

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

**Substantive Meeting
Friday, 3 March 2023**

Virtual Hearing

Name of Registrant:	Laura Hillan
NMC PIN	13C0062N
Part(s) of the register:	Registered Nurse – Adult Nursing RNA – 21 March 2003
Relevant Location:	Northern Ireland
Type of case:	Misconduct
Panel members:	Anthony Mole (Chair, lay member) Donna Green (Registrant member) Stacey Patel (Lay member)
Legal Assessor:	John Donnelly
Hearings Coordinator:	Catherine Acevedo
Facts proved:	Charges 1 and 2
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 Miss Hillan's registered email address by secure email on 24 January 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, the time, date and the fact that the case would be disposed of at a meeting.

In the light of all of the information available, the panel was satisfied that Miss Hillan's 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. Failed to inform Northern Health and Social Care Trust ('NHSCT') that you continued to be paid as a student midwife after you had stopped working in that capacity for NHSCT.
2. Your actions at charge 1 were dishonest in that you intended to conceal from NHSCT that you were receiving payment to which you were not entitled.

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

Background

Miss Hillan entered the register maintained by the NMC on 21 March 2013. She was (and is) registered as a Registered Nurse – Adult (RNA). Subsequently, Miss Hillan was employed by Northern Health and Social Care Trust ('NHSCT') as a student midwife.

Miss Hillan withdrew from the relevant university course in February 2017. She left employment with NHSCT on 3 May 2017. Prior to leaving her employment, Miss Hillan appropriately submitted a Notification of Leaving form.

Due to errors at NHSCT, Miss Hillan continued to be paid as a student midwife from May 2017 until 6 February 2019, when NHSCT's failure to process her Notification of Leaving form was noticed.

Between 29 November 2018 and 06 February 2019, Miss Hillan worked 14 bank shifts at South Eastern Health and Social Care Trust. Shortly after this, Miss Hillan left the country.

On 22 March 2019, NHSCT sent a letter to Miss Hillan bringing the overpayment to her attention and requesting that the salary overpayment be repaid.

On 01 April 2019, on receipt of NHSCT's letter, Miss Hillan's sister contacted NHSCT, advised that Miss Hillan was out of the country and indicated that Miss Hillan would like to discuss setting up a repayment plan.

On 28 October 2019, Miss Hillan returned to the UK.

On 04 November 2019, Miss Hillan emailed NHSCT to arrange repayment. She received an automated reply and was provided with alternative contact details.

On 07 November 2019, Miss Hillan emailed NHSCT using the alternative contact details provided. No response was received.

On 11 November 2019, Miss Hillan spoke to a member of staff at NHSCT. They confirmed that she had the correct contact details to arrange repayment.

On 12 November 2019, Miss Hillan spoke to another member of staff at NHSCT. They also confirmed that she had the correct details to arrange repayment. Miss Hillan sent a further email to NHSCT. This email was responded to. Miss Hillan was told NHSCT would be in touch '*in due course*'.

On 06 January 2020, Miss Hillan emailed NHSCT to arrange repayment. She had not been contacted by NHSCT since 12 November 2019.

On 04 April 2020, Miss Hillan repaid the full amount owed to NHSCT. At this time she was out of country again. As a result repayment was facilitated by an officer in the Police Service of Northern Ireland.

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 witness on behalf of the NMC:

- Mr 1: Senior Accountant /Fraud Liaison
Officer

The panel also had regard to an undated written response from Miss Hillan.

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

Charge 1

Failed to inform Northern Health and Social Care Trust ('NHSCT') that you continued to be paid as a student midwife after you had stopped working in that capacity for NHSCT.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Mr 1 and Miss Hillan.

Mr 1 says in his witness statement:

“Unfortunately, [Miss Hillan’s] manager failed to complete the paperwork to remove her from the Trust Payroll system and she continued to receive monthly salary payments up to February 2019 when the error was discovered. She received a total of £31,772.75.”

When this was discovered, a letter was issued to her on 22 March 2019 informing her of the overpayment and asking her to contact the Trust.

