

Nursing and Midwifery Council

Registrations Appeal Hearing Thursday 20 – Friday 21 May 2021

Nursing and Midwifery Council
Virtual Hearing

Name of appellant:	Rosemary Ewasi Chi
Type of case:	Registrations appeal
Panel members:	Ingrid Lee (Chair, lay member) Gerry Kennedy (Registrant member) Pamela Ormerod (Lay member)
Legal Assessor:	Fiona Barnett
Panel Secretary:	Catherine Acevedo
Nursing and Midwifery Council:	Represented by Rebecca Penfold, Case Presenter
Appellant:	Present and represented by Marc Walker
Decision:	Appeal dismissed

Decision and reasons

The panel decided to dismiss your appeal against the decision of the Assistant Registrar (AR) of the Nursing and Midwifery Council (NMC) to refuse your admission to the Register.

This appeal is made under Article 37 (1) of the Nursing and Midwifery Order 2001 (the Order). You have appealed the decision of the AR, dated 19 November 2020, that you are not of sufficient good character to be capable of safe and effective practice. The AR was not satisfied that you had sufficiently reflected on your conduct, as you did not take full ownership of your conviction. Although you provided a factual account, you did not fully admit your level of involvement in the offence, and you did not reflect on the importance of honesty and integrity in the nursing profession and the impact that dishonest conduct has on the public confidence in the profession.

Article 9(2)(b) of the Nursing and Midwifery Order 2001, states that one of the requirements of registration is that an applicant must satisfy the Registrar that they are capable of safe and effective practice as a nurse.

The AR therefore required you to submit a full self-statement in support of your application reflecting on why you now consider that you are of sufficient good character to be capable of safe and effective practice.

In reaching its decision, the panel considered all of the evidence in this case, as well as your submissions, and those of the NMC.

Background

You first registered as an Adult Nurse on 10 March 2008. On 28 February 2011 your registration lapsed as neither payment nor your Notification of Practice form was received.

On 9 June 2011 you completed a readmission application. As part of this application, you declared a conviction for Conspiracy to defraud in May 2011.

Following investigation of the conviction, an AR considered the readmission application on 9 January 2012 and made the decision to refuse it. The AR was not satisfied that you are capable of safe and effective practice. The determination took account of the offences for which you received criminal convictions and the inconsistencies in your account of the circumstances surrounding the offences. The AR advised you that if you are readmitted to the Register sometime in the future, your actions in committing the offence may amount to misconduct.

On 28 August 2012, you completed a readmission application. As part of this application you declared 'Yes' to having received a police charge or conviction of a crime. You did not declare what the charge or conviction was. Following investigation of the conviction and the previous reason for refusal, the application was referred to the AR for consideration on 30 October 2012. The AR refused your application and cited your conviction for Conspiracy to Defraud, the period you spent in custody and the sum confiscated by the courts.

You appealed the AR's decision on 9 November 2012 and submitted the following documents:

- Notice of Appeal dated 05/11/2012
- Court papers dated 26/05/2011
- Disclosure and Barring Service (DBS) certificate, issued 30/08/2012

On 12 March 2013 your appeal was dismissed, the panel concluded that you had not fully appreciated the seriousness of your actions and the nature of the convictions and the potential effect such dishonesty has in undermining patients' confidence in their nurses.

On 4 September 2013, the NMC received a referral from the Student Services Policy Consultant at University of the West of England, about you. The referral related to your online application to complete a CPD module within the BSc Specialist Practice course. These modules require a student to be registered with the NMC and to be in practice. You did not notify the university that your registration had lapsed, nor did you declare your criminal conviction. As your registration was not effective at the time of the referral, the Fitness to Practise directorate did not have the jurisdiction to investigate the matter.

On 11 September 2020 you submitted a readmission application.

On 12 October 2020 the NMC sent an email to you which requested a statement commenting on the panel's decision to dismiss your appeal in 2013, and to also comment on the referral from University of the West of England.

On 14 October 2020 you sent an email to the NMC which contained a statement written by you.

On 2 November 2020 the NMC requested a Police National Computer (PNC) check regarding the conviction of Conspiracy to defraud in May 2011. The PNC check was returned on 3 November 2020, confirming the conviction.

On 19 November 2020 the AR considered your readmission application.

On the same date the AR made the decision to refuse your readmission application. The AR was not satisfied that you had sufficiently reflected on your conduct, as you did not take full ownership of your conviction. Although you provided a factual account, you did not fully admit your level of involvement in the offence, and you did not reflect on the importance of honesty and integrity in the nursing profession and the impact that dishonest conduct has on public confidence in the profession.

The NMC sent an email to you on 20 November 2020 which advised you of the refusal.

On 25 November 2020 the NMC sent an email to you which contained the AR's decision letter.

