

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

**Substantive Hearing
Tuesday, 7 May 2024 – Monday, 13 May 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Maricris Hilario Vallido

NMC PIN 03H0333O

Part(s) of the register: Registered Nurse- Sub Part 1
RN1: Adult Nurse, Level 1 (5 August 2003)

Relevant Location: Lincoln

Type of case: Misconduct

Panel members: Bryan Hume (Chair, lay member)
Mark Gibson (Registrant member)
Christine Moody (Lay member)

Legal Assessor: Alice Robertson Rickard

Hearings Coordinator: Samara Baboolal

Nursing and Midwifery Council: Represented by Simran Ghotra, Case Presenter

Mrs Vallido: Not present and unrepresented

Facts proved: Charge 1 – Schedule 1 (a), (b) (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa)
Charge 2 – Schedule 2 (b), (c), (d), (e), (f), (g), (h), (i)
Charge 3 – Schedule 3 (b),(c),(d),(e),(f)
Charge 4

Facts not proved: Charge 1 – Schedule 1 (g)
Charge 2 – Schedule 2 (a) and (j)
Charge 3 – Schedule 3 (a)

Fitness to practise: Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Vallido was not in attendance and that the Notice of Hearing letter had been sent to Mrs Vallido's registered email address by secure email on 4 April 2024.

Ms Ghotra, 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 venue of the hearing and, amongst other things, information about Mrs Vallido'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 Vallido 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 Vallido

The panel next considered whether it should proceed in the absence of Mrs Vallido. It had regard to Rule 21 and heard the submissions of Ms Ghotra who invited the panel to continue in the absence of Mrs Vallido.

Ms Ghotra submitted that Mrs Vallido had voluntarily absented herself.

Ms Ghotra submitted that there had been no recent engagement by Mrs Vallido with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. She informed the panel that there has been some contact from the NMC to Mrs Vallido but there has been no recent response. She submitted that all

reasonable efforts have been made by the NMC to contact Mrs Vallido both via email and telephone call. Ms Ghotra referred the panel to the case of *R v Jones (Anthony William)*.

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 *R v Jones (Anthony William)*.

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

- No application for an adjournment has been made by Mrs Vallido;
- Mrs Vallido has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing since the Royal College of Nursing (RCN) came off of the record on the 3 January 2024;
- There have been attempts by the NMC to contact Mrs Vallido via telephone and email, and she has not responded to these attempts;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- One witness is available today to give video evidence, and another is due to give video evidence tomorrow;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019 and 2020;
- 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 is some disadvantage to Mrs Vallido in proceeding in her absence. Mrs Vallido 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. 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. The panel does have the benefit of written submissions from the RCN made on the 6 April 2023 setting out Mrs Vallido's position. Her position can therefore be explored with the witnesses. Furthermore, the limited disadvantage is the consequence of Mrs Vallido's decisions to absent herself from the hearing, waive her rights to attend, and be represented.

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

Details of charge

That you, a registered nurse:

1. On one or more of the dates set out in Schedule 1, worked consecutive shifts as a nurse at the Trust and the Home, without adequate breaks in between shifts. **[PROVED]**
2. On one or more of the dates set out in Schedule 2, worked shifts as a nurse for the Home while in receipt of sick pay from the Trust. **[PROVED]**
3. On one or more of the dates set out in Schedule 3, worked shifts as a nurse for the Home while on phased return working hours at the Hospital. **[PROVED]**

4. Your actions at charges 2 and/or 3 were dishonest in that you represented to the Trust that you were entitled to receive sick pay when you knew that you were not. **[PROVED]**

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

Schedule 1

- a) 20 January 2019 **[PROVED]**
- b) 11 April 2019 **[PROVED]**
- c) 8 May 2019 **[PROVED]**
- d) 26 May 2019 **[PROVED]**
- e) 2 June 2019 **[PROVED]**
- f) 7 June 2019 **[PROVED]**
- g) 11 June 2019 **[NOT PROVED]**
- h) 15 July 2019 **[PROVED]**
- i) 26 July 2019 **[PROVED]**
- j) 21 August 2019 **[PROVED]**
- k) 1 September 2019 **[PROVED]**
- l) 3 October 2019 **[PROVED]**
- m) 7 October 2019 **[PROVED]**
- n) 15 October 2019 **[PROVED]**
- o) 26 October 2019 **[PROVED]**
- p) 29 October 2019 **[PROVED]**
- q) 9 November 2019 **[PROVED]**
- r) 28 November 2019 **[PROVED]**

