift Card at £50*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of Thornton's chocolates, a £20 Amazon gift card and a £50 gift card at Morrisons in December 2015. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Morrisons of £78.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at the Morrisons of £78.00.

### **Charge 7**

*That you, a Registered Nurse:*

*7. Between 1 April 2015 and 31 March 2016 wrote "bats and balls" on a receipt for £36.00 of women's clothing from Asda.*

### **This charge is found proved.**

In reaching this decision, the panel took into account the card sales receipt from Asda dated 3 July 2015, the notes of the internal follow up investigation interview on 17 August 2018 and the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021.

The panel had sight of the handwritten words '*bats & balls*' on the card sales receipt for women's clothing from Asda.

At the internal follow up investigation interview on 17 August 2018, Mrs Gardner was presented with the card sales receipt with the handwritten words, and asked if she could provide an explanation for the note. According to the notes of the meeting, Mrs Gardner said '*sorry I can't remember*' in response.

The panel also took note of Mrs Gardner's admission in her written submissions that, although she cannot recall writing on the receipts, she accepts that it is her handwriting.

The panel concluded that it is more likely than not that between 1 April 2015 and 31 March 2016, Mrs Gardner wrote 'bats & balls' on the card sales receipt of a £36.00 purchase of women's clothing from Asda.

### **Charge 8**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

In reaching its decision for the sub-charges 8a-l, the panel relied on its reasoning for charge 5.

### **Charge 8a)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card:*

*a) Boots, No.7 beauty products and make up at £61.40*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of No.7 beauty products and make up for £61.40 at Boots in April 2016.

The panel considered the card sales receipt dated 1 April 2016, which indicated a total value of £61.40. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Boots of £61.40. The panel therefore

determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Boots of £61.40.

### **Charge 8b)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card:*

*b) TK Maxx, Sunglasses at £14.99*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of Sunglasses for £14.99 at TK Maxx in May 2016.

The panel considered the card sales receipt dated 4 May 2016, which indicated a total value of £14.99. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at TK Maxx of £14.99. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at TK Maxx of £14.99.

### **Charge 8c)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*c) Boots, Perfume at £37.00, Shampoo at £11.98*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' on the Procurement Card Analysis entry which detailed a purchase of Perfume and shampoo at Boots in June 2016.

The panel considered the card sales receipt dated 16 June 2016, which indicated a total value of £48.98. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Boots of £48.98. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Boots of £48.98.

#### **Charge 8d)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*d) Ryman, Filofax at £75.00*

#### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of a Filofax for £75.00 at Ryman in July 2016. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Ryman of £75.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Ryman of £75.00.

### **Charge 8e)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*e) B&M, double duvet at £12.99*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of a double duvet for £12.99 at B&M in August 2016.

The panel considered the card sales receipt dated 24 August 2016, which indicated a total value of £12.99. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at B&M of £12.99. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at B&M of £12.99.

### **Charge 8f)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*f) Tesco, blouse at £12.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of a blouse for £12.00 at Tesco in September 2016.

The panel considered the Tesco sales receipt which included a blouse at £12.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Tesco which included a blouse at £12.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Tesco which included a blouse at £12.00.

#### **Charge 8g)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*g) Body shop, toiletries at £22.05*

#### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of toiletries for £22.05 at the Body Shop in September 2016. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at the Body Shop of £22.05. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at the Body Shop of £22.05.



### **Charge 8h)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*h) Body shop, toiletries at £16.05*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of toiletries for £16.05 at the Body Shop in October 2016. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at the Body Shop of £16.05. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at the Body Shop of £16.05.

### **Charge 8i)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*i) Sainsburys Women's clothing, Jewellery, shoes and deodorant at £103.70*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of women's clothing, Jewellery, shoes and deodorant for £103.70 at the Sainsbury's in November 2016. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included women's clothing, jewellery, shoes and deodorant at £103.70. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included women's clothing, jewellery, shoes and deodorant at £103.70.

### **Charge 8j)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*j) Sainsburys, chocolates, clothing, mug at £43.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of chocolates, clothing and a mug for £43.00 at Sainsbury's in December 2016. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's of £43.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's of £43.00.

### **Charge 8k)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*k) John Lewis, skincare gift sets at £106.25*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of skincare gift sets at John Lewis in December 2016.

The panel also had regard to the entry from the Council's 'SAP system' dated 8 December 2016 for a £106.25 transaction at John Lewis on 7 December 2016. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at John Lewis of £106.25. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at John Lewis of £106.25.

