

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

**Substantive Hearing
12 – 18 December 2019**

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

Name of registrant:	Jayne Robinson
NMC PIN:	05D0251E
Part(s) of the register:	Part of register
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Deborah Jones (Chair, lay member) Jane Jones (Registrant member) Nicholas Cook (Lay member)
Legal Assessor:	John Donnelly
Panel Secretary:	Kelly O'Brien
Registrant:	Not present and not represented
Nursing and Midwifery Council:	Represented by David Claydon, Case Presenter
Facts proved:	1, 2, 3, 4
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

1. Claimed payment for a bank shift for NHS Professionals (“NHSP”) when you were also rostered to work a substantive shift for Sheffield Teaching Hospitals NHS Foundation Trust (“the Trust”) on one or more of the dates set out in Schedule 1.
2. Claimed payment for a bank shift for NHSP when you were on sickness absence from the Trust on 19 October 2014.
3. Your conduct in Charge 1, above, was dishonest in that you knowingly claimed twice for the same hours.
4. Your conduct in Charge 2, above, was dishonest in that you knowingly claimed payment for hours you did not work.

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

Schedule 1

20 January 2014
13 March 2014
26 March 2014
1 July 2014
6 August 2014
15 December 2014
2 January 2015
9 March 2015
13 May 2015
17 July 2015
2 September 2015
1 January 2016
8 January 2016
11 February 2016
21 April 2016
29 July 2016
11 August 2016

Decision on service of notice of hearing

The panel was informed at the start of this hearing that Ms Robinson was not in attendance and that written notice of this hearing had been sent to Ms Robinson's registered address by recorded delivery and by first class post on 13 November 2019. Royal Mail Track and Trace documentation confirmed that notice of this hearing was delivered and signed for at Ms Robinson's registered address on 14 November 2019 in the printed name of "ROBINSON".

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

Mr Claydon submitted the NMC 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.

In the light of all of the information available, the panel was satisfied that Ms Robinson had been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Ms Robinson.

The panel had regard to Rule 21 (2) 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.

Mr Claydon invited the panel to continue in the absence of Ms Robinson on the basis that she had voluntarily absented herself. Mr Claydon submitted that Ms Robinson has confirmed that she will not be attending by an email dated 13 November 2019, and an email dated 10 December. As a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor which included reference to the case of *GMC v Adeogba [2016] EWCA Civ 162*.

The panel noted the email correspondence from Ms Robinson to the NMC dated 13 November 2019 in which she stated “*As I have already explained I will not be attending*”.

The panel decided to proceed in the absence of Ms Robinson. In reaching this decision, the panel considered the submissions of the case presenter, and the advice of the legal

assessor. It had particular regard to the factors set out in the decision of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*.

It 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 Robinson
- Ms Robinson has confirmed that she will not be attending
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- one witness has attended today to give live evidence, others are due to attend;
- not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- 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 Ms Robinson in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgment, 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 Robinson's decisions to absent herself from the hearing, waive her rights to attend and/or be represented and to not provide evidence or make submissions on her own behalf.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Claydon, on behalf of the NMC, to amend the wording of charge 4.

Original charge

4. Your conduct in Charge 2, above, was dishonest in that you knowingly claimed payment for hours you did not work.

The proposed amendment was to more accurately reflect the mischief in charge two, as charge 4 alleges dishonesty in relation to charge 2. Mr Claydon said that as drafted the charge 4 is not accurate. It does not refer to undertaking a bank shift whilst being on sickness absence, but rather for claiming payment for hours not worked. It was submitted by Mr Claydon that the charge required amendment to provide clarity and more accurately reflect the evidence.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

- (2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that such an amendment to charge 4 was in the interest of justice. The panel decided to amend charge 4 as follows:

Original charge

4. Your conduct in Charge 2, above, was dishonest in that you knowingly ~~claimed payment for hours you did not work.~~

Amended charge

4. Your conduct in Charge 2, above, was dishonest in that you knowingly undertook a bank shift whilst you were on sickness absence from the Trust and claimed payment for that bank shift.

