Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
14 – 15 February 2019
Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

Name of registrant: Kudakwashe Dimbi
NMC PIN: 99C2368E
Part(s) of the register: Registered Nurse – Sub Part 1
RNHM: Mental Health – 25 March 2002
Area of Registered Address: England
Type of Case: Misconduct
Panel Members: Anthony Griffin (Chair, Lay member)
Stella Armstrong (Registrant member)
Avril O’Meara (Lay member)
Legal Assessor: Nigel Parry
Panel Secretary: Catherine Acevedo
Miss Dimbi: Present and represented by Marc Walker
Nursing and Midwifery Council: Represented by David Claydon, Case Presenter

Facts proved by admission: 1a, 1b, 1c, 1d, 2a, 2b, 2c, 2d, 3a, 3b, 3c, 3d, 4a, 4b, 4c, 4d, 5a, 5b, 5c, 5d, 6a, 6b, 6c, 6d, 7a, 7b, 7c, 8a, 8b, 8c, 8d, 9a, 9b, 9c, 9d, 10a, 10b, 10c, 10d, 10e, 11a, 11b, 11c, 11d, 12

Fitness to practise: Impaired
Sanction: Suspension order 12 months
Interim Order: Not imposed
Details of charge:

That you, a registered nurse:

1. Claimed overtime payment for 07:00 to 19:00 on 21 May 2016 when you;
   a) Arrived for your shift at 09:53.
   b) Logged onto the control room computer system ("Command Point") at 10:30.
   c) Logged out of Command Point at 17:27.
   d) Recorded zero calls over that period of time.

2. Claimed overtime payment for 19:00 to 07:00 on 27 May 2016 when you;
   a) Arrived for your shift at 19:03.
   b) Logged onto Command Point at 22:05.
   c) Logged out of Command Point at 04:36.
   d) Recorded one call over that period of time.

3. Claimed overtime payment for 19:00 to 07:00 on 28 May 2016 when you;
   a) Arrived for your shift at 19:22.
   b) Logged onto Command Point at 19:24.
   c) Logged out of Command Point at 04:36.
   d) Recorded eight calls between 20:36 and 04:11.

4. Claimed overtime payment for 19:00 to 07:00 on 3 June 2016 when you;
   a) Arrived for your shift at 19:06.
   b) Logged onto Command Point at 19:29.
   c) Logged out of Command Point at 05:58.
   d) Recorded one call over that period time.

5. Claimed overtime payment for 19:00 to 07:00 on 4 June 2016 when you;
   a) Arrived for your shift at 19:36.
   b) Logged onto Command Point at 19:39.
c) Logged out of Command Point at 22:28.
d) Recorded zero calls over that period of time.

6. Claimed overtime payment for 19:00 to 07:00 on 10 June 2016 when you;
a) Arrived for your shift at 18:59.
b) Logged onto Command Point at 19:03.
c) Logged out of Command Point at 05:56.
d) Recorded 15 calls between 19:36 and 04:37.

7. Claimed overtime payment for 19:00 to 07:00 on 11 June 2016 when you;
a) Arrived for your shift at 20:03.
b) Logged onto Command Point at 20:06.
c) Recorded nine calls between 21:56 and 06:00.

8. Claimed overtime payment for 19:00 to 07:00 on 8 July 2016 when you;
a) Arrived for your shift at 19:03.
b) Logged onto Command Point at 19:35.
c) Logged out of Command Point at 05:27.
d) Recorded 12 calls between 23:15 and 05:07.

9. Claimed overtime payment for 19:00 to 07:00 on 15 July 2016 when you;
a) Arrived for your shift at 19:23.
b) Logged onto Command Point at 19:33.
c) Logged out of Command Point at 05:37.
d) Recorded five calls between 21:25 and 05:36.

10. Claimed overtime payment for 19:00 to 07:00 on 16 July 2016 when you;
a) Arrived for your shift at 18:10.
b) Logged onto Command Point at 18:21.
c) Were found to be absent at around 20:55.
d) Logged out of Command Point at 23:22.
e) Recorded four calls between 21:32 and 23:07.

11. Claimed overtime payment for 19:00 to 07:00 on 22 July 2016 when you;
   a) Arrived for your shift at 18:37.
   b) Logged onto Command Point at 19:38.
   c) Logged off Command Point at 06:00.
   d) Recorded 10 calls between 20:31 and 03:15.

12. Your conduct in Charges 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 and/or 7 and/or 8 and/or 9 and/or 10 and/or 11, above, was dishonest in that you knowingly claimed payment for time you did not work.

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

At the time of the allegations you were employed as a Band 8a Mental Health Clinical Advisor/Modern Matron at London Ambulance Service NHS Trust (“the Trust”). You had been employed by the Trust since 1 February 2012.

You had two distinct roles, working part-time hours in each role to make up full-time hours. Your line manager for both roles was Ms 1. In these roles, if you worked overtime, you would not be paid overtime but would receive time off in lieu.

