

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

**Substantive Meeting
Thursday 18 January 2024 – Monday 22 January 2024**

Virtual Meeting

Name of Registrant:	Patience Rugare Machingauta
NMC PIN	05G2153E
Part(s) of the register:	Adult Nurse – Level 1 (September 2005)
Relevant Location:	Luton
Type of case:	Misconduct
Panel members:	Louise Fox (Chair, Lay member) Margaret Marshall (Registrant member) Alison Hayle (Lay member)
Legal Assessor:	John Moir
Hearings Coordinator:	Zahra Khan
Facts proved:	Charges 1, 2, 3, 4 and 5
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 Machingauta's registered email address by secure email on 20 November 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, that it would be held as a meeting and the date after which it would likely be held. It also included information about how Mrs Machingauta could provide written submissions to the panel.

In light of all of the information available, the panel was satisfied that Mrs Machingauta 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:

1. Between February 2017 and July 2018 (inclusive) booked one or more bank shifts on the e-roster system which you did not work and for which you were paid, as set out in schedule 1.
2. Between July 2018 and February 2019 (inclusive) booked one or more bank shifts using Colleague C's log in details which you did not work and for which you were paid, as set out in schedule 2.
3. Your actions in charges 1 and 2 were dishonest because you knew you had not worked the shifts you were claiming for.

4. Between July 2018 and February 2019 (inclusive) on one or more occasions accessed and interacted with the e-roster system using Colleague C's username and password as set out in schedule 2.

5. Your actions in charge 4 were dishonest because you intended any subsequent user/reader of the system to understand any changes had been made by Colleague C.

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

Schedule 1

	Date of shift		Date of shift		Date of shift
1	08/07/2018	36	09/04/2018	71	17/12/2017
2	07/07/2018	37	08/04/2018	72	16/12/2017
3	01/07/2018	38	07/04/2018	73	10/12/2017
4	30/06/2018	39	02/04/2018	74	09/12/2017
5	19/06/2018	40	01/04/2018	75	19/11/2017
6	18/06/2018	41	31/03/2018	76	18/11/2017
7	17/06/2018	42	30/03/2018	77	12/11/2017
8	16/06/2018	43	25/03/2018	78	11/11/2017
9	14/06/2018	44	24/03/2018	79	29/10/2017
10	13/06/2018	45	18/03/2018	80	28/10/2017
11	12/06/2018	46	17/03/2018	81	22/10/2017
12	11/06/2018	47	11/03/2018	82	21/10/2017
13	09/06/2018	48	10/03/2018	83	14/10/2017
14	08/06/2018	49	25/02/2018	84	13/10/2017
15	07/06/2018	50	24/02/2018	85	07/10/2017
16	06/06/2018	51	18/02/2018	86	30/09/2017
17	03/06/2018	52	17/02/2018	87	16/09/2017
18	02/06/2018	53	11/02/2018	88	02/09/2017
19	28/05/2018	54	10/02/2018	89	26/08/2017

20	27/05/2018	55	04/02/2018	90	13/08/2017
21	26/05/2018	56	03/02/2018	91	12/08/2017
22	20/05/2018	57	28/01/2018	92	29/07/2017
23	19/05/2018	58	27/01/2018	93	22/07/2017
24	13/05/2018	59	13/01/2018	94	02/07/2017
25	12/05/2018	60	12/01/2018	95	01/07/2017
26	07/05/2018	61	11/01/2018	96	24/06/2017
27	06/05/2018	62	10/01/2018	97	03/06/2017
28	05/05/2018	63	06/01/2018	98	28/05/2017
29	29/04/2018	64	05/01/2018	99	01/05/2017
30	28/04/2018	65	04/01/2018	100	09/04/2017
31	22/04/2018	66	31/12/2017	101	08/04/2017
32	21/04/2018	67	30/12/2017	102	11/03/2017
33	15/04/2018	68	26/12/2017	103	25/02/2017
34	14/04/2018	69	25/12/2017		
35	10/04/2018	70	24/12/2017		

