

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

**Substantive Hearing  
Tuesday 25 May 2021 – Tuesday 1 June 2021**

Virtual Hearing

**Name of registrant:** Janice Clair Palmer

**NMC PIN:** 78Y0065N

**Part(s) of the register:** Nurses part of the register Sub part 1  
RN1: Adult nurse, level 1 (4 August 1984)

**Area of registered address:** Belfast

**Type of case:** Misconduct

**Panel members:** Jane Kivlin (Chair, Registrant member)  
Sarah Fleming (Registrant member)  
Rachel Childs (Lay member)

**Legal Assessor:** John Bassett

**Panel Secretary:** Anya Sharma

**Nursing and Midwifery Council:** Represented by Dulcie Piff, Case Presenter

**Mrs Palmer:** Not present and not represented in absence

**Facts proved:** All

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

**Interim order:** **Interim Suspension Order (18 months)**

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

The panel was informed at the start of this hearing that Mrs Palmer was not in attendance and that the Notice of Hearing letter had been sent to Mrs Palmer's registered email address on 20 April 2021.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs Palmer's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Piff, 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.

In the light of all of the information available, the panel was satisfied that Mrs Palmer 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 Palmer**

The panel next considered whether it should proceed in the absence of Mrs Palmer. It had regard to Rule 21 and heard the submissions of Ms Piff who invited the panel to continue in the absence of Mrs Palmer. She submitted that Mrs Palmer had voluntarily absented herself.

Ms Piff referred the panel to the documentation from Mrs Palmer which included an email dated 21 April 2021 stating that she will not be attending the hearing and is content for the hearing to proceed in her absence:

*'Thank you for your email and just to confirm that I will not be attending the hearing and happy for it to proceed'*

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'*.

The panel has decided to proceed in the absence of Mrs Palmer. In reaching this decision, the panel has considered the submissions of Ms Piff and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones R v Jones (Anthony William) (No.2)* [2002] UKHL 5 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 Palmer;
- Mrs Palmer has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- Mrs Palmer has, on a number of separate occasions over the last two years, indicated that she has no wish to attend a hearing.
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have attended today to give live evidence, others are due to attend;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred between 2014 and 2017;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

The panel considered whether there would be some disadvantage to Mrs Palmer in proceeding in her absence. For example, she will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, any such disadvantage is the consequence of Mrs Palmer's decisions to absent herself from the hearing, waive her rights to attend, and/or not to be represented.

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

### **Decision and reasons on application to amend the charge**

The panel heard an application made by Ms Piff, on behalf of the NMC, to amend the wording of charge 1(a).

The proposed amendment was to remove the reference to numerical figures and hours. It was submitted by Ms Piff that the proposed amendment would provide clarity and more accurately reflect the evidence.

"That you, a registered nurse,

1) Between 1 January 2014 and 31 March 2017, misused the E-roster system, namely by,

a. Allocating yourself bank shifts that overlapped with your contracted hours, resulting in you being overpaid for a total of ~~838.78 hours, equal to £19,472.28.~~ "

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mrs Palmer and no injustice would be caused to either party by the proposed amendment being allowed. In reaching this conclusion, the panel had regard to the fact that Ms Piff had stated that, while it was the NMC's case that Mrs Palmer had been overpaid a substantial sum, that sum did not exceed that stated in the unamended charge. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

### **Details of charge as amended**

That you, a registered nurse,

1. Between 1 January 2014 and 31 March 2017, misused the E-roster system, namely by,
  - (a) Allocating yourself bank shifts that overlapped with your contracted hours, resulting in you being overpaid.
  - (b) Using colleague 1's password to finalise and authorise your shifts on the system.
2. Your actions as set out in charge 1(a) were dishonest in that you knew your bank shifts were overlapping with your contracted hours and you intended to make a financial gain from being overpaid for these.
3. Your actions as set out in charge 1(b) were dishonest in that you used colleague 1's password without her knowledge to authorise your shifts on the system with the intention to mislead other colleagues into thinking colleague 1 had authorised your shifts.

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

## Background

The charges arose whilst Mrs Palmer was employed as a registered nurse by Belfast City Hospital, Belfast Health and Social Care Trust (the 'Trust'). At the time, Mrs Palmer was working on Ward 2B at the Cancer Centre at the Belfast City Hospital (the Hospital) as a Band 7 Ward Sister, where she was the most senior nurse on the ward. Mrs Palmer remained in this position until she retired on 31 July 2017.