However, you were elected to work overtime shifts at the Trust’s Control Room answering calls in your capacity as mental health nurse. These shifts were booked via an electronic staffing system called GRS (“GRS”) and payments were made by the Operations Directorate. Ms 1 states she was not aware you were requesting these overtime shifts and would have raised it with you if she had known.

The Trust is the pan-London provider of urgent and emergency care through the 999 emergency response model. The Trust receives calls from people requiring help and respond using a variety of resources. The Control Room receives approximately 5000 calls per 24 hour period, and approximately 300 of these calls relate to mental health crisis.

Staff in the Control Room are not all clinicians but are supported by trained nurses and paramedics. Whilst all staff are trained to deal with a mental health crisis, the mental health nurses deal with particularly complex cases. Given the significant proportion of calls from people in mental health crisis, having a specialist clinical advisor to support staff in the Control Room is very important.

Access to the Control Room is by swipe access, both to the main building and the Control Room itself. Each staff member has an individual computer login and there are clear procedures in place for staff commencing a shift in the Control Room. On arrival,
staff must make themselves known to the Watch Manager and if staff are late, a late notice is issued which goes on the employee’s record.

Staff do not have allocated desks and computers in the Control Room but there is an adequate supply. There is an overflow room on the floor above which is used during times of peak staffing.

In order to cope with demand, the Trust advertised overtime shifts on the Trust intranet and via bulletins. As well as paying overtime rates, these shifts also attracted additional incentives called disruption payments.

You elected to do a number of overtime shifts during the period May – July 2016. Ms 1 states that all of these shifts attracted the additional disruption payments. Concerns were raised following one such shift on 19 July 2016 when you were rostered as working but staff were unable to locate you for assistance. Though you were eventually located in a medical directorate office, staff at the Control Room expressed concerns and an investigation ensued.

Ms 1 first became aware of these concerns on or around 17 July 2016 and you were suspended on 9 August 2016 whilst the investigation took place. The investigation revealed that during the period May – July 2016, you claimed and received 120 hours of overtime payments for work not done. This was paid at the rate of Band 8a Senior Manager and amounted to £4044. You also claimed and received an additional £3354 in disruption payments. The total amount claimed and received for this period was therefore £7298.

It became apparent that there were multiple episodes of overtime shift work where you had claimed for the entire shift, including claiming disruption payments, without working the full hours. You were arriving late and leaving early for the majority of the shifts. It was also evident that you were handling significantly fewer calls than the average of 15 – 25 calls per shift, sometimes taking no calls at all during a 12 hour shift as on 21 May 2016 and 4 June 2016.
During the investigatory interview, the explanation given by you was that it was “an unwritten rule” at the Control Room that staff could arrive late and/or leave early if they made up the time on the next shift. This is refuted by Ms 1 who states that neither the clinicians nor the Watch Managers in the Control Room recognise this as common practice. In fact, it is said the opposite is true in that time management is very strict because of the need to have a constant supply of staff to deal with the 5000 calls per day. Ms 1 states that some of her nurses work overtime shifts in the Control Room and if they arrive even five minutes late, she is informed and the employee receives a late notice.

You stated during the investigatory interview that you would sometimes come in for a shift to make up hours when you were not rostered to work and you did not log this on the GRS system. Ms 1 states this would be wholly inappropriate due to the health and safety risk of having staff on duty who were not on the official roster.

When you were asked during this interview why you did not amend the overtime forms to reflect the actual hours you had worked, your response was that you thought it would be “easier” if the hours on the overtime form matched the hours on the GRS system. Ms 1 states that this is not a reasonable explanation as the hours on can be amended easily and you would have known you would be paid for the hours logged on GRS.

[PRIVATE]

In December 2016 you resigned from the Trust but was informed that the investigation would continue due to the seriousness of the allegations. At a disciplinary hearing held in your absence on 18 April 2017, the panel found the allegations against you constituted gross misconduct and you were dismissed with immediate effect. On 22 June 2017, the NMC received a referral regarding you from Ms 1, Deputy Director of Nursing and Quality at the Trust.

At the start of this hearing you admitted the following charges;
1a, 1b, 1c, 1d, 2a, 2b, 2c, 2d, 3a, 3b, 3c, 3d, 4a, 4b, 4c, 4d, 5a, 5b, 5c, 5d, 6a, 6b, 6c, 6d, 7a, 7b, 7c, 8a, 8b, 8c, 8d, 9a, 9b, 9c, 9d, 10a, 10b, 10c, 10d, 10e, 11a, 11b, 11c, 11d, 12.

These were therefore announced as proved.
Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your 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.

In your oral evidence, you told the panel how your personal circumstances had affected your judgement at the time that the charges arose. [PRIVATE]. You went on to say that at the time it did not really occur to you that what you were doing was wrong. However, you told the panel that you now accept that you were repeatedly dishonest and that there is no excuse for your behaviour. You also told the panel how if you found yourself in the same situation now you would try to seek assistance from your line manager and from the available channels.

