Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Wednesday, 6 December 2023 – Thursday, 14 December 2023

Virtual Hearing

Name of Registrant:	Savina Theeka
NMC PIN	08L0432E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – 14 August 2009
Relevant Location:	Enfield
Type of case:	Misconduct
Panel members:	Deborah Jones (Chair, Lay member) Susan Field (Registrant member) Stacey Patel (Lay member)
Legal Assessor:	John Bassett
Hearings Coordinator:	Eyram Anka
Nursing and Midwifery Council:	Represented by Yusuf Segovia, Case Presenter
Mrs Theeka:	Present and represented by Dele Olawanle, (Del & Co Solicitors)
Facts proved:	Charges 1, 2a
Facts not proved:	Charges 2b
No case to answer:	Charges 3, 4a, 4b
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Details of charge (as amended)

That you, a registered nurse

1) Between 1st January 2018 and 25th February 2019, worked Band 5 bank shifts and claimed payment at Band 7 **[PROVED]**

2) Your actions at Charge 1 were dishonest in that you knew you were not entitled to Band 7 payment because

   (a) the shifts were Band 5 shifts and/or. **[PROVED]**

   (b) On the occasions that you were not in charge and/or not allocated patients, your tasks did not merit Band 7 payment. **[NOT PROVED]**

3) Between 1st January 2018 and 8th March 2019, used your Line Manager, Colleague 1's log-in and password to access NHSP or the roster without her permission or consent in order to allocate shifts to yourself **[NO CASE TO ANSWER]**

4) Your actions at Charge 3 were dishonest in that you knew that

   (a) Your use of your Line Manager's log-in and password was unauthorised and/or. **[NO CASE TO ANSWER]**

   (b) Using her log-in and password would circumvent any need for the line Manager's approval. **[NO CASE TO ANSWER]**

And in light of the above misconduct, your fitness to practise is impaired.

Background

On 6 November 2019, you were referred to the NMC by the Head of Midwifery and Gynaecology at North Middlesex University Hospital Trust (the Trust).

You began working for the Trust in April 2014 and in November 2016, you were seconded to work as the Ward Manager on T4 Ward at Band 7 level.

The policy of the Trust was that when completing your time sheets for the bank shifts covering vacancies for Band 5 nurses, you should have recorded your grade as Band 5.

You worked a number of bank shifts covering vacancies for Band 5 nursing staff. It is alleged that in covering those vacancies, you recorded your grade as Band 7 and thereby received a higher payment than you were entitled to.

You allegedly booked yourself on to work bank shifts where there was no necessity for additional staffing. It is also alleged that you used, without her knowledge or consent, the log in details of your line manager to authorise additional hours and thereby indicated that you had her authority to work additional hours when you did not.

You were dismissed by the Trust on 25 October 2019.

Decision and reasons on application to amend the charge

After the conclusion of Witness 1's evidence, the panel heard an application made by Mr Segovia, on behalf of the NMC, to amend the wording of charge 1.

Mr Segovia submitted that the proposed amendment would provide clarity and more accurately reflect the evidence. He told the panel that the wording in charge 1 does not fit the evidence the panel has heard from Witness 1 because the word '*allocate*' brings confusion. He explained to the panel that the issue is not the allocation but that you were allegedly working Band 5 shifts and claiming payment at Band 7. He submitted that it does not increase or decrease the seriousness of the charge because the dishonesty remains an outstanding allegation.

Original charge 1

'That you, a registered nurse

1) *Between 1st January 2018 and 25th February 2019, allocated to yourself Band 5 shifts and claimed payment at Band 7'*

Proposed amendment to charge 1

That you, a registered nurse

1) Between 1st January 2018 and 25th February 2019, **worked** Band 5 **bank** shifts and claimed payment at Band 7

Mr Olawanle submitted that he did not oppose the application.

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).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. It noted that you did not oppose the application. 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 clarity and accuracy.

Decision and reasons on application to admit hearsay evidence

The panel received a hearsay bundle from the NMC which contained information relating to Witness 2's health. The panel of its own volition determined that any discussions relating to Witness 2's health should be heard in private in accordance with Rule 19(3). This was not opposed by the NMC or Mr Olawanle.

The panel heard an application made by Mr Segovia under Rule 31 to allow the hearsay evidence of Witness 2 into evidence. Witness 2 was not present at this hearing and whilst the NMC had made considerable efforts to ensure that this witness was present, she was unable to attend today due to [PRIVATE]. Mr Segovia referred the panel to a letter dated 4 December 2023 from [PRIVATE].

Mr Segovia then referred the panel to Witness 2's evidence and submitted that he would not be making an all or nothing application. He explained to the panel that Witness 2's evidence primarily relates to charges 3 and 4. However, he told the panel that most of the

evidence in the witness statement relates to evidence the panel has already heard from Witness 1 regarding procedural matters relevant to charges 1 and 2.

