Neutral Citation Number: [2025] EWHC 315 (Admin)

Case No: AC-2024-MAN-000333

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**ADMINISTRATIVE COURT**
**SITTING IN MANCHESTER**

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date: 14/02/2025

**Before**:

**MRS JUSTICE HILL DBE**

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**Between:**

**OLADOTUN ADEBAYO** — **Appellant**

**- and -**

**THE NURSING AND MIDWIFERY COUNCIL** — **Respondent**

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The **Appellant** appeared in person
**Benjamin D'Alton** (instructed by **Nursing and Midwifery Council**) for the **Respondent**

Hearing date: 4 February 2025

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 14th February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

**Mrs Justice Hill:**

## Introduction

1. This is an appeal under Article 38(1) of the Nursing and Midwifery Order 2001 ("the 2001 Order") against a decision of a panel of the Respondent's Fitness to Practise Committee dated 5 August 2024 ("the Panel"). The Panel's decision was to the effect that (i) Appellant's practise as a nurse was impaired by reason of misconduct and a criminal conviction; and (ii) an order striking him off the register was appropriate and proportionate in the circumstances

2. The Appellant instructed solicitors for the purposes of this appeal, who drafted his grounds of appeal. He represented himself at the hearing and adopted the grounds of appeal, making certain further oral submissions.

3. The Appellant advanced the following grounds:

> **Ground 1**: The Panel erred in law and in fact in finding that the Appellant was not fit to practice, in that it failed to give sufficient regard to a series of factors set out in the grounds of appeal (**"the impairment ground"**); and
>
> **Ground 2**: The Panel erred in law and in fact in finding that the appropriate sanction in this matter was a striking-off order, because it was disproportionate to the charges that he faced, and more so, in light of the same factors (**"the sanction ground"**).

4. The Respondent defended the appeal and maintained that the Panel was entitled to find the Appellant's fitness to practise impaired and make a striking-off order. I am grateful to the Respondent's counsel, Mr D'Alton, for his concise and focussed submissions and for the assistance he provided the Appellant.

## The legal framework

5. The 2001 Order sets outs the Respondent's functions in respect of allegations of impaired fitness to practise against registered nurses, midwives and nursing associates ("registrants"). The proceedings of the Respondent's Fitness to Practise Committee ("FTPC") are governed by the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (SI 2004/1761).

6. The Respondent provides guidance on various aspects of fitness to practise proceedings. The guidance is not binding, but panels are expected to provide an explanation if they depart from it in their decision making.

7. Articles 29(9) and 38 of the 2001 Order permit a registrant to appeal against an order made by a panel of the Respondent's FTPC. Under Article 38(3) of the 2001 Order, the court may dismiss the appeal, allow the appeal and quash the decision appealed against, substitute the decision appealed against for any other decision the committee concerned or the court, as the case may be, could have made, or remit the case to the practice committee concerned or the Council, as the case may be, to be disposed of in accordance with the directions of the court.

8. Under CPR 52.21(3), the court will only allow an appeal where the decision of the lower court was (a) wrong; or (b) unjust because of a serious procedural or other irregularity.

9. In *Cheatle v General Medical Council* [2009] EWHC 645 (Admin) at [12]-[15], Cranston J set out the court's approach in relation to appeals such as this, as follows:

   (i) The appeal is not confined to a point of law, but nor is it a *de novo* hearing, where the court hears the witnesses giving evidence again;

   (ii) The court's function is not limited to review of the panel decision, and in relation to findings of fact, it is entitled to exercise its own primary judgment on whether the evidence supported such findings. However, it will not interfere with a decision unless persuaded that it was wrong;

   (iii) In considering whether the decision of a fitness to practise panel was wrong, the focus must be "calibrated to the matters under consideration"; and

   (iv) In relation to findings which reflect a professional judgement concerning standards of professional practice and conduct, the court will exercise distinctly secondary judgment and give special place to the judgment of the professional body as the specialist tribunal entrusted with the maintenance of the standards of the profession.

10. The court should therefore consider the available documentary evidence and consider whether the decisions and/or order made by the Panel were wrong or unjust because of a serious irregularity.

## The factual background

11. The Appellant told me that he had originally trained as an accountant, before pursuing his passion which was a career in nursing.

12. From 2013, the Appellant worked as a "bank" Care Assistant at the Greater Manchester Mental Health NHS Foundation Trust ("the Greater Manchester Trust"; and as a bank Health Care Support Worker at the Pennine Care NHS Foundation Trust ("the Pennine Trust").