**Charge 8l)**

*That you, a Registered Nurse:*

*8. Between 1 April 2016 and 31 March 2017 made one or more of the following purchases on the procurement card*

*l) Sainsburys, women's deodorant at £13.05*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of women's deodorant for £13.05 at Sainsbury's in December 2016. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included five items of

women's deodorant at £13.05. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included five items of women's deodorant at £13.05.

### **Charge 9**

*That you, a Registered Nurse:*

*9. Between 1 April 2016 and 31 March 2017 wrote " food " on a receipt for £43.00 for a purchase from Sainsbury's for chocolates, clothing and a mug.*

### **This charge is found proved.**

In reaching this decision, the panel took into account the card sales receipt from Sainsbury's from December 2016, the entry from the Council's 'SAP system', the notes of the internal follow up investigation interview on 17 August 2018 and the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021.

The panel had sight of the handwritten word 'food' on the card sales receipt for chocolates, clothing and a mug from Sainsbury's. It was satisfied that the entry from the Council's 'SAP system' for a £43.00 transaction at Sainsbury's on 6 December 2016 related to this purchase of chocolates, clothing and a mug. This transaction entry contained the following expense description:

*'food'*

At the internal follow up investigation interview on 17 August 2018, Mrs Gardner was presented with the sales receipt with the handwritten words, and asked if she could provide an explanation for the note. According to the notes of the meeting, Mrs Gardner said '*don't know, sorry I can't remember*' in response.

The panel also took note of Mrs Gardner's admission in her written submissions that, although she cannot recall writing on the receipts, she accepts that it is her handwriting.

The panel concluded that it is more likely than not that between 1 April 2016 and 31 March 2017 Mrs Gardner wrote 'food' on the sales receipt of a £43.00 purchase of chocolates, clothing and a mug from Sainsbury's.

### **Charge 10**

*That you, a Registered Nurse:*

*10. Between 1 April 2016 and 31 March 2017 wrote "xmas cards, paper, gifts for pass the parcel - cleaning products" on a receipt for £106.25 for a purchase from John Lewis for skincare.*

### **This charge is found proved.**

In reaching this decision, the panel took into account the SIAP report from the Council's investigation of the Unit; the entry from the Council's 'SAP system'; the card sales receipt from John Lewis from December 2016; the notes of the internal investigation interview on 5 March 2018; and the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021.

The panel had sight of the handwritten words '*xmas cards, paper, gifts for pass the parcel - cleaning products*' on the sales receipt for three skincare items totalling £106.25 from John Lewis. It was satisfied that the entry from the Council's 'SAP system' for a £106.25 transaction at John Lewis on 7 December 2016 related to this purchase of skincare. This transaction entry contained the following expense description:

*'Christmas cards / paper / gifts for pass the parcel, cleaning products'*

The panel noted that Mrs Gardner was the named cardholder and the only person authorised to use the procurement card. It also took into account that Mrs Gardner was responsible for reconciling card purchases on the Council's 'SAP system'.

At the internal investigation interview on 5 March 2018, Mrs Gardner was presented with the sales receipt with the handwritten words, and asked if she could provide an

explanation for the note. According to the notes of the meeting, Mrs Gardner said ‘yes, *I might have needed a piece of paper and that might have been the only thing I could find and written on that [sic]*’ in response.

The SIAP report stated that:

*‘Pam was unable to provide an explanation for these purchases and confirmed it was her handwriting on the receipt. When asked why she would have written this on the receipt Pam stated that she may have needed a piece of paper and this was the only thing to hand’.*

The panel also took note of Mrs Gardner’s admission in her written submissions that, although she cannot recall writing on the receipts, she accepts that it is her handwriting.

The panel was satisfied that the documentary evidence provided in relation to this charge indicated an admission by Mrs Gardner that whilst she could not explain her reason for doing so, she wrote on the John Lewis receipt. The panel concluded that between 1 April 2016 and 31 March 2017 Mrs Gardner wrote ‘*xmas cards, paper, gifts for pass the parcel - cleaning products*’ on the sales receipt of a £106.25 purchase of skincare from John Lewis.

## **Charge 11**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card*

In reaching its decision for the sub-charges 11a-u, the panel relied on its reasoning for charge 5.

### **Charge 11a)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*a) Tesco, Clothing at £100*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of Clothing for £100.00 at Tesco in April 2017.

The panel considered the card sales receipt dated 28 April 2017, which indicated a total value of £100.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Tesco of £100.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Tesco of £100.00.

**Charge 11b)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*b) Mole Valley, Pet food container and two large bags of pet food at £30.97*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of a pet food container and two large bags of pet food for £30.97 at Mole Valley in April 2017.

