

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Hearing**  
**13 – 17 May 2019**

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

|                                       |   |
|---------------------------------------|---|
| <b>Name of registrant:</b>            | Jonathan Mark Hull  |
| <b>NMC PIN:</b>                       | 99H0334E  |
| <b>Part(s) of the register:</b>       | Sub part 1<br>Registered Nurse – Adult (25 August 2002)<br>V300 – Nurse Independent / Supplementary<br>Prescriber (17 September 2010) |
| <b>Area of Registered Address:</b>    | England   |
| <b>Type of Case:</b>                  | Misconduct  |
| <b>Panel Members:</b>                 | Michael Murphy (Chair, Registrant member)<br>Denise Price (Registrant member)<br>Patricia Breslin (Lay member)                        |
| <b>Legal Assessor:</b>                | Linda Goldman   |
| <b>Panel Secretary:</b>               | Maya Hussain  |
| <b>Mr Hull:</b>                       | Not present and not represented   |
| <b>Nursing and Midwifery Council:</b> | David Claydon, Case Presenter   |
| <b>Facts proved:</b>                  | All   |
| <b>Facts proved by admission:</b>     | None  |
| <b>Facts not proved:</b>              | None  |
| <b>Fitness to practise:</b>           | Impaired  |
| <b>Sanction:</b>                      | Striking off order  |
| <b>Interim Order:</b>                 | Suspension order (18 months)  |

**Details of charge:**

That you a registered nurse, whilst employed at the Southern Health and Social Care Trust as a band 7 clinical co-ordinator, between 29 December 2014 and 3 January 2016;

- 1) Submitted overtime claims for hours worked in excess of 5.36 hours per shift.
- 2) You actions in charge 1 were dishonest as you were aware that valid overtime claims could only be made for hours exceeding 37.5 hours per week.

And in light of the above, your fitness to practice is impaired due to your misconduct.

### **Rule 19 declaration:**

At the outset of this hearing, Mr Claydon, on behalf of the Nursing and Midwifery Council (NMC), submitted that this case may concern the personal matters of witnesses, and, as such, parts of this hearing would be held in private under Rule 19 (2) of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

Mr Buxton, on behalf of Mr Hull, instructed by the Royal College of Nursing (RCN) did not oppose the application.

The panel decided that it was justified to hear parts of the hearing in private given that it relates to the personal circumstance of witnesses involved in the case.

### **Day 1**

At 09:50, Mr Claydon informed the panel that there were issues surrounding the attendance of two of the three of the witnesses invited to give evidence. He submitted that Mr 1 was [PRIVATE] unable to give evidence. Mr Claydon submitted that Mr 1's evidence is extremely important to the charges.

In relation to Ms 3, [PRIVATE] Mr Claydon submitted that Ms 3 may be able to give evidence by videolink, however he was yet to make further enquiries about her availability for this.

Mr Buxton informed the panel that on Friday 10 May 2019, he had a telephone conference with Mr Hull in order to discuss this case. Mr Buxton submitted that during the telephone conference Mr Hull stated that he did not have access to the documentation and therefore Mr Buxton was unable to discuss the detail of the case with him. Mr Buxton submitted that he would need at minimum the morning of today in order to speak to Mr Hull and take instructions. Mr Buxton informed the panel that Mr Hull was expected to meet with him today at 08:30 however he had not arrived.

The panel adjourned for the parties to make further enquiries regarding the attendance of the witnesses and Mr Hull.

At 11:20, Mr Claydon informed the panel that Ms 3 would be able to give evidence by videolink on Wednesday 15 May 2019, day 3. Mr Claydon submitted that although Mr 1 was not able to attend, he had contacted the Counter Fraud and Probity Services (CFPS) and they had offered a substitute witness, Mr 4. Mr Claydon submitted that he had sent the relevant paperwork to Mr 4. Mr 4 had confirmed that he would be able to provide a witness statement to the NMC case officer by the end of day 1 and give evidence on the afternoon of day 2 by videolink. Mr Claydon informed the panel that Ms 2 had arrived today. Mr Claydon submitted that he intends to contact the NMC case officer at 13:00 today to track the progress made on Mr 4's evidence.

Mr Buxton informed the panel that he had received an email at 11:15 from his instructing solicitor who informed Mr Buxton that she had left voicemails, a message with Mr Hull's father and she had emailed Mr Hull, however there was no response. Mr Buxton submitted that on Friday 10 May 2019, during the telephone conference, Mr Hull did not indicate that he would not attend the hearing. Mr Buxton informed the panel that this matter had escalated to the senior legal officer at the RCN who was trying to ascertain whether there was an issue preventing Mr Hull attending the hearing today. Mr Buxton informed the panel that Mr Hull had always engaged with the NMC and the RCN regarding his case. Mr Buxton applied for another adjournment in order to await further instructions.

