

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

Substantive Hearing
Monday 16 May 2022 – Thursday 19 May 2022
Monday 23 May 2022 – Thursday 26 May 2022
Monday 31 October 2022 – Wednesday 2 November 2022

Virtual Hearing

Name of registrant: Nimrah Riaz

NMC PIN: 19A0838E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – (February 2019)

Relevant location: Bolton and Lancashire

Type of case: Misconduct

Panel members: Richard Youds (Chair, Lay member)
Jonathan Coombes (Registrant member)
Michael Glickman (Lay member)

Legal Assessor: John Caudle (16 May 2022 – 26 May 2022)
Ian Ashford-Thom (31 October 2022 – 2
November 2022)

Hearings Coordinator: Leigham Malcolm (16 May 2022 – 26 May 2022)
Charis Benefo (31 October 2022 – 2 November
2022)

Nursing and Midwifery Council: Represented by Vishal Misra, Case Presenter (16
May 2022 – 26 May 2022)
Represented by Dominic Bardill, Case Presenter
(31 October 2022 – 2 November 2022)

Miss Riaz: Not present and not represented in absence

Facts proved: 1a, 1b, 2a, 2b, 3a, 3b, 3d, 3e, 4, 5, 6a, 6b, 6c, 6d,
7a, 7b, 7c, 8a, 8b, 9b, 10a, 10b, 10c, 11, 12 and
13

Facts not proved: 3c and 9a

Fitness to practise:

Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed that Miss Riaz was not in attendance and that the Notice of Hearing letter had been sent to her registered email address on 5 April 2022.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates, and a link to join the virtual meeting. Amongst other things it included information about Miss Riaz's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Miss Riaz

The panel had regard to Rule 21 and considered whether it should proceed in the absence of Miss Riaz.

Mr Misra referred the panel to a number of emails, and an attempted telephone call, all to illustrate the NMC's efforts to contact and engage Miss Riaz. In particular, Mr Misra referred the panel to an email from Miss Riaz on 5 December 2019 which she prepared for an interim order hearing which took place on 9 December 2019.

Mr Misra informed the panel that subsequent to receiving this email on 5 December 2019, the NMC had made several unsuccessful attempts to contact and engage Miss Riaz. He informed the panel that the NMC had made efforts to contact Miss Riaz via telephone, however, her registered telephone number was unavailable. In these circumstances, Mr Misra invited the panel to continue in Miss Riaz's absence.

The panel accepted the advice of the legal assessor.

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

Prior to the panel making a decision, the hearing coordinator attempted to contact Miss Riaz via telephone. However, Miss Riaz's registered telephone number was no longer in use and the call failed.

In all the circumstances, the panel decided to proceed in the absence of Miss Riaz. In reaching this decision, the panel considered the submissions of Mr Misra and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Riaz;
- Miss Riaz has not engaged with the NMC since 5 December 2019 and has not responded to any of the letters sent to her about this hearing;
- Miss Riaz has not provided the NMC with any updated details of how she may be contacted other than her registered contact details;
- Miss Riaz has a duty to provide the NMC with up-to-date contact details;
- In light of the above four points, there is no reason to suppose that adjourning would secure her attendance at some future date;

- Seven witnesses have been organised to give live evidence;
- Not proceeding may inconvenience the witnesses, their employers 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; and
- There is a strong public interest in the expeditious disposal of the case.

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. In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Riaz.

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

Mr Misra made a request that any information relating to Patient A be heard in private so as to protect the identity of Patient A, who is a vulnerable individual. The application was made pursuant to Rule 19.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel considered the application and decided that any information whatsoever relating to Patient A, including the kind of accommodation Patient A resided in and its location, should be heard in private so as to protect Patient A's identity and the location of their residence.

Details of charge [as amended]

That you, a Registered Nurse:

- 1) On one or more of the following days you received occupational sick pay from the Bolton Trust when you worked at Lancashire Foundation Trust.
 - a) 22 December 2018
 - b) 11 February 2019

- 2) On one or more of the following dates you inaccurately signed a return to work interview form to confirm that you had not worked for another organisation.
 - a) 25 December 2018
 - b) 1 March 2019

- 3) For one or more of the following dates you received payment from one or both of Bolton Trust and Lancashire Foundation Trust for work you had not carried out.
 - a) 17 December 2018
 - b) 28 January 2019
 - c) 6 February 2019
 - d) 13 February 2019
 - e) 22 February 2019

- 4) Your actions at charge one and/or two were dishonest as you knew you had represented to Bolton Trust you were too sick to work and then worked at Lancashire Trust.

