

Nursing and Midwifery Council Fitness to Practise Committee

Substantive Hearing 6-13 June 2022

Virtual Hearing

Name of registrant:	Margaret Mary Murphy
NMC PIN:	84H1042E
Part(s) of the register:	RN1, Registered Nurse – Adult (November 1987) ROH, Registered Specialist Community Public Health Nurse – OH (June 2002)
Relevant Location:	Hillingdon
Type of case:	Misconduct
Panel members:	Dave Lancaster (Chair, Lay member) Claire Matthews (Registrant member) Jan Bilton (Lay member)
Legal Assessor:	Lucia Whittle-Martin
Hearings Coordinator:	Max Buadi
Nursing and Midwifery Council:	Represented by Yvonne Ferns, Case Presenter
Mrs Murphy:	Not present and not represented in absence
Facts proved:	Charges 1, 2, 3 and 4
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Murphy was not in attendance, nor was she represented in her absence. Notice of this hearing had been sent via email to her email address held on the NMC register on 3 May 2022.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and method of the hearing and, amongst other things, information about Mrs Murphy's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

The panel accepted the advice of the legal assessor.

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

Decision and reasons on proceeding in the absence of Mrs Murphy

The panel next considered whether it should proceed in the absence of Mrs Murphy. It had regard to Rule 21 and heard the submissions of Ms Ferns who referred the panel to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162. She drew the panel's attention to an email from Mrs Murphy dated 21 March 2022 which stated:

"...Thank you for your email. I confirm that I am no longer represented...and that I will not be attending the hearing..."

Mrs Murphy stated that it would be too stressful to attend the hearing on her own.

Ms Ferns also drew the panel's attention to another email from Mrs Murphy, dated 28 April 2022, where she confirmed she did not want the date of the hearing changed so she could attend.

Ms Ferns submitted that there has been no application made for an adjournment today and doing so would serve no purpose as there is no guarantee that adjourning would secure Mrs Murphy's attendance at a future date. She further submitted that Mrs Murphy had voluntarily absented herself and that there is a public interest in the expeditious disposal of this case.

Ms Ferns invited the panel to continue in the absence of Mrs Murphy.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Murphy. In reaching this decision, the panel has considered the submissions of Ms Ferns, the written representations from Mrs Murphy, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Murphy;

- In an email dated 21 March 2022, Mrs Murphy stated she was no longer represented, was not going to attend and supported the NMC's plan to change the hearing date from November 2022 to an earlier date;
- Mrs Murphy has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- One witness is warned for today to give live evidence, others are due to attend;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- There is a strong public interest in the expeditious disposal of the case.

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

Details of charge

That you, a Registered Nurse:

- 1) Between 1 April 2016 to 31 March 2017 claimed between 1 to 5 days of additional paid leave that you were not entitled to.
- 2) Between 1 April 2017 to 31 March 2018 claimed between 1 to 5 days of additional paid leave that you were not entitled to.
- 3) Between 1 April 2018 to 31 March 2019 claimed between 1 to 24 days of additional paid leave that you were not entitled to.
- 4) Your actions at one or more of charges 1 – 3 were dishonest as you knew you were not entitled to the additional days of paid leave.

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

Background

The NMC received a referral on 12 November 2019 from Deputy Chief Nurse at Northwick Park Hospital, London North West Healthcare NHS Trust ('the Trust'). The concern raised in the referral relates to an allegation of dishonest conduct by Mrs Murphy a Clinical Nurse Manager, Band 8a.

Mrs Murphy entered the Register on 2 November 1987. She commenced employment with the Trust on 4 August 1997. She then came onto the Register as a Registered specialist community public health nurse (Occupational Health) on the 27 August 2002.

In 2004/2005 Mrs Murphy began working in the Occupational Health Department. In 2014, the Northwick Park Hospital merged with Ealing Hospital to create the Trust. The Occupational Health Departments completed their merger in February 2018.

In the Trust, annual leave and attendances are recorded on the Health Roster system and this record is used for the payroll purposes. In the Occupational Health Department, annual leave is also recorded on the EOPAS system. The EOPAS system is used to record staff's daily work activities and enables administrative staff to monitor who is in the department and is also used for fire regulation purposes.

Mrs Murphy's job description included checking and accurately transcribing staff member's annual leave from the EOPAS onto the Health Roster. Mrs Murphy was a senior member of staff in her role as Clinical Nurse Manager and occupied the most senior position in the Occupational Health Department in Dr 2's absence.