The panel considered the Mole Valley sales receipt, which indicated a total value of £30.97. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Mole Valley of £30.97. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Mole Valley of £30.97.

### **Charge 11c)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*c) Marks and Spencer, Joggers at £62.55*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of joggers for £62.55 at Marks and Spencer in May 2017.

The panel considered the card sales receipt dated 5 May 2017, which indicated a total value of £62.55. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Marks and Spencer of £62.55. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Marks and Spencer of £62.55.

### **Charge 11d)**

*That you, a Registered Nurse:*



*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*d) Primark, Jumpers at £33.00*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of jumpers for £33.00 at Primark in May 2017.

The panel considered the Primark sales receipt, which included jumpers totalling £33.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Primark which included jumpers at £33.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Primark which included jumpers at £33.00.

**Charge 11e)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*e) Boots, Perfume and Make Up at £135.16*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of perfume and make up for £135.16 at Boots in June 2017.

The panel considered the card sales receipt dated 27 June 2017, which included four items of perfume and make up totalling £135.16. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Boots which included four items of perfume and make up at £135.16. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Boots which included four items of perfume and make up at £135.16.

### **Charge 11f)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*f) Sainsbury's, Women's clothing at £134.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of women's clothing for £134.00 at Sainsbury's in June 2017.

The panel considered the card sales receipt dated 27 June 2017, which included women's clothing totalling £134.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included women's clothing at £134.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included women's clothing at £134.00.

### **Charge 11g)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*g) Asda, Clothing at £140.16*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of clothing for £140.16 at Asda in July 2017.

The panel considered the card sales receipt dated 6 July 2017, which indicated a total value of £140.16. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Asda of £140.16. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Asda of £140.16.

### **Charge 11h)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*h) TK Maxx, Handbag at £129.99*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of a handbag for £129.99 at TK Maxx in July 2017.

The panel considered the card sales receipt dated 21 July 2017, which included a handbag at £129.99. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at TK Maxx which included a handbag at £129.99. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at TK Maxx which included a handbag at £129.99.

### **Charge 11i)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

- i) Sainsburys, Clothing at £36.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of clothing for £36.00 at Sainsbury's in August 2017.

The panel considered the Sainsbury's sales receipt, which included three items of clothing totalling £36.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it

that someone else made the card purchase at Sainsbury's which included three items of clothing at £36.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included three items of clothing at £36.00.

### **Charge 11j)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*j) Lakeland, Confectionery at £26.50*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of confectionery for £26.50 at Lakeland in September 2017.

The panel considered the card sales receipt dated 29 September 2017, which indicated a total value of £26.50. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Lakeland of £26.50. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Lakeland of £26.50.

### **Charge 11k)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*k) Sainsburys, Clothing and Flask at £50.00*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of clothing and a flask from Sainsbury's in September 2017.

The panel considered the Sainsbury's sales receipt, which included clothing and a flask totalling £50.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included clothing and a flask at £50.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included clothing and a flask at £50.00.

**Charge 11I)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

- 1) TK Maxx, Plus Women clothing at £80.04*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of plus women clothing for £80.04 at TK Maxx in September 2017.

The panel considered the TK Maxx sales receipt, which indicated a total value of £80.04. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at TK Maxx of £80.04. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at TK Maxx of £80.04.

### **Charge 11m)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*m) Sainsburys, Clothing at £52.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed a purchase at £52.00 at Sainsbury's in November 2017.

The panel considered the Sainsbury's sales receipt, which included clothing totalling £52.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included clothing at £52.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included clothing at £52.00.

### **Charge 11n)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*n) Boots, Beauty products at £ 114.99*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of beauty products for £114.99 at Boots in November 2017.

The panel considered the card sales receipt dated 2 November 2017, which indicated a total value of £114.99. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Boots of £114.99. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Boots of £114.99.

**Charge 11o)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

- o) Sainsburys, Clothing and hand cream at £27.25*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of clothing and hand cream from Sainsbury's in November 2017.

The panel considered the Sainsbury's sales receipt, which included clothing and hand cream totalling £27.25. The panel was satisfied that this purchase was in fact made as alleged.



The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included clothing and hand cream at £27.25. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included clothing and hand cream at £27.25.

### **Charge 11p)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*p) Primark, Clothing at £16.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of clothing for £16.00 at Primark in December 2017.

The panel considered the card sales receipt dated 21 December 2017, which indicated a total value of £16.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Primark of £16.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Primark of £16.00.

### **Charge 11q)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*q) Sainsburys, Clothing at £53.50*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of clothing at £53.50 at Sainsbury's in December 2017.

