

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

**Substantive Hearing
Monday 9 January 2023 to Thursday 12 January 2023**

Virtual Hearing

Name of registrant:	Chee Moon Lee
NMC PIN:	74I1981E
Part(s) of the register:	Registered Nurse – Adult Nurse
Relevant Location:	Sussex
Type of case:	Misconduct
Panel members:	David Evans (Chair, Lay member) Pauleen Pratt (Registrant member) Asmita Naik (Lay member)
Legal Assessor:	John Bassett
Hearings Coordinator:	Chantel Akintunde
Nursing and Midwifery Council:	Represented by Lucy Chapman, Case Presenter
Ms Lee:	Not present and unrepresented at the hearing
Facts proved by admission:	Charges 1(a), 1(f) and 1(g)
Facts proved:	Charges 1(e), 2 and 3
Facts not proved:	Charges 1(b), 1(c) and 1(d)
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Lee was not in attendance and that the Notice of Hearing letter had been sent to Ms Lee's registered email address, and her representative at the Medical Protection Society (MPS), by secure email on 15 November 2022. The panel had regard to the email evidence and the signed witness statement from an NMC case officer confirming this.

Ms Chapman, on behalf of the Nursing and Midwifery Council (NMC), submitted that 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 took into account that the Notice of Hearing provided details of the allegation, the time, dates, the link to the hearing and, amongst other things, information about Ms Lee'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 Ms Lee 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 Ms Lee

The panel next considered whether it should proceed in the absence of Ms Lee. It had regard to Rule 21 and heard the submissions of Ms Chapman who invited the panel to continue in the absence of Ms Lee.

Ms Chapman referred the panel to the email from the MPS dated 16 November 2022 where they stated the following:

“As explained, Ms Lee will not be attending the hearing in January 2023. Nor will she be represented...She has given this matter considerable thought and has decided that she simply could not face the stress of going through a fitness to practice hearing. She would like to make it clear that she means no discourtesy or disrespect to the Panel or the NMC by her nonattendance. She would also like to make it clear that she takes no issue on the service of notice which she accepts has been done in accordance with the rules. She is also content for the hearing to proceed in her absence and would like to make it clear that no adjournment would help to facilitate her attendance.

We will be making written submissions which will be provided to the Panel in advance of the hearing which we hope will assist the Panel in determining the issues in this case. I will update you once those written submissions are complete.”

Ms Chapman submitted that the correspondence from the MPS confirms that Ms Lee has voluntarily absented herself from these proceedings. Ms Chapman also noted that the MPS have provided written representation on Ms Lee’s behalf to be considered in her absence.

Ms Chapman referred the panel to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162.

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.

The panel has decided to proceed in the absence of Ms Lee. In reaching this decision, the panel has considered the submissions of Ms Chapman, the representations from the MPS, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Lee;
- The MPS has informed the NMC that Ms Lee has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- The MPS also stated that adjourning would not secure Ms Lee's attendance at some future date;
- Two witnesses will be attending to give live evidence who would be inconvenienced if the hearing does not proceed;
- The charges relate to events that occurred between 2011 and 2019, and as such further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Ms Lee in proceeding in her absence. Ms Lee will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can 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. Furthermore, the limited disadvantage is the consequence of Ms Lee's decisions to absent herself from the hearing, waive her rights to attend, and/or be physically represented at the hearing, and to not provide oral evidence or make submissions on her own behalf.

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

Details of charge

That you, a registered nurse:

1) Between June 2011 and March 2019 breached professional boundaries in that you formed an inappropriate relationship with Patient A which included:

- a) Visiting Patient A on numerous occasions without clinical reason;*
- b) Influencing Patient A to sell her home and move into assisted living accommodation;*
- c) Assisting Patient A to complete paperwork relating to the sale of her home;*
- d) Assisting Patient A with her home move by removing the entire contents of her garage;*
- e) Assisting Patient A to change her will making you sole executor and main beneficiary;*
- f) Agreeing to become registered as Patient A's sole Attorney under a Lasting Power of Attorney*
- g) Using the Power of Attorney to request Nationwide Building Society added you as Attorney on Patient A's account;*

2) Between December 2017 and March 2019 made numerous purchases using funds from Patient A's Nationwide Building Society Account.

3) Your actions in charge 2 above were dishonest in that Patient A retained mental capacity, the purchases were neither for Patient A nor in her best interest.