Schedule 2

	Date of shift		Date of shift		Date of shift
1	14/02/2019	15	13/11/2018	29	29/08/2018
2	08/02/2019	16	12/11/2018	30	28/08/2018
3	04/02/2019	17	25/10/2018	31	27/08/2018
4	30/01/2019	18	20/10/2018	32	25/08/2018
5	28/01/2019	19	13/10/2018	33	24/08/2018
6	16/12/2018	20	07/10/2018	34	21/08/2018
7	11/12/2018	21	06/10/2018	35	12/08/2018
8	08/12/2018	22	30/09/2018	36	05/08/2018
9	04/12/2018	23	29/09/2018	37	04/08/2018
10	01/12/2018	24	22/09/2018	38	28/07/2018
11	25/11/2018	25	09/09/2018	39	22/07/2018
12	22/11/2018	26	05/09/2018	40	21/07/2018
13	17/11/2018	27	02/09/2018	41	14/07/2018
14	14/11/2018	28	30/08/2018		

Background

The charges arose whilst Mrs Machingauta was employed at Luton and Dunstable University Foundation Trust (“the Trust”) in an e-rostering role working in the Health Roster team and also working bank shifts as an A&E nurse. In July 2018 she changed role and moved to the Patient Flow team and her alleged fraudulent activity continued.

The NMC made the following submissions on the facts at this stage:

On 12 March 2019, Witness 2, Senior Sister in the Emergency Department (“ED”) at the Trust, was assisting her colleague with a “Hard Truths” document, a document that detailed staffing levels for the preceding month. As part of the exercise, Witness 2 compared the electronic health roster against a paper departmental diary.

The health roster is the electronic roster system which covers all staff in the Trust; staff have access to the health roster, but access levels vary. The health roster is managed by the Health Roster team who are responsible for staff training on the system, overseeing the information on the health roster and submitting it to payroll. The paper departmental diary (or allocation diary) is a book in which there is a handwritten entry for every staff member working on every shift in the ED.

During the process of comparing the health roster to the paper departmental diary, Witness 2 noticed that in January and February 2019 a total of 5 shifts had been allocated to Mrs Machingauta on the health roster, but her name did not appear on the paper departmental diary. The shifts had been “locked” on the health roster and paid for. Witness 2 spoke to Mrs Machingauta about the shifts in question and Mrs Machingauta told her she had not worked the shifts but instead had done some work training staff for the Health Roster team. It was later confirmed that by early 2019 training staff in the Health Roster was not part of Mrs Machingauta’s current role. When Witness 2 questioned her further, Mrs Machingauta assured Witness 2 that she would rectify the problem. Witness 2

followed up her work with an email alerting colleagues to the issues she had found with the health roster and paper departmental diary.

The investigation was then passed onto Witness 1, Head of Work Force Planning at the Trust. Witness 1's investigation concluded that there were 144 shifts where Mrs Machingauta was booked onto Health Roster for ED shifts but where her name did not appear in the paper departmental diary. She was paid for these shifts. Of those 144 shifts, 103 shifts were booked as bank shifts by Mrs Machingauta when she was an E-roster system administrator and had "super-user" access, meaning she had the ability to override information in the health roster. When using the e-roster system the process followed a pattern: on a Monday morning Mrs Machingauta booked a shift before the payroll run and after it had gone to payroll the shift would be deleted. When Mrs Machingauta moved from the E-roster team, in July 2018, the process of booking and cancelling shifts changed.

From August 2018 the NMC allege that Mrs Machingauta booked shifts using Colleague C/Witness 3's log in details. On the system it would appear as though Witness 3 had locked and finalised the shifts. A senior nurse, like Mrs Machingauta, could access the system but they could not finalise their own shifts. Booking shifts in this way accounted for 41 shifts. Mrs Machingauta had access to Witness 3's log in details because when she was part of the e-rostering team it was her responsibility to reset passwords. Mrs Machingauta reset Witness 3's password on 16 July 2014 and Witness 3 had never changed the password.

On 5 April 2019 Mrs Machingauta provided the Trust with a statement dated 18 March 2019 in which she acknowledged the matters under investigation. Mrs Machingauta confirmed she had a conversation with Witness 2 and that she had told her the shifts had been put in for training purposes. Mrs Machingauta said she tried to email a colleague, to rectify the mistakes relating to the shifts booked in January, but had difficulties with her email and had not been able to send it. Mrs Machingauta said the shifts might have been connected to some assistance she had given a Band 6 nurse who was having difficulties

with the system. She also confirmed she had not worked any bank shifts in the A&E department since August 2018.

On 12 April 2019 Mrs Machingauta was interviewed by the Trust. Mrs Machingauta stated that she worked on average 2 bank shifts in the ED per week but none since 2018. She could not explain why her name did not appear in the ED paper diary when she was shown on the health roster as working. She stated she did not know Witness 3's password. She did not reply when challenged that she been paid for shifts she had not worked. She said, when on e-rostering training, she would input shifts and cancel them to assist with training but could not account for how these shifts then became locked and paid for. She could not explain how Witness 3's account had been used to allocate shifts to her. She recalled the conversation with Witness 2 and said she had confirmed she had not worked the two shifts Witness 2 was questioning her about. The interview concluded early as Mrs Machingauta had an urgent family matter to attend to.

