

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

**Substantive Hearing
Monday 27 March – Friday 31 March 2023**

Virtual Hearing

Name of Registrant:	Pamela Borisade
NMC PIN	07E1956E
Part(s) of the register:	Registered Nurse – Sub-part 1 Adult nursing – Level 1 – November 2007
Relevant Location:	Havering
Type of case:	Misconduct
Panel members:	John Kelly (Chair, Lay member) Donna Hart (Registrant member) Anne Phillimore (Lay member)
Legal Assessor:	David Swinstead
Hearings Coordinator:	Philip Austin (27-30 March 2023) Jasmin Sandhu (31 March 2023)
Nursing and Midwifery Council:	Represented by Simon Gruchy, Case Presenter
Mrs Borisade:	Not present and not represented in absence
Facts proved:	Charges 1 and 2
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

At the start of this hearing, the panel noted that Mrs Borisade was not in attendance, nor was she represented in her absence.

The panel was informed that notice of this hearing was sent by email on 22 February 2023 to the address that the Nursing and Midwifery Council (“NMC”) had on the NMC Register for Mrs Borisade. The panel noted that Rule 34 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (“the Rules”) allows for service of the notice of hearing to be effective by electronic means.

Mr Gruchy, on behalf of the NMC, submitted that the service by email complied with the requirements of Rules 11 and 34 of 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 time, date and venue of the hearing and, amongst other things, information about Mrs Borisade’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 Mrs Borisade has been served with the notice of hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Borisade

The panel next considered whether it should proceed in the absence of Mrs Borisade. It had regard to Rule 21 of the Rules and heard submissions from Mr Gruchy who invited the panel to proceed in the absence of Mrs Borisade.

Rule 21 (2) states:

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Mr Gruchy referred the panel to the document titled ‘Your response to the notice of hearing’. He submitted that in this form, Mrs Borisade has ticked the boxes to indicate that she does not plan to attend the hearing on the dates specified in the notice of hearing, she wants the hearing to go ahead without her and she does not want a postponement or change of date.

In taking account of the above, Mr Gruchy submitted that Mrs Borisade voluntarily absented herself from this hearing. He invited the panel to proceed in the absence of Mrs Borisade.

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 great care*’ as referred to in the case of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5, and ‘*with the utmost caution*’ in *R (Raheem) v NMC* [2010] EWHC 2549 (Admin).

The panel decided to proceed in the absence of Mrs Borisade. In reaching this decision, the panel considered the submissions of Mr Gruchy and the advice of the legal assessor. It 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 to the overall interests of justice and fairness to all parties. It noted that:

- Mrs Borisade provided a clear indication that she does not intend to attend the hearing, she wants the hearing to proceed in her absence and does not seek a postponement or change of date of these proceedings;
- Mrs Borisade provided a response to the charges, along with a short statement dated March 2023, which the panel can take account of in considering this matter;
- An application for adjournment has not been made by Mrs Borisade;
- There is no reason to suppose that adjourning would secure Mrs Borisade's attendance at some future date;
- Three witnesses have been warned to give oral evidence at this hearing;
- Not proceeding may inconvenience the witnesses, their employers and, should they be involved in clinical practice, the patients or those who need their professional services;
- Further delay may have an adverse effect on the ability of the witnesses to accurately recall events; and
- The earliest charge relates to an event that occurred as far back as 2015;
- There is a strong public interest in the expeditious disposal of the case.

The panel acknowledged that there is some disadvantage to Mrs Borisade in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her, she will not be able to challenge in person the evidence relied upon by the NMC and will not be able to give oral evidence on her own behalf. However, in the panel's judgement, this can be mitigated. It noted that it has received Mrs Borisade's response to the charges, along with a short statement dated March 2023. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination

and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Borisade's decision to absent herself from the hearing, waive her rights to attend and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge (Before amendment)

That you, a registered nurse, whilst registered for work with Urban Recruitment Group ("the Agency")

- 1) Provided the Agency with incorrect Immediate Life Support training certificates in relation to one or more of the following dates:
 - a) 22 June 2015;
 - b) 28 May 2016;
 - c) 14 July 2017;
 - d) 15 November 2018;
 - e) 15 August 2019

- 2) Your conduct in respect of charge 1 was dishonest, in that you knew you had not attended training on those dates.

