

Nursing and Midwifery Council Fitness to Practise Committee

Substantive Hearing
17–19 October 2022

Virtual Hearing

Name of registrant:	Lorraine Mazwi
NMC PIN:	14D1513E
Part(s) of the register:	Registered Nurse – Sub Part 1 RNMH: Mental Health Nurse – Level 1 – 8 October 2014
Relevant Location:	Camden
Type of case:	Misconduct
Panel members:	Georgie Hill-Jones (Chair, Lay member) Mark Gibson (Registrant member) Jan Bilton (Lay member)
Legal Assessor:	Juliet Gibbon
Hearings Coordinator:	Jumu Ahmed
Nursing and Midwifery Council:	Represented by Shabana Fazal, Case Presenter
Miss Mazwi:	Present and represented by Dr Tagbo Ilozue (Counsel instructed by the RCN)
Facts proved by admission:	1a, 1b, 1c, 1d, 2, 3, 4
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

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

At the outset of the hearing, Dr Ilozue made a request, on your behalf, that this case be held partly in private on the basis that proper exploration of your case involves [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Fazal, on behalf of the Nursing and Midwifery Council (NMC), supported the application.

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.

Having heard that there will be reference to [PRIVATE], the panel determined to go into private session as and when such issues are raised.

Details of charge

That you, a Registered Nurse:

1. In relation to one or more of the dates set out in Schedule A:
 - a) self-authorized shifts/hours via National Health Service Professionals ('NHSP') which you were not entitled to do;
 - b) did not work some or all of the additional hours you claimed payment for via NHSP;
 - c) did not undertake clinical work on some or all of the clinical shifts booked via NHSP.

2. Your actions in charge 1a were dishonest in that you knew were not entitled to self-authorise hours worked via NHSP but did so anyway.
3. Your actions at charge 1b were dishonest in that you claimed payment for hours which you knew you had not worked.
4. Your actions in Charge 1c were dishonest in that you had no intention of carrying out clinical work on the clinical shifts you booked.

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

Schedule A

1. Saturday 24 June 2017
2. Saturday 1 July 2017
3. Sunday 16 July 2017
4. Sunday 3 September 2017
5. Friday 29 September 2017
6. Sunday 8 October 2017
7. Sunday 5 November 2017
8. Sunday 12 November 2017
9. Sunday 26 November 2017
10. Tuesday 26 December 2017
11. Monday 1 January 2018
12. Thursday 1 February 2018
13. Thursday 15 February 2018
14. Friday 16 February 2018
15. Wednesday 21 February 2018
16. Tuesday 27 February 2018
17. Sunday 11 March 2018

18. Sunday 18 March 2018
19. Saturday 24 March 2018
20. Wednesday 4 April 2018
21. Friday 13 April 2018
22. Wednesday 18 April 2018
23. Saturday 28 April 2018
24. Tuesday 22 May 2018
25. Monday 4 June 2018
26. Tuesday 12 June 2018
27. 15 July 2018

Decision and reasons on facts

You made full admissions to charges 1, 2, 3 and 4.

The panel therefore finds charges 1, 2, 3 and 4 proved in their entirety, by way of your admissions.

Background

The charges arose whilst you were employed by Camden and Islington NHS Foundation Trust (the Trust), between 6 June 2016 to 5 February 2019, as a Community Mental Health Nurse and a Team Manager of the South Camden Crisis Team.

It is alleged that between June 2017 and July 2018, whilst you were in the position of a team manager, you had authorised your own time sheet via the National Health Service Professionals ('NHSP') system, a booking platform where you can book shifts and release your authorised timesheets to get paid. You had authorised your own timesheets which included additional shifts that you did not work and, therefore, you were in receipt of payments that you were not entitled to.

Within the shifts that you had self-authorized, you claimed to have carried out clinical work, but you were not on duty at the time.

A local investigation was conducted by the Trust. Each of the shifts you had self-authorized was reviewed, and in order to establish whether you had worked that shift, the investigation reviewed the following:

- The access records for the building;
- Patients records;
- The Team's Outlook diary; and
- Your work Outlook diary.

The local investigation showed that you booked over 200 additional hours in total. In an interview with the Trust, you admitted to self-authorising the shifts and not carrying out the clinical work. However, you told the Trust that, instead of carrying out your clinical work, you were doing your managerial work.

In order to authorise shifts on the NHSP system, there is a disclaimer which notes that *'you must never authorise a shift that you have worked and to do so may result in disciplinary action'*. You told the Trust that you had not read the disclaimer in *'its entirety'*, However, the entire disclaimer comes up every time a shift is to be authorised.

