

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

**Restoration Hearing
Wednesday, 10 April 2024**

Virtual Hearing

Name of Applicant: Michelle King

NMC PIN: 03C05220

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – March 2003

Relevant Location: Wirral

Panel members: Louise Fox (Chair, Lay member)
Wendy Burton (Registrant member)
Frances McGurgan (Lay member)

Legal Assessor: Tim Bradbury

Hearings Coordinator: Samiz Mustak

Nursing and Midwifery Council: Represented by Chengetai Mupara, Case
Presenter

Ms King: Present and represented by Penny Maudsley of
Nurse Defence Service

Outcome: **Application granted subject to the completion
of a return to practice course or a test of
competency**

Determination of application for Restoration to the Register:

This is a hearing of your first application for restoration to the Nursing and Midwifery Council (“NMC”) Register. A panel of the Conduct and Competence Committee directed on 24 November 2016 that your name be removed from the register based on its findings of impairment by reason of your misconduct. This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001 (“the Order”), as at least five years have now elapsed since the date of the striking-off order.

At this hearing the panel may reject your application, or it may grant your application unconditionally. It may grant your application subject to your satisfying the requirements of Article 19(3) and it may make a conditions of practice order.

The panel has considered your application for restoration to the Council’s Register.

Background

You were referred to the NMC by Fairfield Nursing Home, in respect of the condition of a resident when she was transferred there from the Home, concerning your alleged failure to ensure adequate toenail care was provided to this resident.

A further concern was raised by the Care Quality Commission (CQC), alleging that you failed to disclose during an application process to become the registered manager of the Home, that you were under investigation by the NMC and that you did not disclose this fact.

The panel at the substantive hearing on 21 – 24 November 2016, considered the following charges:

‘...That you, a registered nurse:

1. *Did not disclose that you were the subject of a NMC investigation in your application(s) to the Care Quality Commission to register as a manager on the following dates :*
 - 1.1.5 March 2013
 - 1.2.26 June 2013
2. *Your actions at charge 1 were dishonest in that you sought to conceal the fact that you were under investigation by the NMC*
3. *Between 16 October 2014 and 9 April 2015 whilst working as the Home Manager at Woodheath Nursing Home, failed to ensure that adequate toenail care was provided to Resident A*

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

You attended the substantive hearing on 21 – 24 November 2016, and you made admissions to charges 1.1, 1.2 and 3. The panel at the substantive hearing found all of the charges proved.

The substantive hearing panel, determined the following with regard to impairment:

'...The panel next went on to decide if as a result of this misconduct your fitness to practise is currently impaired.

The panel finds honesty and integrity are fundamental requirements of a registered nurse. Looking specifically at your interactions with the CQC, the panel was concerned in respect of your dishonesty. The CQC is reliant on the honesty, integrity and professionalism of a registrant. It was a duty on your part to uphold this expectation in order to minimise the risk of harm to others involved. Further, your actions in failing to ensure adequate toenail care to Resident A, resulted in actual harm to a resident in your care.

The panel considered the judgment of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in reaching its decision.

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.*

In the panel's judgement, your actions engage all of questions a, b, c and d.

The panel then considered whether you were liable to behave in a similar fashion in the future. In considering this question, the panel had regard to insight, remediation, and risk to the public.

Regarding insight, the panel acknowledged that you have demonstrated a degree of insight and an acceptance of your overall responsibility. The panel was concerned, however, in that you made no admissions as to your dishonesty neither in respect of these proceedings, nor in respect of separate proceedings before the NMC in 2014. The panel was minded that whilst your reflective piece addressed certain aspects of the risk to patients, it struggled to find the wider insight required of you. This view is fortified by your live evidence, in which you demonstrated some developing insight as to your actions; however, ultimately you needed to

be prompted to demonstrate a wider insight. The panel notes that your reflective piece identifies your acceptance as to some of your actions; however, you put your shortcomings down to carelessness and failed to accept and take ownership of your dishonesty.

