Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
20 May – 1 June 2022

Virtual Hearing

Name of registrant:	Sarah Fiona Badila
NMC PIN:	07H3434E
Part(s) of the register:	Nursing, Sub part 1 RNMH Registered Nurse - Mental Health (14 February 2008)
Relevant Location(s):	Hertfordshire
Type of case:	Misconduct
Panel members:	Rachel Childs (Chair, Lay member) Michael Duque (Registrant member) Vicki Harris (Lay member)
Legal Assessor:	Peter Jennings
Hearings Coordinator:	Tyrena Agyemang Roshani Wanigasinghe (31 May 2022 and 1 June 2022)
Nursing and Midwifery Council:	Represented by Emma Kutner, Case Presenter
Mrs Badila:	Present and represented by Muhammed Munir of Daffodils Solicitors
Facts proved:	Charges 1c, 2a, 2b, 2c, 3, 4, 5, and 6
Facts not proved:	Charges 1a and 1b
Fitness to practise:	Impaired
Sanction:	Suspension order (12 months) with a review
Interim order:	Interim Suspension order (18 months)

Details of charge (as amended)

That you, a registered nurse:

1) Did not carry out supervision effectively and/or thoroughly in that:

   a) On 11 April 2019 on one or more occasions, you prepared documentation for a supervision in advance of supervision meetings by prepopulating the 'actions' box when this should be individual to the employee and brought up by the employee. **[Found not proved]**

   b) On 11 and/or 12 April 2019, you did not make supervision individual to the supervisee in that the supervision records were prepopulated and you just changed the name of the staff member. **[Found not proved]**

   c) On 11 April 2019, four supervision sessions were recorded as **timed** ~~taking place~~ between 16.00 and 16.20 which ~~only provides a 20 minute~~ **indicates an unduly short** time frame in which to carry out supervision**s** for four ~~separate~~ members of staff. **[Found proved]**

2) Did not document the correct time that supervisions took place, in that:

   a) On 11 April 2019, two different supervision sessions were both recorded as taking place at the same time of 16.10. **[Found proved]**

   b) On 12 April 2019, a supervision was recorded as taking place at 20.10 but you signed out on the register when you left the building at 16.00. **[Found proved]**

   c) On 1 May 2019, a supervision was recorded as taking place at 20.30 but you signed out on the register when you left the building at 17.10. **[Found proved]**

3) Between ~~9~~ 6 August 2018 and 28 August 2018 requested Colleague A to complete one or more learning modules on your behalf. **[Found proved]**

4) Your request at charge 3, above, was made in exchange for granting annual leave to Colleague A. **[Found proved]**

5) Your conduct in charges 3 and/or 4, above, lacked integrity in that you used your position of authority to influence Colleague A to complete the learning modules for you. **[Found proved]**

6) Your conduct in charge 3, above, was dishonest in that you intended to create the misleading impression that you had completed the learning modules yourself when you had not. **[Found proved]**

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

Decision and reasons on application to amend charge 3

During the course of the hearing the panel heard an application made by Ms Kutner, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charge 3.

The proposed amendment was to amend the dates in the charge from 9 August to 6 August 2018. Ms Kutner submitted that the proposed amendment does not change or increase the severity of the charge, but rather includes 6 August 2018 which is when some of the learning modules were completed by Colleague A on your behalf.

Ms Kutner submitted that there would be no injustice towards you in making the amendment due to your acceptance that you did ask Colleague A to complete the learning modules. She told the panel that the core of the charge has not been amended and this amendment more accurately reflects the evidence.

That you, a registered nurse:

3) Between ~~9~~ **6** August 2018 and 28 August 2018 requested Colleague A to complete one or more learning modules on your behalf.

The panel heard submissions from Mr Munir who opposed the application. He invited the panel to consider fairness to you should the application be granted. He told the panel that the amendment at this stage is unfair and results in the charge being more serious. He told the panel that the changing of the dates would go in favour of the NMC's case demonstrating more modules were completed on your behalf.

Mr Munir therefore invited the panel not to allow the proposed amendments as it would be unfair to you.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) which states:

"*28.—(1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—*

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue."

The panel also took account of its overarching duty to protect the public and the wider public interest.