*The Appellant's work with the Greater Manchester Trust*

13. In August 2018, the Greater Manchester Trust became concerned that the Appellant was being paid for shifts that he had not completed. The matter was referred to the NHS Counter Fraud Authority ("the NCFA"), who commenced an investigation. The Greater Manchester Trust also commenced a disciplinary investigation.

14. On 17 April 2019, the Appellant attended an interview with the NCFA under caution. He admitted that he had received payment for shifts that he had not worked. He was advised to make repayment of the money within 12 calendar months, but paid the full amount back by 6 June 2019.

15. The Appellant was dismissed from his role with the Greater Manchester Trust. He appealed the decision, but in October 2019 it was upheld.

16. The Appellant continued working for the Pennine Trust as a bank Health Care Support Worker.

*The Appellant's application to the Pennine Trust*

17. On 9 June 2020 the Appellant submitted an application for a Mental Health Staff Nurse vacancy at the Pennine Trust.

18. On the Pennine Trust application form, the Appellant was required to declare all periods of employment for the previous three years. He did not refer to his previous employment with the Greater Manchester Trust or the reason why that employment had come to an end. The Appellant was asked on the form whether he had been previously dismissed from a role to which he replied "no". He also signed a declaration form confirming that he had not previously been subject to any disciplinary proceedings. He did not disclose the NCFA investigation.

19. On 9 June 2020, a Unit Manager employed by the Pennine Trust (referred to by the Panel as "Witness 1"), interviewed the Appellant for the role. He was eventually selected for appointment.

20. On 20 September 2020 the Appellant qualified as a Mental Health Nurse at the University of Salford.

21. On 26 November 2020 the Appellant signed documentation indicating that he had "read and accepted the terms and conditions of employment" with the Pennine Trust. Paragraph 20 of those terms and conditions provided that "any charges brought against you for a criminal offence whether connected with your employment or not must be reported immediately in writing to your line manager".

22. On 30 November 2020 the Appellant was entered onto the Respondent's register as a nurse and started work for the Pennine Trust as a Band 5 Registered Nurse.

*The criminal proceedings*

23. On 1 December 2020, the Appellant was charged with dishonestly retaining a wrongful credit contrary to the Theft Act 1968, sections 24A(1) and (6). The wrongful credits totalled £9,732.33 and related to the period 4 April 2016 to 26 July 2018. They reflected 64 shifts that the Appellant had not worked, and thus wrongly received payment for from the Greater Manchester Trust.

24. On 5 December 2020 he received a summons to appear at the Magistrates Court. At the hearing, the Appellant told me that the NCFA investigators had not contacted him between June 2019 and the date in December 2020 when he received the Magistrates Court summons, implying that the latter came as something of a surprise.

25. The Appellant did not immediately inform the Pennine Trust of the criminal charge. He did not do so until 28 January 2021. He was suspended by the Pennine Trust while they investigated the matter. On 2 February 2021 the matter was referred to the Respondent.

26. On 10 February 2021, at the Greater Manchester Magistrates' Court, the Appellant pleaded guilty to the criminal offence with which he had been charged.

27. On 25 February 2021, the Appellant was interviewed by a Clinical Services Manager at Pennine Trust. This was a disciplinary investigation meeting, because the Pennine Trust was concerned that he had not disclosed his employment with the Greater Manchester Trust, his dismissal by the Greater Manchester Trust or the ongoing criminal case. The Appellant told the Manager that he had been charged on 1 December 2020, but that he was not aware that he had to notify the Pennine Trust until he received his terms and conditions of employment on 28 January 2021.

28. On 30 March 2021, the Appellant was sentenced to eight weeks' imprisonment, suspended for 12 months.

29. On 28 April 2021the Appellant was dismissed from his employment with the Pennine Trust.

30. In October 2021 he secured employment with HKS Consultancy Group (t/a 24 hr Healthcare) as a Registered Mental Health Nurse and was working in that capacity at the time of the Panel hearing. His CV also suggests that from February 2022 he was working for the Seven Nursing Agency.