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

Background

The NMC received a referral from the Agency on 30 October 2019, in relation to Mrs Borisade. The regulatory concerns revolve around the authenticity of her Immediate Life Support (“ILS”) certificates which she provided to the Agency between 2015 and 2019.

It is alleged Mrs Borisade provided the following ILS certificates, purporting to be issued by the Resuscitation Council UK, and dated as follows:

- 17 June 2014
- 22 June 2015
- 28 June 2016
- 14 July 2017
- 15 November 2018
- 15 August 2019

The ILS certificate dated 17 June 2014 was not alleged to be a falsified document.

The allegations came to light as Ms 1, a compliance officer at the Agency, was reviewing Mrs Borisade’s ILS certificate dated 15 August 2019. Ms 1 was aware that the layout of the ILS certificate changed during 2018, but her 2019 ILS certificate was in the older format. This prompted Ms 1 to look back at Mrs Borisade’s previous ILS certificates and noted that those for 2015 to 2019 all bore the same course reference number, a common feature dating back to Mrs Borisade’s ILS course on 17 June 2014.

Upon further investigation, it was discovered that on the dates for 2015 to 2018 listed above, ILS training was not delivered at Basildon and Thurrock University Hospital (“the Hospital”), recorded on the ILS certificates as the location of the training. On 15 August 2019, whilst ILS training took place at the Hospital, Mrs Borisade did not attend.

On 29 September 2019, Mrs Borisade’s employment with the Agency was terminated.

Decision and reasons on application to amend the charge

Mr Gruchy made an application to amend the wording of charge 1b. The proposed amendment was to correct a typographical error, as there was no ILS certificate dated 28 May 2016, whereas there was a certificate dated 28 June 2016. Mr Gruchy proposed that the date in charge 1b should be amended to 28 June 2016, as this would reflect the evidence the panel had received.

The panel noted that charge 1b currently states that Mrs Borisade:

- “1. Provided the Agency with incorrect Immediate Life Support training certificates in relation to one or more of the following dates:*
- a) ...*
 - b) 28 May 2016;”*

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules, which states:

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

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

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

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

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

The panel was of the view that such an amendment, as applied for, was in the interests of justice.

The panel determined that amending charge 1b in the way proposed would not fundamentally alter the case against Mrs Borisade. It considered it to be a typographical error which could easily be corrected for clarity and accuracy.

The panel was aware that Mrs Borisade had been sent all of the paperwork relating to this case, including the certificate dated 28 June 2016. It was of the view that the proposed amendment did not disadvantage Mrs Borisade in any way. The mischief identified in the allegations remain the same.

Therefore, the panel decided to grant Mr Gruchy's application to amend charge 1b to read as follows:

- "1. Provided the Agency with incorrect Immediate Life Support training certificates in relation to one or more of the following dates:*
- a) ...*
 - b) 28 June 2016;"*

Details of charge (After amendment)

That you, a registered nurse, whilst registered for work with Urban Recruitment Group ("the Agency")

- 1) Provided the Agency with incorrect Immediate Life Support training certificates in relation to one or more of the following dates:
 - a) 22 June 2015;
 - b) 28 June 2016;
 - c) 14 July 2017;
 - d) 15 November 2018;

e) 15 August 2019

- 2) Your conduct in respect of charge 1 was dishonest, in that you knew you had not attended training on those dates.

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

Decision and reasons on facts

In reaching its decisions on the facts, the panel took account of all the oral and documentary evidence in this case, including the written responses from Mrs Borisade, and the submissions made by Mr Gruchy.

The panel has not drawn any adverse inference from the non-attendance of Mrs Borisade.

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 oral evidence from the following witnesses called on behalf of the NMC who, at the relevant time, were employed in the following roles:

- Ms 1: Compliance Officer at the Agency

- Ms 2: Clinical Nurse Manager at the Agency

- Ms 3: Deputy Director of Nursing at Mid and South Essex NHS Foundation Trust.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

Mrs Borisade had indicated that she did not admit the charges. The panel then considered each of the charges and made the following findings.