The panel heard the submissions of both parties and decided to adjourn until 13:00 for further enquiries to be made regarding Mr Hull's attendance.

At 13:10, Mr Buxton informed the panel that Mr Hull had contacted the RCN who had now withdrawn representation. Mr Buxton sought permission to withdraw from the hearing and this was granted.

Mr Claydon informed the panel that Mr 4 would be available to replace Mr 1's evidence on day 2 by videolink. He submitted that Ms 2 who is in attendance today is happy to return to give evidence tomorrow, on day 2.

### **Decision on Service of Notice of Hearing**

Mr Claydon moved on to the issue of notice, he informed the panel that Mr Hull was not in attendance and that written notice of this hearing had been sent to his registered address by recorded delivery and by first class post on 21 March 2019. Notice of this hearing was delivered to Mr Hull's registered address and signed in the name of 'J Hull' on 22 March 2019.

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 Mr Hull's right to attend, be represented and call evidence, as well as the panel's power to proceed in his 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 Mr Hull had been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

### **Proceeding in the absence:**

The panel then considered continuing in the absence of Mr Hull.

Mr Claydon invited the panel to proceed in the absence of Mr Hull on the basis that he was fully aware of the hearing proceedings today having spoken to his solicitor at the

RCN and he has chosen to not attend. Mr Claydon submitted that one witness was in attendance today and two more witnesses were willing to participate on day 2 and day 3. He reminded the panel that the case concerned serious charges and the public would expect the regulator to proceed in the absence of Mr Hull as it had responsibilities for public protection and the expeditious disposal of the case.

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 decided to proceed in the absence of Mr Hull. In reaching this decision, the panel considered the submissions of Mr Claydon, the information provided by Mr Buxton, and the advice of the legal assessor. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for a postponement had been made by Mr Hull having spoken to his former representative from the RCN;
- there is no reason to suppose that postponing would secure his attendance at some future date;
- witnesses were prepared and were available to attend this hearing and one was in attendance today;
- there are public protection concerns and a public interest in the expeditious disposal of this case due to the nature of the charges; and
- the allegations relate to events which took place over 3 years ago and it would be appropriate to hear the case as scheduled in order to protect the public and satisfy the wider public interest.

In these circumstances, the panel decided that it was fair, appropriate and proportionate to proceed in the absence of Mr Hull.

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

The legal assessor informed the panel that there was a “typo” in charge 2 in which the word “you” should have read “your”. This required an amendment under the panel’s

powers set out in Rule 28(1) of the Rules. Correcting a spelling error did not change the nature of the charge.

Mr Claydon did not object to the proposed amendment.

The panel determined that the proposed amendment to the charge could be made without injustice. The panel noted that the proposed amendment to correct a spelling error was not opposed and did not materially alter the substance of the charge. The panel was therefore satisfied that there would be no prejudice or injustice caused to Mr Hull by the proposed amendments being allowed. It was therefore appropriate to allow the amendment, as applied for.

#### **Details of all amendments:**

##### **Original charge:**

2) Your actions in charge 1 were dishonest as you were aware that valid overtime claims could only be made for hours exceeding 37.5 hours per week.

##### **Amended charge:**

2) Your actions in charge 1 were dishonest as you were aware that valid overtime claims could only be made for hours exceeding 37.5 hours per week.

#### **Application to admit hearsay evidence pursuant to Rule 31**

The panel heard an application made by Mr Claydon under Rule 31 of the Nursing and Midwifery (Fitness to Practise) Rules 2004 (the Rules) to allow Mr 1's written statement into evidence.

Mr Claydon submitted that Mr 1 was unable to provide evidence [PRIVATE]. Mr Claydon informed the panel that although Mr 4 was invited to replace Mr 1 and provide oral evidence to the panel, having spoken to Mr 4 today, Mr 4 has now concluded that he would be unable to comment on the investigation conducted by Mr 1 without the panel affording him a considerable amount of time to consider the methodology used by

Mr 1. He therefore submitted that it would be both relevant and fair to admit Mr 1's evidence as hearsay. Mr Claydon submitted that Mr 1's witness statement was not sole or decisive evidence of the case but provide details of the initial investigation conducted into the allegations and it was decided that this could not move forward as a criminal prosecution. Therefore the investigation was returned to the Trust in order for an internal disciplinary investigation to take place which was conducted by Ms 2.