Between 1 April 2016 and 31 March 2019, it is alleged that Mrs Murphy claimed additional paid leave that she was not entitled to. The leave was noted on the EOPAS system but omitted from the Health Roster.

Whilst undertaking training on Health Roster Ms 1, a Senior Occupational Health Nurse Advisor in the Occupational Health Department, came across a discrepancy with Mrs Murphy's annual leave in the EOPAS diary and the Health Roster. Ms 1 raised the issue with Mrs Murphy who allegedly spoke back to her in a firm manner and said words along the line of, "don't worry about what I am doing". Ms 1 reported the concerns about Mrs Murphy's annual leave with Dr 2.

Dr 2, Clinical Director of Occupational Health, inspected the relevant records and discovered that Mrs Murphy took unauthorised leave which she was not entitled to take. Dr 2 raised the concerns with the Mrs Murphy. Mrs Murphy denied that she had claimed leave above her entitlement and put forward a number of suggestions as to why she may have been on leave, for example sick leave. Dr 2 produces evidence of the discrepancy of Mrs Murphy's leave on the Health Roster and EOPAS system.

At that time, Mr 3 was an Assistant Director of Financial Services and Deputy Director of Finance at London North West Healthcare NHS Trust. During this role he conducted a formal investigation into concerns with Mrs Murphy's annual leave. Mr 3's investigation concluded that Mrs Murphy had taken 57 days of annual leave which was 24 days over and above her entitlement of 33 days.

At the close of the NMC's case it was brought to Ms Ferns attention that documentation provided by Mrs Murphy had not been provided to the panel. Mrs Murphy's Case Management Form (CMF), referred to the fact that a supporting document and Mrs Murphy's written responses for the NMC Case Examiners, compiled by her legal representative, dated 14 June 2021, would be supplied to the hearing panel. Ms Fern then obtained these documents, which were forwarded to the panel.

Ms Ferns informed the panel that the NMC had made efforts to recall Dr 2, in order to answer any questions that may arise from this further documentation. However she was travelling on 8 June 2022 and was now on holiday and was unavailable for the entirety of the hearing listing. Ms Ferns submitted that in those circumstances the NMC did not intend to recall Dr 2.

The panel accepted the advice of the legal assessor.

The panel considered whether it wished to recall Dr 2 of its own volition and decided that it did not. It decided that there were no fresh points in the additional documentation to merit the recalling of Dr 2. The vast majority of the points made had already been disclosed in the evidence bundle. Any additional points were not of sufficient importance to merit recalling Dr 2. The panel decided that it would keep the issue under review until the conclusion of its decision on the facts. However at this point in time the additional documentation revealed no additional material that demanded further exploration.

Decision and reasons on facts

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

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

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:

- Ms 1: A Senior Occupational Health Nurse
Advisor in the Occupational Health
Department;
- Dr 2: Clinical Director of Occupational
Health;

- Mr 3: Assistant Director of Financial Services and Deputy Director of Finance at London North West Healthcare NHS Trust at the relevant time.

The panel was also provided with the witness statement of Ms 4, a Senior Human Resources Adviser at the Trust.

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 the written representations from Mrs Murphy.

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

Charge 1

- 1) Between 1 April 2016 to 31 March 2017 claimed between 1 to 5 days of additional paid leave that you were not entitled to.

Charge 2

- 2) Between 1 April 2017 to 31 March 2018 claimed between 1 to 5 days of additional paid leave that you were not entitled to.

Charge 3

- 3) Between 1 April 2018 to 31 March 2019 claimed between 1 to 24 days of additional paid leave that you were not entitled to.

Charges 1, 2 and 3 are found proved.

The panel considered each of these charges separately but as the evidence in relation to each is similar it has dealt with them under one heading. In reaching this decision, the panel took account of the evidence of Ms 1, Dr 2, the Case Management Form and a letter dated 14 June 2021 provided on behalf of Mrs Murphy by her legal representative

The panel took account of the witness statement of Ms 1 which stated:

'Annual leave begins each year on 1 April and runs until 31 March the following year,

There are three separate tiers of annual leave, depending on how many years of continuous service you have provided to the NHS.

