

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
14 – 25 June 2021
Virtual Hearing

Name of registrant: Mrs Rachel Elizabeth Low

NMC PIN: 89A3149E

Part(s) of the register: Registered Nurse (Sub Part 1)
Adult Nursing – March 1992
Registered Midwife – May 1995

Area of Registered Address: County Durham

Type of Case: Misconduct

Panel Members: Anthony Griffin (Chair, Lay member)
Jane Jones (Registrant member)
Alex Forsyth (Lay member)

Legal Assessor: Attracta Wilson

Panel Secretary: Caroline Pringle (14 & 15 June 2021)
Amira Ahmed (16 – 25 June 2021)

Mrs Low: Present as an observer (14 – 24 June 2021)

Nursing and Midwifery Council: Represented by Leeann Mohamed, Case
Presenter

Facts proved: All

Fitness to practise: Impaired

Sanction: Striking-off order

Interim Order: Interim suspension order (18 months)

Details of charge (as amended)

That you, a Registered Nurse, whilst working at the West Rainton Surgery ('the Surgery'):

- 1) Submitted, or caused to be submitted, invoices/claims for monies as set out in Schedule A;
- 2) Paid, or caused to be paid, the invoices/claims for monies as set out in Schedule A;
- 3) Your conduct at charges 1 and/or 2 above was dishonest in that you knew that you and/or Rejuvenate (Durham) Ltd were not entitled to monies claimed;
- 4) Submitted, or caused to be submitted, invoices/claims for monies as set out in Schedule B;
- 5) Paid, or caused to be paid, the invoices/claims for monies as set out in Schedule B;
- 6) Your conduct at charges 4 and/or 5 above was dishonest in that you knew that you and/or Rejuvenate (Durham) Ltd and/or Person A were not entitled to the monies claimed;
- 7) Submitted, or caused to be submitted, invoices/claims for monies as set out in Schedule C;
- 8) Paid, or caused to be paid, the invoices/claims for monies as set out in Schedule C;
- 9) Your conduct at charges 7 and/or 8 above was dishonest in that you knew that Person A was not entitled to the monies claimed;

10) Submitted, or caused to be submitted, inaccurate invoices/claims for the work of a Nurse Practitioner to the North Durham Clinical Commissioning Group for the Winter Pressures Scheme;

11) Your conduct at charge 10 above was dishonest in that you:

- a) knew that a Practice Nurse/Health Care Assistant worked on the shifts in question, instead of a Nurse Practitioner;
- b) deliberately sought to mislead the North Durham Clinical Commissioning Group as to the true status of the individual working as the Nurse Practitioner;
- c) intended to obtain payments for the work of a Nurse Practitioner, which you knew that the Surgery was not entitled to;

12) On or about 5 November 2014 alleged that Colleague 1 was rude to Colleague F and/or instigated a disciplinary process against Colleague 1;

13) On or about 8 January 2014 ~~2014~~ **2015**, alleged that Colleague 1 was bullying Colleague 2;

14) Your conduct at any and/or all of charges 12 and 13 above:

- a) was dishonest in that you knew that Colleague 1 had not behaved in the manner alleged;
- b) was intended to bully Colleague 1;

15) Attempted to influence/subvert a disciplinary investigation in that you:

- a) on 12 February 2015, requested that Colleague 3:
- i) send you a copy of the minutes of a grievance meeting involving yourself;
 - ii) print a copy of the minutes of a grievance meeting involving yourself;
- b) stood over Person G whilst she typed a statement and/or typed the statement on Person G's behalf;
- c) On 2 March 2015 sent a text message to Person G in the following terms *"If anyone asks no one saw your email to [F1], especially not me. See you soon x"* , or words to that effect;
- 16) Your conduct at any and/or all of charge 15 above was dishonest in that you deliberately sought to mislead the disciplinary investigation and/or conceal your involvement in influencing the investigation.

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

SCHEDULE A			
	Invoice Date	Amount £	Narrative
1	30/09/2013	264.81	Overtime October 13
2	10/09/2013	394.63	Overtime August
3	30/09/2013	405.02	Overtime September 13
4	29/11/2013	768.49	Overtime November 13
5	07/01/2014	2118.54	Overtime Dec 13
6	28/02/2014	1407.74	Overtime Feb 14
7	05/03/2014	640.00	Clinical coding