Mr Claydon therefore submitted that the panel can determine what weight to give to the evidence if the maker of the statement is unavailable to be cross-examined. He submitted that the issue of fairness could be addressed through the weight the panel attaches to Mr 1's evidence.

The panel accepted the advice of the legal assessor on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is 'fair and relevant,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel read Mr 1's witness statement before deciding this application.

The panel was satisfied that Mr 1's evidence was clearly relevant but it was not the sole or decisive evidence in relation to the charges.

It therefore moved on to consider the issue of fairness. The panel determined that admitting Mr 1's witness statement into evidence would not cause any unfairness to Mr Hull because he had been sent the documentation prior to the hearing. Further, it considered that Mr Hull was fully aware of Mr 1's witness statement and has provided comments on it within his own bundle which he has submitted to the NMC. This indicates that he has not objected to Mr 1's witness statement.

The panel considered that the NMC had made all reasonable efforts to contact and secure a substitute witness for Mr 1. However it accepted the reasons it was no longer possible for Mr 4 to participate in the hearing.



The panel concluded that in all the circumstances it would not be prejudicial to Mr Hull to admit the witness statement of Mr 1 into evidence.

### **Application for witness to give evidence by videolink under Rule 31(1)**

The panel heard an application made by Mr Claydon under Rule 31 of the Rules to allow Ms 3 to give her evidence by videolink. Mr Claydon explained that Ms 3 was unable to travel to London because of her family commitments. He submitted that it would be fair to allow Ms 3 to provide her evidence by videolink, and that her evidence could still be tested under cross-examination.

Rule 31 of the Rules provides that, so far as it is '*fair and relevant*,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The panel accepted the advice of the legal assessor.

The panel determined that the evidence of Ms 3's evidence is relevant and it then went on to consider whether it would be fair to admit her evidence by videolink.

The panel determined that Mr Hull would not be disadvantaged by allowing the application made by the NMC. In determining fairness, the panel considered whether videolink would be an appropriate means to receive Ms 3's evidence, and whether this would enable Mr Claydon and the panel to question Ms 3 and for the panel to assess her demeanour and form a view as to her credibility. The panel determined that the use of videolink was fair under the circumstances. The panel therefore granted the application to hear Ms 3's evidence by videolink.

### **Day 2 – Tuesday 14 May 2019**

#### **Written submissions from Mr Hull**

Mr Hull sent submissions by email on day 1 and day 2 which included a bundle of documents some of which duplicated the NMC documents. He provided a "reflection

statement”, a testimonial dated 4 March 2017, outcome of the disciplinary hearing dated 10 August 2017 and a “statement of response to charges part 2”.

Mr Claydon informed the panel that the documents submitted by Mr Hull include some correspondence which predate the charge period on 29 December 2014 and are not relevant to the charges. Having accepted the advice of the legal assessor, the panel decided that it would put any documentation submitted from Mr Hull which predates 29 December 2014 out of its mind.

## **Background**

The charges arose whilst Mr Hull was employed as a band 7 staff nurse at Southern Health and Social Care Trust (the Trust) from 1 December 2008 until 18 January 2018. Mr Hull was a clinical coordinator and had responsibilities for producing rosters for himself and the people he worked with. Following an agreement Mr Hull made with Colleague A, Patient Flow Coordinator/Clinical Coordinator, with whom he worked, it is alleged that he claimed overtime in excess of 5.36 hours per shift. Ms 3, Lead Nurse in Medicine at the Trust, stated in her witness statement that:

“The calculation used by Jonathan was not a recognised system of working out overtime and he had no authority from senior management to work it out in this matter”.

These matters came to light as a result of concerns raised by the Trust’s management due to the patient flow staffing budget being overspent. Upon review of what had increased that financial year, Mr Hull’s salary seemed to be inflated and a referral was made on 21 March 2016 to the Counter Fraud and Probitry Services (CFPS) and the case was given to Mr 1, a Graduate Counter Fraud Specialist, on 12 April 2016. The CFPS’s role was to investigate and report on cases with a view to gathering evidence of fraudulent activity and recommending further action based on the likelihood of a successful prosecution for a criminal offence. The Trust was concerned with the spike in the level of claims made by Mr Hull for overtime and allowances from 29 December 2014 to 3 January 2016. Mr 1’s investigation concluded that the overall total

overpayment claimed by Mr Hull was £9237.39. Mr 1 did not consider that this case would meet the standards for progression as a criminal prosecution because of issues concerning the robustness of the Trust's system. Mr 1 therefore recommended that this case be progressed as a disciplinary matter by the Trust.