- I. Tier 1: If you have provided up to five years of continuous service, you are awarded 27 days of annual leave as well as bank holidays*
- II. Tier 2: If you have provided more than five years of continuous, you are awarded 29 days of annual leave as well as bank holidays.*
- III. Tier 3: If you have provided more than ten years of continuous service, you are awarded 33 days of annual leave as well as bank holidays.*

The Registrant had been in the NHS for more than ten years, so she was entitled to 33 days of annual leave as well as bank holidays.'

The panel accepted that Mrs Murphy was entitled to 33 days of annual leave. It also took account of an email received by Dr 2 on 1 April 2019. This is a breakdown for Mrs Murphy's annual leave taken from the Occupational Health EOPAS diary. It stated that for the financial year of "2016/17" and "2017/18" Mrs Murphy's annual leave totalled "38" days for each year. The panel was satisfied that this was 5 days over her entitled annual leave for each year. In the year "2018/19", it stated that Mrs Murphy's annual leave totalled "57"

days for that year. The panel was satisfied that this was 24 days over her entitled annual leave.

The panel bore in mind that Mrs Murphy had admitted these charges on her CMF by ticking boxes 1 to 3. She did deny charge 4 and this would indicate that her acceptance of charges 1, 2 and 3 were not ticked in error. Further in her written responses she has not denied the charges and has expressed remorse for her actions. In a letter dated 25 May 2021, Mrs Murphy's former legal representative stated, in reference to charge 3:

"...Margaret accepts this allegation, in so far as she has been unable to find any evidence to support the fact that she was working on any of the days in question or confirmation that she had time off due to sickness or for any other specific reason...doesn't seek to excuse her actions, in taking more leave than she was entitled to, which she has offered to pay back to the Trust and for which she takes full responsibility and remains extremely remorseful..."

This was followed by letter from Mrs Murphy's former representative, dated 14 June 2021, which stated:

"...Mrs Murphy accepts that she claimed an additional 24 days paid leave that she was not entitled to, in so far as the evidence seems to support the Trust's position that she did take more paid leave than she was entitled to, and that this appears to equate to an additional 24 days, during the year 2018/2019..."

Additionally, the panel has had sight of a letter, dated 12 May 2022, sent to solicitors who were representing Mrs Murphy. This letter stated that the total amount Mrs Murphy owed as a result of taking more annual leave than she was entitled to was £4,782.37. She was also due to make a payment of £200 for 23 months with a final payment on the 24th month of £182.37. An email sent to Mrs Murphy from the Trust, dated 24 May 2022, confirmed receipt of a £200. The panel considered that Mrs Murphy was accepting that she took more annual leave than she was entitled to.

The panel also noted that Mrs Murphy could not provide any explanation or evidence to support her being in the department on the days EOPAS stated she was on annual leave in 2018 to 2019. Dr 2 in her witness statement stated:

“...If you want to undertake work in the department you have to log into the computer which then allows you to log into the EOPAS software. If you are off for the day on annual leave for example, the EOPAS diary would reflect this ('annual leave'). If you came into the department on an annual leave day, you would need to update the EOPAS diary to the relevant activity, for example, attending a meeting... The EOPAS is a live system that we update as we are working and therefore the most accurate. As there is an EOPAS diary page for each day, it shows who is present in the department...”

Further, the panel took account of the fact that on all of the days Mrs Murphy claimed annual leave, there is evidence that she did not log onto the EOPAS system.

Therefore, the panel concluded that, on the balance of probabilities, between 1 April 2016 to 31 March 2017 and 1 April 2017 and 31 March 2018 Mrs Murphy claimed between 1 to 5 days of additional paid leave that she was not entitled to.

It also concluded that on the balance of probabilities, between 1 April 2018 to 31 March 2019 Mrs Murphy claimed between 1 to 24 days of additional paid leave that she was not entitled to.

The panel therefore found charges 1, 2 and 3 proved.

Charge 4

- 4) Your actions at one or more of charges 1 – 3 were dishonest as you knew you were not entitled to the additional days of paid leave.

This charge is found proved.

In reaching this decision, the panel adopted the test for dishonesty set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. That test is as follows:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

The panel had already found charges 1, 2, and 3 proved, namely that from 1 April 2016 to 31 March 2019, Mrs Murphy had claimed days of additional days of paid leave she was not entitled to. It now had to consider whether at the time of making these claims, Mrs Murphy knowingly made the claims and knew she was not entitled to do so. The panel had to be satisfied that this conduct would be considered dishonest by the standards of ordinary honest and decent people.