The panel was satisfied that there would be no prejudice to Ms Robinson and no injustice would be caused to either party by the proposed amendment being allowed. The panel considered that the amendment did not change the gravity of the charge or the nature of the case, and more accurately reflected the mischief sought to be addressed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Background

The charges arose whilst Ms Robinson was employed as a Registered Nurse by Sheffield Teaching Hospital NHS Foundation Trust (the Trust).

Ms Robinson was referred to the NMC by the Trust on 13 November 2017. The referrer received a report from the Trust's Human Resources department regarding members of staff who were working hours in excess of the European Working Time Directive (EWTD).

The Trust undertook an internal audit of Ms Robinson's shifts, and compared her substantive Trust shifts with the bank shifts she had undertaken for National Health Service Professionals (NHSP).

The investigations concluded that Ms Robinson had claimed for payment of bank shifts through NHSP during times when she was in fact working her contractual hours for the Trust. It is alleged that Ms Robinson made multiple false claims from the period of January 2014 – August 2016.

At the local Trust level Ms Robinson stated that her actions were not deliberate.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Claydon, on behalf of the NMC.

Mr Claydon invited the panel to find each of the charges proved. He submitted that based on the documentary evidence and the live testimony of the three NMC witnesses the NMC had discharged the burden of proof on the balance of probabilities.

Mr Claydon submitted that in relation to the dishonesty element of charges 3 and 4, the panel should consider the following submissions:

- There is evidence of repeated system / e-roster errors on a number of occasions over a two year period. Some resulted in small overpayment, some resulted in a large overpayment.
- Ms Robinson was an exceptional, experienced nurse who was well aware of the Trust's e-roster system and trained other people on the system.
- There is no evidence of issues in relation to the e-roster system being raised to management by Ms Robinson.
- There is evidence that Ms Robinson altered the e-roster before and after her shifts, in an attempt to manipulate the roster to allow for double claiming.
- The panel have documentary and live evidence that there were no other issues in relation to other members of staff making errors resulting in frequent double payment.
- The errors that were made in the e-roster were always in Ms Robinson's favour.
- At a local level Ms Robinson maintained that she made stupid genuine errors. It is for the panel to reconcile whether it's possible that frequent overlapping shifts could be anything other than knowingly dishonest.

Mr Claydon submitted that it is the NMC's position that no adverse inference should be drawn from Ms Robinson's non-attendance.

The panel heard and accepted the advice of the legal assessor which included reference to *Lavis v NMC [2014] EWHC 4083 (Admin)*, *Ivey v Genting Casinos [2017] UKSC 67* and *Re H (Minors)(Sexual Abuse: Standard of Proof) [1996] AC 563*

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

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

The panel heard oral evidence from three witnesses called on behalf of the NMC:

Ms 1 – *Senior Nurse at the Trust*;

Ms 2 – *Nurse Director at the Trust*;

Ms 3 – *Deputy Nurse Director at the Trust*;

The panel found Ms 1 to be a credible and reliable witness. Ms 1 was an experienced professional. She was calm when giving her evidence. Ms 1 was consistent in her oral and written evidence. She gave a fair and balanced account and did not seek to make matters worse for Ms Robinson.

The panel found Ms 2 to be a credible and reliable witness. Ms 2 was an experienced nurse manager. She tried her best to assist the panel, and provided helpful background and context. She provided information regarding the use of laptops, staff logins, and told the panel that she regularly spoke to Ms Robinson about excessive hours and whether this was negatively impacting on her health or performance. Ms 2 appeared balanced

and fair. She provided helpful information as to her Ms Robinson's character stating that she was a well-respected nurse.

The panel found Ms 3 to be a credible and reliable witness. Ms 3 assisted the panel with its understanding of the documentary evidence. The panel noted that Ms 3 is semi-retired and that it was a few years since she collected the documentation. However, it considered that her understanding of the documentation was good and that she was a knowledgeable experienced professional. The panel found that Ms 3 was balanced and honest, and spoke of the positive aspects of Ms Robinson's work as a nurse. Ms 3 gave some insight into Ms Robinson's manner during the investigation which was helpful to the panel. Ms 3's live evidence was consistent with her written statement and the documentary evidence.