*The proceedings before the Panel*

31. Following investigation of these matters by the Respondent, a Panel of the FTPC was convened to consider the following charges against the Appellant:

> "That you, a Registered Nurse,
>
> 1. On or about 9 June 2020 on an application form for employment at Pennine Care NHS Foundation Trust,
>
> a) In setting out your last three year's employment failed to set out:
>
> i) Your employment at Greater Manchester Mental Health NHS Foundation Trust when you knew you were required to
>
> ii) The reason why you ceased employment at Greater Manchester Mental Health NHS Foundation Trust when you knew you were required to
>
> b) When required to disclose whether you had ever been dismissed from previous employment, answered 'No' when you knew you had been dismissed from employment by Greater Manchester Mental Health NHS Foundation Trust
>
> c) When required to disclose the role you were dismissed from, and the date and reason for dismissal, failed to disclose that information
>
> 2. Your representations one or more of 1 a) i)-ii), b) and/or c) above, were dishonest in that your representation and/or failures to disclose information were:
>
> a) an attempt to conceal your employment with Greater Manchester Mental Health Trust when you knew you were required to declare it

b) an attempt to conceal that you had been dismissed from your employment by Greater Manchester Mental Health Trust and/or the existence of a related NHS Counter Fraud Investigation when you knew you were required to declare one or both

c) an attempt to obtain employment at Pennine Care NHS foundation Trust on a basis which you knew was false.

3. On or about 9 June 2020 on a declaration form for employment at Pennine Care NHS Foundation Trust:

a) Represented that you had not previously been subject to disciplinary proceedings when you knew you had been

b) Represented that you were not aware of any current NHS Counter Fraud investigation into yourself, when you were aware of such an investigation.

4. You representation at 2 a) and or b) above were dishonest in that:

a) You knew you were making a representation which was not true

b) Your representation was an attempt to obtain employment at Pennine Care NHS foundation Trust on a basis which you knew was false.

5. Having become aware on or about 1 December 2020 that you were charged with a criminal offence, failed to inform your employer until 28 January 2021

6. Your failure at 5. above was:

a) Dishonest in that by not disclosing this you were continuing to represent that you had not been charged with a crime

b) A breach of your professional duty of candour

7. On 25 February 2021, in the course of an investigation interview, represented that you had not received your terms and conditions of employment until on or about 28 January 2021 when you had received and signed your Terms and Conditions of employment in November 2020.

8. Your representation at 7 above was dishonest in that:

a) You had received and signed your Terms and Conditions of employment in November 2020

b) You sought to exculpate yourself from your failure at charge 5 above, and/or your dishonesty and/or lack of candour at charge 6 above.

> 9. On 10 February 2021, at Greater Manchester Magistrates' Court, were convicted of one offence of dishonestly retaining a wrongful credit contrary to 24A(1) and (6) of the Theft Act 1968.And, in light of the above, your fitness to practise is impaired by reason of your misconduct in respect of charges 1-8, and your conviction in respect of charge 9."

32. The Panel hearing took place from 29 July 2024 to 1 August 2024. At the outset of the hearing, the Appellant made full admissions to all charges. Accordingly, the Panel found charges 1-9 proved in their entirety.

33. The Panel found that the Appellant's actions fell seriously short of the conduct and standards expected of a nurse, and therefore amounted to serious misconduct; and that by reason of the misconduct, his fitness to practise was impaired on public interest grounds. The Panel imposed a striking-off order and an Interim Suspension Order for 18 months, pending any appeal by the Appellant.

## Submissions and analysis

34. Before analysing the submissions on the two grounds, I make two preliminary observations, which apply to both grounds.

35. *First*, the Appellant did not advance any suggestion that the Panel's decision was "unjust because of a serious procedural or other irregularity" for the purposes of CPR 52.21(3)(b). Rather, his case was that by virtue of the arguments advanced under one or both his grounds, the Panel's decision was 'wrong" under CPR 52.21(3)(a).

36. *Second,* a fundamental difficulty with the Appellant's position throughout the appeal was that he made assertions, in writing and orally, that were directly contrary to the admissions he had made before the Panel.

37. He contended in his oral submissions at the hearing (as far as I understand it, for the first time), that there was a plausible reason for his failure to disclose his dismissal from the Greater Manchester Trust on the application form for the Pennine Trust. This was that he thought that this was not necessary because he was only a member of bank staff with Greater Manchester. This argument is unsustainable given that the application form made clear that candidates were required to disclose all work "activities" which would include bank work; and the Appellant had plainly understood this because he had disclosed other bank work on the form. More fundamentally, the Appellant had admitted, by charges 1 and 3, that he knew he was required to disclose all these matters; and by charges 2 and 4, that his failure to do so was dishonest and represented an attempt to conceal his employment and dismissal.

38. He suggested in his Grounds of Appeal at paragraph 19.2 that there was a plausible reason for his failure to disclose the criminal proceedings to the Pennine Trust, in that he understood that such disclosure was only necessary once the criminal proceedings had concluded. Again, he had admitted, by way of charges 5 and 6, that his failure to disclose being charged with a criminal offence to the Pennine Trust was dishonest and a breach of his professional duty of candour.

