

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

**Substantive Hearing  
19 – 23 February 2024  
18 – 20 March 2024**

**Virtual Hearing**

**Name of Registrant:** Lisa Marie Gibbons

**NMC PIN** 02I0026W

**Part(s) of the register:** Registered Nursing – RNA, Adult Nurse  
(September 2005)

**Relevant Location:** Cardiff

**Type of case:** Misconduct

**Panel members:** Susan Thomas (Chair – Lay member)  
Brian Stevenson (Lay member)  
Lucy Watson (Registrant member)

**Legal Assessor:** Suzanne Palmer [19-23 February]  
Juliet Gibbon [18 March 2024 onwards]

**Hearings Coordinator:** Vicky Green

**Nursing and Midwifery Council:** Represented by Uzma Khan, Case Presenter  
[19-23 February 2024]  
Holly Girven [18 March 2024 onwards]

**Mrs Gibbons:** Not present and not represented in her absence

**Facts proved:** Charges 1, 2, 3, 4.c, 4.d, 8 and 9 [in respect of  
charges 1, 2, 3 and 4.c. only]

**Facts not proved:** Charges 4.a, 4.b, 4.e, 5, 6, 7 and 9 [in respect of  
all other charges]

**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 Gibbons was not in attendance and that the Notice of Hearing letter (the Notice) had been sent to her registered email address by secure email on 12 December 2023.

Ms Khan, 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 provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Gibbons' 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 Gibbons 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 Gibbons**

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

Ms Khan informed the panel that Mrs Gibbons was previously represented by the Royal College of Nursing and that all communication between the NMC and Mrs Gibbons was through her representative. On 8 November 2023, the NMC received an email from the RCN to say that they were no longer representing Mrs Gibbons. Ms Khan informed the panel that on 8 November 2023, after finding out that Mrs Gibbons was no longer represented, the NMC sent an email to her to ask about her next steps and she did not

respond. The NMC also sent a notice of referral letter on 16 November 2023 and an invitation to attend a case conference on 11 December 2023 and she did not respond. The Notice was sent to Mrs Gibbons and the NMC received no response from Mrs Gibbons.

Ms Khan submitted that given that Mrs Gibbons appears to have disengaged, and she has not requested a postponement or an adjournment, an adjournment is unlikely to secure her attendance in the future. She informed the panel that a witness has made themselves available to give evidence today and any delay would inconvenience them and potentially affect their recollection of events. Ms Khan submitted that there is a strong public interest in the expeditious disposal of cases. Ms Khan invited the panel to proceed in the absence of Mrs Gibbons.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)*.

The panel has decided to proceed in the absence of Mrs Gibbons. In reaching this decision, the panel has considered the submissions of Ms Khan and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *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 Gibbons.
- Mrs Gibbons has not engaged recently with the NMC and has not responded to any of the letters sent to her about this hearing.
- There is no reason to suppose that adjourning would secure Mrs Gibbons' attendance at some future date.
- A witness has made themselves available to give evidence today and not proceeding may inconvenience the witness, her employer and, for those

involved in clinical practice, the clients who need their professional services.

- The charges relate to events that occurred in 2017 and further delay may impact on witness recollection.
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Gibbons in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Gibbons, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. 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. It has some information to assist in that task, in the form of Mrs Gibbons' previous responses to the NMC and her answers in the internal disciplinary investigation carried out by her employer. Furthermore, the limited disadvantage is the consequence of Mrs Gibbons' decision to absent herself from the hearing, waive her right to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

### **Details of charge**

That you, a registered nurse, while employed at Cardiff and Vale University Health Board ("UHB") as a Band 7 District Nurse and working for Direct Nursing Services Ltd ("the Agency"):

1. On 14 November 2017, claimed to UHB that you were working a study day but were working for the Agency; **[Proved]**
2. On 15 November 2017, took special leave from UHB but worked for the Agency; **[Proved]**

3. On 5 December 2017, took sick leave from UHB but worked for the Agency; **[Proved]**
  
4. On the following dates worked for the Agency while being paid for work by UHB:
  - a. 10 November 2017; **[Not proved]**
  - b. 28 February 2018; **[Not proved]**
  - c. 25 April 2018; **[Proved]**
  - d. 1 May 2018; **[Proved]**
  - e. 1 June 2018. **[Not proved]**
  
5. On or around 27 December 2017, you falsified the amount of time off owing to you so you could work for the Agency; **[Not proved]**
  
6. On or around 16 March 2018, you falsified the amount of time off owing to you so you could work for the Agency; **[Not proved]**
  
7. Between 26 November 2017 and 3 December 2017, took an additional day off work from UHB; **[Not proved]**
  
8. Between 1 April 2017 and 31 March 2018 took annual leave from UHB in excess of your entitlement of 315 hours. **[Proved]**
  
9. Any or all of your actions outlined in charges 1-8, above, were dishonest in that you misled UHB for financial gain. **[Proved in respect of charges 1, 2, 3 and 4.c.]**  
**[Not proved in respect of charges 4.d. and 8]**

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

## **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Khan pursuant to Rule 31 of the Rules to allow the witness statements contained within Ms 1's Investigation report into evidence. She referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)* and to the NMC Guidance on 'Evidence', in particular 'Hearsay' (Reference: DMA-6 Last Updated 01/07/2022).

Ms Khan submitted that the witness statements collected by Ms 1 from Mrs Gibbons' colleagues as part of her investigation were contemporaneous and relevant to the events. She submitted that these witness statements provided context and narrative explanation, but they are not the sole or decisive evidence for any of the charges. She submitted that this evidence is not relied on to the extent of these witnesses being called to attend. Ms Khan submitted that there was no reason for the authors of the witness statements to have fabricated their evidence.

Ms Khan submitted that this evidence was sent to Mrs Gibbons and she has not challenged the NMC's reliance on these statements or requested that the NMC call these witnesses to give oral evidence in this hearing. She submitted that the panel does have Mrs Gibbons' account for it to consider. Ms Khan submitted that there would be no prejudice to Mrs Gibbons in admitting these witness statements but that the NMC would be prejudiced if they were excluded from evidence. She submitted that if the panel was minded to admit the witness statements into evidence, then it would be able to attach what weight it deemed to be appropriate taking into consideration that this evidence was gathered as part of the investigation process.