- 5) Your actions at charge three were dishonest as you received payment from Bolton Trust and Lancashire Foundation Trust when you knew you had not worked both shifts.

- 6) On one or more of the following dates you visited Patient A at Fortalice Refuge without clinical justification:
 - a) 13 July 2019
 - b) 14 July 2019
 - c) 24 July 2019
 - d) 25 July 2019

- 7) On 13 July 2019 you represented that you had a clinical justification for attending Fortalice when you did not by:
 - a) wearing a name badge
 - b) Introducing yourself as a nurse
 - c) telling staff you had come to check on Patient A

- 8) On one or more of the following dates you signed a Fortalice Visitors and Professionals confidentiality statement.
 - a) 13 July 2019
 - b) 24 July 2019

- 9) On one or more of the following dates you accessed Patient A's Partnership Working Log when you were no longer involved in her care.
 - a) 24 July 2019
 - b) 25 July 2019

- 10) On one or more of the following dates you made an entry in the Fortalice visitor log when you were no longer involved in Patient A's care.
 - a) 13 July 2019
 - b) 24 July 2019
 - c) 25 July 2019

- 11) On 25 July 2019 passed cigarettes to Patient A.

12) Your actions at one or more of charges six to eleven above breached professional boundaries.

13) Your actions at one of more of charges six to ten were dishonest in that you were misleading staff at Patient A's accommodation that were visiting Patient A in your professional capacity as a nurse in order to gain unauthorised access.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Misra to amend the wording of charges 9 and 10. The proposed amendment was as follows:

*9. On one or more of the following dates you accessed Patient A's **Partnership Working Log records** when you were no longer involved in her care.*

a) 24 July 2019

b) 25 July 2019

*10. On one or more of the following dates you made an entry in **the Fortalice Patient A's professional** visitor log when you were no longer involved in **Patient A's** her care.*

a) 13 July 2019

b) 24 July 2019

c) 25 July 2019

It was submitted by Mr Misra that the proposed amendment would provide clarity and more accurately reflect the evidence before the panel.

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

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Miss Riaz and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on facts

The charges arose whilst Miss Riaz was employed as a registered nurse by The Royal Bolton Hospital, Bolton NHS Foundation Trust (the Bolton Trust). The NMC received a referral on 25 November 2019 alleging that Miss Riaz had dishonestly received occupational sick pay from the Trust for periods at which she had been undertaking paid shifts at Lancashire Teaching Hospital NHS Trust (the Lancashire Hospital), as set out in the charges.

The referral further alleged that Miss Riaz breached professional boundaries in relation to a former patient who resided at Fortalice Refuge, a refuge for women (the Refuge). The referral alleged Miss Riaz misled staff in order to gain access to the women's refuge, contrary to their policies, accessed the former patient's records without reason or authority, and breached professional boundaries, as set out in the charges.

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 Misra on behalf of the NMC. The panel has drawn no adverse inference from the non-attendance of Miss Riaz.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Mr 1, Registered nurse and Matron at Royal Bolton Hospital who conducted the internal investigation;

- Ms 2, Support Worker at Fortalice Refuge;
- Ms 3, Receptionist and Administrator at Fortalice Refuge;
- Ms 4, Operations Manager at Fortalice Refuge;
- Ms 5, Counter Fraud Specialist Manager for Bolton NHS Foundation Trust;
- Ms 6, Temporary Staffing Manager at Lancashire Teaching Hospital NHS Trust;
- Ms 7, Mental Health Coordinator at Fortalice Refuge.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary and oral evidence provided.

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

Charge 1

- 1) *On one of more of the following days you received occupational sick pay from the Bolton Trust when you worked at Lancashire Foundation Trust.*

Charge 1a

- a) *22 December 2018*

The panel took account of all of the evidence before it, including the oral evidence of Ms 5 and the transcript of Miss Riaz's interview under caution on 23 October 2019.

There was evidence before the panel that Miss Riaz had self-certificated sick leave from the Bolton Trust on 22 December 2018, namely the return to work interview notes for the absence. The panel also saw copies of the electronic roster demonstrating that Miss Riaz

worked at the Lancashire Hospital on 22 December 2018. Further, Miss Riaz, in an interview under caution on 23 October 2019, stated:

'What I understood was obviously like as long, obviously I'm rostered to work a certain shift, yeah. [PRIVATE] Obviously these...like from the Lancs Teaching Hospitals I had booked shifts from ages ago and then obviously like all I understood this was that I'm not, obviously I've not done any unpaid work whilst I was rostered.'

