

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

**Substantive Hearing
Monday 23 October 2023 – Friday 27 October 2023**

Virtual Hearing

Name of Registrant: Rachel Claire Fisher

NMC PIN 99Y0343E

Part(s) of the register: Registered Nurse – Sub Part 1
Childrens Nursing L1 – September 2002

Relevant Location: Surrey

Type of case: Misconduct

Panel members: Christina McKenzie (Chair, registrant member)
Richard Bayly (Lay member)
Donna Green (Registrant member)

Legal Assessor: Sanjay Lal

Hearings Coordinator: Shela Begum

Nursing and Midwifery Council: Represented by Matthew Kewley, Case
Presenter

Miss Fisher: Not present and unrepresented

Facts proved: Charges 1, 2, 3 and 4

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 Miss Fisher was not in attendance and that the Notice of Hearing letter had been sent to Miss Fisher's registered email address by secure email on 4 September 2023.

Further, the panel noted that the Notice of Hearing was also sent to Miss Fisher's representative at the Royal College of Nursing (RCN) on 4 September 2023. The panel noted that at this date, the RCN was on record as Miss Fisher's representative.

Mr Kewley, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Fisher's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Fisher 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 Miss Fisher

The panel next considered whether it should proceed in the absence of Miss Fisher. It had regard to Rule 21 and heard the submissions of Mr Kewley who invited the panel to continue in the absence of Miss Fisher.

Mr Kewley informed the panel that on 17 August 2023, Miss Fisher made an application to be removed from the register. The application was considered and on 4 October 2023, the application was refused by the Registrar.

Mr Kewley referred to the letter from the RCN dated 5 October 2023 which informed the NMC that they are no longer acting as Miss Fisher's representatives. He informed the panel that following receipt of this information, the NMC made attempts to contact Miss Fisher by telephone and by email but that there has not been any further correspondence received from Miss Fisher.

Mr Kewley submitted that there has been no specific answer from Miss Fisher as to whether she wishes to attend this hearing.

Mr Kewley referred the panel to the documentation before it which informed the panel that Miss Fisher indicated that she does not intend to continue practising as a nurse. She informed the NMC that she does not intend to remain on the register as a nurse and that she is pursuing a different career path.

Mr Kewley submitted that Miss Fisher has voluntarily absented herself. He submitted that Miss Fisher was made aware of this hearing by the NMC and by way of her former representatives and that she has chosen not to attend.

Mr Kewley submitted that based on the information before the panel, it is clear that Miss Fisher does not intend to participate in these proceedings. He told the panel that there has been no request from Miss Fisher to adjourn this hearing, and there is no suggestion that the dates that the hearing has been scheduled for are of any particular inconvenience to Miss Fisher. For these reasons, he submitted that there is no reason to suggest that an adjournment of this hearing would secure Miss Fisher's future attendance. Further, Mr Kewley informed the panel that there have been two witnesses warned to attend this hearing.

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)* (No.2) [2002] UKHL 5.

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

- No application for an adjournment has been made by Miss Fisher;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have been warned to attend this hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2021;
- 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 accepted that there may be some disadvantage to Miss Fisher in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address, 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. It had regard to her responses to the

allegations contained within her reflective accounts. Further, the panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Fisher's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge

'That you, a registered nurse, while employed at Enviva Complex Care ("Enviva") and Thornbury Community Services ("TCS"):

1. On one or more occasion as set out in Schedule A, submitted time sheets in which you claimed to work at both Enviva and TCS simultaneously.
2. Received payment for the shifts in Schedule A from Enviva and TCS.
3. Your actions in charge 1 and/or charge 2, were dishonest in that you claimed and/or received payment for work you were not entitled.
4. On one or more occasion in Schedule B, worked back-to-back shifts at Enviva and TCS.