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

Decision and reasons on facts

At the outset of the hearing, the panel had regard to the Case Management Form (CMF) attached to the MPS letter dated 4 January 2023 where it indicated that Ms Lee made partial admission to charge 1(a), full admissions to charges 1(f) and 1(g), but

denied that her fitness to practise is impaired. The panel was satisfied that these admissions were made on Ms Lee's behalf and in accordance with her instructions.

In relation to charge 1(a), the panel noted that in Ms Lee's response to this charge she acknowledged that this was a breach of professional boundaries, but stated that this only occurred from January 2016. As this is still within the period of June 2011 and March 2019 as outlined in the charge, the panel were content to consider this as a full admission to charge 1(a). However, once it had heard all the evidence, the panel would consider whether the charge was also proved in relation to matters that arose prior to 2016.

The panel therefore finds charges 1(a), 1(f) and 1(g) proved in their entirety, by way of Ms Lee's admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Chapman on behalf of the NMC and the written representations by the MPS on Ms Lee's behalf.

The panel has drawn no adverse inference from the non-attendance of Ms Lee.

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:

- Witness 1: Nephew of Patient A
- Witness 2: Great Niece of Patient A

In closing submissions, Ms Chapman submitted that from the information available, it is clear that Ms Lee formed a relationship with Patient A that, for a registered nurse and a patient, was inappropriate. She submitted that Ms Lee was fully aware of Patient A's complex medical needs and sought to take advantage of this for her own personal gain. As a result, Ms Chapman submitted that professional boundaries were breached by way of Ms Lee befriending Patient A and having her Power of Attorney.

Ms Chapman invited the panel to find all the disputed charges proved in their entirety based on the documentary and live evidence available. Ms Chapman took the panel through each charge and detailed how the evidence supported it, making references to the relevant sections within both witnesses' statements and the relevant exhibits.

Ms Chapman also referred the panel to the NMC guidance on dishonesty. She submitted that Ms Lee's conduct constituted breaches of professional boundaries, which she was fully aware of at the time.

The panel accepted the advice of the legal advisor.

Background

The charges arose whilst Ms Lee was employed as a Community Matron by Sussex Community NHS Trust (the Trust) and later in her role as Nurse Assessor for Strand Medical Centre (the Centre).

Patient A was a vulnerable elderly patient with complex medical conditions which included the following: hypertension, back pain (impacting on her ability to walk), anxiety, depression and Personal Closeness Disorder. Patient A's medical conditions impacted on her day-to-day living, making it difficult for her to form close relationships with people. Prior to Ms Lee being assigned as Patient A's carer in a professional capacity, Patient A's husband (who passed away in 2008) was her main carer. As a

result, Patient A became more dependent on her General Practitioner (GP) for her care and personal needs.

In June 2011, Patient A was referred to the Trust by her GP at the Centre, which is how she came into contact with Ms Lee who was assigned to support Patient A in the community. From this time, it is alleged that Ms Lee developed a close relationship with Patient A that went beyond the standard professional boundaries. It is further alleged that Ms Lee made a number of visits to Patient A's home without clinical justification.

In 2012, it is alleged that Ms Lee influenced Patient A into selling her home and moving into assisted living accommodation. It is further alleged that Ms Lee assisted Patient A in completing the relevant paperwork for the sale of her home, and assisted with her home move by clearing out the personal contents of her garage, the contents of which to date have not been located.

In May 2013, Patient A's nephew (Witness 1) and his brother understood that they had been given Patient A's Power of Attorney. However, unknown to them it was never put into effect.

In October 2015, Ms Lee resigned from her role at the Trust.

In 2016, Ms Lee commenced a new role at the Centre as a part-time Nurse Assessor. Her role involved visiting and assessing patients at their home at the request of the GPs. During this time, Patient A remained under the care of Ms Lee, amongst other patients. In addition, Ms Lee outside her professional duties commenced supporting Patient A in shopping and cleaning tasks.

In May 2016, it is alleged that Ms Lee agreed to register as Patient A's sole Power of Attorney at Patient A's request.

In June 2016, it is alleged that Ms Lee assisted Patient A in making herself sole executor and main beneficiary of her last will, and was present during the signing of the

will by Patient A's witnesses in the presence of Patient A's solicitor. Prior to this, members of Patient A's family were the executor and beneficiaries of her will.

It is alleged that Ms Lee used the Power of Attorney to add herself onto Patient A's Nationwide Building Society account. Between December 2017 and March 2019, it is further alleged that Ms Lee made a number of purchases using the funds in Patient A's bank account. As Patient A retained her mental capacity at the time of these purchases, it is alleged that such purchases were not made for Patient A's benefit, nor were they in her best interest.