8	31/03/2014	1486.20	Overtime March
SCHEDULE B			
	Invoice Date + Ref	Amount	Narrative
1	1/4/14	1300.00	QOF/Enhanced Services Project Management
2	30/4/14	901.71	Overtime April 2014
3	21/5/14 OT May 2014	555.71	Overtime May 14
4	1/6/14 SJL 005	1300.00	QOF/ESPM June14
5	23/6/14 OT June 2014	796.86	Overtime June 14
6	1/7/14 SJL 005	2740.00	Additional Hours for Business Case/EMIS Meetings and general trouble shooting during June 2014
7	28/7/14 OT July 2014	1027.53	Overtime July 2014
8	1/8/14 SJL 005	900.00	ESPM Meeting with EMIS Web Project Management Searches/templates/coding
9	1/9/14 SJL 006	900.00	ESPM Pre Web go live/training/meetings/coding
10	1/9/14 OT Aug 2014	723.47	Overtime Aug 14 holiday OT Interviews Troubleshooting
11	1/10/14 SJL 007	1660.00	Web go live prep/Eps prep/Necs
12	30/09/14 OT Sep 14`	618.62	Overtime Aug 2014
13	1/11/14 SJL 008	1785.00	Web go live prep/EPS prep/NECS
14	4/11/14 OT Oct 14	1055.50	Overtime Oct 14 Saturday Alarm
15	3/12/14 SJL009	1040.00	Training PRG, QMS. EPS
16	3/12/14 OT Nov 14	703.54	Overtime Nov 14
17	6/1/15 OT Dec 14	754.92	Overtime Dec 14

18	6/1/15 SJL 010	380.00	PRG/EPS Summarising training Dec 14
19	30/01/15 OT Jan 15	649.06	Overtime Jan 15
SCHEDULE C			
	Invoice Date + Ref	Amount	Narrative
1	1/8/14 SL01	400.00	Project Work PP/DES/EPS/Mapping
2	1/9/14 SL02	400.00	Project Work web Groups PP/DES Dispensing Visit
3	1/10/14 SL03	330.00	PP DES Email Group Setting up elephant Kiosk F+F Test
4	4/11/14 SL04	395.00	EMIS Web Deployment Oct 14
5	3/12/14 SL05	360.00	EMIS Web Deployment Nov 14
6	30/1/15 SL06	290.00	Coding training EPS QMS QOF

Your involvement in the hearing

On Sunday 13 June 2021 you informed your NMC case coordinator that you wished to observe this hearing, having previously indicated that you would not be attending.

On day 1 of the hearing (14 June 2021) you confirmed to the panel that you did not wish to participate in the hearing but would like to observe, and were content for the hearing to proceed on that basis.

The panel noted that you are not obliged to participate in this hearing, nor to question witnesses or give evidence yourself, and was content to proceed with the hearing with you as an observer. However, should you change your position at any time and wish to question witnesses or give evidence then the panel left these avenues open to you.

Decision and reasons on application pursuant to Rule 31

Ms Mohamed made an application to admit the witness statement and exhibits of Colleague 2 as hearsay evidence.

Ms Mohamed referred the panel to a telephone note between Colleague 2 and the NMC, dated 19 December 2019. In this telephone note, Colleague 2 is recorded as saying that she *'would not be attending [the hearing] as she had washed her hands of the incidents'*. Colleague 2 signed and returned her NMC witness statement on 12 January 2020 but amended the statement of truth included at the end of her witness statement to indicate that she was not willing to give evidence before an NMC Practice Committee.

Ms Mohamed submitted that the evidence was relevant to charge 13. She further submitted that it would be fair to admit this evidence as it is neither the sole nor decisive evidence and there is other evidence before the panel which corroborates Colleague 2's statement and evidence.

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

The panel was satisfied that Colleague 2's witness statements and exhibits were directly relevant to the matters before it, specifically charge 13.

It therefore moved on to consider whether it would be fair to admit this evidence. It noted that Colleague 2's evidence was neither the sole nor decisive evidence in relation to charge 13. There is evidence before the panel from other witnesses, who will be

giving live evidence, which corroborates Colleague 2's evidence. Colleague 2's evidence has also been provided to you in advance of this hearing and, although you are present, you have indicated that you wish only to observe the proceedings and not to challenge the evidence. The panel therefore concluded that it would be fair to both you and the NMC to admit Colleague 2's witness statement and exhibits into evidence.

Accordingly, the application is allowed.

Decision and reasons on application to amend the charges

Ms Mohamed submitted that charge 13 should be amended to change the year '2014' to '2015' to reflect the evidence in the bundle and to give the accurate date so as to not cause any prejudice to you. Ms Mohamed explained that exhibit SS5 shows the accurate date for the allegation of bullying.

13) On or about 8 January 2014 ~~2015~~, alleged that Colleague 1 was bullying Colleague 2;

The panel accepted the advice of the legal assessor.

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 you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment to ensure clarity and accuracy.

Background

You were employed as the Practice Business Manager at the West Rainton Surgery ('the Surgery') between 1 September 2011 and 27 March 2015. The concerns which led to your referral to the NMC fall into two categories: (i) alleged financial dishonesty and

(ii) allegations of bullying colleagues and attempting to influence or subvert a disciplinary investigation.

It is alleged that on 5 November 2014 you alleged that Colleague 1 was rude to Colleague F and you subsequently started a disciplinary process against Colleague 1. It is further alleged that in January 2015 you alleged that Colleague 1 was bullying Colleague 2.