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

Schedule A:

- a. 18 September 2019;
- b. 11 October 2019;
- c. 12 October 2019;
- d. 17 October 2019;
- e. 28 October 2019;
- f. 4 November 2019;
- g. 16 November 2019;
- h. 23 November 2019;
- i. 9 December 2019;
- j. 10 December 2019;
- k. 7 January 2020;
- l. 29 January 2020;
- m. 11 March 2020;
- n. 16 March 2020;
- o. 22 March 2020;
- p. 25 March 2020;
- q. 31 March 2020;
- r. 3 April 2020;
- s. 21 May 2020;
- t. 24 May 2020;
- u. 6 June 2020;
- v. 13 June 2020;
- w. 17 June 2020;
- x. 24 June 2020;
- y. 4 July 2020;
- z. 12 July 2020;
- aa. 16 July 2020;

bb. 21 July 2020;

Schedule B:

- a. 1 November 2019;
- b. 8 November 2019;
- c. 4 April 2020;
- d. 10 April 2020;
- e. 27 April 2020;
- f. 3 May 2020;
- g. 23 May 2020;
- h. 30 May 2020;
- i. 7 June 2020;
- j. 11 June 2020;
- k. 21 June 2020;
- l. 10 July 2020;

Background

The charges arose whilst Miss Fisher was employed as a registered nurse for Enviva Complex Care (“Enviva”) and Thornbury Community Services (“TCS”).

Enviva and TCS are companies involved in providing care to both paediatric and adult clients who have complex care needs and a majority of the clients are cared for within their own homes. Miss Fisher was employed by Enviva to provide care to Patient A at their home.

It is alleged that Miss Fisher submitted timesheets to both Enviva and TCS for shifts she claimed to have worked. When the timesheets were checked by both Enviva and TCS, it became apparent that Miss Fisher had allegedly been submitting timesheets to both companies claiming payment for shifts that were for the same dates and times.

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 oral and written submissions made by Mr Kewley on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Miss Fisher.

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

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

- Witness 1: Quality Assurance Manager, Enviva
Complex Care (at the time of the incidents)
- Witness 2: Quality Management Coordinator,
Thornbury Community Services.

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

Charge 1

1. On one or more occasion as set out in Schedule A, submitted time sheets in which you claimed to work at both Enviva and TCS simultaneously.

This charge is found proved.

In reaching this decision, the panel took into account the documentary evidence which included Time Sheets and Payslips from both Enviva and TCS. It also took into account the evidence of Witnesses 1 and 2.

The panel heard from Witness 1 and Witness 2 during the hearing. Both witnesses informed the panel that when an employee completes a shift, both the nurse and the client would be required to sign to confirm the shift has been worked and then the time sheet is submitted to payroll in order to be paid for that shift.

The panel was informed that payroll would check the time sheet against the planned shift rota and if the time sheet corresponded with the information on the shift rota, payment would be made to the nurse.

The panel had regard to the documentary evidence which included timesheets and payslips reflecting relevant dates as set out in Schedule A. The panel noted that, in relation to the TCS shifts, it did not have some of the time sheets or corresponding payslips (namely, 7 January 2020, 29 January 2020, 11 March 2020, 16 March 2020, 22 March 2020, and 25 March 2020). However, it did have access to the summary of shifts worked by Miss Fisher provided by Witness 2 which included those dates. It also had regard to TCS payslips for 29 January 2020 and 22 March 2020 and that these documents would not exist if a corresponding time sheet had not been submitted. Further, the panel noted that the charge sets out “on one or more occasions as set out in Schedule A.

The panel had regard to the TCS time sheets which evidence that Miss Fisher submitted Time Sheets for the following dates: 18 September 2019, 11 October 2019, 12 October 2019, 17 October 2019, 28 October 2019, 4 November 2019, 16 November 2019, 23 November 2019, 9 December 2019, 10 December 2019, 31 March 2020, 3 April 2020, 21 May 2020, 24 May 2020, 6 June 2020, 13 June 2020, 17 June 2020, 24 June 2020, 4 July 2020, 12 July 2020, 16 July 2020, and 21 July 2020. It also had regard to the corresponding payslips for these timesheets.

The panel had regard to the Enviva time sheets which evidence that Miss Fisher submitted Time Sheets for the following dates: 18 September 2019, 11 October 2019, 12 October 2019, 17 October 2019, 28 October 2019, 4 November 2019, 16 November 2019, 23 November 2019, 9 December 2019, 10 December 2019, 7 January 2020, 29 January 2020, 11 March 2020, 16 March 2020, 22 March 2020, and 25 March 2020. 31 March 2020, 3 April 2020, 21 May 2020, 24 May 2020, 6 June 2020, 13 June 2020, 17 June 2020, 24 June 2020, 4 July 2020, 12 July 2020, 16 July 2020, and 21 July 2020. The panel also had regard to the corresponding payslip from Enviva for these timesheets.