The panel considered both the NMC's and Mr Munir's submissions and was of the view that such an amendment, as applied for, was in the interests of justice. You have already accepted that you did ask Colleague A to complete the training on your behalf. The panel considered that it may not be wholly clear from the evidence when this took place, but there is evidence pointing to 6 August as the date, or one of the dates, that this occurred. In those circumstances the panel was satisfied that an amendment to include 6 August in the range of dates in the charge was appropriate as reflecting what charge 3 was intended to allege.

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.

The panel was satisfied the amendment did not increase the severity of charge 3 as the core of the charge remained unaltered: the amendment was not to increase the gravity of what is alleged but to reflect uncertainty as to the date. While this application is at the close of the NMC's case, the panel bore in mind that you have been aware of these allegations for some time and you will have ample opportunity

to address the amended charge in your evidence. In reaching its decision that the amendment can be made without injustice, the panel also took into account that you do not dispute that you asked Colleague A to complete training for you.

The panel therefore decided to grant Ms Kutner's application to amend charge 3.

Your case is that you only did learning modules when at work, not at home. The substance of the evidence of Colleague A was that she did learning modules for you on only one occasion, which was when you were at work in the building. Your learning record however shows a number of modules completed when you were on holiday. It appears therefore that those modules may have been completed by someone other than Colleague A but the evidence does not indicate by whom or in what circumstances.

The panel was conscious that its duty of inquiry includes the need to consider whether the charges properly reflect the seriousness of the conduct alleged. The panel therefore gave careful consideration to including a further charge in respect of modules completed by some unidentified person.

The panel has reached the conclusion that it should not do this. The case for the NMC has been based on the allegation made by Colleague A, and in the panel's judgement it would be unfair to you to add, at this late stage of the proceedings, a wider allegation based on inference rather than direct evidence. The panel is not satisfied that such a charge would meet the test in Rule 28 that an amendment may only be made if this can be done without injustice.

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

A request was made by Mr Munir on your behalf that this case should be held partly in private on the basis that proper exploration of your case involves references to your health, the health of your family members and personal matters. The application was made pursuant to Rule 19.

Ms Kutner indicated that she supported the application.

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

Having heard there will be references to your health, the health of your family members and to personal matters, the panel determined to go into private session as and when such issues are raised in order to protect your right to privacy. The panel was satisfied that this course was justified by the need to protect your interests and that this outweighed any prejudice to the general principle of open hearings.

Further decision and reasons on application to amend charge 1c

Following a query from the legal assessor, the panel heard an application made by Ms Kutner, to amend the wording of charge 1c.

The proposed amendment was because of a potential conflict between this charge and charge 2a. It was submitted by Ms Kutner that the proposed amendment would provide clarity, where at times the facts are not clear. She told the panel that you have accepted that there were four supervision sessions on that occasion and, in light of your acceptance, there would be no injustice.

"That you, a registered nurse:

1) Did not carry out supervision effectively and/or thoroughly in that:

    c) On 11 April 2019, four supervision sessions were recorded as **timed** ~~taking place~~ between 16.00 and 16.20 which ~~only provides a 20 minute~~ **indicates an unduly short** time frame in which to carry out supervision**s** for four ~~separate~~ members of staff."

Mr Munir did not oppose the application.

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

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure the charge better captured the allegations and the case put to you by the NMC and to ensure clarity.

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 Kutner on behalf of the NMC and by Mr Munir.

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: Hospital Director for The Priory Hospital North London
- Witness 2: Director of Clinical Services at The Priory Hospital Hemel Hempstead
- Witness 3: Healthcare Assistant at Priory Group

- Colleague A: Mental Health Support Worker at The Priory Hospital Hemel Hempstead and Occupational Health Assistant

The panel also heard evidence from you under affirmation.

Background

The charges arose from your employment as a Ward Manager at the Priory Hospital Hemel Hempstead ('the Priory'). You were referred to the NMC by the Hospital Director in relation to the following concerns.

It was alleged that on specific dates in April and May 2019 your clinical supervision records were written up in advance of meetings with supervisees. This included the agendas and subsequent action boxes. It was alleged that the contents of the supervision records were identical apart from the names of the supervisees.

On 11 April 2019 it is alleged that you undertook four 1:1 supervision sessions at 16.00 with four different members of staff within 20 minutes or so and 2 at the exact same recorded time.

On 12 April 2019 it is alleged that you recorded that you had completed a supervision record at 20.00 when the fire register confirmed that you finished your shift and left the building at 16:00.

On 1 May 2019, another supervision record was completed by you that recorded a time of 20.30, when the fire register confirmed you finished your shift and left the building at 17.10.