A disciplinary hearing was held by the Trust. At the disciplinary hearing, you said that you self-authorized the shifts in the belief that you had authority to self-authorise them. You accepted that you were wrong and confirmed that you had learnt from the experience in that you now understood that you should have sought authorisation from another manager to undertake work outside of normal hours as there was evidence had self-authorized, to

apply a consistent approach, the allegation relating to self-authorisation was not considered when deciding the outcome of the disciplinary proceedings.

In the disciplinary hearing, you accepted that shifts taking place on 29 September 2017 and 15 July 2018 were mistakenly self-authorised, however you said that you did undertake managerial work on the other shifts that you had self-authorised. However, as no evidence was presented of work being undertaken, and your mistakes were not recognised or acted upon (except when confronted by a colleague), the panel concluded that the allegation was founded.

At that hearing, it was concluded that there was insufficient information to evidence the amount of hours that you had claimed to have worked. Therefore, on 5 February 2019, the allegations were upheld by the Trust, and you were summarily dismissed for: booking a series of clinical shifts with no intention of undertaking clinical work, and failing to inform your manager; and receiving payment for shifts you had not worked and were not entitled to receive payments for.

The Trust referred this matter to the NHS Fraud team. On 29 April 2019, an Employment Relations Manager at the Trust, confirmed to the NMC that NHS Fraud *'determined that it is not financially viable to pursue these losses, and on these grounds no proceedings will be undertaken'*.

On 18 June 2021, a Senior HR Advisor provided the NMC with a spreadsheet which showed that the total monies claimed by you, and subsequently paid to you for shifts you self-authorised, was £18,328.62.

Fitness to practise

As you had admitted to the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

You gave evidence under oath. In cross examination, you told the panel that your reflection piece, which was dated 12 October 2022, was the first time you had provided any information to the NMC. You said that you initially did not engage with the NMC investigation as you '*were not in the best place*'.

You told the panel that [PRIVATE]. You said that since you were dismissed by the Trust in 2019, you joined two agencies and that you had a substantive post as you were a mental health lead for one of the agencies. You said that you are currently not in this role as you had given your notice on 21 August 2022.

In response to the panel's questions, you said that you had been employed in the substantive post as a mental health lead from 2019 to this year, 2022. You said that you had [PRIVATE] and during this time, you had handed in your notice.

In response to the panel's question about what you intend to do going forward to keep up with training in your area of speciality, you said that aside from reading and research, and keeping up with your training such as on duty of candour, you are awaiting the outcome of this hearing before making any plans. You said that you wish to continue practising as a nurse.

The payments you received totalled up to £18,328.62. In response to the panel's question as to whether you had given any consideration as to how you intend to repay this money back to the NHS Trust, you said that you were not in the position to do this as you were no longer employed. You said that you [PRIVATE] and had sought support from a charity, in which you were still awaiting feedback. You said that at the current time, you were not in the best financial place to reimburse the monies.

In response to whether it would be a fair assumption that, in the future, you intend to repay the Trust, you said that it would be fair. You said that the monies were taken from public funds which is used to support service users and to improve the NHS service, *you 'think that the Trust would be seeking or wanting the money back'*. You said that *'if [you] were in the position to be able to reimburse that money, it would be appropriate'*. You said that *'[you] would consider it if the Trust approached [you]'*, however that you were currently not in the position to do this. You said that if the Trust approached you and you were in a position to reimburse the money, you would but you were not sure how it would happen.

In cross-examination, you said that even though you were employed in a substantive post as a mental health lead since you were dismissed, you did not make any effort to repay the money back to the Trust. You said that [PRIVATE].

In response to your Counsel, you said that you were not subject to criminal convictions, other regulatory concerns or disciplinary matters in the past.

Submissions on misconduct

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

Ms Fazal invited the panel to take the view that the facts found proved by your admissions 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.

Ms Fazal referred the panel to *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311 and *Johnson and Maggs v Nursing and Midwifery Council* [2013] EWHC 2140 (Admin). She identified the specific, relevant standards where your actions amounted to misconduct. She submitted that the following paragraphs of the Code were the most relevant: 20.2, 20.4, 21, and 25.1.

Ms Fazal submitted that your conduct fell far short and was a serious departure from what was expected of you as a registered nurse and of the standards that were expected of you by the Code.

