

Appeal under Article 38 of the Nursing and Midwifery Rules Order 2001 by  
Krishinda Powers Duff against a decision of the Nursing and Midwifery Council's  
Fitness to Practice Committee

Case Ref No: XA4/24

Date of Hearing: 12 February 2025

Division and Senators: Extra; Lords Malcolm and Tyre, Lady Wise

Livestreamed Hearing?:  Yes  No

**Agents and Counsel (if known):**

**Appellant:-**

Neomi Bennett (lay representative)

**Respondent:-**

Clancy (solicitor-advocate); Shepherd & Wedderburn LLP

**Link to Judgment Reclaimed / Appealed (if available):**

<https://www.nmc.org.uk/globalassets/sitedocuments/ftpoutcomes/2024/january-2024/reasons-powers-duff-ftpcsh-79175-20240110.pdf>

**Case Description:**

This is an appeal by a midwife against decisions by the Nursing and Midwifery Council's Fitness to Practise Committee that her fitness to practise was impaired and to strike her from the register of midwives. The appellant is Krishinda Powers Duff, a midwife. The respondent is the Nursing and Midwifery Council, the regulator for midwives in the United Kingdom.

The appellant qualified as a midwife in 2010. In 2020, she was working for a private midwifery provider.

The NMC received a referral from the appellant's employers in August 2020, followed by a self-referral from the appellant the same month. A further referral was received from the Chief Midwife of NHS Greater Glasgow and Clyde.

Following an investigation and hearing, the Fitness to Practise Committee ultimately found complaints proved against the appellant in respect of her care for four patients, A, B, C & D.

With one exception, the committee considered the appellant was guilty of misconduct, which had placed Patients A – D at risk of harm (and in patient A's case had caused actual harm). There was a high risk of repetition. Her fitness to practise was impaired on public protection and public interest grounds. The committee considered that the appellant had deliberately breached her duty of candour and the only appropriate sanction was to strike the appellant's name from the register, which it did on 10 January 2024.

The appellant now appeals under art. 38 of the Nursing and Midwifery Order (2001) against the decision of the committee. The appellant's grounds of appeal are:

### Ground 1

The decision of the Fitness to Practise Committee was irrational and unfair. It relied upon an investigative process which was selective in its approach to evidence and overlooked contextual evidence favourable to the appellant.

### Ground 2

The decision of the Fitness to Practise Committee lacked procedural fairness insofar as it suggests an over-reliance on selective testimony from biased witnesses.

### Ground 3

The decision of the Fitness to Practise Committee to dismiss the appellant's evidence was informed by racial prejudice and stereotyping towards a black midwife and a refusal to consider the existence of unconscious bias by an unrepresentative panel.

### Ground 4

The Fitness to Practise Committee did not properly take into account all the evidence before it, and failed to include evidence from crucial witnesses.

#### Ground 5

The Fitness to Practise Committee made findings in fact which were not supported by the evidence before it. The committee erred in how it weighed the evidence, resulting in unfairness to the appellant.

#### Ground 6

The decision to strike the appellant's name from the register of midwives was disproportionate in view of her hitherto unblemished career.

#### Ground 7

The Fitness to Practise Committee's assessment of the severity of the appellant's misconduct ignored mitigating factors.

#### Ground 8

The process was infected by the systemic racial bias of the NMC against black midwives as found by that organisation's *Culture Review*. The resultant processes breached the appellant's rights under Article 6 (fair trial) and Article 8 (private life) of the European Convention on Human Rights.

The appellant asks the court to set the decision of the Fitness to Practise Committee aside.

The NMC argue that the Fitness to Practise Committee was entitled to make the findings it did on the basis of the evidence before it. The committee had a discretion on what sanction to impose, and it exercised that discretion reasonably. The lengthy decision report fully narrated what evidence the committee accepted, what evidence it rejected, and gave clear reasons. When read in their entirety, and in their proper context, the committee's reasons leave an informed reader in no real and substantial doubt as to why the committee decided as it did. The allegations of racism are inspecific and unfounded. The NMC invite the court to refuse the appeal and uphold the committee's decision.

The appeal will be argued over one day before an [Extra Division](#) chaired by [Lord Malcolm](#), sitting with [Lord Tyre](#) and [Lady Wise](#).