

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

**Substantive Hearing
8 and 9 May 2025**

Virtual Hearing

Name of Registrant:	Neena Mathew
NMC PIN:	18G4928E
Part(s) of the register:	Registered Nurse – Adult Nursing
Relevant Location:	Staffordshire
Type of case:	Misconduct
Panel members:	Nicholas Rosenfeld (Chair – Lay member) Daniel Harris (Registrant member) Michelle providence (Lay member)
Legal Assessor:	Gillian Hawken
Hearings Coordinator:	Vicky Green
Nursing and Midwifery Council:	Represented by Alastair Kennedy, Case Presenter
Miss Mathew:	Present and represented by Thomas Buxton, Counsel, instructed by the Royal College of Nursing
Facts proved:	All, by way of admission
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Suspension order – 3 months (without a review)
Interim order:	Not imposed

Details of charge

That you, a registered nurse:

- 1) Between 15 August 2021 and 9 November 2022, on one or more occasions as set out in Schedule 1, whilst employed with University Hospitals of Derby and Burton NHS Foundation Trust, worked shifts with one or more Agency, whilst signed off as medically unfit with your substantive employer and/or being in receipt of sick pay;
[Proved by way of admission]
- 2) Your conduct as alleged in charge 1 was dishonest in that you knew that you should not work elsewhere whilst on sick leave. **[Proved by way of admission]**

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

Schedule 1:

15/08/21 to 19/09/21

22/02/22 to 26/02/22

21/04/22 to 08/05/22

13/10/22 to 09/11/22

Decision and reasons on application for hearing to be held in private

At the outset of the hearing Mr Buxton, on your behalf, made an application pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) for parts of this hearing to be held in private. [PRIVATE]

Mr Kennedy, on behalf of the Nursing and Midwifery Council (the NMC), supported your application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to [PRIVATE], the panel decided that it would be reasonable, proportionate and justified to hear such information in private.

Decision and reasons on facts

At the outset of the hearing, Mr Buxton informed the panel that that you have made full admissions to all of the charges. The panel therefore found charges 1 and 2 proved in their entirety, by way of your admission in accordance with Rule 24(5) of the Rules.

Fitness to practise

Having found the facts proved by way of your admission, and being satisfied that you accept the entirety of the NMC's case, the panel moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your 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, your 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 Kennedy invited the panel to take the view that the facts found proved amount to misconduct. He directed the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) and identified the specific, relevant standards where your actions amounted to misconduct.

Mr Kennedy submitted that your actions in working whilst you were medically unfit, and the associated dishonesty for financial gain amounted to serious professional misconduct. He submitted that your conduct fell far below the standards expected of a registered nurse and was sufficiently serious to amount to misconduct.

Mr Buxton informed the panel that he would not be making submissions on misconduct as given the nature of your admissions, he conceded on your behalf that your actions amounted to misconduct.

Submissions on impairment

Mr Kennedy 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 Kennedy submitted that working whilst signed off as medically unfit, your actions placed patients at an unwarranted risk of harm and brought the profession into disrepute. Whilst this case does not relate to concerns relating directly to your clinical practice, Mr Kennedy submitted that your actions, over a considerable period of time, exposed patients to a risk of harm as you worked when you were unfit to do so.

Mr Kennedy submitted that dishonesty is never acceptable in the nursing profession and that the public and colleagues would be appalled to learn that a nurse acted dishonestly for financial gain for a significant period of time.

In respect of whether your conduct is remediable, Mr Kennedy submitted that whilst it is more difficult to remediate as dishonesty can be considered an attitudinal issue, you have not repeated the behaviour since the charges arose. He acknowledged the contextual factors that were present at the relevant time. Mr Kennedy submitted that it is

to your credit that you made early admissions to the charges, and you have provided two detailed reflective statements, a number of testimonials and evidence of training.

Mr Kennedy submitted that a finding of impairment is necessary to protect the public and to uphold proper professional standards and to maintain confidence in the profession and the NMC as its regulator. He submitted that the public would find the dishonesty in this case to be deplorable and that this type of behaviour leads to a breakdown in trust. Mr Kennedy submitted that the public would expect the NMC to take action to discourage such behaviour and to ensure that it would not be repeated. He submitted that if no impairment was found, then this would send a message that is it acceptable to act in a dishonest manner. Mr Kennedy therefore submitted that a finding of impairment was necessary to protect the public and to uphold the reputation of the profession and maintain proper professional standards.

Mr Kennedy informed the panel that according to the Case Examiners Report, the total financial gain to you was £1,124.72. He confirmed that he is unaware of any invoice being provided by the Trust and that in order to make a repayment, you would need to contact your former employer.

Mr Buxton informed the panel that there was total of 17 days worked for the Agency when sick pay was claimed.