- s) 17 December 2019 **[PROVED]**
- t) 20 December 2019 **[PROVED]**
- u) 27 December 2019 **[PROVED]**
- v) 5 January 2020 **[PROVED]**
- w) 21 January 2020 **[PROVED]**
- x) 23 January 2020 **[PROVED]**
- y) 21 February 2020 **[PROVED]**
- z) 24 February 2020 **[PROVED]**
- aa) 10 March 2020 **[PROVED]**

Schedule 2

- a) 15 February 2019 **[NOT PROVED]**
- b) 23 February 2019 **[PROVED]**
- c) 27 February 2019 **[PROVED]**
- d) 28 February 2019 **[PROVED]**
- e) 3 March 2019 **[PROVED]**
- f) 5th March 2019 **[PROVED]**
- g) 22 June 2019 **[PROVED]**
- h) 25 September 2019 **[PROVED]**
- i) 26 September 2019 **[PROVED]**
- j) 3 March 2020 **[NOT PROVED]**

Schedule 3

- a) 8 February 2019 **[NOT PROVED]**
- b) 12 March 2019 **[PROVED]**

- c) 15 March 2019 **[PROVED]**
- d) 16 March 2019 **[PROVED]**
- e) 19 March 2019 **[PROVED]**
- f) 22 March 2019 **[PROVED]**

Decision and reasons on application to amend the charge

At the outset of the hearing the Chair indicated to Ms Ghotra that the names of the Trust and Home were not set out in the charges and proposed that the charges may benefit from including the full name of the Trust and Home for clarity.

Ms Ghotra agreed that the name of the Trust and Home should be added for clarity.

The proposed amendments were as follows:

That you, a registered nurse:

1. On one or more of the dates set out in Schedule 1, worked consecutive shifts as a nurse at the **United Lincolnshire Hospital NHS (the Trust)** and the **Georgians Care (the Home)**, without adequate breaks in between shifts.
2. On one or more of the dates set out in Schedule 2, worked shifts as a nurse for the Home while in receipt of sick pay from the Trust.
3. On one or more of the dates set out in Schedule 3, worked shifts as a nurse for the Home while on phased return working hours at the **Trust Hospital**.
4. Your actions at charges 2 and/or 3 were dishonest in that you represented to the Trust that you were entitled to receive sick pay when you knew that

you were not.

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

Schedule 1

- a) 20 January 2019
- b) 11 April 2019
- c) 8 May 2019
- d) 26 May 2019
- e) 2 June 2019
- f) 7 June 2019
- g) 11 June 2019
- h) 15 July 2019
- i) 26 July 2019
- j) 21 August 2019
- k) 1 September 2019
- l) 3 October 2019
- m) 7 October 2019
- n) 15 October 2019
- o) 26 October 2019
- p) 29 October 2019
- q) 9 November 2019
- r) 28 November 2019
- s) 17 December 2019
- t) 20 December 2019

- u) 27 December 2019
- v) 5 January 2020
- w) 21 January 2020
- x) 23 January 2020
- y) 21 February 2020
- z) 24 February 2020
- aa) 10 March 2020

Schedule 2

- a) 15 February 2019
- b) 23 February 2019
- c) 27 February 2019
- d) 28 February 2019
- e) 3 March 2019
- f) 5th March 2019
- g) 22 June 2019
- h) 25 September 2019
- i) 26 September 2019
- j) 3 March 2020.

Schedule 3

- a) 8 February 2019
- b) 12 March 2019
- c) 15 March 2019
- d) 16 March 2019
- e) 19 March 2019

f) 22 March 2019

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

The panel was of the view that such an amendment was in the interest of justice. The panel was satisfied that there would be no prejudice to Mrs Vallido and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment to ensure clarity.