Charge 1

- 1) Provided the Agency with incorrect Immediate Life Support training certificates in relation to one or more of the following dates:
 - a) 22 June 2015;
 - b) 28 June 2016;
 - c) 14 July 2017;
 - d) 15 November 2018;
 - e) 15 August 2019

These charges are found proved.

In reaching this decision, the panel took account of the evidence of Ms 1, Ms 2 and Ms 3, as well as the evidence provided by Mrs Borisade.

The panel noted evidence that Mrs Borisade worked for the Hospital between 2007 and 2010 as a band 5 staff nurse. Mrs Borisade was promoted to a band 6 post which she held between 2010 and 2013. Following this position, Mrs Borisade progressed to a band 7 senior nurse practitioner role, holding this position between 2013 and 2018 when she left the Hospital. Mrs Borisade registered with the Agency in 2014, combining her role at the Hospital with additional agency shifts until 2018 when she left the Hospital and

transitioned to working for the Agency. During her time working for the Agency, she mainly undertook roles as a band 5 registered nurse in medicine and surgery in South Wales.

Ms 2 told the panel that undertaking appropriate Life Support training was a requirement for any registered nurse and that this needed to be completed annually as one of a suite of mandatory training modules. There are three levels of training depending on the role the clinician is undertaking but over the period in question, all levels would have required some face-to-face training. ILS training was not a requirement for Mrs Borisade's role as a band 5 staff nurse with the Agency, but as a minimum she would have had to have provided evidence annually that she had undertaken Basic Life Support ("BLS") training. Ms 2 stated that the agency had no record of Mrs Borisade having undertaken BLS training, instead Mrs Borisade had chosen to provide the higher level ILS certificates (which would supersede the BLS), to meet this basic mandatory requirement.

In her oral evidence, Ms 1 explained to the panel how she came to identify the concerns. She said that she was aware that Resuscitation Council UK had changed the layout of the certificates in 2018; having looked at examples of such certificates provided by Resuscitation Council UK prior to November 2018, she noted that they were in the new format. Ms 1 stated that the responsibility falls upon registrants to provide the Agency with the necessary training certificates relating to their nursing practice, to evidence that all mandatory training had been successfully undertaken as required, including Resuscitation training.

The panel had sight of the ILS training certificates dated 17 June 2014, 22 June 2015, 28 June 2016, 14 July 2017, 15 November 2018 and 15 August 2019.

The panel identified that the ILS certificates from 2015 – 2019 appeared to be in the same format, and visually appeared to be the same as the one for 2014. Also, there appeared to be a similar mark on all of the ILS certificates, next to the signature of Ms 4, who had signed on behalf of Ms 5, on the purportedly accurate ILS certificate dated 17 June 2014. The panel heard evidence from Ms 3 who said that the course references for ILS training

delivered at the Hospital were made up of the letters 'BAS', denoting the Hospital as the location, followed by the date of delivery and the name of the person delivering the training. The panel saw that the course reference on the ILS certificate dated 17 June 2014 "*BAS-17/06/2014-[Ms 5]*" appears on all the other ILS certificates. The panel considered this to be particularly telling, as the ILS certificate for 2014 was the first to be provided by Mrs Borisade to the Agency, and the only ILS certificate which appears correct. The panel concluded that the only plausible explanation for a course reference relating to 2014 appearing on certificates for five subsequent years is that it has been copied and reused without the course reference date being amended. In the panel's judgment, the only difference between the ILS certificates is the date the training is alleged to have taken place.

Furthermore, the panel received evidence from Ms 3 who confirmed that ILS training courses were not delivered at the Hospital on 22 June 2015, 28 June 2016, 14 July 2017 and 15 November 2018. Whilst an ILS training course on 15 August 2019 was delivered at the Hospital, Mrs Borisade was not pre-booked for this course, nor did she join on an ad hoc basis. Ms 3 had stated that there would have been a register in place for Mrs Borisade to sign her name against and she is not on that list. Additionally, she had asked relevant staff to check their diaries at the time to see if there was any evidence that Mrs Borisade had attended that course.

