

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

**Substantive Hearing  
Friday, 23 September 2022**

2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of registrant:</b>	<b>Neneh Fofanah</b>
<b>NMC PIN:</b>	96I0206E
<b>Part(s) of the register:</b>	Registered Nurse Mental Health Nursing – September 1999
<b>Relevant Location:</b>	Cheshire East
<b>Type of case:</b>	Conviction
<b>Panel members:</b>	Janet Fisher (Chair, Lay member) Jude Bayly (Registrant member) Christine Callender (Registrant member)
<b>Legal Assessor:</b>	Monica Daley
<b>Hearings Coordinator:</b>	Philip Austin
<b>Nursing and Midwifery Council:</b>	Represented by Sylvia McLean, Case Presenter
<b>Miss Fofanah:</b>	Present but not represented
<b>Facts proved:</b>	Charge 1 by way of admission
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Currently impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order – 18 months</b>

## **Details of charge**

That you, a Registered Nurse, on 16 April 2021 at the Crown Court at Nottingham were convicted of:

- 1) Fraud (6 counts)

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

## **NMC Opening**

You qualified as a registered nurse in 1999.

The NMC received a referral in relation to you on 9 September 2016 from Cheshire & Wirral Partnership NHS Foundation Trust (“the Trust”) where you were employed between 28 November 2011 and October 2015. Whilst employed as a Staff Nurse, it is alleged that on several occasions between July 2014 and October 2015, you received sick pay from the Trust and you worked bank shifts for Derby Teaching Hospitals NHS Foundation Trust. There was also one occasion where you worked as a bank nurse whilst on compassionate leave.

During the NMC investigation, you stated that the Trust was aware of the situation and had agreed that you could do bank nursing shifts whilst on sick leave, as your bank shifts were mainly office based. This assertion has been rejected by the Trust.

You were convicted in the Crown Court at Nottingham on 16 April 2021 and were found to be guilty of all six counts of fraud. On 24 September 2021, you were sentenced to nine months imprisonment, suspended for 18 months. You were also ordered to undertake 150 hours of unpaid work, pay a victim surcharge of £100, and undertake Rehabilitation Activity Requirements for a maximum of 15 days.

You had appealed against your conviction, but this was rejected. However, you have appealed for a second time.

### **Decision and reasons on facts**

The panel noted that the charge concerns your conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31(2) and (3). These state:

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

The panel noted that the certificate of conviction was signed by an Officer of the Court on 21 October 2021.

You acknowledged that you have been convicted for six counts of fraud.

Therefore, the panel found charge 1 proved.

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

During your evidence, you raised matters relating to your difficult personal circumstances.

Ms McLean, on behalf of the Nursing and Midwifery Council (“NMC”), made a request that parts of the hearing be held in private on the basis that proper exploration of this case may involve further reference to your difficult personal circumstances. She submitted that any public interest in these parts of the case being aired in public session is outweighed by the need to protect her privacy in this respect. This application was made pursuant to Rule 19 of the NMC (Fitness to Practise) Rules 2004, as amended (“the Rules”).

You did not oppose the application.

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.

Rule 19 states:

19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.

(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant’s physical or mental health must be conducted in private.

(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

(a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and

- (b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—
- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
  - (b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.
- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there may be reference to difficult personal circumstances, the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with these matters as and when such issues are raised.

### **Fitness to practise**

Having announced its findings on the fact, the panel then considered whether, on the basis of the fact 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

Ms McLean 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 reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

Ms McLean submitted that, in the NMC's view, you have brought the profession into disrepute, you have breached fundamental tenets of the nursing profession and your conviction relates to dishonesty.

Ms McLean submitted that your serious convictions have brought the nursing profession into disrepute as it would have a negative impact on it. She submitted that this is evidenced by the nature and number of the convictions, and the imposition of a suspended prison sentence. Ms McLean submitted that the public has the right to expect high standards of registered professionals.

Ms McLean submitted that registered nurses are expected to uphold the laws of the country in which they practise. She submitted that this applies equally to conduct in a registered nurse's private life.

Ms McLean submitted that honesty and integrity is the bedrock of the nursing profession. She submitted that the seriousness of your multiple convictions are such that they call your trustworthiness as a registered nurse into question. Ms McLean submitted that you have demonstrated no insight into your conduct.