As the senior nurse, a large part of Mrs Palmer's role was to ensure that there were sufficient staff on the ward, and she did this by using an e-roster system which went live in the Trust in June 2013.

The NMC alleges that Mrs Palmer manipulated the e-roster system in order to secure overpayments for herself. One way in which she did this was to retrospectively alter her substantive shifts on the system and replace them with bank shifts. As a result, it is alleged that Mrs Palmer was paid for bank shifts worked during her contracted hours. It is further alleged that Mrs Palmer tried to cover up her use of the e-roster system by approving payment for the shifts she worked by using another member of staff's login and password.

On 1 March 2017, concerns were raised regarding Mrs Palmer's misuse of the e-roster system on Ward 2B under the Trust's whistleblowing policy by the Deputy Ward Sister at the time. Mrs Palmer was then placed on cautionary suspension by the Trust whilst an investigation was conducted. As part of the investigation, the Trust commissioned external fraud investigators who conducted an audit of the e-roster system from 1 January 2014 to 31 March 2017. The Trust completed its own investigation report in December 2018.

The investigation revealed that Mrs Palmer had been over paid for a total of 838.78 hours between 1 January 2014 – 15 March 2017 equating to a total overpayment of £19,472.88 in salary or £16,204.56 (gross). The Trust, accepting that Mrs Palmer might be due payment for work she had completed at home, made a without prejudice offer to Mrs Palmer requesting that she repay £8,719.43 which she accepted. This figure was

deducted from Mrs Palmer's pension lump sum which the Trust had withheld pending the outcome from the investigations.

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

The panel has drawn no adverse inference from the non-attendance of Mrs Palmer.

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

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

- Ms 1: E Roster and Safe Care Implementation Manager at the Trust at the time of the incident.
  
- Ms 2: Senior Fraud Investigator at Counter Fraud and Probity Services.
  
- Ms 3: Assistant Service Manager at the Trust.
  
- Ms 4: Assistant Service Manager at the Trust and Mrs Palmer's Line Manager at the time.
  
- Colleague 1: Ward Sister on Ward 2B at the Trust

Ms Piff submitted that in the evidence it is accepted that Mrs Palmer had management's agreement to work her hours within four days and she would therefore adjust the start or finish times to reflect this. She submitted that the panel has heard that Mrs Palmer would allocate and/or adjust herself to a bank shift which often took place on one of the contracted days, and contracted hours were then amended to fit into the other days, which subsequently resulted in an hour shortfall.

Ms Piff submitted that the panel has also heard evidence that given the shortfall, Mrs Palmer should have been working in her contracted post at this point rather than in her bank shift. Mrs Palmer was still paid for her contractual hours despite working fewer hours than required, and some of these missing hours from the rota were then worked on a bank shift, which created additional payment. Mrs Palmer's contractual hours were paid every month and she would then receive additional payments for bank shifts. Ms Piff submitted that this resulted in the overpayment of a substantial amount of money. She submitted that due to this, the panel is invited to find charge 1a) proved.

Ms Piff submitted that in relation to charge 1b), the panel has read Mrs Palmer's response in her bundle, where it is stated '*I did use colleague 1's password to finalise bank shifts and I take full responsibility for this and apologise. My only reason for using the password was to ensure all was signed off in a timely manner*'. She submitted that the panel may consider this is acceptance of this charge and referred the panel to the evidence of Colleague 1 who confirmed that she did not provide Mrs Palmer with her login details and was unaware of this until it became apparent to her in 2017 when she subsequently escalated it. Ms Piff stated that in Colleague 1's evidence she also confirms that Mrs Palmer admitted to her that she used her password. Ms Piff invited the panel to find charge 1b) proved.

Ms Piff submitted that both charges 2 and 3 relate to dishonesty, and set out the leading case and its test in relation to dishonesty, *Ivey v Genting Casinos Ltd* [2017] UKSC 67. The test for dishonesty sets out that the panel must first ascertain the individual's knowledge or belief of the facts. Once this is established, the panel must apply the objective standards of ordinary honest people to answer the question as to whether the



conduct was dishonest or honest. There is no requirement that a registrant must appreciate that what they have done is dishonest.