The panel accepted the advice of the legal assessor.

The panel was of the view that the witness statements collected by Ms 1 as part of her investigation were relevant as they provide additional information and context to the charges, including how various procedures operated in practice. The panel found that the witness statements were not the sole or decisive evidence for any of the charges.

The panel considered the question of fairness to Mrs Gibbons if the witness statements were allowed into evidence as hearsay. It bore in mind that the allegations against Mrs Gibbons are serious, with potentially serious consequences. It noted that the witness statements were sent to Mrs Gibbons and she has not requested that any of the witnesses be called to give oral evidence. The extent of any challenge to this evidence was unclear and Mrs Gibbons has made no representations in that regard. Whilst Mrs Gibbons has not attended the hearing, the panel has had the opportunity to put questions to Ms 1 about her investigation, based on responses provided by Mrs Gibbons. The panel considered that there was no reason to suggest that any of the witnesses had any reason to fabricate their evidence and noted that the statements are balanced, and that it was stated that the witness statements had been sent to each witness to verify and sign as a true record. Some of the evidence appears to support or corroborate assertions made by Mrs Gibbons during the investigation.

Having regard to all of the above, the panel determined that the evidence is relevant and it would be fair to admit it as hearsay. The panel noted that when it assesses all of the evidence before it, it will be able to consider what weight it is appropriate to attach to this evidence.

### **Decision and reasons on application pursuant to Rule 19**

The panel heard an application made by Ms Khan on behalf of Mrs Gibbons, for any reference to her health or to the health of third parties to be heard in private. She submitted that these parts of the hearing should be heard in private to protect Mrs Gibbons' and other parties' right to privacy. This application was made pursuant to Rule 19 of the Rules.

The panel accepted the advice of the legal assessor.

The panel was mindful that Rule 19(1) of the Rules that hearings should be heard in public. In accordance with Rule 19(3), having heard that there will be reference to Mrs Gibbons' and a third party's health, the panel determined that their right to privacy outweighed the public interest in hearings being held entirely in public. The panel

therefore determined that those parts of the hearing where reference is made to Mrs Gibbons' and any other party's health should be heard in private.

## **Background**

The charges arose whilst Mrs Gibbons was employed by the Cardiff and Vale University Health Board (UHB) as a band 7 team leader of the Roath District Nursing Team. On 25 August 2017, Mrs Gibbons started working shifts for Direct Nursing Services agency (the Agency) at various wound clinics in addition to her substantive role. [PRIVATE]. During this time concerns were raised by members of the team and Ms 1 was asked to undertake an investigation into allegations that arose between April 2017 and August 2018 in relation to attitudes towards staff. Further allegations arose during the course of this investigation in relation to alleged dishonesty and working for the Agency whilst being paid by UHB (either for study leave, special leave, sick leave or for work). It is further alleged that Mrs Gibbons falsified the amount of time off owed to her in order to work for the Agency, and took more than her entitlement of leave in order to work for the Agency. Following the investigation, Ms 1 produced a Formal Disciplinary Investigation Report dated 5 September 2019.

In April 2019, UHB referred the case to the Counter Fraud team to investigate and they decided it was not in the public interest to proceed with criminal prosecution.

Mrs Gibbons was dismissed from her employment at UHB for gross misconduct in December 2019. She was referred to the NMC by her employer on 12 June 2019.

By way of general background, the panel bore in mind the explanation given by Mrs Gibbons during the UHB investigation. She said that she had found management of a team increasingly stressful and difficult, and had felt unsupported by her manager. Around this time, she had started to undertake agency shifts at wound clinics. This enabled her to develop clinical skills in a specialist field which she enjoyed, it allowed her to focus on clinical work rather than management responsibilities, and it took her away from what she found an increasingly stressful environment at UHB. She denied



the allegations and said that she routinely changed her off duty pattern to meet the needs of the service.

Also by way of general background, the panel heard that record-keeping practice at UHB was poor in respect of annual leave, time owing (time off in lieu) and the recording of shifts worked. Ms 1's investigation found that roster records were frequently inconsistent with the Rosterpro Audit records (the RP Audit). Members of staff entering information on Rosterpro were under pressure and did not always have access to the DN rosters and mistakes were made. Formal paperwork for recording time owing was not used in practice, and although it seems that an informal record was kept by another member of staff of Mrs Gibbons' time owing, that record was not available at the time of the investigation or at this hearing. Although records were kept of annual leave, it appears that requests were not formally authorised by Mrs Gibbon's line manager. The record of these informal requests was available only for the annual leave year 2017/18. No request sheet was available from April 2018 onwards. The absence of records proved challenging for Ms 1 during her investigation and for the panel at the hearing.

### **Decision and reasons on facts**

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

The panel has drawn no adverse inference from the non-attendance of Mrs Gibbons during the hearing.

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

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

**Ms 1:** Consultant Nurse for Older Vulnerable Adults at Cardiff and Vale University Health Board. Conducted the investigation into Mrs Gibbons.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Mrs Gibbons.

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

**Charge 1.**

1. On 14 November 2017, claimed to UHB that you were working a study day but were working for the Agency;

**This charge is found proved.**

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the District Nurse team duty rosters (the DN Roster) and the RP Audit. Ms 1 said that the Rosterpro system provided a summary of shifts worked in order for payment to be made, and was generated by a member of staff entering information onto the computer from the DN Roster. The panel also had regard to the list of shifts from the Agency and timesheets and payslips from the Agency, Ms 1's Investigation Report, her documentary evidence and oral evidence.