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

At the outset of the hearing, Ms Ghotra made a request that this case be held partly in private on the basis that proper exploration of Mrs Vallido's case involves [PRIVATE]. The application was made pursuant to Rule 19.

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

The panel determined to go into private session in connection with [PRIVATE] as and when such issues are raised in order to protect her privacy.

Background

The charges arose whilst Mrs Vallido was employed as a registered nurse at United Lincolnshire Hospital NHS Trust (the Trust).

The Trust received an anonymous email on 9 March 2020 which raised concerns about Mrs Vallido's working shifts at Lincoln County Hospital (the Hospital) and Pilgrim Hospital Stroke services (the Ward) and then going straight to work at the

Georgians Care Home (the Home). The email expressed concerns about the impact of Mrs Vallido working back-to-back shifts on the safety of patients.

Mrs Vallido is also alleged to have taken sick leave from the Trust, and during periods of sickness there were allegedly times where Mrs Vallido worked at the Home. Mrs Vallido denied this during the local investigation and maintained that she cancelled these shifts at the Home and did not receive pay for those days. She stated that her cancellations were not updated on the rota.

It is alleged that Mrs Vallido worked consecutive shifts at the Trust and Home without adequate breaks in between each shift. She is alleged to have worked early or late day shifts at the Ward at the Trust and would then undertake further shifts without adequate breaks in-between. Mrs Vallido did not dispute that she failed to take adequate breaks and was responsible for working excessively.

Mrs Vallido allegedly worked shifts at the Home while on phased return to work with the Trust contrary to its Managing Attendance policy.

Decision and reasons on facts

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Witness 1: Stroke Improvement Lead Nurse at the Hospital and the Ward responsible for supporting the nursing team with education and training.

- Witness 2: Current manager of the Home.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC. It also considered the submissions and testimonial evidence from Mrs Vallido.

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

Charge 1

“That you, a registered nurse, on one or more of the dates set out in Schedule 1, worked consecutive shifts as a nurse at the United Lincolnshire Hospital NHS Trust (the Trust) and the Georgians Care (the Home), without adequate breaks in between shifts.”

Schedule 1

- a) 20 January 2019
- b) 11 April 2019
- c) 8 May 2019
- d) 26 May 2019
- e) 2 June 2019
- f) 7 June 2019
- g) 11 June 2019
- h) 15 July 2019
- i) 26 July 2019
- j) 21 August 2019
- k) 1 September 2019
- l) 3 October 2019

- m) 7 October 2019
- n) 15 October 2019
- o) 26 October 2019
- p) 29 October 2019
- q) 9 November 2019
- r) 28 November 2019
- s) 17 December 2019
- t) 20 December 2019
- u) 27 December 2019
- v) 5 January 2020
- w) 21 January 2020
- x) 23 January 2020
- y) 21 February 2020
- z) 24 February 2020
- aa) 10 March 2020

This charge is found proved for all dates in Schedule 1, except g)

In reaching this decision, the panel took into account Witness 1's oral and written evidence which provided a list of dates and times where Mrs Vallido worked consecutive shifts with either only a 45-minute break in between her shift at the Trust and her shift at the Home or with a six and a quarter hour break. On these stipulated dates, Witness 1 explained that Mrs Vallido worked a total of 28 consecutive shifts, set out in Schedule 1 of the charges. These consisted of either an early shift (7:00–14:30) at the Trust followed by a night shift at the Home which started at 20:45, or a late shift (12:30 – 20:00) or long day (7:00 – 20:00) at the Trust followed by a night shift at the Home.

The panel also took into account the comparison of the Trust's rota and Home's rota completed by Human Resources (HR) corroborating Witness 1's testimony that Mrs Vallido undertook multiple consecutive shifts.

