

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

**Substantive Hearing
Monday 3 July - Friday 7 July 2023**

Virtual Hearing

Name of Registrant:	Shauna Randeniya
NMC PIN	21L0014W
Part(s) of the register:	RNA: Registered Nurse - Adult - February 2022
Relevant Location:	Conwy County
Type of case:	Misconduct
Panel members:	Lucy Watson (Chair, Registrant member) Sharon Peat (Registrant member) David Hull (Lay member)
Legal Assessor:	John Bassett
Hearings Coordinator:	Yewande Oluwalana
Nursing and Midwifery Council:	Represented by Beverley Da Costa, Case Presenter
Miss Randeniya:	Not present and unrepresented at the hearing
Facts proved by admission:	Charges 1, 2, 3, 4a, 4b and 6b
Facts proved:	N/A
Facts not proved:	Charges 5, 6a and 7
Fitness to practise:	Impaired
Sanction:	Conditions of practice order 12 months
Interim order:	Interim conditions of practice order (18 months)

Decisions and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Randeniya was not in attendance and that the Notice of Hearing letter had been sent to Miss Randeniya's registered email address by secure email on 31 May 2023.

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

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Miss Randeniya 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 Miss Randeniya

The panel next considered whether it should proceed in the absence of Miss Randeniya. It had regard to Rule 21 and heard the submissions of Ms Da Costa who invited the panel to continue in the absence of Miss Randeniya. She referred the panel to Miss Randeniya's email to the NMC dated 26 June 2023 in which she stated, *'I am emailing to confirm that I will not be attending the hearing'* and to Miss Randeniya's case management form dated 9 March 2023 in which she indicated she would not be attending the hearing. Ms Da Costa submitted that Miss Randeniya had voluntarily absented herself. No application for

adjournment had been made by Miss Randeniya and there is no reason to suppose that adjourning would secure her attendance at some future date.

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 Miss Randeniya. In reaching this decision, the panel has considered the submissions of Ms Da Costa, the representations from Miss Randeniya, 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 Miss Randeniya;
- Miss Randeniya has informed the NMC in an email dated 26 June 2023 and the case management form dated 9 March 2023 that she will not be attending the hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- One witness is ready to give live evidence by video link today, and others are due to do so tomorrow;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2022;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There may be disadvantage to Miss Randeniya in proceeding in her absence. However, the evidence upon which the NMC relies has been sent to her at her registered address, and she has responded to the allegations and submitted a registrant's response bundle. The panel recognises that she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated by the panel referring to the registrant's response bundle in questioning the evidence presented. The panel will make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, will explore any inconsistencies in the evidence which it identifies.

Furthermore, any disadvantage is the consequence of Miss Randeniya's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide oral evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Randeniya.

The panel will draw no adverse inference from Miss Randeniya's absence in its findings of fact.

Details of charge

That you, whilst employed at Colwyn Bay Community Hospital, on 29 January 2022;

- 1) Did not attend/undertake observations for a patient complaining about chest pains, in a timely manner or at all **[PROVED BY ADMISSION]**
- 2) Between 12:15 and 14:15, on one or more occasions as listed in Schedule 1, failed to check Patient A. **[PROVED BY ADMISSION]**
- 3) Incorrectly recorded on Patient A's 15 Minute Check form that you had undertaken one or more of the checks listed in Schedule 1. **[PROVED BY ADMISSION]**

- 4) Incorrectly recorded on Patient A's Behaviour chart that you had checked Patient A at: **[PROVED BY ADMISSION]**
 - a. 13.00;
 - b. 14.00.

- 5) Your actions at charges 3 and/or 4 above were dishonest in that you knew you had not checked Patient A but represented that you had. **[NOT PROVED]**

- 6) At around 19.15 incorrectly recorded on Patient B's 15 Minute check form that you had undertaken checks at:
 - a. 19.45; **[NOT PROVED]**
 - b. 20.00. **[PROVED BY ADMISSION]**

- 7) Your actions at charge 6 were dishonest in that you knew you had not yet checked Patient B but represented that you had. **[NOT PROVED]**

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

Schedule 1:

Patient A -15 Minute Check Form

- 1) 12:15
- 2) 12:30
- 3) 12:45
- 4) 13:00
- 5) 13:15
- 6) 13:30
- 7) 13:45
- 8) 14:00
- 9) 14:15

Background

On 7 June 2022 the NMC received a referral from the Betsi Cadwaladr University Health Board (the Health Board) in relation to Miss Shauna Randeniya. Miss Randeniya started working at Colwyn Bay Community Hospital as a student nurse in September 2021 when, due to sickness, she had hours to make up to complete her training. From 12 December 2021 she was employed as a band 4 Assistant Practitioner at Colwyn Bay Community Hospital whilst she was awaiting her PIN from the NMC.