The panel had sight of the DN Roster and the RP Audit and noted that it had been recorded on the DN Roster that Mrs Gibbons was attending a study day on 14 November 2017 and that on the RP Audit she had been paid for attending a study day. The panel also had sight of the list of shifts and timesheets provided by the Agency and noted that Mrs Gibbons worked a 7.5 hours shift at Swansea wound clinic on 14 November 2017. The panel noted that according to the Agency payslip, Mrs Gibbons was also paid for the 7.5 shift undertaken by her on 14 November 2017.

The panel had regard to the following contained in the Investigation Report:

*'Lisa stated that it was dermatology study day which she said may have been cancelled (appendix 15y, 15z). The duty roster was not amended to reflect this. Lisa was paid by the UHB for a study day and by DNS for an agency shift.'*

The panel heard evidence from Ms 1 that the UHB would allow time off for study but that if the study day had been cancelled then Mrs Gibbons would have been under a duty to inform UHB and to work her normal shift, either performing clinical duties or management tasks.

Having regard to all of the above, the panel found that it was more likely than not that Mrs Gibbons claimed to UHB that she was working a study day but she was working for the Agency on 14 November 2017. The panel therefore found this charge proved.

## **Charge 2.**

2. On 15 November 2017, took special leave from UHB but worked for the Agency;

### **This charge is found proved.**

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the District Nurse team the DN Roster, the RP Audit, the list of shifts from the Agency, timesheets and payslips from the Agency, Ms 1's Investigation Report, her documentary evidence and oral evidence.

The panel heard evidence from Ms 1 that UHB offers special leave to enable employees to meet the urgent needs of their families. This is only to be taken in emergency situations or where there has been a family bereavement. Ms 1 told the panel that the UHB trusts its employees to be honest and to use special leave to tend to urgent family needs. She told the panel that it is not appropriate to use special leave to work for another organisation.

The panel had sight of the DN Roster and the RP Audit and noted that on the DN Roster it is recorded that Mrs Gibbons took special leave from UHB on 15 November 2017 and that on the RP Audit she was paid by the UHB for this.

The panel also had regard to the witness statement of Ms 2 contained within the investigation report. Ms 2 was Mrs Gibbons' line manager at UHB. It noted that Ms 2 confirmed that there were no records to support that the form for special leave was completed or who authorised this leave.

The panel had sight of Mrs Gibbon's response during an investigation meeting that took place on 10 July 2019 in which it is recorded that she stated the following:

*'It is alleged that (5) on 15<sup>th</sup> November 2017 you claimed that you were on special leave, but instead you were working for Direct Nursing Services.*

**Q.8 Can you please explain this?**

*I can't remember it. My [family member] died around this time and there was the funeral.'*

The panel had sight of an 'Application for special leave' completed by Mrs Gibbons on 8 April 2013. The panel was therefore satisfied that Mrs Gibbons was aware of the policy and procedure in respect of requesting and taking special leave.

The panel had sight of the Agency timesheet in which it is recorded that Mrs Gibbons worked a 7.5 hour shift at Brynhyfryd Wound Clinic on 15 November 2017. The panel also had sight of Mrs Gibbons' payslip from the Agency which confirms that she was paid for the shift she completed on 15 November 2017.

Having regard to all of the above, the panel found that it was more likely than not that Mrs Gibbons took special leave from UHB but worked for the Agency on 15 November 2017. Accordingly, the panel found this charge proved.

### **Charge 3.**

3. On 5 December 2017, took sick leave from UHB but worked for the Agency;

#### **This charge is found proved.**

In reaching its decision, the panel had regard to all of the evidence before it. It had particular regard to the DN Roster, the RP Audit, the list of shifts from the Agency, timesheets and payslips from the Agency, Ms 1's Investigation Report, her documentary evidence and oral evidence.

The panel had sight of Mrs Gibbons' *'Self Certification of Sickness Absence Form'* dated 10 December 2017. [PRIVATE]. The panel also noted that in this form, Mrs Gibbons signed a declaration to confirm that she had *'not worked or taken part in any activity not consistent with the reasons given'* for her absence.

The panel had sight of the *'Return to Work Interview Form'* completed by Ms 2 on 10 December 2017. The panel noted that this sickness absence was recorded on the DN Roster and the RP Audit states that she was paid for this absence.

The panel had sight of the Agency timesheet in which it is recorded that Mrs Gibbons completed a 7.5 hour shift at Swansea Wound Clinic on 5 December 2017. The panel also had sight of Mrs Gibbons' payslip that shows a payment made to her by the Agency for the 7.5 hour shift she completed on 5 December 2017.

The panel noted Mrs Gibbons' response during investigation interview that took place on 10 July 2019 in which it is recorded that she stated the following:

*'It is alleged (6) that on 5<sup>th</sup> December 2017 you claimed that you were on sick leave from your role at the Health Board, but instead you were working for Direct Nursing Services.*

**Q.9 Can you please explain this?**

*I did that. [PRIVATE]. I spoke to [Ms 2] but she said I needed to stay off.'*

Having regard to all of the above, the panel was satisfied that it was more likely than not that Mrs Gibbons took sick leave from UHB but worked for the Agency. The panel therefore found this charge proved.

**Charge 4.a.**

4. On the following dates worked for the Agency while being paid for work by UHB:
  - a. 10 November 2017;

**This charge is found not proved.**

In reaching this decision, the panel had regard to all of the evidence before it.

The panel noted that Mrs Gibbons had explained that she had this day off because of another occasion when she had worked at a weekend. Ms 1, in her oral evidence, said that district nurse team leaders usually work Monday to Friday, but they would take turns to work a weekend as part of the clinical team and to provide on call cover to a wider group of District Nursing teams. On these occasions, they would be entitled to have a day off during the week: they were expected to work 37.5 hours a week across five days.

On this occasion, the panel noted that there was evidence suggesting that the DN Roster had been altered to 'DE'. Witness 1 said this looked like a combination of day off and early shift. A day off could have been taken on this day as Mrs Gibbons had worked on Saturday 11 November 2017, and would therefore have been entitled to a day off during the week. It was unclear when the alteration was made or by whom, but it was inconsistent with the Rosterpro system. Witness 1 in her oral evidence said that the Rosterpro audit was not always completed accurately. The documentary evidence was therefore unclear and inconclusive.