The panel considered the following statement made by Mrs Vallido and contained in her registrant's response bundle:

'Yes I accept that I work [sic] shift in Nursing Home right after my shift in the Hospital [...] I have no performance issues reported within the Trust and in the Georgians Nursing Home. I have no physical impairment that would put me incapable of performing my assigned duties and responsibilities. I feel more active and alert when I'm working on nights.'

The panel also considered a statement in interview notes with the Trust, where Mrs Vallido stated:

'Working back to back shifts in the Stroke unit and the NH, I recognised now that there may have an impact on my wellbeing and ability to carry on my duties.'

The panel determined that the 45 minutes break in between the shifts undertaken at the Trust and the Home as set out in Schedule 1(e),(j),(l),(m),(r),(t),(u),(v),(w),(y), and (aa), was plainly inadequate.

The panel accepted that the dates relating to early shifts are considered consecutive as they were worked on the same day even though they are listed as an early shift and then night shift.

The panel further noted Witness 1's live evidence, where she informed the panel that *"within the Hospital, the workload was very heavy. [Mrs Vallido] was a senior nurse and would have had junior staff under her"* and one would need enough time to rest and recover before undertaking a shift at the Home.

The panel was of the view that working an early shift on a busy ward and then going on to work a night shift just six and a quarter hours later was an inadequate break and would have had the potential to put patients at the Home at risk as a consequence of being unable to sufficiently rest following a shift at the Ward.

The panel determined that the six and a quarter hour breaks in between the shifts undertaken in Schedule 1 (a),(b),(c),(d),(f),(h),(i),(k),(n),(o),(p),(q),(s),(x), and (z), were inadequate.

The panel did not find that Schedule 1(g) was proved as on this date, Mrs Vallido only worked a night shift.

Charge 2

“That you, a registered nurse, on one or more of the dates set out in Schedule 2, worked shifts as a nurse for the Home whilst in receipt of sick pay from the Trust”.

Schedule 2

- a) 15 February 2019
- b) 23 February 2019
- c) 27 February 2019
- d) 28 February 2019
- e) 3 March 2019
- f) 5th March 2019
- g) 22 June 2019
- h) 25 September 2019
- i) 26 September 2019
- j) 3 March 2020.

This charge is found proved for all dates in Schedule 2, except a) and j)

In reaching this decision, the panel took into account time sheets from the Home, the comparison of the Trust's rota and Home's rota completed by Human Resources (HR), pay slips from the Home, and Witness 1 and Witness 2's live evidence. Witness 2 informed the panel in her live evidence that the employee is responsible for submitting the time sheets. The panel noted that Mrs Vallido had signed most, but not all of the time sheets provided in the exhibit bundle for the relevant dates set out in Schedule 2.

The panel noted that in a letter from Mrs Vallido's Royal College of Nursing (RCN) representative, Mrs Vallido denies that she worked while she was on sick leave. The relevant paragraph states:

'[...] Ms Vallido instructs that she cancelled the shifts at the Home when she was sick. She didn't work during this time. Ms Vallido states that there was an issue with the admin team at the home and they didn't make a record of her call. Ms Vallido instructs that she did not receive pay for this [...]

However, Witness 2's testimony indicated that an administrator would have checked each time sheet submitted and checked the time sheets against the rota at the Home. The administrator would have also ticked the appropriate entry on the time sheets to indicate that this was a valid claim.

The panel noted that a single shift on 13 September 2019 was marked as cancelled. However, this was not the case for the shifts included in Schedule 2 which the panel noted were ticked on the timesheets. The panel also accepted the evidence of Witness 2 that if Mrs Vallido had cancelled her shifts, a further registered nurse would have been required to cover the shifts and this additional expense would have been noticed by the administrator. The panel therefore determined that if Mrs Vallido were sick and cancelled these shifts, these would have been reflected on the rota and in the time sheets.

The panel determined, in light of the above, that Charge 2 is found proved in relation to Schedule 2 (b),(c),(d),(e),(f),(g),(h), and (i). It determined that Schedule 2(a) and (j) are not proved as the rota comparison and time sheets showed that on 15 February 2019 Mrs Vallido did not work due to sickness and on 3 March 2020 she did not work.