The panel noted that in her response to the charges provided to the NMC in February 2023, Mrs Borisade indicated that she denied the charges against her. In her short statement dated March 2023, her comments appear to be confusing and contradictory. However, Mrs Borisade makes reference to "*showing the recruitment company a new certificate*" and goes on to apologise in general terms for her behaviour. This implies some form of admission to the charges. However, the panel was only able to place little weight on these documents because of the inconsistencies noted above.

Therefore, the panel was satisfied that, on the balance of probabilities, Mrs Borisade provided the Agency with incorrect ILS training certificates in relation to 22 June 2015, 28 June 2016, 14 July 2017, 15 November 2018 and 15 August 2019.

Charge 2

- 2) Your conduct in respect of charge 1 was dishonest, in that you knew you had not attended training on those dates.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 1, Ms 2 and Ms 3, as well as the evidence provided by Mrs Borisade.

It had regard to the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67 in determining whether Mrs Borisade had been dishonest in her actions, as outlined in charge 1.

In particular, the panel noted in paragraph 74:

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

The panel had regard to its earlier findings. It was satisfied that Mrs Borisade knew that she had not completed ILS training on 22 June 2015, 28 June 2016, 14 July 2017, 15 November 2018 and 15 August 2019, but nevertheless, amended her ILS certificate for 2014 to give the impression that she had done so.

The panel noted that ILS training was not a requirement for Mrs Borisade working for the Agency in a band 5 staff nurse role. Nevertheless, Mrs Borisade had submitted these ILS certificates in order for her to meet the mandatory requirement for her to work in a clinical setting. The panel's view was that in providing these ILS certificates, Mrs Borisade had the intention of leading the Agency and her colleagues to believe that she met and exceeded the mandatory requirements to work.

In her response provided to the NMC in March 2023, Mrs Borisade focuses much of her comments on having kept her mandatory training up to date. She does not appear to address the specific concerns relating to her ILS training, however, she stated:

"I feel ashamed and embarrassed being a nurse, who normally takes the work seriously and ends up engaging in this bad doing.

I am writing to express my deepest apology. I am a very hard-working and experienced nurse and I have promised myself and all involve that I will never ever engage in this bad behavior again" [sic].

Therefore, whilst Mrs Borisade has expressed some remorse for her conduct, it is unclear what she is specifically referring to. The panel could only infer that she was apologising for her conduct in sending in incorrect ILS certificates.

The panel noted that Mrs Borisade was a senior and experienced registered nurse. It considered her to have been aware of the need to undertake appropriate Life Support training annually, and this is evident from the fact that she continued to provide ILS certificates on an annual basis, even though they were incorrect. The panel was of the

view that Mrs Borisade had sought to create a misleading impression from the ILS certificates that she had falsified. She had knowingly not completed the ILS training, and it concluded that she would have been aware that what she was doing was wrong. Mrs Borisade had maintained her deception from 2015 to 2019 and it considered her conduct to have been motivated by financial gain in order to work as a registered nurse.

In taking account of all the above, the panel reached the conclusion that ordinary, decent people would regard Mrs Borisade's conduct, as found proved in charge 1, to be dishonest.

Therefore, the panel found charge 2 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs Borisade'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. Firstly, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Borisade's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In his submissions, Mr Gruchy referred the panel to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances*’.

Mr Gruchy invited the panel to take the view that Mrs Borisade’s conduct amounted to breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (“the Code”). He then directed the panel to specific paragraphs and identified where, in the NMC’s view, Mrs Borisade’s actions amounted to misconduct.

Mr Gruchy submitted that Mrs Borisade’s behaviour, as set out in the charges, is clearly serious and falls seriously short of the expected standards of a registered nurse.

Mr Gruchy submitted that life support training is a mandatory requirement for a registered nurse and there is strong evidence she practiced without the required life support training. He submitted that, in supplying five incorrect ILS certificates, Mrs Borisade misled the Agency on four occasions, and attempting to mislead it on a fifth into thinking that she was qualified to a higher level of life support training than the basic standard and that she was competent to practice. Mr Gruchy submitted that Mrs Borisade misled the Agency as to her level of competence in order to obtain work and, in so doing, there was a potential for patients to be exposed to a risk of harm.

Mr Gruchy submitted that Mrs Borisade’s actions were deliberate and intentional and raise fundamental concerns about her honesty and integrity. He submitted that nursing is about serving the public, so honesty and integrity is at the centre of good nursing practice.