Following Patient A's death on 13 March 2019, Ms Lee made arrangements with the coroner to formally register her death. Ms Lee did not inform Patient A's family of the death, nor did she inform the funeral home that Patient A's nephew was her next of kin.

Given the concerns Patient A's family had with regard to Ms Lee's involvement in Patient A's affairs, a report was made to the police. The police decided to take no further action due to insufficient evidence to support the claims against Ms Lee. The family also sought advice on whether Patient A's last will could be challenged. In the event, no proceedings were brought.

In March 2022, Ms Lee submitted a request to the NMC for voluntary removal from the register, which was rejected.

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 the MPS.

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

Charge 1(b)

“Between June 2011 and March 2019 breached professional boundaries in that you formed an inappropriate relationship with Patient A which included:

b) Influencing Patient A to sell her home and move into assisted living accommodation”

This charge is found NOT proved.

The panel had regard to Patient A’s medical notes (Exhibit GL/10) where the following was recorded by Ms Lee:

“Discussed sheltered accommodation, mobility scooter, fluids and diet...Pt [Patient A] has agreed to look into shelter”.

Witness 1 told the panel that Patient A used to be supported by her husband before he passed away. The panel understood that Ms Lee was assigned as Patient A’s professional carer to provide support and to reduce her reliance on her GP service.

The panel considered that part of Ms Lee’s role would have unavoidably involved some form of influence when it comes to advising and aiding Patient A in personal matters, such as discussing whether assisted living accommodation would be in her best interest in light of her medical conditions and social isolation. Witness 1 told the panel that Patient A’s sister-in-law agreed with the decision for Patient A to sell her home, but that he advised Patient A against this.

Based on the evidence available, the panel considered that whilst Ms Lee might be regarded as having some influence in Patient A’s decision to sell her home and move into assisted living accommodation, Patient A’s relatives also had some influence as stated by Witness 1 in his statement and live evidence. However, the panel did not consider Ms Lee’s influence in this context as a breach of professional boundaries, but rather that it was in line with her professional role to offer solutions for Patient A’s ongoing care needs.

The panel therefore did not find this charge proved.

Charge 1(c)

“Between June 2011 and March 2019 breached professional boundaries in that you formed an inappropriate relationship with Patient A which included:

c) Assisting Patient A to complete paperwork relating to the sale of her home”

This charge is found NOT proved.

The panel had regard to Patient A’s medical notes (Exhibit GL/10) where Ms Lee recorded on 11 and 12 April 2012 that she visited Patient A’s home to assist with completing forms for her solicitor in relation to the sale of her home. The panel also noted the following entry recorded on 17 April 2012 by Ms Lee *“Spoke to pt in regards to assistance with filing and then spoke to sister-in-law... just to inform her that I have assisted pt with the above due to the fact that she is not able to and has asked me for help....Anyway sister-in-law wants to be in charge of pt’s affairs so I will only be making 6 weeks visit as agreed for health review”*. Furthermore, the panel noted the following entry on 19 April 2012 *“Sister-in-law informed as sister-in-law in in [sic] control of pts finance.”*

Witness 1 confirmed that his sister-in-law was involved in the process of Patient A selling her home as she supported this decision. The panel also saw documentation showing that the solicitor had communicated with the sister-in-law in this regard.

Based on the evidence, the panel considered that not only did Ms Lee assist Patient A in completing the paperwork for the sale of her home, but that Patient A’s relative (the sister-in-law) also had involvement in this as stated by Witness 1 in his live evidence

and in the documentary evidence. However, the panel did not consider Ms Lee's assistance in this regard to be a breach of professional boundaries.

The panel therefore did not find this charge proved.

Charge 1(d)

"Between June 2011 and March 2019 breached professional boundaries in that you formed an inappropriate relationship with Patient A which included:

d) Assisting Patient A with her home move by removing the entire contents of her garage"

This charge is found NOT proved.

The panel had regard to Patient A's medical notes (Exhibit GL/10) where the following was recorded by Ms Lee:

"...pt anxious as there is no one helping to sort and help with move. Nephews no interested."

The panel had regard to Witness 1's statement and live evidence, where he stated he was told by Patient A that Ms Lee and her partner had cleared out her garage. Ms Lee denies this in the CMF, stating that it was the neighbours who cleared out the garage.