In August 2018, you were alleged to have asked a member of staff to complete your Academy learning modules on your behalf when you were required to complete them yourself.

The employer began an internal investigation but you resigned in October 2019 before the investigation was concluded.

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

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

Charge 1a

1) Did not carry out supervision effectively and/or thoroughly in that:

    a) On 11 April 2019 on one or more occasions, you prepared documentation for a supervision in advance of supervision meetings by prepopulating the ‘actions’ box when this should be individual to the employee and brought up by the employee.

This charge is found NOT proved.

In reaching this decision, the panel took into account evidence including the sample of supervision records, the supervision policy, your oral evidence and that of other witnesses, the statements of witnesses, your response bundle and your witness statement dated 19 May 2022.

The panel noted that in the supervision samples provided to the panel both the agenda and the actions box, were in part prepopulated. Two of the four samples had handwritten notes added to the agenda. All of the records had handwritten additions made to the actions section of the form. The panel did not consider that the prepopulation of the actions box of the supervision record in advance necessarily resulted in the supervision being ineffective or lacking in thoroughness. The panel noted that the items added to two of the four agendas and some bullet points added to the actions boxes on all four records suggested some input from the supervisee.

The panel accepted your evidence that prior to the supervision sessions you would prepopulate the supervision records with items you wished to discuss with the supervisee and that you would give the record to the staff member allowing them to review the agenda and offer any additions. The panel considered that while best practice might mean the actions box should be blank initially before the supervision,

in light of the handwritten entries, the panel could not determine that the supervisions were ineffective or lacked thoroughness.

The panel therefore found this charge not proved.

Charge 1b

1) Did not carry out supervision effectively and/or thoroughly in that:

b) On 11 and/or 12 April 2019, you did not make supervision individual to the supervisee in that the supervision records were prepopulated and you just changed the name of the staff member.

This charge is found NOT proved.

In reaching this decision, the panel took into account, among other matters, the supervision records, the written and oral evidence of witnesses and your own evidence.

The panel considered the five supervision records and noted that four of the five records have handwritten notes on them, demonstrating that the supervisee had the opportunity to contribute to the supervision. The panel noted the supervision record of Witness 3 did not have any annotations on it, but it accepted her oral evidence, in which she spoke very positively of her supervisions with you, explaining that they were thorough and she was able to raise any issues she had with you. The panel therefore concluded that while the record of this supervision might have been brief, the supervisee in question had not considered her supervision to be ineffective or lacking in thoroughness.

The panel was of the view that, although it was clear the agenda and actions had been in part copied and pasted on the supervision records, with changes of name, this did not necessarily mean the content of the supervision was not individual to the supervisee. The panel could see examples of items added to the agenda and handwritten bullet points of discussions that were individual on four of the

supervision samples, and in two cases even the prepopulated agenda included an additional item not found in the other records.

The panel therefore finds this charge not proved.

Charge 1c

1) Did not carry out supervision effectively and/or thoroughly in that:

    c) On 11 April 2019, four supervision sessions were recorded as timed between 16:00 and 16:20 which indicates an unduly short time frame in which to carry out supervisions for four members of staff.

This charge is found proved.

In reaching this decision, the panel took into account among other evidence the supervision records, the Investigation Interview Meeting Notes dated 1 October 2019 and your evidence.

The panel noted the supervision records and the timings detailed on each. The panel noted that it was unclear whether the times were start or finish times. It also noted your evidence, in which you accepted that you were not always accurate with timings:

> *"To be honest with the times, I just write them in after, I complete the times after I have done it and I don't always remember exactly,"*

The panel considered the items on the agenda and noted that the supervisions seem to have been completed within a very short time frame. The panel noted that the agenda seems substantial, including topics such as managing the risk of choking and the appraisal process, and it therefore determined that, if the supervisions were completed within the time period detailed on the records, the supervision would not have been long enough in order to cover the items in any real depth.

Whilst the panel appreciated there was management pressure to get the supervisions completed, nevertheless it considered that the timeframe as recorded would not have allowed sufficient time for thorough or effective supervisions.

The panel therefore finds this charge proved.

Charge 2a

2) Did not document the correct time that supervisions took place, in that:

a) On 11 April 2019, two different supervision sessions were both recorded as taking place at the same time of 16.10.

This charge is found proved.