After reviewing all of the evidence before it, the panel found insufficient evidence to show on the balance of probabilities that Mrs Gibbons worked for the Agency while being paid for work undertaken by UHB on 10 November 2017. The panel therefore found that the NMC had failed to discharge its evidential burden in respect of this charge and found it not proved.

**Charge 4.b.**

4. On the following dates worked for the Agency while being paid for work by UHB:
  - b. 28 February 2018;

**This charge is found not proved.**

In reaching this decision, the panel had regard to all of the evidence before it.

In Mrs Gibbons' evidence given during the investigation, she said that this date was taken as a day off for weekend working. On the DN Roster a shift had been worked by Mrs Gibbons on Sunday 25 February 2018.

This charge was similar to charge 4.a. There was evidence to suggest that Mrs Gibbons was entitled to a day off during this week, because she had worked on a Sunday. Again, the records were unclear and there was inconsistency between the DN Roster and the RP Audit. From the evidence it was not possible to establish that Mrs Gibbons had more days off than she was entitled to.

After reviewing all of the evidence before it, the panel found insufficient evidence to demonstrate on the balance of probabilities that Mrs Gibbons worked for the Agency while being paid for work undertaken by UHB on 28 February 2018. The panel therefore found that the NMC had failed to discharge its evidential burden in respect of this charge and found it not proved.

**Charge 4.c.**

4. On the following dates worked for the Agency while being paid for work by UHB:
  - c. 25 April 2018;

**This charge is found proved.**

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the DN Roster, the RP Audit, the list of shifts from the Agency, timesheets and payslips from the Agency, Ms 1's Investigation Report, her documentary evidence and oral evidence.

The panel had sight of an email from Ms 3. Ms 3 was the administration assistant to the district nursing team. In this email to Mrs Gibbons from Ms 3 dated 25 April 2018 the following is stated:

*'Hi Lisa,*

*... I have told her you are working from home as she asked.'*

The panel had sight of the DN Roster where the shift had been amended to a day off. The panel noted that this day was verified on the RP Audit as a day shift by Ms 4 (deputy district nursing team leader) and that Mrs Gibbons was paid by UHB for the shift when she claimed to have been working from home on 25 April 2018. In Mrs Gibbons' evidence to the investigation she said that this date was taken as a day off for weekend working.

The panel had sight of Mrs Gibbons' timesheet at the Agency which confirmed that she worked a 7.5 hour shift at Brynhyfryd Wound Clinic on 25 April 2018. The panel also had sight of Mrs Gibbons' payslip which confirmed that she had been paid by the Agency for the shift she completed on 25 April 2018.

Having regard to all of the above, the panel found that it was more likely than not that Mrs Gibbons worked for the Agency while being paid for work by UHB on 15 April 2018. The panel therefore found this charge proved.



#### **Charge 4.d.**

4. On the following dates worked for the Agency while being paid for work by UHB:
  - d. 1 May 2018;

#### **This charge is found proved.**

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the DN Roster, the RP Audit, the list of shifts from the Agency, timesheets from the Agency, Ms 1's Investigation Report, her documentary evidence and oral evidence.

The panel had sight of the DN roster on which the shift was recorded as 'TO'. Witness 1 explained that this meant Time Owing. The panel also had sight of the RP Audit that showed that the UHB paid Mrs Gibbons for a shift that was showing as completed on 1 May 2018. The panel also had sight of the Agency timesheet that showed that Mrs Gibbons had completed a 7.5 hour shift at Neath Port Talbot on 1 May 2018. The panel was therefore satisfied that it was more likely than not that Mrs Gibbons worked for the Agency on 1 May 2018 whilst being paid for shift by UHB on the same date.

The panel noted that Mrs Gibbons said this was a day where she was entitled to take time owing. Her explanation on this issue was that because UHB was short-staffed, she regularly found herself working additional clinical shifts, and/or working extended hours to complete her management tasks. She said that for every three "*long*" days she worked, she accumulated a day of time owing. She said that Ms 3 kept a tally of her time owing and when she was able to do so, she would take a day off.

As a matter of principle, Ms 1 accepted that if Mrs Gibbons had accrued a day of "*time owing*" she would be permitted to work elsewhere. Ms 1 accepted that the governance in relation to time owing was poor, with procedures not followed in practice, and an absence of records. Ms 1 said in her oral evidence that it would be unusual for a full day

to be accrued for time owing. However, the UHB Rostering Procedure did not set out any requirements in this respect.

The panel scrutinised the available evidence carefully around the date in question. It noted that the only two long days which could be discerned from the records around this period were on 24 and 27 April 2018. However, it appeared that Mrs Gibbons had been paid for both of those, although she may not necessarily have appreciated that at the time. The panel could therefore find no evidence of an entitlement to time owing in respect of this particular day. Accordingly, the panel found this charge proved.

#### **Charge 4.e.**

4. On the following dates worked for the Agency while being paid for work by UHB:
  - e. 1 June 2018.

#### **This charge is found not proved.**

In reaching this decision, the panel had regard to all of the evidence before it.

The panel noted that in Mrs Gibbons' evidence she provided during the investigation, she said this day was taken as annual leave.

The panel had sight of the DN Roster and the RP Audit and noted that on the DN roster the shift is amended to record annual leave. On the RP audit it is recorded as paid for as a day shift by Witness 3. Mrs Gibbons in her evidence to the investigation said this day was taken as annual leave.

The panel did not have a copy of Mrs Gibbons annual leave record card for 2018/19.

After reviewing all of the evidence before it, the panel found insufficient evidence to demonstrate on the balance of probabilities that Mrs Gibbons worked for the Agency while being paid for work undertaken by UHB on 1 June 2018. It was more likely than

not that Mrs Gibbons had taken an annual leave day. The panel therefore found this charge not proved.

**Charge 5.**

5. On or around 27 December 2017, you falsified the amount of time off owing to you so you could work for the Agency;

**This charge is found not proved.**

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the oral and documentary evidence provided by Ms 1.