The panel considered the fact that Witness 1 was not present at the time the contents of Patient A's garage was cleared out, and is solely relying on what Patient A told him at the time (which is hearsay). Nevertheless, the panel deemed Witness 1 to be a credible and reliable witness, and had no reason to believe that what he claims Patient A told him is untrue.

Based on the evidence, the panel considered that there is indication that Ms Lee had some kind of involvement in the clearing out of Patient A's garage, either directly as suggested by Witness 1, or indirectly by way of arranging for others to complete the task. However, the panel noted that, around the time Patient A moved from her home, the relation between her and Witness 1 had become strained and there had been a short breakdown of their relationship. Against this background and given no enquires were made as to what had happened to the items removed from the garage, the panel could not be satisfied that what Patient A told Witness 1, being hearsay, was accurate. Overall, there was insufficient evidence presented by the NMC to support this charge.

The panel therefore did not find this charge proved.

Charge 1(e)

“Between June 2011 and March 2019 breached professional boundaries in that you formed an inappropriate relationship with Patient A which included:

e) Assisting Patient A to change her will making you sole executor and main beneficiary”

This charge is found proved.

The panel had regard to letters from Lyons Davidson Solicitors both dated 13 May 2019 (Exhibits GL/08 and GL/09) addressed to Ms 1 and Ms 2 in relation to Patient A's last will dated 1 June 2016 and their written responses to those letters. The panel were made aware that Ms 1 and Ms 2 were the two individuals who witnessed and signed Patient A's last will. In response to the letter, both confirmed that Ms Lee was present at the time of execution of Patient A's will.

The panel also had regard to a letter written by Ms 2 dated 13 May 2019 (Exhibit GL/09) where she stated:

“Jessica [Ms Lee] told me where to sign and passed me a pen”

Ms Lee in the CMF stated that she was unaware of the fact that Patient A had changed her will making her sole executor and main beneficiary until after her death.

Furthermore, in a letter dated 20 February 2020 from the MPS on behalf of Ms Lee, it was stated that on 25 May 2016, having signed the lasting Power of Attorney, *“she was not present in the room when the solicitor discussed changes to Patient A’s will. She was not party to Patient A’s intentions or wishes and did not have sight of the will until after Patient A died. She was not present when the will was signed and witnessed”*.

In order to find this charge proved, it is not necessary for the NMC to establish that Ms Lee influenced Patient A into changing her will, effectively, in her favour. While recognising that the evidence provided by Ms 1 and Ms 2 may be regarded as hearsay and has not been tested in cross examination, the panel could see no reason why it should not regard their accounts as truthful. Given her professional position in relation to Patient A, the panel considered it was not appropriate for Ms Lee to have any sort of involvement in this matter, including letting the witnesses into Patient A’s flat and showing them where to sign the will. Indeed, the panel did not consider it was appropriate for Ms Lee to be present at all given her professional position.

Therefore, on a balance of probabilities, the panel considered that the NMC has proved that Ms Lee breached professional boundaries by assisting Patient A to change her will making her sole executor and main beneficiary.

While, as already indicated, it is unnecessary in order to find this charge proved to find that Ms Lee was aware of the contents of the will executed by Patient A on 1 June 2016, such a finding is of relevance regarding charges 2 and 3. This panel’s finding on this charge means that it is satisfied on the balance of probabilities that, contrary to her assertion, Ms Lee was present when the will was executed on 1 June 2016.

Moreover, the fact that, just under a week before, Patient A had given and Ms Lee had accepted her Lasting Power of Attorney, makes it clear that Patient A regarded Ms Lee

as someone who was not only close to her but as someone to whom she was prepared to entrust the administration of her affairs. In these circumstances, the panel regards it as completely implausible that Patient A did not inform Ms Lee, at the time it was executed, of her “intentions” to make her executor and that she planned to make her a beneficiary as set out in her will. The panel is satisfied on the balance of probabilities that Ms Lee did know of the contents of the will when it was executed.

The panel therefore found this charge proved.

In the light of the panel’s findings in respect of charge 1(e), it is appropriate to record that it finds charge 1(a) proved only in respect of Ms Lee’s post-2016 conduct.

Charge 2

“Between December 2017 and March 2019 made numerous purchases using funds from Patient A’s Nationwide Building Society Account.”

This charge is found proved.

The panel had regard to Patient A’s bank statements (GJL/01 and GJL/02) which shows that a substantial number of significant purchases were consistently made between 2017 and 2019. Indeed, it is right to say that such purchases were also made in the last three months of 2016. The purchases were regularly made at supermarkets, a jewellery shop, a garden centre, a hair salon and for car fuel. In total, the panel were told that the purchases added up to approximately £50,000 over an 18 month period.

