

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

**Substantive Hearing  
Monday 13 March 2023 to Tuesday 21 March 2023**

Virtual Hearing

**Name of Registrant:** Margaret Annette Rawle

**NMC PIN** 74H0147E

**Part(s) of the register:** Nurses part of the register Sub part 1  
RN1: Adult nurse, level 1 (29 November 1976)

**Relevant Location:** Surrey

**Type of case:** Misconduct

**Panel members:** Des McMorrow (Chair, Registrant member)  
Richard Curtin (Registrant member)  
Linda Redford (Lay member)

**Legal Assessor:** Paul Housego

**Hearings Coordinator:** Taymika Brandy (13 March 2023)  
Sherica Dosunmu (14 March 2023)  
Petra Bernard (15 – 21 March 2023)

**Nursing and Midwifery Council:** Represented by Yvonne Ferns, of Counsel, Case  
Presenter

**Mrs Rawle:** Not Present and not represented

**Facts proved:** All charges found proved in their entirety

**Facts not proved:** None

**Fitness to practise:** **Impaired**

**Sanction:** **Striking-off order**

**Interim order:** **Interim suspension order (18 months)**

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mrs Rawle was not in attendance and that the Notice of Hearing letter had been sent to Mrs Rawle's registered email address by secure email on 10 February 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Rawle's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

## **Decision and reasons on proceeding in the absence of Mrs Rawle**

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

Ms Ferns referred the panel to the registrant's bundle which included an email from Mrs Rawle to the NMC dated 1 February 2023, which states:

*"Thankyou [sic] for your email. As stated before I will not be attending a hearing. This situation has been going on for over four years and [PRIVATE]..."*

The panel heard and 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 Mrs Rawle. In reaching this decision, the panel has considered the submissions of Ms Ferns, the written representation from Mrs Rawle, and the advice of the legal assessor. It has had particular regard to the factors set out in the decisions in *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 Mrs Rawle;
- Mrs Rawle has informed the NMC that she has received the Notice of Hearing and confirmed she will not be attending;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There are a number of witnesses due to attend the hearing 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;
- The charges relate to events that occurred in 2017 and 2018 and further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Rawle in proceeding in her absence. Although the evidence upon which the NMC relies was sent to her via her registered email address, she

will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Rawle's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Rawle. The panel will draw no adverse inference from Mrs Rawle's absence in its findings of fact.

### **Decision and reasons on application to amend the charge (Day one)**

The panel heard an application made by Ms Ferns on behalf of the NMC, to amend an incorrect date in Schedule 1 to the Charges,

The proposed amendment was to correct a date shown on Schedule 1 as 14 January 2018 whereas it should be 14 April 2018. It was submitted by Ms Ferns that the proposed correction would accurately reflect the chronology of events of the evidence.

### **Schedule 1**

28 October 2017	2 hours 46 minutes
12 November 2017	1 hour 49 minutes
9 December 2017	1 hour 11 minutes
20 January 2018	26 minutes
28 January 2018	1 hour 6 minutes
<del>14 January 2018</del>	<del>38 minutes</del>

### **14 April 2018**

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mrs Rawle and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to correct the typographical date error and reflect the evidence.

### **Details of charges (as read)**

That you, a registered nurse:

- 1) Claimed payment in excess of hours worked for some or all of the dates listed in schedule 1
- 2) Your actions in charge 1 above were dishonest in that:
  - a) You claimed payment when you had not worked those hours
  - b) You completed timesheets that were misleading in that they purported to show had worked when you had not
- 3) Claimed payment for shifts were you did not work on the following days:
  - a) 4 February 2018
  - b) 24 March 2018
- 4) Your actions in charge 3 above were dishonest in that:
  - a) You claimed payment when you had not worked those hours
  - b) You completed timesheets that were misleading in that they purported to show had worked when you had not

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

## **Schedule 1**

28 October 2017	2 hours 46 minutes
12 November 2017	1 hour 49 minutes
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28 January 2018	1 hour 6 minutes
14 April 2018	38 minutes

## **Background**

The charges arose whilst Mrs Rawle was employed by Frimley Park Hospital (the Hospital), which is part of Frimley Health NHS Foundation Trust (the Trust). At the time of the matters referred to, Mrs Rawle was a Band 7 senior sister on the Post Anaesthetic Care Unit (PACU) at the Hospital.

A swipe card was needed to gain access to the PACU, as well as to other areas of the Hospital including the Hospital car parks.

Mrs Rawle had volunteered to work a number of Waiting List Initiative (WLI) shifts at the Hospital, on dates from 1 April 2017 to 30 April 2018. In order to claim payment for these shifts, Mrs Rawle was required to complete and sign a paper claim form which included the number of hours worked, the rate at which she was paid and the total sum claimed. Mrs Rawle then needed to obtain authorisation for the claim from a line manager and a general manager, before sending the claim form to the salary department for processing.

Following the publication of an NHS Counter Fraud Report in February 2019, Witness 2, the Head of Nursing, was appointed to investigate the claims made by Mrs Rawle for WLI shift payments.

From a selection of Mrs Rawle's forms in the relevant period, Witness 2 identified six occasions between 28 October 2017 and 14 April 2018 when Mrs Rawle had claimed

payment for a period which, according to the swipe card data, was longer than she was present at work.

Witness 2 also identified that Mrs Rawle had claimed payments for WLI shifts on 4 February 2018 and 24 March 2018, even though there was no evidence she had been at work on those dates.

Following internal disciplinary hearings on 12 August 2018 (the first disciplinary hearing), 24 October and 28 November 2019 (together, the second disciplinary hearing), Mrs Rawle was dismissed from the Trust.

Mrs Rawle is not currently employed as a registered nurse.

## **Admissions**

The panel noted from the outset of the hearing that a Case Management Form (CMF), signed by Mrs Rawle and dated 1 February 2023 contained admissions to all of the charges, as follows:

*'I have found it impossible to prove my innocence over the past 3<sup>1/2</sup> years. I do not feel it is right to ask my witnesses to give evidence after all this time especially when they were not believed previously. I do not intend to nurse again so have decided to sign the declaration admitting misconduct therefore bringing this case to an end for me and my family'*

The panel accepted the advice of the legal assessor in this matter and the panel found this to be an equivocal plea (meaning it cannot be a guilty plea). The panel therefore went on to consider all charges as disputed facts and make a decision and reason on the facts of this case.