In reaching this decision, the panel took into account the Investigation Interview Meeting Notes, dated 1 October 2019 and your evidence. The panel noted discrepancies in your evidence when you stated that the two supervisions were not 1:1 sessions, but should have been titled a group supervision. The panel considered that both the supervisions were 1:1s and noted that the supervisions are described as 1:1 on the records.

The panel acknowledged the interview notes in which you confirmed to Witness 1 that these sessions were 1:1 sessions and not group supervisions. The panel preferred this evidence over your oral evidence, in which you told the panel that the two sessions should have been titled a group session and not 1:1s. The suggestion that the two supervisions were a single joint supervision seems to have arisen for the first time in your oral evidence and the panel decided that the interview meeting notes conducted closer to the time of the events provided a more accurate account of the events.

The panel considered that the two separate 1:1 sessions could not have been held at the same time and were not a group supervision and therefore finds this charge proved.

Charge 2b and 2c

2) Did not document the correct time that supervisions took place, in that:

b) On 12 April 2019, a supervision was recorded as taking place at 20.10 but you signed out on the register when you left the building at 16.00.
c) On 1 May 2019, a supervision was recorded as taking place at 20.30 but you signed out on the register when you left the building at 17.10.

These charges are found proved.

In reaching this decision, the panel took into account among other evidence the Fire Register Records dated 12 April 2019, Witness 3's oral evidence and witness statement and your evidence.

The panel decided to rely on the accuracy of the fire register. It considered that the fire register was an important document and it was unable to accept the evidence that the supervisions had indeed taken place at the recorded times.

The panel noted that Witness 3, although helpful, could not always recall accurate timings and dates and that she relied on the timings documented on the supervision records explaining to the panel that *"if it documented at that time, then it must have happened at that time."*

Witness 3 stated in her oral evidence that she only works nights; and the panel was aware that you worked only day shifts. The panel further considered Witness 3's evidence:

> *"We worked quite closely together, we were in the same Ward. We did not talk every single day but she was always present."*

This evidence led the panel to determine that Witness 3 must have worked both day and night shifts in order for you to be *'present'*. The panel also noted in your

evidence that if there was a supervision to be carried out with a nurse that worked night shifts, you would have asked your Deputy to conduct it. Both you and Witness 3 were clear that you carried out her supervisions.

The panel bore in mind your acceptance that you were not always accurate with the timings of your supervisions. It noted that in your witness statement, you state:

> *"How can they reprimand someone because of wrong time, which in essence was written without any ill intention?"* [sic]

The panel therefore finds that the timings on the supervision record must be incorrect and that you did leave the building at the times documented on the fire register.

The panel therefore finds this charge proved.

Charge 3

3) Between ~~9~~ **6** August 2018 and 28 August 2018 requested Colleague A to complete one or more learning modules on your behalf.

This charge is found proved.

In reaching this decision, the panel took into account among other evidence the Investigation Interview Meeting Notes, dated 1 October 2019, the oral evidence of Witness 3, the Priory Academy Learning Summary dated 20 October 2020, your witness statement dated 19 May 2022 and your statement dated 20 December 2019.

The panel noted your acceptance that you did ask Colleague A to complete one or more modules on your behalf. Although Colleague A was not clear on the dates, the panel could see that 9 modules were completed on 6 August 2018. Colleague A's evidence was that you logged Colleague A into your training portal. Colleague A had only recently joined the ward and there are no entries in your learning record in July or the first five days of August. The panel was therefore satisfied that you requested

Colleague A to complete your modules and that this was within the period in the charge.

The panel also noted a large number of modules were completed while you were on holiday from 9 – 28 August 2018. You told the panel that you never complete your academy modules outside of the office. However, the panel was unable to determine who completed those modules or in what circumstances.

The panel therefore finds this charge proved.

Charge 4

4) Your request at charge 3, above, was made in exchange for granting annual leave to Colleague A.

This charge is found proved.

In reaching this decision, the panel took into account among other evidence, the oral evidence of Colleague A, the witness statement of Witness 1, the Priory Academy Learning Summary dated 20 October 2020 and your evidence.

The panel noted Colleague A's evidence, when she told the panel that she took the annual leave after completing the modules and Witness 1's evidence, "*that the staff member did receive leave several weeks later".*

Although Colleague A states the family birthday for which she wanted annual leave was in July 2018, and that she completed the modules before the leave occurred, the panel considered that this was unlikely, as she was clear in both oral evidence and in her witness statement that she completed the training module Safe Handling of Medicines, and this was completed on 6 August 2018.