The panel heard evidence from Ms 1 that there were no time owing records for Mrs Gibbons. She told the panel that during the investigation, Mrs Gibbons stated that she agreed her time owing with her deputies but that she did not keep a record because Ms 3 kept one for her. Ms 1 also told the panel that Mrs Gibbons stated that if she worked three long days then she would take a day off as time off in lieu. Ms 1 informed the panel that as part of her investigation, she found incomplete time off in lieu forms for other members of staff from November 2017 but none were found detailing Mrs Gibbons' accrued time owing. In her oral evidence, Ms 1 told the panel that record keeping was poor and that there was no audit trail in respect of time off owing to Mrs Gibbons.

The panel found that there was insufficient evidence to support this charge. It noted that there was no audit trail, or record of the amount of time Mrs Gibbons had accrued or taken. The records kept by Ms 3 were not available. There was also no clear record of the number of long days Mrs Gibbons had worked, or which of those had been paid as "*bank*" hours and therefore which might not have qualified for time owing. There were inconsistencies between the DN Roster and the Rosterpro system. There was therefore no clear evidence as to whether or not she had accumulated an entitlement to time owing at the time. In the circumstances, there was also no evidence that she had falsified the time owing to her. The panel was mindful that an allegation of deliberate

falsification is an extremely serious one. It concluded that the evidence available was insufficient to establish this allegation. The panel therefore found this charge not proved.

**Charge 6.**

6. On or around 16 March 2018, you falsified the amount of time off owing to you so you could work for the Agency;

**This charge is found not proved.**

In reaching its decision, the panel had regard to all of the evidence as set out at charge 5. For the reasons stated in charge 5, the panel also found this charge not proved on the same basis.

**Charge 7.**

7. Between 26 November 2017 and 3 December 2017, took an additional day off work from UHB;

**This charge is found not proved.**

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the DN Roster and the RP Audit.

The panel had sight of the shifts that were completed by Mrs Gibbons at UHB between 26 November 2017 and 3 December 2017. The panel found that there was no evidence that Mrs Gibbons took an additional day off. It found that the week that she took an additional day off was balanced by having only taken one day off the following week. It was possible that there was a legitimate reason for this related to the needs of the service or colleagues. The evidence in relation to this charge was insufficient to demonstrate that Mrs Gibbons had taken a day off to which she was not entitled. The panel therefore found this charge not proved.

### **Charge 8.**

8. Between 1 April 2017 and 31 March 2018 took annual leave from UHB in excess of your entitlement of 315 hours.

### **This charge is found proved.**

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Mrs Gibbons' Annual Leave record for 2017/2018.

The panel found from the evidence in the RP audit of annual leave, that Mrs Gibbons had taken 18.5 more hours than she was entitled to take between 1 April 2017 and 31 March 2018. The panel found that the additional 18.5 hours was made up of three individual hours, one on 16 July 2017, one on 31 December and another taken on 28 January 2018. These one hour occurrences were as a result of working bank shifts. Ms 1 said that Mrs Gibbons was genuinely surprised that this annual leave had been recorded as taken. The panel noted that the additional 0.5 hour occurred as 8 hours annual leave was entered instead of 7.5 hours which Ms 1 said could have occurred due to an administrative error.

The panel had sight of the DN Roster and the RP Audit which show that Mrs Gibbons did take two additional days annual leave on 2 June 2017 and 1 January 2018 for which she received payment from the UHB.

The panel therefore found that between 1 April 2017 and 31 March 2018 Mrs Gibbons took annual leave from UHB in excess of her entitlement of 315 hours. Ms 1, in her evidence, said that Mrs Gibbons had said that this had been unintentional. The panel had sight of Mrs Gibbons' annual leave record care for 2017-2018 which did not record additional hours of annual leave taken over her allocation. Notwithstanding this, as a matter of fact, the panel found this charge proved.

### **Charge 9.**

9. Any or all of your actions outlined in charges 1-8, above, were dishonest in that you misled UHB for financial gain.

**[This charge is found proved in respect of charges 1, 2, 3 and 4.c]**

### Charge 1

In reaching this decision, the panel took into account the evidence it relied upon in finding charge 1 proved. It also had regard to Mrs Gibbons' Registrant Response Bundle.

The panel had regard to Mrs Gibbons' written statement in which she stated the following:

*'Outside of my main commitment to Cardiff and Vale Health Board, I began working for Direct Nursing as they were offering shifts in Wound Clinics. I have a keen interest in wound management and so this clinic environment served to develop my interests further. I also worked some hours bank for the treatment room offered by Cardiff and Vale in St David's Hospital and Cardiff Royal Infirmary. I began by organising these shifts on my days off and enjoyed this work very much. I worked in a safe environment doing the thing I loved most – Nursing. I found that these extra shifts encouraged a sense of wellbeing in me. These clinics were a new enterprise and the nurse leading the venture made me feel valued and appreciated as she would often ask my advice and together we built an excellent relationship. These clinics were stress free, in a carefree environment and I felt as I had when I used to thoroughly enjoy my job. Nursing is my life and I have always made my work a priority, even before my family on times. My patients' needs were far greater than mine and they were the reason I went to work every day. My patients were very important to me and I became very protective towards them when they were raising concerns about my staff.'*

The panel considered whether Mrs Gibbons' action in claiming to UHB that she was working a study day while working for the Agency on 14 November was dishonest in

that she misled UHB for financial gain. The panel was of the view that as an experienced band 7 nurse and team leader, Mrs Gibbons would have known that she had a duty to work at UHB on 14 November 2017 even if the study day was cancelled. The panel determined that in working for the Agency on this date whilst claiming to UHB that she was on a study day when she knew she was not, was intentionally deceiving her employer and was therefore dishonest. The panel noted that Mrs Gibbons was clearly motivated to undertake the Agency work for a number of reasons, including her interest in wound care. Whilst financial gain may not have been Mrs Gibbons' primary motivation for being dishonest, she would have been aware of the financial gain from claiming a study day at UHB as well as working at the Agency. The panel therefore found this charge proved in respect of charge 1.