## **Decision and reasons on application for parts of the hearing to be held in private**

At the outset of the hearing, Ms Ferns made a request that this case be held partly in private on the basis that proper exploration of Mrs Rawle's case involves reference to [PRIVATE] in relation to Witness 2, Witness 4 and Witness 6. The application was made pursuant to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (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.

The panel determined to rule on whether or not to go into private session in connection with the health and / or personal family matters of Witness 2, Witness 4 and Witness 6. It determined to go into private session as and when such issues are raised in order to protect their right to privacy.

## **Decision and reasons on facts**

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 Ferns on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mrs Rawle.

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



- Witness 1 (under affirmation): Associate Director at Heatherwood Hospital, part of the Trust, and had oversight of Mrs Rawle disciplinary investigation at the relevant time.
- Witness 2 (under affirmation): Head of Nursing at the Hospital; who undertook the internal investigation at the relevant time.
- Witness 3 (under affirmation): Senior Nurse at the Hospital at the relevant time.
- Witness 4 (under affirmation): Band 5/6 Nurse in the Post Anaesthetic Care Unit (“PACU”) at the Hospital, at the relevant time.
- Witness 5 (under affirmation): Band 5 Staff Nurse [PRIVATE]

The panel heard live evidence from the following witnesses called by the NMC, but who were supportive of Mrs Rawle and were called in the interest of fairness:

- Witness 6 (under oath): Ward Clerk at the Hospital  
Mrs Rawle was her manager at the relevant time.
- Witness 7 (under affirmation): Healthcare Assistant in PACU at the Hospital at the relevant time

### **Witness 1's evidence**

Witness 1 told the panel that she was the overseeing investigator at the Trust and it was her findings on the allegations that were taken into consideration by the disciplinary panel in Mrs Rawle's disciplinary hearings undertaken by the Trust.

### **Witness 2's evidence**

Witness 2 told the panel that he undertook the internal investigation into the allegations against Mrs Rawle at the Trust. He explained the Waiting List Initiative (WLI), the swipe card access system to the Hospital's car parks and various other doors and areas within the Hospital site and the Hospital's patient database system PICIS. Mrs Rawle accessed the Hospital car park, building and PICIS with her swipe card. He explained to the panel the Hospital's procedure for submitting and signing off WLI claim forms. He also explained his analysis of the available data which he had presented to Witness 1.

### **Witness 3's evidence**

Witness 3 confirmed that she was a senior nurse at the time of the allegations against Mrs Rawle. She took over as lead investigator for the second hearing on 24 October 2019.

She told the panel that when she was working as duty nurse, Mrs Rawle shadowed her to gain experience of this senior role. She said that at the time of the allegations Mrs Rawle was one of two Band 7 nurses in charge of the PACU.

Witness 3 explained the Waiting List Initiative (WLI) and its sign-off procedures. She said it was a system whereby extra patients are invited to attend for their procedures on the weekend. She said these shifts attract a higher hourly rate.

Witness 3 was asked by Ms Ferns if it was established practice to round up the hours on the WLI claim forms. Witness 3 replied that she did not as rounding of minutes was not done in her department. She confirmed that when a senior nurse signs off a shift, they

need to have known that the nurse had worked the entirety of the shift and are accountable for it.

Witness 3 then went on to explain her role in the internal investigation into the allegations against Mrs Rawle. She said that she was a senior member of the team with oversight of PACU and was asked to review the appeal. When asked by Ms Ferns what she meant in her statement when she said Mrs Rawle's access into the PICIS database was "*telling*", she said that she believed that on the dates mentioned Mrs Rawle did not log in to PICIS. She said that if you are working a WLI shift, you are there to look after the specific patients listed, and would therefore have need to enter patient data on PICIS.

Witness 3 was asked by Ms Ferns about the car park barriers and whether they were in use. She said that they were and that she would normally expect the barriers to be down and in use.

#### **Witness 4's evidence**

Witness 4 confirmed that she is a registered band 6 nurse and worked with Mrs Rawle in PACU in 2017/2018. She told the panel that at that time Mrs Rawle "*connected with her in a family like manner*". She said that she had told Mrs Rawle that she had [PRIVATE] and that Mrs Rawle allowed her to leave her shift to attend to matters [PRIVATE].

Witness 4 confirmed that after completing WLI shifts, staff members were expected to complete the claim form. She said that if she did a WLI shift, a manager or a band 7 nurse would sign the form. She said that when she signs the forms, she signs on trust and there is also clear documentation elsewhere on another roster to say that that member of staff has done a shift.

Ms Ferns asked Witness 4 how she would have known that the car park barriers were always up if she had not been at the Hospital every weekend. Witness 4 said that her normal working shifts included a Sunday, and her general observation was that the car park barriers were up during weekends. She also said that on occasions the barriers were down and you would have to use your badge to enter.

Ms Ferns referred Witness 4 to paragraph 26 of her statement, where she states that there were times when PICIS was down during her shift, and Ms Ferns asked if this would be for all staff. Witness 4 replied 'yes', the PICIS generally had lots of issues. She said that there were IT problems, printing issues and problems accessing information. She said on these occasions when PICIS was down they would have to document nursing care for patients on paper.

When questioned by the panel about how everyone was afforded flexibility for their working patterns by Mrs Rawle, Witness 4 stated that this flexibility included the ability to leave the department mid shift and return later.

Witness 4 told the panel that when working WLI shifts the nurse in charge could be lower than a band 7 and if a band 7 nurse were working such a shift, they would be working as a staff nurse, under the leadership of a nurse in charge who might be a band 6 nurse.

Witness 4 was asked about the element of trust when signing off on claims forms and whether there is a mechanism to check the hours. She said yes, but they did not scrutinise the hours being claimed.

### **Witness 5's evidence**

Witness 5 confirmed that she is a sister nurse at the Hospital [PRIVATE].

Witness 5 confirmed that Mrs Rawle was ward manager in 2010 on PACU when she started working there.

Witness 5 said that as a band 5 nurse she saw things going on but did not speak out about it. [PRIVATE].

Witness 5 said in her statement that she believed Mrs Rawle had done things she should not have done. She said one example of this was Mrs Rawle going out in the middle of a shift to collect her grandson from school then coming back into the department. Ms Ferns

asked how often this would happen and how long would Mrs Rawle be gone for. She said it happened fairly frequently and could not put a number on it. She said Mrs Rawle would be gone for an hour but it would be quite variable.

