

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
15 March 2019

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

Name of registrant:	Agnes Kakande
NMC PIN:	06L0121E
Part(s) of the register:	Registered Nurse - Adult RNA - 13 March 2007 Sub Part 1
Area of Registered Address:	England
Type of Case:	Conviction / Misconduct
Panel Members:	Nicholas Cook (Chair, Lay member) Deborah Tymms (Registrant member) Robert Cawley (Lay member)
Legal Assessor:	Peter Jennings
Panel Secretary:	Deepan Jaddoo
Miss Kakande:	Not present and not represented
Nursing and Midwifery Council:	Assad Badruddin, Case Presenter
CPD outcome:	Accepted
Facts proved by admission:	All
Fitness to practise:	Impaired
Sanction:	Caution Order – 5 Years

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Kakande was not in attendance and that written notice of this hearing had been sent to her registered address by recorded delivery and by first class post on 7 February 2019. A copy of the notice was also sent to Miss Kakande's legal representative at the Royal College of Nursing (RCN) on the same date. Royal Mail Track and Trace confirmed that the notice was delivered to Miss Kakande's address on 8 February 2019 and signed for in the initials 'LK'.

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

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Kakande has been served with effective notice of this hearing in accordance the Nursing and Midwifery Council (Fitness to Practise) Rules.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Miss Kakande.

Mr Badruddin referred the panel to the Provisional Consensual Panel Determination Agreement ("the Agreement"), signed by Miss Kakande on 6 March 2019 and the NMC representative on 13 March 2019, which confirmed that Miss Kakande would not be attending and was content for the hearing to proceed in her absence. The Agreement stated:

“Agnes Kakande (‘the Registrant’) is aware of the CPD hearing. The Registrant does not intend to attend the hearing and is content for it to proceed in her and her representative’s absence. The Registrant will endeavour to be available by telephone should any clarification on any point be required.”

Mr Badruddin therefore invited the panel to continue in the absence of Miss Kakande on the basis that she had voluntarily absented herself.

Mr Badruddin submitted that it was in the public interest to proceed in Miss Kakande’s absence.

The panel accepted the advice of the legal assessor.

The panel had regard to Rule 21 (2) 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”. However, in this case, Miss Kakande has clearly indicated that she wishes for the hearing to go ahead today, and has not requested an

adjournment and would be available by telephone should the panel wish to clarify anything with her. The panel considered that it was in the public interest for the matter to proceed expeditiously and in light of the agreement from Miss Kakande there was no unfairness to her in proceeding in her absence.

Accordingly, the panel has decided to proceed in the absence of Miss Kakande.

Provisional Consensual Panel Determination Agreement

The Agreement put before the panel sets out Miss Kakande's full admission to the facts of the charges, and her acceptance that her fitness to practise is currently impaired by reason of her conviction and her misconduct. It is stated in the Agreement that the parties agreed that the appropriate sanction in this case would be a caution order for period of five years. The agreement was signed by Miss Kakande on 6 March 2019 and by the NMC on 13 March 2019.

The panel was referred to the Agreement reached by the parties. That Agreement reads as follows:

Fitness to Practise Committee

Consensual panel determination: provisional agreement

The Nursing and Midwifery Council and Miss Agnes Kakande ('the Registrant'), PIN 06L0121E ("the parties") agree as follows:

A. Charges

1. The Registrant admits the following charges:

That you, a Registered Nurse:

- 1. On 18 August 2016 at North Essex Magistrates Court were convicted of between 17/03/2014 and 31/08/2015 dishonestly failing to promptly notify a local authority in the prescribed manner of a change of circumstances which you knew would affect your entitlement to Housing Benefit, namely that there had been an increase in your income, contrary to section 111A (1A) and (3) of the Social Security Administration Act 1992.*
- 2. Failed to notify the NMC of that you had been convicted of the offence referred to in charge 1 above promptly / in a timely manner*

AND in light of the above, your fitness to practise impaired by reason of your conviction in relation to charge 1 and your misconduct in relation to charge 2

B. Facts

2. The facts are as follows:

The Registrant

3. The Registrant was first admitted to the register of nurses and midwives on 13 March 2007 and is on the register as a Registered Nurse- Adult.
4. At the time of the events referred to in the charges, the Registrant was employed as a registered nurse working for the Whipps Cross University Hospital ('Whipps Cross'). The Registrant started her employment with Whipps Cross in 2009 and remains employed there.