Based on the evidence before it, the panel determined, on the balance of probabilities, it is more likely than not, that on one or more occasion as set out in Schedule A, Miss Fisher submitted time sheets in which she claimed to work at both Enviva and TCS on the same shift on the same day. It therefore finds this charge proved.

Charge 2

2. Received payment for the shifts in Schedule A from Enviva and TCS.

This charge is found proved.

In reaching this decision, the panel took into account the documentary evidence which included evidence of payslips from Enviva and from TCS.

The panel took account of the evidence from Witnesses 1 and 2. Both witnesses confirmed that following submission of a signed time sheet, Miss Fisher would have been received payment in accordance with the time sheet.

The panel had regard to the payslips from TCS and Enviva which evidenced that Miss Fisher had received payments for the time sheets submitted for the dates as set out in Schedule A.

The panel had regard to Witness 2's documentary and oral evidence in relation to the dates where it has not been possible to locate a TCS payslip for some dates, namely 7 January 2020, 11 March 2020, 16 March 2020 and 25 March. Her email dated 15 December 2020 which includes a summary of the shifts worked by Miss Fisher details these dates. During her evidence, Witness 2 confirmed that Miss Fisher would have received payments for the time sheets she submitted for those dates.

The panel determined, on the balance of probabilities, it is more likely than not that, Miss Fisher did receive payments for the shifts as set out in Schedule A from Enviva and TCS. It therefore finds this charge proved.

Charge 3

3. Your actions in charge 1 and/or charge 2, were dishonest in that you claimed and/or received payment for work you were not entitled.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it.

In its consideration of this charge, the panel gave regard to the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 which sets out:

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

The panel noted that Miss Fisher had been submitting a time sheet for the same shift to two separate employers over a significant period of time spanning from 18 September 2019 to 21 July 2020. The panel noted Miss Fisher’s reflective piece in which she stated:

“[PRIVATE]. I am a professional and take full accountability for my actions and will face the consequences which I am faced with.

As shown the timesheets which were submitted with the incorrect hours are correct, I failed to amend the hours according to the actual hours I worked over a period of time.”

The panel considered the actual state of Miss Fisher’s knowledge at the time.

The panel determined that, based on the evidence before it, Miss Fisher would have been aware that she was claiming payment for the same shift to two separate employers when she would not have been entitled to do so. The panel found that it is inherently unlikely that Miss Fisher held the genuine belief that she was entitled to claim and receive payments from both TCS and Enviva for the same shifts. Further, the panel noted that Miss Fisher repeatedly submitted time sheets for several shifts to both TCS and Enviva and, [PRIVATE], it was not satisfied that she would not have been aware of why she should not have been doing this.

In addition, the panel found that Miss Fishers actions as set out in charges 1 and 2 would be considered as dishonest by the standards of ordinary decent people.

Based on all of the reasons above, the panel finds this charge proved.

Charge 4

4. On one or more occasion in Schedule B, worked back-to-back shifts at Enviva and TCS.

This charge is found proved.

In reaching this decision, the panel took into account the documentary evidence before it.

The panel had regard to time sheets which evidenced that Miss Fisher claimed and received payments for back-to-back shifts (consecutive shifts without a break). The panel had regard to time sheets from TCS for the following dates: 1 November 2019, November

2019, 4 April 2020, 3 May 2020, 23 May 2020, 30 May 2020, 7 June 2020, 11 June 2020, 21 June 2020, 10 July and 2020. The panel also had regard to time sheets from Enviva for the following dates: 1 November 2019, November 2019, 4 April 2020, 10 April 2020, 27 April 2020, 3 May 2020, 23 May 2020, 30 May 2020, 7 June 2020, 21 June 2020, 10 July and 2020.

The panel took into account Miss Fishers reflective accounts in which she states:

“I have never worked a shift back-to-back and would not compromise patient safety ever by doing this. If I was to work back-to-back shifts this would put patient safety at risk and be neglect.”