In considering your wider insight, the panel determined that whilst you showed some signs of developing insight, it was not yet fully formed. It was of the view that your insight was informed by its impact on your own position, as opposed to that of those who were affected by your misconduct. The panel accepted that under direct questioning you showed some awareness of wider insight, however, this was insufficient to demonstrate that you have developed the full and proactive wider insight required of you.

Regarding remediation and the likelihood of repetition, the panel bore in mind that the question of remediating dishonesty is always a challenging one. The panel was of the view that whilst there is no significant risk of repetition with regards to your clinical failings, it could not be satisfied that you had demonstrated the required level of insight to mitigate the risk of repetition in respect of your dishonesty. There remained, therefore, a real risk of repetition.

Regarding the risk to the public and the wider public interest, the panel determined that in your case a finding of impairment is necessary, primarily to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour. Honesty is fundamental to your profession.

In light of the facts as proved and all the evidence adduced at the misconduct and impairment stage at this hearing, the panel finds that at the time of the incidents your fitness to practise was impaired both by your dishonesty and clinical failing. As regards your current fitness to practise, however, the panel finds that you are not impaired in relation to your

clinical failure, but you are impaired by reason of your dishonesty on grounds of public protection and in the wider public interest...'

The substantive panel went on to determine the following with regard to sanction:

'...The panel first considered taking no further action but concluded that, given the serious nature of the misconduct and the risk of repetition, this would be wholly inappropriate. To take no further action would impose no restriction on your practice and would therefore not serve to protect patients from the risk of harm arising from any repetition of your dishonesty. In addition, the nature and seriousness of the misconduct in this case were such that to take no further action would not serve to declare and uphold proper professional standards and maintain public confidence in the profession. To take no further action would therefore not satisfy the public interest in this case.

For the same reasons, the panel concluded that a caution order would not be a sufficient or appropriate sanction.

The panel then considered a conditions of practice order. While such an order might address clinical failings, your misconduct involved dishonesty. This is a matter which cannot readily be addressed by a conditions of practice order and the panel concluded that workable conditions of practice could not be formulated which would be sufficient to protect the public. The panel also considered that a conditions of practice order would be insufficient to satisfy the public interest considerations in this case.

The panel next considered a suspension order. It bore in mind that you have engaged with the NMC process, made limited admissions and demonstrated some remorse, but had to set against this the fact that the failings in this case are serious. Honesty, integrity and trustworthiness are the bedrock of the nursing profession and failings in this regard are a serious matter and undermine public confidence in the profession. Your

conduct amounted to a most serious departure from the professional standards set out in the Code.

The panel considered that your actions were deplorable and you had demonstrated only limited insight. Furthermore, your evidence showed no admissions of the dishonesty criticised. The panel was mindful that it had found at the impairment stage that there was a risk of repetition of your dishonesty.

You have demonstrated repeated instances of dishonesty, and in particular have acted dishonestly in an attempt to subvert the regulatory process by intentionally concealing relevant information from the CQC. There is little evidence to demonstrate that your failings had been remedied, and no evidence of full and meaningful insight. There is a significant risk of repetition, as demonstrated by your failure to change your behaviour as a result of the previous proceedings in respect of your dishonesty, which you subsequently compounded with further acts of dishonesty. This risk engages the potential to harm patients. In addition, the panel considered that members of the public would be significantly concerned about a member of the nursing profession being permitted to continue to practise if they were liable to act in this way in the future.

Therefore, the panel concluded that a suspension order would be neither appropriate nor proportionate in this case.

Consequently, the panel moved on to consider the sanction of making a striking off order.

The panel had particular regard to paragraphs 71 and 72 of the ISG.

- *“71.1 Is striking off the only sanction which will be sufficient to protect the public interest?”*

The panel asked itself the question as to whether public interest would be maintained in allowing a nurse with multiple findings of dishonesty to remain on the register.