Witness 1 and Witness 2 both told the panel that the level of supermarket expenditure was much greater than Patient A would need to spend on food for herself and was made more frequently than would be necessary. When they visited Patient A they saw nothing that would explain such expenditure. Patient A was unable to cook and mainly consumed ready meals and/or snacks. Much of the expenditure was in supermarkets other than the one nearest to where Patient A lived. They identified: expenditure that related to gardening when Patient A had no garden; expenditure on furniture when there

was no evidence of new furniture in Patient A's flat; expenditure at a car dealership when Patient A did not own one; expenditure on hairdressing beyond what would be expected of Patient A; significant expenditure at Carphone Warehouse when Patient A only had a basic mobile phone; and expenditure on jewellery when there was no evidence of Patient A wearing new jewellery. Witness 1 and Witness 2 also told the panel that Patient A was not known to buy gifts for people or family members on a regular basis, or even at Christmas, and any gifts she did give were of relatively small value such as £20 vouchers.

In Ms Lee's response within the CMF, the MPS stated:

“On occasions Ms Lee would accompany Patient A shopping by driving her to shops that she wished to visit. Patient A would normally agree to pay petrol costs for these trips out of her own her own generosity as Ms Lee would have driven her to many locations of her choice and other personal appointments. However, Ms Lee vehemently denies that she made any purchases from Patient A's bank account. All purchases were made by Patient A of her own free will and for use entirely at her discretion whether that be for her own personal use of as a gift for someone else. Ms Lee recalls that Patient A loved shopping and would frequently watch shopping channels on television. Therefore, any spending that made on the account was made by Patient A.”

The panel has carefully considered the evidence of Witness 1 and Witness 2. In particular, it has carefully considered whether their evidence may be “coloured” or otherwise motivated by their “disappointment” in discovering that the main asset in Patient A's estate was bequeathed to Ms Lee. However, the panel is satisfied that their evidence is credible and reliable. As such, it is satisfied on the balance of probabilities that the relevant expenditure identified in the bank statements is greatly in excess of what Patient A would have spent on herself or by way of gifts to others.

The panel is satisfied that such expenditure was neither for Patient A nor in her best interests.

The panel next considered who had been “instrumental” in such expenditure being incurred.

It recognised that the only card that had been issued on the bank account had been issued to Patient A. When Ms Lee’s Lasting Power of Attorney was registered with the Nationwide Building Society, she had not been issued with a separate card.

In these circumstances, the panel determined that it was likely that the relevant transactions had been made by someone who had access to Patient A’s card and knew the PIN. Alternatively, if Patient A had entered the PIN herself for any of the transactions, she had done so at the instigation of someone else.

The panel had regard to Patient A’s medical records (Exhibit CK/06) where the following was recorded on 4 June 2015:

“Patient has been manipulated by daughter of resident in the same sheltered accommodation to lend money on two occasions...Incident and safeguarding completed, police informed”

The panel considered the possibility that an unknown third party may have taken advantage of Patient A’s account. Patient A’s medical notes in Exhibit CK/06 show that she was vulnerable to financial manipulation. While that particular case was resolved before the period in question (2017 to 2019), it leaves open the possibility of other third parties. However, the panel has seen no evidence that other third parties were regularly involved with Patient A at that time. It is mere speculation that some unknown third party misused Patient A’s account. There is no credible evidence to support this. Moreover, the panel is satisfied that the amount of the expenditure and its regularity would have alerted others including Ms Lee when the Lasting Power of Attorney was registered, if the expenditures had been made by a third party.

The panel accepted that there is no direct evidence linking Ms Lee to the purchases made using Patient A’s funds in her account. However, as already stated, it is apparent that Patient A had entrusted Ms Lee with the administration of her affairs. In the

circumstances of this case, it is proper to infer that this included allowing Ms Lee access to her bank account and providing her with her PIN number. However, that did not permit Ms Lee to use the account for her own benefit.

The panel rejects the account given by Ms Lee in her CMF. Given her close relationship with Patient A, had at least some of the expenditure been on gifts for others, it is likely Patient A would have told her for whom the gifts were intended. Furthermore, having Lasting Power of Attorney while Patient A was alive and being her executor after she passed away, if Ms Lee had no knowledge why such large sums were being expended, it would be reasonable to expect her to question them herself – in particular the item of expenditure seemingly made on 20 March 2019 after Patient A's death.