The panel considered each charge and made the following findings:

Charge 1

1. Claimed payment for a bank shift for NHS Professionals ("NHSP") when you were also rostered to work a substantive shift for Sheffield Teaching Hospitals NHS Foundation Trust ("the Trust") on one or more of the dates set out in Schedule 1.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it.

The panel had regard to the e-roster and NHSP roster of the shifts Ms Robinson had worked. The panel noted that the print outs had been taken directly from the systems and were the primary source of data. The panel was content that these were reliable. The panel noted that Ms Robinson, at the local Trust level, when presented with this data did not dispute the validity of the entries or challenge them.

The panel had regard to the Trust's e-roster which evidenced Ms Robinson's substantive shifts. It noted that on 1 January 2016 Ms Robinson was scheduled to work from 07:00 – 15:00 on a "MD", which the witnesses confirmed meant a "Management Day". The panel considered the evidence of Ms 1, who conducted the internal audit, who explained that management days were usually taken during office hours, i.e. Monday – Friday, 9:00am – 5:00pm, Ms 3 also confirmed that this was the case. Ms 1 told the panel that she thought it was "odd" that Ms Robinson was on a management day on a bank holiday.

The panel had regard to the NHSP shift roster (i.e. bank shifts) for 1 January 2016. It noted that Ms Robinson was scheduled to work a "long day" and that she worked 12.5 hours. Ms 1 in her written statement confirmed that she was concerned when she discovered the double booking as the "the NHSP shift was worked and authorised for payment prior to the management day being added to the roster by the Registrant on 9 January 2016".

The panel had regard to the other dates set out in schedule 1 and conducted the same comparison between the Trust's e-roster and the NHSP bank shift roster. The panel found that on more than one occasion there was an overlap in hours, indicating that Ms Robinson had claimed for payment for bank shifts when she was rostered to work a substantive shift for the Trust resulting in double payment. The panel noted that the dates charged in schedule 1 contain the dates examined in the local investigation.

Accordingly, the panel found charge 1 proved on the balance of probabilities.

Charge 2

2. Claimed payment for a bank shift for NHSP when you were on sickness absence from the Trust on 19 October 2014.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it.

The panel had regard to the Trust's "personal Roster List" for Ms Robinson. This showed that on 19 October 2016 Ms Robinson was scheduled as "Med Susp". Ms 3 confirmed that this meant medical suspension. She explained that this occurs when, for example, a nurse has come into contact with an infection such as MRSA and it would be unsafe for them to work and be around patients, although they may not actually be feeling unwell themselves.

The panel noted that on the hand written attendance record which is kept on the ward, Ms Robinson had a day off on 19 October 2014. The panel had regard to the NHSP shift roster (i.e. bank shifts) for 19 October 2014. This showed that Ms Robinson worked a long shift from 07:00 – 19:30. Ms 3 confirmed that the NHSP shift was a non-retrospective booking, meaning it was booked in advance of the shift. Ms 3 also told the panel that this shift was approved for payment by "ashtone" and this was supported by the documentary evidence.

The panel considered that having found the witnesses to be credible, and in light on the primary source of data they had compared, that on the balance of probabilities Ms Robinson had claimed for payment for a bank shift when she was on sickness absence from the Trust on 19 October 2014. Accordingly, the panel found this charge proved.

Charge 3

3. Your conduct in Charge 1, above, was dishonest in that you knowingly claimed twice for the same hours.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it.

In the absence of Ms Robinson the panel considered her position during the Trust investigation and had regard to her statement of case for the Trust. Ms Robinson stated that she did not have proper training on the e-roster system and that she did not understand how to correctly record time owing. She states that she was working too many hours and that this was known to the Trust. She maintained that she had been “stupid” and that the overlap in hours had been genuine mistakes.

The panel considered possible alternative explanations as for Ms Robinsons conduct as set out in Lavis such as a slapdash attitude, and that she may have made mistakes due to being tired from working excessive hours.