On the basis of the evidence before it, the panel was satisfied that Miss Riaz did work at the Lancashire Hospital on 22 December 2018 whilst receiving occupational sick pay from the Bolton Trust.

This charge is found proved.

Charge 1b

b) 11 February 2019

The panel took account of audit details of shifts for both the Lancashire Hospital and the Bolton Trust on 11 February 2019. From the audit details the panel observed that Miss Riaz was on the roster to work at both the Lancashire Hospital and the Bolton Trust on 11 February 2019.

Based on the evidence before it, the panel was satisfied that Miss Riaz did work at the Lancashire Hospital on 11 February 2019 whilst receiving occupational sick pay from the Bolton Trust.

This charge is found proved.

Charge 2

2) *On one or more of the following dates you inaccurately signed a return to work interview form to confirm that you had not worked for another organisation.*

Charge 2a

a) *25 December 2018*

The panel took account of a return to work interview form, which recorded that Miss Riaz had been absent from work from 20 December 2018 until 24 December 2018 and returned to work on 25 December 2018. The form included the statement '*I declare that I have not undertaken any unpaid/paid work during this period of absence*'. It was signed by Miss Riaz and dated 25 December 2018.

On the evidence before it, the panel was satisfied that Miss Riaz signed the form as set out in the charge. It therefore found charge 2a proved.

This charge is found proved.

Charge 2b

b) *1 March 2019*

The panel took account of a similar return to work interview form, which recorded that Miss Riaz had been absent from work on 11 February 2019. Again, the form was signed by Miss Riaz and dated 1 March 2019.

On the evidence before it, the panel was satisfied that Miss Riaz signed the form as set out in the charge. It therefore found charge 2b proved.

This charge is found proved.

Charge 3

3) *For one or more of the following dates you received payment from one or both of Bolton Trust and Lancashire Foundation Trust for work you had not carried out.*

Charges 3a – e

- a) 17 December 2018*
- b) 28 January 2019*
- c) 6 February 2019*
- d) 13 February 2019*
- e) 22 February 2019*

The panel had regard to shift rotas from Lancashire Hospital on which Miss Riaz had been assigned shifts on the dates set out in Charges 3a – 3e. It also heard evidence from Ms 6 who clarified the Lancashire Hospital's systems and processes for bank working and subsequent payment. There was also evidence before the panel of payments made to Miss Riaz for shifts at the Bolton Trust that she could not have undertaken as she was working at Lancashire Hospital.

On the basis of the evidence before it, the panel found charges 3a, 3b, 3d and 3e proved.

With regards to the shifts claimed on 6 February 2019, the panel heard evidence from Ms 6 that it was possible Miss Riaz could have been allowed to finish work early at the Lancashire Hospital if she had not taken her breaks during the shift. If that was the case, then Miss Riaz could have had sufficient time to make her way to the Bolton Trust and commence her shift without there being any overlap.

The panel therefore found charge 3c not proved.

Charges 3a, 3b, 3d and 3e are found proved. Charge 3c is found not proved.

Charge 4

- 4) *Your actions at charge one and/or two were dishonest as you knew you had represented to Bolton Trust you were too sick to work and then worked at Lancashire Trust.*

The panel had regard to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards dishonest'.

In relation to charges 1a and 1b, the panel considered whether the actions of Miss Riaz were dishonest in the light of the above judgment.

The panel was satisfied that Miss Riaz must have known that she should not have been working at Lancashire Hospital when she had reported sick to Bolton Trust. By doing so, she received not only her shift payment from Lancashire Hospital, but also her occupational sick pay, to which she must have known she was not entitled.

During her interview under caution, Miss Riaz stated she had not realised that she was not permitted to work whilst she was receiving sick pay and offered to repay the occupational sick pay. The panel heard evidence from Ms 5 that no such repayment had been made by Miss Riaz, which the panel considered undermined the claim that this was an innocent mistake. In the circumstances, the panel was satisfied that Miss Riaz received the sick pay from Bolton Trust when she knew she was not entitled to it because she had worked for and been paid by the Lancashire Hospital.