Witness 5 said that she did see some of the time sheets completed by Mrs Rawle and there were certainly occasions where it was documented that Mrs Rawle had claimed for hours longer than she had in fact worked.

When asked if she had raised this with anyone; Witness 5 she did not because she was band 5 and Mrs Rawle was a band 7. She said at the time it was almost just accepted that this is what she did, and it would be very difficult to challenge and question your senior manager. She said that was just the culture of the department in relation to Mrs Rawle, however she did not know if everyone knew but suspected they did as it was no secret where the timesheets were.

### **Witness 6's evidence**

Witness 6 confirmed that at the relevant time she was working as a ward clerk at the PACU at the Hospital. She said she has known Mrs Rawle [PRIVATE]

In her statement Witness 6 said that she knew Mrs Rawle had worked on 4 February 2018. She said that she attended a wedding on 2 February 2018 where [PRIVATE]. She said she returned to Mrs Rawle's house on 4 February 2018 in order to stay there.

Ms Ferns put it to Witness 6 that she had provided two different accounts of the events that took place on 4 February 2018 in that her hand written letter dated 17 October 2019 differs from her witness statement in that the earlier account makes no mention of being at a wedding and having attended A&E at the Hospital.

Witness 6 agreed that 4 February 2018 would have been a memorable day both for her and Mrs Rawle. Witness 6 denied that the reason there is no mention of the events described in her witness statement in this written account is because it never happened.

Witness 6 said that she probably could have provided phone records, but had not thought to do so.

Witness 6 confirmed that she did not work on 24 March 2018. She said this was the day of her father's 90<sup>th</sup> birthday celebration [PRIVATE]. She said she saw that Mrs Rawle was on the WLI shift which would have started at some time between 8:00 am – 10:00 am. [PRIVATE]. She said that she made calls to check if Mrs Rawle was still at work and was told that she was still working. Witness 6 said that she probably could have provided phone records, but had not thought to do so.

### **Witness 7's evidence**

Witness 7 confirmed that she was working as a Health Care Assistant in the PACU at the Hospital during the relevant time and held that position between 2014 to 2021. She said that Mrs Rawle was her manager at the time and that Mrs Rawle [PRIVATE].

Witness 7 confirmed that on 24 March 2018 she worked a WLI shift on that day from 8:00am to 2:00pm. She recalled that Mrs Rawle was working with her on that day but could not recall her shift times; further she said in her witness statement

*'...I remember this day clearly because it was the day I attended my grandfather's birthday lunch, [PRIVATE...]'.*

Witness 7 said that, although there was no mention of this in her account of 11 June 2019 provided to the Trust, it should have been mentioned. Witness 7 considered that the date of her grandfather's lunch would have been memorable to Mrs Rawle.

### **Closing submissions**

Ms Ferns provided a written submission as follows:

*'You are considering charges that relate to Mrs Rawle. I refer you to the schedule of charge for the precise wording of the charges when considering your determination. Mrs Rawle has made admissions to charges 1 - 4 although it is fair to say that it is an equivocal plea.*

*You have been provided with documentary evidence, in the form of witness statements and exhibits from seven witnesses. In addition, you have heard live evidence from all seven witnesses.*

*To assist you with the charges, you have been provided with an evidence matrix detailing parts of the evidence before you in respect of each charge. I do not seek to repeat the information contained within it. The evidence matrix represents the core of the NMC evidence but is not designed to be a complete overview of all the evidence that may be relevant to each matter.*

## **Background**

*The Mrs Rawle was employed by Frimley Health NHS Foundation Trust and had worked for the Trust since 1985.*

*The Mrs Rawle was working as a Band 7 Senior Sister in the Post Anaesthetic Care Unit ("PACU") at Heatherwood Hospital ("the Hospital").*

*An internal investigation was carried out by the Trust, and it was discovered that during the period, 28 October 2017 and 24 March 2018, there were discrepancies in the hours claimed by the Mrs Rawle for Waiting Lists Initiative (WLI) shifts and the hours actually worked by the Mrs Rawle. As part of her role, the Mrs Rawle who was a Band 7 Senior Sister, was also responsible for allocating WLI shifts to staff and checking claims for payment had been filled out and authorised correctly. Therefore, Mrs Rawle would have been fully conversant with the completion and authorisation of WLI claim forms.*

*A swipe card was required in order to gain access to PACU and was also used to enter the Hospital staff car park. Mrs Rawle had a swipe card with her own identification (ID) details and data regarding the Mrs Rawle's swipe card use has been produced.*

*Mrs Rawle claimed payment for WLI shifts on 4 February 2018 and 24 March 2018. The swipe card data has no record of Mrs Rawle accessing PACU at any time on the 4 February 2018 and 24 March 2018.*

*In addition, Mrs Rawle did not access the patient database, PICIS on the 4 February 2018 and 24 March 2018. There is no evidence that the Mrs Rawle had been at work on those dates.*

### **Evidence**

*[Witness] 1 who is the Associate Director at the Hospital, stated in her evidence that she went through each of the dates in the access control report, which was produced by the security department, and records each access and also PICIS, the patient database and found that there was no evidence of the Mrs Rawle being at work on the two dates [4.2.18 and 24.3.18] despite the hours claimed. [Witness 1] stated she went through each of the individual dates and noted that the Mrs Rawle had claimed significantly more. [Witness 1] stated further that she reviewed the report and dates and potential times and explained that PICIS was only used in theatre environment with the individual's log on details. [Witness 1] explained that by comparing other shifts that were not in dispute she could see the range and number of times the Mrs Rawle swiped access. [Witness 1] stated that she found that the Mrs Rawle always logged on to PICIS with the exclusion of the two dates. [Witness 1] stated that she did not know the Mrs Rawle before the disciplinary hearing. [Witness 1] stated that in the disciplinary hearing the Mrs Rawle called a witness, [Witness 6] who gave evidence at the hearing stating that she saw the Mrs Rawle leave for work on the 4 February 2018 as she was temporarily living with the Mrs Rawle for 6 weeks. However, in her written statement, [Witness 6] says she was staying with the Mrs Rawle for the weekend. [Witness 1] said the accounts*



were different and she didn't believe [Witness 6] as she felt it would be 'quite memorable' and she thought it to be a 'big discrepancy' and the conclusion she drew from the discrepancy is that [Witness 6] was not truthful.