On 16 May 2019 Mrs Machingauta signed the interview notes as an accurate reflection of the meeting. The interview recommenced on 3 May 2019. Mrs Machingauta was taken through her payslips and bank accounts and confirmed the two tallied. She said she had not noticed the over payments and said that her husband also accessed the account. She accepted that she had been paid for 2 and a half years of bank shifts she did not work. She continued to state that she did not know that the shifts were being locked.

On 16 May 2019 Mrs Machingauta offered to repay the money she had been paid for shifts she had not worked, in monthly instalments of £1,000. The Trust concluded its investigation in May 2019 and found:

“From February 2017 to July 2018 PM falsified 103 records and received payment from the Trust not due to her. PM used her position as system administrator to retrospectively book, finalise and delete shifts she did not work in the Emergency department...” and “from August 2018 to March 2019 PM falsified records in order to receive payments for a further 41 shifts from the Trust not due to her. PM used her knowledge gained in the position as system administrator to retrospectively

book shifts and finalise them using [Witness 3's] user account for shifts she did not work...

The NMC noted that, in an email dated 4 July 2019, the Royal College of Nursing (RCN) representative for Mrs Machingauta wrote to the Trust in advance of a disciplinary hearing scheduled for 5 July 2019. The RCN told the Trust that Mrs Machingauta now:

“Accepts the investigation report in full and would not be contesting the facts or conclusions reached.”

Mrs Machingauta wrote to the NMC on 6 March 2022. In the letter Mrs Machingauta states that she *“owned up an [sic] apologised”* during the internal investigation for her *“genuine error”*. She offered to repay the Trust and received an invoice for £36,702.55 which she repaid.

Mrs Machingauta sent a further letter to the NMC on 1 June 2023 in which she wrote:

“I am writing to say that please I do not want to go through another hearing for this case. I do not want to drag anyone or any of the witnesses to go through a hearing. I went through a hearing at Luton and Dunstable Hospital and it was the most stressful, physically and emotionally time of my life... I accept what I did was really wrong and I understand the seriousness of this case. I have humiliated myself and lost a good reputation...I cannot express enough how remorseful I am for what I did.”

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will

be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Head of Work Force Planning and Line Manager at the Luton and Dunstable University Foundation Trust at the time of the incident

- Witness 2: Senior Sister in the Emergency Department at the Luton and Dunstable University Foundation Trust at the time of the incident

- Witness 3: Practice Development Nurse at the Luton and Dunstable University Foundation Trust at the time of the incident

- Witness 4: Senior Sister at the Luton and Dunstable University Foundation Trust at the time of the incident

- Witness 5: Deputy Chief Nurse at the Luton and Dunstable University Foundation Trust at the time of the incident

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by the NMC and Mrs Machingauta's written responses to the Trust and the NMC.

The panel then considered each of the charges and made the following findings.

Charge 1

“That you, a registered nurse:

1. Between February 2017 and July 2018 (inclusive) booked one or more bank shifts on the e-roster system which you did not work and for which you were paid, as set out in schedule 1”.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1’s documentary evidence which included an Employee Staff Record (ESR) report on payments made into Mrs Machingauta bank account, a Healthroster report on shifts sent to payroll, and a spreadsheet for ‘ghost shifts’ dated March 2015 to July 2018. It also took into account Witness 4’s Disciplinary Investigation Report dated May 2019 and the Investigation Meeting held with Mrs Machingauta on 12 April 2019 and again on 3 May 2018 and her responses to the NMC.

In relation to schedule 1, the panel was asked to consider 103 shifts. The panel decided to take a sample of various dates to cross reference this with the evidence of Witness 1. The panel was satisfied that the sample provided was consistent with the evidence from Witness 1 and the documentary evidence.

The panel had regard to the ESR report within Witness 1’s evidence on bank payments made to Mrs Machingauta. The panel noted that this was a report covering four years and showed the number of payments that had gone to Mrs Machingauta’s bank accounts for both substantive and bank shifts. The panel was satisfied that this report proved that Mrs Machingauta was paid for all of the shifts set out in schedule 1. It noted that Mrs Machingauta produced her bank statements and acknowledged the payments entering her account in both the investigatory interview, dated April and May 2019, and within her responses at the disciplinary hearing, dated May 2019. For example, when asked by Witness 4 whether Mrs Machingauta accepts that she was paid for two and a half years for bank shifts that she did not work, she responded “*Yes I have*”.

