Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing
Monday, 5 January 2023- Thursday, 12 January 2023
Monday, 16 January 2023- Monday, 23 January 2023

Virtual Hearing

Name of Registrant:	**Riffat Batool**
NMC PIN	06A0305O
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – January 2006
Relevant Location:	London
Type of case:	Misconduct
Panel members:	Alan Greenwood (Chair, Lay member) Sharon Peat (Registrant member) Claire Rashid (Registrant member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Renee Melton-Klein
Nursing and Midwifery Council:	Represented by Amanda Bailey, Case Presenter
Miss Batool:	Not Present, Represented by Penny Maudsley of Alexander Chambers
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Striking-Off Order**
Interim order:	**Interim Suspension Order (18 months)**

Decision and reasons on proceeding in the absence of Miss Batool

[PRIVATE]

The panel were of the view that it would be useful to have a statement from the registrant as to whether or not she would like to voluntarily absent herself, or otherwise, if she would like to attend, whether reasonable adjustments could be made that would allow her to do so.

The panel determined to allow Ms Maudsley time to contact Miss Batool to clarify whether she is voluntarily absenting herself or if she would like to attend the hearing in some capacity.

After a brief recess Ms Maudsley put the following letter dated 5 January 2023 before the panel:

> *'I, Riffat Batool, voluntarily wish to absent myself from attending my fitness to practise hearing scheduled from 5-23 January 2023 and instruct that the hearing proceeds in my absence. I understand that the allegations involve matters of dishonesty and if the matters are found proved, the consequences, based on the NMC's Sanctions Guidance, could be serious.'*

The panel next considered whether it should proceed in the absence of Miss Batool. It had regard to Rule 21 and heard the submissions of Ms Bailey who invited the panel to continue in the absence of Miss Batool. She submitted that Miss Batool had voluntarily absented herself.

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.

The panel has decided to proceed in the absence of Miss Batool. In reaching this decision, the panel has considered the submissions of Ms Bailey, the letter from Miss Batool in which she stated that she was content for the hearing to proceed in her absence, and the representations on her behalf.

The panel accepted 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 Batool;
- Miss Batool has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A number of witnesses are due to attend to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- There is a strong public interest in the expeditious disposal of the case.

The panel bore in mind that, whilst legally represented had made her decision not to attend, no doubt following legal advice. There is disadvantage to Miss Batool arising from her decision not to attend.

Although the evidence upon which the NMC relies will have been sent to Miss Batool at her registered address and to her legal representatives and that her counsel, Ms Maudsley was fully instructed, she will not be present and will not be in a position to add to instructions when evidence relied upon by the NMC is challenged on her behalf. The panel noted that the disadvantage is the consequence of Miss Batool's decision to absent herself from the hearing, and to not provide oral evidence under oath.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Batool. Clearly certain consequences follow from Miss Batool's decision not to attend, and these have been referred to. The panel will draw no adverse inference from Miss Batool's decision to absent herself from the proceedings. The panel emphasise that Miss Batool is entitled to reflect on her decision and change her mind if she chooses. If she does so, at an appropriate time, she would be allowed to participate fully.

Details of charge

That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery:

1. On 8 July 2020 recorded in Patient A's medical records that you had carried out a consultation with them at 12:10 when you had not.

2. On 8 July 2020 recorded in Patient B's medical records that you had carried out a consultation with them at 12:21 when you had not.

3. On 26 June 2020 recorded in Patient Z's medical records that you had carried out a consultation with them at 12:28 when you had not.

4. On 24 June 2020 recorded in Patient T's medical records that you had carried out a consultation with them at 12:54 when you had not.

5. On 8 July 2020 recorded in Patient 14's medical records that you had carried out a consultation with them at 12:26 when you had not.

6. On 6 July 2020 recorded in Patient D's medical records that you had carried out a consultation with them when you had not.

7. On 1 July 2020 recorded in Patient E's medical records that you had carried out a consultation with them when you had not.

8. On 1 July 2020 recorded in Patient F's medical records that you had carried out a consultation with them when you had not.

9. On 3 July 2020 recorded in Patient G's medical records that you had carried out a consultation with them when you had not.

10. On 1 July 2020 recorded in Patient H's medical records that you had carried out a consultation with them when you had not.

11. On 19 June 2020 recorded in Patient M's medical records that you had carried out a consultation with them when you had not.

12. On 19 June 2020 recorded in Patient L's medical records that you had carried out a consultation with them when you had not.

13. On 29 June 2020 recorded in Patient 5's medical records that you had carried out a consultation with them when you had not.

14. On 26 June 2020 recorded in Patient 1's medical records that you had carried out a consultation with them when you had not.

15. On 29 June 2020 recorded in Patient 2's medical records that you had carried out a consultation with them when you had not.

16. On 24 June 2020 recorded in Patient S/Patient 11's medical records that you had carried out a consultation with them when you had not.

17. Your conduct at one or more of charges 1-16 above was dishonest in that you:
    a) Knew the consultations you had recorded had not taken place.

    b) sought to mislead any reader of the records that a consultation with the patient had taken place when it had not.

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

Decision and reasons on application to exclude evidence

The panel heard an application made by Ms Maudsley under Rule 31 to exclude from evidence the consultation sheets of patients which do not go to proof of the charges themselves. Ms Maudsley drew the panels attention to the final exhibit bundle and detailed for it the particular consultation sheets which do not form part of the charges. She submitted that the defence cannot test this information as none of the patients have been contacted or will be giving evidence, it would be unfair and prejudicial to admit them in these proceedings.

Ms Maudsley referred to the case of *Makin v Attorney General of New South Wales*

Privy Council [1894] A.C. 57 and submitted that although the documents may be included for contextual reasons, they were not relevant for proof of the charges. She submitted that the panel should focus specifically on the evidence relating to the charges.

Ms Bailey submitted that the additional patient consultations should be accepted as evidence and submitted that these documents provide relevant evidence to show that the charges being brought against Miss Batool are not clerical error or accident. She submitted that in the entries of ten specific patient consultations the responses are exactly the same. She submitted that it is implausible that these could all be truthful entries as the patients would not have had the same history nor would they have been recorded identically.

Ms Bailey also made reference to the case of *Makin v Attorney General of New South Wales* and submitted that the documents were relevant to rebut the defence's case that the charges were clerical error or accident.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included reference to Rule 31 which provides that the test is one of 'fairness and relevance'. A panel may accept evidence in a range of forms and circumstances, whether or not it would be admissible in civil proceedings. The legal assessor noted that though the case of *Makin v Attorney General of New South Wale* was referenced, this is normally more relevant in regard to more serious criminal cases.

The panel was of the view that, although the documents were potentially relevant, it would not be fair to allow this evidence adduced in support of these charges. The central concerns of the panel were that the patient witnesses had not been contacted nor were any of them here, so no inquiry could be made to them, or their potential evidence tested in any way. The panel was also of the view that it was important to focus on evidence that went more directly to proof of the charges.

The panel determined that it would not be fair in all the circumstances to admit these additional documents into evidence.

Background

The charges arose whilst Miss Batool was employed as a registered nurse by Elm Trees Surgery Greenford Practice (the Practice). Miss Batool, who had been employed as a practice nurse for ten years at the Practice was referred to the NMC on 5 November 2020 by the Practice Manager.

[PRIVATE]. She was to undertake three sessions of four hours each of consultations working from home. A laptop was provided to her which, through a virtual private network, allowed her to access the same programmes and database that she had used at the surgery. She was also provided with a pay-as-you-go SIM to ensure that any cost in making the calls was covered by the surgery.

Miss Batool's start date for home working was 15 June 2020. It was agreed that she would, based on a list created by the Practice's system SYSTMONE, contact these patients to conduct asthma reviews. Working from this list, she was to book patients in using the system and via mostly telephone conduct the asthma reviews from a provided script of questions. It was expected that Miss Batool would organise her own bookings and manage her diary.

On 8 July 2020, the Practice received a phone call from a patient informing them that they had not been contacted by the Practice Nurse for their appointment. The Practice receptionist told the patient that they would probably be contacted later. However, when the patient phoned back saying they still had yet to be contacted, the receptionist checked their record in SYSTMONE and found that an entry had been made in the patient's clinical record detailing a consultation that the patient claimed had not occurred. The Practice Doctor then phoned another patient to determine if this was an isolated incident or if there was a pattern and this patient also said that they had not been contacted, despite a consultation being recorded in the system.

The Practice Doctor contacted a further ten patients and with eight of out of ten confirming they had not received a call from the registrant despite all the patients' records having a consultation and asthma reviews completed.

This raised concern and the Practice sought advice from their HR provider. On advice, Miss Batool was suspended on 9 July 2020 whilst an investigation was carried out. On 15 July 2020 the Practice received written representations from Miss Batool's son-in-law as her representative, detailing factors that would increase the likelihood for error. The investigation revealed that numerous patients had completed consultation records in SYSTMONE but had reported not receiving a consultation from Miss Batool.

Miss Batool was dismissed following a disciplinary procedure. She appealed, maintaining her position that these were clerical or system errors, but the dismissal was upheld.

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

After a recess to allow Ms Maudsley to take further instruction from Miss Batool, the legal assessor addressed the parties to inform them that whilst the panel was in camera, some questions arose in regard to the GP letter. The legal assessor gave the advice to the panel that the questions regard matters of health and recommended that this part of the hearing be heard under Rule 19 of the Rules. 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.

Ms Bailey and Ms Maudsley indicated that they supported the application to the extent that any reference to Miss Batool's health should be heard in private.

Having heard that references to Miss Batool's health may be held in private under Rule 19 to protect her privacy, the panel determined to hold those parts of the hearing in private.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Ms Maudsley.

Decision and reasons on facts

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

- Witness 1: Practice Manager at Elm Trees Surgery Greenford Practice
- Witness 2: Practice Doctor at Elm Trees Surgery Greenford Practice
- Witness 3: Patient Z
- Witness 4: Patient T
- Witness 5: Patient 14
- Witness 6: Administrator/Receptionist at Elm Trees Surgery Greenford Practice

The panel inquired through Ms Maudsley whether Miss Batool might like a further opportunity to attend this hearing and to give evidence under oath and to be cross examined. Ms Maudsley made a further inquiry and the following GP letter was submitted, which was dated 11 January 2023:

[Private]

The panel noted that the GP letter did not specify that Miss Batool could not give evidence. The panel was of the view that there were reasonable adjustments that could

be made to accommodate her. Ms Maudsley told the panel that she would contact Miss Batool again to her to let her know that accommodations could be made.