The panel considered the Sainsbury's sales receipt, which included clothing totalling £53.50. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Sainsbury's which included clothing at £53.50. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Sainsbury's which included clothing at £53.50.

**Charge 11r)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*r) Boots, Perfume at £59.50*

**This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of perfume at £59.50 at Boots in December 2017.

The panel considered the card sales receipt dated 8 December 2017, which included perfume at £59.50. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Boots which included perfume at £59.50. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Boots which included perfume at £59.50.

### **Charge 11s)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*s) Boots, Beauty and dental at £22.44*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of beauty and dental items for £22.44 at Boots in January 2018.

The panel considered the card sales receipt dated 7 January 2018, which indicated a total value of £22.44. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Boots of £22.44. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Boots of £22.44.

### **Charge 11t)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*t) Tesco, Lady shaver at £24.00*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of a lady shaver at £24.00 at Tesco in January 2018.

The panel considered the card sales receipt dated 24 January 2018, which included a lady shaver at £24.00. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase at Tesco which included a lady shaver at £24.00. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the procurement card purchase at Tesco which included a lady shaver at £24.00.

### **Charge 11u)**

*That you, a Registered Nurse:*

*11. Between 1 April 2017 and 31 January 2018 made one or more of the following purchases on the procurement card:*

*u) Amazon, Kipling laptop bag at £73.49*

### **This charge is found proved.**

The panel had sight of the 'Questionable Purchase' section of the Procurement Card Analysis which detailed the purchase of a Kipling laptop bag for £73.49 from Amazon in January 2018. The panel was satisfied that this purchase was in fact made as alleged.

The panel relied on its reasoning as outlined in charge 5 and 5a when considering this charge. When considering this charge, the panel noted there was no evidence before it that someone else made the card purchase on Amazon of £73.49. The panel therefore determined that on the balance of probabilities, it is more likely than not that Mrs Gardner made the card purchase on Amazon of £73.49.

## **Charge 12**

*That you, a Registered Nurse:*

*12. Between 1 April 2017 and 31 January 2018 wrote "hairdryer, brushes, toiletries and sun cream" on a receipt for Perfume and Make Up from Boots at £135.16.*

### **This charge is found proved.**

In reaching this decision, the panel took into account the sales receipt from Boots dated 27 June 2017 and the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021.

The panel had sight of the handwritten word '*hairdryer, brushes, toiletries and sun cream*' on the sales receipt, which included four items of perfume and make up from Boots.

The panel also took note of Mrs Gardner's admission in her written submissions that, although she cannot recall writing on the receipts, she accepts that it is her handwriting.

The panel concluded that it is more likely than not that between 1 April 2017 and 31 January 2018, Mrs Gardner wrote '*hairdryer, brushes, toiletries and sun cream*' on the sales receipt of a £135.16 purchase of perfume and make up from Boots.

## Charge 13

*That you, a Registered Nurse:*

*13. Between 1 April 2017 and 31 January 2018 wrote “pans, cutlery, plates“ on a receipt for a handbag from TK Maxx at £129.99.*

### **This charge is found proved.**

In reaching this decision, the panel took into account the SIAP report from the Council’s investigation of the Unit; the sales receipt from TK Maxx from July 2017; the notes of the internal investigation interview on 5 March 2018; the notes of the internal misconduct meeting on 8 November 2018; and the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021.

The panel had sight of the handwritten words *‘pans, cutlery, plates’* on the sales receipt for a handbag of £129.99 and a carrier bag of £0.05, totalling £130.04 from TK Maxx. It was satisfied that the entry from the Council’s ‘SAP system’ for a £130.04 transaction at TK Maxx on 21 July 2017 related to this purchase of a handbag. This transaction entry contained the following expense description:

*‘new cutlery, bake ware, pans’*

At the internal investigation interview on 5 March 2018, it was noted, *‘confirmed with PG her handwriting. Confirmed that the receipt said handbag but had gone through on RBS statement as pans/cutlery.’* Mrs Gardner was asked if she had any thoughts on this purchase, to which she responded *‘no, I don’t understand... well and truly stitched up, I don’t understand the difference, I don’t understand.’*

The SIAP report stated that:

*‘Pam was unable to explain this purchase. We also asked Pam whether the hand writing on the top of the receipt was hers, to which she confirmed it was. She was unable to provide an explanation as to why ‘pans, cutlery, plates’ was written on this receipt when it was clearly for a handbag. We showed Pam the*

*RBS statement which shows that this purchase has been authorised and coded by herself as pans/cutlery. Again, Pam was unable to provide an explanation for this.'*

Further, in the notes of the internal misconduct meeting on 8 November 2018, Mrs Gardner stated:

*'No, Why would I purchase something on a purchase card that anyone could see. I have not knowingly made inappropriate purchases. When asked why wrote 'pots and pans' on the top of a receipt I could not remember and said maybe it was a list of what people wanted. I really can not remember. [sic]'*

The panel also took note of Mrs Gardner's admission in her written submissions that, although she cannot recall writing on the receipts, she accepts that it is her handwriting.

