

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

**Substantive Meeting
Tuesday 7 December 2021**

Virtual Meeting

Name of registrant: Miss Zahida Bibi

NMC PIN: 19I0330E

Part(s) of the register: Registered Nurse - Mental Health
(September 2019)

Area of registered address: Rochdale

Type of case: Conviction

Panel members: Philip Sayce (Chair, Registrant member)
Melanie Lumbers (Registrant member)
Anne Rice (Lay member)

Legal Assessor: Michael Levy

Panel Secretary: Sherica Dosunmu

Facts proved: All

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel took account of the Case Management Form (CMF) completed by Miss Bibi on 27 July 2021, where she indicated she would like this case disposed of at a meeting. This precludes Miss Bibi from attending today's proceedings. The panel was informed at the start of this meeting that the notice of the substantive meeting had been sent to Miss Bibi's registered address by recorded delivery and by first class post on 29 October 2021.

The panel took into account that the notice of the substantive meeting provided details of the allegations and Miss Bibi has provided a response to those allegations.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Bibi has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

- 1) On 15 January 2021 were convicted at Liverpool Crown Court of:
 - a) Dishonestly failing to disclose information to make a gain for self/another or cause/expose other to a loss;
 - b) Dishonestly making a false representation to make a gain for self/another or cause loss to other/expose other to risk.

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

Background

On 9 March 2020 the NMC received a referral from Mersey Care NHS Foundation Trust ('the Trust'). Miss Bibi was employed by the Trust between 5 February 2007 and 17 September 2018 as a Band 3 Care Support Worker in a low secure unit working 37.5 hours per week.

On 1 August 2016 Miss Bibi reported being hit on the arm with a brush by a service user while on duty.

Between 5 August 2016 until her dismissal Miss Bibi was absent from work due to alleged sickness (and a period of annual leave). Miss Bibi's absence (due to sickness) consisted of two periods. The first period of sick leave was from 5 August 2016 until 10 February 2017. Miss Bibi then took annual leave, so did not physically return to work; she was due to return to work on 24 March 2017, but informed the Trust on 23 March 2017 that she would be going on sick leave and remained on sick leave until 25 June 2018. During her absence Miss Bibi remained in receipt of at least 85% of her salary, with enhanced rates of pay (nights and weekends) paid additionally. After a Stage 4 final sickness review on 25 June 2018 Miss Bibi's employment was terminated on the grounds of ill-health with effect from 17 September 2018.

On 16 September 2016, while on sick leave from her employment, Miss Bibi commenced a full time BNurs (Hons) Mental Health Nursing Degree programme at the University of Manchester but continued to receive her salary from the Trust. Miss Bibi failed to disclose to the Trust that she was studying for a nursing degree whilst she was absent from work purportedly due to sickness.

Miss Bibi completed her degree course in September 2019. The course consisted of 2300 hours of theory and 2300 hours of practice, including nursing placements which Miss Bibi successfully completed. Miss Bibi was subsequently employed as a staff nurse by Greater Manchester Mental Health NHS Foundation Trust on 7 October 2019.

When the Trust were contacted for a reference a counter-fraud investigation was launched into Miss Bibi's fraudulent receipt of income from the Trust. Miss Bibi was subsequently prosecuted for fraud. On 15 January 2021, she pleaded guilty and was convicted of two counts of fraud as set out in the charges.

On 12 February 2021 Miss Bibi was sentenced as follows:

Count 1

- i. A custodial sentence of 16 months imprisonment which was suspended for 24 months;
- ii. 20 days Rehabilitation Activity Requirement;
- iii. 200 hours unpaid work to be undertaken by 11 February 2022.
- iv. A compensation order of £33,533 to Mersey Care NHS Foundation Trust (figure reduced from original amount of £40,533 to reflect payment already repaid by Miss Bibi)
- v. £3,000 towards prosecution costs.
- vi. Victim surcharge of £140.

Count 2

No separate penalty was imposed.

Decision and reasons on facts

The charge concerns Miss Bibi's conviction and, having been provided with a copy of the certificate of conviction dated 4 June 2021, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*

- (b) *the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) *The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Miss Bibi's fitness to practise is currently impaired by reason of Miss Bibi's conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Representations on impairment

The panel had sight of the NMC's statement of case, which reads as follows:

'11. Ms Bibi is currently impaired by reason of her conviction on public interest grounds. When considering impairment the panel will have regard to the questions posed Mrs Justice Cox adopting the approach of Dame Janet Smith in the 5th Shipman Report in Council for Healthcare Regulatory Excellence and (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927 which are:-

- a. Has [the Registrant] 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 [the Registrant] in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
- c. Has [the Registrant] in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or*
- d. Has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future?*

12. *Limbs b, c and d are engaged in this case.*

13. *With regard to limb b. nurses are expected to act with honesty and integrity so that the trust and confidence placed in them by patients, their families and the public is justified and not undermined. The gravity of Ms. Bibi's offences for dishonesty are liable to bring the profession into serious disrepute.*