Upon receiving further instructions, Ms Maudsley confirmed to the panel the Miss Batool did not wish to attend the hearing or to give evidence under oath.

DISPUTED CHARGES

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Bailey on behalf of the NMC and by Ms Maudsley. The panel determined that it would move forward with the understanding that the admissions in the Registrant's Response Bundle were not full admissions to charges 1-16 and in the absence of such admissions would consider whether each of the charges was proved.

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

The panel has drawn no adverse inference from the non-attendance of Miss Batool.

The panel received the following written submissions from Ms Bailey on behalf of the NMC:

> *"Admissions*
> *BSOP – factual stage*
> *The stage in the FtP proceedings has now been reached where the panel needs to decide if the NMC has discharged its burden of proof to satisfy the panel on balance, that it is more likely than not, that as a matter of fact, charges 1-16 are made out.*
> *Introduction / background*

The concerns arose on the 8 July 2020, when Patient A rang in to say that they had not received a call from RB. According to Patient A's consultation notes, RB had conducted the consultation as she should have done. The surgery's first response was to reassure the patient and assumed it to be an isolated error. A pattern was emerging and the evidence was stacking up so the surgery conducted an investigation and it became clear that none of the 16 patients identified in the charges ever received a call from RB. The charges span the period 19 June 2020 – 8 July 2020.

All 16 patient consultation sheets were completed by RB and are date stamped. None of the 16 patients accept that there was any contact with RB.

The NMC submit that none of the potential defences advanced in any of RB's responses recorded in the documents she relies on in the 'Table of Evidence on behalf of Riffat Batool' provide any likely alternative explanation to sensibly account for the nature and scale of the inconsistencies in this case.

In addition to the documentary evidence, the NMC submit that RB's reactions and responses were concerning and not in line with those expected of an experienced RN. These lend further support to the NMC case.

Admissions
It is the NMCs understanding that partial admissions were made on the Registrant's behalf at the outset of the hearing on the limited basis that she may have recorded something in the records on some day other than the dates specified in the charges.

Effect of RB's limited admissions to Charges 1-16
The NMC are therefore required to prove that as a matter of fact it is more likely than not that RF made the record in each of charges 1-16.

Evidence relied on re Charges 1-16
The panel are referred to the NMC's Evidential Matrix

Submissions on evidence in support of charges 1-16
In each case the Consultation Sheet is produced and Nurse Riffat Batool's name appears in each record and can be married with the charge by reference to her date and time stamped entry.

The evidence (unchallenged) is that the clinician entering the record is identified on System1 when they log on to the system using either a smart card or password. This applies to home working on laptops provided by the surgery and the laptops have a smart card slot. Other than logging on via the secure VPN system, once logged on, the system was the same system RB had been used to working with for several years in the surgery (supported by [Witness 1]).

Questions for the panel to consider re Charges 1-16
What is RBs defence to charges 1-16 if it is not that she did not enter the data? How did each record become 'magically' populated if RB was not responsible for it? That leaves only a 'technical' / error defence that some hidden / technical error caused it? If the panel accept that she did on the evidence make those entries, the question for the panel is why?

Charges 17a and b
The NMC submit that she entered the data dishonestly – i.e. in the full knowledge that she had not carried out those consultations, in order to mislead anyone reading the records that the consultations had taken place, when they had not.

RB appears to offer a number of alternative suggestions as to why entries appear against her name on the Consultation Sheets on the relevant dates to include:

Poor inadequate training
System Error / glitches
Clerical error / accident / mistake ie entering clinical information on to the wrong patient's consultation sheet
RB's '2 stage' method of writing her notes: 1 consultation and data collection 2 data entry

Some animus between the parties / the surgery's hostility towards RB and/or her challenge to their bona fide in disciplining her

Observations on alternative suggestions
[Witness 1] and [Witness 2] confirmed in oral evidence that RB was an experienced RN, well used to doing the Reviews. She wanted to work from home having chosen to self-isolate during Covid 19. The surgery was keen to support her wish to continue to work and wanted to continue to pay her. They agreed on 3x 4hour sessions a week home working and provided her with a laptop. [Witness 1] provided the necessary basic training and instructions through telephone calls and followed this up in emails. The annual Asthma Reviews were the least risky for her, she also did other annual Chronic Disease Management Reviews according to the patient's individual needs. Other than logging on from home via the laptop there were no difference for RB, once she was logged on to System1 she was in the same position as she would have been when she logged on at the surgery. She reported no issues. She was a forthcoming person well able to speak up and did if she had any issues. It was agreed she would manage her own diary and bookings. [Witness 1] nor [Witness 2] had any reason to doubt her competence / ability or honesty. She was left to her own devices, she was not micro managed.

The panel is also referred to [Witness 1]/01, [Witness 2]/14 [Witness 2]/15, the disciplinary and appeal hearing documentary exhibits and [Witness 1] and [Witness 2]'s distinct lack of hostility towards RB in their evidence.

[Witness 1] and [Witness 2] attended the hearing and gave evidence on oath and were subjected to cross examination and challenge. The NMC invite the panel to treat [Witness 1] and [Witness 2] as honest, reliable and credible. Both witnesses readily and reasonably conceded where 'possibilities' explored were conceivable even if unlikely or flied in the face of common sense. They did not exaggerate / over egg their evidence. The NMC invite the panel to given considerable weight to the oral evidence of [Witness 1] and [Witness 2].

Observations on System error / glitches / RB's 2 stage system
The panel are referred in particular to [Witness 1]'s evidence and [Witness 2]'s evidence in support. It is submitted that [Witness 1] has in effect 'closed off' any likely technical cause / glitch as a likely alternative explanation.

[Witness 1]'s evidence was (and see [Witness 1] Supplementary Witness Statement) that:
The relevance of the 'glitch' to this case is that it revealed the concern – but for the glitch, it most likely would never have come to light.

It was not normal practice to pre-collect data from patients prior to a consultation as such data is available on the system from any previous consultation. Consultations for AR's etc are booked for 15-minute slots, they could overrun, RB was under no time pressure, she had no patients waiting and had freedom and control over her own diary. Gaps between obtaining patient data on the phone and then recording it are possible but it would be more normal and expected that they would be completed during the consultation itself. If it was necessary to record after the consultation it would be on the same day. Clinicians would enter notes before moving on to the next patient. Notes are time stamped on the system. Where an entry is retrospective, it is customary for the clinician to make it clear that an entry has been made in retrospect. It is not normal practice if notes need to be entered separately for these to refer to 2 different appointments or episodes of care as they refer to one single event. The practice would not give multiple appointments for a single chronic disease review.

[Witness 1] and [Witness 2] maintain that from both a practice management and clinical perspective, that the investigation results and mounting evidence in the number of patients confirming no contact with RB, are to this day, cannot be satisfactorily explained by any clerical error.

Re [Witness 2]/02 and [Witness 2]/05 and the meaning of 'booking' this refers to the appointment booked for the patient for them to talk to RB for her to gather

data on the status of their condition so it is for her to know who she had to contact enabling her to launch the template – i.e. the Consultation sheet – on System1 which in turn prompted her as to what information she needed to collect from that patient.

Entering pre collected data to the system as a booking would not trigger the glitch in which patients were reminded of an appointment. The SMS would go out 48 hours before the patient's scheduled telephone appointment. Going into the patient's notes would not trigger an SMS to be sent.

It is possible to enter patient data without triggering an appointment however the data that had to be entered had to be obtained from speaking to the patients which is considered an appointment.

The patients 1-16 all say they did not receive an appointment so whether she calls it a 'booking' or not the patients do not accept there was any contact.

Other observations on the defence challenges
How could it be normal practice if the 16 patients spoke on the phone to RB for at least 15 minutes for there to be no record of that 'appointment'?

Separate points potentially taken re patients Z and 2 and T
That a 3rd party booked the consultation so RB was not aware and therefore not responsible – according to [Witness 1] it is possible for appointments to have been created by the surgery for patients without RB being aware however she was responsible for booking her own diary - see para 11 of his SWS – re patient Z - both appointments were booked by RB.

Re patient 2 the data entered for patient 2 states she is asthmatic. Patient 2 had been diagnosed as asthmatic in the past hence she was in the list for an asthma review. If RB had spoken to her as she appears to claim, she would have told her, RB, what she told the surgery in November, ie that she no longer used the

inhaler and thought she was no longer asthmatic and we would see that in the patient's July entry. The same argument is advanced for Patient 14.

The asthma list is created automatically by the system based on when the patients had their last review. It is a live and fluid list ([Witness 6] confirmed this in evidence). Some pathologies like asthma can appear / disappear. RB produced the list herself by requesting a report if she were properly reviewing the lists.

Re patient T she said she had never had asthma and some of the entries were incorrect so it is more likely that this is an example of clerical error. Human error is conceded by the witnesses [Witness 1] and [Witness 2]. However, RB was given an immediate opportunity to deal with precisely such errors when the records were made available to her in her first a/c interview dated [Witness 1]/05 but refused and /or to provide telephone evidence in support of who she had called and when.

Other observations on the phone evidence / SIM
As above and according to [Witness 1] (para 45 and see SWS para 14) the surgery only purchased the SIM card and added credit and then sent it to RB who never reported any concerns / difficulties using it. She said she was using several SIM cards so could not provide the surgery with the call history for the patients. If she had provided the SIM – what [Witness 1] described as the simplest way of clearing everything up as they had hoped and anticipated before it all escalated, it would have shown any calls she made to patients. Although the surgery had purchased the SIM, the request had to come from RB for 02 to release the information.

Observations on the WS
Not impartial / independent – dispute with surgery (para 4). Para 5 – does not take RBs case any further, no detail is provided re the common practice of entering data at a different time i.e. is it 2 minutes 2 hours 2 days?. No context is provided pre / during / post C19 etc. [Witness 1] and [Witness 2] fairly concede

they cannot really challenge how nurses were working as they were trusted to do their job and complete records in accordance with their Code / Professional Standards. [Witness 1] and [Witness 2] do however state the reasons why this is not common practice and should not happen i.e. the expectation is records are meant to be contemporaneous etc and in any event even if the practice nurses were not doing their job properly this is an unattractive defence and at its highest only assists RB to the extent that this 'internal' / employment issue may not have been identified / managed as well as it might. Further, the audit revealed the issue only related to RB.

Final submissions on charges 1-16
1-16 are made out as a matter of fact – whether they individually / cumulatively amount to M/C is a matter for the panel in due course if they find the facts of 1-16 proved.
17a and b – Dishonesty the 'mental element / mens rea'
All of the records are in her name and date stamped
All 16 Patients deny being called by RB at all
Repeat regurgitation / inaccurate information on records lends support
It is submitted that there is the cogent evidence in support of the dishonesty charges as is required in cases such as these brought against a RN in FtP proceedings involving dishonesty given the potential far reaching implications for the RN.