Submissions on impairment

Mr Gruchy 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 uphold proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Gruchy submitted that there are clear public protection concerns involved in this case, as well as clear breaches of fundamental tenets of the nursing profession.

Mr Gruchy submitted that in being dishonest by sending in incorrect ILS certificates, Mrs Borisade wanted to portray that she had completed mandatory life support training when she had not done so on five separate occasions. He submitted that Mrs Borisade's behaviour could have had far-reaching consequences for both patients and staff in an emergency situation, as she would not have been qualified to the required standard.

Mr Gruchy submitted that Mrs Borisade has not demonstrated any real insight into the concerns identified. He submitted that Mrs Borisade has not provided any context or mitigation as to how these incidents came about. Mr Gruchy submitted that her dishonest conduct may be more difficult to rectify and could be indicative of a fundamental attitudinal concern. He submitted that there remains a real risk of repetition in this case.

Mr Gruchy submitted that there is significant evidence before the panel to demonstrate that Mrs Borisade's fitness to practise is currently impaired on both public protection and public interest grounds. He concluded by saying that the public interest would be severely undermined if a finding of current impairment was not made.

Decision and reasons on misconduct

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

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

The panel was of the view that Mrs Borisade's actions fell significantly short of the standards expected of a registered nurse, and it considered them to amount to several breaches of the Code. Specifically:

"6 Always practise in line with the best available evidence

To achieve this, you must:

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

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...

22 Fulfil all registration requirements

To achieve this, you must:

22.3 keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim to maintain and develop your competence and improve your performance"

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, in these circumstances, the panel decided that Mrs Borisade's actions in each of the charges found proved fell significantly short of the standards expected so as to justify a finding of misconduct.

The panel considered the charges to be serious because of the timespan involved and repeated dishonesty. It noted that the charges relate not only to her conduct and behaviour but were linked to her nursing practice.

The panel noted that Mrs Borisade had acted dishonestly on multiple occasions. It found that Mrs Borisade deliberately intended to mislead and deceive staff at the Agency into thinking she had completed annual ILS training between 2015 and 2019 when she had not. Therefore, it considered Mrs Borisade's calculated deception to have lasted for a significant period of time; this was not a one-off spontaneous act.

The panel was of the view that other registered nurses would consider Mrs Borisade's actions to be deplorable in the particular circumstances of this case. It determined that Mrs Borisade had fallen far below expected standards in behaving in the way that she did.

The panel found that Mrs Borisade's actions in charges 1 and 2 fell significantly short of the conduct and standards expected of a registered nurse and clearly amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the misconduct, Mrs Borisade's fitness to practise is currently impaired. It had regard to the guidance relating to impairment, which was published on 27 March 2023, with reference 'DMA-1'.

Registered 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 registered nurses with their lives and the lives of their loved ones. To justify that trust, registered 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 74, she said:

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel considered all the above limbs to be engaged in this case. The panel noted that whilst Mrs Borisade's clinical nursing practice has not been brought into question at this hearing, she had acted in a way that put patients at a risk of harm. Furthermore, the panel had also found Mrs Borisade to have breached fundamental tenets of the nursing profession, including by acting dishonestly, and it found her to have brought the reputation of the nursing profession into disrepute by virtue of her actions.

The panel had regard to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and considered whether the concerns identified are capable of remediation, whether they have been remediated, and whether there is a risk of repetition of the incidents occurring at some point in the future.

The panel considered honesty, integrity and trustworthiness to be the bedrock of the nursing profession. It noted that, in principle, dishonesty is often more difficult to remediate than clinical issues, mainly because it could be indicative of a deep-seated attitudinal concern. However, the panel was aware that insight and remediation are key in considering attitudinal concerns, as it means a registrant will be less likely to repeat their failings if these factors are present.

The panel noted that Mrs Borisade's actions represented multiple instances of misconduct, and that these were calculated to deceive staff at the Agency into believing that she had undertaken an ILS training course each year from 2015 to 2019.