Charges

5. Charge 1 alleges that the Registrant's fitness to practise is impaired by reason of a conviction involving dishonesty. On 18 August 2016, the Registrant convicted of the offence referred to in charge 1 as evidenced by the Memorandum of Conviction from the North Essex Magistrates Court.
6. Having taken into account the Registrant's guilty plea, the Court sentenced the Registrant as follows: (a) a community order requiring the Registrant to comply with unpaid work requirement within 12 months consisting of 150 hours unpaid work to be supervised by the responsible officer; (b) to pay a victim surcharge of £60.00; and (c) to pay costs of £85.00.
7. Details of the findings of fact upon which the conviction was based can be found in a communication from the Department for Work and Pensions dated 25 July 2018 which contains the following information:

“As a result of DWP establishing undeclared employment, Mrs Kakande was interviewed under caution (IUC) 8 September 2015 and 13 November 2015. A full admission was made by Mrs Kakande during the second IUC that she knew she should have reported the employment to the local authority but deliberately failed to declare this change to continue receiving her Housing Benefit as she had recently separated from her partner, she was a lone parent and needed the money.

Her Housing Benefit was suspended and a subsequent overpayment was raised for the period 17.3.14 – 20.7.15 totalling £13,326.60. In addition to being liable for repaying the overpayment, a ‘Loss of Benefit’ determination was made and Mrs Kakande was notified of this in writing. For a first conviction a claimant loses entitlement for 13 weeks.

Mrs Kakande committed to a repayment arrangement of £100pcm from March 2016 which was being paid, however, I have been unable to establish if this agreement is still in place and being adhered to. Our Debt Management Team was unable to find details of the debt on their system. Payments may be being made directly to the local authority instead of DWP.”

8. The Registrant self- referred to the NMC by way of an e-mail communication dated 27 March 2018 which stated, amongst other things:

“This happened during my maternity leave in 2013-2014. I was financial struggling (to keep up with rent). Therefore I applied for housing benefit, however when I resumed back to work, I failed to notify the housing benefit department changes in my circumstance, which led to this conviction on benefit fraud.

In August 2016, I was subjected to a community order with 150hours of unpaid work, which I have completed, copies attached.

Having revised the NMC code of conduct I realised it’s my obligation to disclose any conviction as soon as possible, which I have failed to do as it not within the

keeping with the code. Once I realised I have disclose this information to all relevant people.”

9. The Registrant has completed the community order successfully, as evidenced by the various documents entitled ‘Unpaid Work Record of Hours Completed’. The Registrant is continuing to pay back the money received at the rate of £100.00 per month and has provided copy bank statements evidencing this.
10. In relation to charge 2, despite being convicted on 18 August 2016, the Registrant did not report the conviction until the date of her self- referral on 27 March 2018. The reason for the delay in providing such notification is referred to above.
11. The Registrant continues to work at Whipps Cross as nurse, further details of which are referred to below.