The NMC submit that none of the various positions and responses and potential defences advanced and developed by RB offer the more likely explanation. [Witness 1] and [Witness 2] were right to expect that RB would be interested, concerned and cooperative. It gave them no pleasure or assistance that she was not. There was no animus / 'agenda'. The additional work and burden on the investigation and her reaction and response to it impacted significantly on them, their workload, the surgery and the trusted relationship between the surgery and its patients. Instead of reacting as they would expect any fellow clinician to, she was combative, obstructive and sought to deflect blame. Her reaction and responses point the panel away from any other likely explanation.

Dishonesty / Final submissions on Charges 17a and b
NMC submit the only plausible answer here is that RB did dishonestly complete the records to make it look like she had done the work she was entrusted with, when she had not.
All parties agree the case that sets out the relevant test is: Ivey v Genting (UK) Ltd t/a Crockfords [2017] UKSC 67 in which the Supreme Court decided that it was not right that the test of dishonesty should differ depending on whether the proceedings were Criminal or Civil.

The test is explained by Lord Hughes in the unanimous judgement of the Court (Para 74).

The judgement was delivered by Lord Hughes (Para 74)
"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. 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".

It is still of course for the NMC to satisfy the panel, on a Balance of Probabilities, that the Registrant was acting dishonestly and it is still a two-stage process in which the panel will need to ask itself two questions.

The panel will have by this stage have decided which facts it has found to be proved, taking into account the partial / limited admissions to the facts which lay behind them.

The first thing the panel must do is ascertain (subjectively) what the Registrant's actual knowledge or belief was in relation to the facts as the panel has found them to be;
It does not matter whether that state of knowledge or belief was Reasonable. There is no requirement that the knowledge or belief held by the Registrant has to be Reasonable; the requirement is that it must be genuinely held.
Of course, if the panel consider that the knowledge or belief that the Registrant claims they hold is Reasonable, that may well help the panel to decide whether, on a balance of probabilities, the Registrant did in fact hold it. In many cases, the fact that the panel decides that the belief is reasonable will be determinative of your decision whether she did in fact genuinely hold it.

Once the panel has established, on a Balance of Probabilities, what the Registrant's actual knowledge or belief was, it must then go on to consider, in the context of that knowledge or belief, whether what she has admitted she did, or what you have found she did, would be considered dishonest by the standards of ordinary decent people (objective).
The panel must form its own judgement of what the standards of ordinary decent people would be in the circumstances of this case and apply them.
If, applying those standards, the panel decides that, on a Balance of Probabilities, what the Registrant did was not Dishonest, then the Charge has not been proved.
If, on the other hand, the panel is satisfied that, on a Balance of Probabilities, ordinary decent people would consider what the Registrant did to have been Dishonest, then Dishonesty would have been proved.
There is no requirement that the Registrant must have appreciated that what she did was, by those standards, dishonest.
Although truthfulness is one characteristic of honesty and untruthfulness is often a powerful indicator of dishonesty, a dishonest person may sometimes be truthful about her dishonest opinions.

Separate Consideration of Charges

The panel should consider each Charge and Sub-Charge separately. This means that, were the panel for example to find that the Registrant was Dishonest in relation to one of either Charges 1-16, it does not follow that just because the panel finds that she was dishonest in relation to one of them, that she was necessarily dishonest in relation to the other although in this case the NMC put their case that 17a and b apply to all charges 1-16.

RB does not have to satisfy the panel that what she says is correct, the NMC has to satisfy the panel that what is suggested in the documents is not correct. The Registrant has not given evidence as to why she filled in the Patient Consultation sheets in a false and potentially misleading way and the panel are invited to find that the NMC has satisfied the panel, on a Balance of Probabilities, that it can reject any alternative explanation advanced in the documents she relies on.

Final submission
NMC invite panel to find all charges proved and move to consider submissions on M/C and Impairment.

The panel also received the following written submissions by Ms Maudsley on behalf of Miss Batool:

1. *All the evidence has now been presented and it is now the task of the Panel to decide on the whether the facts are found proved, or not.*
2. *Mrs Batool has admitted the facts of charges 1-16 but denies charge 17 (a) and (b).*
3. *It is the case for the NMC that Mrs Batool falsely entered patient information into patient records, knowing that she had not had a consultation with the patient and trying to mislead readers.*
4. *Mrs Batool denies any dishonesty.*

Background

5. *Mrs Batool worked at Elm Trees surgery for 10 years before the incidents occurred in June-July 2020. In March 2020, when the pandemic struck and the country went into lockdown, Mrs Batool went into self-isolation [PRIVATE]. She received sick pay whilst not working.*
6. *After a period of 3 months Mrs Batool wanted to return to work, by agreement, the surgery arranged for her to work from home. She was asked to review the asthma patients. The surgery had confidence in her that she would be able to undertake asthma reviews as she had done this before as part of her practice in the surgery.*
7. *Previously appointments were made for the patients and Mrs Batool saw them in her clinic. She took their information, took the readings and added the data into the software provided by the NHS on the computer. It was uncomplicated.*
8. *However, things changed when she commenced working from home. She was provided with a laptop and became responsible for contacting the patients and making her own appointments and then entering the data into the system.*
9. *We know there was a glitch in the system whereby patients were receiving text messages reminding them of appointments which they should not have been receiving as the function had apparently been disabled, but for some reason it was happening.*
10. *On 8/7/20, Patient A called the surgery to say she had received a text message advising her she was due a call from the nurse, but the call never came. On inspection of the patient records, generated by the computer system, seemingly Patient A had had a consultation that day.*
11. *This triggered further investigation of patient records, which revealed further consultations which allegedly had not taken place.*

Burden and standard of proof

12. *The burden of proof lies with the NMC, Mrs Batool has to prove nothing. She does not have to prove her innocence.*
13. *The standard or proof is the civil standard, the balance of probabilities, that it is more probable than not that the facts are proved.*
14.

Witnesses in the case

15. *There have been a number of witnesses in this case. The Panel will have to assess their evidence, assess their credibility and reliability and give what weight it considers appropriate to their testimony.*

Relevant legal principles

16. *This case is based on dishonesty.*
17. *The leading case on dishonesty is the case of* ***Ivey v Genting Casinos [2017] UKSC 67***

    74. ….. 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.

Hearsay evidence

18. *The Panel will have heard hearsay evidence.*
19. *We have not heard from the majority of the patients, only Patients Z, T and 14.*
20. *The NMC relies on the consultation sheets and the evidence of the patients in respect of what was said on the telephone.*
21. *There is no live confirmation of the calls from the patients made to them by the members of staff at the surgery, that is [Witness 1], [Witness 2] and [Witness 6].*
22. *Further, the Panel cannot speculate on what the patient said outside of what is written in the notes. By way of example, [Witness 1] said that patients would 'usually tell you if they had spoken to the nurse.' [Witness 2] said, 'patients usually give you a lot more information such as which bus they got to the surgery.' There is no further information to be considered other than what is recorded. What is recorded is untested, uncorroborated, written evidence.*
23. *Further there is the hearsay evidence of the receptionist taking a call from Patient A and the conversation [Witness 1] purportedly had with the O2 mobile phone network regarding telephone logs.*
24. *The defence has had no opportunity to test any of this evidence.*
25. *The Panel must be cautious when dealing with hearsay evidence and consider what weight, in any, should be given to this evidence.*

Character in regulatory hearings.

26. *In* ***Wissen v Health Professions Council [2013] EWHC 1036, para 44,*** *good character is a factor that can be considered at the stage 1 when there are*

substantial issues of facts to be decided and the credibility of the registrant is in issue.

27. *Good character goes to Mrs Batool's propensity to be honest and trustworthy and her credibility.*
28. *Mrs Batool has no previous findings against her by her regulator.*
29. *You heard that she worked well for the 10 years she was at the surgery and the staff had confidence in her. There were no issues with her probity, she met the standards expected of the NMC, in particular, honesty and trustworthiness.*
30. *Mrs Batool is therefore entitled to a good character direction.*
31.

Strength of evidence

32. *In **Sharma v GMC [2014] EWHC 1471 (Admin),** a dishonesty case, in quoting Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 at 586:*

    i. *….the court will have in mind as a factor to whatever extent it is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before court concludes that the allegation is established on the balance of probabilities…..*

33. *In **El Karout v NMC [2019] Admin, 28,** where the registrant was also accused of falsifying documents, it was stated by Mr Justice Spencer that it is "well established that the more serious the charge alleged, the more cogent is the evidence needed to prove it."*
34. *Allegations of dishonesty, in particular, are serious and the Panel has to consider the evidence carefully. One only has to think of the case of the post office*

workers, accused of fraud, to know how carefully the evidence has to be considered. The evidence has to be strong to prove, on the balance of probabilities, that Mrs Batool's actions were dishonest.

Motive

35. *What seems to be lacking in this case, is any motive for committing falsification of records. Mrs Batool would gain nothing. There was no pressure of time, no benefit to her or the surgery from saying she had reviewed patients when she had not.*
36. *There was no financial gain. Mrs Batool was at the end of her career, close to retirement. She had everything to lose and nothing to gain.*
37. *[Witness 2] considered that Mrs Batool was trying to reduce her workload, trying to shirk work time.*
38. *This appears implausible as it was her who requested to work and in fact wanted more hours, not less. The audits [Exhibit bundle, pages 35-135] show that Mrs Batool was logged in during her shifts, working, in my submission diligently.*
39. *If she did not want to work, she could have stayed at home receiving statutory sick pay.*
40. *This is a factor that the Panel must consider.*

The witnesses

41. *You have heard from [Witness 1], [Witness 2] and [Witness 6] from Elm Trees Surgery. Both [Witness 1] and [Witness 2] seemingly took the immediate view that Mrs Batool had acted dishonestly by falsifying records.*
42. *However, [Witness 2] admitted that in the 7 years she had worked with Mrs Batool she had worked well with her. There were no issues with her probity.*

[Witness 1]

43. *[Witness 1] was the practice manager.*
44. *He explained the System1 and how Mrs Batool had worked with the same System1 in the surgery. He had not trained her but felt she was familiar with it all. [[Witness 1]/01pages 3-7] shows the conversation. The email conversation shows Mrs Batool asking questions about how to make appointments as it became her responsibility when working from home. It is clear she was not clear on what she had to do.*
45. *After [Witness 2] had made him aware of issues with Patient A he contacted a number of patients D, E, F G and H. The Panel has not heard from any of these patients and the comments on hearsay [sic] apply.*
46. *What [Witness 1] did not do was confirm with the patients (a) did they speak to Mrs Batool on another occasion and (b) confirm their records were an accurate summary of their medical history. [Witness 1] said, 'he didn't need to.'*
47. *This was important to Mrs Batool's case, this is her career at stake. I submit this flippant attitude to exploring what happened was unfair to Mrs Batool. The patients could have confirmed whether the records related to them and if not, another explanation as to who they related to or if they had appeared in the wrong patients' notes may have been explored.*
48. *Her case is that she would only fill in information that she had obtained from the patient. If the details were incorrect, it may be a result of an error. It was stated by [Witness 1] that if a nurse wrote something down on a piece of paper, rather than into the computer, there was room for error as it could have been entered into the wrong notes, especially if more than one page was open at the same*

time. It was important therefore to clarify with the patient whether they agreed their records were correct.