The panel considered that Colleague A had been consistent in her account of events surrounding the request you made that she complete modules on your behalf. She

had initially made the allegation in an exit interview. She then repeated this account in her interview with Witness 1, during his local investigation. She had then been prepared to come to an NMC Hearing to give live evidence. Throughout the substance of her allegation remained the same.

The panel could find no evidence of any significant bad feeling between you and Colleague A, indeed, she had only worked for you for a short period of time which lasted about 3 months. She did not appear to bear a grudge against you despite not considering you a particularly effective manager. The panel could see no reason why she would, in her words, *"fabricate such an elaborate lie"*.

You said that Colleague A's application for leave was granted and that all applications are granted. The panel did not accept this, as granting all applications for leave would be inconsistent with the need to provide a staffed service. If Colleague A's application had been granted, either in the first place or after consideration, the panel considered that she would have no reason to make up that you asked her to do the modules in return for leave.

While the panel acknowledged your consistent denial of this charge, it preferred Colleague A's consistent version of events, even though there was some confusion about the exact timing of the leave requested.

The panel determined, on the balance or probabilities, that your request was made in exchange for granting annual leave to Colleague A and it finds this charge proved.

Charge 5

5) Your conduct in charges 3 and/or 4, above, lacked integrity in that you used your position of authority to influence Colleague A to complete the learning modules for you.

This charge is found proved.

In reaching this decision, the panel had regard to the guidance in relation to integrity set out in the legal advice it received.

The panel considered that Colleague A, as a junior member of staff, was in a difficult position when you asked her to complete your learning modules. She was a new employee, only having been in the role for a few weeks; Colleague A was a support worker and you were the Ward Manager and her line manager. The panel considered that asking her to complete learning modules for you in exchange for approving her annual leave was an abuse of your position as a manager and a registered nurse. In the panel's view this demonstrated a lack of integrity in that it fell far short of the moral and ethical standards of behaviour expected of a nurse.

The panel therefore finds this charge proved.

Charge 6

6) Your conduct in charge 3, above, was dishonest in that you intended to create the misleading impression that you had completed the learning modules yourself when you had not.

This charge is found proved.

In reaching this decision, the panel took into account evidence which included your evidence, the Investigation Interview Meeting Notes dated 1 October 2019, the evidence of Colleague A, the Priory Academy Learning Summary dated 20 October 2020 and your evidence.

The panel considered Colleague A's evidence that you logged her into your portal for her to complete the training. It accepted the evidence that members of staff with different functions were required to complete different modules. It also accepted the evidence of Witness 2 that when he heard of this allegation, he did not believe it. In the light of those matters the panel regards it as part of the nature of the exercise that each person has to complete her own training modules. The panel concludes

that as you had your own individual login details for a password protected training portal you understood that it was you, and only you, who should have completed these training modules.

The panel also bore in mind that when asked about this by Witness 2, and then in the investigatory meeting by Witness 1, you denied it outright. It was only later, when you had been confronted with the fact that a number of modules were done when you were on holiday, that you said that Colleague A *may* have done modules for you. It was more recently still, in your response bundle, that you admitted that it was correct that you asked a colleague to complete training modules on your behalf.

In the panel's judgement you knew that asking Colleague A to complete your training was wrong and that this would create a misleading impression that you had completed the modules yourself.

You have told the panel that you were new to the management role and working in a very pressurised environment but the panel was of the view that, while this might have influenced your decision to ask Colleague A to complete the training modules for you, it does not mean that you would not have known that this was wrong. Indeed, in your written and oral evidence you have accepted that your actions were dishonest.

The panel bore in mind the case of Ivey v Genting Casinos, [2017] UKSC 67 and determined that your actions were dishonest in that you intended to create the misleading impression that you had completed the learning modules yourself when you had not. The panel considered that your actions, as detailed in the charge, would appear dishonest to any ordinary and decent member of the public.

The panel therefore finds this charge proved.

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 amounted 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

Ms Kutner invited the panel to take the view that the facts found proved amount to misconduct. She referred to The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code').

Ms Kutner identified the specific, relevant standards where the NMC contends that your actions amounted to misconduct. She referred the panel to the cases of *Roylance v GMC (No 2) [2001] 1 AC 311* and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). Ms Kutner submitted that the Code is not a tick box exercise or a list but rather key principles that should be woven into the everyday practice of nurses. She submitted that where a registrant has been found to be acting dishonestly, that the panel must determine these actions amount to misconduct.

