

Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing

30 April 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Miss Vivian Feyisola Coker
NMC PIN:	06C1165E
Part(s) of the register:	Registered Nurse – Adult (2006)
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Alison Stone (Chair, lay member) Sally Glen (Registrant member) Sarah Tozzi (Lay member)
Legal Assessor:	Richard Ferry-Swainson
Panel Secretary:	Leigham Malcolm
Miss Coker:	Not present and not represented in absence
Nursing and Midwifery Council:	Represented by Mr Michael Bellis, NMC Case Presenter
Facts proved:	1.1, 1.2.
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 19 December 2017 were convicted of:

1.1. One count of theft, contrary to section 1(1) of the Theft Act 1968.

1.2. One count of fraud, contrary to section 1 of the Fraud Act 2006.

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

Decision on service of notice of hearing

The panel was informed at the start of this hearing that Miss Coker was not in attendance. Written notice of this hearing had been sent to Miss Coker's registered address by recorded delivery and by first class post on 28 March 2019.

The panel took into account that the notice letter provided details of the charges, the time, date and venue of the hearing and, amongst other things, information about Miss Coker's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Bellis submitted that the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Coker has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in the absence of the registrant

The panel noted that Miss Coker was due to be released from prison at the end of March 2019. It also had sight of an email, dated 29 April 2019, between the NMC and Miss Coker's representative. Within the email Miss Coker's representative confirmed that they had not received any instructions from her, that they would not be attending the hearing, and that they did not know if she had yet been released from prison.

The panel considered that there was some possibility that Miss Coker, having recently come out of prison, had not received the notice of hearing sent on 28 March 2019. The panel and Mr Bellis, on behalf of the Nursing and Midwifery Council, agreed that in fairness to Miss Coker, further attempts to make contact with her ought to be made, in order to ensure that she was provided with every opportunity to engage with the hearing process.

The panel decided to adjourn for one hour whilst the NMC made attempts to contact Miss Coker via telephone and email. After one hour, the NMC had been unable to make contact with Miss Coker via telephone and had received no response from Miss Coker via email. The panel, therefore, went on to consider proceeding in her absence. It noted that a case management form (CMF) had been sent to Miss Coker and her representative on 6 February 2019 when she was still in custody. This had given preliminary notice of the NMC's intention to hold a hearing today. She could reasonably be expected, therefore, to be aware that this hearing would take place even if she had not received the formal notice convening the hearing. This fact, in the panel's view, placed a responsibility firmly upon Miss Coker to engage with the NMC were she inclined to do so.

Mr Bellis told the panel that further attempts to contact Miss Coker had been made in the lead up to the hearing again this morning. He stated that Miss Coker had not responded to the notice of hearing, nor requested an adjournment, and that there was no reason to believe that an adjournment would secure her attendance at a future date.

He reminded the panel of the strong public interest in the expeditious disposal of the case and invited it to proceed in the absence of Miss Coker.

The panel heard and accepted the advice of the legal assessor. It had regard to Rule 21 (2), which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
 - (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
 - (c) may adjourn the hearing and issue directions.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “*with the utmost care and caution*”.

The panel has decided to proceed in the absence of Miss Coker. In reaching this decision, the panel has considered the submissions by Mr Bellis and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *General Medical Council v Adeogba* [2016] EWCA Civ 162. It has had regard to the overall interests of justice and fairness to all parties. It particularly noted that:

- The CMF dated 6 February 2019 gave Miss Coker preliminary notice of today’s hearing

- no application for an adjournment has been made by Miss Coker;
- Miss Coker has not responded to any of the letters sent to her about this hearing;
- Miss Coker has not provided the NMC with details of how she may be contacted following her release from prison;
- there is no reason to suppose that adjourning would secure Miss Coker's attendance at some future date and there has been no request for an adjournment;
- those representing Miss Coker have indicated that they have no objection to the hearing proceeding today;
- there is a strong public interest in the expeditious disposal of the case.

The panel accepts that there may be some disadvantage to Miss Coker in proceeding in her absence but noted that this is a conviction case and it would not be open to her to challenge the conviction. Furthermore, through her representative, she has indicated that she admits the charges and that she is currently impaired. In an email dated 6 December 2018 from those representing her, Miss Coker indicated that she was realistic about the prospect of being struck-off the register and that she was seeking alternative employment. In all the circumstances the panel was satisfied that Miss Coker had voluntarily absented herself from the hearing and thereby waived her right to be present.