In reaching its decision, the panel noted that the NMC relied heavily on the documentary and oral evidence provided by Ms 1 and Dr 2. It bore in mind that both witnesses worked directly with Mrs Murphy and that their relationship with Mrs Murphy appeared to be good. There was no evidence of any malice towards Mrs Murphy and the panel had no reason to disbelieve what Ms 1 and Dr 2 said.

The panel took account of the witness statement of Ms 1 who stated:

“...Before the Registrant left her role on 1 November 2019, she was responsible for recording all staff member’ annual leave in the EOPAS. The Registrant had trained in recording annual leave in the EOPAS diary and she had been doing this for a long time...When I was trained to transcribe annual leave to the EOPAS diary, at the end of every month I would go into the Registrant’s office with her to double check that the annual leave requested by all staff was correct. We would compare the annual leave of all staff with the EOPAS diary and wall calendar before locking and finalising the shifts on the electronic Health Roster and submitting to the Health Roster team. The annual leave in the EOPAS diary should have tallied up with both the Health Roster and the wall calendar...”

This is supported by Dr 2 who, in her witness statement, stated:

“...It was the Registrants responsibility to check the information on EOPAS is replicated accurately in Health Roster and checked by another member of staff...”

The panel noted that both had reiterated this in their oral evidence to the panel. It bore in mind that Mrs Murphy began working in the Occupational Health department at London Northwest Healthcare Trust in 2004/2005. Dr 2 confirmed in her evidence that despite the merger the Health Roster and EOPAS systems had not changed over time. Mr 3 stated in his evidence that the Health Roster and EOPAS were in use in 2014.

Therefore, the panel considered that Mrs Murphy had been working at the Trust for many years and was extremely familiar with both the EOPAS system and the Health Roster. It reminded itself Mrs Murphy was the Occupational Health Nurse Manager who was responsible for recording all staff annual leave and ensuring accuracy between the EOPAS and Health Roster system.

Additionally, as Mrs Murphy had been in the role for so long, the panel was of the view that she would have been well aware of the exact amount of annual leave she would have been entitled to.

The panel also noted that Dr 2 in her oral evidence had stated that 'unbeknown to her' Mrs Murphy was doing this role on her own 'but she shouldn't have been.' Dr 2 stated that two people were required to transcribe information from EOPAS to the Health Roster and check it and that 'only Mrs Murphy could sign off' and that it was 'her responsibility to ensure she had someone checking with her'.

Ms 1 also confirmed this in her oral evidence. She stated that when she and Mrs Murphy checked and transcribed the staff's annual leave, they would have 'two computer screens up' which were 'Health Roster and EOPAS' and in addition, they looked at the wall planner. Ms 1 stated that 'all three had to be correct, not just one' and that they were 'all equally as important'.

Mr 3 confirmed in his evidence that Mrs Murphy had 'full authority on EOPAS' and that her user rights for EOPAS was such that she was able to read, create, delete and edit an absence form.

The panel bore in mind that Mrs Murphy had performed her role of checking and transcribing staff member's annual leave with Ms 5 and later Ms 6. It reminded itself that Mrs Murphy would have been aware that two people were required to do this. Despite this, the panel noted that during the period of September 2018 and March 2019 Mrs Murphy was working alone, claiming additional leave without another person checking because there was no other employee employed to assist her at that time. The panel noted that the number of occasions when she claimed unauthorised leave during this period was high. The panel concluded that prior to this time Ms Murphy had clearly found the opportunity to make further unauthorised claims, as she had admitted to making those claims, albeit that she denied doing so dishonestly.

The panel concluded that Mrs Murphy must have been aware she was taking more days than she was entitled to. It bore in mind that between 1 April 2018 to 31 March 2019, she took 24 more additional days annual leave. This was a large figure and the Panel was of the view that Mrs Murphy must have been aware of what she was doing at the time. The panel was of the view that it was too much of a coincidence for Mrs Murphy to have claimed all the additional paid leave, described in charges 1, 2 and 3 in error.

The panel also noted that the discrepancies in annual leave only applied to Mrs Murphy. However, there were no discrepancies in the recording of any other members of staff's leave.

