

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

**Substantive Hearing
8 – 9 August 2022**

Virtual Hearing

Name of registrant:	Grace Vanessa Ntolera-Mujungu
NMC PIN:	19H0494E
Part(s) of the register:	Registered Nurse – Sub Part 1 27 September 2019
Relevant Location:	Maidstone
Type of case:	Conviction
Panel members:	Clara (Claire) Cheetham (Chair, Lay member) Claire Clarke (Registrant member) Nicola Hartley (Lay member)
Legal Assessor:	Gillian Hawken
Hearings Coordinator:	Sophie Cubillo-Barsi
Nursing and Midwifery Council:	Represented by Aoife Kennedy, Case Presenter
Grace Vanessa Ntolera-Mujungu:	Present and represented by Krystal Peters of Community Trade Union
Facts proved:	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) Were convicted on 13 January 2020 at the Crown Court sitting at Maidstone of dishonestly transferring and converting criminal property for your own personal gain contrary to the Proceeds of Crime Act 2002 s327 & 334.

And in light of the above your fitness to practise is impaired by reason of your conviction as set out in charge 1 above.

Background

On 8 April 2021 the NMC received an anonymous referral advising that you had received a two year suspended sentence.

You received a payment of £120,000 after an email to the victim (Person B) from a solicitor was hacked by some means. The email, which told Person B he needed to pay inheritance tax linked to the victim's late grandmother's estate, contained your bank account details so that the money was paid into your account. Upon receipt, the payment was dispersed from your account into several bank accounts owned by you and Person A to pay off debts.

On 13 January 2020, you pleaded not guilty but were found guilty by a jury in the Crown Court of the offence of converting and transferring criminal property. On 28 February 2020 you were sentenced to 18 months' imprisonment suspended for two years with 200 hours unpaid work.

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

Ms Peters, on your behalf, made a request that parts of this hearing be held in private when making reference to your health and family matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Kennedy, on behalf of the Nursing and Midwifery Council (NMC), indicated that she supported the application to the extent that any reference to your health and/or family matters should be heard in private.

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 your health and/or family matters as and when such issues are raised in order to protect your privacy and the privacy of your family.

Decision and reasons on facts

At the outset of the hearing, you admitted the factual charge of the case. The charge concerns your conviction and, having been provided with a copy of the certificate of conviction, together with your admission, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

Having announced its findings on the facts, 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.

Submissions on impairment

Before hearing oral evidence from you under affirmation in relation to impairment, you provided the following documentation:

- A reflective statement, dated 5 August 2022;

- Four character references;
- A training certificate relating to Aseptic Non-Touch Technique, dated 9 March 2020;
- A training certificate relating to Basic Adult and Paediatric Life Support, dated 3 July 2022;
- A training certificate relating to Dementia Awareness, dated 4 July 2022;
- Two training certificates relating to Duty of Candour, dated 25 July 2022 and 7 August 2022;
- A training certificate relating to Equality, Diversity & Inclusion, dated 5 July 2022;
- A training certificate relating to IV Additives, dated 9 March 2022;
- A training certificate relating to Manual Handling (Level 2), dated 5 July 2022;
- A training certificate relating to Medication Awareness and Dosage Calculations for Nurses, dated 7 July 2022;
- A training certificate relating to Mental Health & Learning Disabilities Awareness, dated 7 July 2022;
- A training certificate relating to Safe Working Principles, dated 2 July 2022;
- A training certificate relating to Safeguarding Adults, dated 2 July 2022;
- Evidence of attendance at a Tracheostomy Study Day, dated 18 November 2020;
- Certificate of competency in relation to Venepuncture, dated 15 June 2020; and
- Journal links.

You gave evidence under affirmation and told the panel that you have now completed your 200 hours of unpaid work. You said 'I feel angry sometimes, I have never had a criminal record before'. You stated that you made a mistake in believing and trusting Person A, [PRIVATE], and that you were under the impression the money was coming to the business that you owned together.