Additionally, the panel had regard to a 'Healthroster report on shift sent to payroll' and a copy of the ED diary for the relevant dates in schedule 1 within Witness 1's evidence. The panel noted that this was a report that compared the entries in the ED diary of staff working each shift with the electronic healthcare roster of shifts that were sent to the payroll to be paid to Mrs Machingauta. The panel was satisfied that together this report and the ED diary confirms that Mrs Machingauta did not work the shifts outlined in schedule 1 that were sent to payroll. In addition, Mrs Machingauta confirmed this in her investigatory interview with the Trust.

Further, the panel had regard to a spreadsheet for 'ghost shifts' dated March 2015 to July 2018 within Witness 1's evidence. The panel noted that this spreadsheet shows that the bank shifts were put on the system after they should have occurred but a short time before the list of shifts worked was sent for payment. Shortly after the shifts had been sent to payroll, they were deleted from the rostering system, so that there was no trace of them within the system to be seen by a regular user. (For this reason, they were referred to as ghost shifts). This happened during the time that Mrs Machingauta was working on the e-rostering team and had 'super user' access status which allowed her to make changes to the rostering system that a regular user could not. The panel was satisfied that there is a clear pattern in the data between the first and last dates in schedule 1 where Mrs Machingauta is paid for bank shifts that were no longer visible on the e-roster system and when she had not worked.

The panel noted that this process ran until Mrs Machingauta changed team and she lost her super user rights. The panel also noted that Mrs Machingauta accepted the evidence quoted above which was provided at the disciplinary hearing and that in response she paid back a significant amount of money.

The panel determined that as a super user Mrs Machingauta would have had the knowledge about how to work the system and full access to make the entries and deletions. She was also the sole beneficiary and benefited financially. On the balance of probabilities, the panel was satisfied that it was more likely than not that Mrs Machingauta booked one or more bank shifts on the e-roster system which she did not work and for which she was paid, between February 2017 and July 2018.

Therefore, the panel determined that charge 1 was found proved.

Charge 2)

“That you, a registered nurse:

2. Between July 2018 and February 2019 (inclusive) booked one or more bank shifts using Colleague C’s log in details which you did not work and for which you were paid, as set out in schedule 2”.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1’s documentary evidence which included an ‘ESR report on Bank Payment’ made to Mrs Machingauta, a Healthroster report on shifts sent to payroll, a spreadsheet showing shifts finalised by Witness 3/Colleague C. It also took into account Witness 3’s written statement dated 21 January 2022, and Witness 3’s Counter Fraud Witness Statement. Further, it took into account Witness 4’s Disciplinary Investigation Report dated May 2019 and the Investigation Meeting held with Mrs Machingauta on 12 April 2019 and again on 3 May 2018.

The panel had regard to a spreadsheet within Witness 1’s evidence apparently showing shifts finalised by Witness 3. The panel accepted Witness 3’s evidence that she had not signed off these bank shifts for Mrs Machingauta and noted that on many of the dates and/or times on which the data showed that her log in details had been used to authorise payments, she would have been unable or access the system, because, for example she was on annual leave or training. Witness 3’s statement to the NMC is consistent with her responses during the Trust’s investigatory interview with her and the contents of the Counter Fraud Witness Statement completed contemporaneously.

The panel had sight of the email chain between Mrs Machingauta and Witness 3 in 2014 showing that Mrs Machingauta knew Witness 3’s password and account details as she

had initially helped set up the account when working in e-rostering. Witness 3 confirmed she had not changed her password since the account was set up.

The panel noted that, within the disciplinary hearing dated May 2019, Mrs Machingauta stated that she did not undertake any bank shifts during this period of time at all, namely 2018. Mrs Machingauta also stated that she did change the system for training purposes, although she acknowledged that she had no authority to do so and was no longer in a training role. She stated that she did not know why her entries were subsequently 'locked' (authorised for payment). The panel determined however it was more likely than not that Mrs Machingauta locked the shifts herself using Colleague C's log in details. Mrs Machingauta also told the Trust that she had not noticed that she had been paid for the bank shifts she had not worked. The panel considered this was highly unlikely considering the large and regular payments she received over an extensive period of time and did not accept Mrs Machingauta's account.