Mr Segovia submitted that the evidence that relates specifically to charge 3 can be found in exhibit MC/2 and paragraphs 13 (after the first sentence), 15 and 18 of Witness 2's statement. He submitted that the NMC accepts these elements represent the only evidence from a witness in respect of the specific issue of whether or not you used colleague 1's log in details and if so, whether or not that was dishonest. He further referred the panel to exhibit MC/2 in which Witness 2 indicated eight dates between February 2019 and March 2019 that she did not authorise shifts.

Mr Segovia drew the panel's attention to paragraph 18 in Witness 2's statement which states,

> *'I assume she must have looked at my password and log in username while I was logging in at one point. I did not consent to this and I didn't give her the information.'*

He submitted that the NMC accepts that Witness 2 indicates in her statement that she is making an assumption. He submitted that the panel could exclude from its consideration the evidence from Witness 2 which relates to an assumption as to the use of her login and password.

Mr Segovia informed the panel that, albeit charges 3 and 4 are potentially wide ranging, the NMC accepts that because there is an allegation of dishonesty it has limited charge 3 to what is contained within exhibit MC/2, those particular dates and nothing more.

Regarding admissibility, Mr Segovia referred the panel to the law and some factors it should consider. He drew the panel's attention to Rule 31 and explained the importance of considering relevance and fairness. He submitted that Witness 2's evidence is relevant to this case.

In explaining his application in relation to fairness, Mr Segovia referred the panel to *Thorneycroft v NMC* [2014] EWHC 1565 (Admin). He submitted that the point made in *Thorneycroft* is that fairness is the key issue. With reference to paragraph 45 of the case,

Mr Segovia submitted that although weight is a factor in admitting hearsay evidence, it is not a factor that can be used in totality to admit the evidence and then worry about fairness later, it is simply a factor.

Mr Segovia explained that according to the principles of *Thorneycroft,* there should be a cogent reason why the witness is not in attendance, and he submitted that the NMC view Witness 2's reason for not attending as a reasonable one. Furthermore, in relation to the principle of sole and decisive evidence Mr Segovia informed the panel that the elements of the evidence that touch on matters such as the system for booking is not solely decisive evidence because the panel already heard live evidence from Witness 1 relating to health roster booking systems. He submitted that Witness 2's evidence in relation to this is supportive and hence the NMC's application is for that part of the evidence to be admitted.

Mr Segovia submitted that the NMC accepts that charge 3 and charge 4 are very serious because of the issue of dishonesty which could have implication on your career if proven. He further submitted that the hearsay application relates to an NMC statement that is signed and dated with a statement of truth affirming that the statement is true to the best of Witness 2's knowledge and belief. He further explained that Witness 2 would have no reason to fabricate her evidence.

Mr Segovia submitted that, on balance, the panel can receive all the evidence from Witness 2 because it is fair to do so. However, he accepted that in saying so the NMC does acknowledge that the specific evidence of Witness 2 that relates to charges 3 and 4 and those eight dates within exhibit MC/2 is the sole and decisive evidence on those charges. As such, he acknowledged that it requires the panel to undertake a more careful balancing exercise when considering it when compared with the other evidence from Witness 2 that relates to issues on which the panel has already heard Witness 1's oral evidence. He submitted that, in respect of those issues Witness 2's evidence is not the sole and decisive evidence.

Mr Olawanle, on your behalf, submitted that he challenges the admissibility of Witness 2's hearsay evidence. He submitted that it would not be fair to admit it in part or in totality. He informed the panel that it is the sole and decisive evidence in respect of a serious

allegation and a serious charge, and those allegations are not reliable and not capable of being tested without belabouring the issue.

Mr Olawanle referred the panel to paragraph 18 of Witness 2's witness statement and told the panel that it was an assumption that you had used her log in and password. He submitted that it would be dangerous and prejudicial to your interests for this evidence to admitted in part or in full. He told the panel that you worked as a registered nurse in different capacities for the Trust for twenty years without incident. He also explained to the panel that it would be patently unfair and repugnant to rely on this evidence.

Mr Olawanle said that this case has suffered from unreasonable delay. He informed the panel that you have continued to practise as a nurse throughout the NMC's investigation and have not had any issues. Mr Olawanle submitted that it would be wrong to attribute undue weight to the NMC's absent witness.

Mr Olawanle submitted that this case bears similarities to the case of *El Karout v NMC* [2019] EWHC 28 (Admin) which relates to falsification, dishonesty and theft. He submitted that the NMC had been aware since 7 July 2023 that Witness 2 would probably not be present at this hearing. He referred the panel to correspondence between Witness 2 and the NMC in which Witness 2 on 4 September 2023, 2 October 2023, 27 November 2023 and 30 November 2023 stated that she would not be in attendance. He reminded the panel of Mr Segovia's submission on day two that Witness 2 would not be attending.