Ms Fazal submitted that you did admit to being dishonest over a significant period of time, which was 18 months. She submitted that not only did you receive financial gain from the public, you had also put patients at serious risk of harm by putting yourself down for shifts that you had no intention of undertaking, which consequently meant that the shifts were understaffed. She submitted that this was unacceptable behaviour, particularly as you were a band 7 nurse and in a managerial position of responsibility for the provision of service. She submitted that in allowing shifts to be understaffed as you had no intention of undertaking those clinical shifts, you had put patients at a clear and direct risk of harm and had caused additional work for your colleagues.

Ms Fazal submitted that members of the public would find your conduct to be deplorable. She submitted that this was a criminal offence, albeit a prosecution did not take place, but it had placed patients at direct risk of harm. She submitted that your dishonesty was a serious concern of your trustworthiness as a nurse and as a professional. Therefore, she submitted, that the facts found proved by your admission amount to misconduct.

Dr Ilozue submitted that your reflective piece demonstrates your understanding of the seriousness of your misconduct. He submitted that you accept the need to uphold proper professional standards of the nursing profession and that this would be undermined if a finding of misconduct was not made.

Submissions on impairment

Ms Fazal 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. She submitted that a departure from the Code is not sufficient and referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Ms Fazal submitted that all four limbs of the Grant test were engaged. She submitted that regarding the first limb, your actions in not attending clinical shifts which you had put yourself down for had put patients at direct risk of harm. She submitted that as a result of your actions, the crisis team were understaffed. Ms Fazal referred to the shift of 15 February 2019 where a team of three nurses was reduced to just one. She informed the panel that one team member had called in sick and you also did not attend, which increased pressure was placed on the one nurse on duty. She submitted that the crisis team was already under a significant amount of intense pressure and the consequence of your actions of not undertaking the shifts you had put yourself down for had added more pressure on your nursing colleagues. She submitted that this also resulted in patient care

being compromised and had given rise to a significant serious risk of harm. Ms Fazal informed the panel that there was no evidence of actual harm taking place; however, that there was a potential for significant risk of harm as a result of your actions.

Regarding the second limb of the Grant test, Ms Fazal submitted that your conduct had brought the profession into disrepute. She submitted that your conduct, in not attending the shifts you had put yourself down for in the crisis team and receiving payment for those shifts would be viewed dimly by the public and your fellow professional colleagues, particularly as it placed additional workload pressures within an already pressured team. She submitted that your actions of self-authorising those payments was theft, which is a serious matter. Ms Fazal further submitted in denying your actions in the local disciplinary hearing by stating that you were completing your managerial work, rather than clinical shifts, and suggesting that you had proof of this was also dishonest. She submitted that your dishonesty had put the profession into disrepute.

Regarding the third limb of the Grant test, Ms Fazal submitted that your conduct had breached the fundamental tenets of the nursing profession. She submitted that the Code represented the fundamental tenets of the nursing profession and in being breach of the Code, your actions had also breached the fundamental tenets of the nursing profession.

Regarding dishonesty, which is the fourth limb of the Grant test, Ms Fazal submitted that your admittance to the charges and having conducted those actions dishonestly, permits for this limb to be made out.

Ms Fazal submitted that all four of the limbs are engaged. She referred the panel to the three questions in the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) regarding impairment:

1. Is the misconduct easily remediable?
2. Has the misconduct already been remedied?
3. Is it highly unlikely that the misconduct would be repeated?

Regarding the first question, Ms Fazal submitted that your dishonest conduct fell into a category which is difficult to remediate. She referred the panel to the NMC's guidance on seriousness (FTP-3b) and submitted that your conduct and dishonesty was not an identifiable area of clinical practice which can be remediated with training and full reflection, but was a concern in relation to your trustworthiness as a nurse and is an attitudinal concern in nature. She submitted that the NMC's guidance does provide that there are some areas that can be remedied, but in respect of the dishonest conduct it is more difficult for you to demonstrate remediation.

Ms Fazal submitted that your conduct demonstrated that you had put your interests over the best interest of patients, and your actions of self-authorising your timesheets with the knowledge that you had no authority to do so, concealing your actions by denying it when you were first investigated, demonstrated an underlying deep seated attitudinal issue, which is not easily remediable. She submitted that you would need to fully acknowledge this in order to demonstrate remediation.

Regarding the second question as to whether you had remediated your conduct, Ms Fazal submitted that whilst you had admitted the charges, you had been employed as a mental health lead between 2019 until August 2022 and, during that time, you had not approached or made any effort to repay any money to the Trust. Therefore, your conduct had not been remedied.