The panel also took account of the annotated calendar which detailed Mrs Murphy's annual leave between 1 April 2018 to 31 March 2019. Dr 2 in her witness statement stated:

"...Both members of staff had noticed that in January and February 2019, the Registrant had taken every Friday off in January and three Friday's off in February. They were particularly surprised because they usually have a nurses meeting chaired by the Registrant on a Friday and this was what alerted them to the fact the Registrant was having so much time off. I would not have been in the Department on Friday's; I was not contracted to work for the Trust on Fridays so I would have been doing another form of work not connected to my hospital work away from the Department..."

Mr 3 in his witness statement stated that he was informed that:

"...Friday was an issue', as the Registrant was not always in or left early despite being marked as in the department on eOPAS..."

The panel counted 20 Fridays on the annotated calendar. It was of the view that if Mrs Murphy had acted honestly, as she suggested, it was highly unlikely that she would have

made the error of claiming additional annual leave so often on a Friday. The panel decided that this was too much of a coincidence. Further, the Panel had heard that Dr 2 was absent on Fridays. The Panel concluded from this that the Registrant deliberately made use of Dr 2's absence to carry out her dishonest acts.

The panel also took account of the fact that Mrs Murphy offered to pay back the total amount Mrs Murphy owed, £4,782.37, as a result of taking more annual leave than she was entitled to.

The panel also reminded itself that in March 2019, during a training session, Ms 1 came across a discrepancy with Mrs Murphy's annual leave in the EOPAS diary and Health Roster. Ms 1 raised the issue with Mrs Murphy who spoke to her in a 'firm manner' and said words along the line of, "don't worry about what I am doing." Ms 1 stated that Mrs Murphy's 'tone of voice' made her so concerned that she warned Dr 2 to ensure that she had someone with her when she spoke to Mrs Murphy about the annual leave discrepancy.

Dr 2 corroborated this in her oral evidence when she stated that Ms 1 said something along the lines of Mrs Murphy's 'tone and face changed from friendly to quite firm' and that Mrs Murphy has said something like 'don't interfere with my leave, none of your concern.' Dr 2 stated that Ms 1 had said that Mrs Murphy had spoken to her in a 'forceful and authoritative manner causing her to feel threatened.' The panel concluded that this behaviour provided a degree of corroboration to the other factors that were suggestive of dishonesty.

The panel took into account the fact that when first confronted with the situation, Mrs Murphy provided excuses that could not have been true, such as sick leave, taking time off in lieu owed, claiming she was in the office when she was not, and claiming to be unclear of annual leave processes.

In Mrs Murphy's written response dated 14 June 2021, she stated:

“...She has explained that she may well have taken a few of these 24 days as sick leave but that she cannot provide any evidence to support this, as these would have been odd days off sick, due to migraines that she was suffering, seemingly brought on by the stress of her role and workload, for which she did not see her GP specifically...”

Mr 4 stated in his oral evidence that Mrs Murphy informed him that she had a GP or hospital appointment on one of the days and he asked her to provide evidence by way of a text, email or letter. However, Mrs Murphy did not provide this. The panel bore in mind that due to her role, and being aware of the process of sick leave she would have to have been aware of the need for some form of evidence to support her claim of a GP or hospital appointment.

The panel noted that Mrs Murphy had also provided Dr 2 with details of extra hours she said she had accrued between 1 April 2018 to 31 March 2019. However, it bore in mind that Dr 2 had pointed out to Mrs Murphy that she could not have accumulated 2.5 hours per week for 52 weeks, as Mrs Murphy would not have worked for 52 weeks due to taking 33 days annual leave. Additionally, the panel noted that Dr 2 had stated that time off in lieu had to be agreed in advance with a manager, taken as soon as possible without compromising the department and said that it could not be added to annual leave. The panel was satisfied that Mrs Murphy would have been aware of this and as a result, knew what she was doing in claiming more annual leave than she was entitled to.

The panel also took account of the investigation report from Mr 3, dated 10 September 2019. It noted that under ‘Mitigating Factors’, it stated:

[Mrs Murphy] stated there is a lot of confusion around the systems used to record annual leave and she thinks management should tackle this issue. As a result, [Mrs Murphy] feels let down.

[Mrs Murphy] said she is aware of the annual leave policy and procedure however she added she is not clear on the department processes to record annual leave.