Further, the panel noted that Miss Riaz booked a shift at Lancashire Hospital on 11 February 2019 and then immediately called in sick to Bolton Trust. The panel considered that this was dishonest as Miss Riaz must have realised that she was not entitled to sick pay.

In relation to charges 2a and 2b, the panel was further satisfied from the documentary evidence provided that Miss Riaz signed both return to work forms. In doing so she confirmed that she had not worked anywhere else during her periods of sick leave. As she had in fact worked at the Lancashire Hospital, she was dishonest on both forms.

The panel was satisfied that Miss Riaz's actual state of mind as to knowledge or belief as to the above facts would be regarded as dishonest by the standards of ordinary decent people.

The panel therefore found this charge proved.

This charge is found proved.

Charge 5

- 5) *Your actions at charge three were dishonest as you received payment from Bolton Trust and Lancashire Foundation Trust when you knew you had not worked both shifts.*

The panel heard evidence from Ms 6 that payslips were provided both electronically and in a paper form. The panel bore in mind Miss Riaz's claim in her interview under caution that she found the payslips difficult to understand and so didn't check them. However, the panel considered Miss Riaz's claim to be inconsistent because she also stated that she was not paid for some shifts that she had undertaken, and, therefore, must have checked her payslips to know this.

The panel acknowledged that the payslips did not indicate which days Miss Riaz had worked and only the total number of hours. However, the panel did not believe that Miss Riaz had failed to notice that she was receiving pay for hours that she had not worked.

The panel determined, on the balance of probabilities, that Miss Riaz must have been aware that she had been paid for shifts that she had not worked. She must have known this was dishonest and the panel was satisfied that it would also be regarded as dishonest by the standards of ordinary decent people.

This charge is found proved in relation to 3a, 3b, 3d and 3e.

Charges 6a – 6d

- 6) *On one or more of the following dates you visited Patient A at Fortalice Refuge without clinical justification:*

- a) *13 July 2019*
- b) *14 July 2019*
- c) *24 July 2019*
- d) *25 July 2019*

The panel took account of the oral evidence of Ms 3, Ms 4 and Ms 6 who all confirmed that they had seen CCTV footage of Miss Riaz visiting Patient A at the Refuge. This was also confirmed by visitor logs from the Refuge which showed that Miss Riaz had visited on the dates set out in the charge. The panel also bore in mind that in Miss Riaz's response to the internal investigation, she accepted that she visited on the dates charged.

Miss Riaz was not involved or responsible for the provision of any care to Patient A after her discharge from hospital and therefore she had no clinical justification for making the visits. On the evidence before it, the panel found charges 6a – 6d proved.

Charges 6a – 6d are found proved

Charge 7

7) On 13 July 2019 you represented that you had a clinical justification for attending Fortalice when you did not by:

Charge 7a

a) wearing a name badge

The panel took account of Miss Riaz's response to the internal investigation in which she admits to wearing her nursing uniform and name badge when visiting the Refuge on 13 July 2019. In view of this evidence the panel found the charge proved.

This charge is found proved.

Charge 7b

b) Introducing yourself as a nurse

The panel took account of the visitor logs for the Refuge on which Miss Riaz had signed her name along with her nursing qualification. On the evidence before it the panel found charge 7b proved.

This charge is found proved.

Charge 7c

c) telling staff you had come to check on Patient A

In view of Miss Riaz's response to the internal investigation in which she admits to wearing her nursing uniform and name badge when visiting the Refuge on 13 July 2019, along with the visitor log for the Refuge on which Miss Riaz has signed her name and nursing qualification, as well as witness evidence from Ms 2 and Ms 3, the panel was satisfied that Miss Riaz told staff that she had come to check on Patient A.

On the evidence before it the panel found charge 7c proved.

This charge is found proved.

Charge 8

8) On one or more of the following dates you signed a Fortalice Visitors and Professionals confidentiality statement.

Charge 8a

a) 13 July 2019

The panel had before it a copy of a document titled '*Fortalice Visitors and Professionals confidentiality statement*' signed by Miss Riaz and dated 13 July 2019. In view of this evidence the panel found charge 8a proved.

This charge is found proved.

Charge 8b

b) 24 July 2019

The panel had before it a copy of a document titled '*Fortalice Visitors and Professionals confidentiality statement*' signed by Miss Riaz and dated 24 July 2019. In view of this evidence the panel found charge 8b proved.