This led to an investigation undertaken by Ms 2, Head of Service in the Medicine & Unscheduled Care Division at the Trust, which commenced in September 2016. It was found that Mr Hull had made overtime claims despite not having completed his required contractual hours of 37.5 in the relevant claimed period.

An investigation interview was held with Ms 2 and Mr Hull on 4 November 2016 and he was asked to explain the overtime claims and how he calculated his shifts. Mr Hull explained that he was told by Colleague A that in a given month each day equated to 5.36 hours. Colleague A has not worked for the Trust since February 2016. The conclusion of the Trust's investigation was that Mr Hull had claimed £5620.68 which he was required to pay back. The final figure was lower than the figure £9237.39 as identified by the CFPS and was adjusted as a result of the Trust's further investigation. Ms 2 disregarded discrepancies which could not be validated by the Trust.

A letter detailing the outcome of the disciplinary hearing was sent to Mr Hull on 10 August 2017. It stated that he owed the Trust £5620.68 which was £3260 net following deduction of tax and national insurance. Mr Hull reimbursed the Trust promptly and in full.

The NMC's position is that there was no basis for Mr Hull's action involving him making a unilateral decision to claim overtime when he had not worked his contractual hours of 37.5 per week and therefore he had acted dishonestly as stated in charge 2. The NMC submitted that Mr Hull exploited his position of trust in his role and took advantage of the poor recording system at the Trust for his own personal gain.

## **Evidence**

The panel heard oral evidence from two witnesses called on behalf of the NMC.

Witnesses called on behalf of the NMC were:

- Ms 2, employed as Head of Service in the Medicine & Unscheduled Care Division at the Trust. Ms 2 led the Trust's investigation into the allegations.

Ms 2 told the panel that she expected all nurses to be very familiar with the process of recording overtime on timesheets manually because in November 2014 there was a change in the process. Ms 2 said that Mr Hull was in a team of 23 band 7 nurses who had received induction training on the new guidance on the new overtime system. Ms 2 said that the band 7 nurses were responsible for recording their overtime hours independently on their timesheets. The timesheets would then be passed to a band 3 administrative staff member who was responsible for transcribing the timesheets into a master spreadsheet. This master spreadsheet would then be sent to the finance department. Ms 2 also said that designated staff were available to advise anyone who was having difficulty in using the new overtime system. She said that she was sure the training and resources available were sufficient and therefore overtime errors would be unlikely. Ms 2 said she expected band 7 nurses who were in a senior position to abide by the NMC code of conduct, namely, honesty and integrity, when submitting their timesheets. Ms 2 said not all the timesheets were checked by a line manager because it would require a significant amount of time to do this. However, Ms 2 said that spot checks did take place to ensure the spreadsheet reflected the accuracy of the timesheets. Ms 2 said that she believed that Mr Hull fully understood the overtime system because in the investigation meeting she asked him what constituted overtime and he stated "anything above 37.5 hours" and therefore she was sure he fully understood the overtime system.

Ms 2 said that she was responsible for conducting the Trust's internal investigation into the allegations. Ms 2 said that she asked Mr Hull how he had calculated the number of excess hours he claimed. Ms 2 said that Mr Hull responded by stating that he used a combination of his work roster and a calendar at home to calculate his overtime hours. Ms 2 said that there were no issues found with the timesheets of

the other 21 band 7 nurses in the team and the concerns related to only Mr Hull and Colleague A. Ms 2 said that Colleague A had left the Trust before the internal investigation commenced and had moved abroad permanently.

Ms 2 concluded that the overtime pay claimed by Mr Hull amounted to £5620.68 gross which equates £3260 net and not £9237.39 gross as stated by Mr 1. Ms 2 explained that the Trust's records were manual and were not easy to analyse. She said that whenever there was any ambiguity in the manual records from which she could not come to a conclusion, it was decided that this would be reflected in favour of Mr Hull thereby leading to the reduction in money owed to the Trust.

Ms 2 said that she is not aware of any rationale that would lead to band 7 nurses concluding that when they have worked in excess of 5.36 hours per shift that overtime would follow. Ms 2 said that she does not expect band 7 nurses to claim overtime hours when they have not worked their required contractual hours of 37.5. In response to Mr Hull's assertion that he worked 20 continuous hours a week, Ms 2 stated that the Trust would not allow a staff member to work 20 continuous hours this was not Trust policy and in any case would contradict health and safety provisions.

### **Day 3 – Wednesday 15 May 2019**

#### **Written submissions from Mr Hull**

On day 3 Mr Hull sent further submissions which included an email regarding time off in lieu (TOIL) dated 25 August 2017 and a bundle that had been previously prepared by Mr Hull's former barrister in May 2017.