### Charge 2

In reaching this decision, the panel took into account the evidence it relied upon in finding charge 2 proved. It also had regard to Mrs Gibbons' Registrant Response Bundle, in particular, her written statement.

The panel considered whether Mrs Gibbons' actions in taking special leave from UHB whilst working at the Agency was dishonest in that she misled UHB for financial gain. The panel was of the view that Mrs Gibbons would have been aware that special leave was only available in exceptional circumstances to meet personal and family needs and not to enable her to work for an Agency. The panel therefore found that Mrs Gibbons' actions in taking special leave were dishonest as she intentionally deceived UHB so that she could work at the Agency. Having regard to Mrs Gibbons' written statement (as set out above), the panel found that whilst financial gain may not have been her primary motivation for being dishonest, she would have been aware of the financial gain from claiming a special leave as well as working at the Agency. The panel therefore found this charge proved in respect of charge 2.

### Charge 3

In reaching this decision, the panel took into account the evidence it relied upon in finding charge 3 proved. It also had regard to Mrs Gibbons' Registrant Response Bundle, in particular, her written statement.

The panel considered whether Mrs Gibbons' action in working for the Agency whilst being absent from UHB due to sickness was dishonest in that she misled UHB for financial gain. The panel found that in working a shift for the Agency on 5 December 2017 while being absent from UHB due to sickness was dishonest. The panel noted that Mrs Gibbons signed a declaration to say that she had not worked anywhere else during the period of sickness absence when she knew she had worked at the Agency. The panel found that in not disclosing to the UHB that she had worked at the Agency she intended to mislead. The panel therefore found that in working a shift for the Agency whilst being on sick leave from UHB was dishonest. Having regard to Mrs Gibbons' written statement (as set out above), the panel found that whilst financial gain may not have been her primary motivation for being dishonest, she would have been aware of the financial gain from receiving sick pay from UHB as well as working at the Agency. The panel therefore found this charge proved in respect of charge 3.

#### Charge 4.c.

In reaching this decision, the panel took into account the evidence it relied upon in finding charge 4.c. proved. It also had regard to Mrs Gibbons' Registrant Response Bundle, in particular, her written statement.

The panel considered whether Mrs Gibbons' actions in claiming that she was working at the UHB and the Agency on 25 April 2018 was dishonest in that she misled the UHB for financial gain. The panel found that on 25 April 2018, Mrs Gibbons claimed to be working from home for the UHB while she was undertaking a shift for the Agency. She was clearly aware, from the email exchange the same day referred to in charge 4.c. above, that her staff team were informed she was working from home. The panel determined that in claiming to be working from home for the UHB when she knew she was working a shift for the Agency was dishonest as she intentionally misled the UHB. Having regard to Mrs Gibbons' written statement (as set out above), the panel found



that whilst financial gain may not have been her primary motivation for being dishonest, she would have been aware of the financial gain from receiving claiming to have worked for the UHB whilst working for the Agency. The panel therefore found this charge proved in respect of charge 4.c.

#### Charge 4.d.

In reaching this decision, the panel took into account the evidence it relied upon in finding charge 4.d. proved. It also had regard to Mrs Gibbons' Registrant Response Bundle, in particular, her written statement.

The panel considered whether Mrs Gibbons' action in claiming that she was working at the UHB and the Agency on 1 May 2018 was dishonest in that she misled the UHB for financial gain. The panel considered that it was plausible that Mrs Gibbons may have believed that she had time owing on this date after having worked two long days on 27 and 24 April 2018. It was of the view that there was no evidence to show whether or not Mrs Gibbons knew whether she had been paid for these days when she worked a shift for the Agency on 1 May 2018. As far as she was concerned, Ms 3 was keeping a record of her time owing. The records produced by UHB were inconsistent, and there was scope for confusion about what Mrs Gibbons had or had not accrued and/or been paid for. If she did not know that she had not been paid, and genuinely believed that she was entitled to time owing, then her actions would not be dishonest.

The panel considered that in light of the poor record keeping, absence of clear and cogent records, and potential for confusion or error, there was insufficient evidence available for it to conclude that Mrs Gibbons' actions resulted from dishonesty rather than genuine mistake or confusion. The panel therefore did not find this charge proved in respect of charge 4.d.

#### Charge 8

In reaching this decision, the panel took into account the evidence it relied upon in finding charge 8 proved. It also had regard to Mrs Gibbons' Registrant Response Bundle, in particular, her written statement.

The panel considered whether Mrs Gibbons' actions in taking annual leave in excess of her entitlement of 315 hours between 1 April 2017 and 31 March 2018 was dishonest in that she misled the UHB for financial gain. The panel had regard to Mrs Gibbons' responses during the Investigation and it noted that she appeared to have been genuinely shocked about how the excess hours had occurred. The panel also noted that she said that she would not have taken excess annual leave intentionally, and in her written statement she stated '*I would not want to drain the NHS of its well needed funding*'. The panel was of the view that given the inconsistencies between the DN Roster and RP Audit and Mrs Gibbons' annual leave record card, it was plausible that she had taken the additional annual leave in error. Given the poor and inconsistent record keeping and potential for confusion, the panel considered that there was insufficient evidence for it to be able to infer that Mrs Gibbons' actions resulted from dishonesty rather than genuine mistake or confusion. The panel therefore found that her actions as set out in charge 8 were not dishonest.

**[This hearing resumed on 18 March 2024 when the panel considered service of notice before it handed down its determination on facts]**

## **Decision and reasons on service of Notice of Hearing**

At the outset of the resumed hearing Ms Girven, on behalf of the NMC, informed the panel that Notice of this hearing (the Notice) had been sent to Mrs Gibbons on 28 February 2024. She referred the panel to the '*Proof of service*' bundle which showed that the Notice had been sent to Mrs Gibbons' registered email address and that it contained details of the resuming hearing. Under Rule 32(3) there is no required time scale for the Notice to be sent to Mrs Gibbons for a resumed hearing, rather the NMC should send the Notice as soon as practicable.