[Witness 1] stated that during the disciplinary hearing, the Mrs Rawle called a witness, [Ms 1] who stated she knew that the Mrs Rawle had worked on the 4 February 2018 and produced her diary record. [Ms 1] also produced a photo on her mobile phone in an attempt to demonstrate that the Mrs Rawle had signed her (Ms 1's) leave request on this date. [Witness 1] said that when they examined the photo, they found that it actually referred to 4 February 2019. [Witness 1] said [Ms 1] was 'surprised and embarrassed' by this discovery.

[Witness 1] stated that [Witness 7] also gave evidence during the disciplinary hearing and stated that she was working an 08:00-14:00 WLI shift on 24 March 2018 and that the Mrs Rawle was also working on that date. [Witness 1] noted that [Witness 7] was [Witness 6]'s daughter and this suggested to her that [Witness 7] and the Mrs Rawle had a very close relationship. [Witness 1] stated this was not considered sufficient to prove that the Mrs Rawle was working on this date and that there was data suggesting that the Mrs Rawle was not present.

[Witness 2] who is the Head of Nursing for the Trust was asked to undertake investigations into allegations of fraudulent WLI claim forms submitted by the Mrs Rawle.

[Witness 2] stated that WLI claim forms should be authorised for payment by a line manager or an individual who is above the grade of the claimant and that lunch breaks on WLI shifts could not be claimed for unless specifically authorised. [Witness 2] stated that it was expected that staff would take a lunch break of 30 minutes on a WLI shift. [Witness 2] stated that when he questioned Mrs Rawle about this, he was unable to ascertain if the Mrs Rawle was having a break.

*In his evidence, [Witness 2] explained the details of the swipe card data for the dates listed in schedule 1 of the schedule of charge and referred to the analysis of the variance in his Management Case, exhibit [Witness 2].*

*[Witness 2] stated that staff could log onto the patient database, PICIS with a swipe card or manually with an email and password and that each member of staff had their own ID details. He further explained that access to the PICIS system was recorded and referred to the PICIS data in his exhibit [Witness 2]/08.*

*[Witness 2] did a cross-comparison of the swipe card data and PICIS log on data for the Mrs Rawle's for all the dates in schedule 1 of the schedule of charge and also for 4 February 2018 and 24 March 2018. He found that there was a variance in the hours worked and claimed on 28 October 2017, 12 November 2017, 9 December 2017, 20 January 2018, 28 January 2018 and 14 April 2018. In addition, he found that there was 'no access to the hospital' and 'no access to PICIS' on 4 February 2018 and 24 March 2018. He concluded that the Mrs Rawle was not on duty on those dates as there was no evidence that she was in the hospital.*

*On the 3 April 2019, [Witness 2] had a meeting with Mrs Rawle to discuss the allegations and his findings. [Witness 2] stated that when he questioned the Mrs Rawle about the discrepancies in the WLI claim forms, her response did not alleviate his concerns. The Mrs Rawle explained that the discrepancy on the 28 October 2017 was due to her daughter borrowing her car but could provide no explanation for the other dates. [Witness 2] states that the Mrs Rawle was not forthcoming about why there was no record of her logging in to PICIS on the 4 February 2018 and 24 March 2018 and made no mention of any system failure. [Witness 2] explained that any system failure with PICIS would impact other members of staff too. [Witness 2] stated that the Mrs Rawle did not provide any explanation about the 4 February 2018 and 24 March 2018.*

*[Witness 3] was a Senior Matron at the time of the incident and attended weekly meetings which included the Mrs Rawle but she never line-managed the Mrs Rawle or worked with her in PACU.*

*When questioned about breaks during a WLI shift, [Witness 3] stated that she would expect staff to take a break on a WLI shifts as they would 'need a break'. [Witness 3] stated that WLI claim forms that they would normally be signed by the 'nurse-in-charge' and that a Matron would be permitted to sign as a line manager. [Witness 3] stated that it was 'not appropriate' in her opinion for a Band 7 doing a WLI shift to get the claim form signed by another nurse. [Witness 3] stated it was also 'not appropriate' for a nurse who was a band lower to authorise the WLI claim form of another nurse.*

*[Witness 3] stated that if the Mrs Rawle who was a Band 7 was doing a WLI shift, she would be working as a nurse not as a nurse-in-charge and would be 'working as a nurse responsible for a patient'. [Witness 3] explained that a Band 7 worked as a nurse not a nurse-in-charge as they were 'providing staffing for that shift'.*

*[Witness 3] stated that in relation to the Mrs Rawle's access to PICIS where there was no access to PICIS on dates mentioned that it was 'telling' because the Mrs Rawle if working in WLI would be there 'working look after patients' and that it was not a 'helicopter role' as would be there 'to receive patient and enter events on system'. [Witness 3] stated, 'need to enter patient observations' on PICIS as need 'to able look after patient log in PICIS record observations.' [Witness 3] stated that it was 'not an accepted practice' for two nurses working together for one to log on to PICIS and the other do the tasks.*

*[Witness 3] said that as part of the investigation she conducted, she was given a large amount of data to consider which included claim forms completed by the Mrs Rawle, identification card swipe data, access to PICIS database and off-duty/on-duty book for PACU. When [Witness 3] was asked whether she had looked at data*

*that was not deemed to be fraudulent as a comparison, she stated that she looked at 'many documents' and 'did look at other documents for a comparison'.*

*In reference to the staff car park barriers, [Witness 3] stated that the car park barriers were 'normally in use' on Saturdays and Sundays and that there was 'no difference and barriers down' but 'occasionally' not on an 'ad hoc basis.'*

*[Witness 3] explained that there was an off duty/on duty PACU book where WLI shifts were entered and that she reviewed the book for one particular date and which the Mrs Rawle had said she had worked but had not seen the Mrs Rawle's name.*

*Based on the data [Witness 3] reviewed, she concluded that there was a discrepancy between the hours claimed by the Mrs Rawle and the hours worked by the Mrs Rawle.*

*[Witness 4] stated in her evidence that when she worked with the Mrs Rawle in PACU she was a Band 6 nurse, and the Mrs Rawle was a Band 7. [Witness 4] stated that the Mrs Rawle connected with her in a 'family-like manner' and accommodated 'flexible working hours' such that she [Witness 4] could 'juggle work and childcare'. [Witness 4] stated that the flexibility included the ability to leave the department mid shift.*

