

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

**Substantive Hearing
7 – 8 August 2023**

Virtual Hearing

Name of Registrant:	Sophia Kudzai Chifamba
NMC PIN	20A0082E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – Level 1 3 March 2020
Relevant Location:	Leeds
Type of case:	Conviction
Panel members:	Sarah Lowe (Chair, Lay member) Mary Karasu (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Paul Hester
Hearings Coordinator:	Sophie Cubillo-Barsi
Nursing and Midwifery Council:	Represented by Brittany Buckell, Case Presenter
Sophia Chifamba:	Present and represented by Vishal Misra, Counsel, instructed by the Royal College of Nursing
Facts proved by way of admission:	Charge 1
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order – 18 months

Details of charge

That you, a registered Nurse,

1. On 16 June 2022 at the Leeds Magistrates' Court, were convicted of fraud contrary to sections (1) and (2) of the Fraud Act 2006.

And, in light of the above, your fitness to practise is impaired by reason of your conviction

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

At the outset of the hearing, Mr Misra, on your behalf, made a request that parts of this hearing be held in private on the basis that proper exploration of your case involves significant reference to the health of your family members. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Buckell, on behalf of the Nursing and Midwifery Council (NMC), indicated that she supported the application.

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

The panel determined to go into private session in connection with the health of your family members as and when such issues are raised. It considered that your family member's right to privacy, in relation to sensitive matters regarding their health, outweighed the public interest in holding those distinct parts of the hearing in public.

Background

REED a recruiting agency contracted by Leeds Teaching Hospitals Trust (the Trust), was managing bank staff of workers as well as managing agency bookings for staffing in the Trust. The charges arose after the Trust assessed the 'staff bank' roster and identified that many of your shifts had been marked down as "did not attend", "no show" or that they had never been finalised. This raised a cause for concern as the nursing agency, 24/7 Nursing, had provided the Trust with timesheets, completed and signed by you, indicating that you had attended for the shifts and that the correct process had been followed. 24/7 Nursing lost out financially as you were paid £8,814.49 during July 2018 until September 2019 for shifts that you did not attend.

On 16 June 2022 you were convicted of fraud contrary to sections (1) and (2) of the Fraud Act 2006 and on 14 July 2022, you were sentenced to 150 hours of unpaid work and ordered to pay compensation of £1,000.

You made a self-referral to the NMC on 20 June 2022.

Fitness to practise

Charge one was read to you and you admitted the charge. It was therefore found that charge one was found proved.

The panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your conviction. 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.

Evidence and submissions on impairment

Before hearing submissions by Ms Buckell on behalf of the NMC and Mr Misra on your behalf, the panel heard evidence from you, under oath. You explained that you initially commenced nursing training at the University of Leeds (UoL), but that you were

accused of academic malpractice on two occasions, including plagiarism, and were excluded as a result. This occurred 'around December 2017'. You told the panel that you did not wait for the appeal process, at the UoL, to be completed. You told the panel you knew that after two attempts at sitting the biology module, it was very unlikely that you would be able to continue at UoL and so you applied to the University of Huddersfield (UoH), which offered you a placement in a masters programme. You told the panel that, as a result of your academic malpractice, you undertook training in relation to referencing. You understood from this that you needed to make sure that any work which was not yours, should be declared and referenced, and that it was not permissible to copy and/or cut and paste the work of others. When questioned, you explained that you repeated plagiarism a second time despite the training you had undertaken because you were under time pressure to complete the module. You assured the panel that no further concerns were raised regarding your academic performance whilst you attended the UoH. You completed your masters in January 2020.

You explained to the panel, that initially, you were funding your studies by way of an NHS bursary. However, in 'April or May', you were informed that you would not be granted a bursary because of your exclusion from UoL and as a result, you were required to obtain loans in order to pay for your studies. This included an overdraft with your bank, four pay day loans and borrowing from family and friends. You told the panel you were unable to pay off the pay day loans and were required to create a payment plan, which remains ongoing. You told the panel that you pay £100 every month towards this plan.