Colleague 1 was upset by the allegations and so wrote a grievance letter, dated 8 February 2015. As a result of this grievance letter the Surgery, at your suggestion instructed an independent HR consultant to conduct an investigation. It is alleged that you attempted to influence and/or subvert the disciplinary investigation by instructing another member of staff, Colleague 3, to take notes of the meeting and then asking her to send these to you before the HR Consultant.

You were subsequently suspended from the Surgery on 2 March 2015.

Following your suspension the partners at the Surgery recruited Colleague B to assist with the financial management of the Surgery. Whilst reviewing the financial systems in place he allegedly noticed a number of invoices were being paid to a business called 'Rejuvenate (Durham) Ltd', which was owned by you. These included amounts paid for overtime. According to the partners at the Surgery, you were not entitled to overtime payments and they were unaware of you having claimed this money.

Colleague B also identified invoices from and payments made to [PRIVATE], Person A. According to you, the partners at the Surgery were aware of these payments. However, it is alleged that the partners were not aware of this, and that the agreement made with them was that Person A may help out without payment and you would take time off in lieu for his time worked.

It is further alleged that Colleague B identified invoices submitted by you to the local Clinical Commissioning Group ('CCG') which contained false information in order to obtain a higher rate of payment to the Surgery.

This matter was referred to the police and you were subsequently convicted of two counts of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk. You were sentenced to two years conditional discharge on 7 January 2019.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Mohamed, on behalf of the NMC.

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

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

The panel heard oral evidence from six witnesses called on behalf of the NMC:

Colleague D - Registered General Practitioner and Partner (GP) at the Surgery;

Colleague C – GP and Partner at the Surgery;

Colleague B – Temporary Finance Manager at the Surgery;

Colleague F – GP and Partner at the Surgery;

Mr 1 – Accountant for the Surgery at the time of events;

Colleague 3 – Medical Secretary at the Surgery.

The panel found Colleague D to be credible and reliable. She said when she couldn't remember details and was credible in the areas she had personal experience in.

The panel found Colleague C's evidence to have some inconsistencies but on the whole to be credible and overall reliable.

The panel found Colleague B's evidence to be credible and reliable.

The panel noted that Colleague F chaired the grievance meeting and her evidence on this was credible and reliable.

The panel noted that Mr 1's evidence was limited as he did not know the full allegations but he was credible and reliable in the information he gave.

Colleague 3 had a clear memory and recollection of the conversation she had with you. She explained to the panel that she had mislaid the email that she had sent to the HR person but she did exhibit to the panel an email to show the date she sent over the grievance meeting minutes. The panel found her to be reliable and credible.

The panel considered each charge and made the following findings:

Charge 1

1. Submitted, or caused to be submitted, invoices/claims for monies as set out in Schedule A;

This charge is found proved.

In reaching this decision, the panel took into account that there was no factual dispute in relation to the invoices that were submitted by you for monies as set out in Schedule A. The panel also noted the outcome of the criminal trial on 12 July 2018 where these

allegations were found proved. The panel further noted an email from your RCN representative dated February 2019 in which you admit the charges and state in your reflective piece that you were horrified and were sorry that you that had breached the NMC code.

The panel took into account the email from you to the NMC in January 2021 stating that you cannot show remorse or admit for something you had not done. At the outset of this hearing you denied all charges even though you were only observing the hearing. The panel found you to be inconsistent in your response to this allegation and having considered the copy invoices provided found charge 1 proved.

Charge 2

2. Paid, or caused to be paid, the invoices/claims for monies as set out in Schedule A

This charge is found proved.

In reaching this decision, the panel took into account that Colleague B thoroughly checked the invoices/claims and determined that they were paid or caused to be paid as set out in schedule A. This was also shown in his handwritten notes. The panel had sight of these invoices and the related overtime sheet.

As Practice Manager you were responsible for the payment of all invoices. Further apart from your denial of all charges at the outset of these proceedings you have not otherwise denied that these invoices were paid by you.

The panel therefore found charge 2 proved.

Charge 3

3. Your conduct at charges 1 and/or 2 above was dishonest in that you knew that you and/or Rejuvenate (Durham) Ltd were not entitled to monies claimed;

This charge is found proved.

The panel noted that you maintain that you spoke with the Partners individually and that they verbally sanctioned you for putting invoices in respect of overtime. The panel noted that none of the Partners remember talking to you about it at all and it is their case that you were not entitled to overtime payment. The arrangement as reflected in your contract of employment was that you would take time off in lieu (TOIL) of overtime worked. Colleagues C and D are consistent in their evidence that this arrangement was never varied. The panel accept this to be the case and further concluded that there was never a contract between the Surgery and Rejuvenate (Durham) Ltd for any services and so they were not entitled to monies claimed.

The panel took into account the case of *Ivey v. Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 when looking at the issue of dishonesty. It took into account the evidence of Colleagues C and D given under affirmation. It gave weight to the decision of the Crown Court.