The panel did not accept that Mrs Murphy would have found the situation confusing. It reminded itself that Mrs Murphy was the Occupational Health Nurse Manager who was responsible for recording all staff annual leave and ensuring accuracy between the EOPAS system and the Health Roster. Additionally, she had been working at the Trust for a number of years and would have been aware of the annual leave policy and procedure and familiar with the systems used to record annual leave.

The panel also took account of Mrs Murphy's 'out of office' email replies. These emails correlated with the annual leave dates in the EOPAS diary. Six emails had been provided as examples including an automatic response which was sent on 14 November 2018 at 09:19 which stated that Mrs Murphy was out of the office until 15 November. Dr 2's notes, regarding this email, stated:

"...[Mrs Murphy] says did not add to Health Roster because she was in dept..." [sic]

The panel noted that the out of office email, as well as the EOPAS diary indicated that she was on annual leave. It appeared to the panel that Mrs Murphy had to have known she was not going to be in the office and this email demonstrated pre-meditation on her behalf. It shows that she knew she was going to be on annual leave in advance as the out of office message would have had to have been set up prior to taking annual leave on 14 November 2018. The panel concluded that the quantity of these emails demonstrated a pattern of behaviour over a period of time.

The panel also noted that 27, 28 and 29 March 2019 were marked as annual leave for Mrs Murphy in the EOPAS diary. Dr 2 stated that this was not transferred to the Health Roster system. In her witness statement, Dr 2 stated:

"...I knew she was in Paris on these dates as I received a text message from her

when she had got back from Paris on 31 March 2019 explaining that she was very unwell in Paris and that she was now home in bed....”

The panel had sight of the text messages referenced by Dr 2 which corroborated what was in her witness statement. The panel noted that in the Trust’s formal investigation meeting on 23 July 2019, undertaken by Dr 2, the notes stated:

“At the meeting, [Mrs Murphy] stated she had no evidence as to her activities for the days that were marked as leave on eOPAS and couldn’t give an explanation as to why she would be marked as leave.

[Mrs Murphy] gave back the list from eOPAS and ticked all the days that were also marked as leave on HRoster.

[Dr 2] noticed that the days marked as leave in eOpas for end of March, which were not on HRoster, [Mrs Murphy] was in Paris. Text messages from [Mrs Murphy] to [Dr 2] confirming.”

In light of all the above, the panel concluded that the evidence adduced by the NMC established that it was more likely than not that Mrs Murphy, at the time she was claiming additional paid leave, knew that she was claiming additional paid leave and knew that she was not entitled to it.

Applying the standards of ordinary decent people, the panel considered that on the balance of probabilities, Mrs Murphy’s actions, were dishonest.

Therefore, this charge is found 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 amount to misconduct and, if so, whether Mrs Murphy's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

Submissions on misconduct and impairment

Ms Ferns referred the panel to the case of *Roylance v GMC (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 Ferns invited the panel to take the view that the facts found proved amount to misconduct as Mrs Murphy's repeated actions of dishonesty are serious and fall short of what would be expected of a registered nurse in the circumstances. She directed the panel to specific paragraphs within 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) and identified where, in the NMC's view, Mrs Murphy's actions amounted to misconduct.

Ms Ferns moved on to the issue of impairment and referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*. She reminded the panel of the Dame Janet Smith test from the Fifth Shipman report and submitted that limbs b, c and d should be considered.

Ms Ferns submitted that Mrs Murphy has engaged with the NMC but has not demonstrated any insight into her actions as she had not accepted that her actions in charges 1-4 have been dishonest. She further submitted that Mrs Murphy denies that her fitness to practise is currently impaired by reason of her misconduct.

Ms Ferns referred the panel to the case of *Cohen v GMC [2007] EWHC 581 (Admin)*. She submitted that the regulatory concerns in this case are capable of remediation by way of admissions to the dishonesty of the action. However, she submitted that Mrs Murphy has not made any admissions to dishonesty.

Ms Ferns reminded the panel that Mrs Murphy is currently employed with no concerns raised, has apologised to the Trust and made some payments to the Trust. However, she submitted that Mrs Murphy has not admitted the dishonesty in her conduct which shows lack of insight and integrity which makes any remediation incomplete.

Ms Ferns submitted that Mrs Murphy's conduct was not a one-off incident and unentitled leave taken was for a large figure and demonstrated a pattern of behaviour over a period of time. Further, Mrs Murphy was in a senior position and was the most senior person in the department in Dr 2's absence. There was a breach of trust which resulted in Mrs Murphy directly benefiting from her dishonest actions.