Mr Olawanle referred the panel to [PRIVATE]. He submitted that if any weight or reliance is placed on her statement then it would be a life sentence for you because a label of dishonesty would follow you into your future employment. He told the panel that not being able to ask Witness 2 questions and test her evidence is dangerous because she could have lied. Mr Olawanle told the panel that for Witness 2 to say that someone looked over her shoulder as if you were the only staff member in the establishment around her is dangerous. Furthermore, Mr Olawanle informed the panel that since 2020, there has been a request for Ward diaries in which it was stated that Witness 2 wrote a lot of her information, and which were left open to everyone. He told the panel that this crucial piece of evidence had gone missing.

Mr Olawanle submitted that Witness 1 was an investigator, an external party who did an investigation on what she was able to see, however the crucial piece of evidence would have been from Witness 2. He submitted that Witness 2's evidence should not be relied on partly or in full because of her unwillingness to engage now or in the future.

Mr Olawanle explained to the panel that in accordance with *Thorneycroft* , the panel need to undertake a careful balancing exercise before admitting hearsay evidence especially in the case where the evidence is the sole or decisive evidence on the allegation. He submitted that Witness 2's evidence is crucial in this case and to admit hearsay evidence in part or in full that cannot be tested would be dangerous. Mr Olawanle submitted that you have always denied the allegations and to admit evidence that could destroy your career has potential consequences. He emphasised the case law from *Thorneycroft* and *El Karout*, submitting he opposes the admissibility of Witness 2's evidence.

Mr Segovia, in response to Mr Olawanle's submissions, clarified his earlier submissions regarding the direct evidence for charge 3 and 4. He submitted that the evidence relating to charge 3 and 4 is only from Witness 2 and is decisive. He further explained that in reading Witness 2's statement there are issues relating to procedure for booking and authorisation which the NMC is making the application to be admitted because it relates to the evidence you already heard from Witness 1 in relation to charge 1 and 2.

The legal assessor drew Mr Segovia's attention to a note of a phone conversation between Witness 2 and the NMC on 27 November 2023 in which Witness 2 stated that she wanted to withdraw her evidence.

Mr Segovia submitted that since the conversation was over the telephone, we can probably accept that it is not verbatim. He told the panel that although the panel sees that Witness 2 wanted to withdraw her evidence there is nothing beyond that, namely, an explanation why. He explained to the panel that it would be of greater concern if she stated that she wanted to withdraw her evidence because it was not true, but it does not have an explanation and the panel still has before it signed statements of truth, albeit he accepts that those statement were signed prior to this telephone conversation.

Mr Olawanle, in response, told the panel that the documents containing the telephone conversation were generated by the NMC and they indicate that Witness 2 does not want to engage now or in the future. He submitted panel should not rely on her evidence as she has stated within the information provided to the panel that she wants to withdraw it; therefore, it would be wrong and even unlawful to rely on it.

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

The panel approached its decision by considering the relevance of the hearsay evidence and whether it would be fair to admit the evidence wholly or in part while having regard to the principles identified in the case of *Thorneycroft.*

The panel gave the application in regard to Witness 2's evidence serious consideration. The panel noted that Witness 2's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph*, 'This statement … is true to the best of my information, knowledge and belief'* and signed by her. The panel considered whether you would be disadvantaged by allowing hearsay testimony into evidence.

In considering the principles of *Thorneycroft,* the panel determined that Witness 2's evidence is the sole and decisive evidence for charges 3 and 4 but not for charges 1 and 2. It determined that the charges are serious and may have serious impact on you but noted that there are two separate charges of dishonesty so one could be found proved even if the other one is not. However, the panel accepted that you deny all the charges. Taking Witness 2's evidence into account, the panel was of the view that there is nothing presently before it to suggest that Witness 2 would fabricate evidence against you. In fact, the panel noted that in all her witness statements Witness 2 speaks positively about you and it seems from the evidence that you had a good working relationship up until these allegations were raised.

The panel had regard to the letter from [PRIVATE]. The panel determined that the reason was cogent. It also determined that the NMC had made considerable efforts to secure

Witness 2's attendance by [PRIVATE]. The panel noted Witness 2's request to withdraw her evidence in correspondence with the NMC on 27 November 2023. However, it considered this remark to be [PRIVATE] and noted that she proceeded to have further correspondence with the NMC subsequently.

The panel was of the view that it has been apparent for several months that Witness 2 was unwilling to attend because of [PRIVATE] but also note that the final letter from [PRIVATE] stating that she would not be able to participate now or in the future was received by the NMC on 4 December 2023: up until then the NMC were making reasonable efforts to secure her attendance.

With regard to all of the above, the panel determined that admitting Witness 2's evidence that concerns charges 3 and 4 would not be fair to you. You would not have the opportunity, through your representative, to test and challenge what is the sole and decisive evidence on those charges. Furthermore, as has been conceded by Mr Segovia, some of Witness 2's evidence is speculative and the panel consider that admitting such evidence would be particularly unfair to you. The panel decided not to admit paragraphs 13 (after the first sentence), 15, 16, 17 and 18 of Witness 2's witness statement as well as exhibit MC/2 and MC/3.