- *“71.2 Is the seriousness of the case incompatible with on-going registration?”*

The panel exercised its judgement and carefully considered all the evidence heard during the course of these proceedings. The panel found it of particular concern that someone can be dishonest on repeated occasions whilst in a senior and experienced nursing role. The panel took the view that such misconduct within the ambit of any profession would be likely to give rise to a dismissal, let alone within the nursing profession, the codes and standards of which demand the highest upholding of values such as honesty, integrity and trust. The panel considered that the sanction imposed during your first conduct and competence committee case as regards your dishonesty should have been a marker to remedy sufficiently your misconduct and to facilitate your adherence to the standards expected of nurses. It is deplorable that you are before another panel today, having repeated your dishonest behaviour subsequent to the previous proceedings.

- *“71.3 Can public confidence in the profession and the NMC be sustained if the nurse or midwife is not removed from the register?”*

- *72 This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may include the following:*

- o *72.1 Serious departure from the relevant professional standards as set out in key standards, guidance and advice*

[...]

- o *72.6 Dishonesty, especially when persistent or covered up”*

The panel determined that your misconduct engaged all four parts of the preamble of the Code and as such satisfied conditions as stipulated under the relevant parts of section 72 of the ISG. It found that in the light of your

persistent dishonesty and notable departure from the relevant standards of your profession, that public confidence in the profession and the NMC as its regulator could not be sustained with your on-going registration. This panel is concerned by the evidence before it in respect of your pattern of dishonesty. Your first case was as a result of continued acts of dishonesty over a period of nine months; and this subsequent case has seen a repetition of dishonesty, this time over a period of six months. It is the NMC's role as your regulator to maintain and uphold proper standards and to protect the public. This panel found that you have been dishonest in respect of both the proceedings which have brought you before the NMC on two separate occasions and that there is a risk that you could act in the manner criticised again in the future. It is a duty incumbent on this panel to protect the public from such risk.

In the circumstances the panel concluded that the nature and seriousness of your misconduct were fundamentally incompatible with your continued registration as a nurse. A period of suspension would be insufficient to satisfy the public interest considerations in this case, and that public confidence in the profession and in the NMC as a regulator could only be sustained by your removal from the register.

The panel concluded that, notwithstanding the personal and professional hardship which such a sanction will inevitably cause you, a striking off order is the only sufficient and appropriate sanction. Such an order is necessary to satisfy the public interest in declaring and upholding proper professional standards and maintaining public confidence in the profession and the NMC.

Accordingly, the panel determined to direct the Registrar to strike your name from the Register.

You may not apply for restoration until five years after the date that this decision takes effect...'

Submissions and evidence

The panel took into account the documentary evidence, which included the contents of your application for restoration which you submitted to the NMC, your reflective statement dated 8 April 2023, five written references, several training certificates and evidence of an award.

The panel had regard to the submissions of Mr Mupara, on behalf of the NMC, and those made by Ms Maudsley, on your behalf. The panel also heard the witness evidence of witnesses called by you, Witness 1 and Witness 2. You also gave oral evidence.

You provided evidence under oath. You told the panel that you take *“total responsibility for [your] actions”*. You said that you have reflected, have read the NMC Code of Conduct and acknowledge that you *“could have done so much more better to avoid such a situation from happening especially being in a position of trust as a registered nurse and also a manager with the CQC”*. Further, you also told the panel that you were *“negligent, not vigilant and maybe complacent”*.

You also told the panel that you acknowledge that the behaviour you demonstrated is not behaviour the wider public would expect from a registered nurse, and that you *“failed at the time due to [your] own negligence and naivety”*. You also told the panel that since being struck off, you have been honest and transparent *“no matter how difficult it was to explain to people the journey that [you] have been on”*. You told the panel that compromising the trust of patients and the wider public as a nurse is a *“non-negotiable”*, and that you had a duty to ensure that your conduct upheld the NMC Code of Conduct.

Ms Maudsley asked you to explain the Citizen 4 Good Award. You told the panel that you set up the Active Minds Day Centre (“the Day Centre”) to support patients with dementia and their carers to reduce social isolation. You told the panel that the Day Centre is a non-profit organisation and that you network with other organisations such as the NHS and GP Services, providing workshops to the wider community. You said

that every six months, the local community nominates someone to receive this award and that you had been selected for it. You told the panel that the Mayor of Sefton presented this award to you due to your work in the community.

You were asked some questions by the panel.