The panel noted the Judge's decision in your criminal trial in which he stated:

“Having said all that, you did lie and you did abuse the trust given to you by the doctors. Essentially, you took advantage of the system then in place, namely that there was a system of some laxity, particularly by Dr Wylie, who was in charge of the financial position of the surgery. I have noted and will note that all these invoices in which you have claimed overtime were there to be found by anybody, particularly that partner in charge of the financial situation. You probably appreciated that there was a real possibility that he would not look for those invoices.”

The panel noted that the invoices submitted were submitted by you and paid to Rejuvenate (Durham) Ltd a company owned by you as opposed to being paid through the employee payroll. It took account of Mr 1's evidence in which he stated that he would never have advised payment by this method because it resulted in non-payment of National Insurance and PAYE in respect of an employee. He explained that any payment due to you should have been paid to you through the payroll system as you were an employee for all purposes within the Surgery. The panel decided that you were an employee who took it upon yourself to pay yourself for overtime which you were not entitled to without tax and National Insurance through a company you owned.

The panel found that you were dishonest in that you knew that you and/or Rejuvenate (Durham) Ltd were not entitled to monies claimed and that ordinary decent people would consider your conduct to be dishonest by objective standards. The panel therefore found charge 3 proved.

Charge 4

4. Submitted, or caused to be submitted, invoices/claims for monies as set out in Schedule B;

This charge is found proved.

The panel noted the invoices produced which were described in Schedule B. Apart from your indication at the outset of the hearing that you denied all charges, it is not otherwise denied by you that you submitted these invoices and the panel therefore find this charge proved.

Charge 5

5. Paid, or caused to be paid, the invoices/claims for monies as set out in Schedule B

This charge is found proved.

In reaching this decision, the panel took into account that Colleague B went through thoroughly and checked the invoices and determined that they were paid or caused to be paid as set out in schedule B. This was also shown in his handwritten notes. As Practice Manager you were responsible for the payment of all invoices. Apart from your indication at the outset of the hearing that you denied all charges, it is not otherwise denied by you that you paid or caused to be paid these invoices and the panel therefore find this charge proved.

Charge 6

6. Your conduct at charges 4 and/or 5 above was dishonest in that you knew that you and/or Rejuvenate (Durham) Ltd and/or Person A were not entitled to the monies claimed;

This charge is found proved.

The panel noted that you had told the Partners at the Surgery that Person A would help out with coding. It is confirmed within an email dated April 2012 that the arrangement with Person A was that you would take time off in lieu for his time spent working at the surgery. The panel noted the position maintained by you at all times was that you had responsibility for hiring staff and that there was a contract of employment in place for Person A which authorised the payments made to him. The panel did not see the contract and noted the evidence of Colleagues C and D that they were unaware of any such contract until after your dismissal. Colleagues C and D were also robust in their evidence that your hiring responsibilities were limited to low cost contracts and that you would not have authority to employ Person A without the authorisation of the partners, [PRIVATE]. It was also the evidence of Colleagues C and D that they never authorised payments to Person A and that the arrangement relative to Person A i.e. that he was not to be paid but you were to claim TOIL for hours worked by him, was never varied.

The Partners agreed for Person A to assist with coding as stated in an email dated April 2012:

“A will help out with coding of letters from hospitals and to keep costs to a minimum rather than charging for this Rachel will take the time off in lieu”

Further Colleague E stated in an email dated 22 September 2014:

“it just occurred to me that I don’t think A is formally a practice employee. I have no problem with him helping out with this. I know we talked about Rachel taking some lieu time rather pay for A ‘s. That works fine for me if it works for Rachel”

The panel concluded that you knew that you and or Rejuvenate (Durham) Ltd and/or Person A were not entitled to the monies claimed and that by the objective standards of ordinary decent people your actions would be considered dishonest.

The panel therefore found charge 6 proved.

Charge 7

7. Submitted, or caused to be submitted, invoices/claims for monies as set out in Schedule C;

This charge is found proved.

The panel noted the copies provided of the invoices in Schedule C and the evidence of Colleague B. Apart from your indication at the outset of the hearing that you denied all charges, it is not otherwise denied by you that you submitted, or caused to be submitted the invoices set out in Schedule C.

The panel is therefore satisfied that, you submitted or caused to be submitted the invoices for money as set out in Schedule C and charge 7 is found proved.

Charge 8

8. Paid, or caused to paid, the invoices/claims for monies as set out in Schedule C;

This charge is found proved.

Apart from your denial of all charges at the outset of the hearing, it is not otherwise denied that you paid these invoices.

The panel noted that you stated to your NMC case officer in an email dated 15 January 2021:

“There were no inappropriate payments [PRIVATE], he was paid for work done and the Court accepted this.”

The evidence of B is consistent with your position more generally that you paid these invoices and there is no dispute that they were in fact paid.

The panel therefore found charge 8 proved.

Charge 9

9. Your conduct at charges 7 and/or 8 above was dishonest in that you knew that Person A was not entitled to the monies claimed;

This charge is found proved.