Therefore, on a balance of probabilities, the panel considered that it was more likely than not that these purchases were made by Ms Lee using the funds in Patient A's bank account.

The panel therefore found this charge proved.

Charge 3

“Your actions in charge 2 above were dishonest in that Patient A retained mental capacity, the purchases were neither for Patient A nor in her best interest.”

This charge is found proved.

The panel considered the test for dishonesty outlined in the case of *Ivey v Genting Casinos UK Ltd* [2017] UKSC 67 where it states:

“it must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.”

Once that has been established:

“it must determine ‘whether his conduct was dishonest by applying the objective standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, dishonest.’”

For the reasons already stated, the panel considered that Ms Lee was fully aware that she was abusing her position by making purchases using the funds in Patient A’s account for her own benefit and not Patients A’s benefit. The panel is satisfied that such conduct would unhesitatingly be regarded as dishonest by ordinary decent people, including members of the nursing profession. As such the panel is satisfied that Ms Lee’s conduct was dishonest.

The panel therefore found this charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Ms Lee’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, Ms Lee's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

Ms Chapman invited the panel to take the view that the facts found proved amount to misconduct, and that Ms Lee's fitness to practise is currently impaired by reason of that misconduct.

Ms Chapman referred the panel to '*The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates* (2015, updated 2018) (the Code). She submitted that Ms Lee's proved conduct in this case amounted to breaches of the Code and identified specifically which breaches occurred.

Ms Chapman also referred to the panel to following cases, detailing the case law outlined in their respective judgments and how Ms Lee's case satisfies them, thereby amounting to serious misconduct: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311; *R (Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245; and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Ms Chapman moved onto the issue of impairment and submitted that the NMC's position is that there is a risk to patient and public safety by way of Ms Lee forming an inappropriate relationship with a patient, and the dishonesty involved in this.

Ms Chapman reminded the panel of its duty to act in the public interest, which includes protecting the public, but also maintaining confidence in the profession and upholding proper standards of professional conduct. She submitted that Ms Lee's actions breached public trust in the nursing profession.

Ms Chapman referred the panel to the NMC guidance on insight titled '*Insight and strengthened practice*' which states:

“When assessing evidence of the nurse, midwife or nursing associate’s insight and the steps they have taken to strengthen their practice, decision makers will need to take into account the following questions:

Can the concern be addressed?

Has the concern been addressed?

Is it highly unlikely that the conduct will be repeated?

These factors are key points for decision makers to consider, but they are not a definitive test of whether a nurse, midwife or nursing associate’s fitness to practise is currently impaired”.

Ms Chapman submitted that Ms Lee’s actions of breaching professional boundaries in forming an inappropriate relationship with Patient A included: agreeing to become registered as Patient A’s sole Attorney under a Lasting Power of Attorney; assisting Patient A to change her will making herself the sole executor and main beneficiary; using the Power of Attorney to request that she be added onto Patient A’s Nationwide Building Society account; visiting Patient A on numerous occasions without clinical reason; and making numerous purchases using the funds from Patient A’s Nationwide Building Society account, which was dishonest as Patient A retained mental capacity at the time, and the purchases were neither for Patient A nor in her best interest.

With regard to the public protection ground and the proved charges that fall under charge 1, Ms Chapman submitted that Ms Lee’s conduct occurred over a significant period of time and crossed professional boundaries. As a result, Ms Lee put herself in a position where she had control over Patient A’s personal non-clinical affairs, to the exclusion of Patient A’s family, and in a position where she could have unwittingly coerced, influenced or pressured Patient A into making adverse decisions which could have impacted on her health.

Ms Chapman accepted that no actual harm came to Patient A in this case as a result of Ms Lee's actions. However, she submitted that Ms Lee's behaviour demonstrated a sustained pattern of poor decision making, a severe lack of judgment and a disregard for the basics of professionalism. As a result, she submitted that there is a real risk of repetition of such behaviour.

With regard to charges 2 and 3, Ms Chapman submitted that Ms Lee's personal use of Patient A's funds, which was meant for Patient A's own care and wellbeing, amounted to financial and potentially emotional abuse.

In relation to the dishonesty aspect, Ms Chapman submitted that such actions of Ms Lee can have an impact on, or create issues for fellow members of staff, thereby placing them at risk of harm too, as dishonesty means that information coming from Ms Lee cannot be relied upon.