You told the panel that when the money in the joint account was questioned, 'the fear struck' you that you were going to lose everything you had worked for because of Person A. After the conviction you moved to Bristol, rented a house, whilst relying on Person A's paycheck to pay the rent. When Person A went to prison the money stopped. You applied to the council for social housing, but you were not eligible.

You stated that you were subsequently dismissed from your job. You told the panel that you struggled to secure employment due to the ongoing NMC's proceedings and your criminal record. You are now employed as a registered nurse by an agency, Hamilton Cross, who carried out a risk assessment before employing you. You confirmed that the agency is aware of both the NMC's proceedings and your conviction.

In relation to the Duty of Candour training certificates, you confirmed that you undertook this online training independently and that each of the courses took you around two hours to complete. You told the panel that on both occasions, you were assessed by answering questions online. You told the panel you had learned that as a nurse you have a duty of candour as a professional to act openly and honestly. You stated that you continue to undertake training to make you a 'better person' whilst reflecting on your mistakes. You promised the panel that the behaviour which led to your conviction would never happen again.

When referred to the character reference from Ms 1, you told the panel that you worked for Ms 1 for four years caring for her child who has 'complex needs'. You confirmed that Ms 1 is aware of the NMC proceedings and your conviction. When referred to the character reference from Ms 2, you told the panel that Ms 2 is the manager of the agency who you work for and that you have worked for her for over a year.

You explained to the panel that you currently provide care to vulnerable people in a hospice and a home for disabled adults. You stated that your role requires you to complete handovers to other members of staff and that the care you provide is 'tracked'. You told the panel that you do not work alone. You confirmed that throughout your entire career, your clinical practice has never been questioned.

In relation to your reflective statement, you informed the panel that you have always treated patients with dignity, providing quality care. You recognised that the conduct which led to your conviction was self-serving in that you did not prioritise the requirement of a nurse to be honest nor did you prioritise patients in your care. You recognised that the public look up to nurses as 'role models' and expect nurses to tell

the truth. You asked the panel for forgiveness and to consider the fact that you are 'only human', that you 'made only one mistake'. You said that 'no part of me thinks what I did was right'. You stated that you 'wouldn't wish anyone to go through what I went through' and 'you think it will never happen to you'.

[PRIVATE]

When questioned, you acknowledged that you should have exercised some due diligence and that you were wrong to trust Person A. You stated that looking back, you should have questioned Person A about the account and the money but instead you 'took the word' of Person A, which was not the right thing to do. You told the panel that you are now cautious regarding accepting gifts and giving people your bank details, particularly individuals who you do not know. You stated that you now have a separate bank account from Person A.

In relation to your actions leading to the convictions, you stated 'it happened to me'. When asked about how others might view your convictions, you said that you now talked about what happened to your colleagues, so that they would know not to make the same mistakes. You explained that it would be hard for people who don't know you.

When answering questions from the panel in relation to who might have been adversely affected by your conduct, you answered that this would be patients and colleagues in relation to their trust in you. When specifically asked about the impact on Person B, the victim of the crime, you informed the panel that after your convictions you and Person A had attempted to meet with Person B and that you 'wanted to tell our story' and apologise but this had not been possible.

Ms Kennedy 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 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 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 Kennedy submitted that all four limbs of the test are engaged in this case. She submitted that your conviction had breached specific parts of the NMC's Code of

Conduct. Ms Kennedy referred to your reflective statement and submitted that you have consistently deflected responsibility for your actions. She described your oral evidence as 'confusing' and 'inconsistent', especially in relation to when you became aware that the money in your account did not belong to you. Ms Kennedy submitted that in explaining your actions you had consistently attempted to go behind the Judge's sentencing remarks and your conviction. In this regard she referred the panel to the case of *Achina v General Pharmaceutical Council [2021] EWHC 415 (Admin)*.