Regarding the third question as to whether it is highly unlikely that the misconduct would be repeated, Ms Fazal submitted that the panel's assessment on your insight is significant here. She submitted that if the panel considered that you had insight, had remediated and had reflected on your conduct, then the risk of repetition is low. Ms Fazal submitted that you have provided the panel with a reflective piece today, but that you had not engaged or sent the NMC any information prior to the hearing. She submitted that what was given to the panel today is not sufficient to demonstrate that you had taken steps to remediate the misconduct or that you had fully reflected and acknowledged the concerns.

Ms Fazal, therefore, submitted that current impairment can be found on the basis that there is a continuing risk and that public confidence in the nursing profession and the NMC as regulator would be undermined if such a finding were not made. She further submitted that your conduct and dishonesty brought the nursing profession into disrepute and breached fundamental tenets of the profession.

In light of the above, Ms Fazal invited the panel to find your fitness to practise as a registered nurse is currently impaired.

Dr Ilozue referred the panel to the NMC's guidance on seriousness (FTP-3b). He submitted that your reflective piece in which you referred to your 'misguided thinking' and 'flawed perception' of your colleagues and the NHS as a whole, at the time of the misconduct, demonstrated that you recognised what went wrong. He submitted that the combination of climbing up the success ladder too quickly, your arrogance of your success, and the skills and responsibility you had obtained had led you to 'misguidedly' make decisions which were unacceptable and not appropriate. He submitted that you accept your role in the way you behaved and that you do not place any blame on your personal circumstances, but that they were a factor. He submitted that you recognise that it was your thinking and your flaws in character that enabled you to make such unacceptable decisions, and that your reflective piece showed that you understand what you could have done differently. In your reflective piece, you wrote that you would rely on your manager, be more open with the difficulties that you were facing, seek more assistance with your financial difficulties and to take more time with your development and clinical understanding before taking the role of a manager. He submitted that you understand the implications of your actions.

Dr Ilozue further submitted that the misconduct in question took place in 2017 to 2018, which led to your dismissal in 2019. He submitted that since 2019, you had been practising as a mental health lead without any further concerns. He informed the panel that you were not subject to any interim order as you were deemed to not be a risk to the public. He submitted that, in light of this, it demonstrated that this significantly reduced the risk of repetition. Therefore, there is no risk to the public.

Dr Ilozue submitted that you had recognised the seriousness of your misconduct, and therefore you accept the need to uphold proper professional standards in your nursing practice. He further submitted that impairment was conceded in full in keeping with your frank acknowledgement of the seriousness of your conduct, on the basis of finding of impairment was required on public interest grounds. He submitted that a finding of impairment on grounds of public protection was not required given your reflection.

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, R (on the application of Remedy U.K. Limited) v General Medical Council* [2010] EWHC 1245 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Cohen v General Medical Council* and *Grant*.

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 your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

'19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

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, treating people fairly and without discrimination, bullying or harassment

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

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, including people in your care

21.5 never use your status as a registered professional to promote causes that are not related to health

25 Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system

To achieve this, you must:

25.1 identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It had regard to the case of *Roylance v General Medical Council* which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

The panel determined that your actions in each of the individual charges found proved fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct. It was of the view that your actions in putting yourself down for a shift with the intention to not undertake that shift, whilst self-authorising your timesheet for that shift in order to get paid, demonstrated significant departures from the standards expected of a registered nurse.

The panel was of the view that you were an experienced registered nurse who would have been fully aware that you needed another manager to authorise your timesheets. The panel was also of the view that you knew this was wrong, which is demonstrated by you denying the concerns when they were first raised with you. The panel was also of the view that your actions of putting yourself down for a shift with the intention to not undertake that shift had placed a serious risk of significant harm to patients as it had resulted in the crisis team being severely understaffed and putting patients at risk of potentially not gaining access to the assessments and services. The panel noted that the team was not meeting it's deadline or it's response targets for those service users in crisis, so therefore, it was also of the view that your actions had put colleagues under immense pressure by not

having you on duty when you should have been. The panel was of the view that, at least on one occasion, there was a further risk to a colleague as if they had needed support with a patient, then there was not another nurse present to assist.

The panel noted that you had declared that you were undertaking managerial duties when you had a clinical responsibility towards your colleagues in the crisis team. The panel also noted that the NHSP was a system for clinical shifts, and not managerial shifts and that your manager was not aware of the additional shifts that you were putting yourself down for but not working. Therefore, it was of the view that you had sought this opportunity to use your position as a manager to cause yourself a financial gain. The panel noted that you understood that managers cannot self-authorise their timesheets and that you were aware of the disclaimer, but you still went ahead dishonestly approving them over a significant period of time.

In light of this, the panel determined that your conduct failed to prioritise people and the safety of patients, which is a requirement of you as a registered nurse.