[PRIVATE]

[PRIVATE]

You told the panel that, at the time the charges arose, you were 'drowning in debt' and had bailiffs attending your home on a regular basis. In your referral to the NMC, you stated that you would often go without electricity in your home for weeks at a time. When questioned, you clarified in your evidence that the longest period you went

without power was ten days. As you did not have money to pay the prepayment meter, you would buy candles and would only eat at work [PRIVATE]. You told the panel that this greatly impacted upon your studies, in that you completed your assignments in breaks during your shifts or by going to the library.

With regards to your actions which led to your conviction, you explained that you felt you did not have anywhere else to turn and that you were 'really struggling' and burnt out. You stated that, on some days, you would complete a long day shift and go straight into a night shift, without a shower. You recognised that this was not good practice as a registered nurse. You admitted that your actions were not the 'best decision' and that you recognised what you were doing was wrong. You stated that you felt terrible because you have always been of good character, and hardworking but that the lack of options made you 'desperate' and you acted in a way you never thought you would.

You acknowledged the impact of your actions, explaining how hospitals were left understaffed, having to pay another nurse to attend the shift at short notice. You further acknowledged that when a shift is short staffed, there is a higher workload on the staff present, having to care for more patients than what is normally allocated, placing patients at an increased risk and receiving delayed services.

With regards to the police investigation, you confirmed that you cooperated fully and made admissions. At your first appearance before the Magistrates Court, you took responsibility for what you had done. You stated that you wanted to be accountable and confirmed that before your conviction, you did not have any prior involvement with the police. When questioned, you indicated that you stopped your fraudulent activity when you could manage your finances and your tuition fees were paid. You did not know why you had not told someone in authority about that activity before you were contacted by the police in early 2022.

You informed the panel that you have now paid the compensation and statutory victim surcharge totalling £1,089, sentenced to you by the Crown Court but that you have not yet completed your community order, consisting of 150 hours of unpaid work. You explained that this is because you have recently suffered an injury and in addition, you

are waiting for an appropriate placement to be assigned to you. You confirmed that you are not in breach of the order. You have not, however, chosen to repay the rest of the sum received during your fraudulent claims. You told the panel that there was some doubt regarding the exact amount received by you and you were also unsure where to send the money, albeit you had not made any enquiries in that regard.

Reflecting on your sentencing, you described the situation as 'awful' and that all you could think about was your career and how your family were going to be impacted. You explained that, since your conviction, you have 'learnt to be honest', to 'not to abuse your position' and to give yourself time to evaluate a situation and ask for help, before acting out of character and in desperation.

You told the panel that you have now built up your credit score and that your mum is also in a position to help you financially if necessary and that you have some savings. You stated that you want to continue being a nurse and explained that you thoroughly enjoy your job.

Ms Buckell addressed the panel on the issue of impairment and reminded the panel to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin) 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.'*

Ms Buckell invited the panel to find that all four limbs of the test are engaged in your case. She stated that claiming for shifts and failing to attend those shifts, left the hospital understaffed and placed patients at an unwarranted risk of harm. Ms Buckell further stated that as a consequence of your dishonest actions, and subsequent conviction, you have breached fundamental tenets of the nursing profession and brought the nursing profession into disrepute.

Ms Buckell acknowledged the mitigation put forward on your behalf. However, she submitted that your insight is limited and there is no evidence before the panel to suggest how, should you find yourself in a similar situation in the future, you would approach the circumstances differently. Ms Buckell submitted that you have

demonstrated a 'pattern of dishonesty' and the conduct which led to your conviction was not an isolated incident. You had previously been excluded from UoL for academic malpractice. In light of this, Ms Buckell invited the panel to conclude that a finding of impairment should be made on both public protection and public interest grounds. She stated that a finding of no impairment would undermine the professional standards expected of a registered nurse and/or negatively impact the public's confidence in the nursing profession.

Mr Misra accepted the NMC's submissions that all four limbs of the *Grant* test are engaged in your case and informed the panel that you accept that your fitness to practice is currently impaired

Mr Misra acknowledged that between July 2017 and September 2018, you found yourself in difficult circumstances which resulted in you committing fraud. However, he reminded the panel that this behaviour has not been repeated over the past four years and that you now have support mechanisms available to you should you deem it necessary. Mr Misra submitted that you have been able to highlight how you would act differently should you find yourself in a similar situation again and expressed guilt for your actions. He asked the panel to consider that your conduct, which led to your conviction, is highly unlikely to be repeated. Mr Misra referred the panel to the judge's comments made at the Crown Court, in which Judge Batty deemed it unnecessary to impose a suspended sentence and acknowledged that you had 'sorted yourself out'. Mr Misra confirmed to the panel that whilst you have not completed the 150 hours of unpaid work, you are not in breach the community service order.

