

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

Substantive Meeting

Monday, 15 and Wednesday, 17 January 2024

Virtual Meeting

Name of Registrant: Bhagwantee Gopaul

NMC PIN 03103420

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing (RN1) – 15 September 2003

Relevant Location: Warrington

Type of case: Misconduct

Panel members: Debbie Hill (Chair, Lay Member)
Catherine Askey (Registrant Member)
Georgina Foster (Lay Member)

Legal Assessor: Oliver Wise

Hearings Coordinator: Angela Nkansa-Dwamena

Facts proved: Charges 1, 2, 3, 4, 5 and 6

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 Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mrs Gopaul's registered email address by secure email on 11 December 2023.

Further, the panel noted that the Notice of Meeting was also sent to Mrs Gopaul's representative at the Royal College of Nursing (RCN), who was copied into the above email.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations and the fact that this meeting was to be heard on or after 15 January 2024.

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

Details of charge

That you, a registered nurse, whilst employed by Spire Cheshire Hospital:

- 1) Worked for Pall Mall Hospital whilst on sick leave from Spire Cheshire Hospital on one or more of the dates set out in Schedule 1.
- 2) Worked for Transform Pines Hospital whilst on sick leave from Spire Cheshire Hospital on one or more of the dates set out in Schedule 2.
- 3) Worked for First Trust Hospital whilst on sick leave from Spire Cheshire Hospital on one or more of the dates set out in Schedule 3.
- 4) Worked for one or more of the following care centres and /or hospitals set out in Schedule 4 whilst on sick leave from Spire Cheshire Hospital on one or more of the dates set out in Schedule 5.

- 5) Worked for Optical Express at one or more of the branches set out in Schedule 6 whilst on sick leave from Spire Cheshire Hospital on one or more of the dates set out in Schedule 7.
- 6) Your conduct as alleged in charges 1 and/or 2 and/or 3 and/or 4 and/or 5 above was dishonest in that you were representing to Spire Cheshire Hospital that you were not well enough to work when you knew that was not the case.

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

Schedule 1

09.08.21
11.08.21
13.09.21
18.09.21
25.08.21
20.08.21
05.08.21
21.07.21

Schedule 2

01.08.21
07.08.21
08.08.21
10.10.21
12.08.21
12.09.21
12.10.21
13.10.21
17.10.21
13.07.21
19.09.21
22.08.21
29.08.21
07.11.20
08.11.20

Schedule 3

13.04.21
27.07.21
30.07.21
30.01.21
28.09.21
04.06.21
01.06.21
05.01.21
08.05.21
07.07.21

09.09.21
13.06.21
13.08.21
11.05.21
15.09.21
14.06.21
18.06.21
21.05.21
21.10.21
20.07.21
23.09.21
24.06.21
26.06.21
28.05.21
25.10.21
27.10.21
29.10.21
30.06.21

Schedule 4

Blackpool CEC
Avroe Eye
Avroe Eye Community Centre
Avroe Court
Avroe Crescent
Preston CEC
Manchester Community Care
Wakefield CEC
Coventry Eye Care

Schedule 5

28.04.21
04.04.21
08.04.21
09.04.21
08.03.21
11.03.21
12.04.21
14.04.21
15.04.21
16.04.21
19.04.21
20.04.21
26.03.21
25.03.21
22.03.21
08.05.21
26.10.20
27.10.20
30.10.20
31.12.20

30.12.20
29.12.20
29.09.20
30.11.20
01.12.20
01.09.20
07.02.21
06.02.21
03.02.21
01.02.21
05.11.20
03.11.20
02.11.20
08.10.20
06.10.20
05.10.20
13.12.20
12.12.20
08.12.20
07.12.20
07.09.20
08.09.20
11.02.21
10.02.21
09.02.21
08.02.21
15.11.20
13.08.20
16.01.21
20.12.20
16.11.20
17.11.20
19.11.20
20.08.20
22.10.20
20.10.20
19.10.20
21.12.20
22.12.20
21.09.20
24.11.20
23.11.20
24.11.20
30.01.21
28.01.21
26.01.21
25.01.21
01.03.21
12.10.20
13.10.20
16.03.21

18.03.21
23.01.21
21.01.21
19.01.21
18.01.21

Schedule 6
Nottingham
Birmingham
Manchester
Glasgow
London

Schedule 7
31.05.21
02.06.21
06.04.21
07.04.21
10.04.21
07.06.21
10.06.21
11.06.21
12.06.21
17.04.21
16.06.21
17.06.21
19.06.21
21.06.21
22.06.21
23.06.21
25.06.21
24.03.21
25.03.21
26.03.21
27.06.21

Background

The Nursing and Midwifery Council (NMC) received a referral from the Director of Clinical Services at Spire Healthcare (Spire) on 15 October 2021, in relation to Mrs Gopaul. The charges arose whilst Mrs Gopaul was employed as a registered nurse in the Theatre Department at Spire Cheshire Hospital (the Hospital).