The panel noted the evidence of C and D that they were unaware of any employment contract between the Surgery and Person A. Their evidence was that they did not

authorise any payments to A and that you did not have the authority to employ Person A or to make payments to him. Their evidence is supported by the email of April 2012 where it is recorded that you were to take time off in lieu of hours worked by Person A and in a further email dated 22 September 2014. The evidence of Colleagues C and D is that this arrangement was never varied and the panel accept this to be the case.

The panel noted that you were charged with a criminal offence relative to this charge and were found not guilty. However the panel noted the criminal standard of proof is higher than the civil standard applicable in this case. The panel carefully considered all the evidence and evaluated and assessed the evidence of Colleagues C and D in particular. The panel is satisfied on the balance of probabilities that you were aware that Person A was not entitled to payment but that you submitted or caused to be submitted and paid or caused to be paid invoices in respect of work done by him nonetheless. The panel also determined that by the objective standards of ordinary decent people your actions in submitting or causing to be submitted and paying or causing to be paid the invoices set out in Schedule C was dishonest.

The panel found charge 9 proved.

Charge 10

10. Submitted, or caused to be submitted, inaccurate invoices/claims for the work of a Nurse Practitioner to the North Durham Clinical Commissioning Group for the Winter Pressures Scheme;

This charge is found proved.

The panel noted the invoices and overtime sheets provided together with a copy of the guidance issued by the CCG. It noted the evidence provided by Colleague B and was satisfied that the invoices submitted to the CCG for the Winter Pressures Scheme were inaccurate in that they claimed payment for a Nurse Practitioner in circumstances where

a Nurse Practitioner had not worked. It is not in dispute that you submitted or caused these invoices to be submitted.

The panel find this charge proved.

Charge 11

11. Your conduct at charge 10 above was dishonest in that you:

- a) knew that a Practice Nurse/Health Care Assistant worked on the shifts in question, instead of a Nurse Practitioner;

This charge is found proved.

The panel noted that, in respect of this charge you told your NMC case officer in an email dated case officer 31 March 2021:

“I accept that I may have inadvertently made a mistake but this was not malicious. It is common practice that claims are checked and any discrepancies rectified each quarter by the data quality team at the CCG. Most practices will have been under or over paid due to human error.”

The panel noted that you are saying you submitted the invoices for the work of a Nurse Practitioner (higher rate of pay) rather than a Practice Nurse or a Health Care Assistant to CCG inadvertently. It also noted Colleague B’s evidence that he had checked thoroughly through the overtime file, found the inaccuracies between who had worked and who hadn’t and the claims submitted to the CCG. He gave evidence that this was a fundamental mistake and not one that could easily have been made. He noted 38 claims for a Nurse Practitioner of which only 13 were correct. The panel noted that you were in the circulation list for the applicable CCG guidance and is satisfied that as an experienced and conscientious practice manager you were, on the balance of

probabilities aware of the guidance and of the appropriate rates of pay. The panel noted the overtime sheets relied upon by you in preparation of the invoices and found them to be clear and unambiguous. The panel noted also that there was no financial benefit to you in claiming a higher rate than the Surgery was entitled to. Nevertheless, the panel did not accept your explanation that you had inadvertently made a mistake in submitting them. The panel accepts the evidence of Colleague B regarding the fundamental nature of this error and how unlikely it was that a Practice Manager of your experience would make such a mistake to the extent claimed.

The panel is therefore satisfied that you were dishonest in claiming for a Nurse Practitioner instead of a Practice Nurse or Health Care Assistant, that you knew you were submitting a false claim and that your actions in doing so would be considered dishonest by the objective standards of ordinary decent people.

This finding is consistent with the Crown Court verdict.

The panel therefore found this charge proved.

- b) deliberately sought to mislead the North Durham Clinical Commissioning Group as to the true status of the individual working as the Nurse Practitioner;

This charge is found proved.

You submitted the invoices to the CCG indicating incorrect members of staff who had been working this in particular indicated that a Nurse Practitioner had been working some of the Saturdays when they had not. These details were found by Colleague B by reviewing the staff overtime sheets and comparing the invoices submitted which showed that there were occasions where you submitted that a Nurse Practitioner was working when they did not.

The panel noted Judge Bourne-Arton's address to the jury on 5 July 2018 at page 310 of the hearing bundle:

“She now accepts that had she known she would have claimed the different rates for the two nurses, senior nurse or junior nurse. They are different rates but her case is she at all times was unaware of that.”

In your response bundle you suggested that you were unaware of the CCG rates of payment. However, the panel had sight of an email and attached PowerPoint presentation from North Durham CCG dated 14 May 2014. This was sent to you and other Practice Managers and labelled GP weekend opening 2014/15. This clearly set out the rates of payment for the different staff combinations undertaking weekend working.

In March 2021 you wrote to the NMC with some comments on these charges and you accepted that you had submitted the invoices to the CCG and stated:

“I accept that I may have inadvertently made a mistake this was not malicious”.