Mr Claydon submitted that large parts of Mr Hull's submissions relate to TOIL which does not form part of the charges. Accordingly, the panel did not consider any documentation relating to TOIL in its fact finding exercise.

#### **Evidence**

- Ms 3, Lead Nurse in Medicine at the Trust

Ms 3 said that all staff had access to the Trust's intranet which included the Agenda for Change terms and conditions regarding the completion of monthly timesheets for overtime payment.

Ms 3 said that overtime is only payable for staff who have worked above the contracted 37.5 hours per week. She said that it would not be appropriate for any staff member to claim overtime unless they had completed their 37.5 contracted hours. She said given that Mr Hull was a band 7 nurse and had worked at the Trust for a substantial number of years, he would have been fully aware of the overtime system.

In relation to charge 1, Ms 3 said she had no knowledge of the method Mr Hull used to arrive at the figure 5.36.

Ms 3 stated that she was unaware of nurses working 20 hours at the Trust as asserted by Mr Hull.

Ms 3 explained the overtime system to the panel. She said that the band 7 nurses would fill in their timesheets independently and these timesheets would be sent to a band 3 admin staff member. Ms 3 said that the band 3 admin staff member and Colleague A were responsible for uploading the information recorded in the timesheets on the matrix which is the "group spreadsheet". She said the group spreadsheet included the hours of all 23 band 7 nurses, medical assistants and other junior staff which totalled to 40 staff members. Ms 3 said that the finalised group spreadsheet would be sent to herself. She would then conduct randomised checks to ensure that the group spreadsheet reflected the accuracy in the roster. Ms 3 said that once she had completed her check, the group spreadsheet was sent to payroll.

Ms 3 said that the band 7 nurses team had a combination of different responsibilities. She said that there were some band 7 nurses who only managed patient flow and others had dual responsibilities which included patient flow, night shifts and clinical

coordinator responsibilities. Ms 3 said that in Mr Hull's role he predominantly worked as a clinical coordinator. Ms 3 said that if Mr Hull was not available, there were other nurses who were able to perform the same duties.

Ms 3 said that generally overtime was allocated at short notice. She said that the band 7 nurses would receive a text message or phone call informing them of the shifts that required covering. Ms 3 said that Mr Hull and Colleague A were the two nurses that were most supportive and accommodating to filling the staff gaps at the Trust. Ms 3 said that whenever nurses offered to do overtime, they were required to document it by annotating the changes on the roster and complete their own timesheet.

The panel asked Ms 3 if Mr Hull had the authority to allocate overtime to himself. Ms 3 said that Mr Hull was a band 7 nurse at the Trust, staff members occasionally contact band 7 nurses to call in sick. Ms 3 said that if a band 7 nurse had this knowledge they would step in to attempt to cover that shift however this was not something that happened regularly. Ms 3 said that if Mr Hull noticed that cover was required whilst he was producing the rosters, he would need to discuss this with the team and a decision on who did overtime would be made collectively.

Ms 3 said that Mr Hull and Colleague A were colleagues. She said that Colleague A did not have any managerial responsibility for Mr Hull.

Mr Claydon asked Ms 3 if she recalled Mr Hull apologising to her regarding charge 1. He referred Ms 3 to Mr Hull's statement which stated:

"I apologised to [Ms 3] in person during my return to work meeting with her in January 2017"

Ms 3 said that she does not recall Mr Hull apologising to her.

Ms 3 said that she had a good relationship with Mr Hull. She said that she admired his clinical skills and had no reason not to trust him. Ms 3 said that she was fully confident in his nursing abilities to provide safe and effective care and she had no concerns about

his role. Ms 3 said that when she found out about the allegations she was shocked and disappointed.

### **Decision on the findings on facts and reasons**

The panel heard and accepted the advice of the legal assessor. The panel considered Mr Claydon's submissions and the written submissions provided by Mr Hull.

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 is satisfied that it was more likely than not that the incidents occurred as alleged.

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case. The panel considered oral evidence from two witnesses called on behalf of the NMC.

The panel first considered the overall credibility and reliability of the witnesses it heard from, noting that Mr 1's evidence was corroborated by the live witnesses to the amount of £5620.68.

The panel found Ms 2 to be a credible and reliable witness. It considered that she answered the questions put to her clearly and to the best of her ability. She was helpful, candid and balanced.

The panel found Ms 3 to be a credible and reliable witness. It considered her to be fair, balanced and consistent with her witness statement. She gave a reasonable account of events and answered the questions put to her clearly.