14. *With regard to limb c. Ms Bibi's conduct has breached the fundamental tenets of honesty and integrity which are expected of every registered nurse.*

15. *With regard to limb d. Ms Bibi has acted dishonestly repeatedly and over a significant period of time.*

16. *It is submitted that Ms Bibi has fallen short of the standards of a registered nurse as set out in the Code of Conduct. It is submitted that, by virtue of her conviction, she has breached the following standards:-*

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, treating people fairly and without discrimination, bullying or harassment*

20.4 *keep to the laws of the country in which you are practising*

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

21 Uphold your position as a registered nurse or midwife

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*

17. *Article 3(4A) of The Nursing and Midwifery Order 2001 states:-*

The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-

(a)...

(b) to promote and maintain public confidence in the professions regulated under this Order; and

(c) to promote and maintain proper professional standards and conduct for members of those professions.

18. The case of Grant makes it clear that the public interest must be considered paramount and Cox J stated at para 71:

"It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations ... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession".

19. A finding of current impairment is necessary on public interest grounds to give effect to the NMC's objectives as set out above Ms Bibi has admitted the charges and that her fitness to practise is impaired. In the absence of a finding of impairment public confidence in the profession and the NMC as regulator of that profession would be seriously undermined.

20. There is no evidence to suggest that there were any issues with regards to Ms Bibi's clinical practice once she qualified as a nurse and it is not submitted that a finding of impairment is required on public protection grounds.'

Decision and reasons on impairment

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

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

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

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

The panel had regard to Article 3(4A) of The Nursing and Midwifery Order 2001 ('the Order'), which states:

'The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-

(a) to protect, promote and maintain the health, safety and wellbeing of the public;

(b) to promote and maintain public confidence in the professions regulated under this Order; and

(c) to promote and maintain proper professional standards and conduct for members of those professions.'

The panel determined that all three limbs of Article 3(4A) of the Order were engaged.

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 that all four limbs of *Grant* were engaged on the basis of what happened in the past, given the specific vulnerabilities of service users Miss Bibi would care for. Miss Bibi's dishonest conduct, which led to conviction, had breached 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.

The panel took into account the evidence provided regarding matters relating to Miss Bibi's health. However, the panel determined to place little weight on this matter as it was of view that it did not provide an explanation for the level of dishonesty demonstrated in Miss Bibi's actions.

The panel found that this case involves serious dishonesty directly related to Miss Bibi's nursing practice. The panel considered that Miss Bibi fraudulently acquired a large amount of money from the Trust, which was valued in excess of £40,000 over a prolonged period of time, for personal financial gain. The panel was of the view that Miss Bibi's conduct resulting in her conviction was an indication of a dishonest practitioner, which could put patients at unwarranted risk of harm.

Regarding insight, the panel noted that Miss Bibi has demonstrated limited insight in her reflective statement and admission to the charge. Further, the panel considered that Miss Bibi has not provided any reflection as to how her actions put patients at risk, nor has she provided any evidence which demonstrates an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession.

In light of the above, the panel determined that there is a real risk of repetition based on evidence before it. The panel is of the view that due to the limited insight and lack of remediation or remorse, there is nothing to evidence that Miss Bibi's conduct would not be repeated. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that, in this case, a finding of impairment on public interest grounds was required. The panel considered that Miss Bibi's conviction involved fraud directly relating to her nursing practice and concluded that a member of the public would be concerned if a nurse with such conviction was not found to be impaired.

Having regard to all of the above, the panel was satisfied that Miss Bibi's fitness to practise is currently impaired and her actions breached the following sections of the Code:

'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, treating people fairly and without discrimination, bullying or harassment

20.4 keep to the laws of the country in which you are practising

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

21 Uphold your position as a registered nurse or midwife

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’.

Sanction

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

Representations on sanction

The panel had sight of the NMC’s statement of case, which reads as follows:

‘21. The NMC submits that the appropriate and proportionate sanction in this case is a Striking-Off Order. Ms Bibi does not agree but has requested that the appropriate sanction be determined at a meeting.

Aggravating Features

22. The aggravating features of this case are that:-

- the dishonesty was premeditated, prolonged and systematic;*
- Ms Bibi made a personal financial gain as a result of her deception in the sum of approximately £40,000.*

Mitigating features

23. The mitigating features are that:-

- There are no concerns with regards to Ms Bibi’s clinical skills;*

- *Ms Bibi appears to have suffered from some health issues during the relevant period;*
- *Ms Bibi has admitted the charges and that her fitness to practise is impaired.*

Previous Interim Order

24. Ms Bibi has been the subject of a 12 month Interim Suspension Order since 19 March 2021.

Available sanctions

25. The Registrant committed a long standing deception against her former employers and received a substantial sum of money to which she was not entitled. The NMC guidance on Sanctions for Serious Cases (SAN-2) indicates that dishonesty will always be serious because of the importance of honesty to a nurse, midwife or nursing associate's practice. The guidance goes on to state the forms of dishonesty which are most likely to call into question whether a nurse should be allowed to remain on the register. These include the following forms which apply in the present case:-

- *Personal financial gain from a breach of trust;*
- *Premeditated, systematic or longstanding deception.*

26. The gravity of Ms Bibi's conviction requires the NMC to take action in relation to her registration in order to maintain public confidence in the profession and to maintain proper professional standards of conduct for nurses and midwives. To take no further action would not be appropriate or sufficient to meet the public interest. The panel's discretion to take no further action should only be exercised rarely.