39. Finally, he said at paragraph 19.3 that he did not properly review the terms and conditions of employment when they were initially sent to him by email in November 2020. However, he admitted, by charges 7 and 8, that he had received and signed the terms and conditions in November 2020, and that his representations in relation to not having previously received the terms and conditions were dishonest and an attempt to exculpate himself from his failure to disclose his criminal charge as required under the terms and conditions.

40. The Appellant's counsel had made similar submissions to the Panel. The transcript makes clear that on the second day of the hearing, the Panel Chair sought to clarify whether the nature of these submissions indicated that the Appellant's admissions were equivocal. The Chair emphasised to the Appellant's counsel that the admissions included admissions to dishonesty. In response counsel confirmed that the Appellant's admissions were unequivocal.

41. I have also seen correspondence sent to the Respondent by the Appellant's union some time before the Panel hearing indicating that he was not contesting the charges.

42. These assertions by the Appellant go beyond providing "context" for his actions. Rather, they seek to contradict and thus undermine his admissions Panel's findings based on those admissions. When someone "adopts position X in one tribunal and position not-X in another tribunal that could or would be an abuse of process": *Harrold v NMC* [2016] EWHC 2555 at [40]. I therefore accept the Respondent's submission that this court cannot properly attach any weight to these assertions.

## Ground 1: The impairment ground

43. The Appellant contended that the Panel was wrong to find that his fitness to practise was impaired on public interest grounds, because the Panel failed to give sufficient regard to a series of factors set out in his Grounds of Appeal at paragraph 19.

44. The factors he advanced at paragraphs 19.2 and 19.3 can be afforded no weight for the reasons given at [36]-[42] above.

*The cause of overpayments*

45. At paragraph 19.1 the Appellant argued that the "overpayment" was as a result of a mix-up in the booking system.

46. However, the means by which the monies came to be in the Appellant's account is not a mitigating factor to which the Panel should have afforded weight. The mischief to which the criminal offence of which the Appellant was convicted is aimed is the retaining of such wrongful credits: as the particulars of the charge made clear, the Appellant had "dishonestly failed to take such steps as were reasonable to secure that the credit was cancelled".

47. The Appellant's description of the wrongful credit as a singular "overpayment", and his submission in this regard generally, seek to minimise his culpability: rather, as noted at [23] above, the criminal charge reflected overpayments between 4 April 2016 and 26 July 2018, reflecting some 64 shifts the Appellant had been paid for but had not done.

48. In any event, the Privy Council has made clear that it is not open to a registrant to go behind the facts of their conviction in the regulatory context: *Kirk v Royal College of Veterinary Surgeons* [2004] UKPC 4 at [21].

*The suspended nature of the term of imprisonment*

49. At paragraph 19.7 the Appellant pointed to the fact that the Magistrates Court took the view that a suspended sentence was the appropriate sanction on the basis that his conviction was not so serious to warrant immediate custody.

50. However, the Respondent's guidance, 'Criminal convictions and cautions' (Reference FTP-2c) makes clear at p.2 that the Respondent "almost always" takes concerns to a fitness to practice panel when a professional has been given a custodial sentence, including a suspended sentence. This is because the offending is "considered to be so serious that is it likely to undermine [the Respondent's] professional standards and public confidence in the [nursing] profession".

51. The same guidance also indicates on p.2 that while the sentence passed by a criminal court is likely to be a relevant consideration when deciding the seriousness of a professional's behaviour, it will "not always be a reliable guide on how seriously the conviction affects a professional's fitness to practise". This is because "[i]n the criminal courts, one of the purposes of sentencing is to punish people for offending". In contrast, the Respondent's "overarching objective" is "public protection and maintaining confidence in the professions we regulate".

52. Similarly, in *Low v General Osteopathic Council* [2007] EWHC 2839 (Admin) at [20], Sullivan J reiterated that the seriousness of a criminal offence as measured by the sentence imposed by a Crown Court (and by analogy a Magistrates Court) is "not necessarily a reliable guide to its gravity in terms of maintaining public confidence in a particular profession". As an example, he observed that "a relatively minor offence of financial dishonesty may well be considered to be of the utmost gravity by the Law Society when dealing with a solicitor who has care of his clients' funds".

53. Accordingly, I accept the Respondent's submission that a conviction for dishonestly retaining funds incorrectly paid by an NHS employer is a particularly serious offence for a registered nurse, and it was appropriate for the Panel to regard this as a very serious offence, notwithstanding the suspended nature of the term of imprisonment.