*[Witness 4] confirmed that she had signed the Mrs Rawle's WLI claim form 'on occasions' and that she had authorisation to do so as she was trained to deal with wages but was unable to provide any documentation to prove this. [Witness 4] confirmed that she signed the Mrs Rawle's WLI claim forms even though she had not been on the same shift as the Mrs Rawle. When it was put to [Witness 4] that by signing the Mrs Rawle's WLI claim form she was saying that the Mrs Rawle had done the hours in that shift, [Witness 4] conceded that she signed the WLI claim form 'on trust'. [Witness 4] confirmed that she was not the Mrs Rawle's line manager when she signed the Mrs Rawle's WLI claim form.*

*In relation to using PICIS on WLI shifts, [Witness 4] stated, 'generally don't use PICIS for WLI' however, she conceded that for WLI patients, you would be expected to log on to PICIS to enter patient observations.*

*[Witness 4] accepted that if you were a Band 7 signing up for WLI, you were there as a staff nurse.*

*[Witness 6] was a Ward Clerk in the Recovery Unit during the period 2014-2019 and that the Mrs Rawle was her manager at the material time. [Witness 6] confirmed that she has known the Mrs Rawle for 31 years and that she is a good friend of hers.*

*[Witness 6] stated in an account given on 17 October 2019, that [PRIVATE] stayed at the Mrs Rawle's for the weekend and that her husband had a golf match the following day. However, in her statement of 13 February 2023, [Witness 6] does not refer to any golf match but states that she attended a Wedding in the Cotswold on the 2 February 2018 and [PRIVATE]. She states that on 3 February 2018 she [PRIVATE] on the 4 February 2018 stayed at Mrs Rawle's house. [Witness 6] states that the Mrs Rawle called her whilst she was [PRIVATE] to check on her.*

*There is no mention in [Witness 6]'s first account on 17 October 2019 being [PRIVATE] which I submit is a memorable detail to leave it.*

*I submit that the two accounts provided by [Witness 6] show an inconsistency which suggests that both accounts have been fabricated.*

*[Witness 6] stated that she did not have any phone records to demonstrate telephone calls were made but accepted that she could have obtained those records.*

*I submit that either of the accounts provided by [Witness 6] would have been memorable to the Mrs Rawle and if true, the Mrs Rawle would have referred it in her meeting with [Witness 2], at the disciplinary hearing or in the Case Management Form. It would have assisted the Mrs Rawle to refer to these accounts, but the Mrs Rawle has made no reference to the either of the accounts given by [Witness 6]. You may form the view that the reason the Mrs Rawle has not*

*referred to any of the details provided by [Witness 6] is because they did not happen.*

*[Witness 6] stated that she saw that the Mrs Rawle was down to do a WLI shift on 24 March 2018 and that it was also the date of her father's 90 birthday to which the Mrs Rawle was invited. [Witness 6] confirmed that she was not working on the 24 March 2018. [Witness 6] was unable to provide the times of the WLI shift that the Mrs Rawle was working. [Witness 6] stated that she telephoned the Hospital to see whether the Mrs Rawle had left as she had not arrived at the party and was informed that the Mrs Rawle's shift was running over time. [Witness 6] stated that she did not have any phone records to show that the telephone call took place.*

*[Witness 6] accepted that she could have obtained those telephone records.*

*[Witness 6] accepted that her father's 90<sup>th</sup> birthday was a memorable occasion and that she would have expected the Mrs Rawle to have remembered it. The Mrs Rawle never mentioned attending [Witness 6]'s father's 90<sup>th</sup> birthday party late due to her WLI shift running late when she had her meeting with [Witness 2] or at the disciplinary hearing or in the Case Management Form.*

*You may form the view that the reason the Mrs Rawle has not referred to attending a 90<sup>th</sup> birthday party late due to working a WLI shift which was running late was because it did not happen.*

*[Witness 7] was a health care assistant who was working in Recovery from 2014 - 2021 and that the Mrs Rawle was her manager. [Witness 7] stated that the Mrs Rawle is a very close family friend. [Witness 7] also confirmed that [Witness 6] is her mother.*

*[Witness 7] wrote a statement on 11 June 2019 stating that she was working on 24 March 2018 from 08:00-14:00 and that the Mrs Rawle was also working that date. [Witness 7] was unable to provide the times that the Mrs Rawle worked or who the team members were on that date.*

*On 15 February 2023, [Witness 7] provided a further statement which stated, 'I remember this day clearly because it was the day, I attended my grandfather's birthday lunch'. [Witness 7] accepted that events would have been clearer on the 11 June 2019. [Witness 7] also accepted that she had not made any reference in*

*her statement of 11 June 2019 to her grandfather's birthday lunch and that the Mrs Rawle was invited to attend.*

*[Witness 7] accepted that it was an important detail to have left out and said that it should have been stated.*

*I submit that it was not an oversight but that it was a fabrication by the witness to make her evidence more credible.*

*[Witness 5] [PRIVATE] Mrs Rawle became her Ward Manager until the Mrs Rawle left the Hospital. At the time of the incident, [Witness 5] stated that she was a Band 5 nurse, and the Mrs Rawle was Band 7. [Witness 5] explained that she initially supported the Mrs Rawle, but it was with the benefit of hindsight when she became a Band 6 and 'worked more' and was 'involved in managing people' that she 'changed her view'.*

*[Witness 5] explained that 'things happened that shouldn't have happened' and provided a list of things done by the Mrs Rawle: "leaving in the middle of a shift, stating working longer hours than are, not delivering patient care, not grasping departmental change, not moving managerially with time". [Witness 5] gave an example of the Mrs Rawle going 'out in the middle shift to collect her grandson' and that this occurred 'fairly frequently' and that the Mrs Rawle would be gone for 'an hour maybe'.*

*[Witness 5] also stated that she did WLI shifts herself and when she added her time sheet to the file, she could see the Mrs Rawle's claim forms. [Witness 5] stated that she found on 'occasions documented worked longer than she had'. [Witness 5] explained that she did not raise it with anyone partly because she was a Band 5 and the Mrs Rawle was a Band 7, but also because it was 'accepted' and 'something she [Mrs Rawle] did'. [Witness 5] stated that it was 'difficult to challenge' and 'just culture of department'.*

*Having heard from all the witness, you may form the view that there is cogent evidence from reliable sources which supports the position that the Mrs Rawle made inflated claims for WLI shifts and that the Mrs Rawle was not working on the 4 February 2018 and 24 March 2018 and the only logical conclusion is that the Mrs Rawle made fraudulent WLI claims.*

*I submit that the legal test for dishonesty, is set out in the case of Ivey v Genting Casinos Ltd t/a Crockfords [2017] UKSC 67, which can be summarised as follows: 'You should first ascertain the actual state of the individual's knowledge or belief as to the facts. Once this has been established, the question of whether the conduct was honest or dishonest is to be determined by applying the standards of ordinary decent people.'*

*In accordance with Rule 30 Nursing and Midwifery Council Rules (2004), the burden of proof is on the NMC to prove any allegations in dispute. The standard required, is the civil standard, which is the 'balance of probabilities,' namely whether the evidence as presented by the NMC is more likely than not to have occurred.*

*In the circumstances and based on the evidence submitted, on the balance of probabilities, I invite the panel to find all the charges proved.'*

[sic]

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 the NMC.