49. *[Witness 1], in my submission too easily considered that Mrs Batool had acted fraudulently. He relied on her reaction when she was advised of the 'concerns.'*
50. *He stated she was defensive and called patients liars, asked who he had spoken to. On this basis he concluded the only possibility was fraud.*

[Witness 2]

51. *[Witness 2] said that she had known Mrs Batool a number of years and that they worked well together. She was described as a robust character who was known to speak her mind. Mrs Batool maintained the standards expected of her by her regulator, which includes of course being honest and trustworthy.*
52. *It appears that during Covid the surgery was kept open, face to face consultations were still being held but Mrs Batool did not want to work in the surgery putting herself at risk from Covid. However, she wanted to work by June 2020, and she had asked for more hours, but the surgery could only give her 12 hrs.*
53. *She was given quite a free reign, no time pressure, no targets, she didn't have to prove she had seen certain patients, she was not being micromanaged.*
54. *[Witness 2], admitted, with some reluctance, that Mrs Batool had spoken to a number of patients, the majority of whom there had been no issues.*
55. *However, she received a message to say that Patient A was notified of a consultation and had not received it. [Witness 2] then got involved.*
56. *She called Patient A later in the afternoon of 8/7/20. She established that Patient A had not been spoken to on 8/7/20 but did not establish whether she had been*

spoken to on 6/7/20. The records show an appointment was booked on 6/7/20 for 8/7/20.

57. *[Witness 2] admitted that it was possible to enter data later although not necessarily normal practice in her view.*
58. *[Witness 2] did not show the records to Patient A so it cannot be established if Patient A could confirm her records as she did not give evidence to confirm. She also initially said that Patient A did not even have a blood pressure machine at home until she had to concede that she did, once shown the documentation.*
59. *She then called Patient B who also said he had not had consultations with Mrs Batool on 8/7/20.*
60. *Again, it was only established that he did not speak to Mrs Batool on 8/7/20. He was also not able to confirm his records as they were not shown to him, and he did not give evidence.*
61. *[Witness 2] also accepted that if the patient was stable and had not any asthmatic episodes over a 4 week period, then the records may be unchanged and similar.*
62. *[Witness 2] recounted what she would do if in a similar position if such concerns had been raised. I would ask the Panel to disregard her evidence on how she would react, as everybody reacts differently.*

Patient Z

63. *Patient Z said he knew Mrs Batool well over 3 years when he had his annual review with her. However, it is questionable how 'well' that means he knew her with limited interaction.*
64. *He had no issues with her or her practice.*

65. *He said he received an appointment from the receptionist booking his asthma review. Apparently, receptionists do not book asthma reviews according to [Witness 1]. However, no call came, said Patient Z.*
66. *He says he received a call in summer 2020 from the surgery asking if he had an appointment with Mrs Batool. This does not appear in his statement neither does it appear in the notes. [page 329-331].*
67. *However, he said he did not recall a telephone call from Mrs Batool but neither did he recall any other contact about his asthma in 2020. It can be seen from the records that he was called by the pharmacist, Shelina Shah, [page 331] 'telephone call to patient on 13/11/20, 15.41hrs. She records an asthma 'medication review, weight 114 kgs, inhaler technique good.' It should be noted that the asthma control test is very similar to that recorded by Mrs Batool.*
68. *Maybe he just does not recall his asthma review as he could not recall the pharmacist's review either.*
69. *Patient Z was never shown his notes in the past, the first time he saw them was at the hearing. He was therefore never able to confirm if it was him previously.*

Patient T

70. *Patient T said that she had not had any contact with anybody about this case until she was contacted by the NMC last year.*
71. *She did not suffer from asthma, not since she was a child.*
72. *The information did not relate to her, and she considered the records were not hers.*
73. *This begs the question, why would she be on a list of asthmatic patients for annual review? Why would she be randomly called if she was not on the list? The likelihood was that she was not called by Mrs Batool and for some reason another patients' details have been entered in error.*

74. *This fortifies Mrs Batool's case that there must have been an error. The information gathered from an asthmatic patient has been incorrectly entered.*

Patient 14

75. *Patient 14 also said she was not asthmatic and has never been registered as asthmatic. Why then would she be on a list to be called? It would seem unlikely that she would be contacted by Mrs Batool.*
76. *She can't recall who called her in July 2020 but she thinks it was the receptionist. She can't recall why she was to be contacted by a nurse. This seems inconsistent with the way asthma reviews were conducted in any event.*
77. *She had never seen the consultation record before the NMC contacted her.*
78. *She said that the information recorded in the notes does not relate to her, none of the information is correct, except for being a non-smoker. She had used an inhaler in April but that had not been related to asthma, it was prescribed by the GP to help with her breathing as she had Covid.*
79. *I would submit that these records may have been entered in error and relate to another genuine asthmatic patient.*
80. *It would seem strange that non-asthmatic patients would appear on a list of asthmatic patients who were due for review. This list was computer generated and would only flag up asthmatic patients. They would be added to an appointment schedule. It seems inherently implausible that Mrs Batool would call non asthmatic patients.*

[Witness 6]

81. *[Witness 6] was an administrator at the surgery. She was given a list of patients to call. It is unclear how this list was produced, its provenance, or what it contained as it has never been produced to the NMC.*

82. *[Witness 6] was tasked with asking if the patients were called in June or July. Some were called as late as November 2020, some, it transpires, were child patients. We have not of course heard from any of them.*

83. *None of the patients were given the opportunity to view the records to establish whether it related to them, unlike those that gave evidence. Patient L, by way of example, [PA/01, page 13/page 316] was a child and [Witness 6] spoke to the mother. The records for the consultation that were recorded as having taken place on 19/6/20 show that the patient is a smoker. This is unlikely to be correct. Again, in my submission, it is more likely than not, that this is an error on Mrs Batool's part. It would be too easy to verify. It was not a deliberate attempt to mislead.*

Mrs Batool

84. *Mrs Batool has always maintained that she was not dishonest.*

85. *The Panel has not heard Mrs Batool give oral evidence so has not been able to assess her credibility.*

86. *However, Mrs Batool has been consistent in her responses throughout this process, in her statement [pages 1-14], and her earlier responses, [registrant's bundle pages 34-39, 16-19] [exhibits bundle 29-34]. Consistency correlates to credibility.*

87. *She was not trained to work from home using the system. She was used to working in the surgery where she had the facilities, she was familiar with. She had not worked for 3 months, and this home working was new to her.*

88. *She was given a computer-generated list of asthma patients to contact who needed their annual reviews. She would call the patients and when she spoke to them, she entered them on to a schedule of appointments, collected the data*

using the template provided by the surgery [pages 240-244] and then input the data into the computer on the Consultation Information Sheet.

89. *If she was not able to contact the patient, she would not enter the patient's details into the schedule of appointments.*
90. *Sometimes she would write information on a piece of paper to be entered at a later stage. If this was the case, she would make another time slot in the appointment schedule and enter the data subsequent to the call to the patient.*
91. *No system is perfect and seemingly this system had a glitch whereby patients would be sent a text message regarding their appointment in error. There was also a tick box on the system where if left unticked, would also send a message.*
92. *Seemingly according to Patients Z and Patient 14 both had appointments arranged by the surgery, not directly from Mrs Batool. She was not advised of this and therefore would not know to call them.*
93. *It was some time ago that this all happened, and Mrs Batool cannot recall all the patients she called, there was quite a number that she called. However, she recalled Patient H. She spoke to his wife as he was bed ridden having just come out of hospital.*
94. *She is adamant that she never entered data into records without having spoken to the patient. She states that information such as the next of kin could not be invented. She must have spoken to that patient to obtain the information at some time.*
95. *Clearly something has gone wrong. It is unclear what went wrong for information to be in the records that did not correspond to the patient consultation.*
96. *When confronted with the concerns, her reaction to what she perceived as accusations, was one of shock. She asked which patients said they were not*

called, and her initial reaction was to say they were lying. It may not have been the composed reaction that [Witness 2] and [Witness 1] claim they would have given but they have never been in her position. One cannot say how you would react. She is a very senior nurse having had a long career and never been accused of dishonesty before. Understandably she was shocked and upset.