Mr Misra reminded the panel that you made early admissions to the charges, cooperated fully with the police investigation and pled guilty at the Magistrates court. He submitted that at the time the allegations arose, you found yourself trapped between 'a rock and a hard place' but that you have now taken significant steps to ensure that this conduct will not be repeated and understand the impact your actions have had upon others. Mr Misra asked the panel to carefully consider your state of mind at the time the charges arose, including the fact that you were under incredible pressure; working long hours and stressed. Mr Misra submitted that your failings are capable of remediation

and that you have full intentions to begin repaying 24/7 Nursing. He referred the panel to the testimonial from your manager, dated 6 August 2023, which Mr Misra submitted, attests to your honesty and integrity.

Mr Misra submitted that you now manage two jobs whilst ensuring that your stress levels do not rise. Whilst Mr Misra acknowledged the poor decisions you have previously made, he invited the panel to find that you have learnt from your failings and do not wish for those circumstances to be repeated.

Decision and reasons on impairment

The panel accepted the advice of the legal assessor.

The panel went on to decide if as a result of the conviction, your fitness to practise is currently impaired. When making this decision, the panel had sight of the following documentation provided by you:

- A reflective statement;
- Your Case Management Form (CMF), dated 4 August 2023; and
- A character testimonial, dated 6 August 2023.

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*. The panel noted that the test formulated by Dame Janet Smith in the Fifth Shipman Report is firstly, backward looking and then looks to the future.

The panel firstly considered whether any of the four limbs in the Shipman test are engaged as to the past. The panel determined that all four limbs of the test are engaged in your case. It found that patients were put at a real risk of harm as a result of your behaviour which led to your conviction. In not attending work, for which you were paid, the shift was understaffed and there was a potential for patients not to receive adequate care. The panel decided that by acting in the way that you did, you have put the nursing profession into disrepute and, further, breached the fundamental tenets of the profession which are set out within the NMC's Code. In respect of the fourth limb of the Shipman test, you were convicted of a single count of fraud at Leeds Crown Court, which entails serious dishonesty. The panel therefore decided that all four limbs of the Shipman test are engaged as to the past.

The panel then applied the Shipman test and looked to the future. In this regard, the panel noted *Cohen v. GMC* which requires panels to ascertain whether the conviction of dishonesty is easily remediable within the context of your nursing practice; whether it has been remedied; and whether it is highly unlikely to be repeated. In respect of remediation and strengthening of practice, the panel looked to whether there is evidence of genuine remorse, developed insight and whether you have undertaken any relevant training.

The panel firstly considered whether your dishonest actions are easily remediable. The panel acknowledged that dishonesty is always difficult to remediate but not impossible.

The panel next considered whether you have remediated your dishonesty and thereby strengthened your practice.

The panel carefully considered evidence in relation to remorse. It noted that during the course of your evidence you expressed remorse on several occasions. The panel also considered the course of your dishonesty and the history through the criminal courts. It noted that you did not admit to your dishonesty until you were discovered. The panel also noted that whilst you made full admissions to the police and the Courts thereafter, you have not fully paid back the amount lost by the NHS. In this regard, the panel noted that during your evidence you stated that neither the amount lost nor the loser could be

readily identified by you. The panel also noted that you have made no efforts to clarify the sum owed or indeed, the loser. In these circumstances, the panel decided that whilst you have expressed remorse, you have not taken steps to show genuine remorse by repaying monies beyond the Court compensation order of £1,000 despite giving evidence that you have savings. The panel therefore concluded that your remorse is limited and not entirely genuine.