The panel accepted the advice of the legal assessor.

Having had sight of the '*Proof of Service*' bundle and regard to the submissions of Ms Girven, the panel was satisfied that that the Notice had been served in accordance with the Rules. The panel noted that the Notice had been sent more than two weeks in advance of the resumed hearing.

## **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 Gibbons' 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 Gibbons' fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

Ms Girven invited the panel to take the view that the facts found proved amount to misconduct. Ms Girven referred the panel to the relevant standards of '*The Code: Professional standards of practice and behaviour for nurses and midwives (2015)*' (the Code) which, she submitted, had been breached by Mrs Gibbons in this case, namely standards in relation to accurate record keeping and acting with honesty and integrity.

Ms Girven identified the specific, relevant standards where in her submission, Mrs Gibbons actions amounted to misconduct. She submitted that the facts found proved, including dishonesty, arose in Mrs Gibbons' professional life in that she worked for the Agency whilst also receiving payment for shifts worked for her substantive employer. Ms Girven submitted that the dishonesty found proved was serious in that it resulted in financial gain for Mrs Gibbons and it was repeated and sustained over a significant period of time. She invited the panel to find that both individually, and collectively, the facts found proved were serious and amounted to misconduct.

### **Submissions on impairment**

Ms Girven 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 cases of *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Girven referred the panel to the test set out in the case of *Grant* and submitted that all four limbs are engaged in this case. She submitted that whilst no concerns were raised about her clinical practice, Mrs Gibbons indirectly placed patients at a risk of harm by diverting valuable resources away from patient care. Ms Girven submitted that Mrs Gibbons' dishonest conduct has brought the nursing profession into disrepute and a member of the public would be concerned about a nurse who falsified shifts and claimed money. Ms Girven submitted that Mrs Gibbons had breached fundamental tenets of the profession with regard to professional standards of integrity and honesty.

Ms Girven submitted that the dishonesty found proved is serious, as it resulted in financial gain for Mrs Gibbons and it was sustained over a significant period of time. In respect of remediation, she submitted that dishonesty is difficult to remediate particularly where it relates to financial gain. Ms Girven submitted that Mrs Gibbons has denied all of the charges, disengaged with the NMC and might not appreciate and fully understand or recognise the importance of accurately reporting her time off and shift work. Ms Girven submitted that there is no evidence that Mrs Gibbons has strengthened her practice, and there is no reflective piece on how she would avoid doing this again. Ms Girven submitted that Mrs Gibbons has provided information about the culture of the workplace and the stress she was under, but this does not account for the dishonesty and financial gain and there therefore remains a risk of repetition.

Ms Girven invited the panel to find Mrs Gibbons' fitness to practise currently impaired on public protection and public interest grounds. She submitted that Mrs Gibbons placed patients at an indirect risk of harm. Ms Girven submitted that the public would be concerned if a finding of impairment was not made given the dishonesty in this case. She therefore submitted that a finding of impairment was required to uphold and declare proper standards of professional conduct.

The panel accepted the advice of the legal assessor.

## **Decision and reasons on misconduct**

In reaching 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.*’

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 Gibbons’ actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

***‘8 Work co-operatively***

*To achieve this, you must:*

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

***10 Keep clear and accurate records relevant to your practice***

*This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records. To achieve this, you must:*

***10.3 complete records accurately and without any falsification...***

***19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice***

*To achieve this, you must:*

***19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public***

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

*To achieve this, you must:*

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

**20.2** *act with honesty and integrity at all times,...*

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

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

*To achieve this, you must:*

**21.3** *act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that with the exception of charge 8, the charges found proved amounted to misconduct. The panel did not find that the facts found proved in relation to charge 8 amounted to misconduct because it accepted that the excess leave taken by Mrs Gibbons may have been taken unintentionally.

The panel determined that in working for the Agency whilst claiming to have been on a study day, special leave and sick leave was very serious. Mrs Gibbons was in a position of trust as a team leader for a district nursing team, and she had intentionally misled her substantive employer for financial gain, when working for the Agency on these occasions. Furthermore, the panel determined that in working for the agency whilst she was on sick leave and not permitted to return to work for 48 hours, Mrs Gibbons placed vulnerable patients she came into contact with at the Agency's wound clinic at risk of infection and harm.

The panel found that Mrs Gibbons failed to inform her staff on 25 April 2018 that she was working for the Agency. Mrs Gibbons was therefore unavailable to assist staff with leadership and advice on clinical care or to assist if there was a clinical emergency. This was dishonest and put patients at risk and amounted to misconduct.

In respect of the dishonesty charges, the panel determined that these amounted to misconduct. Repeated and sustained dishonesty for financial gain is extremely serious. Although Mrs Gibbons' primary motivation for working for the Agency was to develop her skills in wound care and to work in a less stressful environment, she was diverting her time and expertise away from patients in the district nursing team, and she would have known this resulted in financial gain.

Having regard to all of the above, the panel found that Mrs Gibbons' acts and omissions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Mrs Gibbons' 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 *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 all four limbs engaged in this case. Mrs Gibbons' lack of clarity about whether she was on duty affected her team's understanding of whether she was available for patient care and staff supervision. By not providing the appropriate support to her staff and in particular her deputies, Mrs Gibbons' misconduct placed patients in the community at a risk of harm. The panel found that Mrs Gibbons worked for the Agency when she was not meant to be at work due to sickness and therefore may have placed patients at an unwarranted risk of harm.

The panel determined that Mrs Gibbons' dishonest conduct brought the profession into disrepute. The panel considered that as a senior community nurse Mrs Gibbons was in a position of trust and was expected to act as a role model to her junior colleagues, and to act with honesty and integrity. As honesty and integrity are fundamental tenets of the nursing profession, the panel found that Mrs Gibbons has breached fundamental tenets of the profession. The panel found that Mrs Gibbons acted dishonestly on a number of occasions, over a significant period of time. The panel determined that this dishonesty was serious as it occurred in her nursing practice and it resulted in her receiving financial gain.