In a separate reflective account, Miss Fisher stated:

“I understand that this has now led Thornbury to believe that I may have worked back-to-back shifts. I never worked back-to-back to shifts and would never risk compromising patient care. I was always 100% committed and fully able to carry out my care giving and safety for the Children was never in doubt and never has been during my entire career. The children I cared for and their safety was always paramount.”

The panel took into account Miss Fisher’s account that she would never work back-to-back shifts.

The panel had regard to Witness 2’s evidence and noted that she conducted an investigation into these concerns which included examining patient records, speaking to the client and checking the time sheets and corresponding payslips. The information retrieved during these investigations supported the conclusion that Miss Fisher had worked back-to-back shifts on those occasions as set out in Schedule B.

The panel determined, on the basis of the evidence before it, it is more likely than not on the balance of probabilities, Miss Fisher did work back-to-back shifts at Enviva and TCS. It therefore finds this charge proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Fisher's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration. 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, Miss Fisher's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Mr Kewley invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code)' in making its decision.

Mr Kewley identified what he said were the specific, relevant standards where Miss Fisher's actions amounted to misconduct.

Mr Kewley reminded the panel that the concerns in this case do not relate to Miss Fisher's clinical practice but instead relate to her professional conduct. He acknowledged that the panel has before it, testimonials which suggest that Miss Fisher is a very competent and indeed highly experienced nurse.

Mr Kewley addressed the dishonesty in connection with the claims for payment for shifts that Miss Fisher was not entitled to. He submitted that this dishonesty was on the higher end of the spectrum in that it relates to a nurse who engaged in repeated deliberate acts of dishonesty for her own personal financial gain. He submitted that there would have been some degree of planning which went into Miss Fisher's actions and that her actions were not spontaneous or opportunistic acts of dishonesty. Further, he submitted that this was dishonesty which spanned a significant period of time.

Mr Kewley told the panel that during witness evidence, it heard that Enviva and TCS were companies which relied on the trustworthiness of Miss Fisher that she was claiming for the correct shifts and completing documents accurately and truthfully. He submitted that the companies relied on Miss Fisher to have acted honestly given that she was working autonomously and not within a hospital environment where there is the presence of layers of supervision and management.

Mr Kewley submitted that Miss Fisher was being trusted to work out in the community, in patient's houses and that she breached the high degree of trust that was placed on her for her own personal gain.

Mr Kewley submitted that Miss Fisher also worked back-to-back shifts. He submitted that, whilst there has been no evidence of actual harm to patients, there was the potential for a risk of harm as a result of this. He submitted that there was an expectation in respect of night shifts that Miss Fisher would be awake, alert, and fully able to deal with these complex patients throughout the duration of the night shift. He submitted that the panel could infer that Miss Fisher cannot be deemed fully fit and ready for duties if she had just completed a shift before beginning another. He informed the panel that the TCS system would not have allowed this shift to be booked and that it would flag up due to the issue of risk.

Mr Kewley submitted that there has been a serious falling short such that it amounts to misconduct.

Submissions on impairment

Mr Kewley 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Kewley submitted that a finding of impairment is necessary on public protection and public interest grounds.

Mr Kewley submitted that the NMC recognizes no actual harm came to patients from Miss Fisher's actions. However, he stated that the risk of harm from the dishonesty is wider than direct patient harm, because of course the dishonesty raises issues about Miss Fisher's character and her honesty and her integrity.

Mr Kewley submitted that a fundamental tenet of nursing is that those on the register should have the required degree of good character, honesty and integrity.

Mr Kewley submitted that back-to-back working has a potential to create a risk to patients in circumstances where a nurse may not be fully fit. In terms of future risk, he told the panel that one of the difficulties in this case is that Miss Fisher hasn't engaged with this final hearing. Whilst he submitted that this should not result in any adverse findings against Miss Fisher, he submitted the practical consequence of someone not engaging is that the panel is deprived of a good opportunity to assess Miss Fisher's insight and assess whether she has strengthened her practice so as to work out whether or not there is a risk of repetition going forward.