This charge is found proved.

Charge 9

9) On one or more of the following dates you accessed Patient A's Partnership Working Log when you were no longer involved in her care.

Charge 9a

a) 24 July 2019

There was no evidence before the panel to support this charge. It therefore found charge 9a not proved.

This charge is found NOT proved.

Charge 9b

b) 25 July 2019

The panel had before it a copy of Patient A's Partnership Working Log for 25 July 2019 in which Miss Riaz made an entry and signed her name and nursing qualification. In view of this evidence the panel found charge 9b proved.

This charge is found proved.

Charges 10a – 10c

10) On one or more of the following dates you made an entry in the Fortalice visitor log when you were no longer involved in Patient A's care.

a) 13 July 2019

b) 24 July 2019

c) 25 July 2019

The panel had before it a copy of the visitor log for the Refuge on which showed that Miss Riaz visited on 13 July, 24 July and 25 July 2019, dates on which she was not responsible for Patient A's care, as set out in the charges. In view of this evidence the panel found charges 10a – 10c proved.

Charges 10a – 10c are found proved.

Charge 11

11) On 25 July 2019 passed cigarettes to Patient A.

The panel took account of the written and oral evidence of Ms 4 who told the panel that on 25 July 2019 she saw Miss Riaz pass cigarettes to Patient A. Further, the panel had

evidence that in the internal investigation interview with Mr 1 on 17 September 2019, when asked if she had ever bought anything for or on behalf of Patient A, Miss Riaz replied:

'I just got her cigarettes which she gave me the money to buy for her.'

On the basis of the evidence before it, the panel found charge 11 proved.

This charge is found proved.

Charge 12

12) Your actions at one or more of charges six to eleven above breached professional boundaries.

The panel reached the view that Charges 6, 7, 9, 10 and 11 all breached professional boundaries. In the internal investigation interview, Miss Riaz admitted that she had arranged to meet Patient A after she had been discharged from the hospital. As there was no clinical justification for this, this was an inappropriate attempt to maintain a relationship with a vulnerable person. By visiting Patient A in her accommodation, making false representations to gain access, making an entry in her partnership working log, and buying her cigarettes, Miss Riaz was acting outside her professional boundaries.

This charge is found proved.

Charge 13

13) Your actions at one of more of charges six to ten were dishonest in that you were misleading staff at Patient A's accommodation that were visiting Patient A in your professional capacity as a nurse in order to gain unauthorised access.

The panel considered whether Miss Riaz's actions in one or more of charges 6, 7, 8, 9 and 10 were dishonest in accordance with *Ivey v Genting Casinos (UK) Ltd t/a Crockfords*.

In her interview during the internal investigation, Miss Riaz was asked '*do you understand what [Fortalice] is?*' she responded '*I didn't at the time*'. The panel considered documentary evidence in the form of Patient A's notes from her time in hospital. These included the phrase '*awaiting a refugee [sic] placement once medically fit*'. This entry appears to be signed by Miss Riaz. It is therefore unlikely that Miss Riaz did not know before Patient A was discharged, the type of accommodation she would be moving to.

The panel accepted that on the occasion of her first visit, Miss Riaz may not have known the specific policies in relation to the Refuge not allowing visitors. However, the security measures taken such as intercom access, having to sign a confidentiality statement and explaining her reasons for visiting must have made it clear to her that only visits from professionals involved in the ongoing care and support of residents were permitted. The panel was satisfied that Miss Riaz's intention was to deceive the staff at the Refuge that she was visiting in her professional capacity as a nurse on duty in order to obtain access to Patient A. The panel was also satisfied that this conduct would be regarded as dishonest by the standards of ordinary decent people.

The panel found that Miss Riaz's actions in signing the confidentiality statement were not of themselves dishonest as she was complying with requests made of her by staff at the Refuge. The panel therefore found this charge not proved in relation to charge 8.

This charge is found proved in relation to charges 6, 7, 9 and 10. This charge is found not proved in relation to charge 8.

The hearing adjourned on 26 May 2022 due to lack of time, after the panel concluded its deliberations on the facts.

The hearing resumed on 31 October 2022.