As advised by the legal assessor, the panel has jurisdiction in this matter by virtue of Article 22 (3) of the Nursing and Midwifery Order 2001 which provides

'[Article 22] is not prevented from applying because the allegation is based on a matter alleged to have occurred.....at a time when the person against whom the allegation was made was not registered.'

On 29 January 2022 Miss Randeniya was working a long day on ward 1 at Colwyn Bay community Hospital. Patient A was a vulnerable patient with intermittent confusion. Miss Randeniya allegedly falsified patient documentation by marking eight entries on Patient A's 15-minute observation form. This was during a one and a half hour period between 12:25-14:05, when in fact Patient A had absconded from the ward at the time.

Further, on 29 January 2022, Miss Randeniya allegedly falsified patient documentation by making two entries on Patient A's behaviour chart. This was during a one hour period between 13:00-14:00, at the time when Patient A had absconded from the ward.

In addition, on 29 January 2022, Miss Randeniya allegedly signed Patient B's 15-minute check chart in advance at 19:15 for the period of 19:15 to 20:00, meaning the entry was not contemporaneous.

It was also alleged that, on 29 January 2022, after being requested to do so, Miss Randeniya had failed in a timely manner to undertake observations of a patient who was complaining of chest pains.

Miss Randeniya entered the NMC register on 7 February 2022. A local investigation was started on the 4 March 2022 and on 18 May 2022 after the disciplinary hearing Miss Randeniya was dismissed from her employment for gross misconduct.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Da Costa who informed the panel that Miss Randeniya made full admissions to charges 1, 2, 3, 4a, 4b and 6b in her case management form dated 9 March 2023 and in the email to the NMC dated 26 June 2023 where she reiterated her admissions to the charges.

The panel was satisfied that Miss Randeniya had electronically signed the case management form and had sent the email dated 26 June 2023. As such, It was satisfied that she had made unequivocal admissions to these charges. Therefore, the panel finds charges 1, 2, 3, 4a,4b, and 6b proved in their entirety, by way of Miss Randeniya's admissions.

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

The panel has drawn no adverse inference from the non-attendance of Miss Randeniya.

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 disputed incidents occurred and that Miss Randeniya acted dishonestly as alleged.

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

- Witness 1: Matron of Denbigh and Ruthin Community Hospitals and the Health Board's investigator at the time.
- Witness 2: Ward Manager on Ward 1 at the Health Board's Colwyn Bay Hospital at the time.
- Witness 3: Staff Nurse on Ward 1 at the Health Board's Colwyn Bay Hospital at the time.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 67 with regard to the test for dishonesty. The panel considered the NMC guidance on '*Making decisions on dishonesty charges*'. It also considered the witness and documentary evidence provided by both the NMC and Miss Randeniya.

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

Charge 5

'That you, whilst employed at Colwyn Bay Community Hospital, on 29 January 2022;

- 5) *Your actions at charges 3 and/or 4 above were dishonest in that you knew you had not checked Patient A but represented that you had.'*

This charge is found not proved.

In reaching this decision, the panel recognised that Miss Randeniya had admitted Charges 3 and 4 above and, consequently, there was no factual dispute as to what had occurred.

The issue to be determined by the panel was whether the NMC had proved that, at the time Miss Randeniya made the relevant entries on Patient A's 15 Minute Check form and Behaviour chart, she was acting dishonestly. In reaching its decision, the panel had careful regard to the test set out in *Ivey v Genting Casinos*, in particular:

- *What was the defendant's actual state of knowledge or belief at the time she made the entries;*
- *Whether that belief was genuinely held; and*
- *Was the conduct dishonest by the standards of ordinary decent people?*

The panel is satisfied that Miss Randeniya was not dishonest in her action.

In reviewing the evidence, the panel carefully considered Witness 1, Witness 2 and Witness 3's written statements and live evidence. It also carefully considered the accounts that have been provided by Miss Randeniya, in particular the reflective account she provided to the Health Board soon after 29 January 2022.