The panel was of the view that your conduct extended over a significant period of time, between 2017 to 2018. It also believed that your conduct in defrauding the Trust and making false claims and obtaining money by deception over a significant period of time could be indicative of a deep-seated attitudinal issue.

Further, it determined that your dishonesty breached fundamental tenets of the Code. The panel was also of the view that your conduct was very serious and would be considered as '*deplorable*' by fellow practitioners.

On the basis of the above, the panel determined that your conduct and dishonest behaviour fell significantly short of the standards expected of a registered nurse and is sufficiently serious to amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your 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. 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 concluded that all four limbs of this test were engaged.

Whilst there is no evidence to suggest that your actions caused actual harm to patients, your dishonesty and your intended failure to undertake the shifts you had put yourself down for put patients and colleagues at risk of significant harm. Furthermore, having breached multiple provisions of the Code, the panel determined that your misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find your fitness to practise to be impaired and the charges relating to dishonesty as extremely serious.

The panel took into account the four positive testimonials and your reflective piece dated 12 October 2022. It was of the view that your reflective piece did show that you were remorseful and that there was developing insight. The panel referred to the NMC's guidance on insight (FTP-13b):

'A nurse, midwife or nursing associate who shows insight will usually be able to:

- step back from the situation and look at it objectively recognise what went wrong*
- accept their role and responsibilities and how they are relevant to what happened*
- appreciate what could and should have been done differently*
- understand how to act differently in the future to avoid similar problems happening.'*

...

- 'If they had the opportunity to do so, did the nurse, midwife or nursing associate cooperate with their employer's or any other local investigation into the concerns?*
- Did the nurse, midwife or nursing associate accept the concerns against them when first raised by their employer?*
- Did the nurse, midwife or nursing associate, voluntarily or without prompting, draw any failings or inappropriate conduct to the attention of their employer?*
- Did the nurse, midwife or nursing associate 'self-report' to the NMC, when a referral might otherwise not have been made by someone else?*
- Does the nurse, midwife or nursing associate accept the substance of our regulatory concern, and accept responsibility for any failings or inappropriate conduct?*
- Has the nurse, midwife or nursing associate done so since the early stages of our investigation?*
- Does the nurse, midwife or nursing associate acknowledge:*
 - any harm or risk of harm, to patients?*
 - any damage to public confidence in the professions?*
 - how far their conduct or practice fell short of professional standards?*

- *their own responsibility for the problem, without seeking to blame others or excuse their actions?’*

It took into account that you were able to recognise what went wrong, accepted the misconduct, and what you would do differently in the future.

The panel noted that you had denied the concerns during the Trust’s local investigation and had stated that you would produce evidence, which was not forthcoming. The panel noted that you did not tell anyone of your conduct and considered that it is likely that you would have continued with this had you not been caught out by other colleagues. The panel noted that you do accept the substance of the regulatory concern and your dishonesty and do accept responsibility for your inappropriate conduct. However, you did not do this at the early stage of the local investigation or the NMC investigation. It was of the view that you had only recently acknowledged that your conduct was wrong. It noted that your reflective piece did demonstrate an understanding of what you did was wrong and how this impacted negatively on the reputation of the nursing profession and the need to uphold the reputation. However, it was of the view that you did not demonstrate a full understanding of how your actions put the patients and your colleagues at a risk of harm. The panel could not be satisfied that you have a full understanding and appreciate the seriousness of your conduct, and this may demonstrate a deep-seated attitudinal issue. It, therefore, was of the view that you did not demonstrate sufficient insight.

In considering whether you had taken any steps to remediate the misconduct, the panel noted that you had not made any efforts to contact the Trust to plan as to how the money would be reimbursed. It noted your evidence where you informed the panel that you were not in a position to do this. However, the panel noted that you were employed in a substantive post after your dismissal in 2019 till August 2022. The panel could not be satisfied that there was not a risk of repetition as you did not make any efforts to try to repay this money to the Trust. Further, it noted from your oral evidence, in response to the panel’s question where you said that ‘[you] *would consider it if the Trust approached*

[you]', however that you were currently not in a position to do this. The panel was of the view that this was of significant concern as it demonstrated an intention to only reimburse the money if the Trust approaches you, and not your willingness to pay the Trust back. The panel could not be assured that you would act dishonestly again in the workplace.