In his submissions, Mr Claydon invited the panel to take the view that your actions amounted to a breach of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2015* (“the Code”). He then directed the panel to specific paragraphs and identified where, in the NMC’s view, your actions amounted to misconduct.

Mr Claydon referred the panel 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.*’

He then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and uphold proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Mr Claydon referred the panel to the
Mr Walker, on your behalf, told the panel that you accept that your fitness to practise is impaired by reason of your misconduct.

The panel accepted the advice of the legal assessor.

The panel adopted a two-stage process in its consideration, as advised. 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, your fitness to practise is currently impaired as a result of that misconduct.

**Decision on misconduct**

When determining whether 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 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 was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

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, ...

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

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 found that your repeated dishonesty over approximately a two month period fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

Decision on impairment

The panel next went on to decide if as a result of this misconduct your 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 and to maintain professional boundaries. 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 judgement 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 was satisfied that all four limbs of the above test were engaged in your case. In respect of limb (a) the panel found that your misconduct, through your absence and not taking calls, put patients at unwarranted risk of harm.

The panel took into account your three reflective statements, the last one dated 13 February 2019. Regarding insight, the panel considered that you made early admissions in the NMC’s regulatory process. You have demonstrated an understanding of how your actions impacted on your colleagues and put the public at risk of harm. You have demonstrated an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. You apologised to the panel for your misconduct. When questioned during the course of this hearing about how you would handle the situation differently in the future, you were able to provide some detailed answers. You told the panel that if faced with a similar set of circumstances you would act in a totally different manner by, for example, seeking help from your line manager.

The panel accepts that dishonesty is difficult to remediate and that you have provided little evidence of steps you have taken to attempt to remediate your dishonesty. However, the panel has concluded that in view of your reflective statements and oral evidence, the risk of repetition of your dishonest behaviour is low.

The panel therefore decided 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 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, in this case, a finding of 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 by reason of your misconduct.
Determination on sanction:

The panel has considered this case very carefully and has decided to make a suspension order for 12 months. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. 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 NMC had advised you in the written notice of this hearing, that it would ask the panel to make a strike off order if it found your fitness to practise currently impaired. Mr Claydon affirmed the NMC’s position and invited the panel to impose this sanction.

Mr Walker, accepted that your misconduct was very serious and invited the panel to make a suspension order for 12 months. He drew the panel’s attention to the case of Parkinson v NMC and submitted that your case is an appropriate one for the panel to be merciful and not impose a striking off order.

The panel first considered what it deemed to be the aggravating and mitigating features in this case and determined the following:

**Aggravating features:**

- Personal financial gain/loss to the Trust.
- Breach of trust.
- Abuse of position of seniority.
• You put vulnerable patients at potential risk of harm.
• You demonstrated systematic and premeditated dishonest behaviour over a period of time.

Mitigating features

• [PRIVATE].
• You have no previous regulatory findings.
• You made early admissions in the regulatory process.
• You reflected on your actions prior to the NMC being involved.
• You have shown remorse for and insight into your misconduct.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where ‘…the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that your 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 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 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. Furthermore the panel concluded that the placing of
conditions on your 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 indicates that a suspension order may be appropriate where some of the following factors are apparent:

- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident
- the panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel is of the view that your misconduct was very serious. It was repeated on eleven occasions over a period of about two months and you told the panel in your evidence that it did not occur to you at the time that you were being dishonest. As a result of your dishonest misconduct you obtained £7298 which you have not repaid. Your misconduct was deliberate, premeditated and a misuse of your position of seniority. It also had the potential to put vulnerable patients at risk of harm. The panel gave serious consideration to whether your behaviour was fundamentally incompatible with remaining on the register and whether a striking off order should be made.

However, the panel took into account that at the time of your dishonest misconduct, you were [PRIVATE]. You should be in no doubt that the panel in no way considers that this excuses your behaviour, but it does provide an explanation as to why you acted out of character. The panel has already stated that the risk of repetition of similar dishonest misconduct is low. In all the circumstances, the panel has concluded that in your case a suspension order of 12 months would be sufficient to uphold the public interest and maintain public confidence in the profession and NMC as regulator. Further, the suspension order will declare and uphold proper professional standards.

The panel further considered whether a striking-off order would be proportionate in your case. Taking account of all the information before it, including the mitigation provided to
the panel on your behalf, the panel concluded that it would be disproportionate and unduly punitive in your case to impose a striking off order.

The panel noted the hardship such a suspension order will inevitably cause you. However, this is outweighed by the public interest in this case.

As the panel only found impairment on public interest grounds and the suspension has been imposed on public interest grounds only, it has concluded that a review hearing is unnecessary.

**Determination on Interim Order**

The panel has considered the submissions made by Mr Claydon that an interim order should be made in this case. The panel also took account of the submissions made by Mr Walker on your behalf. Mr Walker submitted that no interim order was required in this case.

The panel accepted the advice of the legal assessor.

In view of the fact that the panel imposed the substantive suspension order on public interest grounds alone and that there are no patient safety issues in this case, the panel has concluded that there is no need for an interim order.

That concludes this determination.