It was reported that from 14 April 2020 until October 2021, Mrs Gopaul was absent from the Hospital on long term sick leave [PRIVATE].

In March 2020, Mrs Gopaul registered with Nursing Zone, an agency, via her limited company and from November 2020, Mrs Gopaul undertook 18 shifts with Nursing Zone. At the time, Mrs Gopaul did not inform Nursing Zone that she was on sick leave from Spire. Mrs Gopaul was also registered with MCM, on a zero-hour contract via her personal service company. Between September 2020 and October 2021, Mrs Gopaul undertook numerous shifts for MCM, up to five times per week. Mrs Gopaul did not tell MCM that she was on long term sick leave from Spire.

In April 2021, Mrs Gopaul registered with Blackrock Medical and undertook agency shifts for them in August and September 2021. An anonymous whistleblower informed Spire that Mrs Gopaul had been seen working at Pall Mall Hospital whilst on long term sick leave. Spire attempted to contact Mrs Gopaul to discuss these concerns, but she was not available. Mrs Gopaul subsequently resigned from her position at Spire.

Since her resignation from Spire, Mrs Gopaul has been working as a nurse for Optical Express.

Decision and reasons on facts

At the outset of the meeting, the panel noted Mrs Gopaul's returned Case Management Form (CMF) completed on 30 October 2023, indicated that she had made full admissions to all the charges.

The panel therefore finds Charges 1, 2, 3, 4, 5 and 6 proved in their entirety, by way of Mrs Gopaul's admissions.

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 Gopaul's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the NMC's written representations in relation to misconduct and impairment:

Misconduct

10. It is submitted that the facts amount to misconduct.

*11. The comments of Lord Clyde in *Roylance v General Medical Council* [1999] UKPC 16 may provide some assistance when seeking to define misconduct:*

'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

*12. As may the comments of Jackson J in *Calheam v GMC* [2007] EWHC 2606 (Admin) and Collins J in *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), respectively*

'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.

And

'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.

13. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct 2015 ('the Code').

14. At all relevant times, Mrs Gopaul was subject to the provisions of the Code. The Code sets out the professional standards that nurses must uphold. These are the standards that patients and members of the public expect from health professionals. On the basis of the charges alleged, it is submitted, that the following parts of the Code have been breached in this case;

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 nurse, midwives and nursing associates to aspire to

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

To achieve this, you must:

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

15. *It is submitted that Mrs Gopaul's conduct detailed in charges 1-6 fell far short of what would have been expected of a registered nurse. Mrs Gopaul's significant departure from the principles of promoting professionalism and trust by dishonestly misrepresenting the state of her health to her employer to obtain sick pay whilst being paid for other work, would be seen as deplorable by fellow practitioners and would damage the trust that the public places in the profession. Acting with honesty and integrity at all times are integral to the standards expected of a registered nurse and central to the Code.*

16. *Mrs Gopaul's conduct fell far below what would be expected of a registered nurse and a finding of misconduct must follow.*

17. *The provisions of the Code constitute fundamental tenets of the profession and Mrs Gopaul's actions have clearly breached these in so far as they relate to promoting professionalism and trust.*

Impairment

18. *It is submitted that Mrs Gopaul's fitness to practice is impaired by reason of her misconduct on both the grounds of public protection and public interest.*

19. *Impairment needs to be considered as at today's date, i.e. whether the nurse's fitness to practice is currently impaired. The NMC defines impairment as a nurse's suitability to remain on the register without restriction.*

20. *The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:*

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

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

21. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.

22. When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

- 1) has Mrs Gopaul in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or
- 2) has Mrs Gopaul in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or
- 3) has Mrs Gopaul in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or
- 4) has Mrs Gopaul in the past acted dishonestly and/or is liable to act dishonestly in the future.