The panel then went on to consider each charge separately and made the following findings:



## Charge 1

Submitted overtime claims for hours worked in excess of 5.36 hours per shift.

**This charge was found PROVED.**

In reaching its decision the panel considered the documentation provided by Mr Hull.

The panel had sight of Mr Hull's reflection statement which stated:

*"I openly admit, now looking back, that I made numerous errors in the way I submitted and calculated my overtime. My thinking was obviously confused, and I did not realise this at the time. I stated to [staff member] and [Ms 2] that there were several ways to calculate overtime. I now know that it should have been calculated as hours over and above 37.5hrs per week and not calculated on a monthly basis of hours in excess of the number of days in a month multiplied by 5.36 as advised by my colleague [Colleague A] who was given responsibility for the inputting of individuals hours onto the group time sheet for submission to our manager to cross check against the rota and sign off accordingly. There were weeks when I did submit hours correctly over and above 37.5 hrs but there were numerous weeks where this was not the case. I was clearly unsure how to correctly claim my overtime. At the time I did try and locate a trust policy for the claiming of annual leave on the trust intranet system. I could not locate one because, as noted by the NMC, a trust policy on overtime submission did not exist. It transpires that I should have dug deeper and studied in great detail the Agenda for change handbook whereby I would locate the correct overtime policy. Once again I acted in a lazy manner by not looking into the matter further. Instead I listened to my colleague [Colleague A]. His version seemed to make sense to me at the time. This is due to the fact that we submitted all overtime and unsocial hours on a monthly basis and it a weekly basis as per hours over and above 37.5hrs. I openly acknowledge that a lack of knowledge is no excuse for such errors made in calculating overtime. I should have questioned [Colleague A] further as to how he came to this method of submission, I have an email for*

*submission from [Colleague A] that states that is how he calculated overtime submission...*

Further the panel noted that Mr Hull stated:

*"I fully acknowledge and understand that the errors I have made..."*

*"As soon as the amount that I was deemed to have been overpaid, to the total of £3600, was requested to be paid back I paid the trust back the amount in full and immediately."*

The panel considered Mr Hull's statements to be an admission to charge 1.

In addition, the panel considered the oral evidence it heard from Ms 2 and Ms 3 who both stated that the methodology used by Mr Hull was not recognised at the Trust. The panel also noted that Mr Hull did not provide any supplementary evidence supporting the legitimacy of his methodology which led to him claiming overtime in excess of 5.36 hours per shift. Therefore based on the evidence it has before it, the panel found the charge to be proved.

## **Charge 2**

Your actions in charge 1 were dishonest as you were aware that valid overtime claims could only be made for hours exceeding 37.5 hours per week.

**This charge was found PROVED.**

In reaching its decision, the panel first considered that Mr Hull had worked at the Trust since 2008 and more recently had a role senior as a band 7 nurse. The panel was therefore of the view that Mr Hull had considerable experience working at the Trust and also had clinical coordinator duties which involved producing rosters and having knowledge of timesheets as stated by Ms 2 and Ms 3 in their oral evidence. The panel

referred to Mr Hull's statement of the investigation interview held with Ms 2 on 4 November 2016 which demonstrates his understanding of overtime. He stated:

"I was then asked to confirm what my understanding of overtime I was. I stated that overtime was claimed for hours worked over and about 37.5 in a week or 166 hours in a month."

The panel then went on to consider the terms and condition changes of the overtime system that were made in November 2014. It reminded itself of Ms 2 and Ms 3's oral evidence who both stated that all staff members received training and had access to the new guidance on completing timesheets. The panel had sight of the Trust's guidance entitled "Guidance on completion of Revised Monthly Individual Electronic Timesheets" and concluded that it was a clear informative document that Mr Hull would be able to understand if he faced any difficulties when filling in his timesheet. It therefore considered that Mr Hull's explanation that his miscalculations were a result of "laziness born out of stress and exhaustion" was not credible.

The panel bore in mind that the team in which Mr Hull worked consisted of 23 band 7 nurses and concerns were only raised into Mr Hull and another nurse's timesheet, overtime hours and salaries. Therefore, the panel was of the view that the calculations of overtime hours were not a result of any error but rather were purposeful acts for personal gain. The panel also reminded itself of the documentary evidence from the CFPS and the oral evidence of Ms 2 and Ms 3, all stated that the Trust's internal systems lacked robustness.

The panel concluded that given Mr Hull's knowledge of timesheets and overtime, his senior trusted position and experience at the Trust combined with the lack of robustness in the systems at the Trust, it was more likely than not that Mr Hull deliberately intended to take advantage of his position and acted in a dishonest way in respect of charge 1. It therefore found charge 2 proved.