The panel therefore decided that it would be fair, in the interest of justice, and in Miss Coker's own interest, to proceed notwithstanding her absence.

Decision on the findings on facts and reasons

The charges concern Miss Coker's conviction and the panel was provided with a copy of the certificate of conviction. In accordance with Rule 31 (2) and (3) of the Rules:

- (2) Where a registrant has been convicted of a criminal offence—
 - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

In reaching its decision on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Bellis.

Mr Bellis outlined the background to Miss Coker's case. He informed the panel that Miss Coker was found guilty of theft and fraud at Kingston Crown Court on 19 December 2017.

Mr Bellis told the panel that whilst signed off from work at St George's hospital by occupational health, Miss Coker worked for two agencies. He submitted that Miss Coker received both her sick pay from the NHS and her salary from the agencies. He told the panel that the total amount Miss Coker fraudulently obtained was £32,745.

Mr Bellis informed the panel that Miss Coker was warned by occupational health that whilst on sick-leave she would be unable to work elsewhere. He submitted that this was made explicitly clear to her.

Mr Bellis referred the panel to the certificate of conviction and stated that under Rule 32(1)(a) a signed copy of a conviction is sufficient to find the facts proved. He therefore invited the panel to find the facts of Miss Coker's case proved on this basis.

The panel heard and accepted the advice of the legal assessor.

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel has drawn no adverse inference from the non-attendance of Miss Coker.

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case.

The panel considered each charge and made the following findings:

Charge 1.1

1. On 19 December 2017 were convicted of:

1.1. One count of theft, contrary to section 1(1) of the Theft Act 1968.

This charge is found proved.

The panel had regard to the certificate of conviction. It noted that under Rule 32(1)(a) a signed copy of a conviction is sufficient to find the facts proved.

The panel also had regard to Miss Coker's mitigation at the criminal trial, in which she accepted both of the charges. The panel noted that her acceptance of guilt also featured in her submissions through her representative during these regulatory proceedings. The panel considered that she acknowledged her theft and fraud over a prolonged period of time.

Charge 1.2

1.2. One count of fraud, contrary to section 1 of the Fraud Act 2006.

This charge is found proved.

The panel found this charge proved for the same reasons as above.

Decision on impairment

Mr Bellis submitted that Miss Coker's actions which led to her conviction breached the following terms of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code).

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

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

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

Mr Bellis submitted that Miss Coker's actions were dishonest, breached a fundamental tenet of the nursing profession and brought the profession into disrepute. He submitted that Miss Coker has limited insight and there is no information to suggest that she has remediated her behaviour. Mr Bellis submitted that the conviction in this case, for two offences of dishonesty, was very serious and he invited the panel to find Miss Coker's fitness to practise impaired.

The panel heard and accepted the advice of the legal assessor.

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel must decide whether, in all the circumstances, Miss Coker's fitness to practise is currently impaired as a result of her conviction. When determining whether the facts found proved amount to impairment the panel had regard to the Code.

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

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

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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

The panel appreciated that breaches of the Code do not automatically result in a finding of impairment. However, the panel was of the view that 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 fitness to practise is impaired in the sense that s/he:

- 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 considered b, c, and d, above to be engaged in this case. It bore in mind that there is no suggestion of any patient harm and therefore considered a. above did not apply.

The panel bore in mind that the theft and fraud occurred over a prolonged period of time. It considered Miss Coker's action to impact directly upon her fitness to practise as a registered nurse, as well as the reputation of the profession and the public's confidence in it. The panel also considered that Miss Coker's conviction gave rise to concerns surrounding her honesty and integrity.

The panel noted that Miss Coker accepted that her fitness to practise is impaired by her conviction. The panel considered that Miss Coker, in her response to NMC's investigation report, had not been able to demonstrate sufficient insight. Furthermore, it considered Miss Coker to have carried out no remediation. The panel noted Miss Coker also stated that her returning to work for two agencies was a coping mechanism. However, the panel did not accept this. It considered this statement to be irrational as, if that were the case, then Miss Coker could have returned to her job at St George's Hospital.

The panel also bore in mind that Miss Coker had been expressly told by occupational health that she could not work elsewhere whilst signed off from work at St George's Hospital and this included agency work. She was told that if it was discovered that she had been working during this period she may be subject to an NHS fraud investigation, which could result in removal from the professional register and potential prosecution.