Therefore, in having regard to the above, the panel considered there to be no evidence to demonstrate that you had remediated your misconduct. The panel was of the view that you had not demonstrated sufficient level of insight into the concerns which was a planned pattern of behaviour of defrauding the Trust and obtaining money by deception over a significant period of time. It therefore considered there to be a risk of repetition of your dishonesty and an unwarranted risk of harm to patients in your care, should adequate safeguards not be imposed on your nursing practice. Therefore, the panel decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel considered there to be a public interest in the circumstances of this case. The panel found that the charges found proved are serious and include dishonesty. It was of the view that a fully informed member of the public would be concerned by its findings on facts and misconduct. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that your fitness to practise as a registered nurse is currently impaired on the grounds of public protection and public interest.

Sanction

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

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case and paid careful regard to the Sanctions Guidance (SG) and '*Considering sanctions for serious cases*' (SAN-2) guidance published by the NMC.

Submissions on sanction

Ms Fazal informed the panel that in the Notice of Hearing, dated 31 August 2022, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

Ms Fazal submitted that the mitigating features of this case include evidence of developing insight, as you provided the panel with a reflective piece which addressed some of the concerns; admissions to the charges on the first day of the hearing, and notification of your position prior to that, which allowed the NMC to de-warn witnesses; and that there was no actual patient harm.

Ms Fazal submitted that the aggravating features include: conduct which put service users at a risk of significant harm due to the understaffing of the crisis team. There is no evidence of actual patient harm, but by virtue of your actions, the potential risk of harm was significant. She further submitted that the nature of the misconduct which in itself is an aggravating feature as dishonesty is very serious and falls into a category which is difficult to put right. She submitted that the attitudinal concerns are also an aggravating feature. She submitted that the admissions were only made at the outset of the hearing; however, no information was given to the NMC prior to the hearing as you did not engage or cooperate with the NMC's investigation. She submitted that it was on the first day of this

hearing that a reflective piece and testimonials were provided. She submitted that the misconduct took place over a prolonged period of time where you had abused your role as a band 7 nurse in a managerial position for financial gain. She submitted that no efforts were made by you to return the monies that you had taken from the NHS. Since your dismissal from the Trust in 2019, you were employed in a substantive post until August 2022. She submitted that you had the opportunity to make efforts to repay the NHS, but that you did not do this. Ms Fazal further submitted that by denying the concerns when you were first approached by the Trust, was also dishonest. She submitted that your deception went to the extent where you told the Trust that you could give evidence of the managerial work that you falsely claimed you had done, instead of undertaking the clinical concerns you had put yourself down for. She submitted that you were not candid nor honest which is not the behaviour that is expected of a registered nurse, especially a nurse who was in a managerial position.

With regard to the type of sanction, Ms Fazal submitted that taking no further action or a caution order would not be proportionate or appropriate in the circumstances of this case. She submitted that these orders would not protect the public or uphold the public interest.

Regarding a conditions of practice order, she submitted that given the nature of the misconduct and the dishonesty involved, it would not be possible to formulate appropriate or suitable conditions to address the concerns. She submitted that this order would be appropriate where there were clinical practice issues, which was not the concern in your case. She submitted that there were no issues with your clinical practice, and in fact you were considered to be a very good practitioner. However, the dishonesty element could not be addressed through imposing conditions.

Ms Fazal submitted that a suspension order would not be appropriate or proportionate either given the serious issues identified. She submitted that your misconduct was fundamentally incompatible with you remaining on the NMC register, and that a temporary removal from the NMC register would not be appropriate or proportionate. Ms Fazal referred the panel to the NMC's guidance on suspension order (SAN-3d). She submitted that your misconduct was not a single instance of misconduct; there is evidence of harmful deep-seated attitudinal problems; there is evidence of developing insight but that there is still a risk of repetition as you had not made any efforts to repay the monies back to the NHS, and therefore there would continue to be a risk to patient safety if you were allowed to continue to practise.

Ms Fazal, therefore, submitted that the only appropriate and proportionate sanction would be a striking-off order. She submitted that the most serious kind of cases are when a registrant breaches their duty of candour to be honest. She submitted that you were dishonest for a significant period of time, even after you were approached about the concerns by the Trust, and that you had misused your position as a manager for your own financial gain. She submitted that this, in effect, had a direct risk of patient harm as you had put yourself down for shifts which you did not have any intention of undertaking, leaving the crisis team understaffed. She said that this had continued for a prolonged period of time which demonstrated premeditated and systematic deception.

Ms Fazal submitted that the factors in the SG which make the dishonesty less serious were not present in your case as this was not a one-off incident or opportunistic or spontaneous conduct. There was direct personal financial gain which caused a potential risk to service users. She submitted that your dishonesty was not remediable and that there was significant evidence of deep-seated attitudinal concerns. She therefore invited the panel to impose a striking-off order.