Fitness to practise

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

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

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

Submissions on misconduct and impairment

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

Mr Bardill invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Mr Bardill referred the panel to his written submissions on misconduct and impairment. He submitted that Miss Riaz's actions consisted both of acts and omissions and that the pervasive regulatory concern in the charges was principally and overwhelmingly dishonesty. Mr Bardill submitted that misconduct must be serious and must be connected to the profession, although he invited the panel to note that conduct removed from medical practice, and even administrative conduct, can still amount to misconduct for the purposes of these proceedings if it was sufficiently immoral, outrageous or disgraceful in character.

Mr Bardill submitted that Miss Riaz's relevant acts and omissions in relation to misconduct and impairment were as follows:

- *'The dishonesty in calling in as sick to Bolton Trust such that she received sick pay, whilst working a shift at the Lancashire Hospital on two occasions; 22 December 2018 and 11 February 2019.*
- *Signing a return to work interview form which confirmed she had not worked for another organisation, when in fact she had on two occasions; 25 December 2018 and 1 March 2019.*
- *Representing herself as having a clinical justification for visiting Resident A/Patient A, including by using uniforms and ID; and signing documents or paperwork she was not supposed to sign.*
- *Receiving payment from the Bolton Trust and Lancashire Trust for work she had not carried out, and not repaying it despite claiming to have offered to do so.'*

Mr Bardill submitted that Miss Riaz also breached professional boundaries as a consequence of some of these incidents, including purchasing cigarettes for Patient A and making unauthorised visits to Patient A outside of work.

Mr Bardill referred the panel to the NMC guidance on seriousness, as well as the cases of *R (Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr Bardill submitted that in relation to the charges found proved, Miss Riaz's acts or omissions did amount to '*sufficient serious misconduct*' in that they fell short of what was proper in the circumstances, particularly where dishonesty or a lack of candour had been found. He submitted that the consequence of dishonesty or lack of candour was that Miss Riaz was untrustworthy or unreliable. Mr Bardill submitted that Miss Riaz's dishonesty placed residents and patients at a direct risk of serious harm and as an additional consequence, it placed fellow members of staff at risk professionally and in difficult positions insofar as they were not able to trust or rely on the candour or honesty of their colleague. He submitted that the impact of Miss Riaz's dishonesty on other members of staff could potentially have an impact on their patients by creating a risk of clinical errors, such as not providing care under the belief that it had already been provided.

Submissions on impairment

Mr Bardill moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

Mr Bardill submitted that Miss Riaz's fitness to practise was currently impaired by reason of her misconduct. He submitted that there was a risk to patient and public safety by virtue of the dishonesty element of the panel's findings.

Mr Bardill referred the panel to the NMC guidance on insight and strengthened practice which set out the factors to be considered:

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

- *Can the concern be addressed?*
- *Has the concern been addressed?*

- *Is it highly unlikely that the conduct will be repeated?*

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

Mr Bardill stated that Miss Riaz had no previous NMC findings against her name and referred the panel to the email from Miss Riaz to the NMC dated 5 December 2019, which contained statements addressing some of the regulatory concerns. Mr Bardill submitted that notwithstanding her reflection, Miss Riaz had demonstrated limited or no insight. Mr Bardill submitted that Miss Riaz had attempted to label the patient as dishonest, and consistently claimed mistakes or misunderstanding at every step of the way; even where the panel have found that this could not have been the case.

Mr Bardill submitted that without remediation, there remained a real risk to patient safety and of repetition, in particular in a dishonesty case. He submitted that the risk to patient safety was therefore clear and ongoing. Mr Bardill submitted that dishonesty was extremely difficult to remedy. He submitted that Miss Riaz misled multiple agencies and people on multiple occasions and did so in order to gain access to patients, to earn money, and to avoid accountability. Mr Bardill submitted that this conduct showed a pattern of repeated dishonesty, and remained a risk which had not been addressed.

Mr Bardill submitted that there was also a public interest in a finding of impairment owing to Miss Riaz's dishonesty and the reason for, or consequences of, that dishonesty, and in particular where patients had been placed at risk of harm and staff put in difficult or risky situations pertaining to their own practice. He further submitted that Miss Riaz, by claiming wages to which she was not entitled, had misappropriated taxpayers' money, which engaged the wider public interest. Mr Bardill invited the panel to make a finding of current impairment in order to maintain public trust and confidence in the nursing profession, and to declare and uphold proper standards of professional conduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*, *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Decision and reasons on misconduct

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

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.4 keep to the laws of the country in which you are practising

20.5 treat people in a way that does not take advantage of their vulnerability ...

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

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

To achieve this, you must:

21.3 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.