Ms Kutner submitted that there are a number of breaches of the Code in this case, and the facts now found proved both individually and cumulatively amount to misconduct.

Mr Munir submitted that that you are fit to practise in light of the panel's findings. He submitted that as not all the charges were found proved, this showed you are innocent. He told the panel that no further action should be taken against you.

Submissions on impairment

Ms Kutner moved on to the issue of impairment and addressed the panel on the need to have regard both to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. She made reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Ronald Jack Cohen v General* Medical Council [2008] EWHC 581 (Admin), *General Medical Council v Meadow [2007] QB 462 (Admin) and Yeong v General Medical Council [2009] EWHC 1923 (Admin).*

Ms Kutner submitted that, having found dishonesty, the panel may well conclude that this is so serious as to undermine public confidence in the profession should a finding of impairment not be made. She said that in these circumstances the public would expect the NMC as your regulator to take action against your registration.

Ms Kutner submitted that this is a case in which your fitness to practise should be found impaired on public interest, as well as public protection, grounds. She reminded the panel that you were in a very senior position, you were trusted, and you dishonestly abused your position by asking a junior member of staff to complete training on your behalf. She invited the panel to consider whether you have taken any steps to remediate your practice. She said that it is difficult to remedy the concerns when, until very recently, you have been disputing them. She submitted that there is very little evidence of reflection and the strengthening of your practice. She stated that whilst dishonesty is not easy to remediate, the panel might be satisfied by sufficient evidence that you have insight. However, she submitted that in this case, there is limited evidence.

Ms Kutner referred the panel to the Fifth Shipman Enquiry Report and stated that b, c and d of the 'test' - that you have brought the profession into disrepute, you have breached the fundamental tenets of the profession, and that your honesty cannot be relied on - are engaged in this case. She also referred the panel to the case of *CHRE v NMC and Grant* and further submitted that this is the type of case where the need to uphold and declare proper standards and to maintain public confidence in the profession requires a finding of impairment.

Mr Munir submitted that there was no harm to any patients and although dishonesty was found proved, there is no evidence that any harm would have come to a member of the public in the future. **[PRIVATE]**. Mr Munir therefore invited the panel to make a finding of no impairment.

The panel accepted the advice of the legal assessor.

Decision and reasons 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.'* The misconduct must however fall significantly short of the standards expected of a registered nurse.

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

The panel determined that your actions amounted to a breach of the Code. Specifically:

6.2 maintain the knowledge and skills you need for safe and effective practice

10.3 complete records accurately…

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

20.2 act with honesty and integrity at all times…

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel determined that your actions detailed in charges 3, 4,5 and 6 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. It determined that your decision to ask a junior colleague to complete training modules on your behalf in exchange for the approval of her holiday request was such a serious departure from the expected standards of behaviour for a nurse, that it could only be judged to be misconduct. It was an abuse of your position as a Ward Manager and was dishonest and it would be viewed by the profession as "deplorable".

The panel did not consider that the facts found proved in charges 1c, 2a, 2b and 2c amounted to misconduct. Your supervision sessions with your staff were shorter than they should have been, but the evidence was that a number of topics were covered, the supervisees could and did raise topics of their own, and the one supervisee who gave evidence was very positive about her supervisions with you. While you made errors in noting the times of the supervisions, and while all records ought to be accurate, there is no reason to suppose that these mistakes could have had any real consequences. These errors occurred on a very limited number of occasions. The panel therefore determined that these mistakes were not so serious as to amount to misconduct. In reaching this decision, the panel took account of the pressures you were under in a new Ward Manager role and the fact that no concern had been raised directly with you by your own line manager about the quality of your supervision records.

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… 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 decided that although patients were not directly put at risk of harm by your actions, there is an indirect risk to patient safety when a nurse does not complete up-to-date training required for her role and does not appreciate the seriousness of getting a colleague to complete the training in her name. Further, the panel considered that your conduct was dishonest and lacked integrity and this brings the nursing profession into disrepute. The panel also decided that your misconduct breached the fundamental professional tenets of probity and of not abusing your position. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not judge charges relating to lack of integrity and dishonesty to be serious.