For the same reasons as in charge 1, the panel determined that Mrs Machingauta had been paid for the shifts outlined in schedule 2. The panel again cross referenced a sample of the dates on which it was alleged that Mrs Machingauta had created fraudulent entries with the system reports provided by Witness 1. It noted that on these dates Mrs Machingauta did not appear in the ED diary, and that all shifts were put on the system retrospectively. It noted witnesses' evidence that nobody had seen her in the department at all.

On the balance of probabilities, the panel was satisfied that it was more likely than not that Mrs Machingauta booked one or more bank shifts using Colleague C's log in details which she did not work and for which she was paid, between July 2018 and February 2019.

Therefore, the panel determined that charge 2 was found proved.

Charge 3)

"That you, a registered nurse:

3. Your actions in charges 1 and 2 were dishonest because you knew you had not worked the shifts you were claiming for.”

This charge is found proved.

Having found charges 1 and 2 proved, the panel went on to consider whether or not Mrs Machingauta’s actions in charges 1 and 2 were dishonest. The panel had regard to the investigatory interviews with Mrs Machingauta, the witness statements and Mrs Machingauta’s correspondence with the Trust and the NMC. It also had regard to the test set out in *Ivey v Genting Casinos* [2017] UKSC 67, which outlines the following:

- What was the defendant's actual state of knowledge or belief as to the facts; and
- Was the conduct dishonest by the standards of ordinary decent people?

The panel also had regard to the NMC guidance entitled *‘Making decisions on dishonesty charges’* (reference DMA-7) dated 12 October 2018. Within this guidance, Fitness to Practise Committee (FtPC) panels are advised to decide whether the conduct indeed took place and if so, what was the registrant’s state of mind at the time. Panels are reminded to consider the following:

- *‘What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*
- *Whether the panel considers that the nurse, midwife or nursing associate’s actions were dishonest, or*
- *Whether there is evidence of alternative explanations, and which is more likely.’*

In reviewing the evidence, the panel did not accept Mrs Machingauta’s account that she had booked the shifts retrospectively when she was providing training to colleagues, and she did this on the live system to ensure the system was working. She said she did not go back and delete them as they related to dates already passed so no one would be using that data. She was not able to explain how those shifts were then locked and sent to payroll and then in relation to the schedule 1 dates were deleted. The panel determined

that there was a clear sustained pattern of the shifts being entered close to the date and time the submissions were made to payroll and then they were deleted often minutes later. The panel concluded this was a premeditated process by which Mrs Machingauta obtained payment fraudulently and then made sophisticated efforts to cover her tracks. Once she lost her super-user rights this process changed, and she found an alternative way to be paid for the shifts outlined in schedule 2 by using Colleague C's log in.

The panel noted that Mrs Machingauta did not challenge any of the Trust's findings. The RCN wrote to the Trust on behalf of Mrs Machingauta before the disciplinary hearing, stating that: *'Patience will herself propose that the fraudulently gained monies are repaid'*. The panel was of the view that this demonstrated she knew she had been acting dishonestly. The panel was satisfied that Mrs Machingauta was well aware that she was dishonestly booking shifts that she had not worked. It was also satisfied that Mrs Machingauta had done this for significant personal financial gain and that she took conscious steps to cover her tracks.

The panel considered that Mrs Machingauta's conduct in relation to charges 1 and 2 would be regarded as dishonest by the standards of ordinary decent people.

In light of the above, the panel was satisfied that Mrs Machingauta was dishonest in her actions because she knew that she had not worked the shifts that she was claiming for.

Accordingly, on the balance of probabilities, the panel determined that charge 3 was found proved.

Charge 4)

"That you, a registered nurse:

4. Between July 2018 and February 2019 (inclusive) on one or more occasions accessed and interacted with the e-roster system using Colleague C's username and password as set out in schedule 2."

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's documentary evidence which included an 'ESR report on Bank Payment', a Healthroster report on shift sent to payroll, a spreadsheet for 'ghost shifts' dated March 2015 to July 2018, a spreadsheet showing shifts finalised by Witness 3/Colleague C. It also took into account Witness 3's written statement dated 21 January 2022, and Witness 3's Counter Fraud Witness Statement. Further, it took into account Witness 4's Disciplinary Investigation Report dated May 2019 and the Investigation Meeting held with Mrs Machingauta on 12 April 2019 and again on 3 May 2018.