Ms 2 confirmed that she knew Ms Robinson was working excessive hours as she appeared on the EWTD report which Ms 2 received. Ms 2 confirmed that she had spoken to Ms Robinson about this, and that it did not appear to affect her ability to do her job properly. Ms 2 said that Ms Robinson was a competent and capable nurse and did not appear over tired.

Ms 3 told the panel that Ms Robinson was somewhat of an “expert” in using the e-roster system and would provide training to more junior members of staff. Ms 3 explained that Ms Robinson knew how to add discussion notes to the system, which is indicative of an advanced user.

The panel had regard to the evidence of Ms 3 who stated that “we could see the e-roster system was being manipulated to accommodate the bank shift which was never moved”. This is supported by Ms 1 who explained that Ms Robinson’s bank shifts were non-retrospective entries. After Ms Robinson had got her bank shift approved she would change her normal working days so that these would overlap with when she had booked her NHSP shift.

The panel considered the documentary evidence and the finding of the local investigation. The panel noted that over a two year period there was a consistent pattern of Ms Robinson claiming payment for two shifts, one from the Trust and one from the NHSP bank shifts for the same hours. The panel considered that the frequency of incidents of double claiming, which increased over time, was not indicative of mere mistakes. Furthermore the panel considered that the possibility of a mistake was even less likely as the entries were always in Ms Robinson's favour and did not result in her losing hours and payment. Nor did she make similar errors in relation to other staff. The panel bore in mind that Ms Robinson's actions resulted in financial gain through double payment.

The panel considered that on both the objective and subjective set out test in Ivey, Ms Robinson's actions were dishonest. The panel concluded that Ms Robinson's entries were not mere mistakes, and the ordinary reasonable person would consider her actions to be inherently dishonest.

Accordingly, the panel found this charge proved.

Charge 4

4. Your conduct in Charge 2, above, was dishonest in that you knowingly undertook a bank shift whilst you were on sickness absence from the Trust and claimed payment for that bank shift.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it.

The panel considered that it had found the fact of charge 2 proved, and that on the balance of probabilities, Ms Robinson undertook a bank shift whilst she was on sickness absence from the Trust and claimed payment for that bank shift.

The panel considered that Ms Robinson was an experienced senior nurse and that she would have known that she could not work as a nurse, in the same hospital, whilst under sickness absence from her substantive role. Ms 3 told the panel that medical suspension was normal practice whilst working as a nurse, and that any nurse would know that it was unacceptable to work whilst on sickness absence.

The panel considered that this charge relates to a single date 19 October 2014, which in isolation could increase the chances that this was a genuine mistake. However, in the context of charge 1 and charge 3 and the multiple incidences of double claiming that the panel had found that Ms Robinson's actions amounted to a course of conduct, and considered her actions to be dishonest.

The panel also considered that there were inconsistencies in Ms Robinson's evidence to the Trust during the investigation and between that evidence and what the NMC witnesses, whom the panel found to be credible and reliable, have told the panel. The panel noted that Ms Robinson claimed she was not good at working the e-roster system whilst Ms 1 and Ms 3 said that she was an advanced user or "expert".

The panel considered that on both the objective and subjective set out test in Ivey, Ms Robinson's actions were dishonest. The panel concluded that Ms Robinson's entries relating to the 19 October 2014 were not mistakes, and that the ordinary reasonable person would consider her actions to be dishonest.

Accordingly, the panel found this charge proved.

Submission on misconduct and impairment

Having announced its finding on all the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Ms Robinson'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.

In his submissions Mr Claydon invited the panel to take the view that Ms Robinson's actions amounted to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)*. He then directed the panel to the following specific paragraphs: 10, 10.3, 21, 21.3 and identified where, in the NMC's view, Ms Robinson's actions amounted to misconduct.