Mr Kewley referred to Miss Fisher's reflective pieces. He submitted that these appear to evidence some acceptance of the fact that the time sheets were simply not correct. However, he submitted that the difficulty here is that that reflection is really targeted at the wrong issues and not about the dishonesty in this case. He submitted that there has been no recognition at all or engagement with that issue within the reflective pieces and no meaningful insight into the dishonesty issue.

Mr Kewley submitted that, in relation to the strengthening her practice, there is no dispute at all about her clinical skills. This is really about professionalism and professional conduct, and there is no evidence before the panel that Miss Fisher has meaningfully addressed those issues or completed any relevant training or wider reading about professional ethics.

Mr Kewley referred the panel to the character references, but he submitted that the panel may consider these to be of limited relevance on the basis that there isn't any dispute that the registrant is clinically competent. He submitted that there is limited weight that can be placed on those character references.

Mr Kewley submitted that the risk of repetition of the misconduct remains high in this case, and that clearly presents an issue of public protection.

Mr Kewley submitted that the public interest is at the heart of this case. He submitted that this is conduct which strikes at the heart of the values that are expected of registrants, namely honesty and integrity. He submitted that nurses have to be capable of being trusted when no one is watching. For that reason, he submitted that a finding of impairment is in the interest of the wider public interest impairment.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that Miss Fisher's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Fisher's actions amounted to a breach of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

1.2 make sure you deliver the fundamentals of care effectively

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.

10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

13 Recognise and work within the limits of your competence

13.4 take account of your own personal safety as well as the safety of people in your care

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

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your profession at all times

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

In respect of charges 1 and 2, the panel found that Miss Fisher's actions were sufficiently serious to amount to misconduct. It found that she on more than one occasion knowingly submitted time sheets and received payment for shifts that she was not entitled to. Miss Fisher's actions, in falsifying information she was submitting on her time sheets, breached a fundamental tenet of nursing and brings her trustworthiness into question. The panel noted that her actions occurred over an extended period of time and were repeated and deliberate acts of claiming and receiving money for shifts she was not entitled to. The panel considered that Miss Fisher's actions in claiming and receiving payment for shifts that she was not entitled to impacts on patient care in that the funds she was incorrectly claiming may have been used for other patients.

In respect of charge 3, the panel found that Miss Fisher failed to act with honesty and integrity, specifically in relation to financial dealings. The panel found that Miss Fisher's dishonesty was on the higher end of the spectrum and relates to ongoing deliberate acts by her for her own personal financial gain. The panel determined that Miss Fisher's actions would be considered deplorable by a member of the public and fell far below the proper standards expected of a registered nurse.

In respect of charge 4, the panel determined that in working back-to-back shifts, Miss Fisher failed to prioritise patient safety in that she did not take measures to reduce the likelihood of mistakes, particularly given the patients she was caring for had complex needs. Miss Fisher would not have been deemed ready to fulfil her nursing duties after completing one shift and beginning another straight away.

For all the reasons above, the panel found that Miss Fisher's actions did fall seriously short of the conduct and standards expected of a nurse. The panel concluded that Miss Fisher's actions demonstrate a serious departure from the Code and the fundamental tenets of nursing. The panel has found that her actions were so serious to amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Fisher'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.

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 limbs a – d of the “test” are engaged in this case.

Whilst the panel noted that no actual harm was caused to patients as a result of Miss Fisher’s actions, it found that there was serious potential for patient harm to be caused. Specifically in relation to Miss Fisher working back-to-back shifts, the panel found that patients would not have been offered the degree of required care given that Miss Fisher would not have been deemed to be fully alert or ready for nursing duties.

Miss Fisher’s misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel took into account the reflective accounts provided by Miss Fisher. However, the panel was not satisfied that Miss Fisher has demonstrated that she has an understanding of how her actions put patients at a risk of harm. The panel found that Miss Fisher has very limited insight about potential reasons for her actions and therefore found that she is liable in the future to repeat her misconduct and bring the profession into disrepute.

The panel carefully considered the evidence before it in determining whether or not Miss Fisher has taken steps to strengthen her practice. The panel took into account that Miss Fisher has indicated to the NMC that she does not wish to return to nursing practice or remain on the register. The panel did not have any evidence of steps she has taken to strengthen her practice or any evidence of remediation in relation to her dishonesty. For these reasons, the panel determined that there is a risk of repetition.