The panel considered that Miss Riaz's acts and omissions at the charges had a common thread of dishonesty, and could be separated into two cases relating to:

1. The charges in relation to Miss Riaz's employment at the Bolton Trust and Lancashire Hospital.
2. The charges in relation to visiting Patient A after she was discharged from hospital.

In relation to the employment charges, the panel considered that it had found that Miss Riaz had reported sick at the Bolton Trust and then worked at the Lancashire Hospital on two occasions, and had allowed shifts at the Bolton Trust and Lancashire Hospital to overlap and received payment for these shifts on four occasions. The panel was of the view that Miss Riaz's actions and omissions were premeditated in that she deliberately set out to deceive her employers for personal financial gain. It considered that Miss Riaz had an opportunity to remedy her behaviour by repaying the money fraudulently claimed, but had not done so.

In relation to Patient A, the panel noted from the Bolton Trust's internal investigation interview that Miss Riaz had admitted to agreeing to visit the patient. It also took into account Miss Riaz's submissions in her email to the NMC dated 5 December 2019 which included representations placing blame on Patient A. However, the panel considered that most of Miss Riaz's representations were at odds with what had been established as the facts of this case. The panel was satisfied that Miss Riaz knew what she was going to do when she visited Patient A, a vulnerable patient, at the Refuge without clinical justification or authorisation, represented to staff at the Refuge that she was visiting Patient A in a professional capacity when she was no longer involved in the patient's care and passed

cigarettes to the patient. The panel considered that Miss Riaz did not take ownership of her actions and, in particular considered that her justifications for her acts and omissions were dishonest.

The panel was satisfied that Miss Riaz's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

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

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

The panel found limbs b, c and d engaged in this case. It was not satisfied that patients were put at risk of harm as a result of Miss Riaz's misconduct. The panel was of the view, however, that Miss Riaz's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel noted that Miss Riaz had provided submissions to the NMC in an email dated 5 December 2019. However, the panel was not satisfied that Miss Riaz had demonstrated sufficient remorse or insight. The panel also noted from witness evidence that Miss Riaz showed only limited remorse and insight into her actions during the internal investigation or her interview under caution, and did not fully co-operate with

her interview under caution by providing evidence she claimed to have to support her version of events.

The panel was satisfied that the misconduct in this case, in particular dishonesty, was capable of being addressed. However, the panel had not seen evidence to suggest that Miss Riaz had taken steps to strengthen her practice and character.

The panel was of the view that the multiple acts of dishonesty pointed to a deep-seated attitudinal problem and that there was a risk of repetition. The panel was not persuaded by Mr Bardill's submissions that Miss Riaz's acts and omissions resulted in a real risk of patient harm. The panel decided that there was no actual or potential patient harm as a result of Miss Riaz's acts and omissions. The panel therefore decided that a finding of impairment was not necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that a finding of impairment on public interest grounds was required. It concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore found Miss Riaz's fitness to practise impaired on the grounds of public interest only.

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

Sanction

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

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

Submissions on sanction

In the Notice of Hearing, dated 5 April 2022, the NMC had advised Miss Riaz that it would seek the imposition of a striking-off order if it found her fitness to practise currently impaired.

Mr Bardill submitted that the most appropriate sanction in this case was a striking-off order and asked the panel to consider the SG.

Mr Bardill referred the panel to the cases of *Brennan v Health Professions Council* [2011] EWHC 41 (Admin) and *Daraghmeh v General Medical Council* [2011] EWHC 2080 (Admin). In Mr Bardill's written submissions, it was submitted that a sanction could be used to deter others, other than in relation to the primary issue of public safety, and in this instance, reasoning was particularly important to showing proportionality. Mr Bardill asked the panel to have regard to the consequences and effect of a sanction on Miss Riaz.

Mr Bardill submitted that in Miss Riaz's case, the fact that the acts were dishonest was an aggravating feature. He submitted that dishonesty, being heavily interlinked with attitude and insight, was extremely difficult to address and it would be difficult to know that it had been addressed. He referred to the panel's earlier finding that Miss Riaz's conduct, although remediable, reflected deep-seated and attitudinal issues, and submitted that no evidence had been provided to address these concerns. Further, Mr Bardill submitted that the fact that the dishonesty was ongoing and multi-faceted was another aggravating

feature. He submitted that the dishonesty was extended to various persons and consisted of both acts and omissions. Mr Bardill submitted that Miss Riaz's lack of insight was also an aggravating feature. He submitted that whilst there had been an acceptance of fault to some degree, it came alongside the labelling of the Patient A as manipulative and dishonest, which suggested bare minimum acceptance from Miss Riaz, whilst passing blame to patients who are not subject to the Code, and not here to defend themselves.