Ms Chapman submitted that Ms Lee has demonstrated limited insight into the matter and has not apologised for her actions. She noted that remediation is usually difficult in cases that involve dishonesty. However, Ms Chapman acknowledged that Ms Lee had admitted to charges 1(a), 1(e), 1(f) and 1(g) at the outset of this hearing. She further acknowledged that there is no evidence of previous similar incidents or concerns during the course of Ms Lee's nursing career.

With regard to the public interest ground, Ms Chapman submitted that Ms Lee benefitted financially through the inappropriate relationship she had with Patient A, who was an elderly, vulnerable and socially isolated patient with multiple medical conditions. She submitted that, even without the proven dishonesty being present, Ms Lee's actions would be considered deplorable to an informed member of the public who would be shocked to discover that Ms Lee were permitted to practise without restriction.

Ms Chapman submitted that given the serious nature of this case, the panel may even find impairment purely on the basis of the strong public interest.

In light of her submissions, Ms Chapman invited the panel to find that Ms Lee's fitness to practise is currently impaired by reason of her misconduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* 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.*'

The panel also had regard to the terms of The Code.

In relation to charge 1(a), the panel considered this action as Ms Lee blurring the boundaries of the professional relationship between a nurse and a patient. Although the panel considered the mere act of visiting a patient without clinical justification does not amount to misconduct on its own, it considered the fact that these visits enabled the conduct found proved in charges 1(e), 1(f), 1(g), 2 and 3. The panel therefore found this charge amounted to misconduct.

In relation to charge 1(e), the panel considered that Ms Lee's involvement in such private matters of a patient is not within the remit or duties of a registered nurse. There was no urgency to help Patient A amend her will, she could have signposted her to an advocate or family member to facilitate this. Ms Lee should have therefore distanced herself from such matters to avoid breaching the standards of professionalism required of her profession. The panel therefore found this charge amounted to misconduct.

In relation to charge 1(f), the panel also considered as with charge 1(e) that such private matters of a patient are not within the remit of a registered nurse to have any direct involvement in. Ms Lee should have therefore rejected Patient A's request and

signposted her to the appropriate services that could have aided her with such matters. The panel therefore found this charge amounted to misconduct.

In relation to charge 1(g), the panel considered that Ms Lee using the Power of Attorney to request that she be added onto a patient's bank account, which would have enabled her access to their funds, was wholly inappropriate given her professional capacity. The panel therefore found this charge amounted to misconduct.

In relation to charges 2 and 3, the panel considered the act of using a patient's funds for personal use as serious and deplorable for someone of the nursing profession. Such actions were far removed from Ms Lee's professional responsibilities and were not for the benefit of Patient A, rather, Ms Lee sought to take advantage of her position and relationship with Patient A. The panel therefore found that these two charges respectively amounted to misconduct.

In considering all the charges above individually and collectively, the panel was of the view that Ms Lee's proved conduct did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code.

Specifically:

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

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

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

To achieve this, you must:

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel found that Ms Lee's actions did fall 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, Ms Lee's fitness to practise is currently impaired.

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of

the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

The panel finds that limbs a) b) c) and d) have been engaged in this case. While there was no evidence of actual harm to Patient A, the panel could not rule out the risk of harm being caused in the future to any patient being cared for by Ms Lee. Furthermore, the panel considered that Ms Lee's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel found

that Ms Lee has acted dishonestly in the past, and that there is a risk of this conduct being repeated.

With regard to insight, the panel considered Ms Lee's response to the charges in the CMF where she has admitted to some of the charges and shown some remorse for the impact this matter had on Patient A's family. However, the panel considered that Ms Lee has overall demonstrated limited insight into her conduct and the impact this has had on the patient, her family and public confidence and trust in the nursing profession.

The panel has not received any information or evidence from Ms Lee to demonstrate any steps she has taken to address the concerns and strengthen her practice since the allegations were referred to the NMC. It also noted that Ms Lee is currently not working in a nursing capacity as she has retired.

In light of this, the panel is of the view that there is a risk of the misconduct being repeated, particularly as it involves Ms Lee befriending a vulnerable patient and abusing her professional position to exploit the relationship for her own personal gain. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Ms Lee's fitness to practise impaired on the grounds of public interest. It therefore determined that a finding of impairment on public interest grounds is also required.

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

Sanction

The panel has considered this case carefully and has decided to make a striking-off order. It directs the Registrar to strike Ms Lee off the register. The effect of this order is that the NMC register will show that Ms Lee 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

Ms Chapman informed the panel that in the Notice of Hearing, dated 15 November 2022, the NMC had advised Ms Lee that it would seek the imposition of a striking off order if it found Ms Lee's fitness to practise currently impaired.