97. *I submit that her initial reaction was one of disbelief. She may well have said patients were lying as a knee jerk reaction. She may well ask who these patients were, and this may well be because she was in shock that such a suggestion could be levelled at her.*

98. *Her defence is not that the patients were lying, and I would ask the Panel not to focus too much on this initial reaction.*

99. *Blaming the patients does not form part of her defence.*

[Ms 1]

100. *[Ms 1] provided a witness statement in support of Mrs Batool to confirm that it was not uncommon for nurses to make appointments to enter information into the records at a later date.*

101. *This supports Mrs Batool's case.*

Lack of evidence

102. *It has become apparent that there is missing relevant evidence that would have been useful for the Panel to consider.*

103. *The NMC has not provided the appointments list that Mrs Batool would have completed, her 'schedule of appointments.' This would have shown which patients she was to call. This was not a 'shifting' list like the list of asthmatic patients which also has not be produced due to it not being available.*

104. *The NMC has not provided the appointments schedule or the list that [Witness 6] was working from.*

105. *Neither has the NMC provided the O2 records. It is not for Mrs Batool do prove her innocence. It is for the NMC to prove the case and it could have obtained the evidence of phone calls with patient numbers.*

106. *Further, there are missing medical records, the text to Patient A inviting her for an appointment. We have not heard from her, and she has not produced the text message from her mobile phone. We only have half the documentation. Just because somebody says something happened, does not make it so, there has to be evidence.*

107. *There a missing consultation records, for example Patient H. He was asked about a consultation on 29/6/20. There is no consultation sheet from 29/6/20, only 1/7/20. If the NMC says there was a consultation on 29/6/20 then it must provide the evidence.*

108. *The NMC has also not provided consultation sheets of those patients where there was no issue to compare the information Mrs Batool entered.*

Patient records

109. *Patient A – Mrs Batool accepts that on 8th July 2020 there was information recorded in the medical records showing a consultation had been carried out a 12.10 when it had not.*

110. *Mrs Batool's case is that there is evidence to show that this appointment was made by her on 6/7/20 however, this was to enter the care plan data only [Page 216]. The text message would have been triggered by a mistake due to the glitch in the system which erroneously sent out SMS messages to patients reminding them of an appointment.*

111. *In order to obtain this information about Patient A, such as the next of kin, Mrs Batool would have had to have spoken to the patient at some stage.*
112. *She denies dishonesty in that she knew the consultation had not taken place because a consultation had taken place and there was certainly no intention to mislead.*
113. *There was no falsification of records, they were genuine records. If there was an error it was not intentional.*
114. *Patient B- Mrs Batool's case is that she accepts that it is recorded in the notes that a consultation took place at 12.21 on 8/7/20 when it had not. Mrs Batool maintains that an appointment was made on 8/7/20 [page 222] possibly for data entry. There would be no reason to call Patient B to make an appointment at a later date. The patient must have been spoken to previously.*
115. *She denies that she knew the consultation had not taken place because a consultation had taken place and there was certainly no intention to mislead. There was no falsification of records, they were genuine records unless an unintentional error has occurred.*
116. *Patient Z- Mrs Batool accepts that there is a record dated 26/6/20 in Patient Z's records stating a consultation had taken place at 12.28 when it had not.*
117. *Riffat Batool maintains that Patient Z would not have been contacted if he was not on the list of patients to call and the was no reason why he would expect one. If the surgery had made an appointment then it was not conveyed to her. He must however, have been called at some point for data to be entered.*
118. *She denies knowing a consultation had not taken place as to the best of her belief, no patient's data was recorded without the patient having been*

contacted. There was intention to mislead unless some kind of error had occurred.

119. *Patient T – Mrs Batool accepts that it is recorded on 24/6/20 that Patient T's records show that she had a consultation with the patient at 12.54 when she had not.*
120. *For the same reasons as above, Mrs Batool maintains that no patient information would have been entered into the records which did not come from having spoken to a patient. Unless there had been an error of which she was unaware.*
121. *To the best of her belief there had been a consultation at some time, there was no intention to mislead.*
122. *Patient 14 – Mrs Batool accepts that on 8/7/20 Patient 14's records show that she had a consultation with the patient at 12.26 when she had not.*
123. *Mrs Batool says that there would have been no reason to call Patient 14 if she was not on the list of asthmatic patients. Patient 14 would have no reason to expect a call.*
124. *Any appointment made by reception was not conveyed to her. For the same reasons as above, Mrs Batool maintains that no patient information would have been entered into the records which did not come from having spoken to a patient, she would not have just made it up. Unless unbeknown to her, there had been an error. To the best of her belief there had been a consultation at some time, there was no intention to mislead.*
125. *Patient D, E F and G, M, L, 5, 1 and SP/11 are the same as above.*
126. *Patient H – Mrs Batool accepts that the records show that a consultation had taken place on 1/7/20 when it had not.*

127. *Unlike the other patients who she is unable to recall, she does recall this patient who had recently come out of hospital. She spoke to him via his wife. She therefore maintains that a consultation did take place. The information entered must have been as a result of a consultation at some other time. An error must have occurred. There was no intention to mislead.*
128. *Patient 2 – It is accepted that there is an entry on 29/6/20 showing that a consultation had been carried out when there had not.*

Conclusion

129. *This is a puzzling case. This is a nurse who had requested to work from home after 3 months of doing nothing, self-isolating.*
130. *It is a case where appears to be no motive. Why would she ask to work if she did not want to work, if she was trying to shirk her workload? Mrs Batool was not being forced to work and had no targets to meet. She was a woman with no history of not being trustworthy. She could have stayed at home and been paid for doing nothing.*
131. *Mistakes happen when one is not familiar with a different way of working, especially when not fully trained. It was only a short period, 12 days. There may have been teething problems. It is possible that Mrs Batool made errors.*
132. *In my submission the evidence is tenuous, reliant on hearsay as the Panel has not heard from most of the patients to confirm their records or whether they received a call from the Mrs Batool at any time. The majority of the evidence is uncorroborated.*
133. *Something obviously went wrong, but it was not through any dishonest act by Mrs Batool.*

134. *In my submission the evidence is weak to prove that Mrs Batool acted dishonestly.*
135. *The NMC has to prove the case to the relevant standard. I submit that the NMC has failed to prove the case and therefore I would urge that the Panel find charge 17 not proved, that Mrs Batool did not act dishonestly.*

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

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

Charge 1

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 8 July 2020 recorded in Patient A's medical records that you had carried out a consultation with them at 12:10 when you had not.'*

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Witness 2 and Patient A's Consultation Information Sheet.

The panel first considered whether it was possible for anyone else to have created this or any other of the records that make up the charges. The panel referred to evidence given by Witnesses 1, 2, and 6 that a "smart card" was used to log into the system and hence the time and name stamps that appear within SYSTMONE are automatically generated. The panel considered that Miss Batool had sole use of her "smart card" and her log-in details during this time as she was self-isolating and working from home and on the balance of probabilities, she was the only one who could have created these records. Having determined this, the panel went on to consider whether the Consultation Information Sheet which was completed on 8 July 2020 at 12:10 did, in fact, relate to information from an actual consultation carried out by Miss Batool.

The panel referred to the oral evidence of Witness 2 in which she stated that when she called the patient, she said that she had not been called and was surprised that there had been information about a consultation. The panel noted that this evidence did not come directly from the patient, but noted the contemporaneous detailed notes from the conversation written by Witness 2 in the documentary evidence date 8 July 2020:

> *Patient called the surgery - as awaiting a call from the nurse . There is a consultation but patient states she has not been called . She has a bp machine but has not done this recently. She states she has not been called at 12 that is why she called the reception at 2pm . They were surprised consult done so informed me. I have spoken to patient and advised that I am not sure what the confusion has been but will call on Friday (sic) and let her know…"*

The panel noted inconsistencies in the Consultation Information Sheet for Patient A. On the Appointment Sheet in the documentary evidence, it states that the slot allocated for Patient A is reserved for telephone appointments. However, the panel noted that a test for cognitive function was recorded in the Consultation Information Sheet which involves drawing a clock, marking in the numbers and drawing the hands to indicate the time as "ten past eleven". The panel considered that it would be improbable that this test could be carried out over the phone as Miss Batool makes no reference to using the video facilities on the equipment provided. Furthermore, Miss Batool has entered that the test was completed and "Correct".

The panel also noted that a blood pressure reading was recorded on 6 July 2020 as 135/76 in the Consultation Information Sheet for Patient A, which conflicts with the documentary notes made by Witness 2 which state on 8 July 2020:

> *"They were surprised consult done so informed me . I have spoken to patient and advised that I am not sure what the confusion has been but will call on friday (sic) and let her know, in which the patient says that she has a blood pressure machine but had not taken a reading recently."*

The panel had regard to Miss Batool's statement in which she states that she did the consultation on 6 July 2020 and that additional data had been entered on 8 July 2020. However, the panel was of the view that this does not address the other inconsistencies found in the documentation and the written and oral evidence.

Accordingly, the panel determined that on the balance of probabilities it was proved that Miss Batool did on 8 July 2020 record in Patient A's medical records that she had carried out a consultation with them at 12:10 when she had not.

Charge 2

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 8 July 2020 recorded in Patient B's medical records that you had carried out a consultation with them at 12:21 when you had not.'*

This charge is found proved.

In reaching this decision, the panel took into account the oral and written evidence of Witnesses 1 and 2 and the documentary evidence dated 8 July 2020 of the Consultation Information Sheet.

The panel had regard to the note in Patient B's Consultation Information Sheet in which Witness 2 entered the following note on 9 July 2020:

> *"Reception informed patients are calling and stating not been called by nurse thus I called patient. Spoke to patient yesterday and asked if he had an asthma review with the nurse . Patient stated that he has not been contacted by the nurse . The time of the conversation was appx just before 4 pm on 08/07/2020 I had called and spoke to [the patient] who stated that he had not been called yesterday by the nurse."*

The panel took into account the registrant's reference to Patient B in her Witness Statement, in which she says that this patient must have been contacted previously.

However, the panel considered all the evidence before it and determined that Witness 2 was clear in oral evidence and in the patient's notes. The panel found, on the balance of probabilities, that on 8 July 2020 Miss Batool recorded in Patient B's medical records that she had carried out a consultation with them at 12:21 when she had not and found this charge proved.

Charge 3

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 26 June 2020 recorded in Patient Z's medical records that you had carried out a consultation with them at 12:28 when you had not.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Patient Z and the Consultation Information Sheet for Patient Z dated 26 June 2020.

The panel was of the view that Patient Z provided clear, cogent, and consistent evidence in both his written and oral statement. The panel found him to be a strong witness as he is asthmatic and previously had an annual asthma review undertaken in person at the Practice by Miss Batool. He gave evidence that he didn't have a call from anyone, including the registrant, and said that an asthma review never took place. This was consistent in his written and oral evidence. In his written statement signed on 17 October 2021 he had stated:

> *"I did not receive the pre-arranged consultation call from the Registrant or from anyone else. I did not do anything when I did not receive the call. I can confirm that the Registrant did not contact me at any time between 15 June and 8 July 2020."*

The panel had regard to the registrants written statement, in which Miss Batool states that she is adamant that the patient must have been contacted previously.

The panel preferred the evidence of Witness 3 and on the balance of probabilities concluded that on 26 June 2020 Miss Batool recorded in Patient Z's medical records that she had carried out a consultation with him at 12:28 when she had not and found this charge proved.

Charge 4

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 24 June 2020 recorded in Patient T's medical records that you had carried out a consultation with them at 12:54 when you had not.*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Patient T and accompanying exhibit.

The panel heard from the witness that she only had asthma as a child, was not sure why she would have been on the asthma review list and has never had an asthma review. In response to questions whilst giving oral evidence she said that contrary to the information in the Consultation Information Sheet, she does not have an asthma personal action plan nor has she ever demonstrated how she uses an inhaler because she doesn't use one. She said that she must have been on the asthma review list in error.