Ms Piff submitted that the panel has heard from five live witnesses and the oral evidence has been comprehensively tested. She submitted that the witnesses all attended voluntarily and gave evidence consistent with their written statements, and have also been fair to Mrs Palmer in their evidence. She submitted that this supports that they are credible, professional and honest witnesses.

Ms Piff submitted that in relation to charge 2 the panel has heard that the bank shifts available on the ward were not released to other members of staff to be filled and Mrs Palmer assigned them to herself. At times a pattern emerged on the e-roster of Mrs Palmer working three extended substantive days and one bank day during the week. Ms Piff submitted that Mrs Palmer was neither authorised to work a three day pattern nor change her work pattern on the e-roster.

Ms Piff submitted that Mrs Palmer wore her Band 7 uniform so it was not apparent to other colleagues that she was completing a Band 5 bank shift during her usual working day. Colleague 1, who worked directly alongside her was also not aware of Mrs Palmer working as a bank nurse.

Ms Piff submitted that Mrs Palmer is described as having a good understanding of the e-roster system. Ms 3 explained in her evidence that if Mrs Palmer had assigned an additional substantive shift to account for the suggested additional hours she had worked, this would have been easier to see on the roster, but instead she assigned a bank shift and lengthened her substantive hours and also explained that the only errors on the e-roster system were made in relation to Mrs Palmer's shifts.

Ms Piff submitted that Ms 4 explained that whilst at times the ward was busy, she was not aware of Mrs Palmer needing more staff in order to conduct her role. Mrs Palmer was reluctant when suggestions in terms of reallocation were made in order to balance workload across the team. She submitted that the panel also heard that whilst Ms 4 was

supposed to be checking the rota, this did not happen and given Mrs Palmer was authorising shifts with Colleague 1's password, these shifts may have been overlooked.

Ms Piff submitted that Colleague 1 was excluded from being involved in the roster, which is suggestive that Mrs Palmer knew what she was doing and why she was trying to hide it. Colleague 1 had explained that Mrs Palmer always took breaks and they would go to a coffee shop together. Ms Piff submitted that Mrs Palmer frequently reduced her break times effectively to suggest her hours fitted into three days, and this also suggests a manipulation of the system. Ms Piff invited the panel to conclude that Mrs Palmer did act dishonestly in that she knew the bank shifts were overlapping with the time she was expected to be working during her substantive shift and she effectively hid that she was working a bank shift from her colleagues. Mrs Palmer intended to make a financial gain from this situation and given the length of time that this progressed for, became skilled in hiding this.

Ms Piff submitted that on the evidence presented, the panel could find on the balance of probabilities that Mrs Palmer acted dishonestly by the standards of ordinary honest people.

Ms Piff submitted that in relation to charge 3, the panel heard that a restriction was built into the e-roster system to prevent staff from finalising their own shifts. The panel also heard that once shifts are finalised the hours go to payroll. Shifts can be finalised on a weekly basis with bank shifts being paid weekly. Ms Piff submitted that Mrs Palmer was aware of this in that she knew to use Colleague 1's password in order to sign off these shifts. Ms Piff referred the panel to the evidence from Colleague 1 in that Mrs Palmer did not have permission to use her password. Colleague 1 also appeared unaware that Mrs Palmer was doing this and explained that she had little involvement in checking the roster, which she found unusual when comparing her role to similar band 6 nurses.

Ms Piff submitted to the panel that Colleague 1 also appeared unaware Mrs Palmer was working bank shifts so frequently. Rota print outs show that on a number of occasions shifts appeared to have been finalised by Colleague 1 on days when Colleague 1 was not on shift. Ms Piff submitted that the panel have also heard that the bank shifts

resulted in Mrs Palmer being overpaid. She submitted that taking all of this into consideration the panel can be confident that on the balance of probabilities Mrs Palmer was acting dishonestly in that her intention was to mislead colleagues into thinking Colleague 1 had finalised the shifts.

Ms Piff invited the panel to find charges 1, 2 and 3 proved.