Mr Claydon referred the panel to the case of *Roylance v GMC (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 Claydon outlined what the NMC submitted were the aggravating and mitigating features of this case:

Aggravating:

- Ms Robinson was in a position of responsibility. She had responsibility for the roster, and her position as a senior sister allowed her to perpetuate the dishonesty
- This was an abuse of position of trust in relation to the NHS Trust Ms Robinson was employed by
- Ms Robinson received personal financial gain

Mitigating features

- Ms Robinson has no previous regulatory findings

- There is strong evidence that Ms Robinson was an excellent and hardworking nurse
- Ms Robinson was working excessive hours

He then moved on to the issue of impairment, and addressed the panel on the need to have regard to protect 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. Mr Claydon referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

Mr Claydon submitted that Ms Robinson has not accepted her dishonesty, nor has she shown any insight, remediation or remorse for her conduct. He submitted that in these circumstances there is a high risk of repetition. Mr Claydon submitted that Ms Robinson's actions have brought the nursing profession into disrepute, and are sufficiently serious to warrant a finding of impairment on public interest grounds alone. He did not invite the panel to consider public protection concerns.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included: *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311*, *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*, and *Cohen v General Medical Council [2008] EWHC 581*.

The panel adopted a two-stage process in its consideration, as advised. 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 Robinson's fitness to practise is currently impaired as a result of that misconduct.

Decision on misconduct

When determining whether 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).

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Ms Robinson's actions were serious and did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the 2008 Code and the 2015 Code. Specifically:

The 2008 Code

The people in your care must be able to trust you with their health and wellbeing
To justify that trust, you must:

- be open and honest, act with integrity and uphold the reputation of your profession.

As a professional, you are personally accountable for actions and omissions in your practice, and must always be able to justify your decisions.

You must always act lawfully, whether those laws relate to your professional practice or personal life.

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

The 2015 Code

10 Keep clear and accurate records relevant to your practice

This includes but is not limited to patient records. It includes all records that are relevant to your scope of practice.

To achieve this, you must:

10.3 complete all 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:

20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to

21 Uphold your position as a registered nurse or midwife

To achieve this, you must:

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the reasonable member of the public would find Ms Robinson's actions in defrauding her employer to be deplorable. The panel considered that Ms Robinson was in a position of responsibility as a senior sister and she breached her employer's trust. The panel considered that multiple incidences of claiming double payments from the Trust to be so serious as to amount to misconduct.

The panel, as invited to by Mr Claydon, considered the mitigating and aggravating features of this case.

The panel found the aggravating features to be:

- Ms Robinson was in a position of responsibility, and she had responsibility for the roster. Her position allowed her to perpetuate the dishonesty. Her actions were an abuse of her position of trust as a Senior Sister.
- Ms Robinson received personal financial gain
- Her dishonesty was a course of conduct over more than two years

The panel found the mitigating features to be:

- The panel have heard strong evidence that Ms Robinson was an excellent and hardworking nurse

The panel concluded that Ms Robinson's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision on impairment

The panel next went on to decide if as a result of this misconduct Ms Robinson'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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) 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.”

Mrs Justice Cox went on to say in Paragraph 76:

“I would also add the following observations in this case...as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my

view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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. ...
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”

The panel found that limbs b, c and d of Grant were engaged in this case.

The panel noted that Ms Robinson has not attended this hearing or provided written submissions or any other information to this panel. In the absence of Ms Robinson or any evidence on her behalf, the panel was not in a position to evaluate her current insight, remorse or remediation. The panel had regard to Ms Robinson's reflective piece provided to the Trust during the local investigation. Ms Robinson's reflective piece made clear that she knows that it is wrong to claim double pay, however she displayed no insight into the impact of doing so on the Trust and/or her colleagues. The panel found that Ms Robinson, even at the local investigation stage, did not show any real insight into her conduct, nor any remorse. In these circumstances the panel concluded that Ms Robinson had no insight.

Dishonesty by its nature is difficult to remediate. The panel considered that some steps could have been taken by Ms Robinson which could have evidenced remediation of her failings. However, the panel received no information from Ms Robinson and therefore had to conclude that she has not taken any steps to remediate her failings.

The panel considered that in the absence of any evidence of insight or remediation, the risk of repetition of repeating the matters of the kind found proved is high. The panel accepted that there were no public protection concerns in this case, and that Ms Robinson was an otherwise competent nurse.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 considered that trust is a fundamental tenet of the nursing profession. Ms Robinson's dishonesty, which spanned a period of more than two years, diverted funds from the public purse and undermined that trust. The panel considered that any reasonable member of the public would find Ms Robinson's conduct deplorable. The panel found that Ms Robinson's actions have the potential to undermine public trust and confidence in the profession, and the NMC as its regulator, if a finding of impairment were not made. The panel determined that, in this case, a finding of impairment on public interest grounds alone was required.