The panel considered that your insight is limited. The panel referred to your response bundle of December 2019, in which you conceded that your actions were dishonest and wrong, and considered that you appear to have demonstrated more insight at that time, than in your most recent statement or in oral evidence during this hearing, where you treat your misconduct in getting Colleague A to complete your training modules for you as unimportant on the grounds that you had done similar training in an earlier employment. The panel was concerned that over time, since your statement in 2019, you may have rationalised your actions and now do not acknowledge the seriousness or the importance of not completing your own training modules and asking another member of staff to complete the training modules on your behalf. In your witness statement, dated 19 May 2022, despite acknowledging that you had asked Colleague A to complete training modules on your behalf, you say "*I always conducted my role with honesty and never mislead and gave wrong impression in completing my modules*". The panel considered that this demonstrated a significant lack of insight into your misconduct.

While the panel noted that you have apologised for your actions and have demonstrated some remorse, it also considered that your insight into the impact your actions had on Colleague A, your colleagues, and the wider nursing profession is yet to be sufficiently developed.

The panel also noted that you did not provide a reflective piece, addressing the concerns, outlining what you would have done differently and the impact of your actions for the panel's consideration. It also noted the absence of any character references or any information from your current employment or references from your current manager detailing your progress and how, if at all, you are addressing the concerns.

The panel noted the absence of any evidence of training you may have completed since you left the Priory or that you have completed the outstanding training that was mandated for you while you were employed at the Priory. More significantly, your willingness to cause another member of staff to do your training modules for you and your insufficient insight into the gravity of this behaviour present a risk to the public.

Taking all these factors into account, the panel determined that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 proper professional standards for members of those professions.

The panel determined that, in this case, a finding of impairment on public interest grounds was also required. The panel considered that the public would expect a registered nurse in a senior position to act with integrity and honesty, and would expect the regulator to take action in cases where a nurse has been found to be dishonest in relation to completing and recording her own professional development

and training. Further it would also expect the regulator to take action when a nurse had been found to abuse her position as a Ward Manager to persuade a new and junior colleague to complete training on her behalf in exchange for the approval of annual leave. The panel considered that proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made. Therefore the panel 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 suspension order for a period of 12 months with a review. As a result of this order the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and has 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 Kutner informed the panel that, whilst recognising that the decision and sanction was for the panel alone, the NMC is seeking the imposition of a striking-off order on your practice, as the appropriate sanction in this case. She then outlined the aggravating and the mitigating factors in this case.

She took the panel through the sanctions available and, for each, set out the view of the NMC. She submitted that these were serious breaches, which involved not only dishonest conduct but also an abuse of your position. She submitted that your misconduct had the potential to cause harm to patients. Ms Kutner submitted that

given the seriousness of the concerns identified and the need to have regard to the public interest, taking no action or imposing a caution order would not be appropriate. She then reminded the panel that you were in a very senior position, you were trusted, and you dishonestly abused your position by asking a junior member of staff to complete training on your behalf. She therefore submitted that a conditions of practice order would not be appropriate in this case.

Ms Kutner submitted that due to its nature, your dishonesty is at the higher end of the spectrum. Therefore she submitted that a striking-off order would be the only appropriate sanction in your case.

Mr Munir submitted that the sanction most appropriate in your case is to take no further action. However, if the panel were not in agreement, he invited the panel to refer you to mediation.

Mr Munir submitted that you have been working for over two years in your current employment; you have updated your modules and your supervisions have been done correctly. He submitted that you have not had any further concerns raised about your practice since and that you had been offered managerial positions by your current employer. However, you have declined these posts due to these current proceedings.

Mr Munir informed the panel that these proceedings have had a detrimental effect **[PRIVATE]**. He submitted that you have “learnt your lesson” and know that the conduct found proved should not be repeated. He further told the panel that you attend church regularly and provide help and assistance in the community due to your “strong role”. He submitted that you love your job as a nurse and have made a difference to people and that you chose this career as you are a good listener, responsible and professional at your work.

Mr Munir reminded the panel that despite the allegations, no actual harm was caused to any patients. **[PRIVATE]**.

Mr Munir submitted that your conduct has not been repeated since these concerns first came to light and that there has been “no direct evidence found against you”. Mr Munir therefore invited the panel to take no further action in your case; or alternatively refer you for mediation.

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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- You were in a senior position as a ward manager;
- Colleague A was significantly junior in her role as a Support Worker;
- Your lack of insight and repeated minimisation of your actions throughout the internal investigations and these proceedings; and
- Abuse of a position of trust.

The panel also took into account the following mitigating features:

- This was a single episode;
- Your newness to the role of Ward Manager; and
- The incident occurred at a time of particular pressure in the work environment.