On 18 December 2020 your representative Mr Walker sent an email to the NMC which contained your Notice of Appeal and a further reflective statement.

Evidence

The panel heard oral evidence from a character witness, Ms 1 on your behalf.

Ms 1 confirmed that she acted as referee in your application for readmission. Ms 1 told the panel that she met you in 2008 through your younger sister and has interacted socially with you from that time until the present day. Ms 1 has been a registered nurse since 2014, working for North Bristol NHS Trust, initially in a substantive post but as a bank nurse for the Trust since 2015. Ms 1 declared that you are of good character to the best of her knowledge and there is no cause for concern. She said that she knew of issues prior to her knowing you and to do with a statement in an application which was incorrect at the time that you made the application.

Ms 1 said that she was aware that you pleaded guilty of conspiracy to defraud over a 6 year time frame but that she is not aware of the specific details. She said her opinion is limited to her interactions with you and what she has seen of you with each of your families and socially in the community. She said that she understands you are trying to be an upright citizen and that you had not repeated any dishonest behaviour. Ms 1 told the panel that she would normally see you on a monthly basis but this has been less so since lock down. She said you speak regularly on the telephone. You have never worked together.

In your oral evidence, you explained to the panel your involvement in the different elements of the conspiracy and how you were directly involved in charge 1 and 2. You accepted that you let other participants in the conspiracy use your property that they rented from you as a drop box for their illegal activities and to use your laptop to commit their fraud and that you knew this was happening. You told the panel that you “turned a blind eye’ to the activity of your tenants. You also told the panel that you needed to secure rent from your tenants in order to pay the mortgage. You said you fully appreciate the seriousness of your behaviour and you are sorry that you gave that panel the impression that you that not taken ownership of your conviction.

You explained that at the time of your appeal hearing on 12 March 2013 you were unwell and were not thinking properly. [PRIVATE]. You told the panel [PRIVATE] your continued commitment to your family made it difficult for you to take up full time employment.

In relation to the false references which you used to obtain employment as an accountant with the NHS when you first sought employment in the UK, you explained that you come from a very lawless country and you have come to realise what a serious offence your actions were but that you did not realise this at the time. You told the panel that it can be sure that you would not be dishonest again because you know the system now and you will never do the same thing again.

You said that you have tried to keep your knowledge and skills up to date by doing online reading and have undertaken and passed the NMC Test of Competence which includes a written exam and a practical test allowing you to return to practice.

You said that in relation to your online university application, that the field for your PIN was not mandatory and that there was no request on the form for you to declare your previous criminal conviction. You said that you believed that the form was generic, open to any applicant. However, you told the panel that you now realise you should have informed the university of your lapsed PIN and your previous conviction.

You explained [PRIVATE] now your children have grown up and you want to come back to nursing. You believe you had been a good nurse and there is a lot for you to offer back to the patients. If you were readmitted, you said you previously worked in cardiology but would like to work in intensive care. You said you are now a different person and you are ready to move forward with your life.

Submissions

Ms Penfold on behalf of the NMC invited the panel to dismiss the appeal. She submitted that the test is whether you are of sufficient good character to be capable of safe and effective practice and invited the panel to consider three issues. These were your

conviction for dishonesty, the further evidence of dishonesty in relation to your university application and the evidence you gave to the last panel in 2013.

Ms Penfold said that character is a burden that the appellant must satisfy and the wider public interest must also be considered. Ms Penfold asked the panel to consider whether allowing someone of this character on to the Register would undermine public confidence in the profession and undermine proper professional standards. Ms Penfold referred the panel to the NMC guidance on character and health.

Ms Penfold submitted that the conduct which led to this appeal was so serious and that it is incompatible with professional registration. Dishonesty is a breach of a fundamental tenet of nursing and is a character and attitudinal failing. Further to the conviction, you demonstrated a lack of insight and continued dishonesty in a university application.

Ms Penfold submitted that your evidence today has not been clear and reflects a continued lack of insight and acceptance as to the true nature of your offending. In relation to character witness Ms 1, Ms Penfold invited the panel to attach little weight to her evidence as it was clear that she had limited knowledge of your character, all which was provided by you, and further demonstrates your lack of acceptance and insight.

Ms Penfold submitted that you may be clinically competent and some years have passed but your behaviour was so serious to warrant this panel to dismiss the appeal.

Mr Walker submitted that the central question for the panel is whether you are of good character to practise safely and effectively. Mr Walker submitted that the panel will see that the AR refused the registration appeal on three occasions, principally, because of your conviction and the conduct around that conviction. The AR did not reject your last application on the basis of any other requirement other than character. Mr Walker

submitted that the panel should be clear that you have satisfied all the requirements except that of character.