23. It is the submission of the NMC that questions (2), (3), and (4) can be answered in the affirmative in this case. Dealing with each one in turn:

24. Mrs Gopaul's conduct has brought the profession into disrepute – her conduct is of a serious nature, and aggravated because Mrs Gopaul has been dishonest on more than one occasion; not only are there 80 timesheets across 2020-2021, with over 100 dates of shifts undertaken by Mrs Gopaul, Mrs Gopaul has also been the subject of a previous NMC referral in 2016 for similar dishonesty concerns whereby a FtP panel decided to suspend Mrs Gopaul for 6 months for dishonestly working while on sick leave in November 2014 (and for dishonestly asking a colleague to provide an employment reference for her whilst pretending to be her line manager). In this previous referral Mrs Gopaul accepted all charges and that her fitness to practice was impaired and gave assurances that she wouldn't be dishonest again. Mrs Gopaul went so far as to say in her reflective statement that "in future she

would do things differently” and would “never repeat this action in the future”. Mrs Gopaul has taken advantage of her privileged position of a nurse and has failed to keep to and uphold the standards and values set out in the Code and as such has failed to uphold the reputation of the profession. The public has the right to expect high standards of registered professionals.

25. Mrs Gopaul’s actions demonstrate a flagrant departure from the standards expected of a registered nurse and a breach of the fundamental tenets of the profession.

26. Mrs Gopaul has in the past acted dishonestly and it is very clear that she is liable to act dishonestly in the future as we can see from her pattern of behaviour since the first NMC referral in 2016 to the most recent acts.

27. Impairment is a forward thinking exercise which looks at the risk the registrant’s practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

28. It appears that there are attitudinal concerns here. It is often said that conduct of an attitudinal nature is difficult to remediate. The NMC guidance entitled: Can the concern be addressed? (Reference: FTP-13a) is likely to be of assistance:

“Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the concerns in the case can be addressed. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious.

The first question is whether the concerns can be addressed. That is, are there steps that the nurse, midwife or nursing associate can take to address the identified problem in their practice?

It can often be very difficult, if not impossible, to put right the outcome of the clinical failing or behaviour, especially where it has resulted in harm to a patient. However, rather than focusing on whether the outcome can be put right, decision makers should assess the conduct that led to the outcome, and consider whether the conduct itself, and the risks it could pose, can be addressed by taking steps, such as completing training courses or supervised practice.

Decision makers need to be aware of our role in maintaining confidence in the professions by declaring and upholding proper standards of professional conduct. Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.

Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to the nurse, midwife or nursing associate's practice".

29. It is submitted that Mrs Gopaul has displayed no insight and has failed to provide a reflective statement acknowledging the seriousness of her conduct. Mrs Gopaul does not accept the regulatory concerns. It appears from Mrs Gopaul's response that she blames Spire for paying sick leave for too long due to a system error. Mrs Gopaul states that she is "completely innocent and the case against [her] should be closed down and no further action taken".

30. Given that there was a previous NMC referral in 2016 and Mrs Gopaul gave assurances that she wouldn't be dishonest again, it is submitted that her conduct has fallen so short of the standards the public expect of professionals caring for them that the public confidence in the nursing and midwifery professions could be undermined. In a case such as this one and in a case where behaviours could suggest underlying problems with the nurse's attitude it is less likely the nurse will be able to address their conduct by taking steps such as completing training courses or supervised practice to remedy their behaviour and address the concerns.

28. Also relevant is *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), paragraph 74, where Cox J commented that:

"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."

29. Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.

30. It is submitted that there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Honesty and integrity form fundamental tenets of the profession. Nurses must therefore be honest, open and act with integrity. They must make sure that their conduct at all times justifies the public's trust in the profession. It is submitted that a member of the public apprised of the facts, would be shocked to hear that a registered nurse was entitled to practice without restriction. As such, the need to

protect the wider public interest calls for a finding of impairment to uphold standards of the profession, maintain trust and confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession, and the regulator, would be seriously undermined, particularly where there is a high risk of repetition and a pattern of behaviour as is present in this case.'

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of *'The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates'* (2018) (the Code).

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

'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 professions from patients, people receiving care, other health and care professionals and the public.'