The panel accept the evidence of Colleague B regarding the fundamental nature of this error and how unlikely it was that a practice manager of your experience would make such a mistake to the extent claimed

For the reasons above the panel were not persuaded that it was an inadvertent mistake by you. The panel concluded that it was more likely than not that you knew the rates submitted in the invoices were incorrect and that you deliberately sought to mislead the CCG as to the true status of the individual working as the Nurse Practitioner. Therefore this charge is found proved.

- c) intended to obtain payments for the work of a Nurse Practitioner, which you knew that the Surgery was not entitled to;

This charge is found proved.

The panel having considered the invoices prepared and submitted by you in reliance on the overtime sheets, the panel is satisfied on the balance of probabilities that you intended to obtain payments for the work of a Nurse Practitioner which you knew the Surgery was not entitled to. The panel is further satisfied, applying the Ivey test that you were dishonest in doing so.

For the reasons given in charge 11 (a) and (b) and above this charge is found proved.

Charge 12

12. On or about 5 November 2014 alleged that Colleague 1 was rude to Colleague F and/or instigated a disciplinary process against Colleague 1;

This charge is found proved.

The panel noted the evidence of C, D and F. Their evidence was consistent with their written statements and with the documentation provided relative to the internal investigation more generally. It appears to the panel that your position is that you overheard a comment made by Colleague 1 to Colleague F that you considered to be rude. From this you instigated a disciplinary process against Colleague 1.

Colleague F states in her witness statement:

"I was surprised but not offended by anything that went on in the reception area and can confirm that colleague 1 was not rude to me".

Colleague C indicated that you started a disciplinary process by sending a formal letter to Colleague 1 which the partners saw prior to it being sent. It is the evidence of Colleague C that you insisted that the matter be dealt with formally and that you involved an external company named Peninsula.

From the evidence presented to the panel it found charge 12 proved.

Charge 13

13. On or about 8 January 2014, alleged that Colleague 1 was bullying Colleague 2;

This charge is found proved.

The panel found clear evidence to find this charge proved. Colleague D indicated that when Colleague 2 was questioned about the bullying from Colleague 1. She stated that:

“Colleague 1 was her friend and was not bullying her”.

In the witness statement of Colleague 2 she stated with respect to alleged bullying by Colleague 1 her response was:

“...this was not the case, I was never bullied by Colleague 1”.

Colleague 2's statement was made in 16 January 2014 and stated:

“the doctors asked me if I had ever felt bullied by my work colleague, Colleague 1 ... I was completely flabbergasted and very much taken aback by the allegations as I have never experienced any such behaviour during all the time [sic] have worked with Colleague 1”

The panel noted that in your appeal letter against dismissal from the Surgery you stated:

“I simply informed GPs of the information passed to me, this was not presented as fact as I not witnessed this behaviour, it was third party [sic]”.

Colleagues D and C clearly indicated that they were presented with the bullying situation as a matter of fact. The panel considered the witness statements and the oral evidence of Colleagues D and C. The panel found Colleagues D and C to be reliable witnesses, their evidence to the panel was consistent with their witness statements. Both witnesses replied in clear terms to questions posed by the panel and remained consistent throughout. For those reasons the panel accept their evidence in preference to the information provided by you and found this charge proved.

Charge 14

14. Your conduct at any and/or all of charges 12 and 13 above:

- a) was dishonest in that you knew that Colleague 1 had not behaved in the manner alleged;

This charge is found proved.

From the evidence presented to the panel and from the oral evidence of the witnesses heard by the panel it could find no evidence of bullying by Colleague 1 on Colleague 2. The panel did find evidence of you insisting that formal procedures against Colleague 1 be pursued even though you had little or no evidence of i) Rude behaviour (Charge 12) and ii) Bullying of Colleague 2 (Charge 13). It was clear to the panel that you were aware that both alleged incidents were not true and that an ordinary, decent and objective individual would consider such actions as dishonest. The panel therefore find charge 14 proved.

- b) was intended to bully Colleague 1;

This charge is found proved.

The panel considered all the evidence presented to it and on the balance of probabilities concluded that there was a strained relationship between you and Colleague 1. The panel determined that there was no foundation to your allegations that Colleague 1 was rude to Colleague F or that Colleague 1 bullied Colleague 2. The panel having already found that you were dishonest in relation to charge 14 (a), concluded on the balance of probabilities that your conduct as described at charges 12 and 13 above was intended to bully Colleague 1. Therefore this charge was found proved.

Charge 15

15. Attempted to influence/subvert a disciplinary investigation in that you:

- a. on 12 February 2015, requested that Colleague 3:
 - i. send you a copy of the minutes of a grievance meeting involving yourself;

This charge is found proved.