The panel accepted Witness 3's evidence in that she did not sign off Mrs Machingauta's various bank shifts. Mrs Machingauta said she did not have access to Witness 3's log in details but the panel determined that she did based on the emails from 2014 exhibited. The panel also considered Mrs Machingauta had a significant financial motive for using Witness 3's log in details and had no plausible explanation as to why the shifts were on the system or were locked by Colleague C and sent to payroll. Therefore, the panel preferred the evidence of Witness 3.

On the balance of probabilities, the panel was satisfied that it was more likely than not that Mrs Machingauta, on one or more occasions, accessed and interacted with the e-roster system using Colleague C's username and password, between July 2018 and February 2019.

Therefore, the panel determined that charge 4 was found proved.

Charge 5)

"That you, a registered nurse:

5. Your actions in charge 4 were dishonest because you intended any subsequent user/reader of the system to understand any changes had been made by Colleague C".

This charge is found proved.

In reaching this decision, the panel took into account the same evidence as set out in the previous charges.

The panel then considered its previous findings with respect of charge 4.

The panel had regard to the same test set out in *Ivey v Genting Casinos* as set out in charge 3.

In reviewing the evidence, the panel determined that Mrs Machingauta's actions were dishonest as it had determined she was aware of what she was doing and also financially benefited. Mrs Machingauta would know, as a registered nurse and significantly as a previous member of the e-roster team, that it would be dishonest to use other colleagues' log in details and passwords to approve bank shifts.

The panel was of the view that Mrs Machingauta's actions were a premeditated deception to give the impression that Witness 3 had been signing off these bank shifts that Mrs Machingauta knowingly had not worked.

The panel considered that Mrs Machingauta's conduct in relation to charge 4 would be regarded as dishonest by the standards of ordinary decent people.

In light of the above, the panel was satisfied that Mrs Machingauta was dishonest in her actions because she intended for any subsequent user/reader of the system to understand that any changes had been made by Witness 3/Colleague C.

Accordingly, on the balance of probabilities, the panel determined that charge 4 was found proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Machingauta'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 Machingauta'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 case of *Roylance v GMC (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.'

The NMC also referred to the cases of *Calheam v GMC* [2007] EWHC 2606 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317.

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ("the Code") in making its decision. The NMC referred to paragraphs 20, 20.2, 20.4, 20.8, 21 and 21.3 of the Code.

The NMC submitted specific, relevant standards where Mrs Machingauta's actions amounted to misconduct. The NMC considered the misconduct serious for the following reasons:

1. Mrs Machingauta's actions were dishonest from the outset.
2. Mrs Machingauta abused her position of trust. She used her knowledge of the e-rostering system to manipulate it for her own personal financial gain and when her super-user access rights were removed she found an alternative method to continue gaining payment for work she had not done. Using two methods to engineer the same outcome shows considerable planning and determination to perpetuate the fraud.
3. Having reset a colleague's password in 2014 Mrs Machingauta retained that information for her own use years later, which significantly aggravates the dishonesty.
4. Mrs Machingauta knew she was booking shifts she would never work and for which she would receive payment.
5. Mrs Machingauta engaged in a premeditated, systematic and longstanding deception. Her dishonesty was repeated and sustained.
6. Mrs Machingauta's actions only came to light as a result of an internal audit.

When determining whether Mrs Machingauta's fitness to practice is impaired, the NMC submitted that limbs 2, 3 and 4 of Dame Janet Smith's "test" in the Fifth Shipman Report are engaged.

The NMC submitted that Mrs Machingauta's actions and dishonesty are not easily remediable, and that Mrs Machingauta has displayed limited insight, which would be required for remediation. It submitted that Mrs Machingauta has shown no or very limited insight for the following reasons:

1. During the internal investigation, even when faced with overwhelming evidence, Mrs Machingauta continued to deny any dishonesty, claiming the shifts she was paid for were only inputted onto the e-roster for training purposes. She denied using Witness 3's user account and password. It was only towards the end of the investigation that Mrs Machingauta accepted the findings of the Trust, that she had falsified records for personal financial gain.
2. In response to the NMC investigation Mrs Machingauta said she had "owned up and apologised" during the internal investigation for her "genuine error". Mrs Machingauta referred to the money she had dishonestly claimed as an "overpayment of salary" in an attempt to minimise her culpability. This demonstrates a lack of insight as her actions were not "errors", but deliberate acts designed to secure payment for work she had no intention of doing.
3. The closest Mrs Machingauta has come to showing insight is in her letter to the NMC dated 1 June 2023 in which she accepts her wrong-doing and states that she understands the seriousness of the case. However, her insight is still extremely limited as she does not articulate how her actions were wrong. She has not reflected on the impact of her dishonesty on the Trust or her colleagues. She has not explained her understanding of how her actions and dishonesty are serious.
4. It is not known if Mrs Machingauta has worked as a nurse since the issues of concern.