C. Impairment

12. The Registrant admits that her fitness to practise is impaired by reason of her conviction in relation to charge 1 and by reason of her misconduct in relation to charge 2. The NMC defines impairment as the Registrant’s suitability to remain on the register without restriction.
13. The parties have had regard to ***Roylance v General Medical Council (No 2)*** [2000] 1 AC 311 in which the Privy Council held that “*misconduct is a word of general effect involving some act or omission that falls short of what would be proper in the circumstances*”.
14. One of the sources of standards for the nursing profession can be found in *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (‘the Code’) which was in force on the date of conviction and the Registrant’s self- referral to the NMC. The parties agree that the following parts of the Code were engaged and breached in this case:

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, ~~treating people fairly and without discrimination, bullying or harassment~~ [latter part deleted as not applicable to this case]

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

21 Uphold your position as a registered nurse, midwife or

To achieve this, you must:

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

23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)

15. The Registrant's conduct breached the above provisions of the Code. By her actions she failed to uphold the reputation of the profession and her role as a registered nurse by acting dishonestly. Such conduct brought the Registrant into contact with the criminal justice system and brought the reputation of the profession into disrepute (charge 1). The conduct was compounded by the fact that Registrant failed to report the concerns to the NMC in a timely manner. The conduct as alleged in charge 2 fell significantly short of the standards of propriety as set out in the Code.

Not only did the dishonesty persist over a considerable period of time, this was compounded by the delay in reporting the conviction to the NMC, which deprived the regulator of timeously reviewing the Registrant's fitness to practise as a result of the conviction. Accordingly, charge 2 is sufficiently serious so as to amount to misconduct.

16. In relation to impairment, a general approach to what might lead to a finding of impairment was provided by Dame Janet Smith in her Fifth Shipman Report. A summary is set out in the case of **CHRE v Nursing and Midwifery Council & Grant** [2011] EWHC 927 at paragraph 76 in the following terms:

“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.”

17. It is agreed between the parties that the final 3 limbs of the above test are engaged in this matter.

18. The Registrant's actions which led to her conviction, and her involvement with the criminal justice system, brought the profession into disrepute. The public would rightly expect registered members of the profession to comply with the law and for the NMC, as regulator, to take action in such circumstances.
19. The provisions of the Code constitute fundamental tenets of the profession and the Registrant's actions have clearly breached these in so far as they relate to upholding the reputation of the profession and the Registrant upholding her position as a registered nurse. The public consider that as a registered nurse, honesty and transparency are basic tenets of the profession.
20. The offence for which the Registrant was convicted was one of dishonesty. Honesty and integrity are the bedrock of the profession.
21. In relation to whether the Registrant is likely to act the same way in the future, the Registrant has provided a written reflective piece dated 8 August 2018 which is attached as '**Annex A**'. This has been supplemented by an addendum reflective piece dated 20 February 2019 which is attached marked '**Annex B**'.
22. The Registrant has also provided additional documentation including:
- 22.1. Two references from Individual A- Matron in Critical Care dated 6 and 7 June 2018 which are attached as '**Annex C**'.
- 22.2. A reference from Individual B dated 13 June 2018 attached as '**Annex D**'
- 22.3. Evidence of ongoing training and continual professional development in clinical areas relevant to the Registrant's work, which is attached as '**Annex E**'.
23. With regard to future risk the parties have had regard to the comments of Silber J in *Cohen v General Medical Council* [2008] EWHC 581 (Admin) namely, whether the

concerns are easily remediable, whether they have in fact been remedied and whether they are highly unlikely to be repeated.

24. It is acknowledged by the parties that dishonesty is often said to be attitudinal in nature and, as a consequence, difficult to remediate. However, it is also noted from the Registrant's self-referral and written reflective piece that the Registrant has shown insight into the regulatory concerns. Further, there has been no known repetition of the behaviour in question. Having regard to such matters it is agreed between the parties that the risk of repetition is low.

25. Also relevant are the comments of Cox J in **Grant** at paragraph 101:

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the regulator and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case."

26. The parties agree that a finding of impairment is necessary to declare and uphold proper professional standards. This is particularly so having regard to the nature of the allegations which involve a conviction for dishonesty over a significant period of time and involving a significant sum of money. It is agreed that public confidence in the nursing profession and in the NMC as regulator would be undermined if a finding of impairment were not made in this case.