The panel also bore in mind Dr Ilozue's submissions. He submitted that the panel must find a fair balance between the rights of a registrant and the overarching principles of public protection. He submitted that there is a public interest in keeping a skilled and committed nurse on the register. He told the panel that you understood that the seriousness of your misconduct meant that the only appropriate sanctions could be a suspension order or a striking-off order. It is, however, open for the panel to impose a suspension order.

Dr Ilozue informed the panel that the aggravating features submitted by Ms Fazal were not in dispute. He submitted that the factors referred to in the SG that make dishonesty less serious were not present in your case.

Dr Ilozue submitted that the NMC's guidance does not mandate a removal from the NMC register despite a serious form of dishonesty, and therefore a striking-off order is not inevitable. He submitted that a dishonest nurse is always at risk of being taken off the register. However, where the nurse has demonstrated remorse, had insight into their dishonest conduct and satisfies the panel that the conduct will not be repeated, then a suspension order can be the appropriate order.

Regarding mitigating factors, Dr Ilozue submitted that the factors include: developing insight, good nursing practice, good character testimonials, lack of previous concerns, positive good character and your personal mitigation.

Dr Ilozue submitted that in considering the third question in *Cohen v General Medical Council* which is: '*Is it highly unlikely that the misconduct would be repeated?*' the panel must take into account your insight. He submitted that your reflective piece demonstrated openness, frankness and humility and that you had had time since the incident to reflect and to develop an understanding of your actions. He submitted that you initially did not engage as you were in '*flight mode*' but that you have come back and engaged with the NMC in order to face and accept the consequences of your actions. He submitted that you admitted to the charges in full and recognise the impact of your conduct. He submitted that

you had apologised and had undertaken work to ascertain why you acted in the way you did, such as [PRIVATE]. He submitted that you are committed and have made efforts to prevent this from happening again and that it was clear that you used this time between the dismissal and now to reflect. He submitted that your reflective piece demonstrated a clear understanding of your insight which had occurred step by step. He submitted that this process demonstrated that you have the potential to reach a full level of insight. He further submitted that the language you used in your reflective piece showed that you do not seek to minimise the seriousness of your dishonesty and demonstrates a recognition of the seriousness and the gravity of your conduct.

Dr Ilozue further submitted that you had been practising as a nurse since you were dismissed from the Trust with no concerns.

Dr Ilozue referred the panel to your reflective piece and submitted that you do recognise the risk of potential harm to the public and to your colleagues. He submitted that it may not be to the full extent that the panel would wish to see, but that there is a recognition. He submitted that you also had a recognition of the damage your conduct had caused to the nursing profession.

Dr Ilozue submitted that you were not in a financial position to reimburse the Trust of the monies taken, even when you were employed in a substantive post. He submitted that you answered the panel's question in that way as a response to the way the question was asked. However, that if the Trust were to approach you, you would have to find a way to reimburse that money when the time comes. He submitted that it was the case that you do wish to repay that money back, but that it would be dependent on your financial circumstances.

Dr Ilozue submitted that this was not a single instance of misconduct, but that does not demonstrate a harmful deep-seated attitudinal problem. He submitted that there has been no evidence of repeated behaviour since the incident and that you have insight into your conduct, therefore there is a low risk of that conduct being repeated. Regarding the attitudinal concern, he submitted that you had shown an ability to change and to develop insight that is candid and in depth. He submitted that you were capable of change and could reach a position of demonstrating no attitudinal problems.

Dr Ilozue submitted that your reflection illustrated that you are an individual with a conscience as you knew that what you were doing was wrong at the time of the incidents. He submitted that remediation is possible, and you are not a lost cause. He invited the panel to give you the opportunity to demonstrate that your deep-seated attitudinal issue does not mean that you are incompatible with remaining on the register.

Dr Ilozue submitted that based on the elements of insight, and the support shown by your colleagues and friends in their testimonials, you have the determination to gain full insight. He submitted that there is not a significant risk of repetition and so therefore, your insight was such that a suspension order could be properly deemed appropriate. He further submitted that the NMC's guidance states that if the panel considered a suspension order to be the appropriate order, then it can give directions as to what a future reviewing panel may want to see from you. He submitted that this could be extended to allow you time that you may need to demonstrate full insight and to give you an opportunity to set out and present a complete strategy as to how you would reimburse the money once you had a clear idea as to how you would improve your financial circumstances in the future.