Ms Ferns invited the panel to find that Mrs Murphy's fitness to practise is impaired on public interest grounds.

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

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*_(No 2) [2000] 1 A.C. 311 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

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

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with integrity and honesty at all times

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

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

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

To achieve this, you must:

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It had already determined that Mrs Murphy acted dishonestly by claiming additional paid annual leave she knew she was not entitled to. It noted that this was not a one-off instance and was repeated over a significant period of time which demonstrated a persistent pattern of behaviour.

The panel bore in mind that Mrs Murphy was an experienced senior member of staff and knew that she was not entitled to additional and paid annual leave. Her actions were driven by personal gain and deliberate. The panel concluded that Mrs Murphy's actions amounted to misconduct.

Decision and reasons on impairment

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

The panel accepted the advice of the legal assessor who took the panel to the case of *Grant and Cohen*.

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 reaching its decision, the panel considered the judgement of Mrs Justice Cox in the case of *Grant*. In paragraph 76, the Judge referred to Dame Janet Smith's "test", formulated in her fifth report in the Shipman inquiry, 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 limbs b, c and d are engaged in this case.

The panel was of the view that Mrs Murphy's actions were not directly related to patient care and had not put patients at risk of unwarranted harm. Whilst the panel bore in mind that her actions may have potentially impacted on the Hospital's ability to provide a service to patients, it accepted that there was insufficient information before it to demonstrate that this put patients at direct risk of harm.

The panel therefore concluded that Mrs Murphy's fitness to practise is not impaired by reason of her misconduct on public protection grounds. It also noted that the NMC has not suggested otherwise.

The panel did however consider that Mrs Murphy actions involved an act of dishonesty which breached fundamental tenets of nursing practice. Further, her misconduct is liable to bring the nursing profession into disrepute. In the panel's judgement, the public do not expect a nurse to act as Mrs Murphy did as they require nurses to adhere at all times to the appropriate professional standards and to behave with honesty and integrity.

The panel considered whether Mrs Murphy's actions are capable of remediation, whether they have been remediated, and whether there is a risk of repetition of similar concerns occurring at some point in the future.

The panel carefully considered the evidence before it in determining whether or not Mrs Murphy has remedied her practice. The panel had borne in mind, throughout its consideration of this case and its deliberation of the charges, that Mrs Murphy is a nurse of previous good character. It took account of the positive testimonials from professional colleagues, including her current employer, who are informed of the case, which speak to Mrs Murphy's honesty and integrity.

However, the panel concluded that Mrs Murphy's past dishonesty was not an isolated incident. It was a pattern of behaviour that occurred over several years. In light of this, the panel was of the view that the testimonials provided do not assist in this regard. Further, there is no evidence, before the panel, of remediation undertaken by Mrs Murphy that directly addresses her past dishonesty.

The panel had heard that Mrs Murphy has continued working without restriction and there have been no further concerns raised, and took this into account. The panel also noted that she had engaged with the NMC albeit she decided not to attend this hearing.

However, the panel concluded that Mrs Murphy had demonstrated very little insight into her actions. Whilst she had admitted charges 1, 2 and 3, these admissions had not been immediately forthcoming, and she had continued to deny charge 4 from the beginning of these proceedings.

The panel accepted that Mrs Murphy had shown some limited insight into the effect of her dishonesty in the following passage of her reflective statement:

“...Taking annual leave that I was not entitled to could be seen as dishonest, although this was never my intention and I recognise that my absence may have affected the service and caused a delay with appointments affecting the workload of my colleagues, for which I am very sorry...I understand the impact that dishonesty in the nursing profession may have on patient safety and the detrimental effect to its reputation. The public should be able to expect all healthcare professionals to act with honesty and integrity at all times. Where this is not the case the public may lose confidence in the care they receive... I understand that my perceived dishonesty goes against the NMC Code, specifically paragraphs 20 and 21 and 21.3 whereby the reputation of the nursing profession should be upheld and I should act with honesty and integrity at all times...”

The panel noted that Mrs Murphy has recognised that her actions have impacted upon the Hospital’s ability to provide a service, the nursing profession, her colleagues and breached the fundamental tenets of the Code. However, the panel concluded that her insight was limited and she had not remediated her misconduct. She had provided a certificate of Continuing Professional Development pertaining to a module on Remediation dated 13 May 2022. However, she had not evidenced any professional development targeted at dishonesty.