*The Appellant's admissions*

54. At paragraph 19.1 he relied on the fact that he had pleaded guilty to the criminal charges.

55. However, the Panel specifically referred to the fact that the Appellant had pleaded guilty to the criminal offences as well as "full admissions to the [regulatory] charges" in reaching its decision on the impairment issue (Decision, p.18). The Panel returned to this theme when considering sanction, noting the fact that he had "apologised for [his] actions and shown remorse" and made "full admissions to the charges at the outset of the hearing" as mitigating factors (Decision, p.25).

56. Accordingly, the Panel gave careful consideration to the Appellant's guilty plea, but found that the circumstances of the case still warranted a finding of impairment. This was an entirely justified conclusion.

*His repayment of the monies and completion of the suspended sentence*

57. At paragraph 19.1 the Appellant relied on the fact that he repaid the overpaid amount of £9,732.33 to the Greater Manchester Trust and completed his suspended sentence without the term of imprisonment being activated.

58. The Panel specifically acknowledged that the Appellant had "paid back the money in full to the Greater Manchester Trust" and that he was "no longer subject to a suspended sentence". Nevertheless, the Panel was of the view that his actions were serious and that a "reasonable and fully informed member of the public" would be concerned that his behaviour raised questions about your professionalism; and that despite obtaining payment for 64 shifts he had not worked, over a prolonged period, he had failed to raise this with his employer "until he was investigated" (Decision, p.19).

59. The Panel therefore took into account these factors, but concluded that the Appellant's actions in dishonestly retaining the money over a sustained period, and only addressing the issue when he was investigated still warranted a finding of impairment. The Panel cannot, in my judgment, be criticised for these findings.

*His detailed reflection demonstrating insight and his remorse*

60. The Appellant had provided a detailed reflective piece in July 2024. There was also an earlier reflective piece in the bundle before the Panel.

61. At paragraph 19.4 of his Grounds of Appeal the Appellant prayed in aid that he fully accepted his wrongdoing and had expressed remorse and apologised for his failings. He contended that he had provided a detailed reflection demonstrating sufficient insight, addressing what he should have done and what he would do differently in the future.

62. The Panel specifically cited the Appellant's reflective piece and noted that he had "apologised for [his] actions, expressed remorse and demonstrated some awareness of the implications of [his] actions". Notwithstanding this, the Panel considered that his reflection "did not fully explore what [he] would do differently in the future and the impact of [his] actions on colleagues and the reputation of the profession" (Decision, p.19). These were all observations made in the context of the impairment issue.

63. The Panel therefore gave careful consideration to the Appellant's reflective piece, but did not consider that its contents showed full insight. That was a nuanced and justified approach.

*The lack of clinical concerns*

64. At paragraph 19.5 the Appellant drew support from the fact that the Respondent's counsel had accepted before the Panel that there was positive evidence regarding the Appellant's knowledge and clinical skills and that there were no clinical concerns in this case that could pose a direct risk to patients.

65. The Panel explicitly noted that "the misconduct in this case did not involve concerns about…clinical practice". However, the Panel observed that it involved "a number of instances of dishonest behaviour over a period of time" (Decision, p.27).

66. Accordingly the Panel bore the lack of clinical concerns in mind, but concluded that this had to be weighed against the seriousness of the Appellant's dishonest behaviour over a period of time. Thie was a balanced and fair approach.

*His work with earlier and subsequent employers without concern*

67. At paragraph 19.6 of his Grounds of Appeal the Appellant submitted that he had worked for the NHS previously for seven years without concern; again pointing to his period of unrestricted practice since the concerns arose. He argued that he was clearly an otherwise good and valued member of the profession.

68. The Panel noted that the Appellant "had previously worked at the Greater Manchester NHS Trust from 2013". However, this indicated that he was "well experienced in working in the NHS", such that he "would have been aware of your duty to be open and honest" (Decision, p.15). It is therefore apparent that the Panel gave consideration to the Appellant's history with the NHS as part of its decision, but rightly recognised that this did not entirely support the Appellant's position.

69. Further, the Respondent's guidance on 'Factors to consider before deciding on sanctions' (Reference SAN-1) indicates at p.4 that where the allegations relate to "deep-seated attitudinal concerns", the absence of a fitness to practise history is unlikely to be relevant to a panel when considering sanction. Similarly, if a nurse's conduct is so serious it is "fundamentally incompatible with continuing to be a registered professional" the fact that the nurse does not have any fitness to practise history "cannot change the fact that what they had done cannot sit with them remaining on the register".

70. In *PSA v Nursing and Midwifery Council and Judge* [2017] EWHC 817 (Admin) at [40], Garnham J similarly observed that the fact that a nurse had "considerable unblemished experience" was not of material assistance to the Panel in that case.