## **Day 4 – Thursday 16 May 2019**

### **Submissions on misconduct and impairment:**

Having announced the facts found, the panel then moved on to consider, whether the facts proved amount to misconduct and, if so, whether Mr Hull'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.

Mr Claydon invited the panel to take the view that Mr Hull's conduct amounted to a serious breach of NMC codes of practice in force at the material time; The Code: Standards of conduct, performance and ethics for nurses and midwives 2008; The Code: Professional standards of practice and behaviour for nurses and midwives 2015 ("the Code"). He then directed the panel to specific paragraphs and identified where, in the NMC's view, Mr Hull actions amounted to misconduct.

In relation to charge 1, Mr Claydon submitted that Mr Hull's actions involved an abuse of trust in his position as a band 7 nurse over a significant period of time. He submitted that Mr Hull repeatedly manipulated the rosters and the payroll system in order to facilitate his claims for overtime hours, for his own personal gain. Mr Claydon also submitted that Mr Hull's actions may have involved collusion with another colleague.

In relation to both charges, Mr Claydon submitted that Mr Hull's conduct demonstrated a lack of honesty and integrity which are fundamental tenets of the nursing profession.

Mr Claydon submitted that Mr Hull clearly demonstrated a significant failing, falling short of the standard to be expected of a registered nurse and that a finding of misconduct should necessarily follow.

Mr Claydon then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. Mr Claydon submitted that given that Mr Hull's misconduct does not involve clinical concerns, there

are no public protection issues in this case. It is a public interest case only and the panel must have regard to 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 case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) and submitted that limbs b, c and d were engaged.

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

The panel exercised its independent judgement and adopted a two-stage process in its consideration, as advised. The first stage is to determine whether the facts found proved amount to misconduct. Secondly, if the facts found proved amount to misconduct, the panel went on to consider whether, in all the circumstances, Mr Hull's fitness to practise is currently impaired as a result of that misconduct.

### **Decision on misconduct**

When determining whether the facts proved amount to misconduct the panel had regard to the terms of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) specifically:

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

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

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

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 was of the view that Mr Hull's dishonest conduct went against the tenets of the nursing profession.

The panel considered that the dishonest actions were carried out on numerous occasions in the course of Mr Hull's work. He abused his trusted senior position as a band 7 nurse over a significant period of time for his own personal gain. It considered Mr Hull intended to take advantage of the lack of robust procedures within the overtime process which were in place at that time at the Trust. The panel considered that Mr Hull's actions had breached the trust of his colleagues, and he had sought to deprive the NHS of financial resources. The panel noted that the matters in this case did not relate to Mr Hull's clinical practice, but nonetheless found that his conduct was fraudulent and dishonest.

The panel found that Mr Hull's actions fell seriously short of the conduct and standards expected of a nurse and therefore amounted to serious misconduct.

### **Decision on impairment**

The panel next went on to decide whether, as a result of this misconduct, Mr Hull'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 open and honest 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 *Grant* in reaching its decision, in paragraph 74 she said:

In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold

proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, 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. 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 considered that the first limb of the Grant test was not engaged in this case as there was no suggestion that Mr Hull's clinical practice was deficient and no evidence that individual patients had suffered any emotional or financial harm in his care. However, the panel considered that the subsequent three limbs of the test were engaged.

The panel found that Mr Hull's misconduct has brought the nursing profession into disrepute by his breaches of the fundamental tenets of the nursing profession. Mr Hull has been found to have acted dishonestly.

The panel considered that there was negligible evidence that Mr Hull had demonstrated any insight in relation to his actions and their consequences. The panel considered the two statements it had before it from Mr Hull, and took the view that Mr Hull had not sought to accept responsibility for his actions, but to blame it on others. The panel noted that there is no evidence that Mr Hull has expressed any remorse for his actions. Mr Hull has stated:

“At no point during the period in question did I act in a dishonest fashion...”

The panel noted that there was no evidence that Mr Hull has taken any steps to remedy his conduct. It noted that dishonesty involves attitudinal issues and, although it made no adverse inference from Mr Hull's non-attendance, noted that it had not had the benefit of any live evidence from Mr Hull, nor any evidence demonstrating insight, remorse and remediation. The panel considered that there was no evidence to suggest that Mr Hull would not repeat the misconduct in question, or that he had taken steps to reduce the risk of repeating the misconduct in question.