Ms Kennedy further referred the case of *Ronald Jack Cohen v General Medical Council [2008] EWHC 581 (Admin)*. She submitted that your conduct which resulted in your conviction, is not easily remediable and that your conviction raises fundamental questions about your trustworthiness. Ms Kennedy submitted that your oral evidence focused on the impact your conviction had upon you rather than others. Ms Kennedy described your insight as 'limited' and reminded the panel that it was not until you were directly asked, did you express some recognition of how your actions had impacted upon Person B, the victim. With regards to the training undertaken by you, Ms Kennedy submitted that they are of limited relevance as the majority of the training related to clinical practice.

Ms Kennedy submitted that in light of the serious concerns in this case and your lack of insight and remediation, there is a risk of repetition at this time. Ms Kennedy invited the panel to find that your fitness to practise is currently impaired on both public protection and public interest grounds.

Ms Peters, on your behalf, accepted that it can be difficult to remediate concerns of dishonesty but asked the panel to consider all the circumstances of the case at the time the conduct arose. Ms Peters reminded the panel that, on two occasions, you have completed training in relation to Duty of Candour and that during the regulatory proceedings, you have kept your nursing skills up to date.

Ms Peters submitted that your reflective statement demonstrates an understanding of how your dishonesty impacted negatively upon the reputation of the nursing profession. Ms Peters asked the panel to consider the progress made by you in the last five years.

She reminded the panel that you have admitted you acted dishonestly and that you recognise how your conduct fell far short of that expected of a registered nurse. Ms Peters submitted that there are no concerns in relation to your competency and that during the past five years, you have continued to practise as a nurse in a trusted setting with vulnerable patients.

Ms Peters reiterated the fact that you do not want to make excuses for your conduct which led to your conviction and that you recognise the consequences of your behaviour. Ms Peters asked the panel to carefully consider the positive character references before it.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included the cases of *Grant*, *Cohen* and *General Medical Council v Chaudhary [2017] EWHC 2561 (Admin)*.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, 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. 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 accepted the NMC's submissions that all four limbs of the test are engaged in your case. The panel carefully considered the impact of your dishonest offending and resulting convictions on patients. While there is no suggestion that your clinical skills are in question and the conduct leading to your convictions occurred outside your nursing practice, and that no patients were placed at an unwarranted risk of harm, it determined that there is a future risk to patients should your

behaviour be repeated. Further, the panel determined that your serious dishonest conduct and subsequent convictions had breached fundamental tenets of the nursing profession – the need to act with honesty and integrity and not to transgress the laws of the land - and therefore brought its reputation into disrepute.

When determining whether you have insight into your conduct, the panel considered both your reflective written statement and oral evidence. It noted that you accept dishonesty and you have recognised that patients and colleagues' perceptions of you will be negatively impacted upon. It was your evidence that you will need to 'work hard' to show that you are trustworthy.

However, the panel determined that your insight focused primarily upon the impact your conviction had upon you and your family. It found that during your oral evidence you continued to minimise the effect your conduct had upon others, in particular the victim in this case, and it was only when you were directly questioned did you express some limited recognition. The panel noted that in your reflective statement, you failed to mention Person B. During your oral evidence, the panel considered your answers in relation to when you became aware that the money in your account was not yours, to be inconsistent and evasive.

In the panel's view, you have demonstrated limited insight into the severity of your criminal behaviour and into what caused it. The panel determined that throughout these proceedings you have attempted to deflect your culpability in relation to the conduct which resulted in your convictions. The panel noted the Judge's sentencing remarks, that you were 'a willing party', had 'played a significant role' and that you 'went along with it and is still going along with it'.

When considering whether you have addressed your failings, the panel noted all the documentary evidence provided by you. The panel considered the fact that no further concerns have been raised regarding your honesty and/or integrity since your conviction. Further, you told the panel that you have now completed the 200 hours of unpaid work as part of your sentence.

The panel acknowledged that conviction cases, particularly those involving dishonesty, are inherently difficult to remediate. Whilst the panel had before it evidence of a number of training courses, including two relating to Duty of Candour, it determined that these attempts to remediate have been largely misdirected as the training did not relate to the circumstances of the dishonesty in your case.