The panel found the witness was clear and concise and the panel understood from her oral evidence and her witness statement that she has had 'no asthma since childhood'. She said, "I wouldn't have a conversation like this because I don't have asthma." She states in her Witness statement signed on 29 May 2022:

> *"Some of the information in the consultation notes is inconsistent with my history. For example, where written 'Asthma Trigger: Respiratory infection' – I have never experienced a chest/respiratory infection before. Also under 'history' – I do not*

have a personal asthma action plan."

The panel took into account Miss Batool's explanation in her witness statement in which she was adamant that the patient must have been contacted previously.

However, the panel was of the view that Patient T was cogent and convincing and that on the balance of probabilities the conversation documented in the Consultation Information Sheet could not have taken place. The panel found that on 24 June 2020 Miss Batool recorded in Patient T's medical records that she had carried out a consultation with her at 12:54 when she had not, and found this charge proved.

Charge 5

'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 8 July 2020 recorded in Patient 14's medical records that you had carried out a consultation with them at 12:26 when you had not.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Patient 14 and accompanying exhibit and entries in the Consultation Information Sheet written by Witness 2.

The panel considered the documentary and oral evidence before it and found both witnesses to be clear and consistent throughout their evidence. Patient 14 told the panel that she had only used an inhaler once in April 2020 due to Covid and did not have asthma. She stated in her Witness statement signed 31 August 2022 that a copy of her Patient Consultation Information had been shown to her and she said:

"I can confirm that a consultation never took place with the Registrant on 8 July 2020. The notes mention that my asthma causes shortness of breath 1-2 time a week and that I use me inhaler once a week, however this is not true. I have only used my inhaler once and this was in April/May 2020."

When Witness 2 phoned Patient 14 on 19 August 2020 she took the following notes and recorded in the patient's Consultation Information Sheet the following:

> *"Asked patient if she has asthma review with the nurse. Patient states she last spoke to the Practice in April. She has not had a call from the nurse and has not has any review in July. As patient states she last spoke to practice in April 2020 and then again today."*

The panel took into account the registrant's insistence in her written statement that this patient must have been contacted previously.

The panel determined that on the balance of probabilities on 8 July 2020 Miss Batool recorded in Patient 14's medical records that she had carried out a consultation with her at 12:26 when she had not and found this charge proved.

Charge 6

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery,* on 6 July 2020 recorded in Patient D's medical records that you had carried out a consultation with them when you had not.

This charge is found proved.

In reaching this decision, the panel took into account Exhibit [Witness 1]/02 and Patient D's Consultation Information Sheet, the oral evidence of Witness 1 and the written and oral evidence of Witness 6.

The panel heard the oral evidence of Witness 1 in which he gave evidence about Patient D. The panel was of the view that his memory was very clear regarding this patient as it was a cause for concern for him that the patient, who did not have asthma, had an asthma review completed in the system without their knowledge.

Witness 6 in her statement also spoke to this patient in regard to her appointment. Witness 6 phoned the patient on 9 July 2020 and entered the following into the patient Consultation Information Sheet:

> *"Spoke to patient with regards to her appointment on Monday 6th of July. The patient said that she does not have asthma, only hayfever, and that it is now better. She said that she did not receive a call from the surgery on Monday and has not spoken to anyone in the surgery this week until today."*

The panel went on to consider how Miss Batool would have carried out an inhaler test if, as stated in the statement of Witness 1, she could not get the video link to work.

The panel noted that in her witness statement Miss Batool says that this patient must have been contacted previously.

The panel determined, based on the evidence before it, that it was more likely than not that on 6 July 2020 Miss Batool recorded in Patient D's medical records that she had carried out a consultation with her when she had not and found this charge proved.

Charge 7

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery,* on 1 July 2020 recorded in Patient E's medical records that you had carried out a consultation with them when you had not.

This charge is found proved.

In reaching this decision, the panel took into account Patient E's consultation record for 1 July 2020.

In reviewing the evidence before it the panel noted that Patient E of Charge 7 and Patient F of Charge 8 were a couple. It had regard to the phone note in the Consultation Information Sheet which was recorded by Witness 1 on 10 July 2020:

“Spoke to patient and patient's husband. Last week they had been to Northwick Park and on Friday came to the practice for BP reading, but did not receive any calls from the nurse regarding asthma or mental health.”

The panel also noted that if, as has been established on the basis of the balance of probability, Miss Batool was conducting a telephone rather than video consultation, it was improbable that she would have been able to conduct the cognitive impairment clock test with Patient E, which is recorded in their patient Consultation Information Sheet.

On the basis of this, the panel found on the balance of probabilities that on 1 July 2020 Miss Batool recorded in Patient E’s medical records that she had carried out a consultation with them when she had not and found this charge proved.

Charge 8

‘That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 1 July 2020 recorded in Patient F’s medical records that you had carried out a consultation with them when you had not.

This charge is found proved.

In reaching this decision, the panel took into account Patient F’s Consultation Information Sheet.

The panel found this charge proved for the same reasons as detailed above in Charge 7 as Patient E and Patient F were a couple and were contacted by Witness 1 when they were together.
The panel determined that on 1 July 2020 Miss Batool recorded in Patient F’s medical records that she had carried out a consultation with them when she had not.

Charge 9

‘That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 3 July 2020 recorded in Patient G’s medical records that you had carried out a consultation with them when you had not.

This charge is found proved.

In reaching this decision, the panel took into account Patient G’s Consultation Information Sheet.

The panel heard evidence that the patient reported that he had not used his inhaler for over 12 months which was in contradiction to the information Miss Batool had entered in the Consultation Information Sheet notes.

The panel was of the view that the contemporaneous note in the record, entered by Witness 1 in 10 July 2020, is the best evidence before it. The record states:

“Spoke to patient regarding nurse audit and he said he has not used his inhaler for the past 12 months and did not receive a call from the Nurse last week.”

The panel took into account Miss Batool’s response in her witness statement was that this patient must have been contacted previously.

The panel concluded on the balance of probabilities that on 3 July 2020 Miss Batool recorded in Patient G’s medical records that she had carried out a consultation with him when she had not and found this charge proved.

Charge 10

‘That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 1 July 2020 recorded in Patient H’s medical records that you had carried out a consultation with them when you had not.

This charge is found proved.

In reaching this decision, the panel took into account Patient H's Consultation Information sheet.

The panel noted this is a mental health review rather than an asthma review and it goes straight to this section of the consultation record. The panel also noted that in this patient's Consultation Information Sheet Miss Batool has also included the clock to be drawn as a cognitive test. The panel was of the view that this was inconsistent with the realities of conducting a telephone consultation.

During the cross examination of Witness 1, Ms Maudsley stated that Miss Batool remembers speaking to this patient's wife because the patient was bedridden. Witness 1 did not accept this suggestion as this would have been mentioned in the patients notes from the outset. He stood by the entry in his records that the patient did not have a conversation with the nurse as appears in the patient's Consultation Information Sheet dated 11 July 2020 which states:

> "*Spoke to patient and told him that we are conducting an audit and that I wanted to know if he had spoken to our nurse on the 29th of June regarding his Asthma to which he said no, he has not had any conversations with our nurse."*

The panel was of the view it was more likely than not, based on Witness 1's evidence, that on 1 July 2020 Miss Batool recorded in Patient H's medical records that she had carried out a consultation with him when she had not and found this charge proved on the balance of probabilities.

Charge 11

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery,* on 19 June 2020 recorded in Patient M's medical records that you had carried out a consultation with them when you had not.

This charge is found proved.

In reaching this decision, the panel took into account Patient M's medical records, particularly the entry on 10 November 2020.

On 10 November 2020, Witness 6 spoke to the patient and asked if they had spoken to Miss Batool or received an asthma review in June and the patient confirmed they had not. The patient note was entered on 10 November 2020 and read:

> *'Telephone encounter (9N31.) - Patient confirmed that she did not speak PN regarding Asthma rev in June.'*

The panel took note of Miss Batool's response in her witness statement but found that she was adamant that this patient must have been contacted.

On the balance of probabilities, the panel was of the view that it was more likely than not that on 19 June 2020 Miss Batool recorded in Patient M's medical records that she had carried out a consultation with them when she had not and found this charge proved.

Charge 12

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery,* on 19 June 2020 recorded in Patient L's medical records that you had carried out a consultation with them when you had not.

This charge is found proved.

In reaching this decision, the panel took into account Patient L's medical records and the evidence of Witness 6.

Witness 6 had spoken to the patient's mother and it was therefore understood that the patient was a child. The panel noted that in Miss Batool's asthma assessment

consultation notes, dated 19 June 2020, the patient is described as a smoker. The panel found this inconsistent with the record of a child patient.

The panel also took into account the asthma review from by the new Practice Nurse dated 10 November 2020 which read:

> *"Telephone encounter (9N31.) - Mother confirmed that patient did not speak PN regarding (sic) Asthma rev in June."*

The panel also noted that in the asthma review by the new Practice Nurse from 10 November 2020 she noted:

> *"Smoking cessation advice…Never smoked tobacco"*

The panel had regard to the registrant's response, as above, that she is adamant that the patient must have been contacted previously.

The panel determined based on the evidence before it that it was more likely than not that Miss Batool did on 19 June 2020 record in Patient L's medical records that she had carried out a consultation with them when she had not and found this charge proved.

Charge 13

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 29 June 2020 recorded in Patient 5's medical records that you had carried out a consultation with them when you had not.*

This charge is found proved.

In reaching this decision, the panel took into account Patient 5's medical notes and the entry on 13 November 2020 of a telephone encounter with the patient's mother.

The panel had regard to Patient's 5's Consultation Information Sheet which had the asthma review notes of both Miss Batool dated 29 June 2020 and the new Practice Nurse's dated 16 November 2020. The panel found that the new Practice Nurse's notes were more thorough and noted that this patient was a child and that the telephone encounter was with the patient and the patient's mother. The panel noted that the record in November stated that the patient did not have a peak flow meter at home despite there being a peak flow entry in Miss Batool's consultation record on 29 June 2020. The panel found this to be inconsistent.

The panel found that on the balance of probabilities the discrepancies had occurred because Miss Batool had not carried out the asthma review on 29 June 2020 but recorded in Patient 5's medical records that she had done so. The panel found this charge proved.

Charge 14

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 26 June 2020 recorded in Patient 1's medical records that you had carried out a consultation with them when you had not.*

This charge is found proved.

In reaching this decision, the panel took into account Patient 1's medical notes, Consultation Information Sheet and the evidence of Witness 6.

The panel had regard to the following note from the record dated 12 November 2020:

> *Telephone encounter (9N31.) - Patient confirmed that she did not speak PN regarding Asthma rev in June.*

The panel was of the view that the conversation between Witness 6 and the patient is the best evidence in relation to this charge. Even though Witness 6 only asked if she had the consultation in June, the panel were of the view that this was an appropriate

question which enabled the adult patient to report whether they had a consultation during this time.