When asked by the panel to provide further information about the course in Probity and Ethics that you completed on 12 March 2024, you told the panel that this course was done by your own volition and that it had taken approximately five and a half hours with studying to undertake and complete a test at the end. You told the panel that in 2016, your insight was limited but now you recognise, from an ethical point of view, why it is important to uphold integrity and to be honest and transparent. You also told the panel that these are qualities that are expected from a registered nurse, especially those who are dealing with vulnerable patients. You also told the panel that it is the role of regulators such as the NMC and the CQC to take *“serious action”* to ensure that a nurse is acting by the Code of Conduct and is *“ensuring patient safety and being honest and transparent at all times”*.

When asked by the panel to explain how you feel your actions impacted the wider public, you said that your conduct was dishonest and had consequences. You told the panel that had you not been held accountable, it would have *“put doubt in the minds of the general public”* if no action had been taken. You also told the panel that it would have been a total failure and that the public would have lost its trust in the profession as they expect regulators to *“ensure patient safety”*.

When asked by the panel to give information about your current role, you confirmed that you started the Day Centre to help patients with dementia and their carers to reduce social isolation. You told the panel that you had worked other jobs outside of health and social care, but you felt that you had more to offer and therefore you set up the Day Centre.

When asked by the panel what you meant when you said you had been “naïve”, you told the panel that you moved to the United Kingdom in 2003 and when you registered with the NMC, you felt as though you knew the Codes of Conduct well. You told the panel that there were never any issues with your management or issues around patient safety, and that this was your focus. You told the panel that the Director had been filing the CQC forms for the Home and consequently you did not see this as your responsibility. You told the panel that since reflecting, you understand that as the manager of the Home, it was your responsibility, and that this was your naivety which stemmed from a lack of understanding.

The panel heard submissions from Mr Mupara and Ms Maudsley.

Mr Mupara submitted that granting or rejecting of this application is for the panel’s professional judgement, and that the NMC adopts a neutral position.

Ms Maudsley invited the panel to grant the application. She provided the panel with a background to the case, setting out the NMC’s guidance and relevant case law.

Addressing the panel first on your reflection, Ms Maudsley told the panel that you had not admitted to dishonesty at the substantive hearing; however, you have since reflected and now make full admission. She also confirmed to the panel the reason for your action. Ms Maudsley told the panel that when applying for the CQC role, you did not disclose the NMC proceedings against you as you felt that you would not be able to secure the role. She further told the panel that you were under “*mistaken belief*” that you “*would be made clear of any wrongdoing*”.

Ms Maudsley also told the panel that eight years have now passed since the striking-off order was imposed, and some eleven years have passed since the concerns were reported to the NMC. She told the panel that you accept your dishonesty and submitted that your insight is now “*far more developed*” than it had been at the substantive hearing. Ms Maudsley submitted that you accept the misconduct, you have reflected on reasons why you were dishonest and you are now remorseful and “*far more aware*” of

the impacts of your actions on patients, colleagues, the wider public and the NMC as a regulator.

Ms Maudsley told the panel that you have made efforts to remediate your actions and directed them to the Probit and Ethics course which you undertook by your own volition. She told the panel that you feel that you have learnt from the experience and have been honest in your interactions since. Ms Maudsley directed the panel to several excerpts from the testimonials provided by colleagues and told the panel that this demonstrates and confirms that since being struck off, you have not made any attempts to conceal the sanction and your dishonesty. She told the panel that you have encouraged others (whom you interacted with) to view the panel's decision and reasons on the NMC's website. Further, Ms Maudsley told the panel that during a CQC inspection, you were honest with the inspector about your history and accurately summarised the reasons for your striking off the NMC register.

Ms Maudsley further submitted that there has been no repeat of dishonesty and consequently no further concerns. She directed the panel to your Citizens 4 Good Award and took the panel through the work you have done, and its impact on the wider community.

Ms Maudsley submitted that you have made all efforts to keep up to date with your practice and have made provisional enquiries about the NMC's Test of Competence. She told the panel that should the application be granted, you plan to secure an NHS role to work with patients diagnosed with dementia.