Mr Bardill submitted that the only mitigating feature in this case was that there were no previous sanctions or NMC findings, "*other than the current interim suspension order*". Mr Bardill submitted that these aggravating and mitigating features were not exhaustive. He submitted that in fairness to Miss Riaz, the panel could consider what Miss Riaz's motivations might have been during the course of her dishonesty, which might give rise to additional aggravating and mitigating features.

Mr Bardill submitted that a caution order would not be sufficient to reflect the seriousness of the case or protect the public. Mr Bardill submitted that a conditions of practice order would not be appropriate to address Miss Riaz's lack of insight, remediation and dishonesty, and therefore would not protect the public. He submitted that without information as to Miss Riaz's future plans, it would be difficult to impose a conditions of practice order whilst managing the risks or public interest. Mr Bardill submitted that similar to a conditions of practice order, a suspension order would not be appropriate because it would not address insight or remediation.

Mr Bardill submitted that in light of the deep-seated attitudinal issues and dishonesty without any evidence of real insight and remediation, the only appropriate sanction to achieve the overarching objective of patient safety and public protection was a striking-off order. He submitted that this order would preserve public confidence in the profession, and the NMC as a regulator, and provide a deterrence for others.

Mr Bardill submitted that Miss Riaz's conduct was incompatible with continued registration, and that her actions undermined the integrity of the profession, "*engaging significant public protection/public interest issues*".

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- A pattern of premeditated misconduct and dishonesty relating to two distinct issues over a period of time, and in one case relating to a vulnerable patient;
- Personal financial gain from a breach of trust;
- Abuse of a position of trust;
- Lack of insight into failings; and
- Lack of any significant remorse.

The panel did not identify any mitigating features in this case, other than the fact that Miss Riaz had no apparent personal gain from her interaction with Patient A.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, an order that does not

restrict Miss Riaz's practice would not be proportionate or appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Riaz's misconduct involved dishonesty and therefore was not at the lower end of the spectrum and that a caution order would be inappropriate.

The panel next considered whether placing conditions of practice on Miss Riaz's registration would be a sufficient and appropriate response. The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the attitudinal issues demonstrated by Miss Riaz. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Riaz's registration would not adequately address the seriousness of this case or address public concerns.

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

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

The panel considered the two distinct series of incidents, both involving dishonesty, which took place over a period of time related firstly to Miss Riaz's employment at the Bolton Trust and Lancashire Hospital, and second to Miss Riaz visiting Patient A after she was discharged from hospital. It was satisfied that this provided evidence of multiple instances

of misconduct and of a harmful deep seated attitudinal issue. The panel considered that Miss Riaz had ample opportunity to present, in person or in written form, her own mitigation or evidence of insight remorse or strengthened character. However this was not forthcoming and in her only written submission to the NMC, she minimised her culpability and in part tried to blame others. Taking into account Miss Riaz's current lack of remorse or insight and the risk of repetition, the panel determined that a suspension order would not mark the seriousness of the case and the public interest concerns, nor would it maintain public confidence in the nursing profession and the NMC.

The conduct, as demonstrated 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 Miss Riaz's actions is fundamentally incompatible with her remaining on the register.

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

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

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

The panel decided that Miss Riaz's conduct raised fundamental questions about her professionalism. Miss Riaz's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case

demonstrated that to allow Miss Riaz 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 effect of Miss Riaz'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 concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Miss Riaz in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Bardill. He invited the panel to make an interim suspension order for a period of 18 months to cover any appeal period until the substantive striking-off order takes effect.

Decision and reasons on interim order

The panel was mindful that there is a high bar in relation to imposing an interim order on public interest grounds alone. It had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel took into account that Miss Riaz's conduct consisted of dishonesty in two distinct instances, relating to the abuse of public money and her off-duty interactions with a vulnerable person. It also noted Miss Riaz's inability to recognise the issues identified and her attempts to blame others. The panel was of the view that the high bar had been reached in this case and that an interim order was otherwise in the public interest.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to ensure that Miss Riaz cannot practise without restriction before the substantive striking-off order takes effect. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.