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

### **Charge 1**

*That you, a registered nurse:*

- 1) Claimed payment in excess of hours worked for some or all of the dates listed in schedule 1*

**This charge is found proved.**

In reaching this decision, the panel took into account Witness 4's evidence and the WLI Claim Forms exhibited in evidence. The panel found Witness 4's evidence to be credible



as she worked in PACU and had direct knowledge of how the PICIS system was used in practice.

The panel considered that Witness 2 gave a detailed account of how the system's data related to the arrival and departure in the carpark and also the movement around the doors and areas in the Hospital. The panel determined that the swipe card data was reliable evidence and supports the claim that the car park barrier was very much in use on weekends. This undermines the evidence that the barriers were left up over the weekend. Further, the panel concluded that, because of the times in and out, it would have been impossible for Mrs Rawle to have been on site at the Hospital during the times she claimed for in Schedule 1, even if she had taken no break in a long shift as she claimed.

In all the circumstances and on the basis of the swipe card data, the hours claimed on each of the dates in question in Schedule 1 to this charge do not match the data in the report. The times used by the Trust were as favourable to Mrs Rawle as possible, as in all but one morning, they measured the time between entry to the car park and leaving the car park, not time actually at work. This supports the allegation of the charge that Mrs Rawle did claim excess amount of time on the given dates. The panel determined that on the balance of probabilities this charge was made out and found this charge proved.

## **Charge 2)**

*That you, a registered nurse:*

*2) Your actions in charge 1 above were dishonest in that:*

*a) You claimed payment when you had not worked those hours*

**This charge is found proved.**

In reaching its decision the panel determined that having found Charge 1 proved, it follows that Charge 2a is proved as Mrs Rawle knowingly claimed payments when she had not worked those hours. The panel considered that ordinary decent people would consider this to be dishonest.

## **Charge 2)**

*That you, a registered nurse:*

- b) You completed timesheets that were misleading in that they purported to show had worked when you had not*

### **This charge is found proved.**

In reaching its decision, the panel determined that having found Charge 2a proved, it follows that Mrs Rawle's timesheets were misleading in that they did show she had worked when she had not. The dates and hours in Schedule 1 of the charges were signed for, Mrs Rawle knew the system and had overstated hours for times on those dates where she did not work. The panel considered that ordinary decent people would consider this to be dishonest.

## **Charge 3**

*That you, a registered nurse:*

- 3) Claimed payment for shifts were you did not work on the following days:*
  - a) 4 February 2018*
  - b) 24 March 2018*

### **This charge is found proved in its entirety.**

The panel took account of swipe card data for 24 February 2018 and 24 March 2018 and the oral and written evidence of Witness 2, especially his management report and the exhibited data sheets. There is no PICIS date or swipe card record to support Mrs Rawle's claim that she was on site at the Hospital working on these two dates.

The panel accepted that the security system is reliable and that the barrier system is usually in operation at the weekend. The panel noted that there is no objective evidence that supports Mrs Rawle's claim that she was working on those dates.

The panel considered the evidence from Witness 6 in relation to 4 February 2018. She said that Mrs Rawle was working on that day. The panel took account of the omissions in her statement to the Trust and her evidence to this hearing. Further, the panel determined that Witness 6 could have obtained telephone record evidence to support the calls made and received between her and Mrs Rawle, but did not think to do so.

Witness 6 and Witness 7 both say that Mrs Rawle was working on 24 March 2018. They said that it was their father / grandfather's birthday celebration on this day and Mrs Rawle was invited to the birthday celebration. However they say that she did not make it on time to the party as they say she was working.

The panel considered the PICIS system which showed no entries from Mrs Rawle on these two dates.

The panel considered it to be more likely than not that Mrs Rawle had not attended work on either date. That would require the barriers to have been up on both weekends, for her to forget her swipe card on both days and for the PICIS system to have failed on both days. This combination of factors is unlikely and is unevidenced.

In all the circumstances the panel determined that Mrs Rawle did not work on these two dates as claimed. The panel therefore find this charge proved in its entirety.

#### **Charge 4**

*That you, a registered nurse:*

- 4) *Your actions in charge 3 above were dishonest in that:*
  - a) *You claimed payment when you had not worked those hours*

*b) You completed timesheets that were misleading in that they purported to show had worked when you had not*

**This charge is found proved in its entirety.**

In reaching its decision, the panel determined that having found Charge 3a and 3b proved, it follows that Mrs Rawle's claim forms were misleading in that they did show Mrs Rawle had worked when she had not.

The panel took account that Mrs Rawle was familiar with the system. The panel was of the view that Mrs Rawle knowingly overstated and claimed for hours she had not worked. It is not said that this was a mistake.

The panel was of the view that the both limbs of the test in *Ivey* have been met. It determined that Mrs Rawle knew what she was doing. It determined that her conduct was dishonest by the standards of ordinary decent people.

The panel found this charge proved in its entirety.

### **Fitness to practise**

Having found the facts proved for all the charges in their entirety, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Rawle 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, Mrs Rawle's fitness to practise is currently impaired as a result of that misconduct.

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

Ms Ferns provided the panel with a brief outline of this case. She referred the panel to the CMF form where Mrs Rawle has admitted that her fitness to practise is impaired by her misconduct but noted that her admission was equivocal.

Ms Ferns referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015 (the Code) in making its decision. Ms Ferns identified paragraphs 20.1, 20.2, 20.3, 20.4, and 21.3 of the Code as the specific, relevant standards Mrs Rawle's has breached.