Mr Walker submitted that the conduct is remediable. The AR did not state it was not remediable but was not satisfied that you had insight or taken full ownership for the level of your involvement. Mr Walker reminded the panel that you pleaded guilty to the whole conspiracy and you accept your involvement in the whole conspiracy. You were not found guilty, you pleaded guilty and the panel has heard how you became involved and your personal and financial difficulties at the time. He submitted that in admitting the conspiracy offence the panel can see the beginning of remediation.

Mr Walker said that the university application is unfortunate, the PIN was not a mandatory field, there was no guidance regarding previous convictions and subsequently no one asked for your PIN when you had left the field blank. You had completed the course and passed it and had demonstrated the high degree of insight required for a registered nurse in that you have told the panel that you should have declared to the university that your PIN had lapsed and that you have a criminal conviction.

Mr Walker submitted that dishonesty is difficult to remediate but can be remediated by the passage of time. He said that even if the panel took the view that the university matter amounted to misconduct, there is still a period of over 8 years without any reprehensible conduct on your part. The AR did not rely on the university matter when your last application for readmission was refused. Mr Walker invited the panel not to rely upon it.

Mr Walker referred the panel to character evidence received from three people which he submitted was positive character evidence.

Mr Walker highlighted the hardships within your personal circumstances and indicated that the cost of your actions has been ruinous. Mr Walker submitted that a member of the

public, fully informed about what has happened including the aftermath, would conclude that the public interest has been fully served.

Mr Walker asked the panel what more could you do to remediate your conduct. You have completed the test of competence and remediated your dishonest conduct and there is public interest in returning a nurse who is fit to practise to the Register.

Mr Walker provided the panel with documentation to support this appeal including:

- Three character references.
- A reflective statement dated 14 October 2020.
- A reflective statement dated 18 December 2020.

Panel's decision

The panel accepted the advice of the legal assessor

The panel considered the evidence before it and your oral evidence and the oral evidence of Ms 1.

The panel first considered your character in relation to the university application. The panel noted that the AR did not raise this as a concern in the most recent refusal. The panel considered your intent at the time of completing the application and whether it was completed with the intention to mislead. Having heard your explanation, the panel could not be satisfied that you deliberately set out to mislead the university in your application form. Nevertheless, it had concerns that you had been economical with the truth because, as a qualified nurse, you ought to have known that a criminal conviction and your lapsed PIN should have been declared to an education provider. The panel was satisfied that you now accept that you should have disclosed your conviction and your lapsed PIN. You further outlined the impact this incident would have on the nursing profession and that you would not do it again. The panel was of the view that you have developed insight and

accepted what you had done was wrong and not in compliance with the conduct expected of a nurse. The panel was reassured that you have achieved a high degree of remediation in this respect.

Your conviction related to a conspiracy to defraud the NHS of a significant sum of money (approximately £450,000) over a period of several years from 2003 – 2009 by gaining employment for you and others to which you were not entitled. The panel recognised a developing but relatively recent awareness on your part of your responsibility for the fraudulent activity associated with your offending. However, this appeared to be still emerging and while you were anxious to reassure the panel that your offending would not be repeated, you were unable to provide sufficient substantive, independent and objective evidence that demonstrated your commitment to upholding the values required by the 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code).

The panel noted, to your credit, that you have taken steps to stay competent and have shown a commitment to the nursing profession by taking and passing the NMC Test of Competency.

The panel took into account the references it had received from three referees, one of whom provided live evidence in the hearing. The panel considered Ms 1's oral evidence to be credible and gave positive information about you. However, the panel considered her knowledge was limited as she was not aware of the full details of your conviction or the incident regarding your university application. Additionally, the panel considered that as a friend, Ms 1 is less likely to give objective evidence regarding your honesty and integrity.

The panel considered the reference of Ms 2. It noted that you know her as a friend and although she was aware of all the circumstances, the panel considered that as a friend, she is also less likely to give objective evidence regarding your honesty and integrity.

The panel considered the reference from Mr 3, a doctor in Cameroon for whom you work on debt recovery on a voluntary and, for the most part, on a remote basis. It noted that although he was aware of the circumstances of your conviction and could attest to your good character, he had only known you for a short time.

Taking into account all of the above, the panel considered that progress has been made and you have developed insight into the seriousness of your conviction and its impact on the nursing profession. However, it was of the view that it had not seen compelling, objective evidence that showed that you are capable of upholding the Code and the standards expected of a registered nurse on an ongoing basis. The panel was therefore, not satisfied that you had demonstrated that you are of sufficient good character to be capable of safe and effective practise.

The panel decided to dismiss your appeal, to uphold the decision of the AR, thereby refusing your application to the NMC register.

This decision will be confirmed to you in writing.

That concludes this determination.