The panel noted that Miss Randeniya was a student nurse who was finishing her training and transitioning to become a band 5 nurse. Although transitioning, it was apparent from the evidence of Witness 2 and Witness 3 that she struggled with the demands of the role of an assistant practitioner and what was expected of her. Both witnesses gave evidence of the time that was spent with Miss Randeniya repeatedly going over what they considered to be basic nursing skills. Miss Randeniya was described as being quiet and shy and was slow to build relationships with colleagues. However, she was also described as having good relationships with patients showing them empathy and kindness. In addition, it is apparent that Miss Randeniya, as reported by Witness 1 had a difficult relationship with Witness 3 who, initially, had been appointed her mentor. In this respect,

the panel noted that, in her evidence, Witness 3 described Miss Randeniya as *“a bit like a rabbit in headlights when she raised any issues with her”*.

The relevant entries were made by Miss Randeniya in respect of times when Patient A went missing from Ward 1 and, therefore, she could not have seen him. In passing, the panel has noted that some of the specific allegations that were notified to Miss Randeniya in the course of the Health Board’s disciplinary process, were factually inaccurate. This may have led to some confusion on her part as she was unrepresented throughout the process.

The panel was told that, at the time, the ward was short staffed with four staff members on duty including one registered nurse on 29 January 2022. The normal staffing for the ward on a day shift was two registered nurses and four to five band 2 healthcare assistants. When Patient A was found to be missing, Witness 3, the registered nurse on duty, informed the staff and asked them to search for the patient. Neither Witness 2 nor Witness 3 was able to provide evidence that Miss Randeniya was directly informed that Patient A was missing from the ward.

Miss Randeniya in her reflective account said that she was not aware that a patient was missing as she was attending to patients in the female bay at the other end of the ward. When, soon after 2.00pm, she returned to the male bay of the ward, she saw Patient A sitting by his bedside and went to sign his 15 Minute Check form. She saw there were gaps in it and, assuming Patient A had been there all along retrospectively filled them in.

In their evidence, both Witness 2 and Witness 3 stated that they could not understand how Miss Randeniya would not have been aware that Patient A had gone missing. In the panel’s view, the fact that Miss Randeniya filled in the gaps in Patient A’s form and chart is more likely to be confirmatory evidence that she did not know he had gone missing. She would have known that, filling in the gaps for times when she knew she could not have seen Patient A, would almost inevitably have resulted in her being challenged by Witness 3 and probably Witness 2.

When Miss Randeniya's entries were brought to her attention, she admitted making them immediately, however, gave no explanation for her actions. In her reflective account she stated,

'...Additionally, I never should have signed the form despite there being gaps, as I had not seen the patient in front of me during the other time slots. After reflecting upon this I feel extremely frustrated by my involvement of such a serious error, but enormously relieved that no harm had come to the patient. Although I thought it would be the correct idea to keep the charts up to date, I am very annoyed at myself for not double checking with a member of staff, and I have learnt some important lessons.' [sic]

In the case management form 9 March 2023, Miss Randeniya stated,

'... I would never maliciously sign documentation to deceive...'

The panel determined that it was Miss Randeniya's genuine belief that the charts needed to be kept up to date and that was why she completed them as she did. Due to her inexperience, she did not understand the importance of the charts or the consequences of incorrect completion. Nor did she realise that she should have asked a member of the team why there were gaps in them rather than completing them herself.

Witness 2 during her live evidence said that she thought Miss Randeniya did not understand the importance of the patient behaviour checks and the 15-minute check form. Witness 2 in her view felt that Miss Randeniya saw the charts as a "tick box checklist". The panel heard from Witnesses 1, 2 and 3 that Miss Randeniya did not appear to understand the seriousness of the error she made.

In response to panel's questions, Witness 2 stated,

"I don't think she would have done it deliberately. I don't think she had a proper understanding or a realisation of the forms that they weren't a tick box and she didn't do it deliberately to cause harm".

The panel considered Witness 2's answer to be informative as to Miss Randeniya's "state of mind" at the relevant time.

Taking everything into consideration, the panel determined that, in the light of Miss Randeniya's genuine belief about the need to complete Patient A's 15 Minute Check form and his Behaviour chart as, in effect, a tick box exercise, her actions would not be considered as dishonest by the standards of ordinary, decent people.