The panel bore in mind that you have no previous regulatory findings against you.

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 and public interest concerns identified. For the same reasons, the panel concluded that

mediation would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to take no further action or to undertake mediation.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your dishonesty and abuse of position were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 was mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that your failings related to you dishonestly abusing your position by asking a junior member of staff to complete training modules on your behalf. It considered that concerns involving dishonesty and an abuse of position can be difficult to remedy. Further it was mindful that there are some attitudinal concerns raised by your minimisation of your conduct, which could not be addressed through a conditions of practice order. The panel decided that in light of all of the concerns above, your limited insight demonstrated during the internal investigation and these proceedings the absence of any evidence of strengthened practice to date, workable conditions could not be formulated which would protect the public or meet the wider public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension 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 has insight and does not pose a significant risk of repeating behaviour.*

This was a single episode of misconduct and there is no evidence that it has been repeated since.

The panel considered your lack of meaningful insight or recognition of the impact of your failings on clients, your colleagues and the wider profession. It bore in mind the senior position you held when you asked a much junior member of staff to complete modules on your behalf. However, it determined that your dishonest actions were opportunistic rather than pre-planned. It considered that you were trying to take an easy way out when faced with the pressure of a new managerial role and its associated workload. While this was serious and fell far short of the standards required of a registered nurse it was, in the panel's judgement, limited in extent and was not fundamentally incompatible with remaining on the register.

The panel therefore determined that a suspension order is the proper order in this case. In reaching this decision, it took account of the hardship such an order would have on you and balanced your interests with the need to protect the public and to meet the public interest.

The panel then considered for how long the order should be. The panel determined that the maximum period of 12 months was required to maintain public confidence in the profession given the findings in this case. In the panel's judgement, a period of 12 months would also allow you the time to reflect on the findings of this panel as to your misconduct, to take the steps necessary to demonstrate that your practice has been strengthened and to enable you to provide substantive evidence of your progress in addressing the concerns identified.

The panel gave very careful consideration to whether a striking-off order was necessary to address the public interest concerns in your case. However, taking

account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order at this stage.

Balancing all of these factors the panel has concluded that a suspension order for 12 months is the appropriate and proportionate sanction.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC;
- Your attendance at the review hearing;
- A structured written reflective piece using a recognised model which demonstrates your understanding of:
    - the concerns identified above;
    - the effect of your misconduct on patients/clients, their families, the nursing profession and the public's perception of nurses; and
    - how you would approach similar circumstances differently in the future.
- Any testimonials commenting on your recent performance in the workplace from either paid or voluntary positions; and
- Any personal references attesting to your honesty, integrity and character.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order until the suspension sanction takes effect 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.

The panel took into account the evidence that it had received and the submissions of Ms Kutner and Mr Munir. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

Ms Kutner submitted that an interim suspension order for a period of 18 months would cover the 28 days before the substantive suspension order comes into effect, and the subsequent appeal period should you appeal the decision. She submitted that the grounds for this would mirror the panel's earlier decision, that it is necessary for the protection of the public and is otherwise in the public interest.

Mr Munir submitted that that an interim order should not be made. He submitted that you should continue to work and be given the opportunity to take up the training provided by your employer. He submitted that given **[PRIVATE]** , it is entirely unreasonable to ask you to stop working. He submitted that it is unreasonable and unjust to impose an interim order as there is no evidence of any repetition or any evidence of patient safety having been compromised. He submitted that the misconduct is "*trivial"* and not serious enough to warrant an interim order.

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. In reaching this decision, the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order.

The panel did not consider the concerns found proved to be "trivial". As it has said in its determinations earlier in this hearing, the panel considered that your dishonesty and abuse of your position by asking a junior member of staff to complete training modules on your behalf fell far short of the standards required of a registered nurse.

It further bore in mind the lack of any meaningful insight demonstrated by you. As the panel has also set out above, it considers that your willingness to behave in this way and limited understanding of its seriousness presents a risk to patients and the public in addition to having implications for public confidence in the profession.

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 given the seriousness of the facts found proved and in the interest of protecting patients and the public and of maintaining public confidence in the nursing profession and the NMC as a regulator.

The period of this interim order is 18 months, in order to allow for the time which may be needed before an appeal can be heard and determined.

The panel has taken account of Mr Munir's submissions concerning the impact, which an order will have on you. It has balanced your interests with the need to protect the public and the public interest.

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

That concludes this determination.