The panel had regard to the response that Miss Batool in which she stated that this patient must have been contacted previously.

The panel was of the view that it was more likely than not, given the evidence before it, that on 26 June 2020 Miss Batool recorded in Patient 1's medical records that she had carried out a consultation with them when she had not.

Charge 15

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 29 June 2020 recorded in Patient 2's medical records that you had carried out a consultation with them when you had not.*

This charge is found proved.

In reaching this decision, the panel took into account Patient 2's medical notes particularly the telephone entry on 12 November 2020.

The panel noted that on 12 November 2020 Witness 6 phoned Patient 2 and made the following note in the patient's Consultation Information Sheet:

> *"Telephone encounter (9N31.) - Patient confirmed that she did not speak PN regarding Asthma. She said she doesn't use inhaler and she is not asthmatic."*

The panel then had regard to the entry by Miss Batool on 29 June 2020 in the patient's Consultation Information Sheet. The panel found it unlikely that a patient who did not believe they had asthma would have completed an asthma review with Miss Batool. The panel also considered that it would be unnecessary to do so, particularly a peak flow assessment on someone that didn't have asthma. The panel found it unlikely that a person who didn't have asthma would have an inhaler, which would also make the entry

Miss Batool made into the record that their inhaler technique was “good” unlikely. The panel noted the following entries into the consultation notes:

> *“Asthma causes daytime symptoms 1 to 2 times per month…Asthma sometimes restricts exercise…Asthma not disturbing sleep”*

The panel were of the view that common sense would dictate that a patient that did not have asthma would remember having an asthma review and concluded that on the balance of probabilities it was unlikely that Miss Batool carried out a consultation with Patient 2 on 29 June 2020 despite recording in the medical records that she had and so found this charge proved.

Charge 16

> *‘That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, on 24 June 2020 recorded in Patient S/Patient 11’s medical records that you had carried out a consultation with them when you had not.*

This charge is found proved.

In reaching this decision, the panel took into account Patient S/Patient 11’s medical records particularly the entry dated 10 November 2020 and the evidence of Witness 6.

The panel considered the evidence, including the written note in the patient’s Consultation information sheet date 10 November 2020 which stated:

> *“Telephone encounter (9N31.) - Patient confirmed that he didn't speak PN for Asthma rev in June.”*

The panel also took into account Miss Batool’s response in the witness statement and one again she stated that this patient must have contacted previously.

The panel preferred the documentary evidence of the note from the patient in the Consultation information sheet and the oral evidence given by Witness 6. The panel determined on the balance of probabilities that on 24 June 2020 Miss Batool recorded in Patient S/Patient 11's medical records that she had carried out a consultation with them when she had not and found this charge proved.

Charge 17

> *'That you a registered nurse, while employed as a Practice Nurse at Elm Trees Surgery, your conduct at one or more of charges 1-16 above was dishonest in that you:*
>
> *a) Knew the consultations you had recorded had not taken place.*
>
> *b) sought to mislead any reader of the records that a consultation with the patient had taken place when it had not.*

This charge is found proved.

In reaching this decision, the panel took into account all the documentary and oral evidence before it. The panel accepted the submissions of Ms Bailey and Ms Maudsley and the advice of the legal assessor and treated Miss Batool as a person of good character.

The panel raised charge 17 throughout its consideration of the charges. The panel asked, in every case, whether the dishonesty alleged in charged 17 was proved in each of the charges. The panel reminded itself of the test set out of *Ivey v Genting Casinos* in accordance with the legal advice. Namely:

> *A. You must firstly determine –(Subjectively)- The actual state of the Registrants knowledge and belief as to the facts. (The reasonableness of that belief is not an additional requirement)*

B. Once that is established the panel must then determine whether her conduct was dishonest, by applying the (objective) standards of ordinary and decent people. (It is not a requirement for the registrant to appreciate that what she had done, is by those standards, dishonest).

Determining the motive for the dishonesty, if any, forms no part of the test of dishonesty as set out in *Ivey*.

The panel also took account of the NMC's guidance on making decisions on dishonesty charges.

Charge 17a

The panel considered the allegation in charge 17a, that Miss Batool knew that the consultations had not taken place. In the view of the panel, the allegation in charge 17a was proved. As set out earlier, in relation to each charge, it had been proved on the balance of probabilities that there had not been a consultation at the time and on the day when it was recorded by the registrant. In the view of the panel, she did know at the time that those consultation had not taken place.

The panel was of the view that a clear pattern had emerged which consisted of the same course of conduct being repeated on numerous occasions. The panel concluded that this was a course of conduct which the registrant had embarked on knowingly.

Charge 17b

The panel considered the allegation in charge 17b, that the registrant sought to mislead any reader of the records that a consultation with the patient had taken place when it had not. In the view of the panel, the allegation in 17b was proved. In relation to each charge, the panel was satisfied on the balance of probabilities that at the time when the registrant recorded in medical records that a consultation had taken place when she knew that the particular consultation had not, in fact, taken place she was seeking to

mislead any reader of the records. As stated above, it is not necessary for the NMC to establish a motive for acting in the way that she did.

The panel next sought to determine whether her actions were dishonest by the objective standard of ordinary decent people. The panel was satisfied that a well-informed member of the public considering the charges that had been found proved would consider Miss Batool's failures to be dishonest in accordance with the test in the case of *Ivey.*

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 Batool's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

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 Bailey invited the panel to take the view that the facts found proved amount to misconduct. She directed the panel to the comments of Lord Clyde in *Roylance v General Medical Council [1999] UKPC 16* which provides assistance when seeking to define misconduct. Ms Bailey told the panel that the misconduct must be serious and submitted that the facts found proved in this case do amount to serious misconduct as it involves falsification of medical records and behaving dishonestly in a clinical role.

Ms Bailey drew that panel's attention to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code). Ms Bailey identified the specific, relevant standards of the Code which were breached. She submitted that Miss Batool's conduct referred to in the charges fell short of what would have been expected of a nurse and represents a serious departure from the standards contained in the Code.

Ms Bailey submitted that the charges, which included dishonesty, occurred over a three-week period and that the panel found:

> *'a clear pattern had emerged which consisted of the same course of conduct being repeated on numerous occasions. The Panel consider this was a course of conduct the registrant had embarked on knowingly.'*

She submitted that the charges found proved related to the basic requirements of a registered nurse in regard to professionalism and integrity and were a serious departure from the expected standards, especially given her seniority and autonomy.

Ms Bailey submitted that patients were placed at risk and that both public protection and public interest were engaged. She submitted the charges found proved were a breach of the trust placed in her and that this could damage the public trust and confidence in the nursing profession. She submitted that there remained an ongoing risk to patients in the future.

Ms Maudsley submitted that there is no burden of proof to determine whether Miss Batool's fitness to practice is impaired. She reminded the panel that this must be decided in two stages. Firstly, whether serious professional misconduct occurred and secondly, whether her current practice remains impaired. She referred the panel in particular to the relevant case law of *Roylance v General Medical Council.*

Ms Maudsley submitted that while not all breaches of the code will amount to misconduct, dishonesty almost always will, but this determination was ultimately up to the panel.

Submissions on impairment

Ms Bailey 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). She drew the panel's attention to all the factors that might lead to a finding of impairment, using the questions outlined by Dame Janet Smith in the Fifth Shipman Report. She submitted that all four limbs set out in this test were engaged in this case.

Ms Bailey submitted that Miss Batool's dishonesty was directly related to her practice as a nurse, and it was not confined to one record but involved creating inaccurate records for 16 patients over a three-week period. She submitted that Miss Batool's dishonesty was compounded by her initial response, which included refusing to cooperate with the local investigation.

Ms Bailey submitted that though there was no evidence before the panel of actual harm, there was a real risk of serious harm to patients by not carrying out expected consultations and falsifying the medical records. Furthermore, she submitted that her

dishonesty breached the fundamental tenets of the profession and brought the profession into disrepute.

Ms Bailey drew the panel's attention to Cohen v General Medical Council [2008] EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;

- Whether the conduct that led to the charge(s) is easily remediable.
- Whether it has been remedied;
- Whether it is highly unlikely to be repeated.

She submitted that dishonesty, as laid out it the NMC guidance on dishonesty, is not easily remedied and is unlikely to be remedied through training or supervision. She submitted that Miss Batool has demonstrated some limited insight but has shown no evidence of strengthened practice nor has she fully articulated why she acted as she did or what steps she has taken to prevent similar failures in the future. She submitted that Miss Batool maintains that she did not act dishonestly.

Ms Bailey submitted that Miss Batool's conduct has not been remedied and it cannot be said that she is highly unlikely to repeat this conduct in the future.

Ms Bailey concluded by submitting that there remains a real risk of Miss Batool engaging in similar conduct to that charged, if allowed to practise without restriction. A finding of current impairment is therefore necessary on the grounds of public protection.

Ms Bailey also invited the panel to find that the misconduct in this case is so serious, that a finding of impairment on the basis of public interest is also required to declare and uphold proper professional standards and to maintain public confidence in, and protect the reputation of, the nursing profession.

Ms Maudsley also drew the panel's attention to the cases of *Grant* and *Cohen v GMC* as well as *General Medical Council v Meadow [2007] QB 462 (Admin)*. She reminded

the panel that the case of *Meadow* sets out that it is not the role of the regulator to punish the registrant for past wrongdoings but to protect the public in the future.

Ms Maudsley then referred the panel to Miss Batool's reflective statement. She submitted that though Miss Batool has not admitted dishonesty, this does not mean that she does not have insight. She submitted that maintaining her innocence does not mean that she does not have insight or remorse.

Ms Maudsley submitted that Miss Batool accepts that a nurse would not be able to fundamentally provide patients safe and effective care if proper records were not kept and that falsifying records can lead to harm or poor outcomes. She submitted that though it seems no harm had occurred in this case, Miss Batool accepts that harm could have been caused to patients with asthma, especially during the Covid 19 pandemic when these patients were particularly vulnerable.

Ms Maudsley also submitted that Miss Batool understands that the reputation of the profession and the public's confidence in nurses could have been harmed, as they may assume that the whole profession may be untrustworthy.

Ms Maudsley told the panel that Miss Batool has completed a course in NHS record keeping and quoted the following statement from Miss Batool's Reflective Statement:

> *'I would also extend my fullest and unreserved apologies to the patients affected and reassure them that I would always consider complaints made against me by patients to be feedback of their perception of me and I would never allow such complaints, to compromise my professional integrity or in any way affect the quality of care and service I would provide.'*

Ms Maudsley told the panel that Miss Batool will reduce the possibility of this occurring again by undertaking training and escalating any issues or difficulties, if she were to return to nursing.