In light of the above, the panel found Miss Randeniya's actions were not dishonest.

Accordingly, the panel found Charge 5 not proved on the balance of probabilities.

Charge 6a

'That you, whilst employed at Colwyn Bay Community Hospital, on 29 January 2022;

- 6) *At around 19.15 incorrectly recorded on Patient B's 15 Minute check form that you had undertaken checks at:
 - a. 19.45;*

This charge is found not proved.

In considering this charge, the panel noted that the NMC relied upon the evidence of Witness 3 alone. It had not obtained a statement from the member of staff who had brought the matter to the attention of Witness 3.

The panel also noted, that in paragraph 41 of her witness statement, Witness 3 referred to only two allegedly incorrect entries in Patient B's 15 Minute Check form rather than for as would have been expected if the matter had been brought to her attention at or around 19.15. This was reflected in the charges brought against Miss Randeniya.

In her accounts, Miss Randeniya has consistently maintained that the 19.45 entry was a correct entry, while admitting that she had made the entry for 20.00 in advance.

When asked about the discrepancy in her evidence, Witness 3 accepted that she could not be sure of the time she was approached by the Healthcare Assistant. As such the panel could not rule out the possibility that the Healthcare Assistant had approached Witness 3 at about 19:45.

The panel considered that Miss Randeniya has been open and honest in admitting the majority of the charges and could see no logical reason why she should deny this particular one if she had acted as alleged.

The panel considered the NMC's case regarding Charge 6a and it was of the view that the burden of proof had not been satisfied.

Charge 7

'That you, whilst employed at Colwyn Bay Community Hospital, on 29 January 2022;

- 7) Your actions at charge 6 were dishonest in that you knew you had not yet checked Patient B but represented that you had.'*

This charge is found not proved.

In reaching this decision, the panel had regard to its decision in charge 6a and the test of dishonesty in *Ivey v Genting Casinos*.

The panel considered having found Charge 6a not proved and Miss Randeniya has admitted Charge 6b for completing the 15-minute check form for Patient B. The panel noted from the witness statements provided, that the day shift finished at 20:00 and

handover to the night shift took place between 19:30-20:00. From Miss Randeniya's reflection she stated,

'During this time it was the end of the shift, I went to sign the form at 7:45pm as the patient was sat in front of me and also signed for 8pm as I wanted the form to be completed ready for the night staff.... poor time management leaves us feeling frustrated at the end of the day, I purely rushed to ensure the night staff would not have uncompleted tasks carried forward to them...' [sic]

and CMF dated 9 March 2023 she reiterated,

'Charge 6 (point a) is incorrect. I signed the chart for 20:00 at 19:45 because I wanted this document to be complete, ready for the night staff and for good time management. I am aware that this was wrong to do, and that I must not sign ahead of time.'

The panel considered that Miss Randeniya's intention at the time was to make sure the charts were up to date and to make life easier for the night staff. It further considered that this was poor practice rather than dishonesty on the part of Miss Randeniya, who was trying to be helpful. As already stated, at the time she did not understand the seriousness of inaccurately completing the forms and this was reiterated by Witnesses 1, 2 and 3 in their live evidence and their written statements.

The panel, therefore, for the same reasons as stated in respect of Charge 5, determined that Miss Randeniya did not act dishonestly and it was of the view that this was an error in judgment.

Accordingly, the panel found Charge 7 not proved on the balance of probabilities.

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 Miss Randeniya'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.

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, Miss Randeniya's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Da Costa invited the panel to take the view that the facts found proved by admission amount to misconduct. The panel had regard to the terms of The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Ms Da Costa identified the specific paragraphs of the Code 3, 4, 6,10,19 and 20 where Miss Randeniya's actions had breached the code and submitted that these actions amounted to misconduct.

Ms Da Costa submitted that Miss Randeniya's conduct fell short of the code and what would have been expected of her, given the training and the support she had received at university and from Witness 2 and Witness 3. Furthermore, Miss Randeniya should have been aware of her duty and the need to maintain clear and accurate records, as well as checking on patients in a timely manner and she should have been aware of the risk of harm to the patients as a result of her conduct. Ms Da Costa reminded the panel that Patient A and Patient B are said to have been vulnerable and as a result they were on 15-minute checks.