Mr Buxton submitted that you are currently fit to practise as a nurse without restriction. He drew the panel's attention to your reflective statements and outlined the contextual factors which led to your actions and dishonesty. Mr Buxton took the panel through your reflective statement, testimonials, trainings certificate, and curriculum vitae to support the submissions made on your behalf.

Mr Buxton submitted that you have not only reflected fully on the gravity and significance of what you did, but you have demonstrated an understanding from public protection and public interest point of view of the impact and implications of your misconduct. He submitted that you have also demonstrated an understanding of how seriously you fell short of the standards expected of you. Mr Buxton submitted that you

have remediated your conduct and that you continue to remediate the concerns. He submitted that it is clear that you have strengthened your practice as evidenced by the testimonials from your recent employers.

Mr Buxton submitted that the question of public protection is not live in this case. He submitted that whilst it is conceded that working whilst unfit to do so could have exposed patients to a risk of harm, there is no evidence that any harm occurred. Mr Buxton submitted that there are testimonials which attest to the fact that no harm was caused, or that it was likely in the circumstances. He submitted that three years have elapsed since the charges arose and that you have been working without incident for two different employers. Mr Buxton submitted that even if a risk to the public is identified, then in these circumstances, any risk is negligible. Mr Buxton therefore submitted that impairment should only be considered on public interest grounds.

Mr Buxton acknowledged that in cases involving dishonesty, a finding of no impairment could lead to a breakdown in trust and the public could take this as a signal that it is acceptable to act in this way. However, he submitted that there is evidence contained within your bundle that you have the fullest insight into your conduct. Mr Buxton submitted that you have strengthened your practice and implemented your learning, as confirmed by the positive testimonials from your current, and previous employers who have stated that they have no concerns about your honesty.

Mr Buxton submitted that you recognise that your actions breached trust and you have a willingness and commitment to repay the Trust. He submitted that you are now in a very different situation, you have learned from your mistakes and that if faced with a similar situation in the future, you would act differently. Mr Buxton submitted that you would consult your manager if you faced any difficulties and not make decisions in isolation.

In the particular circumstances of this case, Mr Buxton submitted that a finding of impairment is not required on public protection or public interest grounds.

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. The panel found that your actions fell significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the following provisions of the Code:

‘ 20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times.’

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 attending work whilst working for an agency and being medically unfit to do so, with the associated dishonesty in claiming sick pay from the Trust, fell seriously short of the conduct and standards expected of a nurse and amounted to serious professional misconduct. [PRIVATE]. The panel also found that your actions in undertaking work through an agency whilst receiving sick pay from the Trust was not only dishonest, but would have diverted much needed funds away from the NHS. Your misconduct breached the fundamental tenets of the profession of preserving safety and promoting professionalism and trust.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your 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. 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 limbs b, c and d engaged.

In respect of limb a, the panel determined that although there was a potential risk when you attended work when you were unfit to do so, there was insufficient evidence before it to establish that you placed patients at an unwarranted risk of harm.

In attending work whilst unfit to do so and acting dishonestly, the panel determined that you brought the profession into disrepute. Prioritising patient safety and acting with honesty and integrity are fundamental tenets of the profession, which were breached by you. The panel also found that by working for an agency whilst you were claiming sick pay from the Trust, you acted dishonestly.

In determining whether you were liable to place patients at an unwarranted risk of harm, bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly in the future, the panel had regard to the evidence before it.

The panel had sight of the two detailed reflective statements provided by you and to the testimonials provided by you current and previous employers. It noted that there have been no concerns about your clinical practice either prior to these regulatory

proceedings, or in the three years that have elapsed since the charges arose. The panel had sight of a number of positive references which attest to your excellent nursing skills and character, and the additional training you had undertaken. There was no evidence before the panel that you would place patients at unwarranted risk of harm in the future.

In respect of the dishonesty found, the panel determined that whilst it is difficult to remediate an attitudinal concern, the panel noted the contextual factors set out in your reflective statement. Having considered both of your reflective statements, the panel found that you have demonstrated remorse for your actions and that you have developed insight into your misconduct. The panel considered that you have an understanding of the gravity and impact of your misconduct and noted that you have undertaken training courses in an attempt to remediate your dishonesty. The panel had sight of a number of positive testimonials that attest to your honesty and integrity and support your assertions that you have put training and learning into practice. The panel noted that you have been open and honest during the interview stages which led to your current employment and disclosed these regulatory proceedings and the nature of the charges. Having regard to all of above, the panel was satisfied that if faced with a similar set of circumstances, you would not act dishonestly in the future.

Having found that the risk of repetition of conduct that would place patients at risk of harm is low, the panel considered that a finding of impairment on public protection grounds is not required.