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 against Mrs Gopaul did amount to serious misconduct and went against the fundamental characteristics of honesty and integrity expected of registered nurses. The panel considered that Mrs Gopaul's actions and dishonesty were serious departures from the standards that could be properly expected of a nurse and her dishonesty was deliberate, calculated and repeated over a prolonged period of time, and involved being dishonest to both her employer and her GP (who had provided documentation certifying that she was

unfit to work). The panel was of the view that any reasonable member of the public would deem Mrs Gopaul's actions as deplorable therefore, the panel determined that Mrs Gopaul's dishonesty and her actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. At 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.'

At 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/their fitness to practise is impaired in the sense that S/He/They:

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

The panel was aware that this is a forward-looking exercise, and accordingly it went on to consider whether Mrs Gopaul's misconduct was remediable and whether Mrs Gopaul had strengthened her practice.

The panel had regard to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and considered whether the misconduct identified was capable of remediation.

The panel had reservations about Mrs Gopaul's honesty. Not only had she been dishonest, but her dishonesty entailed lying to her employer and her GP, which was deliberate and continuously repeated over a prolonged period of time between 2020 and 2021. The panel also took into account that this was not the first time Mrs Gopaul had been before the NMC with similar concerns and the panel was of the view that this made the dishonesty even more significant. The panel determined that Mrs Gopaul's misconduct was serious and that it had no evidence before it in relation to her strengthened practice or remediation.

Accordingly, the panel went on to consider whether Mrs Gopaul remained liable to act in a way that would put patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future.

The panel again considered that despite Mrs Gopaul previously being sanctioned by the NMC for similar behaviour in the past, she had repeated the exact behaviour, even though she had promised that she had learned from her mistake and would not repeat it again in the future. The panel was of the view that Mrs Gopaul's actions brought into question her trustworthiness and integrity as a registered nurse. Regarding insight, the panel noted that there was no evidence before it, such as a written reflective piece from Mrs Gopaul, to demonstrate her insight or attempts to strengthen her practice. The panel determined that this indicated that Mrs Gopaul has not reflected on her actions or their impact on others and the public's perception of the nursing profession.

In light of this, the panel concluded that there was a risk to the public and there was a high likelihood of this conduct being repeated. The panel noted that despite Mrs Gopaul stating that she would provide testimonials and references, there was nothing before it of this nature and there had been no indications of her insight or any remediation. The panel took into account that Mrs Gopaul has not acknowledged the seriousness of her actions and she has sought to deflect accountability for her actions. The panel was of the view that due to her lack of insight and recognition of the seriousness of her actions, there was a risk of repetition. 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 also required as a member of the public and other members of the nursing profession would be concerned as Mrs Gopaul's actions demonstrated a lack of honesty and integrity as a registered nurse. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment was not made in this case and therefore also finds Mrs Gopaul's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Gopaul'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 Gopaul off the register. The effect of this order is that the NMC register will show that Mrs Gopaul has been struck-off the register.

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

Representations on sanction

The panel noted that in the NMC's submissions, it had stated that it would seek the imposition of a striking off order if it found Mrs Gopaul's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mrs Gopaul'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:

- Premeditated and prolonged dishonesty with the employer, GP services and the NMC.
- Previous regulatory finding for the same concern
- Lack of insight into failings
- A pattern of misconduct over a period of time

The panel also carefully considered mitigating features and determined that there were no significant mitigating features in this case.

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 charges in this case and the repeated nature of the dishonesty, an order that does not restrict Mrs Gopaul'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 Gopaul'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 Gopaul's registration would be a sufficient and appropriate response. The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel considered that the misconduct identified in this case was not something that can be addressed through a conditions of practice order as concerns relating to dishonesty are often difficult to remediate. Furthermore, the panel concluded that the placing of conditions on Mrs Gopaul's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mrs Gopaul's actions is fundamentally incompatible with Mrs Gopaul remaining on the register. The panel also acknowledged that Mrs Gopaul's repeated behaviour demonstrated that the previous suspension order was not enough to deter her from repeating the same behaviour.

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

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

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

This will be confirmed to Mrs Gopaul in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Gopaul's own interests until the striking-off sanction takes effect. The panel accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC which stated:

'In the event that a sanction resulting in the restriction of Mrs Gopaul's practice is imposed, it is also necessary for the protection of the public and otherwise in the public interest for there to be an interim suspension order of 18 months to cover the appeal period.'

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 decided to impose an interim suspension order for a period of 18 months.

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

That concludes this determination.