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 determined that, in this case, a finding of impairment on public interest grounds is required; the trust, honesty and integrity which the public expects of nurses has been breached by Mr Hull's misconduct. The panel further considered that, were Mr Hull's fitness to practise found not to be impaired, such a finding would undermine public confidence in the profession and the NMC as a regulator.

Having regard to all of the above, the panel has determined that that Mr Hull's fitness to practise is currently impaired by reason of his misconduct.

### **Day 5 – Friday 17 May 2019**

#### **Submissions on sanction**

Mr Claydon outlined the aggravating and mitigating factors in the case to the panel.

Mr Claydon suggested that the panel impose a striking-off order, so as to reflect the seriousness of the matters found proved and in the absence of any information as to insight or remediation.

Mr Claydon invited the panel to consider the NMC's Sanctions Guidance (SG) on cases involving dishonesty. He submitted that Mr Hull's actions were premeditated, systematic and a longstanding deception and therefore the dishonesty in this case was at the higher end of the spectrum.

Mr Claydon reminded the panel that Mr Hull's "reflection statement" states clear denial of his dishonesty. He has not provided any evidence of insight or remediation and submitted that his misconduct indicates a deep-seated, attitudinal issue. It was his submission that Mr Hull's actions were fundamentally incompatible with ongoing registration.

#### **Determination on sanction:**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Hull off the register. The effect of this order is that the NMC register will show Mr Hull 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 took into account the submissions made by Mr Claydon and Mr Hull's written submissions.

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

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, it may have such consequences. The panel had careful regard to the SG published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement and its obligation to uphold the public interest.

The panel considered the following aggravating and mitigating factors:

### **Aggravating features**

- the dishonest misconduct took place over a long period of time;
- the misconduct amounted to an abuse of a position of trust;
- there is minimal evidence of insight on Mr Hull's part;
- there is no evidence of remorse;
- Mr Hull blamed and continues to blame others;
- Mr Hull's dishonest misconduct was premeditated rather than opportunistic;
- Mr Hull may have engaged in collusion with another colleague;
- Mr Hull has betrayed his colleagues' trust, as well as that of the NHS as a whole

### **Mitigating features**

- prior to this incident, Mr Hull's colleagues had considered him to be an excellent nurse as stated by Ms 2 and Ms 3;
- Mr Hull has repaid the claimed money in question back to the Trust; and
- there is no evidence of any previous regulatory concerns about Mr Hull or any concerns about his clinical practice.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, 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 Fitness to Practise Committee wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Hull'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 Mr Hull's registration would be a sufficient and appropriate response. The panel noted that no area of Mr Hull's clinical practice had been called into question. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining, as the dishonesty in question involves evidence of attitudinal problems. Furthermore the panel concluded that the placing of conditions on Mr Hull's registration would not adequately address the seriousness of this case, or the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel noted that Mr Hull has not demonstrated any insight into his dishonest conduct and has attempted to shift responsibility for his actions onto

his colleagues which is indicative of attitudinal issues. The panel was not satisfied that Mr Hull does not pose a significant risk of repeating his behaviour. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Hull's actions is fundamentally incompatible with him remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Before considering a striking off order, the panel had sight of the SG's provisions on dishonesty. The panel found the following bullet points engaged in this case:

- Deliberately breaching the professional duty of candour...
- Misuse of power, given Mr Hull's senior position as a band 7 nurse at the Trust;
- Personal financial gain from a breach of trust; and
- Mr Hull unilaterally and dishonestly changed the method he used to calculate his overtime claims. This indicates that his actions were premeditated, systematic and a longstanding deception.

The panel noted that Mr Hull has not shown any remorse for his actions. Therefore the panel considers that he remains in a position of risk with regards to his misconduct. The panel concluded that, although dishonesty is a serious matter in any case, Mr Hull's misconduct was at the higher end of the spectrum of dishonesty.

Finally, in looking at a striking-off order, the panel took into account the following sections of the SG:

**Key considerations are:**

- Can public confidence in the professions and the NMC 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 the public interest?
- is the seriousness of the case incompatible with ongoing registration?

The panel determined that each of these three bullet points are engaged in this case.

The panel noted that Mr Hull's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with Mr Hull remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Hull's actions were serious. To allow him 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 Mr Hull's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse. This is so, particularly in light of Mr Hull's lack of remorse, apology or understanding of the seriousness of his actions.

### **Determination on Interim Order**

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

The panel accepted the advice of the legal assessor.

The panel was satisfied that the imposition of an interim suspension order is necessary on public interest grounds. The panel took into account the high bar which must be reached in order to impose such an order. 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 Mr Hull is sent the decision of this hearing in writing.

That concludes this determination.