The NMC submitted that there is a continuing risk to the public interest due to Mrs Machingauta's lack of insight and her failure to demonstrate proper insight means there is a real risk of repetition.

The NMC submitted that the panel is to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC 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. It submitted that Mrs Machingauta's conduct engages the public interest because Mrs Machingauta has breached a fundamental principle of the profession, to act with honesty and integrity. As such, the need to protect the wider public interest calls for a finding of impairment to uphold the 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.

The NMC invited the panel to find Mrs Machingauta's fitness to practise impaired on the grounds of public interest.

In her written responses to the NMC, Mrs Machingauta did not take a position on whether her actions amounted to misconduct or if her fitness to practise is currently impaired. In relation to remediation, in her letter to the NMC dated 1 June 2023, she wrote: *'I have rectified my mistakes by repaying all the money owed to Luton and Dunstable Hospital and I wrote emails to all the top management and [Witness 3] my colleague who dealt with case [sic] profusely apologising' ... 'I have learnt from my mistakes. I will start on a clean slate and promise never to do this again.'*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Cohen* [2008] EWHC 581 [Admin] and *Grant*.

Decision and reasons on misconduct

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

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

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.2 act with honesty and integrity at all times...

20.4 keep to the laws of the country in which you are practising

20.8 act as a role model of professional behaviour for students and newly qualified nurses, 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

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

The panel determined that Mrs Machingauta's actions were very serious in that they occurred in a work context, were premeditated, and were sustained over a period of two

years, involving fraud, dishonesty, and an abuse of trust. In addition, the panel considered using a colleague's login fraudulently which could have put Witness 3's career at risk was particularly serious.

Therefore, the panel found that Mrs Machingauta's 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 Machingauta'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. 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/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 determined that patients were not put at risk or caused harm as a result of Mrs Machingauta's misconduct. However, Mrs Machingauta's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel acknowledged that Mrs Machingauta paid some of the money back and states that she has apologised to the Trust. However, the panel determined that

Mrs Machingauta has not shown any significant insight as she has not demonstrated an understanding of why what she did was wrong. In her written responses, Mrs Machingauta only reflected on the impact on herself and showed no understanding of the impact of her dishonesty on Witness 3 or her other colleagues or the public's trust in the nursing profession. Nor had she recognised the potential impact of the financial loss to the Trust. Further, Mrs Machingauta has not demonstrated how she would manage financial pressures differently in the future. The panel noted that Mrs Machingauta has not acknowledged that she was dishonest.

The panel considered that this type of misconduct being attitudinal in nature is very difficult to remediate. Other than repaying some of the money misappropriated, Mrs Machingauta has not provided any evidence that she has taken steps to remediate. Nor has the panel been provided with any evidence of her working practice since the incidents, either in a health or social care setting or any other type of paid or unpaid work.

Based on Mrs Machingauta's dishonesty, lack of insight and remediation, the panel determined that there is a risk of repetition of dishonest activity in future roles.

As the panel found that there are no concerns regarding Mrs Machingauta's clinical practice, nor did she cause direct harm to patients, it determined that a finding of impairment is not 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 was of the view that a reasonable and well-informed member of the public would be significantly concerned if Mrs Machingauta was permitted to practise without restriction. The panel therefore concluded that public confidence in the profession would be seriously undermined if a finding of impairment were not made in this case.

Therefore, the panel determined that a finding of impairment on the grounds of public interest is required.

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

Sanction

The panel considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Machingauta off the register. The effect of this order is that the NMC register will show that Mrs Machingauta has been struck-off the register.

In reaching this decision, the panel had regard to all the evidence 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 Notice of Meeting, dated 20 November 2023, the NMC had advised Mrs Machingauta that it would seek the imposition of a striking-off order the panel found Mrs Machingauta's fitness to practise currently impaired.

The NMC submitted that the aggravating features of the case are as follows:

1. Abuse of a position of trust
2. A pattern of misconduct over a long period of time
3. Lack of insight into failings

The NMC submitted that the mitigating feature of the case is personal mitigation in relation to stress, ill-health, and financial hardship.