D. Sanction

27. The appropriate sanction in this case is a **Five Year Caution Order**.

28. The parties agree that the aggravating features in this case are:

28.1. The public nature of the conviction and the impact that this had on the reputation of the profession.

28.2. The sum of money involved in the dishonesty and the length of time that it persisted (charge 1), compounded by the delay in reporting this matter to the NMC (charge 2).

29. It is further agreed that the mitigating feature of this case are:

29.1. The Registrant's local admissions during the second interview under caution and subsequent guilty plea.

29.2. The concerns do not relate to the Registrant's clinical skills.

29.3. The personal and social circumstances affecting the Registrant and said to be a motivating factor behind the offending, as referred to in the reflective piece.

30. The parties agree that dishonesty in any form is always taken seriously and have had regard to the various factors set out in the Sanctions Guidance relating to 'Cases relating to dishonesty'. It is noted that the dishonesty in this case did not take place in a clinical setting or relate to the Registrant's status as a nurse. In addition, the Registrant has shown considerable insight into the events, has fully engaged in the regulatory process and has continued to work in a registered role, with positive testimonials.

31. Since the regulatory concerns relate to the Registrant's conviction for an offence of dishonesty and associated misconduct, they are too serious to take no further action. Taking no further action would not mark the seriousness of the conduct.

32. A caution order would be appropriate to mark the conduct as being unacceptable. There are no concerns that the Registrant's actions placed members of the public, or to patients, at risk so as to require the Registrant's practice to be restricted. However, a caution order would mark the Registrant's behaviour as unacceptable

and send a clear message that such events must not happen again. It is agreed that the length of 5 years for the Caution Order is proportionate in all of the circumstances.

33. A conditions of practice order would not be appropriate in this matter, in that there are no identifiable areas of retraining required to meet the concerns in this case.

34. A suspension order could meet the regulatory concerns in this matter but, having regard to the contents of the written reflective piece, the positive testimonials, details of training and continuous professional development undertaken and the fact that the Registrant has worked continuously without any other regulatory concerns, such an order would be disproportionate in all of the circumstances. Further, it is acknowledged that there is a public interest in allowing an otherwise competent nurse to continue to work.

The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges set out at section A above, and the agreed statement of facts set out at section B above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.

This marks the end of the written provisional CPD agreement between the NMC and Miss Kakande.

The Panel's Decision

In reaching its decision, the panel accepted the advice of the legal assessor and bore in mind that in considering the Agreement the panel should have regard to the law and guidance in respect of misconduct, impairment and sanction. The panel should consider whether the Agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the profession and the regulatory body, and declare and uphold proper standards of conduct and behaviour for nurses.

The panel accepted Mr Badruddin's submissions and took into account the reflective statement of Miss Kakande dated 8 August 2018, supplemented by a further reflective piece dated 20 February 2019 and two references from Individual A, Matron in Critical Care, dated 6 and 7 June 2018 which were appendices to the Agreement.

The panel in its judgement considered that Miss Kakande admits the fact of her criminal conviction and of her failure to notify the NMC promptly. The panel found those facts proved. Furthermore, it considered that misconduct was established and agreed with the reasons as set out in paragraphs 14 - 15 of the Agreement. However, the panel did not consider section 21.3 of the NMC Code to be engaged. The panel then considered whether Miss Kakande's fitness to practise is currently impaired by reason of her conviction and misconduct.

The panel had regard to the guidance given in the judgment of Mrs Justice Cox in the case of Grant. At paragraph 74 of that judgment, 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:

“Do our findings of fact in respect of the ... misconduct... 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 that Miss Kakande’s conduct engaged categories b, c and d of the guidance in *Grant*. The panel concluded that Miss Kakande, by having acted dishonestly in the past, has breached the fundamental professional tenet of integrity and has brought the profession into disrepute.