In light of these circumstances, 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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession and its regulator would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that Miss Fisher'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 Miss Fisher off the register. The effect of this order is that the NMC register will show that Miss Fisher 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

Mr Kewley informed the panel that in the Notice of Hearing, the NMC had advised Miss Fisher that it would seek the imposition of a striking off order if the panel found that her fitness to practise is currently impaired.

Mr Kewley submitted that the purpose of a sanction is to primarily protect the public and that it also encompasses the need to maintain public confidence in the nursing profession.

Mr Kewley addressed the issue of dishonesty. He referred the panel to the SG and specifically the guidance on considering sanctions for serious cases and for cases which relate to dishonesty. He submitted that the guidance explains that honesty is of central importance to a nurses practice and it makes the point that dishonesty allegations will always be serious. He stated that it is for the panel to make an assessment of the dishonesty in the individual case and that the guidance recognises that not all dishonesty is equally serious.

Mr Kewley submitted that in this case, there are two markers of seriousness which are engaged. First, the dishonesty was intended for Miss Fishers personal financial gain and second, the dishonesty was premeditated, systematic and longstanding deception as opposed to dishonesty that occurred in the spur of the moment. He submitted that the dishonesty was persistent and there was an element of planning which went into it. He therefore reiterated that the dishonesty was towards the higher end of the spectrum.

Mr Kewley addressed the panel on what the NMC deemed to be aggravating features in this case. He submitted that these included Miss Fisher's lack of insight, absence of any remorse, and her lack of engagement in addressing the central issues.

Mr Kewley submitted that, a lack of any previous findings by the NMC does not amount to mitigation, particularly in a case which relates to systematic, long standing and repeated dishonesty over a significant period of time. [PRIVATE].

Mr Kewley submitted that, given the panel's findings on the ongoing risk of repetition, taking no action, imposing a caution order or a conditions of practice order, would be insufficient to address the risk of repetition and the misconduct is not at the lower end of the spectrum.

Mr Kewley addressed a suspension order. He submitted that there are a number of reasons why the NMC submits that a suspension order would not be sufficient to protect the public or maintain public confidence. He submitted that this included the serious nature of the dishonesty, the lack of insight and lack of remorse, and the fact that there is not any evidence of Miss Fisher's future willingness to reflect and engage with the issues. He submitted that the panel is aware that Miss Fisher does not intend on returning to nursing practice and therefore there is no reason to believe she might in the future start to reflect and engage with these issues.

In closing, Mr Kewley submitted that for all the reasons above a suspension order is not the appropriate sanction in this case and would be insufficient to protect the public and maintain public confidence. He therefore submitted that this only leaves a striking off order.

Decision and reasons on sanction

Having found Miss Fisher'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:

- A pattern of misconduct over a significant period of time
- Conduct which put patients at potential risk of harm
- Abuse of a position of trust
- Lack of insight and remorse into failings
- Lack of remediation and steps taken to address the concerns.

[PRIVATE]. However, the panel was not satisfied that it had evidence of any mitigating features that were present.

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 Fisher'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 Fisher'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 Miss Fisher'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 facts found proven in this case. The misconduct identified in this case was not something that can be addressed through retraining given that this is a case which relates to dishonesty which took place over a significant period of time. The panel found that dishonesty is not something which can normally be managed by a conditions of practice order. Furthermore, the panel concluded that the placing of conditions on Miss Fisher's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel found that the factors as set out above do not apply in the circumstances of this case.

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

Further, the panel noted that Miss Fisher has indicated that she does not intend to return to nursing practice and that she does not wish to remain on the register. It therefore concluded that a suspension order would serve no useful purpose in the circumstances of this case.

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?*

The panel considered that Miss Fisher'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 Fisher's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Fisher'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 Fisher 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 Fisher's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Kewley. He submitted that an interim suspension order is required for a period of 18 months to cover the 28-day appeal period and any period it may take to deal with an appeal if one is lodged by Miss Fisher. He submitted that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period and the period for which any appeal may be dealt with.

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

That concludes this determination.