Submissions on impairment

Ms Da Costa moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Da Costa submitted that Miss Randeniya is currently impaired because her misconduct involved a serious departure from expected standards and put patients at risk of harm. She further submitted that Miss Randeniya's conduct presents a risk of harm to patients in the future if it is not adequately addressed.

Ms Da Costa told the panel that Miss Randeniya has engaged with the NMC's investigation and process, this is evidenced by a number of correspondences received from her. She has provided statements, detailed explanations and accounts within the case management form. Ms Da Costa submitted that Miss Randeniya has taken steps to

address the concerns by completing relevant training and that she has been applying for jobs, however Miss Randeniya has not yet secured employment as a nurse or in the nursing field.

Ms Da Costa submitted that in light of the above, the NMC are of the view that Miss Randeniya has been unable to demonstrate safe practice through a period of working without issue or supervision, or indeed any feedback from senior colleagues. Furthermore, she has provided some insight in her reflective pieces and responses but has not adequately addressed the impact her actions could have had on the patients and the reputation of the profession.

Ms Da Costa submitted that the first three limbs of the test in *CHRE v NMC and Grant* were engaged in Miss Randeniya's case. She submitted that the NMC takes the view that Miss Randeniya's insight is still developing and as such a risk of repetition and the risk of harm to patients remains.

In response to a panel question, Ms Da Costa submitted that while Miss Randeniya remained in employment until her dismissal from the witness evidence given, after the incidents Miss Randeniya worked in a band 2 role with reduced responsibilities. Since the incidents Miss Randeniya has not been able to provide evidence that she has practised safely or provide evidence that her record keeping has improved to the standard required of a registered nurse.

Ms Da Costa submitted that Miss Randeniya is currently impaired on public protection and public interest grounds.

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

Decision and reasons on misconduct

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

The panel was of the view that Miss Randeniya's actions in charges 1, 2, 3, and 4 did fall significantly short of the standards expected of a registered nurse, and that Miss Randeniya's actions amounted to a breach of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 *make sure you deliver the fundamentals of care effectively*

1.4 *make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

Practise effectively

You assess need and deliver or advise on treatment, or give help (including preventative or rehabilitative care) without too much delay and to the best of your abilities, on the basis of the best evidence available and best practice. You communicate effectively, keeping clear and accurate records and sharing skills, knowledge and experience where appropriate. You reflect and act on any feedback you receive to improve your practice.

8 Work cooperatively

To achieve this, you must:

....

8.2 *maintain effective communication with colleagues*

8.3 *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*

...

8.5 work with colleagues to preserve the safety of those receiving care

10 Keep clear and accurate records relevant to your practice

To achieve this, you must:

10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event

...

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

25 Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system

To achieve this, you must:

25.1 identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first.'

The panel appreciated that not every breach of the Code will automatically result in a finding of misconduct. However, the panel was of the view that Miss Randeniya's actions at the time in charges 1, 2,3 and 4 fell seriously short of what is expected of a registered nurse. It noted, that at the time Miss Randeniya was transitioning from a student nurse to a registered nurse and would have been aware of the NMC's Code as part of her training. The panel determined that her inability to prioritise, her poor communication with colleagues and her incorrect documentation amount to misconduct. She failed to check on a patient who complained of chest pain in a timely manner, failed to communicate effectively with the team regarding Patient A and subsequently made entries on his 15-minute check form when he had absconded from the ward. This could have misled colleagues about Patient A's behaviour and the level of risk he could have posed to himself. The panel found that these actions could have led to serious harm to patients.

The panel, therefore, determined that Miss Randeniya's actions in charges 1, 2, 3 and 4 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

However, the panel did not consider that the facts found proved in charge 6b were serious enough to be regarded as misconduct. The relevant entry that Miss Randeniya made on Patient B's 15-minute check chart had been poor practice made with the intention of assisting the patient's smooth handover for the oncoming shift.

Decision and reasons on impairment

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

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

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

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

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test", in the fifth Shipman report 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) ...'*

The panel found that the first three limbs a), b), c) of *Grant* were engaged.