Charge 3

“That you, a registered nurse, on one or more of the dates set out in Schedule 3, worked shifts as a nurse for the Home while on phased return working hours at the Trust”.

Schedule 3

- a) 8 February 2019
- b) 12 March 2019
- c) 15 March 2019
- d) 16 March 2019
- e) 19 March 2019
- f) 22 March 2019

This charge is found proved for all dates in Schedule 3, except a)

In reaching this decision, the panel took into account that the comparison of the Trust’s rota and Home’s rota completed by Human Resources (HR) reflects that there were five shifts undertaken by Mrs Vallido upon her phased return from sick leave at the Trust. On 8 February 2019 (Schedule 3(a)), the rota comparison and timesheets show that Mrs Vallido was on sick leave from the Trust and did not work at the Home.

The panel noted that Mrs Vallido has signed the time sheets for the dates set out in Schedule 3(b),(c),(d),(e) and (f). The panel also took into account that Witness 2

testified that it would not be permissible to work at the Home whilst undertaking phased return.

The panel determined that Charge 3 Schedule 3 (b),(c),(d),(e) and (f) were found proved.

Charge 4

“Your actions at charges 2 and/or 3 were dishonest in that you represented to the Trust that you were entitled to receive sick pay when you knew that you were not.”

This charge is found proved.

The panel accepted that the period of sick pay includes the period of time that a nurse would have worked reduced hours at the hospital during the phased return to work period during which Mrs Vallido received full pay.

The panel took into account the Trust’s Managing Attendance policy which set out the rules regarding sick leave and phased return to work, the time sheets and pay slips from the Home, the comparison of the Trust’s rota and Home’s rota completed by human resources (HR), and the signed return to work interviews.

It noted that Mrs Vallido engaged with and signed return to work interviews and determined that she knew she was not entitled to sick pay from the Trust whilst she was working at the Home. She engaged in the return-to-work interview and signed it despite having continued working at the Home during her period of sick leave and phased return to the Trust.

The panel also took into account the employee declaration on the return-to-work interviews signed by Mrs Vallido which says:

‘[...] I confirm that I have not engaged in any unauthorised employment (paid or voluntary) during my absence’.

The panel determined that it is more likely than not that Mrs Vallido was aware that claiming sick pay whilst working was wrong and was aware of the Trust's policy surrounding sick leave. The panel noted that through her RCN representative, Mrs Vallido previously maintained that she did not receive payment whilst on sick leave which suggests that she was well aware that this would have been wrong. However, the panel found that the pay slips clearly showed that Mrs Vallido received payment for these shifts. The panel determined that Mrs Vallido is an experienced nurse, and this was not a careless mistake. She has engaged in this dishonest behaviour knowingly despite not being entitled to this pay. The panel noted that this is repeated conduct, is not one off, and occurred on several occasions during a period of time.

The panel did note the positive character references included in the registrant response bundle which spoke highly of Mrs Vallido's good character and clinical practice. However, the panel noted that these character references did not acknowledge these proceedings and did not mention the allegations of dishonesty. In these circumstances, the panel gave limited weight to these references.

The panel also determined that an ordinary member of the public would consider a nurse on sick leave and on reduced hours following a period of sickness, who was receiving full pay, to be dishonest where she then worked at a nursing home for further remuneration.

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 Vallido'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 ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that

there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Vallido'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 Ghotra invited the panel to take the view that the facts found proved 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 Ghotra identified where Mrs Vallido's actions breached specific, relevant standards and amounted to misconduct. She submitted that her fitness to practise is impaired on both public protection and public interest grounds.

Ms Ghotra submitted that the misconduct that arises in this matter is serious. She submitted that Mrs Vallido's actions were repeated incidents of dishonesty and were not single isolated incidents.

Ms Ghotra further submitted that through her actions, Mrs Vallido breached fundamental tenets of nursing, and through her failure to consider patient safety, put the patients in her care at risk of harm. She submitted that Mrs Vallido's actions fell short of professional standards and bring the nursing profession into disrepute.