The panel was satisfied that the documentary evidence provided in relation to this charge indicated an admission by Mrs Gardner that whilst she could not explain her reason for doing so, she wrote on the TK Maxx receipt. The panel concluded that between 1 April 2017 and 31 January 2018 Mrs Gardner wrote 'pans, cutlery, plates' on the sales receipt of a £103.04 purchase of a handbag from TK Maxx.

#### **Charge 14**

*That you, a Registered Nurse:*

*14. Your actions in charges 2 to 13 caused a financial loss to Firvale Respite Unit.*

#### **This charge is found proved.**

In reaching its decision for charge 14, the panel took into account its decision and reasons for charges 2 to 13; the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021; the 'Background Information for the Statement of Pam Gardner' dated 9 March 2018; and Mrs Gardner's written submissions contained in the notes of the misconduct meeting on 8 November 2018.

The panel took particular note of the written submissions from the RCN on Mrs Gardner's behalf, which invited the panel to consider whether it is more likely than not:

*'c. That the purchases were not for legitimate purposes within the Home; i.e. that they were not for the use of the children, or for the staff in pursuit of their duties in the Home, or for the Home itself. If the purchase was legitimate it is not 'financial loss' properly considered. It is for the NMC to demonstrate for each sub-charge that the purchase was not legitimate'*

The panel determined that Mrs Gardner caused financial loss to the Unit:

- Where duplicate petty cash claims were made for purchases using the procurement card;
- In all other instances, where use of the procurement card was not legitimate.

In relation to the duplicate petty cash claims, the panel relied on its decision on charges 2, 3 and 4. It noted that sub-charges 2a-h, with the exception of sub-charge 2d, were found proved, sub-charges 3a-i, with the exception of sub-charge 3e, were found proved and charge 4 was found proved in its entirety. The panel concluded that by submitting duplicate petty cash claims for card transactions Mrs Gardner caused financial loss to the Unit.

In relation to the purchases on the procurement card, the panel relied on its decision on charges 5, 6, 8 and 11. It noted that in these decisions, it was determined that Mrs Gardner had made the purchases using the procurement card. The panel considered whether the items purchased were more or less likely to be legitimate purchases for the Unit and therefore caused a financial loss to the Unit.

In relation to charge 5 in its entirety, the panel decided that, on balance of probabilities, the purchases were not legitimate for the Unit and therefore caused a financial loss to the Unit.



In relation to charge 6, with the exception of 6c, the panel decided that, on balance of probabilities, the purchases were not legitimate for the Unit and therefore caused a financial loss to the Unit.

In relation to charge 8 in its entirety, the panel decided that, on balance of probabilities, the purchases were not legitimate for the Unit and therefore caused a financial loss to the Unit.

In relation to charge 11 in its entirety, the panel decided that, on balance of probabilities, the purchases were not legitimate for the Unit and therefore caused a financial loss to the Unit.

The panel therefore found charge 14 proved.

### **Charge 15**

*That you, a Registered Nurse:*

*15. Your actions in charges 2 to 13 were dishonest in that you misappropriated funds for your own personal gain.*

**This charge is found proved.**

In reaching its decision for charge 15, took into account its decision and reasons for charges 2 to 13 and the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021.

The panel bore in mind the NMC's guidance on dishonesty. The panel took into account the seriousness of any allegation of dishonesty and the necessity for cogent evidence. Further, the panel gave careful consideration to Mrs Gardner's previous good character.

The panel considered the written submissions from the RCN which stated that:

*'Ms Gardner denies dishonesty. Insofar as the panel finds any error resulting in financial loss to the home, Ms Gardner says it was a mistake rather than dishonesty on her part. She denies ever misappropriating funds for personal gain; and certainly ever knowingly profiting.'*

In relation to charges 7, 9, 10, 12 and 13, the panel noted the written submission from the RCN on Mrs Gardner's behalf that:

*'Ms Gardner cannot recall writing on the receipts, but accepts it is her handwriting. However, writing on the receipt would make any fraud more obvious, and would therefore be strange behaviour for a fraudster.'*

However, the panel is satisfied that these misdescriptions were in each case deliberate.