The panel finds that patients were put at risk of harm as a result of Miss Randeniya's misconduct. Not checking on a patient who complained of chest pain in a timely manner posed a significant risk of harm and possible patient deterioration. Miss Randeniya's misconduct of completing documentation for Patient A who was in fact absent from the ward created a false impression that nothing untoward had occurred, when in fact it had, could have resulted in adverse consequences. Failing to communicate with colleagues to inform and carry out assessments and observations at the correct time led to an unsafe environment for patients on the ward. The panel, therefore determined that Miss Randeniya had breached the fundamental tenets of the nursing profession and brought its reputation into disrepute. The panel was of the view that a member of the public would find

Miss Randeniya's conduct concerning and confidence in the nursing profession and the NMC as a regulator would be undermined if a finding of current impairment was not made.

The panel considered that Miss Randeniya is still developing her insight and has shown some understanding that her actions were wrong as demonstrated in her reflective accounts. However, the panel was of the view that the accounts provided, lacked depth in her ability to explain what impact and consequences her actions may have caused her patients, colleagues, the hospital, the nursing profession and the public. There is no evidence that Miss Randeniya fully understands the rationale for using the 15 minute check charts or the behaviour charts and how they enhance patient safety.

The panel was satisfied that the misconduct in this case is capable of being remedied. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Randeniya has taken steps to strengthen her practice. The panel considered that Miss Randeniya has undertaken some training and provided the following certificates: Continuing Professional Development in Documentation and Record-Keeping- Level 2 dated 26 June 2022, Record Keeping, Data Protection and Access to Records dated 17 November 2022, Good record-keeping dated 18 November 2022. Miss Randeniya also referenced some of her learning contracts from her student training placements showing successful assessments of her work and attitude. The panel was mindful that these latter documents related to the time when Miss Randeniya was a student in training and therefore supernumerary and gave them less weight accordingly. Miss Randeniya has demonstrated remorse for her actions through her reflective accounts.

However, the panel is of the view that there is a risk of repetition by Miss Randeniya of the charges found proved. Although she remained in employment for three months after the incidents, it was as a band 2 healthcare assistant. She has not been successful in securing further employment and has therefore been unable to demonstrate her ability to practise safely and effectively and address the concerns raised. There is no evidence before the panel today which shows Miss Randeniya has put her training regarding record-keeping into practice in the health or social care sector. Nor has she been able to

demonstrate improvement in her communication with colleagues and effectiveness in these aspects of her practice. Therefore, the panel cannot be satisfied that she has remediated and strengthened her practice. The panel determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that public confidence in the profession would be undermined if a finding of current impairment were not made in this case. The panel also finds Miss Randeniya's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Randeniya's fitness to practise is currently impaired in three areas of the code:

- Prioritise people
- Practise effectively
- Promote professionalism and trust

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that Miss Randeniya's name on the NMC register will show that she is subject to a conditions of practice order and anyone who enquires about her registration will be informed of this order.

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 Da Costa informed the panel that the NMC are seeking a conditions of practice order for nine months in light of the panel's findings.

Ms Da Costa submitted the following aggravating factors applied to this case:

- Record keeping failures that were linked to two separate vulnerable patients during one shift.
- Miss Randeniya's actions placed Patient A at significant risk of harm
- Evidence of misconduct at the earliest stage of Miss Randeniya's professional career.

Ms Da Costa further submitted the following mitigating features applied to this case:

- Miss Randeniya's acceptance of the regulatory concerns and her acceptance of her wrongdoing when confronted by her employers.
- Miss Randeniya's engagement with the NMC.

Ms Da Costa referred the panel to the SG. She submitted that no order or a caution order would not be appropriate in this case due to the continued risk of harm Miss Randeniya

presented, particularly to vulnerable patients. Furthermore, given the panel's determination on misconduct to make no order or to impose a caution order would undermine public confidence in the nursing profession and not be in the public interest.

Ms Da Costa submitted that a nine month conditions of practice order with a review would be an appropriate sanction in this case. She further submitted that the conditions should focus on the areas of clinical concerns that have been raised by the panel's findings in respect of Miss Randeniya's practice. Given that there is a risk of repetition, Ms Da Costa suggested that Miss Randeniya should be required to work under supervision until her employers are confident, she has a full understanding of what is expected of her as a nurse.

Decision and reasons on sanction

Having found Miss Randeniya'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 also had regard to the context in which Miss Randeniya's misconduct occurred as already referred to in its finding of facts.