Submissions on impairment

Ms Ghotra 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 Grant* [2011] EWHC 927 (Admin)

Ms Ghotra reminded the panel of that the test is for fitness to practise asks the question as to whether the nurse or midwife can practise kindly, safely and professionally. Ms Ghotra cited the Dame Janet Smith test in assessing past conduct and future risk of harm and reminded the panel of the four limbs of the test.

Ms Ghotra submitted that all four limbs of the Dame Janet Smith test are engaged in this matter. She submitted that while no actual harm was caused to patients, there was a risk of harm to patients as a result of Mrs Vallido's conduct. At the local level, Mrs Vallido accepted that working back-to-back shifts at the hospital and the home may have had an impact on her ability to carry out her nursing duties, as stated in the RCN submitted reflections contained in the registrant's response bundle. Ms Ghotra submitted that a nurse working long hours without adequate breaks can result in fatigue and consequently impact one's ability to remain alert and provide care.

Ms Ghotra further submitted that Witness 1 testified to the heavy workload and pressure at the stroke ward. Witness 1 elaborated that as Mrs Vallido was a senior nurse she would have additional responsibility and junior nurses working under her.

Ms Ghotra submitted that Mrs Vallido's conduct in this matter is central to the values expected of a registrant, namely their honesty and integrity. Ms Ghotra submitted that Mrs Vallido's actions were egregious and breached fundamental tenets of the nursing profession and the Code.

Ms Ghotra submitted that there are attitudinal issues which arise, stemming from the charges found proved, that Mrs Vallido acted dishonestly by acting as if she were entitled to receive sick pay when she was not. Ms Ghotra submitted that this was not a one-off incident of a momentary lapse of judgment, but long standing and premeditated deception which took place over a two-year period.

Ms Ghotra submitted that the misconduct concerns in this matter are difficult to remediate. She submitted that at present, there is little evidence of remediation from Mrs Vallido and limited insight as Mrs Vallido has not fully reflected on the consequences of working back-to-back shifts without breaks or working while on sick leave and phased return to work. Ms Ghotra submitted that Mrs Vallido has admitted that there may be an impact on work performance if a nurse were taking too many shifts, but she justified this by saying that she has not experienced any physical impairment or performance issues at work, and that she feels more active and alert when working night shifts.

Ms Ghotra submitted that a finding of impairment is required on the ground of public protection as there is no evidence that Mrs Vallido has insight or remorse regarding her actions and therefore there is a risk of repetition of her misconduct. She submitted that a finding of impairment is also required on the ground of public interest in order to maintain public confidence in the profession and the NMC as its regulator, and to uphold and declare proper standards of professional conduct.

The panel accepted the advice of the legal assessor.

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 Mrs Vallido's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Vallido's actions amounted to a breach of the Code. Specifically:

‘20 Uphold the reputation of your profession at all times’

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

20.2 *You must act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

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

21.3 *Act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with [...]*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mrs Vallido’s actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel determined that Charge 1 amounted to misconduct. It determined that although no actual harm was caused to patients, there was a potential for harm to be caused. Mrs Vallido undertook back-to-back shifts over an extended period of time on repeated occasions. The panel determined that this conduct has the potential to bring the profession into disrepute, as a nurse who is not taking adequate breaks in between demanding shifts may not be able to provide the best quality of care to patients and consequentially puts these patients at a risk of harm.

The panel determined that Charge 2 amounted to serious misconduct. It determined that Mrs Vallido’s conduct in relation to working at the Home while receiving sick pay from the Trust amounted to serious misconduct and put patients at a risk of harm. The panel noted that if a nurse were taking sick leave, then they would not be fit to practise, and this could impact the quality of care received by their patients. Additionally, the panel noted that by fraudulently claiming sick pay while working,

Mrs Vallido led the Trust to cover the cost of her sick pay, and the cost of a replacement nurse in her absence. The panel also noted that this was not a one-off incident but repeated conduct over a period of time.