[Miss Hillan] made no contact with the Trust so the case was referred to the Business Service Organisations (BSO) Counter Fraud who carried out an investigation before passing it to the Police service of Northern Ireland (PSNI).”

The panel noted that these events involved a large sum of money and it considered that it was clear from Miss Hillan’s response she was aware of the money deposited into her bank account. The panel considered that although Miss Hillan’s manager at NHSCT had failed to complete the paperwork to remove Miss Hillan from the Payroll, Miss Hillan had a moral and legal obligation to inform NHSCT of the overpayment once she noticed it.

The panel also noted that Miss Hillan appears to acknowledge that she failed to inform the Trust about the overpayments. She stated in her response *“Reflecting on my failure to inform the Trust of the salary overpayment and how it has escalated to the NMC and PSNI referral has made me realise the magnitude of the consequences in making one bad decision. It was never my intention to keep the salary overpayment”*. The panel also saw no evidence that Miss Hillan actively tried to contact NHSCT to make repayments until the Police were involved.

The panel accepted the detailed and consistent evidence of Mr 1 and Miss Hillan’s acknowledgment of her failure to inform. The panel determined, on the balance of

probabilities that Miss Hillan did fail to inform NHSCT that she continued to be paid as a student midwife after she had stopped working in that capacity for NHSCT. The panel therefore found charge 1 proved

Charge 2

Your actions at charge 1 were dishonest in that you intended to conceal from NHSCT that you were receiving payment to which you were not entitled.

This charge is found proved.

In reaching this decision, the panel first considered what Miss Hillan knew or believed at the time about what she was doing. The panel noted that Miss Hillan was aware of the overpayments and appears to accept that she failed to inform NHSCT.

The panel noted in Miss Hillan's responses she states *"I honestly never thought I was being dishonest. I always knew the money had to be repaid and it was always my intention to do so. I moved overseas and became preoccupied with life abroad, which is where I was for the majority of payments. I know I should have acted sooner and was extremely lax in doing so however I attempted to repay the money as soon as I received correspondence from the NHSCT. I asked my sister to ring the Trust and repay the money on my behalf as I was overseas. Since returning home I have tried numerous times to contact the Trust and repay the full outstanding amount owed. To date I have received no contact back from the NHSCT regarding this"*.

The panel saw no evidence that Miss Hillan had proactively made attempts to contact NHSCT to arrange repayments. The panel considered that although Miss Hillan's manager at NHSCT had failed to complete the paperwork to remove Miss Hillan from the Payroll, Miss Hillan had a moral and legal obligation to inform NHSCT of the overpayment once she noticed it. The panel took into account Miss Hillan's hitherto good character.

The panel considered that these were repeated payments over a lengthy period of almost two years and involved a substantial amount of money namely £31,772.75. The panel had no further information about her circumstances at the time and no explanation was given

as to why she did not inform NHSCT. It was of the view that Miss Hillan would have known that something needed to be done about the overpayment on her part especially because she states that this had happened on a previous occasion.

Taking into account the above, the panel determined that Miss Hillan's actions did amount to dishonesty as she did not make any efforts of her own accord to return the money that had been overpaid. The panel noted, to Miss Hillan's credit, that she paid the money back in full, However, it noted that she only took action and engaged once the police and BSO were involved.

The panel determined that, on the balance of probabilities that, by Miss Hillan not informing NHSCT she intended to conceal from NHSCT that she was receiving payment to which she was not entitled. The panel therefore found charge 2 proved.

Fitness to practise

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

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Hillan'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 invited the panel to take the view that the facts found proved amount to misconduct. The panel was referred to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (“the Code”).

The NMC identified the provisions of the Code they consider have been breached in this case. The NMC submit that the misconduct is serious because it relates to financial dishonesty and amounts to misconduct.

The NMC requires the panel 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Miss Hillan’s fitness to practise impaired. The NMC consider that Miss Hillan has displayed some insight and appears to accept the conduct alleged at charge 1. She denies that her actions were dishonest. She explains that a combination of her frustration with NHSCT for overpaying her and events in her private life meant she did not prioritise drawing the overpayment to NHSCT’s attention. On that basis, she is remorseful for her actions.