The panel considered Mrs Borisade to have demonstrated limited insight in relation to the charges found proved. It was aware that Mrs Borisade had not been able to comment on the panel's earlier findings because she is not present at this hearing. However, in having regard to Mrs Borisade's short statement dated March 2023, it was clear that she failed to appreciate the potential impact of her behaviour. Whilst the panel had inferred that the remorse, expressed in vague terms in her short statement, was directed at the regulatory concerns identified, Mrs Borisade has not provided an explanation for her behaviour, or identified the circumstances that led to it. Nor had she sought to assure the panel that she

would not behave in a similar way in future. Mrs Borisade does not appear to have reflected on the seriousness of her actions in providing incorrect ILS certificates. She has not shown any understanding of the impact her actions could have had on patients, colleagues, the nursing profession or the wider public as a whole. The panel noted that Mrs Borisade continued to work as a registered nurse for the Agency, up until the point in 2019 when her conduct was discovered.

The panel had sight of a further bundle of documents containing reference to training courses undertaken by Mrs Borisade from October 2019 including a training certificate consisting of 23 modules, provided by a second nursing agency, Concept Care Solutions, and verified on 14 October 2019 and a second certificate dated 24 October 2020, showing that Mrs Borisade had completed mandatory training, which was provided by a third nursing agency, Enferm Medical Limited. Enferm Medical Limited also provided five further certificates of completion showing that Mrs Borisade had completed further training all dated 17 February 2021.

The panel was of the view that whilst this was evidence of Mrs Borisade having attended some training courses subsequent to leaving the Agency, this did not address the fundamental issues in this case relating to her dishonesty in respect of the ILS training certificates. The panel noted that Mrs Borisade had undertaken her mandatory training in 2019 and 2020, which is a requirement for her to work, and does show some commitment to her ongoing nursing career.

At the second stage of proceedings, the panel also had sight of positive references provided by Enferm Medical Limited dated March 2021. However, the focus of these references was on Mrs Borisade's clinical nursing abilities, as opposed to her honesty, integrity and trustworthiness. The panel found these references to be of limited assistance in considering the matters found proved.

In taking account of the above, the panel determined that there are outstanding public protection concerns that need to be addressed. It was satisfied that there is no evidence

before it to demonstrate that Mrs Borisade has addressed her misconduct, beyond a vague apology and undertaking online Continuous Professional Development (“CPD”) or has developed insight into the concerns identified.

The panel did not have evidence to allay its concerns that Mrs Borisade may currently pose a risk to patient safety. It considered there to be a risk of repetition of the incidents found proved and a risk of significant harm to patients in Mrs Borisade’s care, should adequate safeguards not be imposed on her nursing practice. Therefore, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objective of the NMC is to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 also considered there to be a public interest in this case. It was of the view that an informed member of the public would be shocked by Mrs Borisade’s behaviour, taking account of the panel’s findings throughout these proceedings, with particular regard to her multiple dishonest actions. The panel concluded that public confidence in the nursing profession would be undermined if a finding of impairment were not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to the above, the panel was satisfied that Mrs Borisade’s fitness to practise as a registered nurse is currently impaired.

Sanction

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

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

Submissions on sanction

Mr Gruchy informed the panel that the NMC would be seeking a striking-off order in this case.

Mr Gruchy outlined the aggravating factors which he submitted were relevant, as follows:

- Continued lack of insight into failings
- Pattern of misconduct over a considerable time
- Patients were put at a risk of harm

Mr Gruchy submitted that there were no mitigating features in this case. He stated that the panel may attach whatever weight it considers suitable to the fact that there have been no issues raised regarding Mrs Borisade's clinical practice.

It was submitted by Mr Gruchy that the concerns in this case are serious and would be difficult to put right. There has been no remediation or context provided by Mrs Borisade to assist the panel in taking other than the most serious course in this case. He submitted that deliberately falsifying certificates is a serious concern, which raises questions about Mrs Borisade's trustworthiness as a professional which are difficult to remediate.

Mr Gruchy submitted that as this case concerns attitudinal failings, a conditions of practice order would not be appropriate. He also submitted that a suspension order would not be appropriate in this case. Whilst a suspension order may protect the public during the time that it is in force, it would not be sufficient to meet the public interest in this case given the seriousness of these concerns.