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

The panel considered the evidence of the witnesses and drew the following conclusions:

Ms 1: The panel considered the evidence of Ms 1 to be credible. Whilst Ms 1 did not have a direct working relationship with Mrs Palmer, the panel found she had very good attention to detail and was useful to the panel in her understanding of how the e-roster system worked, in particular in her assessment of Mrs Palmer as a competent user of the system. The panel found that Ms 1 was honest, clear, methodical and objective in her answers. The panel found that Ms 1's evidence was helpful and that she did her best to assist the panel.

Ms 2: The panel considered the evidence of Ms 2 to be credible. The panel found that Ms 2 was very clear and professional and that her input was very useful in corroborating with what other witnesses had told the panel. The panel also considered that Ms 2's analysis of the incident was also consistent with the other witnesses. Ms 2 was able to provide an interesting overview of how this incident compared to other cases she came across, within other healthcare settings in that it was not exceptional for there to be e-roster issues, but it was unusual for this to occur to the extent seemingly apparent in this case. The panel considered that that Ms 2 had no knowledge of Ms Palmer, and whilst this gave an element of objectivity, she was unable to provide context and insight in regard to Mrs Palmer's motivations and potential dishonesty. The panel found that Ms 2 was very helpful in the conclusions that she had reached in her examination.

Ms 3: The panel considered the evidence of Ms 3 to be credible. The panel found that Ms 3 was very easy to understand and had a clear level of experience, especially in regard to the e-roster system. The panel was of the view that Ms 3 was very logical and was helpful in that she had a level of clinical knowledge to be able to put the issues into the context of the incident. The panel found that whilst Ms 3 did not know Mrs Palmer, she did know the e-roster system, the Trust and the way the e-roster system had been introduced to Trust. The panel also considered that Ms 3 was the first witness who had conducted a face-to-face conversation with Mrs Palmer about what had happened, and provided detail in how Mrs Palmer had reacted to the allegations, in that it was difficult to comprehend her responses. The panel considered that Ms 3 had found it hard to challenge Mrs Palmer due to the verbose and evasive manner in which she had sought to explain her actions. The panel also considered that the fairness of the way Ms 3 gave her evidence was shown in her recognition of Mrs Palmer's accepted authority within the Trust and the professional level of respect in which she was held.

Ms 4: The panel considered the evidence of Ms 4 to be credible. The panel found Ms 4 to be very helpful in providing an insight into the atmosphere of the Ward, how it operated and what the working relationships between colleagues were like, as well as her own working relationship with Mrs Palmer. The panel found that Ms 4 was not defensive about her own difficulties with the e-roster system and fully accepted that she had not supervised Mrs Palmer in the way that was expected. Ms 4 told the panel about her working relationship with Mrs Palmer and how there was a slight element of control present in Mrs Palmer diverting the conversation at times. The panel found that whilst Ms 4 had the impression that the ward was very busy and chaotic with stressed staff, she was not able to tell the panel why this was happening. Ms 4 was also unable to discuss this with Mrs Palmer as she deflected the conversation and did not understand the extent to which she was working above her hours. The panel also considered that Ms 4 found it difficult to discuss this with Mrs Palmer, given her experience and the high level of respect she was regarded with.

Colleague 1: The panel considered the evidence of Colleague 1 to be credible. Colleague 1 told the panel that Mrs Palmer was recognised within the Trust as a very experienced and highly valued nurse. The panel found that Colleague 1 had a high level

of respect for Mrs Palmer despite the breakdown in their relationship following the allegations and investigations. They did not hold any grudges against Mrs Palmer and gave a balanced view of Mrs Palmer's behaviour. The panel found Colleague 1's evidence to be a useful perspective in that it was honest, direct, helpful and very clear. The panel found that Colleague 1 was able to build on the previous evidence heard on working with Mrs Palmer and the dynamics of the ward. The panel considered that Colleague 1 was a very balanced witness who valued their working relationship with Mrs Palmer.