The panel considered that Mrs Murphy was a senior member of staff in charge of systems related to the management of the department’s annual leave. It was her responsibility to ensure that these systems were managed correctly and honestly. It was of the view that she abused her position for personal and financial gain.

The panel took account of the fact that Mrs Murphy has started to make payments following an arrangement with the Trust. However, whilst she accepts that she received unauthorised payments, she continues to deny that she did so dishonestly.

The panel had regard to 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.'

The panel was satisfied that in light of Mrs Murphy's dishonesty, the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made. The panel concluded that, in the circumstances, the public would be appalled that a nurse claimed additional paid annual leave when she knew she was not entitled to.

In conclusion, on public interest grounds alone, the panel has found that Mrs Murphy's fitness to practise is currently impaired by reason of her misconduct.

Sanction

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

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

Submissions on sanction

Ms Ferns informed the panel that the NMC seek the imposition of a striking off order.

Ms Ferns took the panel through the aggravating and mitigating factors she considered to be engaged in this case.

Ms Ferns submitted that the case is too serious to take no action or to impose a caution order. She submitted that this would be wholly inappropriate in view of the seriousness of Mrs Murphy's misconduct and the finding of current impairment on public interest grounds. Her misconduct has brought the nursing profession into disrepute, and she has breached a fundamental tenet of nursing.

Ms Ferns submitted that imposing a conditions of practice order would be inappropriate given the conduct relates to dishonesty. She submitted that this is not a matter in which there are identifiable areas of training or supervision which can remediate the concern.

Ms Ferns submitted that a suspension order would not maintain public confidence in the profession and declare and uphold proper standards of conduct and performance. She submitted that Mrs Murphy had demonstrated very little insight into her actions and what insight she has shown is limited. Ms Ferns further submitted that she has not remediated her misconduct.

Ms Ferns submitted that a striking-off order is the appropriate order. She submitted that Mrs Murphy's behaviour is fundamentally incompatible with registration and public confidence in the profession demands no less a sanction.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Breach and abuse of trust given one of her responsibilities was to enter and check the annual leave of other members of staff;
- Senior position held;
- Not isolated incident, repeated over several years;
- Persistent pattern of behaviour;
- Personal and financial gain, deliberate;
- Significant amount of unentitled leave taken;

The panel also took into account the following mitigating features:

- Mrs Murphy has apologised and shown some insight into the effects of her dishonesty;
- Mrs Murphy is of previous good character and has provided positive testimonials;
- Ms Murphy has commenced a repayment plan to the Trust;
- Mrs Murphy is currently working and there has been no repetition of the dishonest conduct.

In making its decision the panel also had regard to the NMC guidance entitled "Considering sanctions for serious cases" and in particular the subsection entitled "*Cases involving dishonesty*". The panel noted that Mrs Murphy's actions were not one-off

incidents and were not opportunistic or spontaneous. Further, there was a misuse of power, she had personal financial gain from a breach of trust as a result of her actions. The panel also found that this was premeditated and longstanding deception. It therefore concluded that Mrs Murphy's dishonesty was at the higher end of seriousness.

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. Further, it does not reduce the risk of repetition in the future.

It then considered the imposition of a caution order but again determined that this would be incompatible with its findings of current impairment and the dishonesty identified. An order that does not restrict Mrs Murphy's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Murphy's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Murphy's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. However, 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. Additionally, the panel was of the view that the dishonesty identified in this case was not something that can be addressed through retraining. The panel concluded that placing conditions on Mrs Murphy's registration would not adequately address the seriousness of this case nor meet the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The aggravating factors that the panel took into account were that the misconduct found proved was not an isolated incident. It was a repeated pattern of behaviour over a significant period of time. Additionally, Mrs Murphy has demonstrated limited insight as she has continued to deny the dishonesty of her actions.

The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Murphy's actions is fundamentally incompatible with her remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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?*

Mrs Murphy's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Murphy's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel took account of Mrs Murphy's previous good character, supported by written testimonials, together with the fact that she has continued to work part time in unrestricted practice.

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

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

This will be confirmed to Mrs Murphy in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Ferns. She submitted that an interim suspension order for a period of 18 months should be made on the grounds that it is necessary in the public interest.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is 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 Mrs Murphy is sent the decision of this hearing in writing.

That concludes this determination.