71. At paragraph 19.5 the Appellant referred to the fact that he had continued to work without issue with two different employers since the concerns arose, having been honest and transparent with both employers about his past. This, he contended, demonstrated his integrity and adherence to the duty of candour, on which he had also undertaken relevant training. He had therefore fully remediated the regulatory concerns.

72. The Panel explicitly recognised that he had "since been open and transparent with…current employers regarding your conviction and past disciplinary proceedings" (Decision, p.18). The Panel nevertheless concluded that the Appellant's insight was not fully developed, for the reasons explained at [62]-[63] above. The Panel was justified in reaching this conclusion.

*Overall conclusions on Ground 1*

73. The Panel's reasoning in respect of the impairment issue is clear and detailed (Decision, pp.16-20).

74. The Panel approached the impairment issue having properly directed itself to the correct legal framework. The Panel recognised that the regulatory concerns did not give rise to any patient protection matters where the Appellant's actions put patients at risk of harm. However, the Panel concluded that his conviction and subsequent dishonest behaviour to obtain employment at the Pennine Trust brought the profession into disrepute; and breached fundamental tenets of the profession, namely honesty and integrity and the need to uphold the reputation of the profession.

75. The Panel properly acknowledged that impairment is a "forward-looking exercise" and so went on to consider whether the Appellant's misconduct was remediable and whether it had been remediated. The Panel recognised case law to the effect that dishonesty is difficult to remediate; but nevertheless carefully analysed the Appellant's evidence of insight and remediation and the steps he had taken to strengthen his practice. The Panel took into account the bundle of references the Appellant had provided attesting to his current nursing practice and the evidence of the training he had completed which was relevant to the regulatory concerns, namely, courses on the duty of candour and communication.

76. Regarding the misconduct at charges 1-8, the Panel found that the Appellant had taken some steps to remediate the concerns. However, the Panel also had regard to the "serious and sustained nature of [his] dishonesty" and his "attempt conceal information to circumvent safeguarding procedures at Pennine Trust required for respective employees". The Panel also noted that his dishonest behaviour was "directly linked to his attempt to obtain employment as a Registered Nurse". In light of this, and the Panel's finding that his insight was "not yet fully developed", the Panel concluded that he had not yet sufficiently addressed the concerns.

77. Regarding the conviction, the Panel acknowledged that he was no longer subject to a suspended sentence and that he had paid back the money in full, but nevertheless concluded that his actions were serious and that a reasonable and fully informed member of the public would be concerned that his behaviour raised questions about his professionalism. The Panel noted that the payment related to some 64 shifts he had not worked, and that "over a prolonged period" he had failed to raise the issue with his employer until he was investigated.

78. The Panel bore in mind that the overarching objectives of the Respondent are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession.

79. The Panel considered that patients, fellow practitioners and members of the public expect nurses to act with honesty at all times; that confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made in the circumstances. Accordingly, the Panel determined that a finding of impairment was necessary on public interest grounds and that the Appellant's fitness to practice was impaired.

80. It is important that an appellate tribunal such as this court "accords due deference" to the Panel, "especially on the issue of impairment which requires the bringing to bear of specific expertise which the [Panel] (in particular the registrant member) has and the

court lacks": *Gabarda v Nursing and Midwifery Council* [2015] EWHC 4039 (Admin) at [113].

81. Applying that principle, and for the reasons detailed above, I conclude that the Panel appropriately considered all relevant factors when making a decision on impairment.

82. For these reasons I do not consider that the Panel's decision on impairment was "wrong" under CPR 52.21(3)(a). Accordingly, Ground 1 is dismissed.

## Ground 2: The sanction ground

83. The Appellant's overarching submission was that the strike-off order was unreasonable, disproportionate and unduly harsh, relative to the charges and given the factors advanced at paragraph 19 of his Grounds of Appeal. He contended that in all the circumstances, another sanction would have been appropriate.

*A conditions of practice order*

84. The Appellant contended that a conditions of practice order would have been a more appropriate and proportionate sanction. He argued that there was no evidence of "harmful, deep seated personality or attitudinal problems" which, according to the Respondent's guidance on conditions of practice orders (Reference SAN-3c), p.1, can indicate that such an order is appropriate. There were clearly identifiable areas of training such as on the duty of candour and communication that a condition of practice would address. He had shown a willingness to complete relevant training and to remain engaged with his employer to ensure that he is supported and to mitigate the risk of repetition. While working under a conditions of practice order, the Appellant would continue to develop his insight.

85. However, the Panel did identify certain attitudinal issues, stating that there was "evidence of attitudinal problems in this case, noting [the Appellant's] continued and sustained dishonesty".