The panel determined that Charge 3 amounted to serious misconduct. It determined that Mrs Vallido's conduct in relation to working at the Home while on phased return at the Trust put patients at a risk of harm. The panel noted that Mrs Vallido actions led the Trust to incur unnecessary costs in paying her a full wage during her phased return to work support, while she was working at the Home. The panel also noted that this was not a one-off incident but repeated conduct over a period of time.

The panel determined that Charge 4 amounted to serious misconduct. It determined that Mrs Vallido's dishonest conduct was repeated over a period of two years. It also noted that it involved dishonesty in the course of her employment for personal financial gain, as Mrs Vallido was claiming sick pay that she was not entitled to. It concluded that this charge is serious and brings the profession into disrepute.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with

their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

'Do our findings of fact in respect of the doctor's misconduct, 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 found patients were put at risk of harm as a result of Mrs Vallido's misconduct. Mrs Vallido's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that Mrs Vallido accepts that she failed to take sufficient rest breaks and apologised, therefore demonstrating some, although limited, insight in regard to Charge 1. However, the panel noted that she has not provided any insight or reflection in relation to the other three charges. She has not provided any reflection into what the impacts of her actions on her colleagues and the reputation of the profession. The panel determined that although the issues in this matter are not impossible to address and mitigate, Mrs Vallido's limited and insufficient insight raises a risk of repetition and a finding of impairment is therefore necessary on the ground 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 a finding of impairment on public interest grounds is required as the public would be very concerned to learn that a nurse working excessive hours were allowed to care for vulnerable patients without restriction. It also determined that a well-informed member of the public fully apprised of the evidence would be concerned to learn that a nurse was taking money that they were not entitled to, that could potentially be used for patient care and hospital services. The panel also concluded that a finding of impairment is necessary on public interest grounds to maintain confidence in the profession as integrity and honesty is integral to nursing practice.

Having regard to all of the above, the panel was satisfied that Mrs Vallido's fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

In the Notice of Hearing, dated 4 April 2024, the NMC had advised Mrs Vallido that it would seek the imposition of a striking-off order if it found Mrs Vallido's fitness to practise currently impaired.

Ms Ghotra submitted that as Mrs Vallido's fitness to practise is impaired, a striking-off order is the most appropriate sanction given the nature of the misconduct in this case. She submitted that there has been a repeat pattern of misconduct over a period of two years. Ms Ghotra submitted that this conduct put patients at a risk of harm. Ms Ghotra submitted that the dishonesty element in this matter is serious, as Mrs Vallido was dishonestly undertaking employment whilst claiming sick pay for financial gain over an extended period of time.

Ms Ghotra submitted that there has been some [PRIVATE] and some insight as set out in the letter from her former RCN representatives, where Mrs Vallido has acknowledged that working back-to-back shifts may have put patients at risk.

However, she submitted that this insight is limited and that allegations of dishonesty will always be extremely serious.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Mrs Vallido's dishonesty in the course of her employment for personal financial gain.
- That Mrs Vallido's conduct was repeated over a period of two years.
- That Mrs Vallido's conduct put patients at risk of harm.

The panel also took into account the following mitigating features:

- Mrs Vallido's demonstrated some insight in relation to Charge 1.
- [PRIVATE]

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Vallido's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel*

wishes to mark that the behaviour was unacceptable and must not happen again.'

The panel considered that Mrs Vallido's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Vallido's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining or supervised practice as it related to dishonesty over a protracted period of time. Furthermore, the panel concluded that the placing of conditions on Mrs Vallido's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered that this was not a single instance of misconduct as the misconduct took place over a two-year period. It found that there are attitudinal concerns in this case as Mrs Vallido's misconduct involved dishonesty over an extended period of time, and that there has been repetition as this was not a one-off isolated incident. The panel considered that Mrs Vallido has not provided sufficient insight or reflection to mitigate the risk of repetition of the misconduct.

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

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

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

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

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

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

This will be confirmed to Mrs Vallido 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 Vallido's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Ghotra. She submitted that an 18-month interim suspension order is the most appropriate order to protect the public and meet the public interest.

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 an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to risk of harm to the public if Mrs Vallido were to work during the interim period before the striking-off order takes place.

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

That concludes this determination.