The panel determined that it could not be satisfied that Miss Coker's judgment is such that she can clearly relate her actions to their possible consequences. Having regard to all of the above, the panel was satisfied that Miss Coker's fitness to practise is currently impaired on public interest grounds.

Determination on sanction

Mr Bellis submitted that Miss Coker's actions were premeditated, long standing, and for personal financial gain. He stated that whilst there was no harm to patients, Miss Coker took money from the NHS, a body with already limited funds. He reminded the panel that Miss Coker has not attended today and has not shown insight into her action.

Mr Bellis referred the panel to the case of *CRHP v GDC and Fleischmann [2005] EWHC 87 (Admin)* and stated that the principle established in this case dictates that Miss Coker should not be allowed to practise as a registered nurse during the period of her sentence.

In terms of mitigation, Mr Bellis reminded the panel that Miss Coker entered guilty pleas in the criminal prosecution. He put forward the following aggravating factors:

- Miss Coker's actions were a serious departure from the standards expected of a registered nurse;
- she stole substantial sums from the NHS, an organisation struggling under severe financial constraints;
- her actions were for personal financial gain;
- her criminal behaviour was sustained over a considerable period of time.

He submitted that Miss Coker has demonstrated a deep-seated personality problem and that her behaviour is fundamentally incompatible with remaining on the register, her dishonesty being at the higher end of the spectrum. He submitted that only a striking-off order would address the concerns and address the public interest. He therefore invited the panel to impose a striking-off order.

The panel heard and accepted the advice of the legal assessor.

The panel has considered this case and has decided to make a striking-off order. It directs the registrar to strike Miss Coker off the register. The effect of this order is that the NMC register will show that Miss Coker 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 all matters of personal mitigation. 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”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the following mitigating factors:

- the panel acknowledged Miss Coker’s personal circumstances over the period of the incident;
- her early guilty pleas;
- her acceptance of the charges in this case and that her fitness to practise is impaired;
- Miss Coker’s previous good character, as noted in the court’s judgement.

It considered the aggravating factors in this case to be:

- Miss Coker’s offending behaviour spanned a period from August 2014 – May 2016;
- Miss Coker’s fraud and theft were serious criminal actions;
- they were for personal gain;
- the sum of money fraudulently obtained was high;
- Miss Coker stole from her employer, the NHS, an organisation already struggling financially;

- indirect costs caused to the NHS by the loss of £32,745, and the indirect loss to the public, i.e. the provision of services.

The panel bore in mind the submissions of Mr Bellis and noted his reference to the case of *CRHP v GDC and Fleischmann*. The panel was of the view that Miss Coker had been convicted of a serious criminal offence and that therefore, at the very least, she should not be permitted to resume her practice until she had satisfactorily completed her sentence, which would be mid November 2019. The panel therefore determined that to take no further action, to impose a caution order, or to impose a conditions of practice order would not be appropriate, as each of those options would allow Miss Coker to practise as a registered nurse.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to) there was:

- a single instance of misconduct;
- no evidence of harmful or deep-seated attitudinal problems;
- no evidence of repetition of the behaviour since the incident;

and

- the Committee is satisfied that the nurse has insight and does not pose a significant risk of repeating the behaviour.

The panel considered Miss Coker's theft and fraud to be an act of serious and prolonged deception, sustained over a period of 21 months, and not a single instance, which was indicative of a harmful and deep-seated personality issue. The panel also bore in mind its earlier finding that Miss Coker had demonstrated insufficient insight into her behaviour and there was thus a concern that she may be dishonest in the future.

The panel determined that the conduct which led to Miss Coker's conviction was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breach of the fundamental tenets of the profession evidenced by Miss Coker's actions is fundamentally incompatible with Miss Coker 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 from the SG:

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

Miss Coker's actions represented a significant departure 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 to allow Miss Coker to continue practising would seriously undermine public confidence in the profession and in the NMC as its 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 only appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Coker'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.

Determination on interim order

The panel has considered the submissions made by Mr Bellis that an interim order should be made on the ground that it is in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary on the ground that 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. To do otherwise would be incompatible with its earlier findings.

For the same reasons as referred to at the sanction stage, the panel did not consider this to be an appropriate case for conditions and therefore the interim order is one of suspension.

The period of this suspension order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.