The panel determined that Mrs Gardner:

1. Duplicated the petty cash claims in the relevant purchases in charges 2, 3 and 4;
2. Used the procurement card to make the relevant purchases in charges 5, 6, 8 and 11; and
3. Misdescribed the receipts in charges 7, 9, 10, 12 and 13

The panel found that Mrs Gardner attempted to disguise the true nature of the purchases, and knew that the purchases that she made were not legitimate when she made them and when she reconciled them on the Council's 'SAP system'.

The panel determined that on the standard of ordinary decent people, Mrs Gardner's actions above were dishonest in that she misappropriated funds for her own personal gain.

### **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 Mrs

Gardner's 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, Mrs Gardner's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

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

Mr Underwood 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: Standards of conduct, performance and ethics for nurses and midwives 2008' (the 2008 Code) and 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the 2015 Code) in making its decision.

Mr Underwood referred to breaches of the Code and identified the specific, relevant standards where Mrs Gardner's actions amounted to misconduct. He submitted that Ms Gardner abused her position to misappropriate funds over a period of four years, causing financial harm to the home. Mr Underwood submitted that every pound that

was spent on personal purchases for Mrs Gardner was money not spent on the children in her care.

Mr Underwood stated that in respect of the duplicate petty cash claims, this amounted to around £1100. Further, in respect of the misuse of the procurement card, this amounted to approximately £2500. He submitted that whilst this amounts to less than £1000 a year, it was a severe breach of trust for someone in a management position of a children's home to misappropriate funds in this way.

Mr Underwood submitted that the facts found proved are significant breaches of fundamental tenets of the nursing profession and such dishonesty is always likely to seriously undermine public trust placed in the profession, even where it is not directly related to clinical practice or caring for patients.

### **Submissions on impairment**

Mr Underwood moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Underwood submitted that Mrs Gardner has in the past brought and/or is liable in the future to bring the medical profession into disrepute; has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and has in the past acted dishonestly and/or is liable to act dishonestly in the future. He submitted that in determining whether Mrs Gardner's practice is currently impaired, the panel would need to consider any insight and remediation since the incident.

Mr Underwood asked the panel to consider Mrs Gardner's attempts to shift blame onto her colleagues and to minimise her own actions and responsibility. He referred the panel to the notes of the internal investigation interview on 5 March 2018 where Mrs

Gardner was invited to answer questions about her conduct as part of the Council's investigation. Mr Underwood highlighted a number of Mrs Gardner's statements during the interview where she stated:

- *'I could do it, everyone has access to forms though, they are not locked away, there could be missing receipts';*
- *'I write so many of these and there is so much more going on. People look through and reconcile petty cash they should look at receipts as well'; and*
- *'...could someone else be doing this? ... could someone else have got my password from my diary?'*

Mr Underwood submitted that these responses suggest a lack of insight into Mrs Gardner's own actions and how they reflect upon herself and the nursing profession. He submitted that it also demonstrates very poor accountability and responsibility.

Mr Underwood referred the panel to the written submissions from the RCN on behalf of Mrs Gardner dated 10 November 2021. He stated that the panel does not have the benefit of Mrs Gardner's presence at the hearing to assess the extent of any remediation. He told the panel that as far as the NMC is aware, Mrs Gardner has not returned to work in a registered role, despite there being no interim order, and therefore has not been able to demonstrate good professional conduct since the NMC's investigation began.

The panel also had regard to the written submissions from the RCN which addressed the panel on misconduct and impairment. It stated that:

*'Ms Gardner accepts that if the Panel finds that she was dishonest, it follows that she committed misconduct and her current fitness to practise is impaired. Otherwise the issues are left to the Panel's judgement.'*

The panel accepted the advice of the legal assessor who referred to the case of *CHRE v NMC and Grant* and the relevant legal principles at this stage.

## **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the 2008 Code and the 2015 Code.

The panel was of the view that Mrs Gardner's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to breaches of the 2008 Code and the 2015 Code since they relate to events that occurred between 2014 and 2018.

The panel considered that the following section of the 2008 Code was engaged in this case in relation to charges 1 and 5:

***'Uphold the reputation of your profession***

61 *You must uphold the reputation of your profession at all times.'*

The panel considered that the following sections of the 2015 Code were engaged in this case in relation to all of the charges, save charge 5:

***'10 Keep clear and accurate records relevant to your practice***

*To achieve this, you must:*

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

***'20 Uphold the reputation of your profession at all times***

*To achieve this, you must:*

20.2 *act with honesty and integrity at all times...'*

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

In relation to charge 1, the panel noted that Mrs Gardner had a responsibility to maintain the safety of the procurement card and ensure that it was not being used by anyone else, as contained in the Council's Purchasing and Embedded Card Policy.