The panel found that Colleague 1 was very helpful and useful in providing information about working practices on the ward. Colleague 1 was able to provide definitive evidence in regard to dishonesty, in how Mrs Palmer never missed her coffee breaks and that her staying longer hours was in order to provide an opportunity for clinical conversations, where one of Mrs Palmer's accounts had suggested this was for clinical need. Colleague 1 provided helpful evidence about their own training when they started as a deputy ward sister, recalling how Mrs Palmer was particularly keen for them (Colleague 1) to receive one-to-one e-roster training, but then effectively blocked them (Colleague 1) from meaningful involvement in the administration of the e-roster system. Colleague 1 told the panel that after they had completed the training, Mrs Palmer had asked them whether they had been provided with a particular password. At the time Colleague 1 confirmed that they had been given this password. They did not change it and in hindsight realised that this how Mrs Palmer came to misuse it. Colleague 1 was clear that they had not given Mrs Palmer permission to use their e-roster password and that they were initially unaware that Mrs Palmer was doing so. When they became aware, they asked her not to use it.

In reaching its decision on the charges, the panel took into account all the evidence adduced in this case including the oral and written evidence of Ms 1, Ms 2, Ms 3, Ms 4 and Colleague 1. The panel noted that it had not had the opportunity of hearing directly from Mrs Palmer. The panel did consider Mrs Palmer's responses to the regulatory concerns set out in her bundle, which included two statements where she indirectly provides her response. Mrs Palmer's bundle also included a letter from her dated 28

January 2020 as well as email correspondence dated 10 July, 13 July and 16 December 2020 in which Mrs Palmer stated that she will not be attending the hearing.

The panel considered all of the charges and made the following findings.

**Charge 1a)**

That you, a registered nurse, between 1 January 2014 and 31 March 2017, misused the E-roster system, namely by,

- a) Allocating yourself bank shifts that overlapped with your contracted hours, resulting in you being overpaid.

**This charge is found proved.**

The panel had regard to both the witness statements of Ms 1 and Ms 2, who had worked alongside each other in producing a desktop audit of Mrs Palmer's substantive and bank shift working between 2015 and 2017. The panel considered Ms 1's and Ms 2's analysis of the audit for Mrs Palmer's shifts worked and the documents provided. The panel noted that the reports provided consistent examples of occasions where Mrs Palmer failed to work all her substantive hours, allocated herself additional bank shifts that were not made available to the wider nursing team, and manipulated the hours that she did work by extending her working day and reducing the amount of time allocated for breaks. This pattern persisted over a long period of time leading to Mrs Palmer being substantially overpaid. Having reviewed the evidence of screenshots from the e-roster system, the panel also concluded that Mrs Palmer's working time record was the only one being amended in this way. No other staff member was allocated bank shifts to replace substantive hours and no other staff member had their shift start and finish times amended or their break times altered or reduced.

The panel also considered that Ms 3's witness statement and evidence corroborated this, in which she states that it had become 'habitual' for Mrs Palmer to have manipulated her shifts in this way resulting in the overpayment.

### **Charge 1b)**

That you, a registered nurse, between 1 January 2014 and 31 March 2017, misused the E-roster system, namely by,

- b) Using Colleague 1's password to finalise and authorise your shifts on the system.

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

In reaching this decision, the panel noted that Mrs Palmer has admitted in her written statement that she did use Colleague 1's password as referenced by Ms Piff.

This confirms the evidence of Colleague 1 given to the panel and also as set out in paragraph 15 of their witness statement.

It is further confirmed by the evidence of Ms 4, who had the responsibility of finalising Mrs Palmer's shifts, and stated in her witness statement that *'at the time [she] did not know that'* the shifts were seemingly being finalised and authorised by Colleague 1.

### **Charge 2)**

2. Your actions as set out in charge 1(a) were dishonest in that you knew your bank shifts were overlapping with your contracted hours and you intended to make a financial gain from being overpaid for these.

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

In reaching this decision, the panel took into account that Mrs Palmer had concealed her behaviour from colleagues. She failed to give any visibility to any staff, including her line manager, of the fact that she was allocating herself additional bank shifts and extending her substantive working days. She told no one that she was using Colleague 1's password until concerns were raised by Colleague 1 in March 2017. Colleague 1

had stated to the panel in her evidence that the only training she had received was in the e-roster system, and it was then never utilised, despite Mrs Palmer being keen for her to complete the training.

The panel further noted that it was only Mrs Palmer's hours that were amended on the e-roster system and that she was a very competent user of the e-roster system, which Ms 3 corroborated in her evidence, stating that Mrs Palmer had an excellent use of the system and that '*this was an expert*'. From this, the panel concluded that Mrs Palmer's misuse of the e-roster system was in no way attributable to her lack of experience or ignorance of the e-roster system.