The panel came to the view that it would be fair and relevant to accept into evidence some of the hearsay evidence of Witness 2 that relates to charges 1 and 2 because it is not the sole and decisive evidence concerning those charges. However, it would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

As a professional panel, it will put the matters that have been ruled inadmissible out of its mind as it considers the charges.

Decision and reasons on application of no case to answer

The panel considered an application from Mr Olawanle that there is no case to answer in respect of charges 3 and 4. This application was made under Rule 24(7).

Mr Olawanle submitted that since the panel did not admit paragraphs 13 (after the first sentence), 15, 16, 17 and 18 of Witness 2's witness statement as well as exhibit MC/2 and MC/3 into the evidence, there is no longer a case to answer in respect of charges 3 and 4. In these circumstances, it was submitted that these charges should not be allowed to remain before the panel.

Mr Segovia submitted that based on the panel's decision on hearsay evidence there is no evidence remaining on which a panel could properly find charges 3 and 4 proven. On the basis, he submitted that it is conceded that there is no case to answer, although it is a matter for the panel to decide.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charges 3 and 4 proved.

Decision and reasons on facts

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 witness called on behalf of the NMC:

- Witness 1: Head of Nursing Specialty Medicine
  PRUH & SS at Kings College
  Hospital NHS Foundation Trust,

Investigator of your misconduct at the Trust.

The panel also considered those parts of the witness statement from Witness 2, a Matron at the Trust, that it had ruled to be admissible as hearsay evidence.

The panel also heard evidence from you under oath.

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 Olawanle.

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

Charge 1

'That you, a registered nurse between 1st January 2018 and 25th February 2019, worked Band 5 bank shifts and claimed payment at Band 7.'

This charge is found proved.

In reaching this decision, the panel took into account the evidence before it, including Witness 1's oral and documentary evidence, your oral and documentary evidence, and the parts of Witness 2's evidence that have been admitted as evidence. In so far as it has taken account of Witness 2's admitted evidence, it has borne in mind that it has not been tested in cross-examination and, as such, cannot be afforded the same weight as oral evidence that has been so tested.

On the evidence before it, the panel accepted that in the period referred to in charge 1, the Trust's Temporary Staffing Policy ('the Policy') was that set out in exhibit CK/1t produced by Witness 1. Furthermore, the panel accepted the evidence of Witness 1 that this policy was in place in the relevant period when bank shifts were booked through National Health Service Professionals ('NHSP') and remained in place when, from about January 2019,

bank shifts were booked though Bank Partners ('BP'). Indeed, the panel did not understand you to dispute this.

Paragraph 8.4 of the Policy states:

> *'Shifts that are booked for a certain band (for instance, at Band 5) will be paid at Band 5, even if the person working the shifts is substantively on a higher band.'*

In her evidence, Witness 1 stated that when bank shifts were "*advertised*", they would be for clinical shifts which would be at Band 5 or, in the case of Health Care Support Workers, at Band 2. Witness 1 also stated that it would be unusual for such bank shifts to be at Band 7 and for that to happen it would require specific authorisation. The panel accepted this evidence from Witness 1 whom it regarded as straightforward, experienced and factual in her evidence. For example, she acknowledged in her first witness statement that there *'were administrative failures and systemic failings in the [Trust's] Healthroster booking system'* which she described as *'a mess'*.

Once again, the panel did not understand you to dispute this evidence in principle. Your case, as stressed by Mr Olawanle in his closing submissions, is that you were authorised to work bank shifts at Band 7. In effect, you had been granted a "*special dispensation*" to work such shifts at Band 7 and to be paid accordingly.

Whether bank shifts were booked through NHSP or BP, they were '*advertised*' on the Health Roster system. The panel accepts the evidence in paragraph 18 of Witness 1's first statement that you *'would have been given training to use the roster system'* and you confirmed this in your evidence. The panel also accepts the evidence of Witness 1 that this training enabled you to amend the shifts being '*advertised*' from a Band 5 shift or a Band 2 shift to a Band 7 shift. However, being trained on how to amend the banding of '*advertised*' shifts does not mean you were '*self-authorised*' to change the banding of bank shifts you worked. In this regard, after careful consideration of the weight to be attached to it, the panel accepts the evidence in the last sentence of paragraph 14 of Witness 2's first witness statement.

In the circumstances, always bearing in mind that there is no burden of proof on you and the burden of proof is on the NMC throughout, the panel found it necessary to carefully consider and assess the reliability of your evidence to it. This is because there is nothing within the evidence presented by the NMC that confirms your assertion that you were authorised to work clinical bank shifts at Band 7 and be paid at that level. With respect to Mr Olawanle, the panel was of the view that passages that he relied upon within the statement of Witness 1 (such as paragraphs 10 and 14 of her first witness statement) and the statement of Witness 2 (such as the first sentence of paragraph 13 and paragraph 14 of her first witness statement), do not confirm that you were expressly authorised to work bank shifts at Band 7 and to be paid accordingly.

In assessing your evidence, the panel was mindful of the fact that, prior to 2018/2019, you had an unblemished record of employment by the Trust. It also took into account the positive character evidence submitted on your behalf. It recognised that such evidence was important in assessing the credibility of your evidence and, also, in considering your propensity to act as alleged by the NMC.