Ms McLean invited the panel to take the view that the behaviour which led to your conviction amounted to breaches of *The Code: Professional standards of practice and*

*behaviour for nurses and midwives* (2015) (“the Code”). She submitted that the provisions of the Code constitute fundamental tenets of the profession and your actions have clearly breached these in so far as they relate to upholding the reputation of the profession and you upholding your position as a registered nurse.

Ms McLean referred the panel to the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)* and invited it to consider whether your convictions are capable of remediation, whether it has indeed been remediated, and whether it is highly unlikely to be repeated.

Ms McLean submitted that as the conduct appears to be attitudinal in nature, it is unlikely to be easily remediable. She submitted that the nature and circumstances of the offence, coupled with the lack of insight shown by you, indicates that there is an attitudinal concern which is difficult to remedy.

Ms McLean further submitted that there is no evidence before this panel that you have taken any steps towards remediating the concern. There is no reflective piece, no apology, and no acknowledgement from you as to how your convictions could have an adverse impact on your colleagues, the reputation of the profession and the wider public interest. Accordingly, Ms McLean submitted that the panel has limited information before it to suggest that you would not repeat your behaviour for which the conviction relates to.

Ms McLean invited the panel to find that your fitness to practise as a registered nurse is currently impaired on the grounds of public interest.

You gave evidence to the panel under oath.

You told the panel that you have referred seven individuals to the NMC following these incidents, and that this counts as taking proactive steps in seeking remedial action. You said that you have received a response from the NMC in relation to five of these referrals,

and you are awaiting feedback about the other two referrals. You stated that the NMC should be taking these referrals very seriously.

You agreed that the core of nursing is built on the fundamental principles of being honest and acting with integrity.

You told the panel that you are the victim here, and you have had lies told against you. You said that everything became transparent during the criminal trial, and you are going to keep fighting until you get the truth. You told the panel that you acknowledge the fact that you have a conviction but you do not accept it. You stated that you are appealing against your conviction and the Criminal Cases Review Commissions (“CRCC”) is looking into it because you believe there is new evidence in support of your case.

You told the panel that you were working full-time at the Trust and you took time off work due to stress related issues. You said that you had permission from the Trust to work elsewhere whilst you were on sick leave and compassionate leave. You stated that you do not know what the public would think of a registered nurse with a conviction such as yours; you do not judge other members of the public and they should not judge you. You said that your conviction would have no adverse impact on the reputation of the nursing profession and it would not bring the profession into disrepute. In any event, you said that people would not be aware of your conviction at work. You told the panel that your focus is your work ethic and how that allows you to deliver safe and effective nursing practice.

You said that you have completed your hours of unpaid work. You informed the panel that although you have worked as a registered nurse since 2015, you have not worked as a registered nurse since November 2021.

You said you are not going to be forced to be insightful or demonstrate remorse when you have done nothing wrong. You reiterated that you were entitled to sick pay from the Trust and permitted to work elsewhere at the same time, and this was the agreement. You stated that you believe this is acceptable and you were not told you could not do this.



Specifically in respect of the compassionate leave, you said that it was fine for you to claim sick pay and work elsewhere as this leave was not due to ill-health.

You stated that your nursing practice has never been brought into question and you have never had any problems when working. You said that you are an excellent registered nurse and you deliver a high standard of care.

### **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. It heard and accepted the advice of the legal assessor.

Registered 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 registered nurses with their lives and the lives of their loved ones. To justify that trust, registered nurses must be honest, 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 Grant 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.'*

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) ...
- 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 found limbs b, c and d above to be engaged in this case. It determined that you had in the past and were liable in future to bring the reputation of the nursing profession into disrepute, and the same could be said for breaching fundamental tenets of the nursing profession. The panel considered your conviction to be serious. It noted that you had been convicted multiple times of fraud, which is dishonest behaviour.

The panel also found you to have breached the following standards of the Code:

***"20 Uphold the reputation of your profession at all times***

*To achieve this, you must:*

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

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

**21 Uphold your position as a registered nurse, midwife or nursing associate**

*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”.*

In assessing your level of reflection, the panel considered you to have demonstrated no insight into the conviction. You appear to accept the factual basis of the charge in that you worked several bank shifts for Derby Teaching Hospitals NHS Foundation Trust whilst on sick leave and compassionate leave from the Trust, and in receipt of remuneration. You seem to be under the impression that you have done nothing wrong, as you have stated that you have nothing to be remorseful for. Instead, you have attempted to deflect blame on to colleagues at the Trust who you claim gave you permission to work for a different employer whilst on sick leave and compassionate leave. You had also stated that you do not think your conviction would have any impact on colleagues or the nursing profession.