Ms Ferns submitted that Mrs Rawle's repeated actions of dishonesty are serious and fall short of what would be expected of a registered nurse. She submitted that the areas of concern identified relate to dishonesty and this failing involves a serious departure from expected standards.

Ms Ferns invited the panel to take the view that the facts found proved amount to misconduct, citing the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 as applicable case law. She submitted that Mrs Rawle's actions were so serious both individually and collectively that they fall seriously short of the conduct of a registered nurse and amount to misconduct.

### **Impairment**

Ms Ferns submitted that if the panel conclude that the Mrs Rawle's actions amount to misconduct, it should then move on to consider whether on the basis of the facts found proved, her fitness to practise is currently impaired by reason of her misconduct.

Ms Ferns addressed the panel on the need to have regard to 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. Therefore, in considering Mrs Rawle's fitness to practise the panel should remind itself of its duty to protect the public interest which includes declaring and upholding proper standards of conduct and behaviour, and the maintenance of public confidence in the profession and the regulatory process.

Ms Ferns referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), where Mrs Justice Cox 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 of the judgment in *Grant*, Mrs Justice Cox approved of the approach formulated by Dame Janet Smith 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 she/he:*

Reference to '*doctor*' can be substituted for '*nurse*'.

- 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.*
- d) *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The word '*medical*' can be substituted with '*nursing*'.

Ms Ferns submitted that limbs b, c, and d in *Grant* are engaged.

Ms Ferns referred the panel to the NMC guidance on impairment. She submitted that dishonest actions are concerns that are serious and are difficult to remediate. In the absence of any remediation, there remains a risk of repetition should Mrs Rawle be permitted to return to practise unrestricted.

Ms Ferns referred the panel to the case of *Cohen v GMC* [2007] 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:

*1. Whether the conduct that led to the charge(s) is easily remediable*

Ms Ferns submitted that it is difficult to remediate the regulatory concerns in this case.

*2. Whether it has been remedied*

Ms Ferns submitted that Mrs Rawle's conduct was not a one-off incident but occurred over a prolonged period of time. She submitted that Mrs Rawle's was in a senior position of authority and therefore there was a breach of trust which resulted in her directly benefiting

from her dishonest actions. She submitted that it is a matter for the panel to determine whether Mrs Rawle has already remediated her conduct in relation to the charges found proved and referred the panel to the case of *Meadow v GMC* (2007) EWCA Civ 1390.

### *3. Whether it is highly unlikely to be repeated*

Ms Ferns submitted that Mrs Rawle has admitted the charge however, as it is an equivocal plea, she submitted that Mrs Rawle does not accept that her actions are a regulatory concern and a risk to the public or to the public's confidence in nurses. She submitted that in the light of this lack of insight and acceptance, there is a risk of repetition.

Ms Ferns referred the panel to the NMC guidance on *Remediation and insight* to see if the alleged failings have been addressed. She submitted that the concerns in this case satisfy the criteria in this guidance. The NMC guidance identifies dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to a nurse's practice, as an example of conduct which may not be possible to remedy, and where steps such as training courses or supervision at work are unlikely to address the concerns.

Ms Ferns submitted that Mrs Rawle has not demonstrated insight into the seriousness of her actions and that her failings in this case could raise concern about her integrity as a nurse, and that her alleged actions are so serious that they may not be capable of remediation.

Ms Ferns submitted that the question for the panel is whether in light of the above, due to Mrs Rawle's misconduct and no evidence of remediation, Mrs Rawle is liable in the future to repeat the behaviour and conduct. Additionally, the reputation of the nursing profession would be damaged if Mrs Rawle were to be permitted to practise unrestricted: the public expect nurses to be honest at all times.

Ms Ferns submitted that Mrs Rawle has breached the fundamental tenets of the profession relating to honesty and integrity and thereby brought its reputation into disrepute. She submitted that Mrs Rawle's actions relate to core nursing requirements of



honesty and integrity in the fulfilment of her profession. In light of her actions, a finding of current impairment is necessary to declare and uphold proper standards.

For the reasons above, Ms Ferns submitted that Mrs Rawle's fitness to practise is currently impaired, on public interest grounds.

Ms Ferns submitted that public confidence in the profession and the NMC as regulator would be undermined if that behaviour were allowed to pass, effectively unmarked. She told the panel that it may form the view that Mrs Rawle's misconduct was so serious and that there is a need to declare and uphold the professional standards expected of a registered nurse and to maintain public confidence in the profession and the NMC as its regulator.

Given the seriousness of this case and the conduct identified, Ms Ferns submitted that the panel may conclude, in the circumstances of this case, a finding of impairment on public interest grounds is required and that Mrs Rawle's fitness to practice is currently impaired.

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

### **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 Mrs Rawle's actions did fall short of the standards expected of a registered nurse, and that her actions amounted to breaches of the NMC 2015 Code. Specifically:

***'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 integrity and honesty at all times*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

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

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

*To achieve this, you must:*

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

The panel took no account of Mrs Rawle's admission of misconduct contained in her CMF because of its equivocal nature. The panel considered the charges found proved as a whole, and found them to be serious, repetitive and occurring over a prolonged period of time. The panel found that Mrs Rawle's actions did fall seriously short of the conduct and standards expected of a nurse and that it amounted to misconduct.

**Decision and reasons on impairment**

The panel then went on to decide if as a result of the misconduct, Mrs Rawle's fitness to practise is currently impaired.

The panel determined that there are no allegations in the charges that evidence that the ground of public protection is engaged in this case. There is no information to show that any patient has been put at risk. The panel did however consider that the wider public interest is engaged and determined that the dishonesty in this case was serious and sustained and would be very hard to remediate as the dishonesty extended over a period of time.

The panel determined that Mrs Rawle has engaged minimally with the NMC and this hearing process. The panel noted there was no evidence of insight into the nature of the charges and seriousness of the situation not just for herself, her colleagues, the Trust and the wider nursing profession. The panel determined that Mrs Rawle has breached one of the fundamental tenets of the nursing profession by her dishonesty.

The panel determined that Mrs Rawle has provided no evidence of insight, or of strengthening of her practice.

The panel considered the evidence of Witness 5 who gave very powerful voice to how she went along with what was happening at the Hospital when she was a band 5 nurse, but when she got promoted to a band 6 nurse she took a very different view. The panel considered her evidence to be significant as she had previously felt she could not do anything about a nurse in a senior position such as Mrs Rawle, but then was able to speak out about the situation at a later date.