Dr Ilozue submitted that this is not a regulatory concern that is automatically fundamentally incompatible with remaining on NMC register. He invited the panel to impose a suspension order. He submitted that you have the ability to develop your insight. He submitted that the suspension order is a serious sanction as it does not only have a deterrent effect but also has a protective effect by preventing you from practising as a nurse which protects the public. He submitted that if the panel were to impose a suspension order, the risk to the public and public confidence would be eliminated.

The panel heard and accepted the advice of the legal assessor who made reference to the case of *Parkinson v NMC* [2010] EWHC 1898 (Admin).

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust
- A pattern of dishonest misconduct over a long period of time
- The monies were taken from public funds for your own financial gain
- Conduct which had the potential to put service users at risk of suffering harm
- No efforts or any attempt to pay the monies back to the NHS
- No admissions during the Trust's investigation, although you did make admissions at the outset of this hearing
- When you were first approached by the Trust, you were dishonest by denying the concerns

- Did not cooperate or engage with the NMC at the beginning of the proceedings
- Evidence of deep-seated attitudinal concerns

The panel also took into account the following mitigating features:

- Full admissions to the charges at the outset of this hearing
- Demonstrated developing insight into misconduct through your reflective piece
- Apologised in your reflective piece
- Previous positive good character
- [PRIVATE]

The panel had regard to the NMC guidance on '*Considering sanctions for serious cases*' (SAN-2) and considered that your dishonesty was towards the higher end of the spectrum. In reaching this decision, the panel considered that your dishonesty was a misuse of your position as a manager, which was a premeditated, systematic and longstanding deception as it progressed on for a significant period of time (over a year), in order to have a personal financial gain which was from a breach of the Trust placed in you. The panel was of the view that in not undertaking those clinical shifts that you had put yourself down for, there was potential to cause significant harm to vulnerable service users in them potentially not receiving the care required in the time expected, and on your colleagues whom you had placed additional pressure on. It further noted that you had deliberately breached your professional duty of candour by denying the allegations when you were first approached about this and had gone further by stating that you could provide evidence of your managerial work, which was not forthcoming because you had not carried out such work.

The panel took into account your reflective piece dated 12 October 2022. It was of the view that it was articulate, frank and dealt with some of the concerns identified. However, the panel was of the view that you did not address the significant factor of repaying the monies owed to the NHS. It accepted that you were not in a position to repay that money whilst you were employed in a substantive post. However, it was of the view that an effort could have been made to contact the Trust to negotiate a plan as to how you would start paying the monies back in the future. This would have given the panel and the public, as a whole, some confidence that you would not do this again. It did not have any information or evidence to show that you intend to pay that money back to the Trust. Further, the panel was concerned that your reflective piece only completed a week before the hearing was due to start. The panel also noted that in your reflective piece and in your evidence, you stated that at the time of the incidents, you were misguided. However, the panel was of the view that the misguidance was of your own doing.

The panel also took into account the positive testimonials by your colleagues and friends. It noted that you have no criminal convictions, other regulatory concerns or disciplinary matters in the past. However, the panel was of the view that during the time that you were employed as a nurse, you were defrauding the Trust and making false claims, and obtaining money by deception over a significant period of time, which demonstrated a deep-seated attitudinal issue.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* The panel considered that your 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 your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the SG which outlines the circumstances where a suspension order may be appropriate. The panel considered that your misconduct was not a single instance but a premeditated, systematic and long-standing deception as it went on for a significant period of time.

Regarding your insight, the panel took into account your reflective piece. It was of the view that you had demonstrated developing insight. It also considered that the long-standing deception was evidence of a deep-seated attitudinal issue. As there had been no efforts made to approach the Trust about negotiating a plan to reimburse the Trust, the panel could not be satisfied that there was not a risk of repetition.

The panel was of the view that your conduct, as highlighted by the facts admitted and 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 your actions is fundamentally incompatible with you remaining on the register and as such, determined that a suspension order would not be a sufficient, appropriate or proportionate sanction in that it would not protect service users or maintain confidence in the nursing profession.

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 determined that your actions and your dishonesty were a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were extremely serious and to allow you to continue practising would seriously undermine public confidence in the profession and in the NMC as a regulatory body. The panel recognised the adverse effect that a striking off order may have on you but was mindful of case law and of the NMC's own guidance that the reputation of the nursing profession is more important than the fortunes of an individual nurse.

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 your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you 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 your 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 Ms Fazal. She submitted that an interim suspension order for a period of 18 months is necessary to protect the public and is otherwise in the public interest.

Dr Ilozue did not object to the application.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow sufficient time for any appeal to be heard. The panel is satisfied that such an order is appropriate and proportionate in the circumstances of this case.

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

That concludes this determination.