The panel considered that Colleague 1's evidence was particularly helpful in providing an insight into Mrs Palmer's practice of shortening her breaks on the e-roster system. Colleague 1 had stated that Mrs Palmer never missed a coffee break, which was taken with other ward sisters and their deputies including Colleague 1, on a daily basis. This led the panel to conclude that Mrs Palmer's amendments to the e-roster intentionally misrepresented the hours that she was actually working. Colleague 1 and Ms 4 had both stated that they were unaware of Mrs Palmer undertaking any bank shifts. The evidence was that any bank shifts undertaken by Mrs Palmer would have been as a Band 5 nurse to meet clinical needs. Neither witness had ever seen Mrs Palmer in a Band 5 uniform. She always wore her Band 7 uniform. The panel concluded that this indicated a further lack of transparency and a desire to conceal the fact that she was working in a bank capacity. As stated, the Band 5 shift should have been worked as a clinical patient facing role, but that Mrs Palmer never worked these shifts in this capacity. Colleague 1 confirmed that Mrs Palmer '*never*' wore a Band 5 uniform to work, and was always on the ward as the ward sister. From this the panel concluded that Mrs Palmer was dishonestly hiding the capacity in that she was being paid for her shifts and also the extra bank shifts that she had allocated to herself served no direct clinical need on the ward.

### **Charge 3)**



3. Your actions as set out in charge 1(b) were dishonest in that you used colleague 1's password without her knowledge to authorise your shifts on the system with the intention to mislead other colleagues into thinking colleague 1 had authorised your shifts.

**This charge is found proved.**

In reaching this decision, the panel took into account of Colleague 1's evidence. It was clear that Colleague 1 had not given Mrs Palmer permission to use their password to authorise shifts on the system. In fact, the first time that Colleague 1 became aware that this was what was happening was when they challenged Mrs Palmer about who authorised her bank shifts. Colleague 1 asked Mrs Palmer if it was the Assistant Service Manager (Ms 4) who had authorised the shifts. Mrs Palmer replied, "*No, she doesn't authorise my bank shifts, you do*". Given that the panel has seen evidence that Colleague 1's password had frequently been used over the course of two years when they had not actually been present in the hospital, the panel concluded that Mrs Palmer had dishonestly concealed the fact that she was using the password from Colleague 1.

The general lack of transparency displayed by Mrs Palmer, in hiding that she was using another's password and in using the password to make alterations solely to her own shifts led the panel to the conclusion that her actions were dishonest. She used Colleague 1's password to circumvent the fail-safe in the system which should have prevented her from being able to authorise her own bank shifts for payment.

The panel also considered Colleague's 1 evidence, that Mrs Palmer had shown a sense of urgency when arranging Colleague 1's e-roster training when they started in the Deputy Ward Sister role, suggested an element of premeditation. She made sure her Deputy was trained in the e-roster and issued with a password but then made sure that they were never involved meaningfully in the creation and management of the e-roster. The panel concluded that Mrs Palmer had dishonestly obtained Colleague 1's password and used it for her own financial advantage.

The panel wishes to make it clear that in reaching its decisions on charges 2 and 3, it is satisfied that, assuming Mrs Palmer believed she had been underpaid by the Trust for the hours she had worked between 2014 and 2017, she was well aware that the means she adopted to be 'compensated' for those hours were dishonest.

### **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 Palmer's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as Mrs Palmer's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Palmer's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

Ms Piff drew the panel's attention 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.*' She submitted that a reasonable member of the public would consider Mrs Palmer's actions to be deplorable.

Ms Piff drew the panel's attention to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and submitted that Mrs Palmer had breached fundamental tenets of the nursing profession as set out in the Code.

Ms Piff submitted that Mrs Palmer had been working at the Trust for a substantial period of time and she had dishonestly misused the e-roster system for financial gain, and had also dishonestly used a colleague's login details. Ms Piff submitted that any member of the public would be shocked by Mrs Palmer's conduct and would find it deplorable. Ms Piff invited the panel to find that Mrs Palmer's actions amounted to misconduct.

### **Submissions on impairment**

Ms Piff 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. Ms Piff referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and invited it to consider to whether Mrs Palmer had put patients at an unwarranted risk of harm, whether she had brought the nursing profession into disrepute through her actions, whether she had breached fundamental tenets of the nursing profession or whether she had acted dishonestly.