The panel had regard to Ms 2's witness statement which stated that:

*'In addition to these issues, Pam had been letting other staff use the card, when under HCC policy she should have been the only one using it. She was letting others use it, as she wasn't the only one taking the children out or going out to buy things and would just give the card and pin to whoever was going. This wasn't a huge issue in my investigation though, and I didn't focus on this too much.'*

However, the panel considered that by allowing staff at the Unit to access the card and PIN, Mrs Gardner did not keep the card and PIN safely. The panel took into account that this was not a momentary failure in Mrs Gardner's of decision making, but represented a course of conduct throughout the period between 1 April 2014 and 31 March 2018. It determined that Mrs Gardner caused financial loss to the Unit.

Mrs Gardner was aware of her responsibility to keep the card safe. She was the named cardholder and completed the relevant training on use of the card in 2008. She nevertheless allowed staff to access the card for a period of around four years. The panel concluded that Mrs Gardner's actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel was of the view that taken collectively, the charges found proved within charges 2-14 related to dishonest transactions for Mrs Gardner's personal gain which caused financial loss to the Unit. It therefore considered that in making a finding on misconduct in relation to these charges, it would take particular note of the finding of dishonesty in charge 15.

In relation to charge 15, the panel was of the view that by misappropriating funds for her own personal gain and acting dishonestly, Mrs Gardner put her own needs above those of the vulnerable service users at the Unit. It noted that as a result of Mrs

Gardner's managerial role at the Unit, she was in the position to orchestrate the fraud and hide her actions. The panel considered that one of the fundamental tenets of the nursing profession is to act with honesty. It concluded that Mrs Gardner's actions breached a fundamental tenet of the profession and brought the profession into disrepute. In the panel's judgement, Mrs Gardner's actions fell seriously short of the conduct and standards expected of a nurse, and therefore amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Mrs Gardner's fitness to practise is currently impaired.

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

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

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

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

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*



*determination show that his/her fitness to practise is impaired in the sense that s/he:*

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

The panel had no information before it to suggest that the service users at the Unit were caused actual harm by the misappropriation of funds by Mrs Gardner. There was also nothing to suggest that unwarranted risk of harm was caused in the past or was liable to be caused in the future. The panel found that Mrs Gardner's misconduct had breached the fundamental tenets of the nursing profession and also brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel noted the written submissions from the RCN on Mrs Gardner's behalf where she exhibited some insight by accepting that she mismanaged the petty cash system and the procurement card. It also took into account Mrs Gardner's personal reflection contained in the 'Background Information for the Statement of Pam Gardner' dated 9 March 2018. However the panel noted that this reflection focussed on the personal impact on Mrs Gardner without any indication of what she would do differently in the future or, any appreciation of the effects of her actions on service users, the Unit, her colleagues or the reputation of the nursing profession. Therefore the panel determined

that it had no information before it to suggest that Mrs Gardner has reflected on her actions and developed sufficient insight.

The panel noted that there were no concerns with Mrs Gardner's clinical practice and the charges found proved relate solely to her financial mismanagement in the Unit. It was therefore of the view that a finding of impairment on public protection grounds is not necessary.

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

The panel determined that a finding of impairment on public interest grounds is required. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore found Mrs Gardner's fitness to practise impaired on public interest grounds only.

Having regard to all of the above, the panel was satisfied that Mrs Gardner's fitness to practise is currently impaired.

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Gardner's name from the register. The effect of this order is that the NMC register will show that Mrs Gardner has been struck-off the register.

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

## Submissions on sanction

Mr Underwood informed the panel that in the Notice of Hearing, dated 29 September 2021, the NMC had advised Mrs Gardner that it would seek the imposition of a striking-off order if it found Mrs Gardner's fitness to practise currently impaired.

Mr Underwood submitted that Mrs Gardner's misconduct is too serious to be dealt with either by way of making no order, a caution order or a conditions of practice order. He submitted that the panel ought to consider either a suspension order or a striking-off order because a number of factors indicating serious dishonesty are present in this case.

Mr Underwood referred the panel to the SG and highlighted the following features that increase the seriousness of the misconduct in this case:

- Misuse of power
- Personal financial gain from a breach of trust
- Premeditated, systematic and longstanding deception

Mr Underwood submitted that all of these features apply as Mrs Gardner was in a managerial role which she abused in order to make false claims and inappropriate purchases. She made financial gain due to this breach of trust and the fraudulent activity took place over a four year period.