However, the panel has concluded that your evidence that you were authorised to work bank shifts at Band 7 and to be paid accordingly is not credible and cannot be accepted. Its reasons are as follows:

- You were contradictory and inconsistent in your explanation. At times you appeared to state you had received authorisation for each shift, while at others you appeared to state you had received a "*general*" authority to work bank shifts at Band 7.

- When questioned by Mr Segovia on behalf of the NMC and by the panel in order to obtain clarity about the way in which you say you had received the authorisation, you consistently avoided answering the question. The panel noted that this appeared to be Witness 1's "*experience*" when interviewing you for the purposes of the Trust's investigation.

- In the interview conducted by Witness 1, you did not state you had been authorised to work the bank shifts at Band 7, rather you stated that you had made a mistake in

claiming payment at the Band 7 rate. The panel has noted that you had representation from the Royal College of Nursing ('RCN') at the interview and, even allowing for the likely stress arising from being interviewed, in these circumstances it is implausible that you would have failed to tell Witness 1 that you had authority to act as you did if that was in fact the case.

- In your initial responses to the concerns raised by the NMC after the matter was referred to it, you continued to state that it had been a mistake to claim payment for the bank shifts you worked at the Band 7 rate. Again, the panel consider it implausible that you would have failed to state in your responses that you had been authorised to act as you did if that was in fact the case.

- Again, the panel consider it implausible that you would have failed to state in your responses that you had been authorised to act as you did if that was in fact the case.

The panel has not overlooked the fact that you have asserted that the authorisation you say you received would have been recorded or evidenced in the communications diary that has not been produced by the Trust despite requests made on your behalf. If that were the case, it is reasonable to expect you to have so stated in your interview by Witness 1. Furthermore, the panel has noted that, in your response to the NMC, disclosure of the "*work diaries*" was sought to confirm that Witness 2 had written her password in them, not to confirm that you had been authorised to be paid bank shifts at the Band 7 rate. For the avoidance of doubt, the panel rejects any suggestion that either the Trust or the NMC have deliberately withheld evidence that might assist your case.

Out of fairness to you, the panel has considered whether you could be said to have some kind of implied authority to be paid at Band 7 rate for the bank shifts your undoubtedly worked. It has done so because, as Mr Olawanle has stressed on your behalf, it is clear that you worked a considerable number of hours each week on T4 ward and the ward, never having been established as a "permanent" one, was dependent upon staff, including yourself being willing to work bank shifts as well as having to engage agency staff. However, the panel has discounted this possibility, not least because it is not the case you

advanced on your own behalf. As stated already, your case is that you had received actual authorisation to act as you did.

Having rejected your evidence that you were authorised to work bank shifts as a Band 7 and to be paid accordingly, the only finding that the panel can properly make is that the factual allegation in charge 1 has been proved to the required standard.

Charge 2

In charge 2, the NMC alleges that your actions in charge 1, which the panel has found proved, were dishonest. In determining whether you acted dishonestly, the panel has applied the "test" set out in the judgment of the Supreme Court in *Ivey v Genting Casinos Ltd t/a Crockfords [2017] UKSC 67* and, in particular, in paragraph 74 of the judgment.

Charge 2(a)

> *'Your actions at Charge 1 were dishonest in that you knew you were not entitled to Band 7 payments because*
>
> *(a) the shifts were Band 5 shifts and/or.'*

This charge is found proved.

Having found as a fact that you were not authorised to work Band 5 bank shifts as Band 7 and to be paid at the Band 7 rate, the panel went on to consider whether, at the relevant time, you were aware of the provision in paragraph 8.4 of the Trust's Policy. The panel went on to consider whether, as appeared to be your case when interviewed by Witness 1, you had made an '*honest mistake*' in claiming payment at the Band 7 rate for the bank shifts you worked. In your evidence to the panel, it appeared that you were saying that you were unaware of the policy.

On the evidence before it, the panel is satisfied on a balance of probabilities that you were aware of the policy. This is apparent from what you told Witness 1 when she interviewed

you and you confirmed that if *'one of your band-sixes'* on T4 ward wanted to work an advertised bank shift, *'They're paid as band-five'* (see: pages 13/14 of the Exhibits Bundle). The panel also considers it was likely, on the balance of probabilities, that you must have been aware of the policy as a result of the management responsibilities you had in relation to T4 ward.

The inevitable and logical consequence of your being aware of the provision in the Policy is that, at the time you claimed payment at the Band 7 rate for the banks shifts you worked, you knew you were not entitled to do so. Indeed, this is also the inevitable and logical consequence of the panel's rejection of your assertion that you had been authorised to do so.

The panel next considered whether what you knowingly did would be considered to be dishonest when applying the objective standards of ordinary decent people. In doing so, the panel recognised that any personal belief on your part that you deserved to be paid at the Band 7 rate was irrelevant.

The panel has no hesitation in finding that ordinary decent people would consider you were dishonest in what you did. Accordingly charge 2a is proved.