The NMC do not consider any training would be relevant to the issues in this case. It was submitted there is a continuing risk to the public due to Miss Hillan’s lack of full insight. Miss Hillan denies that she behaved dishonestly. Were that to be found proved against her that would also suggest a public protection risk.

The NMC consider there is also a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Miss Hillan’s

conduct engages the public interest because it relates to financial dishonesty and is directly connected to her practice.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Wisson v HPC* 2013 EWHC 1036, *Ivey v Gentings Casinos (UK) Ltd t/a Crockfords* (2017) UKSC 67 and *PSA v GMC and Uppal* 2015 EWHC 1304.

Decision and reasons on misconduct

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

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

“Promote professionalism and trust

20 Uphold the reputation of your profession at all times

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

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...

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship...”

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your dishonest conduct was so serious and involved repeated payments over a lengthy period and involved a substantial sum of money being paid to Miss Hillan which she failed to inform anyone about when she had an obligation to do so as the money did not belong to her.

The panel found that Miss Hillan'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, Miss Hillan's fitness to practise is currently impaired.

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

a) ...

- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found limbs b, c and d engaged in *Grant* test. The panel finds that Miss Hillan's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It found that Miss Hillan had behaved dishonestly by concealing from NHSCT that she was receiving payments to which she was not entitled. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel took into account her written response. The panel considered that Miss Hillan had demonstrated some remorse and insight and some understanding of why what she did was wrong. The panel noted that Miss Hillan had only paid the money back in full after involvement from the police and BSO.

The panel was satisfied that the misconduct in this case is capable of being addressed. The panel carefully considered the evidence before it in determining whether or not Miss Hillan has taken steps to remediate her conduct. The panel took into account there was no comprehensive evidence of reflection or remediation.

However, the panel is of the view that there is a risk of repetition based on the limited insight and lack of evidence of remediation. The panel determined that this case did not involve Miss Hillan's clinical practice and public protection was not a consideration in this case.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Miss Hillan's fitness to practise impaired solely on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Hillan's fitness to practise is currently impaired.

Sanction

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

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

Representations on sanction

The NMC consider a striking-off order to be the appropriate and proportionate sanction. The NMC referred the panel to the SG, particularly, the following features of Miss Hillan's dishonesty which the guidance identifies as '*most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register*':

- i. personal financial gain from a breach of trust.
 - ii. ... longstanding deception.
- a) the fundamental incompatibility of a professional who defrauded the NHS of remaining on the register.

The NMC also note the features of Miss Hillan's dishonesty which the guidance identifies as '*generally... less serious*':

- a. Opportunistic conduct;

b. No risk to patients.

However, the NMC do not consider those features sufficient to mean a suspension order would be appropriate, the conduct remains fundamentally incompatible with registration.

Decision and reasons on sanction

Having found Miss Hillan's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Hillan's misconduct occurred over a prolonged period of time and involved longstanding deception.
- No proactive action taken by Miss Hillan to repay the money.
- Personal financial gain.
- Miss Hillan has demonstrated limited insight into her misconduct.

The panel also took into account the following mitigating features:

- Miss Hillan's has demonstrated some remorse for her misconduct.
- Miss Hillan paid back the money in full.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case an order that does not restrict Miss Hillan's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate

where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel considered that Miss Hillan's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Hillan'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 charges in this case. 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 Ms Hillan'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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel considered that although the misconduct could be considered a single instance, it had occurred over a long period of time. The panel also considered that although there was no evidence Miss Hillan had repeated the misconduct since the event, it was not satisfied that she had demonstrated sufficient insight or remediation for the panel to be confident that there was no risk or repetition. The panel determined that 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 Miss Hillan's actions is fundamentally incompatible with her 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?*

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

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Hillan'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 decision will be confirmed to Miss Hillan in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Hillan'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. The NMC submit that if a finding is made that Miss Hillan's fitness to practise is impaired on a public interest only basis and that her conduct was fundamentally incompatible with continued registration, The NMC consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest.

Decision and reasons on interim order

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

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

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

That concludes this determination.