The NMC submitted that the allegations are too serious to take no further action and so as to achieve its overarching objective of public protection, action does need to be taken to secure public trust in nurses and to promote and maintain proper professional standards and conduct.

The NMC submitted that a caution order is only appropriate for cases at the lower end of the spectrum. It submitted that this case is not at the lower end of the spectrum because it involves behaviour that was dishonest, longstanding and in breach of trust.

The NMC submitted that a conditions of practice order would not be appropriate, in that there are no identifiable areas of nursing practise which require assessment and/or retraining. Additionally, it submitted that the dishonesty of Mrs Machingauta is a strong indication of deep-seated harmful personality problems.

Further, the NMC submitted that a suspension order would restrict Mrs Machingauta's practice for a period of time: protecting the public and upholding the public interest to a certain extent. However, it submitted that such an order would not sufficiently mark the seriousness of the conduct in question, nor sufficiently protect the public confidence in nurses.

The NMC submitted that this was not a single incident of misconduct, but a sustained course of conduct carried out over two years. It also submitted that this conduct is indicative of a harmful deep-seated personality problem and Mrs Machingauta's conduct is not such that can be remediated and therefore poses a significant risk to the reputation of the profession.

As such, the NMC submitted that a suspension order would not mark the seriousness of the conduct in question nor sufficiently protect the public confidence in nurses and is therefore not to be considered a proportionate response to the concerns raised.

The NMC submitted that a striking-off order is the most appropriate order in the circumstances as Mrs Machingauta's actions are fundamentally incompatible with being a registered professional. Mrs Machingauta has shown a lack of probity, honesty and

trustworthiness stemming from her professional duties at the Trust where she worked. It submitted that striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions. In this case, although there were no concerns around Mrs Machingauta's clinical skills, her dishonest actions undermine everything the profession stands for.

In her correspondence with the NMC, Mrs Machingauta did not make any comments regarding individual sanctions, but she did ask that she be allowed to remain on the register.

Decision and reasons on sanction

Having found Mrs Machingauta'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 Sanctions Guidance (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 actions that were sustained over a long period of time
- Abuse of position of trust and misused her expert knowledge for financial gain
- Lack of insight into failings, particularly in relation to dishonesty
- Put her colleague's honesty in question

The panel considered whether there were any mitigating features. The panel took into account the NMC's submissions in relation to Mrs Machingauta's financial hardship, but it could not give this any weight as a mitigating feature due to Mrs Machingauta's contradictory statements to the Trust. She first claimed that she had a large amount of money in her account so did not notice the payments from the Trust. Later she claimed financial hardship as a motivator, although the Trust noted that she told them she had several foreign holidays. The panel also noted that Mrs Machingauta's reference to ill-

health and stress related to the investigatory processes and not her state of mind during the period when she was dishonest. Therefore, the panel could not determine any 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.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, it 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 Machingauta'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 Machingauta's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the misconduct does not relate to clinical practice but the attitudinal behaviours of Mrs Machingauta. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Machingauta's registration would not adequately address the seriousness of this case.

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; and*
- *The Panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour*

The panel accepted there has been no evidence of repetition of behaviour since the incidents in 2019 but concluded that none of the other factors apply in Mrs Machingauta's case. 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 Machingauta's actions is fundamentally incompatible with Mrs Machingauta remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate, or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

The panel determined that Mrs Machingauta's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. Mrs Machingauta attempted to defraud the Trust of more than £50,000 over a two-year period. When she lost her super user status, rather than stop, she decided to fraudulently use a colleague's log in to continue receiving payments for shifts she had not worked and had no intention of working. She did this with no consideration for the risk to her colleague's reputation. Mrs Machingauta was a senior nurse with responsibility for training her colleagues to use the e-roster system and she abused the

trust placed in her and misused her expertise of the system for her own financial gain. Mrs Machingauta could have chosen to work additional shifts had she wanted to increase her income honestly. The panel was of the view that the findings demonstrate that Mrs Machingauta's misconduct was sufficiently serious that 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, 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 Machingauta's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mrs Machingauta 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 Machingauta's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC in that an interim suspension order is necessary given the panel's findings in order to meet the wider public

interest. This is required to cover the 28-day appeal period and, if Mrs Machingauta does appeal the decision, the period for which it may take for that appeal to be heard.

The NMC submitted that the reputation of the profession would be significantly undermined if an interim suspension order was not in place.

Mrs Machingauta did not make any submissions regarding an interim order.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order.

The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period and any period which an appeal may be heard.

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

That concludes this determination.