Charge 2b)

> *'Your actions at Charge 1 were dishonest in that you knew you were not entitled to Band 7 payments because*
>
> *(b) On the occasions that you were not in charge and/or not allocated patients, your tasks did not merit Band 7 payment.'*

This charge is found NOT proved.

Given its finding on charge 2a, the panel has considered it unnecessary to make a determination on charge 2b. Indeed, on the evidence presented to it, the panel does not consider it would be appropriate to do so.

While emphasising that it is not in any way casting doubt on the reliability and credibility of Witness 1, the panel considers that, in order to give proper consideration to this charge as drafted, it would need to see the documentary material upon which Witness 1 prepared the Schedules that are exhibited by her as Exhibits CK/1s and CK/1u. Without seeing the documentary material, the panel cannot rule out the possibility that there were occasions within the relevant period when, while working bank shifts, you carried out some duties that might be considered to be the duties of a ward manager or a nurse in charge.

For the avoidance of doubt, the panel makes it clear that the possibility that, while working bank shifts, you carried out some duties that might be considered to be the duties of a ward manager of a nurse in charge, does not affect its findings that charge 1 and charge 2a are proved. Those findings are based on the panel's findings that you were not authorised to work those bank shifts at Band 7 and, consequently, you knew you were not entitled to claim payment for those shifts at Band 7 level.

For these reasons, the panel decided that charge 2b is not 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 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 ability to practise kindly, safely and professionally.

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

The panel heard evidence from you under oath.

Mr Segovia invited the panel to take the view that the facts found proved amount to misconduct.

Mr Segovia referred the panel to paragraph 38 of *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311 which states,

> *'…Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word "serious". It is not any professional misconduct which will qualify. The professional misconduct must be serious….'*

Mr Segovia submitted that this is a case of sustained dishonesty because it took place over considerable period of time, from January 2018 to February 2019. He told the panel that there was a break from 30 April 2018 to 26 November 2018, however, the NMC's submission is that the gap does not negate the sustained dishonesty. He informed the panel that during that period of time you claimed an excess of 1000 bank hours.

Mr Segovia submitted that you were in a position of authority as a Band 7 nurse which adds to the seriousness as one might assume a professional person in a position of leadership and authority would not involve themselves in this type of sustained dishonesty. He submitted to the panel that this had been an abuse of your position and undoubtedly there had been financial gain.

Mr Segovia drew the panel's attention to the following sections of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code), which he submitted are relevant to finding of misconduct.

'***Promote professionalism and trust***

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

*'**20 Uphold the reputation of your profession at all times***

To achieve this, you must:

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

20.2 act with honesty and integrity at all times…

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

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, including people in your care'

Mr Segovia submitted that the NMC's position is that this is a matter serious enough to amount to professional misconduct.

Mr Olawanle submitted that the panel should look at the issues of professional misconduct in a panoramic way and consider the fact that its findings were on the balance of probability as to the evidence that was presented before it. He told the panel that at the

centre of justice is the issue of fairness and impartiality when it comes to dispensing justice.

Mr Olawanle submitted that in terms of dishonesty, there were dark areas to this case that we may never find out. He asked the panel to consider that if you were dishonest as found then that would be serious misconduct but what if there has been a series of miscarriages of justice. He informed the panel that the communication book and the daily conversations with Witness 2 were not made available. He also told the panel that we are unable to unravel the truth because Witness 2, the main witness was not present.

Mr Olawanle was reminded that at this stage he was being invited to make submissions solely on misconduct and impairment.

The panel understood that he effectively conceded on your behalf that a finding of dishonesty would probably amount to professional misconduct.

Submissions on impairment

Mr Segovia moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Grant* [2011] EWHC 927 (Admin).

Mr Segovia referred the panel to paragraph 74 of *Grant* which states,

> *'…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.'*

He told the panel that the paragraph indicates that the panel should not only consider issues of risk to the public but also the need to uphold proper professional standards and confidence in the profession.

Mr Segovia outlined paragraph 76 of *Grant* to the panel. He explained that impairment can be found on the grounds of public protection and public interest or either of those two grounds singularly. Mr Segovia informed the panel that in paragraph 76 of *Grant* Mrs Justice Cox, having looked at Dame Janet Smith's formulation from the Fifth Shipman Report, essentially designed a series of questions that would be relevant when a panel considers the issue of impairment. Mr Segovia took the panel through the four limbs for finding impairment and submitted that the first one is not relevant to this case, but the remaining three were engaged.

Mr Segovia referred the panel to paragraph 116 in *Grant* which states,

> *'When considering whether fitness to practise is currently impaired, the level of insight shown by the practitioner is central to a proper determination of that issue…'*

He submitted that, in the past, you had acted dishonestly, had brought the profession into disrepute and had breached the fundamental tenets of the profession. He invited the panel to consider the risk that you would do so again in the future. He submitted that the issue of insight is central to the panel's consideration of future risk. As the panel had found dishonesty proved, unless you provide it with evidence demonstrating that you understand the impact on yourself, other members of the profession and the impact on the public in terms of maintaining confidence in the profession, there is a real risk of your misconduct being repeated. He submitted that you have not provided the panel with any evidence of insight, not because you denied the charges but because, after reading the panel's decision on facts, you did not say anything about the impact on the profession during your oral evidence before these submissions.