Ms Maudsley concluded by submitting that the risk of repetition has been significantly reduced through the insight she has shown in her Reflective statement and the coursework she has undertaken. She also submitted that these charges were out of character for Miss Batool. She drew the panel's attention to the testimonials put before it which speak of her professionalism and integrity. She also noted that Witness 2 said in her oral evidence that they worked well together. She reminded the panel that a finding of misconduct does not automatically result in a finding of impairment.

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, Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow.*

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

> ***2 Listen to people and respond to their preferences and concerns***
> *To achieve this, you must:*
>
> ***2.1*** *work in partnership with people to make sure you deliver care effectively*
>
> ***2.2*** *recognise and respect the contribution that people can make to their own health and wellbeing*
>
> ***2.3*** *encourage and empower people to share decisions about their treatment and care*

2.4 *respect the level to which people receiving care want to be involved in decisions about their own health, wellbeing and care*

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.1 pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages

8 Work cooperatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues

To achieve this, you must:

9.2 gather and reflect on feedback from a variety of sources, using it to improve your practice and performance

10 Keep clear and accurate records relevant to your practice

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

To achieve this, you must:

10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

10.4 attribute any entries you make in any paper or electronic records to yourself, making sure they are clearly written, dated and timed, and do not include unnecessary abbreviations, jargon or speculation

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

To achieve this, you must:

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the charges found proved fall short of what is proper and expected of a registered nurse. The panel was of the view that these failings, which include dishonesty, were a serious departure from the standards set out by the Code. The panel found that there was a pattern of behaviour, and the charges were not an isolated occurrence. The panel found that Miss Batool put patients at real risk of serious harm, especially as the patients in this case were on the asthma review list and therefore particularly vulnerable during the Covid 19 pandemic.

The panel were of the view that Miss Batool provided a poor response when she was initially contacted by the Practice, and has shown limited insight into her own behaviour. The panel was of the view that she has distanced herself from the process and the Reflective Piece remains hypothetical as it is written in the third person. The panel noted the following excerpt from her Reflective Piece:

'Any dishonesty in a RN is serious but there is a spectrum of seriousness. Here it directly relates to Mrs Batool's practice as a RN – she was an experienced RN trusted to do her job from home with expectations that she would complete honest accurate and contemporaneous records after completing the consultations. As the Panel heard from witnesses [1 and 2] the whole point was to review the patients' chronic disease status. To fraudulently enter that

important health data / clinical patient information when they had not had a consultation was dangerous, misleading and wrong and impacted on the patients, colleagues, the data itself and the trust between the surgery and its patients.'

The panel found no personal acceptance, remediation, or remorse regarding the charges. The panel was of the view that she had expressed insight into what the behaviour of a registered nurse might be, but she did not relate this to herself or her own practice.

The panel found that Miss Batool'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 Batool'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. 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 that all limbs of Grant are engaged in this case.

The panel finds that patients were put at risk of physical and emotional harm as a result of Miss Batool's misconduct. Miss Batool'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 treat charges relating to dishonesty extremely seriously.

Regarding insight, the panel considered that Miss Batool has very limited insight.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Batool has taken steps to strengthen her practice. The panel took into account that she had undertaken a course on NHS record keeping on 11 January 2023, during the course of this hearing, but that other than this there was nothing before it to demonstrate that she had strengthened her practice.

The panel is of the view that Miss Batool remains impaired due to lack of insight and limited steps to strengthen her practice. The panel considered that even at this stage she does not seem to understand and acknowledge her failings which put vulnerable patients at a risk of serious harm, particularly those patients with asthma during the Covid 19 pandemic. The panel concluded that, on account of this, there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required as the panel was of the view the any member of the public would be very concerned if a nurse had entered fictitious clinical data into patients' medical records that were not based on a consultation or information that they had given to a nurse.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Batool's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

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

Submissions on sanction

Ms Bailey informed the panel that in the Notice of Hearing, dated 5 December 2022, the NMC had advised Miss Batool that it would seek the imposition of a striking off order if it found Miss Batool's fitness to practise currently impaired.

Ms Bailey submitted that the charges found proved raised fundamental concerns regarding her professionalism as a registered nurse and the need to maintain confidence and uphold the standards of the profession. She submitted that it was not easy to put right breaches of trustworthiness, especially when the dishonesty resulted in potential harm to patients. She told the panel that the charges found proved could damage the public trust in nurses and that the public interest is engaged at a high level in this case.

Ms Bailey submitted that the following were aggravating factors in determining the sanction in this case, namely that the charges involved:

- Dishonesty related to clinical practice
- Multiple patients were involved and there was a pattern of behaviour

- A high breach of trust due to her seniority and autonomy.

Ms Bailey also informed the panel that there have been two other referrals regarding Miss Batool to the NMC, which were closed at the screening stage.

Ms Bailey submitted that the panel may find that the following mitigating factors were engaged in that Miss Batool has had:

- A long career as a registered nurse
- Some very limited insight

Ms Bailey told the panel that Miss Batool has been on an interim suspension order since November 2020 and has therefore not been practising as a registered nurse since that time.

Ms Bailey reminded the panel that it must choose a sanction that does not go further than is necessary to protect the public. She took the panel through the sanctions available to it and submitted that no order, a caution order, and conditions of practice were not appropriate, given the seriousness of the charges found proved and there being no conditions of practice which would be workable in this case. She submitted that a suspension order could be appropriate if there were a single episode of dishonesty and if Miss Batool showed good levels of insight. She concluded, however, that due to the pattern of dishonesty and Miss Batool's very limited insight the behaviour is incompatible with her remaining on the register.

The panel also bore in mind Ms Maudsley submissions on behalf of Miss Batool.

Ms Maudsley referred the panel to the sanctions guidance and reminded the panel the role of the sanction is to protect the public, not to punish. She submitted that the panel must act proportionately to protect the health, safety and well-being of the public, maintain public confidence in the nursing profession, and promote and maintain the standards of the nursing profession. She submitted that the panel must choose a

sanction that goes only so far as is necessary to achieve these aims, with the least impact on the registrant.

Ms Maudsley submitted the following mitigating features and invited the panel to consider these in its deliberation on sanction. She submitted that Miss Batool has attempted to reflect and has shown some insight, even though she does not accept that she was dishonest. She told the panel that Miss Batool understands the risk to patients though no patients were actually harmed as the result of the charges found proved. Ms Maudsley submitted to the panel that in her reflective piece, Miss Batool apologised to any patients who may have been harmed.

Ms Maudsley submitted that Miss Batool had taken a record keeping course. She submitted that at the time of the charges Miss Batool was dealing with a difficult work situation within the Practice and was experiencing difficulties working from home. In addition to these mitigating factors, Ms Maudsley also drew the panel's attention to the strong testimonials provided and the positive remarks about her practice made by Witness 2 during oral evidence. She submitted that the other referrals made to the NMC have no similarity with the current charges and were closed at the screening stage and should have no bearing on this case. She submitted that she has been a nurse since 1979 and was also a nursing tutor during this time.

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Ms Maudsley submitted that the charges were an isolated incident over a short period of time and that she gained absolutely nothing from her behaviour, which did not result in any harm to patients.

Ms Maudsley reminded the panel that it is not only a choice between a Suspension and Strike-Off order, but that every sanction must be considered. Ms Maudsley submitted that an interim order of practice would enable Miss Batool to continue working and strengthen her practice whilst still protecting the public. However, if the panel were of the view that a more serious sanction was required, a Suspension would be appropriate

in this case as there are no attitudinal concerns and the failures identified can be remediated.

Decision and reasons on sanction

Having found Miss Batool'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 systematic pattern of misconduct over a period of time in respect of vulnerable patients
- Abuse of a position of trust in an autonomous role as a registered nurse
- Lack of insight into failings
- Attitudinal concerns throughout the investigative and regulatory process
- Conduct which put patients at a direct risk of suffering harm.

The panel also took into account the following mitigating features:

- Previous good character
- Ten years' experience as a nurse at the Practice
- Positive testimonials, including the evidence of Witness 2 regarding her previous conduct at the Practice

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

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 Miss Batool's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Batool's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Batool's 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 that would protect the public, 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 Miss Batool's registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The 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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was of the view that in the guidance on suspension, which was relevant to this case, the only criteria which was met which would support suspension was that there had been no repetition of behaviour since the incident. However, the panel was of

the view that there could not have been such a repetition as Miss Batool was not in practise as a registered nurse. The panel had no assurance from Miss Batool in person or in writing that she acknowledged her failings and was determined these would never be repeated if she were to return to practice.

In considering this, the panel had particular regard to the NMC guidance 'Considering sanctions for serious cases'. That guidance document makes it clear that a nurse who has acted dishonestly will always be at risk at being removed from the register.

> *"Nurses, midwives and nursing associates who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register.*
>
> *None of this means that the Fitness to Practise Committee only has a choice between suspending a nurse, midwife or nursing associate or removing them from the register in cases about dishonesty. It's vital that, like any other case, the Fitness to Practise Committee should start by considering the sanction with the least impact on the nurse, midwife or nursing associate's practice, and work upwards to the next most serious sanctions if it needs to."*

The panel also took particular note of Miss Batool's attitudinal issues and poor response throughout the investigatory and regulatory process.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Honesty, integrity, and trustworthiness are the bedrock of any nurse's practice. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Batool's actions is wholly incompatible with Miss Batool 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?*

Miss Batool'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 demonstrate that Miss Batool's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Batool's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Miss Batool 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 Batool's own interests 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 Bailey. She submitted that an interim suspension order be imposed for 18 months to cover the 28-day appeal notice period and any further delay that may occur due to an appeal. She submitted that the order was necessary on the same two grounds, namely the public protection and to maintain public confidence in the nursing profession and the NMC as regulator. She submitted that the interim suspension order be imposed for the same reasons as outlined in the panel's substantive determination above.

The panel also took into account the submissions of Ms Maudsley on behalf of Miss Batool. She submitted that it is highly unlikely that as Miss Batool has not worked as a registered nurse for three years that she would be able to secure employment and work as a registered nurse during the 28-day notice of appeal period. She submitted that there was, therefore, no risk to the public nor the public confidence if an interim order were not put in place.

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 was of the view that not to make an interim suspension order would be inconsistent with its previous findings.

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, which should provide sufficient time and protect the public and the public confidence should an appeal be made.

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

That concludes this determination.