Given the combination of your lack of insight and any meaningful remediation, the panel is of the view that there is a real risk of repetition at this time. The panel therefore decided that a finding of impairment is 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 was of the view that a member of the public would be seriously concerned should a nurse, who has received a serious conviction involving dishonesty, not be found impaired. The panel therefore determined that, in this case, a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel concluded that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have 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 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 Kennedy informed the panel that in the Notice of Hearing, dated 13 June 2022, the NMC had advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired. Ms Kennedy outlined what, in the NMC's view, were aggravating and mitigating factors in your case. She submitted that a striking off order is the only sanction which would appropriately address the seriousness of your case and satisfy the public interest.

Ms Peters outlined the mitigating features in your case. She told the panel that you have reflected upon the panel's decision in relation to your impairment and reiterated that you are 'extremely ashamed' of your dishonesty. Ms Peters told the panel that you intend to enquire about cognitive behavioural therapy to address the issue the criminal behaviour which led to your convictions.

Ms Peters invited the panel to impose a suspension order. She stated that your conduct and convictions are not fundamentally incompatible with you remaining on the register and that the public interest would be satisfied by a period of suspension. Ms Peters further submitted that a period of suspension would allow you a further opportunity to demonstrate reflection and insight. [PRIVATE]

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 identified and took into account the following aggravating features:

- Your conduct resulted in personal financial gain;

- The theft related to a substantial amount of money from one individual;
- Your conduct was a dishonest and long lasting deception;
- You have not demonstrated any meaningful insight, remorse and/or remediation into your conduct which led to your convictions; and
- It is unlikely that Person B, the victim, will ever recover his money.

The panel also identified and took into account the following mitigating features:

- Five years have elapsed since the allegations arose and no further concerns have been raised regarding your honesty and/or integrity;
- No direct patient harm;
- At the time you were suffering from financial hardship; and
- The conviction occurred outside of your clinical practice.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public safety concerns identified and 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, an order that does not restrict your practice would not be appropriate in the circumstances. A caution order would not protect the public from the risks identified. 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 conduct was not at the lower end of the spectrum. 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 of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The conduct which led to your conviction is not something which

can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not protect the public from the risks identified by this panel, would not adequately address the seriousness of this case nor would it address the significant public interest concerns.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of repetition of behaviour since the incident;*

However, the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted the aggravating factors in this case. It determined that the conduct reveals evidence of harmful, deep-seated attitudinal problems and that your lack of meaningful insight, remorse and remediation some five years on from the actions leading to your conviction means that there is a significant risk of repetition. The panel noted the serious breach of fundamental tenets of the profession evidenced by your conduct and subsequent convictions.

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 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?*

Your actions were significant departures from the standards expected of a registered nurse. Despite five years elapsing since the allegations arose, you have failed to demonstrate any meaningful insight and/or remorse into your conviction which related to the theft of a significant amount of money from one individual, Person B. The panel determined that this failure is indicative of a deep-seated attitudinal problem. The panel was of the view that your actions are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were extremely serious and any lesser sanction would seriously undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all of 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 of 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.

In coming to its decision, the panel took into account the principle of proportionality and carefully considered the impact that such a sanction will have on your right to practise your chosen profession, as well as the likely reputational and financial impact. The panel weighed up the information about your family's reliance upon you financially. However, when weighing up all of the factors set out in this determination, the panel decided that the need to protect the public and uphold the public interest outweighs your interests in this regard.

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 interest until the striking-off 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 Kennedy. She invited the panel to impose an interim suspension order for 18 months to cover any appeal period.

Ms Peters did not oppose the application. However, she reminded the panel that you have continued to practise unrestricted during these regulatory proceedings.

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 facts found proved 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 or proportionate 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 to cover any appeal period should an appeal be made by you.

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

That concludes this determination.