86. The Panel noted the Respondent's guidance 'Considering sanctions for serious cases' (Reference SAN-2), p.1 to the effect that the most serious forms of dishonesty, which are most likely to question whether a nurse should be allowed to remain on the register, often involve "deliberately breaching the professional duty of candour by covering up when things have gone wrong", "personal financial gain from a breach of trust" and/or a "longstanding deception". All of these descriptions applied to the Appellant's conduct, such that the Panel rightly considered that his dishonesty was "at the upper end of the spectrum of seriousness".

87. Given all these circumstances, the Panel was entitled to conclude that a conditions of practice order "would not mark the seriousness of [the Appellant's] misconduct, or address the wider public interest in maintaining confidence in the nursing profession and in the NMC as a regulator".

*A suspension order*

88. Alternatively, the Appellant contended that a suspension order would suffice. Given the mitigating factors he had advanced, a short period of suspension would mark the

seriousness of these matters and allow him to continue working on his insight and remediation. The Appellant's misconduct was, he said, a "single incident" in the course of his early nursing career and there had been no repetition of the behaviour since the incident.

89. However, the Panel was also plainly entitled, indeed right, to reject the Appellant's attempt to characterise his behaviour as a single instance of misconduct. Rather, the Appellant's actions represented a sustained period of dishonesty lasting for several years: thus, the Panel were justified in describing the nature of his dishonesty as "multifaceted" and considering this to be an aggravating factor; and in later describing it as "a number of instances of dishonest behaviour over a period of time."

90. The Panel noted that the Appellant had provided a number of positive references from his current employers, commenting on his honesty and openness; and acknowledged that there was no evidence to suggest he had repeated the behaviour since the incidents arose. However, the Panel noted that following his conviction for dishonesty, he had failed to understand the importance of honesty and integrity; and his dishonesty continued in his attempt to mislead and conceal information from Pennine Trust prior to and following his appointment to his new role.

91. The Panel acknowledged the Appellant had shown "developing insight", but did not consider that he had fully addressed the concerns in question. For example, the Panel noted that the Appellant had not "provided…any explanation as to why the misconduct occurred" nor had he "demonstrate[d] a sufficient understanding of what [he] would do differently". Accordingly, the Panel was entitled to find that it was "not satisfied that [the Appellant] had developed full insight into [his] misconduct".

92. Taking all these factors into account, and given the serious level of dishonesty shown by the Appellant, the Panel was entitled to conclude that a period of suspension would not be sufficient to maintain public confidence in nurses and uphold professional standards.

*A striking-off order*

93. The Panel specifically directed itself to consider the Respondent's guidance on striking-off orders (Reference SAN-3e) to the effect that such an order is likely to be appropriate when what the registrant has done is "fundamentally incompatible with being a registered professional"; and that before imposing this sanction, key considerations would be whether the regulatory concerns raise fundamental questions about their professionalism, whether public confidence in nurses could be maintained if the nurse was not removed from the register; and whether striking-off was the only sanction that would be sufficient to protect patients, members of the public, or maintain professional standards.

94. The Panel concluded that the Appellant's dishonesty was "sustained over a period of time" and was "directly linked" to his attempt to obtain and retain employment as a Registered Nurse. The Panel found that he had "allowed [his] own personal interests to outweigh [his] duty to be honest, open and truthful". The Panel found that the Appellant's behaviour not only raised fundamental questions about his professionalism but breached "fundamental tenets" of the nursing profession, namely honesty and

integrity. In light of these factors, and the seriousness of his dishonest behaviour, the Panel was entirely justified in finding that his conduct was fundamentally incompatible with being a registered professional and that public confidence in nurses would not be maintained unless he was permanently removed from the register.

95. For these reasons, it was consistent with the Respondent's guidance and, in my judgment, right, for the Panel to conclude that a striking-off order was the only sanction sufficient to maintain public confidence in the profession.

*Additional points made by the Appellant*

96. The Appellant prayed in aid the fact that he was a newly qualified nurse. Although this was correct, the Panel justifiably observed that the Appellant was "well experienced in working in the NHS and that [he] would have been aware of [his] duty to be open and honest"

97. The Appellant contended that a striking-off order would have a disproportionate impact on his livelihood and that of his family. However, the Panel specifically noted "the hardship [a striking-off] order will inevitably cause" but concluded that this was outweighed by the public interest in this case.