Ms Piff submitted in that in regard to having put patients at an unwarranted risk of harm, Mrs Palmer's case does not involve her clinical practice and therefore there has been no harm to patients nor an ongoing risk of harm.

Ms Piff submitted that Mrs Palmer's actions brought the nursing profession into disrepute. She submitted that members of the public would expect nurses to act with honesty and integrity at all times, and Mrs Palmer, through her actions, had brought the profession into disrepute.

Ms Piff submitted that Mrs Palmer had breached fundamental tenets of the profession. She submitted that being honest can be considered to be a fundamental tenet of the

nursing profession and Mrs Palmer had breached this, as she had not acted in a trustworthy or honest manner.

Ms Piff submitted that Ms Palmer has acted dishonestly. She submitted that this is a case involving repeated dishonesty for financial gain, over a period of three years.

Ms Piff referred the panel to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and invited the panel to consider whether Mrs Palmer's conduct is capable of remediation, whether it has been remedied, and whether her actions are likely to be repeated in the future.

Ms Piff submitted that Mrs Palmer has not accepted that she acted dishonestly, and therefore the panel is likely to conclude that her conduct has not been remediated. Ms Piff submitted that Mrs Palmer has shown limited insight and has attempted to excuse her actions. Ms Piff submitted that dishonesty is much harder to remediate and raises questions of there being an attitudinal problem present.

Ms Piff submitted that nurses occupy trust and privilege within society and are expected at all times to act with honesty and integrity. Ms Piff submitted that Mrs Palmer's case involves sustained dishonest behaviour over a substantial period of time and resulted in Mrs Palmer making a financial gain from her work at the Trust. Ms Piff submitted that the public interest is clearly engaged and Mrs Palmer's conduct has undermined the trust and public confidence in the nursing profession. Ms Piff submitted that the case of *Grant* highlights that the public interest will remain paramount and a finding of no impairment would undermine the public confidence in the NMC as a regulator.

Ms Piff therefore invited the panel to find that Mrs Palmer's fitness to practise is currently impaired by way of her misconduct on the ground of public interest.

No submissions were received at this stage from Mrs Palmer, but the panel took the time to reconsider the documents she had submitted prior to the hearing.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments including *Roylance*, *Grant* and *Cohen*.

### **Decision and reasons on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance* and to the terms of the Code.

The panel was of the view that Mrs Palmer's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Palmer's actions amounted to a breach of the Code. The panel identified that the following elements of the Code were breached:

#### ***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*

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

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 the charges found proved in this case are of a serious nature. The panel considered that the concerns raised relate to a serious level of dishonesty over a very protracted period of time, with Mrs Palmer's actions as highlighted in the charges being very deliberate, sophisticated, calculated and covert.

The panel had regard to the contextual elements of the case in light of Mrs Palmer's dishonesty. The panel considered that the level of dishonesty had been sustained over a substantial period of time including multiple individual dishonest actions. The panel also took into consideration the level of trust and respect placed in Mrs Palmer by her

colleagues and employers and the authority Mrs Palmer held both on the ward and within the Trust, and how she had taken advantage of this over a long period of time.

The panel found that Mrs Palmer's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

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

The panel next went on to decide if as a result of the misconduct, Mrs Palmer'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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

a) ...

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 noted that there has been no suggestion of direct patient harm in this case but found the remaining three limbs of *Grant* to be engaged in this case.

The panel considered that Mrs Palmer's misconduct had seriously breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that with such long standing sophisticated deception, it is very difficult for the misconduct in this case to be remedied. The panel noted that Mrs Palmer's misconduct was reflective of a deep seated attitudinal problem and that she has made no admission aside from some limited attempts to excuse herself and deflect blame.

The panel therefore formed the view that Mrs Palmer had very limited, if any, insight into the impact of her actions on her colleagues, the Trust and the wider public confidence in

the nursing profession. In the absence of any documentation or evidence from Mrs Palmer to suggest the contrary, the panel is of the view that Mrs Palmer has not remediated the concerns and misconduct arising in this case.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Mrs Palmer's fitness to practise impaired on the grounds of public interest.