The panel bore in mind that concerns involving dishonesty are inherently difficult to remediate. The panel considered whether Mrs Gibbons is able to practise kindly, safely and professionally. The panel found that Mrs Gibbons' actions caused undue stress to her deputies, some of whom were inexperienced and were relying on her to provide assistance and guidance. The panel had sight of a bundle of documents provided by Mrs Gibbons to the NMC in 2019. It had regard to her written responses to the charges at that time and found that Mrs Gibbons appears to have no remorse for her actions or insight into her misconduct. Whilst Mrs Gibbons stated that she could have done more to escalate her concerns about the lack of management support, the panel had limited information before it about any steps Mrs Gibbons has taken to address the concerns and to strengthen her practice. The panel is of the view that there is a risk of repetition

given Mrs Gibbons' lack of insight and remediation. The panel therefore concluded that Mrs Gibbons is not currently able to practise safely and professionally and decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel found that Mrs Gibbons acted dishonestly and unprofessionally. In view of the serious nature of this case, the panel determined that public confidence in the profession would be undermined if a finding of impairment were not made and therefore also finds Mrs Gibbons' fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Gibbons' fitness to practise is currently impaired on both public protection and public interest grounds.

## **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 Gibbons off the register. The effect of this order is that the NMC register will show that Mrs Gibbons has been struck-off the register.

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

## **Submissions on sanction**

Ms Girven submitted that the NMC sanction bid is that of a striking off order. She invited the panel to consider a number of aggravating features of Mrs Gibbons' misconduct. Ms Girven referred the panel to the SG. She submitted that Mrs Gibbons' misconduct, in particular the dishonesty, was serious, sustained for a significant period of time, resulted in personal financial gain and placed patients at a risk of harm. She submitted that Mrs Gibbons' dishonesty and her lack of insight are an indication of deep seated attitudinal concerns. Ms Girven submitted that in mitigation, there were some contextual factors. Ms Girven submitted that due to the seriousness and nature of the facts found proved, a striking off order is the only appropriate order.

## **Decision and reasons on sanction**

Having found Mrs Gibbons' 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:

- As a band 7 team leader in the district nursing team, a higher level of autonomy and trust was placed in Mrs Gibbons. She took advantage of this, and the measures put in place by her employer to help staff, such as study leave and special leave which was a serious breach of trust.
- The dishonesty occurred on a number of occasions and was repeated over a period of about six months and resulted in financial gain for her.
- Mrs Gibbons' has disengaged with the NMC since 2019.
- Patients were placed at an indirect risk of harm.
- Mrs Gibbons has not admitted her misconduct and there is no evidence of any insight or remorse.

The panel also took into account the following mitigating features:

- [PRIVATE].
- There were significant pressures on the district nursing team which was understaffed and included a number of inexperienced team members.
- Mrs Gibbons said that she received limited support from her employer in dealing with a number of difficult staff management issues.
- Record keeping systems and processes were poor, in that there was no system for managing time owing or approving annual leave.
- Mrs Gibbons' nursing practice was not called into question.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the serious nature of the case. Having found that there is a risk of repetition and a risk of harm, the panel determined that an order that does not restrict Mrs Gibbons' practice would not protect the public. 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 serious nature of the case, and the public protection issues identified, an order that does not restrict Mrs Gibbons' 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 Gibbons' 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 Gibbons' 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 found proved in this case. The panel was of the view that the misconduct was not clinical in nature and therefore there are no identifiable areas in Mrs Gibbons' practice that could be addressed through retraining. The panel determined that even if conditions could be formulated to address the dishonesty identified in this case, it is likely that these would be too restrictive and tantamount to a suspension order. Furthermore, the panel decided that a conditions of practice order is not workable given Mrs Gibbons' lack of engagement, remorse and insight. The panel concluded that the placing of conditions on Mrs Gibbons' registration would not protect the public or adequately address the seriousness of this case.

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 found that Mrs Gibbons abused her position of trust and was dishonest on a number of occasions over a period of about six months. Whilst the panel had no

evidence of a deep-seated personality disorder, it considered that Mrs Gibbons' dishonesty and disengagement with the NMC since 2019 raised possible attitudinal concerns. The panel noted that there is no evidence that Mrs Gibbons has repeated the behaviour since the incidents, however, there is no evidence that she has been working as a registered nurse and the panel found that in view of her lack of insight or remorse there remains a risk of repetition.

Having regard to all of the above, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction to protect the public and uphold confidence in the profession.

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 Gibbons was in a position of trust as a band 7 team leader in the district nursing team, a high level of autonomy and trust was placed in Mrs Gibbons and she took advantage of this and her employment conditions which allowed time off to study and for special leave. In working for an Agency when she was receiving money for working for her substantive employer, Mrs Gibbons' actions were dishonest. Her conduct had the potential to cause harm to patients and had placed additional pressure on her team. She was a senior nurse and did not act as a role model to other staff. The panel determined that the regulatory concerns raise fundamental questions about Mrs Gibbons' professionalism.

The panel was of the view that the findings in this case are serious and to allow Mrs Gibbons to continue practising would undermine public confidence in the profession and

in the NMC as a regulatory body. The panel determined that a striking off order is the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards. The panel also determined that Mrs Gibbons' dishonesty and misconduct demonstrates a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register.

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 Gibbons' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, 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.

## **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 Gibbons' own interests until the striking-off sanction takes effect.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Girven who invited the panel to impose an interim suspension order for a period of 18 months to cover any appeal period. She submitted that an interim suspension order is necessary for the reasons set out in the panel's reasons for finding current impairment and imposing a striking off order.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on 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. Having already determined that a striking off order is necessary to protect the public and to satisfy the public interest in this case, to not impose an interim suspension order to cover the appeal period would be inconsistent with its earlier findings. The panel therefore imposed an interim suspension order for a period of 18 months.

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

This will be confirmed to Mrs Gibbons in writing.

That concludes this determination.