Ms Chapman submitted that there is presently a risk to the public should Ms Lee be allowed to practise unrestricted in light of the panel findings of misconduct and current impairment on the grounds of public protection and public interest.

Ms Chapman referred and took the panel through the NMC guidance on sanction.

Ms Chapman referred the panel to the case of *Brennan v Health Professions Council* [2011] EWHC 41 (Admin) and *Daraghmeah v General Medical Council* [2011] EWHC 2080 (Admin).

Ms Chapman submitted that either taking no action or imposing a caution order would be inappropriate in this case given the seriousness of the matter, and the public protection issues identified.

Ms Chapman submitted that a conditions of practice order would also not be appropriate in this case. She submitted that given the dishonesty element involved, imposing conditions around this may prove difficult. Ms Chapman also submitted that

given the serious nature of the matter, and the insufficient evidence from Ms Lee to demonstrate any attempts she has made to address the proven concerns, such an order would not suffice in this case.

Furthermore, Ms Chapman submitted that a suspension order would not be appropriate in this case. She submitted that Ms Lee has provided limited insight and no evidence of remediation. Ms Chapman explained that the matter occurred repeatedly over a prolonged period of time, which Ms Lee financially gained from, and involves deep-seated personality issues. In addition, there is the proven dishonesty aspect to consider which in itself is hard to remedy. Ms Chapman submitted that temporarily removing Ms Lee from the register would be insufficient in addressing the risks and public interest factors present.

Ms Chapman submitted that given the seriousness of the case and the lack of insight demonstrated by Ms Lee, the only appropriate sanction is that of a striking off order. She submitted that such an order is necessary to preserve public confidence in the profession, and to mark the seriousness of the misconduct. Ms Chapman therefore invited the panel to consider the imposition of a striking off order.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Ms Lee'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:

- Ms Lee abused her position of trust as a registered nurse;

- The behaviour continued repeatedly over a prolonged period of time;
- Ms Lee benefited financially from the misconduct;
- The patient involved was a vulnerable individual; and
- Ms Lee has shown limited insight into her conduct and has provided no evidence of remediation.

The panel were unable to find any mitigating features in this case. However, the panel noted that Ms Lee had a 46 year nursing career with no prior similar concerns raised.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Ms Lee's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Ms Lee'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 Ms Lee's registration would be a sufficient and appropriate response. As the concerns are centred around Ms Lee's dishonesty, rather than her clinical practice, the panel agreed that it would be difficult to formulate conditions that would adequately address this and mitigate the risks identified. The panel was mindful that much of the behaviour occurred outside of Ms Lee's routine clinical visits. It also took into account of the limited insight Ms Lee has demonstrated in this case. The panel is therefore of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Furthermore, the panel concluded that placing conditions on Ms Lee's registration would not adequately protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It considered the fact that the misconduct occurred and was repeated over a prolonged period of time, and involved Ms Lee abusing her position by taking advantage of a vulnerable patient. Such actions were a significant departure from the standards expected of a registered nurse and was a serious breach of the fundamental tenets of the nursing profession.

Taking the above into account, the lack of insight and remediation from Ms Lee, as well as the serious nature of the case, the panel considered that a temporary suspension from the register would not address the concerns identified, nor would it protect the public or maintain confidence in the profession. 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?*

As outlined in its reasoning for not imposing a suspension order, the panel considered that the only appropriate sanction in this case is that of a striking-off order. The panel was in no doubt that the findings in this particular case demonstrate that Ms Lee's actions were very serious in that they concerned an abuse of a position of trust involving a vulnerable individual, personal financial gain and took place over a prolonged period. Furthermore, the public would find the conduct shocking and allowing her to remain on the register and continue practising would undermine public confidence in the profession and the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Ms Lee'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, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel has been provided with no direct evidence of the likely effect a striking-off order would have upon Ms Lee. However, it is satisfied that the public interest in her being removed from the register significantly outweighs any adverse effect on her personally.

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 Ms Lee'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

Ms Chapman submitted that the NMC are seeking the imposition of an interim suspension order for a period of 18 months on the grounds of public protection and public interest.

Ms Chapman submitted that in light of the panel's finding of current impairment and its decision to impose a striking-off order, which procedurally will not take effect until after the 28 day appeal period, an interim order is necessary to protect the public during this time. She therefore invited the panel to impose an 18 month interim suspension order.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

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

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

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

That concludes this determination.