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

### **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Palmer off the register. The effect of this order is that the NMC register will show that Mrs Palmer 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 Piff informed the panel that it is the NMC's submission that a striking-off order would be the appropriate sanction in this case. She referred the panel to the SG, including guidance on dishonesty.



Ms Piff submitted that the aggravating features in this case include abuse of a position of trust, a lack of insight into the failings and a pattern of misconduct over a three year period involving sophisticated deception.

Ms Piff submitted that in terms of mitigating factors the panel may consider any personal mitigation, or the fact Mrs Palmer had made limited admissions.

Ms Piff submitted that given the seriousness of the case, taking no further action would be inappropriate as it means the conduct cannot be marked. She submitted that in regard to a caution order, this is often used in cases described as being at the lower end of spectrum of impaired fitness to practise. Ms Piff submitted that given the sustained dishonesty in this case a caution order would not be appropriate.

Ms Piff submitted that given there are no clinical concerns in this case, the panel may find that a conditions of practice order is not appropriate given that there are no identifiable areas requiring retraining or assessment. She also submitted that a suspension order is usually appropriate (as stated in the SG) in a single instance of misconduct, when there is no evidence of harmful, deep seated attitudinal problems. Ms Piff submitted that in these circumstances the conduct was repeated over a period of three years and involved sustained dishonesty by manipulating the e-roster system for Mrs Palmer's own financial gain. Ms Piff submitted that this is suggestive of deep seated attitudinal problems and a suspension order would therefore not be the appropriate or proportionate response in this case.

Ms Piff submitted that the panel will consider a number of questions when considering a striking off order:

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

Ms Piff submitted that in respect of the guidance on seriousness, the panel is invited to consider that this was a misuse of power, there was personal and financial gain from a breach of trust, and that the behaviour could be described as premeditated, systematic and longstanding deception. Ms Piff informed the panel that Mrs Palmer does not accept that she acted dishonestly and therefore has not been able to acknowledge and reduce the risk she poses to public confidence in the nursing profession.

Ms Piff submitted that despite this, there were no issues or concerns about Mrs Palmer's clinical skills or any direct risk of harm to patients.

### **Decision and reasons on sanction**

Having found Mrs Palmer'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:

- Abuse of a position of trust,
- A lack of insight into the failings
- A pattern of misconduct over a three year period involving sophisticated deception and personal financial gain.

The panel also took into account the following mitigating features:

- Mrs Palmer had worked for the Trust for a significant length of time
- Several witnesses have stated prior to these concerns Mrs Palmer was held in high regard by her colleagues and employer

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 interest issues identified, an order that does not restrict Mrs Palmer's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Palmer's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Palmer's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining, in addition to Mrs Palmer's comments that she does not intend to return to nursing practice. Furthermore, the panel concluded that the placing of conditions on Mrs Palmer's registration would not adequately address the seriousness of this case and would not satisfy the public interest.

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;*

Mrs Palmer's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Her misconduct was not a single instance but rather a prolonged period of deception that resulted in significant personal financial gain. She abused the trust of colleagues and her employer and has demonstrated very little insight into her behaviour. The panel concluded that the serious nature of Mrs Palmer's conduct was fundamentally incompatible with Mrs Palmer 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?*

Mrs Palmer's actions were significant departures from the standards expected of a registered nurse, and the panel is of the view that they are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Palmer's actions were serious and to allow her to practise 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. Given that Mrs Palmer's actions had brought the profession into disrepute by adversely affecting the public's view of how registered nurses 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 Palmer's own interest until the striking-off order takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Piff. She submitted that an interim suspension order for a period of 18 months would cover the 28 days before the striking-off order comes into effect, and the subsequent appeal period should Mrs Palmer appeal the decision. She submitted that the grounds for this would mirror the panel's earlier decision in terms of impairment, namely public interest grounds.

Ms Piff submitted that it is acknowledged that the threshold to impose an interim order on public interest grounds alone is a high threshold, but that in these circumstances, given the seriousness of the repeated dishonesty, the threshold has been met.

The panel accepted the advice of the legal assessor.

## **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary 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 given the seriousness of the dishonesty and in the interest of the public in maintaining public confidence in the nursing profession and the NMC as a regulator.

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

This will be confirmed to Mrs Palmer in writing.

That concludes this determination.