The panel took into account the following aggravating features:

- Record keeping failures linked to a vulnerable patient
- Repetition of these failures in entries for Patient A's 15-minute checks and behaviour charts.
- Conduct which put patients at risk of significant harm

The panel also took into account the following mitigating features:

- Acceptance of regulatory concerns
- Being open and honest
- Engagement with the NMC throughout the process
- Very early stage of her career without a preceptorship programme in place
- Evidence of developing insight

The panel recognised that Miss Randeniya completed the latter part of her training during the Covid 19 pandemic.

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 risk of repetition and public protection issues identified as Miss Randeniya has not had an opportunity to strengthen her practice. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict Miss Randeniya'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 Miss Randeniya's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Randeniya's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *...*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

For the avoidance of doubt, the panel did not consider that Miss Randeniya's failures evidenced general incompetence. Rather she had shown lack of competence in the areas of:

1. Communication and team working
2. Record keeping
3. Patient safety particularly when patients have altered cognition
4. Organisation, planning and prioritisation of workload

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel noted that Miss Randeniya has shown a willingness to learn from her wrongdoing and maintains her commitment to nursing as her vocation.

The panel had regard to the fact that Miss Randeniya was in the early stages of her career when the incidents happened. It considered that Miss Randeniya needs more time to develop the knowledge and skills to become a competent nurse. Witness 2 told the panel that Miss Randeniya could achieve the competencies required of a registered nurse with the appropriate level of support. The panel was of the view that it was in the public interest that, with appropriate safeguards, Miss Randeniya should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Randeniya's case. It considered that to impose a suspension order in Miss Randeniya's case would be punitive and would not serve any useful purpose. Specifically, it would not allow her to address the failures identified in her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your nursing practice to one substantive employer, which must be either an NHS Health Board or NHS Trust and which has a preceptorship programme in which you must enrol and engage fully with its requirements.
2. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of working at all

times on the same shift as, but not always directly observed by a registered nurse.

3. You must keep a reflective practice log. The log will facilitate you to record your learning from general work and specific incidents. It should include your reflections on your practice in the following areas:
 - a) Communication and team working
 - b) The effectiveness and consequences of accurate record keeping and how misunderstandings can occur if records are not accurate
 - c) Patient safety particularly when patients have altered cognition
 - d) Your strategies to coordinate, organise and prioritise care for patients, particularly at times of increased workload or staff shortages
4. You must take your reflective practice log with you to your meetings with your mentor/preceptor, to discuss and reflect on your progress with the conditions.
5. You must work with your line manager to create a personal development plan (PDP). Your PDP must address the following concerns:
 - i. Communication and team working
 - ii. Record Keeping
 - iii. Patient safety particularly when patients have altered cognition
 - iv. Organisation, planning and prioritisation of workload

You must:

- Send your NMC case officer a copy of your PDP within seven days of its creation.

- Send your NMC case officer a report from your Mentor seven days in advance of your next NMC hearing or meeting. This report must show your progress towards achieving the aims set out in your PDP.
6. You must engage with your mentor/preceptor on a frequent basis to ensure you are making progress towards the aims set in your PDP. Such engagement must be weekly for the first month of your employment and continue weekly thereafter until your mentor/preceptor is satisfied that the frequency can be reduced to a minimum of monthly.
 7. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
 8. You must keep NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
 9. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any employers you apply to for work (at the time of application).

- c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

10. You must tell your case officer, within seven days of your becoming aware of:
 - a) Any patient safety incident involving a patient whose care you have direct responsibility for.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

11. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 months.

Before the order expires, a panel will hold a review hearing to see how well Miss Randeniya has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- A reflective piece that provides evidence of your journey to becoming a competent registered nurse who meets the required standards and

complies with the Code and how you have strengthened your practice as a result of these incidents.

- Testimonials from current colleagues, mentor/preceptor or line manager that detail your current work practices
- Continued engagement with the NMC and attendance at hearings

This will be confirmed to Miss Randeniya in writing.

Interim order

As the conditions of practice 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 Miss Randeniya's own interests until the conditions of practice 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 Da Costa. She submitted that an interim conditions of practice order was required on the grounds of public protection and in the public interest, for the same reasons the panel had imposed the substantive conditions of practice order. This will cover the 28-day appeal period in which Miss Randeniya's could appeal the panel's decision and, should she do so, the time it is likely to take for that appeal to be determined.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order. It will be for a period of 18 months to allow any appeal by Miss Randeniya to be determined.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Miss Randeniya is sent the decision of this hearing in writing.

That concludes this determination.