Mr Segovia submitted that this is not a case about public protection but a case solely about upholding the reputation and the proper standards of the profession. He said that it is perfectly proper for the panel to make a finding on current impairment on the basis of public interest alone. He submitted that although the matters go back to 2018/2019, a

finding of current impairment is necessary on the grounds of public interest because of the seriousness of your dishonesty. He submitted that each claim for a payment of a bank shift at a Band 7 rate between January 2018 and February 2019 was an act of dishonesty and that is what makes your misconduct so serious.

Mr Segovia submitted that there is a risk of these matters being repeated in the future because you have no proper understanding of the fundamental issue here, which is dishonesty. Therefore, based not only on the past but the continuing risk of repetition in the future, the NMC's position is that your fitness to practise is currently impaired.

Mr Olawanle submitted that the panel should have regard to the time that had passed since the matters giving rise to the proven charges, your previous unblemished record of employment with the Trust and the positive references you have placed before the panel. These factors demonstrated that allowing you to practise without restriction would not prejudice the proper professional standards expected of registered nurses or affect the confidence of the public in the profession.

Mr Olawanle, with reference to paragraph 115 of *Grant,* submitted that caution is required when the panel consider your countenance when giving evidence at this stage of the hearing. He informed the panel that you have been going through this process for several years and [PRIVATE]. It was his submission that your fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor which included reference to *Roylance.*

Decision and reasons on misconduct

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

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

*‘**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

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

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, including people in your care’

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that this is serious misconduct. The panel accepted Mr Segovia’s submission that the dishonesty was for a sustained period, during which more than 1000 hours of bank shifts were worked, which must have resulted in significant financial gain.

In considering the NMC guidance on dishonesty, the panel concluded that your dishonesty is at the more serious end of the spectrum due to that financial gain. The panel also accepted Mr Segovia’s submission that, in essence, each individual claim of a Band 7 shift payment was an act of dishonesty.

Additionally, the panel determined that as a nurse in a position of trust and leadership, your sustained dishonesty does not uphold the standards of the profession and negatively impacts on the public’s confidence in the profession.

The panel also took into account that Mr Olawanle, in his submissions, accepted that a finding of dishonesty would probably amount to serious professional misconduct.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 *Grant* in reaching its decision.

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that the issues involved relate to dishonesty and do not have direct bearing on public protection.

Accordingly, the panel was required to determine whether a finding of impairment on public interest grounds is required. In doing so, the panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel was satisfied that limbs b, c and d of the *Grant* test are engaged in your case.

Your dishonest misconduct undoubtedly breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. As such, the panel went on to consider whether there is a real risk that your future conduct would also do so.

Regarding insight, the panel considered that, even after the panel had handed down its decision on the facts, you tried to refute them during your oral evidence stating that you do not think that matters have been "*considered fairly*" because of evidence the panel did not have before it. The panel noted that you did not address the charges found proved or reflect on your actions. It was also of the view that throughout the proceedings you attempted to shift the focus and fault to others, such as when you stated that Witness 2 "*betrayed*" you and that you felt "*persecuted*" by the Trust.

Although it is your right to continue to deny the charges, the panel considered that you did not demonstrate that you understood the impact of your dishonesty on your colleagues, patients and the Trust. Consequently, the panel determined that there is a real risk of repetition of your dishonest conduct in the future.

The panel did have regard to how long these proceedings have been ongoing and [PRIVATE]. The panel also had regard to the positive references you provided describing you as a dedicated nurse. However, the panel noted that some references were not dated and none of them mention the ongoing NMC proceedings. This meant the panel could not

be certain that the authors were aware of the charges you faced. In the circumstances, the panel did not consider the matters advanced on your behalf by Mr Olawanle demonstrated there was no real risk of repetition of your misconduct.

The panel concluded that public confidence in the profession and the NMC as a regulator would be undermined if a finding of impairment were not made in this case and therefore finds your fitness to practise is currently impaired on the grounds of public interest.

Sanction

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

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

Submissions on sanction

Mr Segovia informed the panel that in the Notice of Hearing, dated 6 November 2023, the NMC had advised you that it would seek the imposition of a strike off if it were found that your fitness to practise was currently impaired. He also informed the panel that an interim order has never been imposed in this case.

Mr Segovia submitted that this case raises fundamental questions about your professionalism and there cannot be any doubt that where a registered nurse has been found to be dishonest, there is a risk of a striking off order being imposed.