The panel accepted the advice of the legal assessor.

The legal assessor referred the panel to the test provided in Article 33(5) of the Order. Firstly, you must satisfy the panel that you satisfy the requirements of Article 9(2)(a) (approved qualification and prescribed education, training and experience) and Article 9(2)(b) (capable of safe practice). Secondly, you must satisfy the panel whether, having regard in particular to the circumstances which led to the making of the striking-off order in 2016, you are a "fit and proper person to practise as a registered nurse". The legal

assessor advised the panel that it is for you to satisfy the panel of these matters and it is for the panel to use its own independent judgment as to whether it is so satisfied.

Decision on the application for restoration

The panel has considered your application for restoration to the NMC register very carefully. It has decided to allow the application subject to your successful completion of a return to practice course or successful completion of a test of competence.

In reaching its decision the panel recognised its statutory duty to protect the public as well as maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that the burden was on you to satisfy it that you are a fit and proper person who is able to practise safely and effectively as a nurse.

The panel considered whether you have demonstrated that you are now a fit and proper person. It considered the extent of your insight and remorse. The panel noted the reasons why you acted dishonestly, namely that you felt that you would not be able to secure the role and that you thought you would be "*made clear of any wrongdoings*". It further took into account your written reflection dated 8 April 2024 and the oral account you gave at this hearing. The panel was of the view that it is clear you now know your actions and behaviours were wrong, and how they impacted negatively on patients, colleagues, the wider public and on the reputation of the nursing profession. The panel noted you have been proactive in telling prospective employers, colleagues and CQC staff about the NMC proceedings and strike-off and you have used your experience to teach others. In your oral evidence especially, the panel determined that you were remorseful and demonstrated fully developed insight.

The panel also noted your employment history and considered whether you have kept yourself up to date with nursing practice and whether you have addressed the public interest. The panel bore in mind that there was no finding of impairment regarding your clinical care. The panel is encouraged by the work you have done through the Day Centre, including receiving the Citizens 4 Good Award and your role as manager of a

care home. It was of the view that this attests to the passion you have for working in health and social care. The panel also had regard to the fact that there have been no further issues regarding your conduct.

The panel noted the positive testimonials provided by colleagues. The panel also took into account the live evidence from Witness 2 at this hearing. It had particular regard to Witness 2 stating that “[you] fostered a culture of honesty and learning”. In addition, the panel noted in a testimonial dated 9 February 2022 from a CQC inspector, it is stated that “[you] had a good reputation within Sefton as a nurse manager and presented as honest and professional in all dealing with Sefton Health Authority”.

The panel was further encouraged by the 16 mandatory courses you had completed in 2022, and 6 courses completed in 2024, including a course on Probity and Ethics which was done by your own volition. The panel considered this shows your on-going commitment to ensuring your nursing skills and knowledge are kept up to date.

The panel has carefully considered whether restoring you to the register would undermine public confidence in the nursing profession and the NMC as a regulator. Having regard to the nature and circumstances of your misconduct, the evidence it heard from you, Witness 1 and 2, the positive testimonials it has received, your written reflection, and the time (eight years) that has passed since you were struck off, the panel is satisfied that public confidence would not be undermined by your restoration to the register. It also considered that there could be public benefit in permitting a fully competent nurse to return to professional practice.

In determining to grant your application for restoration the panel bore in mind that you have not practised as a registered nurse since 24 November 2016, and that you no longer meet the requirements for registration with the NMC on this basis. However, the panel determined to allow your application for restoration subject to your completion of a Return to Practice course or successful completion of the Test of Competence, and paying the prescribed fee which satisfies the requirements of Article 19(3) and Article 33(7)(a). This article states:

“The Council may by rules require persons who have not practised or who have not practised for or during a prescribed period, to undertake such education or training or to gain such experience as it shall specify in standards.”

“(7) On granting an application for restoration, the Committee—

(a) shall direct the Registrar to register the applicant in the relevant part of the register on his satisfying any requirements imposed under paragraph (6) and on payment of the prescribed fee; and...”

That concludes this determination.

This decision will be confirmed to you in writing.