Mr Gruchy submitted that Mrs Borisade's actions call into question her suitability to practise as a registered nurse and are incompatible with allowing her to remain on the register. In this regard, Mr Gruchy submitted that a striking-off order would be the only appropriate and proportionate order in this case. He also reminded the panel that Mrs Borisade was made aware, in the notice of hearing sent to her on 22 February 2023, that the NMC would be seeking a striking-off order in this matter.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Breach of professional trust
- Lack of insight into failings
- A pattern of misconduct over a period of time
- Conduct which put patients at risk of suffering harm

The panel also took into account the following mitigating features:

- Mrs Borisade has continued to engage in her professional development
- Some evidence of engagement in the regulatory process
- Some positive professional references as to her clinical competence

The panel took account of the NMC's Guidance on 'Considering sanctions for serious cases' (SAN-2), which sets out the following in regard to cases involving dishonesty:

'In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power*
- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to patients*
- *premeditated, systematic or longstanding deception*

Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *no risk to patients*
- *incidents in private life of nurse, midwife or nursing associate'*

Having regard to the above guidance, the panel was of the view that the dishonesty in this case is serious. It considered that there was a personal financial gain from Mrs Borisade's breach of trust, patients were put at a direct risk of harm, and that her dishonesty was premediated, systematic and longstanding. Further, the panel was of the view that the factors indicating a lower level of seriousness were not present in this case. This was not a one-off incident, not opportunistic or spontaneous conduct, there was direct personal gain, patients were put at a risk of harm, and these incidents did not happen in Mrs Borisade's private life. Her conduct was calculated so as to allow her to continue working without the need to undergo mandatory training.

In determining what sanction to impose, the panel first considered whether to take no action. However, the panel concluded that this would be inappropriate in view of the seriousness of the case. It decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but determined that, due to the ongoing public protection and public interest issues identified and the seriousness of the matters found proved, an order that does not restrict Mrs Borisade's practice would not be appropriate or proportionate in the circumstances.

The panel next considered whether placing conditions of practice on Mrs Borisade's registration would be a sufficient and appropriate response. The panel was 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 relates to serious dishonesty, which is not something that can be addressed through retraining or supervision. As such, the panel was of the view that a conditions of practice order would not be sufficient to protect the public. Furthermore, the panel concluded that placing conditions on Mrs Borisade's registration would not adequately address the seriousness of the concerns sufficiently to meet the public interest or to declare and uphold proper professional standards.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It had regard to the NMC's Guidance SAN-3d which outlines that a suspension order may be appropriate in the following circumstances:

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

The panel determined that the above factors were not present in this case. It noted its previous findings that Mrs Borisade has demonstrated limited insight and continues to pose a significant risk of harm to the patients in her care. Whilst the panel had sight of some documentation, including references and training certificates (albeit these certificates were not recent, with the latest being February 2021), the panel was of the view that these did not address the dishonesty and specific concerns highlighted in this case. It also noted that Mrs Borisade's misconduct was not a single instance, but was dishonesty first perpetrated in 2015 and repeated annually for four further years.

The panel took the view that although a suspension order may be sufficient to protect the public whilst in force, it would not be sufficient to address the public interest in this case. In these circumstances, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*

- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel was of the view that the above factors were relevant. It considered that the concerns highlighted in this case raise fundamental questions about Mrs Borisade professionalism. Further, given the seriousness of her actions, the panel considered that public confidence could not be maintained if Mrs Borisade were to remain on the NMC register. It considered that Mrs Borisade's actions would adversely affect the public's view of how a registered nurse should conduct themselves and as such, nothing short of removing her from the register would be sufficient in this case.

Balancing all 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.

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

This will be confirmed to Mrs Borisade in writing.

Interim order

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

Submissions on interim order

Mr Gruchy submitted that an interim suspension order for a period of 18 months was necessary to allow for any potential period of appeal. He submitted that an interim suspension order would be appropriate as it would be consistent with the panel's decision to impose the substantive striking-off order.

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

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and that it is otherwise in the public interest. The panel had regard to 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, due to the reasons already identified in its decision for imposing the substantive striking-off order. The panel therefore imposed an interim suspension order for a period of 18 months to allow sufficient time for Mrs Borisade to make an appeal, should she wish to do so.

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

That concludes this determination.