*Overall conclusions on Ground 2*

98. The Panel's reasoning in respect of sanction is again carefully structured and comprehensive (Decision, pp.24-29).

99. Stepping back, it is clear that the Panel approached its task with care. The Panel specifically directed itself to ensure that any sanction imposed was "appropriate and proportionate" and that "although not intended to be punitive in its effect, [it] may have such consequences". The Panel considered all possible sanctions, in ascending order of gravity, as was appropriate; and took into account all relevant factors. Its decision to impose a striking-off order was consistent with the Respondent's guidance. It was one that was well within the Panel's discretion.

100. Properly analysed, the Appellant's grounds do not contend that the Panel wrongly applied the Respondent's guidance on sanctions or failed to take into account any relevant case law. Nor do they suggest that the Panel's reasoning was wrong. Rather, the Appellant's submissions on appeal largely repeat those factual arguments that had been made by his counsel to the Panel and were considered but rejected the Panel.

101. For these reasons I do not consider that it was "wrong" under CPR 52.21(3)(a). Accordingly, Ground 2 is dismissed.

## Conclusion and costs

102. For all these reasons, I dismiss the Appellant's appeal.

103. As the successful party on the appeal, the Respondent sought an order that the Appellant pay their costs, in accordance with the general rule in CPR 44.2(2)(a) to the effect that the unsuccessful party will be ordered to pay the costs of the successful party.

104. For the avoidance of doubt, CPR 44.2 applies to appeals of this nature: as Rupert Jackson LJ explained in *Wingate and Evans v Solicitors Regulation Authority and others* [2018] 1 WLR 3969 at [135]:

> "When the parties arrive in the Administrative Court, because one or other of them is appealing against decisions made by the Solicitors Disciplinary Tribunal [and by analogy, the Respondent], they are entering a conventional costs shifting regime. They stand on an equal footing. Subject to any special circumstances, the losing party will normally pay the winning party's costs".

105. The Appellant did not identify any special circumstances or other reasons why the general rule should not apply, not can I identify any. This was not a case, for example, where it could be said for the purposes of the discretion as to costs set out in CPR 44.2(4)(b) that the Appellant had succeeded on some part of his appeal, even if he had not been wholly successful. The Appellant was the wholly unsuccessful party on the appeal. The Respondent did not rely on any aspect of the Appellant's conduct of the appeal for the purposes of CPR 44.2(4)(a), although such an argument could have been open to the Respondent in light of the issue over factual disputes set out at [35]-[42] above.

106. I was concerned to ensure that the Appellant had been aware of the costs risk of unsuccessfully bringing the appeal. I am satisfied that he was: Mr D'Alton assured me that this had been pointed out to him in correspondence; the Respondent's Skeleton Argument dated 10 January 2025 made clear that the Respondent would be seeking its costs; and the Appellant has had solicitors on record throughout the appeal proceedings.

107. The Appellant said that he would have some difficulty in paying the sum sought: it was, he said, for financial reasons that he had represented himself at the appeal hearing. However, there was no other evidence before me about his means. Prior to the Panel hearing he had been in employment as a Mental Health Nurse and had been for some time; and he informed the Panel that his wife was in full-time work. In any event, a person's means is not necessarily a reason for not making a costs order against them: this is not a specific factor to which the court must have regard in exercising its discretion under CPR 44. The courts are regularly required to make costs orders against those of modest means, if correct application of the principles in CPR 44 requires that.

108. In all these circumstances I am not persuaded that there is any reason to depart from the general rule set out in CPR 44.2(2)(a). The Appellant will therefore be ordered to pay the Respondent's costs, on the standard basis.

109. Under CPR 44.3(2), where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The Respondent claimed the sum of £8,972.43 in costs. The Appellant contended that these were too high overall, but did not advance any specific points in support of that submission. The costs schedule clearly explained what work had been done by Grade A, C and D fee earners (including Mr D'Alton as in house counsel) and Mr D'Alton explained matters further in oral submissions. I am

satisfied that the Respondent's costs were all reasonably and necessarily incurred. I could not discern any disproportionate costs.

110. Under CPR 44.7(1)(a) a party must comply with an order for the payment of costs within 14 days of the date of the judgment or order which states the amount of those costs, unless under CPR 44.7(1)(c) the court specifies another date. The Appellant did not seek an extension of time in terms. That said, I accept that the costs order is for a significant sum. He also indicated that he needed a credit card loan to repay the similar sum that had been overpaid to him by the Greater Manchester Trust.

111. I am therefore content to grant the Appellant additional to pay the Respondent's costs. Accordingly, the time for the Appellant to pay the costs is extended to 28 days, under CPR 44.7(1)(c).

112. Accordingly, the order I make is that the appeal is dismissed; and the Appellant must pay the Respondent's costs, on the standard basis, summarily assessed in the sum of £8,972.43, within 28 days.