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

Submissions and determination on sanction

In his submissions, Mr Claydon invited the panel to impose a striking-off order. He adopted his previous submissions on the aggravating and mitigating features of this case, and submitted that, because of the seriousness of the facts underlying Ms Robinson's misconduct, and the dishonesty identified, a striking-off was the only appropriate and proportionate sanction.

Mr Claydon submitted that no further action or a caution order would not reflect the seriousness of Ms Robinson's conduct. He submitted that there are no clinical concerns in this case and that conditions of practice order could not appropriately address the dishonesty. Furthermore, Ms Robinson has not shown any willingness to comply with such an order. Mr Claydon referred the panel to the NMC sanctions guidance. He submitted, with reference to the guidance on a suspension order and a striking-off order, that a striking-off order was the appropriate and proportionate sanction in this case.

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

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor which included reference to *Lusinga v NMC [2017] EWHC 1458 (Admin)*, and *Watters v NMC [2017] EWHC 1888 (Admin)*.

The panel bore 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 Sanctions Guidance published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel had regard to the NMC Guidance on sanctions for serious cases – dishonesty. The panel noted the following:

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

- ...
- misuse of power
- ...
- personal financial gain from a breach of trust
- ...
- premeditated, systematic or longstanding deception”

The panel considered that these elements, indicative of a more serious form of dishonesty were relevant to this case. The panel considered that Ms Robinson used her position of power as a Senior Nurse, with the ability to change the roster, to facilitate her dishonesty. The panel considered that Ms Robinson received a personal financial gain from claiming double payments. The dishonesty was longstanding, lasting for over two years, with multiple incidents, that indicated that the dishonesty was systematic and premeditated.

The panel considered the indicators of less serious dishonesty and identified that there was no risk to patients. The other indicators were not applicable to this case. The panel therefore concluded that Ms Robinson’s dishonesty was particularly serious.

The panel next considered the available sanctions in increasing order of seriousness:

The panel 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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the Sanctions Guidance, which 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 dishonesty is not at the lower end of the spectrum of seriousness and that accordingly a caution order would be inappropriate in this 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 Robinson’s registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, relevant, measurable and workable. The panel considered that Ms Robinson’s misconduct was not related to her clinical practice, and that it had heard that Ms Robinson was an otherwise good and competent nurse. The panel considered that the dishonesty identified in this case was not something that can be addressed through retraining or extra support and supervision. Ms Robinson has not engaged with the NMC and there is no evidence to suggest she would be willing to comply with conditions of practice. The panel concluded 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 the placing of conditions on Ms Robinson’s registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates that a suspension order would be appropriate where (but not limited to):

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident

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

The panel considered that this was not a single incident of misconduct, but rather a course of protracted and premediated conduct over a period of more than two years. Ms Robinson has failed to engage with the regulatory process, she has not attended this hearing, or provided any supporting documentation in her absence. The panel considered that Ms Robinson's lack of insight and remorse into her failings are indicative of attitudinal problems. The panel has decided that there is a real risk of repetition in these circumstances.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that dishonestly defrauding her employer is a serious breach of the fundamental tenets of the profession.

The panel has taken into account the mitigation that Ms Robinson was an otherwise good and competent nurse. The panel noted that there is a public interest in retaining otherwise good nurses in the profession. However, in light of her non-engagement and lack of insight, remediation or remorse the panel concluded that a period of suspension would not adequately address the concerns in this case, nor be in the public interest.

Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following from the Sanctions Guidance:

This sanction is likely to be appropriate when what the nurse or midwife has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

- 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 was of the view that the findings in this particular case demonstrate that Ms Robinson's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms Robinson'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 maintain 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.

Determination on interim order

The panel considered the submissions made by Mr Claydon that an interim order should be made on the ground that it is necessary in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.