Mr Segovia referred the panel to its decision and reasons on misconduct, in which it indicated that your dishonesty is at the more serious end of the spectrum due to the financial gain. He submitted that the panel's decision on the seriousness of your dishonesty is also a relevant factor when considering sanction. He also drew the panel's attention to its decisions on impairment in which it stated that you demonstrated a lack of

insight and therefore there remains a real risk of repetition. Mr Segovia submitted that the dishonesty in this case was an abuse of trust. He also informed the panel that there was a pattern of dishonesty because it was sustained for over a year involving over one thousand hours of bank shifts being claimed at Band 7.

Mr Segovia referred the panel to the NMC Guidance on Dishonesty. He submitted that the dishonesty in this case is more serious because it was long standing, there was personal financial gain and there was a misuse of power. Furthermore, he submitted that your lack of insight is a serious aggravating factor. For these reasons, Mr Segovia submitted that a strike-off would be more appropriate than a suspension order.

Mr Segovia referred the panel to paragraph 86 of *Sanusi v. General Medical Council* [2019] EWCA Civ 1172 which states,

> *'…Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct and where there is a finding of deliberate dishonesty coupled with a lack of insight, the case law recognises that in practical terms, a finding of erasure may be inevitable…'*

Mr Segovia submitted that the case law indicates that when you have this type of deliberate dishonesty and a lack of insight, the situation becomes very difficult and it raises the risk of a strike-off. He informed the panel that you have probably been thinking about this case since 2019 and given the panel's decisions and reasons on facts, misconduct and impairment, it is worrying that even at this stage, notwithstanding your right to deny these matters, you still have not demonstrated to the panel a clear enunciation and understanding of the impact of the dishonesty on others.

Mr Olawanle informed the panel that you are aware of the sanction proposed by the NMC. He invited the panel to consider that you have not queried the panel's competence or professionalism and [PRIVATE]. He asked the panel to look at the past and the present, bearing in mind that this is a case that was decided on the balance of probabilities.

Mr Olawanle informed the panel that you have been working with the Trust since 1999 and practising as a nurse since 2009 without incident, until this case. He invited the panel to

look at this case as one incident. He submitted that the possibility of repetition of the conduct is minimal. Since you have been allowed to practise without restriction since your dismissal, he asked the panel to consider a caution order or a conditions of practice order in order to monitor your fitness to practise with a periodic review. He submitted that a conditions of practice order would be the fair and proportionate sanction that will deliver the outcome the panel is looking to achieve.

Regarding your lack of insight, Mr Olawanle asked the panel to consider the NMC guidance which indicates that the panel should not look at the mood of a registrant to determine whether they are remorseful or not. He explained to the panel that [PRIVATE].

Mr Olawanle's secondary submission was that the panel should consider a suspension order because it would give you the opportunity to reflect on the situation and to redeem yourself. He submitted that a strike-off would be disproportionate considering your previous and present record as a nurse.

The panel accepted the advice of the legal assessor.

After the legal advice, Mr Segovia submitted that should the panel decide that suspension is the most appropriate sanction then that should end with a review of the order. Mr Segovia submitted that although the panel found that this is a public interest case, the panel also found a continuing lack of insight and future risk. Therefore, he submitted that there would need to be a review at the end of any suspension period in order to determine at that stage, the risk that you might present as well as any development in your insight.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Lack of insight into failings
- A pattern of misconduct over a period of time
- Personal financial gain

In relation to mitigating factors, the panel acknowledged Mr Olawanle's submission that besides this case you have had an unblemished nursing career. The panel also considered the context and the pressures of your work on T4 Ward as well as the positive testimonials provided on your behalf. Nevertheless, it determined that those factors provide only minimal mitigation given the nature and seriousness of your dishonesty.

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

It then considered the imposition of a caution order but again determined that it would be inappropriate due to the seriousness of the case. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not serve 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 repetition of behaviour since the incident;*
- *No evidence of harmful deep-seated personality or attitudinal problems*
- *The Committee is satisfied that the nurse has insight and does not pose a significant risk of repeating behaviour.'*

While the panel accepted that there was no evidence of repetition of the behaviour since 2019, the matters found proved could not properly be regarded as a single instance of misconduct. As already stated, your dishonesty was sustained and repeated over a prolonged period of time. It displayed an attitudinal problem in that you systematically and repeatedly abused your position within the Trust for your own purposes and you have shown no insight regarding the impact of your actions upon your former colleagues and the nursing profession as a whole. Therefore, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

Honesty and integrity are one of the fundamental tenets of the nursing profession. Your dishonesty therefore represents a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with your remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your

actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

The panel considered that this order is 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 you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Segovia. He submitted that the NMC's application is for an interim suspension order for 18 months on public interest grounds. He submitted that if you choose to make an appeal, it will take time for that appeal to be determined through the higher courts.

The panel also took into account the submissions of Mr Olawanle. He submitted that a suspension order, as proposed by the NMC would not be fair and just for the appeal period. He submitted that you have been practising since your dismissal from the Trust without incident. He asked the panel that you should not be suspended until you have been able to fight your case in the Court of Appeal.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary as it 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 to allow for the appeal period as not to do so would be inconsistent with its previous findings.

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

That concludes this determination.