Despite the panel's attempts to elicit some information as to the impact such behaviour could have on the nursing profession, you were unable to engage in a hypothetical discussion or demonstrate insight of any kind. The panel noted that these incidents occurred in 2015, and you do not appear to have made any progress in your reflection since that time.

The panel noted from your oral evidence that whilst you acknowledge you have received a conviction, you are currently appealing against it; despite it being previously upheld.

In considering whether you have remediated the conduct behind your conviction, the panel considered the factors set out in Cohen. It noted that behavioural concerns are often more difficult to remediate than clinical concerns, as it could be suggestive of a deep-seated attitudinal issue. Whilst the panel considered your behaviour to be capable of remediation, in principle, it needed to be satisfied that you have the requisite level of insight. At the

current time, the panel was not satisfied that you have any insight into the behaviour which led to your conviction. Therefore, the panel considered there to be a real risk of repetition.

The panel noted that you are of the view that referring other individuals to the NMC is evidence of you having undertaken remediation. You have not completed any training of any sort to address the underlying concerns surrounding your conviction, however, you have complied with the suspended sentence order given by Nottingham Crown Court.

The panel did not consider there to be any public protection issues involved in this case. It had no evidence before it of any clinical nursing concerns.

However, 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. It was of the view that a fully informed member of the public would be seriously concerned by your conviction, and the behaviour behind it. 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.

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the NMC Registrar to strike your name off the NMC register. The effect of this order is that the NMC register will show that you have been struck off the NMC 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 McLean invited the panel to have regard to the aggravating factors which, in the NMC’s view, are present in this case. She submitted that she has not been able to identify any contextual factors which may give rise to mitigation.

Ms McLean took the panel through the sanctions available to it in turn.

Ms McLean submitted that as the panel has found there to be an outstanding public interest concern, taking no further action is not appropriate in the particular circumstances of this case. Ms McLean submitted that the panel should take action to secure the public’s trust in registered nurses, and to promote and maintain proper professional standards and conduct.

Ms McLean submitted that a caution order would only be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise. She submitted that the conviction cannot be described as being at the lower end of the spectrum in this case and, as such, a caution order is not appropriate.

Ms McLean also submitted that a conditions of practice order would not be a sufficient sanction to reflect the severity of your conviction. She submitted that there are no identifiable clinical concerns involved in this case, and the nature of your conviction makes it difficult to formulate workable conditions. Ms McLean submitted that this outcome would not sufficiently satisfy the public interest concerns.

Ms McLean submitted that a suspension order would restrict your nursing practice and uphold the public interest. However, such an order would not mark the seriousness of the conduct in question, nor would it be sufficient to uphold trust and confidence in the profession and the regulatory process, particularly in the absence of any insight.

Ms McLean submitted that your actions, as demonstrated by the charge found proved, raise fundamental questions about your character and trustworthiness as a registered nurse. Furthermore, she submitted that you have demonstrated no insight or remediation, so permanent removal is required.

Ms McLean referred the panel to the guidance published by the NMC titled 'Cases involving criminal convictions or cautions'. She also referred the panel to the case of CRHP v GDC and Fleischmann [2005] EWHC 87 Admin, and submitted that as you are still serving your suspended sentence, you should not be permitted to resume your practice until you have satisfactorily completed your sentence. Ms McLean submitted that only circumstances which plainly justify a different course should permit otherwise.

Ms McLean submitted that a striking-off order would restrict your practice during the currency of your sentence (and for a longer period) and would also uphold trust and confidence in the profession. She submitted that your conduct is fundamentally incompatible with being a registered nursing professional. Ms McLean submitted that confidence in the nursing profession would be undermined by any lesser sanction and a striking-off order is the only sanction which will be sufficient to maintain professional standards.

You stated that you are not surprised by the submissions of the NMC, as the system is not fit for purpose. You said you no longer want to be a registered nurse, as you would rather not work for an organisation that has no integrity. You stated '*I am not guilty in this life, or the next*' and you reiterated that your integrity is more important to you than your nursing registration.

After making your submissions, you announced that you would not be remaining at the hearing centre as you have a long journey home. You understood that the hearing would continue and you confirmed that you would be happy to receive the panel's decision electronically.