Colleague 3 indicated in an email dated 12 February 2015 in which she made contemporaneous notes of how you requested that she share the minutes with you of a grievance meeting that was regarding you. The panel noted that you were Colleague 3's line manager and Colleague 3 felt obliged to provide you a copy of the minutes before sending them to the HR Consultant as you had requested them. This was confirmed by Colleague 3 in her oral witness evidence. This was accepted by the panel as truthful. The panel had in front of it the HR interview minutes [submitted by you as part of your NMC response bundle] in which you clearly admitted that you had asked Colleague 3 to send you a copy of the minutes of the grievance meeting involving yourself. The panel found that there were inconsistencies between your position at the HR meeting where you admitted asking for the minutes and your denial at the outset of

this hearing, when you also confirmed to the panel your intention to not participate in the proceedings. The panel was satisfied that you had asked Colleague 3 to send you the grievance meeting involving yourself and therefore found this charge proved.

- ii. print a copy of the minutes of a grievance meeting involving yourself;

This charge is found proved.

Colleague 3 took the notes within the grievance meeting that was regarding you, and was requested by you to provide her with the minutes. Colleague 3 felt uneasy about doing so and in her contemporaneous email notes she indicated this. She reaffirmed this in her witness evidence given to the panel. Colleague 3 reported in her email that you had said:

“...oh that’s OK just print off what you’ve done for me please.”

The panel had in front of it the HR interview minutes [submitted by you as part of your NMC response bundle] in which you clearly admitted that you had requested that Colleague 3 print a copy of the minutes of the grievance meeting involving yourself. The panel found that there were inconsistencies between your position at the HR meeting where you admitted that you had requested that Colleague 3 print a copy of the minutes and your denial at the outset of this hearing, when you also confirmed to the panel your intention to not participate in the proceedings. However, the panel was satisfied that you asked Colleague 3 to print a copy of the minutes for the grievance meeting involving yourself and therefore found this charge proved.

- b. stood over Person G whilst she typed a statement and/or typed the statement on Person G’s behalf;

This charge is found proved.

Colleague C's witness evidence indicated that you:

"... dictated to her what to write in her statement to Peninsula in respect of issue regarding [Colleague 2]".

The panel had before it a copy of an email from Colleague G to Colleague C and D dated 23 March 2015 in which Colleague G states:

"Rachel not only stood over me whilst I typed the statement she also actually wrote this out for me."

The panel also had minutes of the HR meeting in which you suggested that Colleague G did not know how to structure the statement and you had simply offered to help by writing a few bullets. The panel found that you stood over Colleague G whilst she typed a statement but did not type the statement on Colleague G's behalf.

- c. On 2 March 2015 sent a text message to Person G in the following terms
"if anyone asks no one saw your email to [F1], especially not me. See you soon x", or words to that effect;

This charge is found proved.

The panel had before it a copy of the text message from you to Colleague G dated 2 March 2015 and it stated:

"if anyone asks no one saw your email to [F1], especially not me. See you soon x".

The panel also had before it within your NMC response bundle, the minutes of the HR meeting in which you stated:

“I text [sic] her to say that I don’t think anyone should know that I’ve seen that email to protect G”.

The panel also saw in your bundle your appeal against dismissal letter in which you stated:

“...text to G was to protect her, it was not asking her to lie, as it was she that had asked me for help in writing a statement.”

The panel also noted that you had accepted that you sent the text in question and it therefore found charge 15 (c) proved.

Charge 16

16. Your conduct at any and/or all of charge 15 above was dishonest in that you deliberately sought to mislead the disciplinary investigation and/or conceal your involvement in influencing the investigation.

This charge is found proved.

For charges 15 (a) (i) and (ii) you knew the grievance meeting was about you. Colleague 3 told you that the minutes were confidential and she wasn’t sure she should be sharing them with you. You asked to see the minutes before Colleague 3 sent them to the HR Consultant and were insistent on receiving a copy. You made Colleague 3 (a junior member of staff) uncomfortable in providing you with a copy to such an extent that Colleague 3 wrote a contemporaneous record of what had happened in an email to herself.

The panel found your actions in this charge dishonest. It does not accept your explanation for requesting the minutes and having considered all the available evidence

and giving weight to the fact that you requested a copy of the minutes before they were sent to the HR Consultant, conclude on the balance of probabilities that you deliberately sought to mislead the disciplinary investigation and/or conceal your involvement in influencing the investigation. The panel conclude that there is no other plausible reason for your behaviour and that you knew that you were behaving dishonestly. This is supported by the fact that you wrote to Colleague 3 telling her effectively to conceal your involvement. Further the panel is satisfied that your behaviour would be regarded as dishonest by an ordinary decent person using objective standards.

The panel found charge 15 (b) proved. The panel considered the explanation, given in your NMC response bundle for your behaviour relative to this charge. You explained that you were assisting Colleague G with the statement. The panel did not accept this explanation as plausible given that the statement related to an investigation concerning yourself and you were well aware of that and of the potential consequences for you. The panel determined that there were no grounds on which you could reasonably justify your behaviour as described in the charge. The panel also concluded that on the balance of probability you took advantage of Colleague G's junior status with the intention of subverting the investigation and concealing your involvement in influencing it. This is supported by the email you sent her stating:

"if anyone asks no one saw your email to [F1], especially not me. See you soon"

Consequently the panel concluded that you behaved dishonestly applying the Ivey test.