Whilst the panel acknowledged that you have made significant efforts in addressing your dishonesty, and that the risk of you repeating this behaviour is low, it considered that public confidence in the profession would be undermined if a finding of impairment were not made in this case. As promoting professionalism and trust is a fundamental tenet of the profession, the panel determined that in order to declare and uphold proper professional standards and maintain confidence in the profession and the NMC, a finding of impairment in the public interest is required to mark the seriousness of the misconduct which has taken place.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public interest grounds alone.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 3 months. The effect of this order is that the NMC register will show that your registration has been suspended.

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 Kennedy informed the panel that the NMC sanction bid, as set out in the Notice of Hearing, is a striking off order. He suggested a number of potential aggravating and mitigating factors. He referred the panel to the case of *Sawati v General Medical Council* [2022] EWHC 283 (Admin). Mr Kennedy submitted that the honesty found was not at the lower end of the spectrum.

Mr Buxton referred the panel to the case of *Lusinga v Nursing and Midwifery Council* EWHC 1458. He submitted that all types of dishonesty should not be treated the same and that in determining sanction, there should be a detailed consideration of all of the facts, including mitigating circumstances. He submitted that in view of the contextual factors and the findings of the panel, a sanction bid of a striking off order is disproportionate. Mr Buxton submitted that as you have demonstrated insight and strengthened practice, and the panel has found that there are no concerns about your future honesty and integrity, a lesser sanction than a striking off order is proportionate.

Decision and reasons on sanction

Having found your 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 that persisted over a period of time.
- Personal financial gain from a breach of Trust.

The panel also took into account the following mitigating features:

- Full and early admissions.
- Developed insight.
- Evidence of good character before and after the misconduct arose.
- Difficult personal circumstances at the relevant time.

Before considering what sanction, if any was appropriate, the panel has regard to the NMC Guidance on '*Sanctions for particularly serious cases*' Reference: SAN-2 Last Updated 06/05/2025). It had particular regard to the section entitled '*Cases involving dishonesty*':

'Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care*
- *misuse of power*

- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to people receiving care*
- *premeditated, systematic or longstanding deception*

Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents outside professional practice.'*

The panel found that the dishonesty in this case occurred on a number of occasions, over a significant period of time which was a breach of trust that resulted in financial gain. The panel therefore determined that your dishonesty was not at the lower end of the spectrum.

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 an order that does not restrict your 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Having found that there are

no concerns about your clinical practice, and no public protection issues, the panel determined that a conditions of practice order would not be appropriate.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to SG and considered that the following factors were applicable in this case:

- *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;*

Whilst the panel found that your dishonesty was not at the lower end of the spectrum, the panel had particular regard to the contextual factors and mitigating features of this case. The panel found that your dishonesty, although it persisted over a significant period of time, was out of character and occurred as a result of difficult personal circumstances. As set out previously, the panel found that given your level of insight, strengthened practice and unblemished record since the charges arose, it was unlikely that you would act in a similar way in the future and that the risk of repetition was low.

Having found that it is unlikely that you would repeat your behaviour, and that current impairment was required on public interest grounds alone, the panel considered whether a suspension order would satisfy the public interest in this case. The panel balanced the public interest in maintaining confidence in the profession and upholding proper professional standards, with the public interest in allowing a competent nurse to practise without restriction. Having regard to this, and to the contextual factors in this case, the panel determined that the public interest would be satisfied by the imposition of a suspension order. The panel determined that a striking off order would be disproportionate and unduly punitive in these circumstances and would not be in the public interest.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel considered that any financial hardship such an order may cause you is outweighed by the public interest in this case.

The panel considered that this order is 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 expected of a registered nurse.

The panel determined that a suspension order for a period of 3 months was appropriate in this case to mark the seriousness of the misconduct.

In accordance with Article 29(8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary. In this particular circumstance of a public interest only case, where the panel has been satisfied that you have demonstrated developed insight with a low risk of repetition, it was of the view that a review would serve no purpose. Accordingly, the panel directs that no review is required in this case and that the current substantive order will expire, without review at the end of the period of suspension.

Interim order

As the suspension 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 your own interests until the suspension order sanction takes effect.

The panel accepted the advice of the legal assessor.

Submissions on interim order

Whilst Mr Kennedy acknowledged that the panel needs to consider whether an interim order should be imposed, he submitted that the NMC is not making an application. He submitted that there has been no interim order in place to date, the risk has not increased and the high bar for imposing an interim order solely on public interest grounds has not been met.

Mr Buxton supported the NMC's position.

Decision and reasons on interim order

Having regard to its findings that there are no public protection concerns, the panel determined that an interim order was not necessary to protect the public. The panel was mindful there is a high bar that must be met in order to impose an interim order on public interest grounds alone. As no risks have been identified, and considering that a substantive order was imposed to serve the public interest, the panel determined that an interim order was not necessary.

That concludes this determination.

This will be confirmed to you in writing.