The panel determined that without there being evidence of insight or remorse, it is very difficult to remediate. The panel was of the view that Mrs Rawle's dishonesty in submitting claim forms with hours and days she had not worked to be serious misconduct amounting to impairment. The panel further determined that, without any further evidence before it, there was an unacceptable risk of repetition.

In all the circumstances and having regard to all of the above, the panel was satisfied that Mrs Rawle's fitness to practise is currently impaired.

## **Sanctions**

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

In reaching this decision, the panel has had regard to all the evidence that has been provided in this case and to the NMC Sanctions Guidance (SG) published by the NMC.

## **Submissions on Sanctions**

Ms Ferns provided a written submission, which included the following:

The position of the NMC in relation to the sanction bid at this stage of the proceedings is that of a striking-off order. The NMC has considered the SG, bearing in mind that it provides guidance and not firm rules. In coming to this view, the NMC kept in mind the principle of proportionality and the principle that sanctions are not intended to be punitive.

Ms Ferns informed the panel that in the Notice of Hearing, dated 10 February 2023, the NMC had advised Mrs Rawle that it would seek the imposition of a striking-off order if it found her fitness to practise currently impaired. The sanction bid has been considered by the NMC and Ms Ferns submitted that it is the only suitable sanction to address the regulatory concerns.

Ms Ferns referred the panel to the SG serious cases and cases involving dishonesty. She submitted that the regulatory concerns in this case satisfy the criteria in the guidance, such that they raise fundamental questions about Mrs Rawle's trustworthiness as a registered professional, and that her right to practise may need to be restricted in some way to uphold standards and to maintain public confidence in the profession.

Ms Ferns having outlined all the available sanctions in ascending order of seriousness, submitted that a striking-off order was the only fair and appropriate sanction in this case. She outlined the aggravating and mitigating features that the NMC submit are present in this case, as follows:

The aggravating factors in this case include:

- no admissions to dishonesty;
- breach and abuse of trust;
- senior position held;
- prolonged dishonesty for personal and financial gain; and
- damage to the reputation of the profession.

Ms Ferns submitted that the only mitigating factor in this case was:

- long unblemished service.

Ms Ferns submitted that Mrs Rawle's behaviour is fundamentally incompatible with registration and, further, public confidence in the profession demands no less a sanction. She submitted that Ms Rawle has engaged minimally with the NMC and this hearing process. Further, she submitted that there was no evidence of insight from Mrs Rawle into the nature of the charges and seriousness of the situation, not just for herself, but to her colleagues, the Trust and the wider nursing profession.

Ms Ferns referred the panel to the case of *Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Admin) where it was stated that:

*'A nurse acting dishonestly is always going to be at severe risk of having their name erased from the register. A nurse who has acted dishonestly, who does not appear before the panel either personally or by solicitor or counsel to demonstrate remorse, a realisation that their conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the panel to adopt a lenient or merciful outcome and to suspend for a period, rather than direct erasure.'*

She also referred the panel to the case of *Raschid v GMC; Fatnani v GMC* (2007) 1 WLR 1460 where Laws LJ referred to the guidance in the decision of the Privy Council in *Gupta v GMC* (2002) 1 WLR 1691.

Ms Ferns submitted that for all the reasons outlined in her submissions above, and in the light of the panel's finding that Mrs Rawle's fitness to practise is currently impaired by reason of her misconduct, she submitted that public confidence would be undermined if a striking-off order is not made.

The panel heard and accepted the advice of the legal assessor, who included reference to the following cases: *Parkinson v NMC* [2010] EWHC 1898 (Admin) and *Lusinga v Nursing and Midwifery Council* [2017] EWHC 1458, and the guidance of the NMC in respect of serious cases and of dishonesty.

### **Decision and reasons on sanction**

Having found Mrs Rawle's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel also bore in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the 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:

- no admissions to dishonesty;
- breach and abuse of trust;
- senior leadership position held;
- role model for other and more junior colleagues;
- abuse of her influential position within the Trust;
- prolonged deliberate dishonesty for personal and financial gain; and
- damage to the reputation of the profession.

The panel also took into account the following mitigating features:

- long unblemished service; and
- there are no public protection concerns.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues

identified. 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, an order that does not restrict Mrs Rawle's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order. 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 Mrs Rawle'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 Mrs Rawle'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, given the nature of the charges found proved in this case. The misconduct identified in this case was not something that could be addressed through strengthening her practice or remediation. Furthermore, the panel concluded that the placing of conditions on Mrs Rawle's registration could not adequately address the issue of dishonesty.

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 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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Mrs Rawle's actions is fundamentally incompatible with her remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction as it would not sufficiently uphold public confidence. It considered that Mrs Rawle has shown no insight or remorse or provided any reasons as to how or why her misconduct occurred.

The panel noted that there is a spectrum of dishonesty. It noted that in Mrs Rawle's case there was no dishonesty related to patients or colleagues. However, this was intentional dishonest overclaiming of money from her employer for work claimed to have been performed as a nurse. It was not an isolated incident. It was more than dishonest 'rounding up' and was overclaiming of pay (at £35 an hour) for a substantial number of hours over multiple days. Additionally, Mrs Rawle claimed two whole shifts which she had not worked at all. These factors meant that the matters found proved were not at the lower end of dishonesty.

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

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

The panel determined that Mrs Rawle's dishonesty was a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with her remaining on the register. The panel determined that Mrs Rawle has not demonstrated



any insight or remorse. It determined that a striking-off order was the only possible order it could make that is consistent with its findings. The panel was of the view that the findings in this particular case demonstrate that Mrs Rawle's conduct was serious and to allow her to continue practising would undermine public confidence in the nursing profession and the NMC as its 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. A member of the public in possession of the facts of this case would consider it deplorable if such a sanction were not imposed. Having regard to the effect of Mrs Rawle's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered 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.

The panel directs the registrar to strike Mrs Rawle off the NMC register. The effect of this order is that the NMC register will show that she has been struck off the register.

This will be confirmed to Mrs Rawle 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 Mrs Rawle's own interest until the striking-off order 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 Ferns. She submitted that an interim suspension order was necessary in the wider public interest.

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

### **Decision and reasons on interim order**

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any potential appeal period.

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

That concludes this determination.