27. A Caution Order would not be appropriate or sufficient to meet the public interest. The NMC sanctions guidance indicates such an order is appropriate where the case is at the lower end of the spectrum of impaired fitness to practise which does not apply in a case involving a serious dishonesty offence.

28. A Conditions of Practice Order would not be appropriate or sufficient in this case as the concerns regarding dishonesty do not relate to Ms Bibi's clinical practice.

Conditions cannot be formulated which would meet the dishonesty. Therefore such an order would not be workable.

29. It is submitted that a Suspension Order is neither appropriate nor sufficient to mark the gravity of Ms Bibi's offences.

30. The checklist in the guidance on Suspension Orders sets out the types of cases where a Suspension Order might be appropriate. It is submitted that, in accordance with that guidance a Suspension Order would not be appropriate because Ms Bibi's dishonesty was sustained over a prolonged period of time and was not "a single instance of misconduct.." In addition her conviction evidences a serious attitudinal problem whereas the checklist refers to "no evidence of harmful deep-seated personality or attitudinal problems"

31. The guidance on Striking-Off Orders poses the following questions:-

- "Do the regulatory concerns about the nurse/midwife raise fundamental questions about their professionalism?"*

32. Ms Bibi's conduct has fallen significantly short of the conduct and standards expected of a nurse by virtue of her conviction and fundamentally undermines her trustworthiness and professionalism

- "Can public confidence in nurses and midwives be maintained if nurse/midwife is not removed from the register?"*

33. It is a fundamental requirement of all nurses and midwives that they act with honesty and integrity so that they can justify the trust and confidence placed in them by patients, their families and the wider public. Ms Bibi has seriously undermined that trust and confidence by her criminal conduct and public confidence in nurses and midwives cannot be maintained if she remains on the Register.

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

34. A Striking-Off Order is the only sanction which will maintain professional standards.

35. *In Bolton v Law Society [1993] EWCA Civ 32 Sir Thomas Bingham MR stated:-*
“The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is part of the price.”

36. *Ms Bibi’s actions are so serious as to be fundamentally incompatible with ongoing registration as a nurse. Any detrimental impact upon her as an individual as a result of a Striking-off Order is outweighed by the need to maintain confidence in the profession as a whole. Only a Striking-off Order adequately performs this vital function. In the circumstances the appropriate and proportionate sanction is a Striking-Off order.*

37. *The operational period of Ms Bibi’s suspended sentence comes to an end on 11 February 2023. The panel will bear in mind the general rule in Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Flieschmann [2005] EWHC 87 that a nurse should not be permitted to practise until they have completed their sentence for a serious offence. However it is submitted that a Striking-off Order is the appropriate sanction in any event in view of the nature and gravity of the conviction.’*

Decision and reasons on sanction

Having found Miss Bibi’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:

- The dishonesty was premeditated, prolonged and systematic;

- Miss Bibi made a personal financial gain as a result of her deception in the sum of approximately £40,000.

The panel also took into account the following mitigating features:

- There are no concerns with regards to Miss Bibi's clinical skills;
- Miss Bibi has admitted the charges and that her fitness to practise is impaired.

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 Miss Bibi's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Bibi's conviction 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 Miss Bibi'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 panel considered that the concerns regarding dishonesty in this case do not relate to Miss Bibi's clinical practice. The panel therefore concluded that conditions cannot be formulated which would meet the dishonesty or 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;*

The panel considered that a suspension order would not be appropriate because:

- *Of the existence of evidence of harmful deep-seated attitudinal problems related to honesty; and*
- *The Committee is not satisfied that Miss Bibi has insight and does not pose a significant risk of repeating behaviour.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Bibi's actions is fundamentally incompatible with Miss Bibi remaining on the register.

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?*

Miss Bibi'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 Miss Bibi'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 matters it identified, in particular the effect of Miss Bibi'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 Miss Bibi 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 Miss Bibi's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel had sight of the NMC's statement of case, which reads as follows:

'38. It is in the public interest for there to be an Interim Suspension Order for 18 months to cover the appeal period for the reasons set out above. It would undermine confidence in the nursing profession and the NMC as regulator if Ms Bibi were permitted to practise as a nurse pending the substantive Striking-off Order coming into effect.'

Decision and reasons on interim order

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

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 allow for any possible appeal period.

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

That concludes this determination.