The panel carefully considered Miss Kakande’s insight and remediation and found that Miss Kakande has shown insight into her actions. The panel noted that Miss Kakande made admissions at her second police interview and that she self-referred to the NMC albeit 19 months later. The panel was also satisfied that she has demonstrated through her reflective piece some understanding of the impact her criminal conviction has on the reputation of the NMC and the nursing profession, and how it undermines public confidence. The panel also took into account the positive testimonials which attest to Miss Kakande’s professionalism and good character. However, the panel noted that dishonesty by its nature is difficult to remedy, and determined that Miss Kakande has

not evidenced that she has yet fully remediated her past conduct. Trust and integrity are the bedrock of the nursing profession.

The panel noted that there has been no repetition of the behaviour in question, and agreed with the parties, given Miss Kakande's level of insight and remorse, that the risk of repetition was low. However, the panel noted that Miss Kakande's conviction related to dishonesty of a serious nature which was sustained over a significant period of time and involved a significant sum of money albeit not occurring in her professional capacity. The panel also noted that Miss Kakande's dishonesty was aggravated by her failure to notify the NMC of her criminal conviction in a prompt / timely manner, for approximately 19 months.

The panel considered that by acting dishonestly Miss Kakande had brought the nursing profession into disrepute. The panel therefore determined that a finding of impairment is necessary to declare and uphold proper professional standards. The panel also determined that public confidence in the profession and the regulator would be undermined if a finding of impairment on public interest grounds was not made in the particular circumstances of Miss Kakande's case.

Having found Miss Kakande's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose at this hearing. In reaching this decision, the panel has had regard to all the evidence that has been presented 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 NMC's Sanction 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 had regard to the agreed aggravating and mitigating factors set out at paragraphs 28 and 29 of the Agreement.

The panel considered whether it would be right to take no action, but concluded that this would be inappropriate in view of the seriousness of the case as identified within the Agreement.

The panel next considered a caution order. The panel noted that Miss Kakande's dishonesty was of a serious nature, effectively involving the theft of approximately £13,000, and that her actions were carried out over a sustained period of time, although her dishonesty was not carried out in a work setting and did not relate to Miss Kakande's clinical skills.

The panel also noted that at the time of her dishonesty Miss Kakande was experiencing difficult personal and social circumstances which may have impacted upon her judgment. The panel also noted that Miss Kakande made admissions during the second interview under caution and subsequently plead guilty.

However, the panel agreed Miss Kakande's conduct was wholly unacceptable and a significant departure from the standards of conduct and behaviour expected of a registered nurse. The panel considered that a caution 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 and that such behaviour must not happen again.

The panel agreed that a conditions of practice order would not be appropriate, given that the regulatory concerns in this matter do not involve Miss Kakande's clinical skills. The panel gave very serious consideration as to whether a suspension order would be an appropriate sanction, but agreed that this would be disproportionate given Miss Kakande's level of insight and remorse. The panel found that Miss Kakande accepts

and understands the seriousness of her actions and the impact they had on public confidence in the profession and the NMC as regulator. The panel noted that Miss Kakande is a senior nurse with considerable experience and that there is evidence which attests to her clinical ability, good character and competence. The panel determined that there is that there is a public interest in allowing a good nurse to continue to work and provide safe and effective care to patients. The panel considered that a member of the public, fully appraised of the facts and evidence in this case would not be concerned by the panel's decision to impose a caution order of five years.

The panel therefore determined to accept the provisional agreement and its reasoning, with the qualification that the panel does not regard paragraph 21.3 of the Code as relevant.

The panel decided that a caution order would adequately serve the public interest.

For the next five years Miss Kakande's employer or any prospective employer will be on notice that her fitness to practise had been found to be impaired and that her practice is subject to a restriction.

At the end of this period the caution on Miss Kakande's entry in the register will be removed. However, the NMC will keep a record of the panel's finding that her fitness to practise had been found impaired. If the NMC receives a further allegation that Miss Kakande's fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

That concludes this determination.