Mr Underwood also drew the panel's attention to the following information contained in the SG:

*'The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk being removed from the register.'*

Mr Underwood submitted that a substantive suspension order would not be appropriate for the following reasons:

- Mrs Gardner has not admitted any of the dishonesty allegations nor has she put forward any evidence of efforts at remediation or indication of remorse, beyond the acceptance that the petty cash system had been mismanaged. Her insight was solely into the impact of the investigation on her personally and not upon the reputation of the wider profession.
- Mrs Gardner has indicated that she does not wish to return to nursing practice, therefore there is a low possibility of remediation in the immediate term.
- Mrs Gardner's dishonest conduct was repeated over a lengthy period, and she used the investigation to try and shift the blame and focus on senior management and those she managed. Such behaviour is so fundamentally inconsistent with the values of the profession that it could reasonably be considered irremediable.

Mr Underwood submitted that a striking-off order is necessary to reflect the seriousness of Mrs Gardner's misconduct. He submitted that any less onerous order might fail to maintain public trust in nursing or the effectiveness of the NMC as a regulator. He submitted that if a well-informed member of the public were to learn that a nurse had misappropriated funds meant for vulnerable children that were in her care, and had shown no remorse or efforts to remediate the situation, it would fundamentally undermine their trust in the nursing profession if that nurse were to remain on the register.

Mr Underwood invited the panel to bear in mind the draconian nature of a striking-off order and the potential reputational damage this may cause to Mrs Gardner. He submitted however that in this case, the need to protect the reputation of the nursing profession outweighs any consideration of the impact upon Mrs Gardner.

Mr Underwood submitted that if the panel were not minded to impose a striking-off order, he would recommend, in the alternative, a lengthy period of suspension with a review. He stated that at a future review, Mrs Gardner would be able to demonstrate any remorse or remediation which would allow her to return to work unrestricted.

Mr Underwood maintained the NMC's position that Mrs Gardner's conduct is irredeemable and her removal from the register is the necessary outcome.

In response to questions from the panel, Mr Underwood stated that Mrs Gardner's previous good character should be taken into account, but that it should not be an absolute guard against the imposition of a striking-off order in light of the seriousness and long-standing nature of her dishonesty.

The panel also bore in mind the written submission from the RCN on behalf of Mrs Gardner that:

*'Should the panel reach sanction stage, it is submitted that absent dishonesty it would be clearly disproportionate to strike her off the register. If the panel imposed sanction short of strike-off, Ms Gardner would intend to allow her registration to lapse, and at any review hearing would seek for the order to be allowed to lapse in line with the principles in the NMC's guidance document entitled 'Allowing orders to expire when a nurse or midwife's registration will lapse' and the case of Clarke v GOC [2018].'*

### **Decision and reasons on sanction**

Having found Mrs Gardner's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Personal financial gain from a breach of trust
- Premeditated, systematic and longstanding deception

- Lack of insight into her failings
- A pattern of misconduct over a significant period of time

The panel did not identify any mitigating features in this case.

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

The panel then considered the imposition of a caution order but again determined that, it would not be appropriate in these 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 Mrs Gardner’s misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Gardner’s registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case did not relate to Mrs Gardner’s clinical practice and was not something that can be addressed by retraining or the imposition of conditions. Furthermore, the panel concluded that the placing of conditions on Mrs Gardner’s registration would not adequately address the seriousness of this case nor mark the public interest of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel considered that the persistent and repetitive nature of Mrs Gardner's dishonest actions over a period of some four years provided evidence to the panel of a harmful deep seated attitudinal issue. Further, taking into account Mrs Gardner's current lack of insight, the panel determined that a suspension order would not mark the public interest concerns nor would it maintain public confidence in the nursing profession and the NMC.

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

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

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

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

The panel noted Mrs Gardner's long history of unblemished nursing practice with no previous regulatory or disciplinary findings. However it was of the view that her misconduct raised fundamental questions about her professionalism. Mrs Gardner's

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

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

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

This will be confirmed to Mrs Gardner in writing.

### **Interim order**

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

### **Submissions on interim order**

The panel took account of the submissions made by Mr Underwood. He submitted that an interim order would maintain the integrity of the nursing profession and was in the public interest for the same reasons given for the substantive order. Mr Underwood



invited the panel to make an interim suspension order for a period of 18 months to cover any appeal period, in the event that Mrs Gardner chooses to appeal, until the striking-off order takes effect.

### **Decision and reasons on interim order**

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to ensure that Mrs Gardner cannot practise unrestricted before the striking-off order takes effect. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.