Having found charge 15 (c) proved, the panel considered the content of the text message and your explanation for sending the text in those terms. Given that the text related to an emailed statement concerning your behaviour, the panel did not regard your explanation as plausible. The panel are satisfied that it is clear from the text message sent to Colleague G (a junior member staff) that it was for the purposes of concealing your involvement in subverting and /or influencing the investigation.

The panel concluded that you knew that your behaviour as described under charge 15 (c) was dishonest and that it would be considered dishonest by the objective standard of ordinary decent people.

The panel therefore found charge 16 proved in its entirety.

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

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

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

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 Mohamed invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'the code: Standards of conduct, performance and ethics for nurses and midwives 2008' (the Code) in making its decision as this was the Code relevant at the time.

Ms Mohamed identified the specific, relevant standards where your actions amounted to misconduct. She submitted that the misconduct was not isolated and it covers a period of time that led to a criminal trial and a conviction. Ms Mohamed submitted that your actions did fall significantly short of that expected of a registered nurse.

Submissions on impairment

Ms Mohamed 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Mohamed submitted that a finding of current impairment is required in order to protect the public and to maintain public confidence in the professions.

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

Decision and reasons on misconduct

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

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

Work effectively as part of a team

27 You must treat your colleagues fairly and without discrimination.

Act with integrity

49 You must adhere to the laws of the country in which you are practising.

Be impartial

57 You must not abuse your privileged position for your own ends.

58 You must ensure that your professional judgement is not influenced by any commercial considerations.

Uphold the reputation of your profession

61 You must uphold the reputation of your profession at all times.'

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 you were in breach of all the above areas of the Code.

The panel decided that the dishonest behaviour you exhibited and the bullying that occurred affected individuals and their practice at the time. It also noted that the criminal conviction demonstrates a certain level of seriousness. The panel found that your 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, your fitness to practise is currently impaired.

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

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

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

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

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

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;
and/or*

- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that all four limbs of Grant were engaged. Your misconduct was such as to impact upon your colleagues and had the potential to impact on the public and in all likelihood put patients at risk. You had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. This is supported by the extent of your dishonesty spanning a period from 2013 to 2015 and the fact that you were found guilty of two counts of dishonesty by the Crown Court. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that it heard no evidence in regards to remorse or remediation. It noted the historical testimonials dating back to 2015 and 2018 which do not refer to your criminal conviction or the NMC charges and none of which are supported by oral evidence. You have also not provided an up to date reflective piece to the panel. The reflective piece that you had previously submitted in February 2019 is inconsistent with other more recent evidence before the panel. This includes your stated of lack of remorse in an email dated 14 January 2021. The panel is therefore of the view that there is a risk of repetition based on your lack of insight, remorse and remediation. The panel therefore concluded 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 concluded that public confidence in the profession and in the NMC as a regulator would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your 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 you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching this decision, the panel 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 Mohamed informed the panel that the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired. She submitted that the dishonesty in this case related to not only financial impropriety, attempts to subvert a disciplinary investigation but also to your inappropriate behaviour

towards colleagues. She explained that a striking-off order is the most appropriate sanction as this case involves serious attitudinal issues and a real risk of repetition.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Lack of insight into your failings;
- Lack of remorse;
- Abuse of a position of trust;
- Conduct which put patients at risk of potential harm;
- Pattern of conduct over a period of time including dishonesty, financial impropriety and inappropriate conduct towards staff which the panel found dishonest.

The panel also took into account the following mitigating feature:

- Previous good character as shown in historical testimonials and references

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case shows attitudinal issues which was not something that can be addressed through retraining. The panel noted that you have indicated in correspondence that you are now retired and no longer wish to practice as a nurse. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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;*

- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel noted that this was not a single incident of misconduct and the panel is concerned that the dishonesty and misconduct is evidence of attitudinal problems. The panel was not satisfied that you have shown insight and found that there is a significant risk of you repeating this behaviour.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the register. The panel noted that the dishonesty in this case is very serious and was premeditated over a long period of time. Therefore the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel also considered the SG on a striking-off order and noted the regulatory concerns about you which raised fundamental questions about your professionalism and your suitability to remain on the NMC register. It also took account of the case *Parkinson v NMC [2010] EWHC 1898 (Admin)* which states:

“A nurse found to have acted 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 a solicitor or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there would 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 to direct erasure.”

The panel also took account of the case of *Bolton v Law Society* [1994] 1WLR in relation to imposing a striking-off order:

“The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.”

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you 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 in order to protect the public.

The panel considered that this order was also necessary to mark the importance of maintaining public confidence in the profession, the NMC as a regulatory body 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 you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Mohamed. She submitted that an 18 months interim suspension order would be appropriate in this case and would be in line with other findings made by the panel.

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

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

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

That concludes this determination.