### **Decision and reasons on sanction**

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

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 and the guidance issued titled '*Cases involving criminal convictions or cautions*'. The decision on sanction is a matter for the panel independently exercising its own judgement.

In respect of aggravating factors, the panel has considered the following as relevant:

- The seriousness of the conviction, as evidenced by the suspended sentence of imprisonment imposed by Nottingham Crown Court.
- Miss Fofanah abused her position of trust as a registered nurse which resulted in financial loss to the NHS.
- Miss Fofanah has been convicted for multiple dishonesty related offences.
- Miss Fofanah's behaviour has adversely impacted the reputation of the nursing profession.
- There is some evidence of deep-seated attitudinal issues.
- No evidence of insight or remorse.

The panel did not identify any mitigating factors in the particular circumstances of this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of your conviction. 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 and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* Miss Fofanah had embarked on a course of dishonest conduct, and the panel considered your convictions were not at the lower end of the spectrum. The panel determined that a caution order would be inappropriate in view of the seriousness involved in the case. Further, 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 Miss Fofanah’s registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable.

The panel was of the view that there were no practical or workable conditions that could be formulated, given the nature of Miss Fofanah’s conviction. The panel was of the view that the convictions in this case were not something that could be addressed through retraining. There are no clinical deficiencies that have been identified, all of the charges relate to Miss Fofanah’s conduct and behaviour.

Furthermore, the panel concluded that the placing of conditions on Miss Fofanah’s registration would not adequately address the seriousness of her conviction and would not satisfy the wider public interest considerations.

The panel then went on to consider whether a suspension order would be an appropriate sanction.



The panel considered whether the seriousness of this case could be addressed by temporary removal from the NMC Register and whether a period of suspension would be sufficient to satisfy the wider public interest concerns. When considering seriousness, the panel took into account the extent of the departure from the standards to be expected of a registered nurse and the risk of harm to the public interest caused by that departure.

The panel was of the view that Miss Fofanah's convictions could not be regarded as '*trivial*' as the criminal activity was serious and persisted for a prolonged period of time. Miss Fofanah had engaged in a repeated pattern of behaviour which amounted to abusing her position of trust as a registered nurse.

The panel was of the view a suspension order may have been appropriate, had Miss Fofanah demonstrated a significant degree of insight, remorse and remediation. However, Miss Fofanah had attended today and blamed staff at the Trust for her conviction, instead of taking responsibility for her own actions. Miss Fofanah has reiterated that she has absolutely nothing to apologise for, and she classed her remediation as referring other individuals to the NMC as a result of what had happened. In taking account of all the evidence before it, the panel had considered Miss Fofanah to have demonstrated no insight, remorse or remediation. Miss Fofanah has already had a significant period of time to reflect on her actions, given that these incidents took place approximately seven years ago. The panel was satisfied that there was an underlying attitudinal issue in this case; one that raises fundamental concerns about Miss Fofanah's level of professionalism.

Taking account of the above, the panel determined that Miss Fofanah's conviction was not merely a serious departure from the standards expected of a registered nurse and a serious breach of the fundamental tenets of the nursing profession, it was fundamentally incompatible with Miss Fofanah remaining on the NMC register. In the panel's judgment, to allow someone who had behaved in this way without demonstrating insight and remediation would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on Miss Fofanah both professionally and personally. However, the panel was satisfied that the need to adequately address the public interest elements of this case outweighs the impact on her in this regard.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Fofanah's convictions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

### **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 is in your own interest until the striking-off order takes effect.

## **Submissions on interim order**

Ms McLean invited the panel to impose an interim suspension order for a period of 18 months. She submitted that this interim order is necessary on the grounds of it being in the public interest, having regard to the panel's findings.

## **Decision and reasons on interim order**

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

The panel was satisfied that an interim order is necessary on the ground of it being 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. Owing to the seriousness of the convictions in this case, along with the risk of repetition identified, it determined that Miss Fofanah's actions were sufficiently serious to justify the imposition of an interim suspension order until the striking-off order takes effect. In the panel's judgment, public confidence in the regulatory process would be undermined if Miss Fofanah was to be permitted to practise as a registered nurse prior to the substantive order coming into effect.

The panel decided to impose an interim suspension order in the circumstances of this case. To conclude otherwise would be incompatible with its earlier findings.

The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.