Regarding your insight, the panel noted that you made admissions to the charges at an early stage of the police investigation and that you self-referred to the NMC. During your oral evidence, you acknowledged that your dishonest behaviour was wrong. However, the panel determined that your insight is limited and focuses primarily upon how your actions have negatively affected you and your family rather than your colleagues, patients and the reputation of the nursing profession. Whilst the panel acknowledged the mitigating circumstances you faced at the time the charges arose, it determined that your dishonest behaviour was not a 'one off', but rather that your behaviour continued over a prolonged period of time, namely two years, involving a sum in the region of £8,800. Your dishonest conduct became apparent, only when the Trust identified discrepancies in your claims. When considering collectively your behaviour which led to your conviction, and the prior findings by the UoL that you had committed academic malpractice on two occasions, the panel determined that this demonstrated a pattern of dishonesty.

In light of your limited insight, limited remorse and the seriousness of your dishonesty, the panel determined that there is a real risk of repetition at this time. The panel therefore decided that a finding of impairment was necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 determined that a fully informed member of the public would be seriously concerned should a finding of

impairment not be made at this time and therefore concluded that a finding of current impairment on public interest grounds was required.

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

Sanction

The panel has considered this case carefully and has decided to make a striking-off order. It directs the Registrar to strike you 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.

Submissions on sanction

Ms Buckell informed the panel that the sanction bid by the NMC, is that of a striking off order. She outlined to the panel what, in the NMC's view, were mitigating and aggravating features in your case. Ms Buckell reminded the panel that your actions were a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register.

Mr Misra referred the panel to several legal authorities. He submitted that the only misconduct which needs to be considered by the panel is the behaviour which led to your conviction, not the incidents of academic malpractice. Mr Misra stated that the principle of proportionality and public confidence can be met with a lesser sanction than that of a striking off order. He submitted that a striking off order would be disproportionate in the circumstances of your case.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Your dishonest course of conduct was premeditated, systematic and over a prolonged period of time;
- There was personal financial gain from a breach of trust with your employer;
- You have demonstrated limited remorse and insight;
- There is evidence of a harmful deep-seated attitudinal problem;
- Your behaviour had a potential adverse effect on patients;
- Your behaviour had an actual adverse effect upon the NHS and the public purse; and
- You did not declare your dishonest conduct until discrepancies were discovered by the Trust.

The panel also took into account the following mitigating features:

- You were experiencing difficult family circumstances at the time of your fraudulent conduct;
- You cooperated with the police investigation and pleaded guilty in the Magistrates' Court at the first opportunity;
- You self-referred to the NMC;
- No concerns have been raised regarding your clinical practice; and
- There is no evidence before the panel to suggest that the fraudulent behaviour has been repeated since your conviction.

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, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your behaviour which led to your conviction was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel acknowledged the submissions made by Mr Misra, that a condition could be implemented requiring you to declare your timesheets for scrutiny. However, 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. Your conduct which resulted in your conviction is not something that can be addressed through conditions.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not sufficiently protect the public at this time.

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;*

Your dishonesty did not relate to a single incident. Your dishonesty was a course of conduct which involved multiple premeditated decisions to defraud your employer. Your dishonesty was repeated over a period of about 15 months, involving at least 50 fraudulent time sheets and false claims amounting to approximately £8,800. This repeated course of conduct, which benefitted you financially, had an adverse effect upon others including your colleagues who would have had to have covered your work; the NHS; the public purse and potentially, upon the adequacy and quality of care received by patients.

You qualified and registered as a nurse, working for the Trust you defrauded for over two years before your dishonesty came to light. During that time, you chose not to declare your dishonesty, and the panel considered on your oral evidence that it may never have come to light had the discrepancies not been discovered. The panel determined that there is evidence of deep-seated attitudinal problems, particularly when considering the background context in that on two occasions you were accused of academic malpractice, involving plagiarism, in order to successfully obtain a degree. It was as a result of this malpractice that your studies were no longer funded, which in turn led you to commit the fraudulent behaviour that led to the criminal conviction which is now before this panel. It was concerned that, with this background, and without full insight into your behaviour, there is a risk of repetition in the future. The panel therefore determined that, in this particular case, 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?*

Whilst there is a clear public interest in retaining an otherwise competent nurse on the register, the panel determined that your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the dishonesty in this particular case was extremely serious and to allow you to continue practising would undermine public confidence in the nursing 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 effect your 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 you 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 your own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Buckell.

Mr Misra did not oppose the application.

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 dishonesty 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, proportionate or consistent 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 in order to protect the public during any potential appeal period.

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

That concludes this determination.

