

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Restoration Hearing**  
**16 September 2019**

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

<b>Name of Registrant Nurse:</b>	Pamela Adasa Higgins
<b>NMC PIN:</b>	06A0103E
<b>Part(s) of the register:</b>	Registered Nursing - Sub Part 1 Adult Nursing – 2007
<b>Area of Registered Address:</b>	England
<b>Panel Members:</b>	Trevor Spires (Chair, Lay member) Pauline Esson (Registrant member) Sarah Tozzi (Lay member)
<b>Legal Assessor:</b>	Tracy Ayling
<b>Panel Secretary:</b>	Maya Hussain
<b>Mrs Higgins:</b>	Present and represented by Matthew Kewley, Legal representative
<b>Nursing and Midwifery Council:</b>	Neil Jeffs, Case presenter
<b>Outcome:</b>	Application granted with the additional requirement of completing an NMC approved Return to Practise Course

## **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 6 February 2009 that your name be removed from the Register based on their findings with regard to the facts of your case and your impairment. This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001, as at least five years have now elapsed since the date of your strike-off.

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**

The panel at the substantive hearing on 27-30 January 2009, considered the following charges:

*1. That whilst applying for the post of Band 5 Staff Nurse at the Heart of England NHS Foundation Trust, Heartlands Hospital, Birmingham:*

*a) You completed an application form, dated 15th January 2007 and made a false declaration about the criminal convictions that had been recorded against you, namely you only declared some of the convictions that had been recorded against you and failed to declare all of the convictions that had been recorded against you, as are listed in the attached document ('Schedule of Convictions');*

*b) Your false declaration as set out in 1 a) above was dishonest*

*2. That on 27<sup>th</sup> October 2006, at Birmingham Magistrates Court:*

*You were convicted of an offence contrary to sec 111A(1A) Social Security Administration Act 1992, namely that between 4.5.04 – 13.11.05, you failed to notify Birmingham City Council Benefit Service promptly, and in the prescribed*

*manner, of a change of circumstances that you knew would affect your entitlement to Housing Benefit and Council Tax Benefit, namely that you commenced employment with the NHS on 4.5.04; and you made this false representation dishonestly, knowing it to be false, and for the purpose of obtaining for yourself benefit; and you were sentenced to a Community Order for 12 months with supervision requirements to be complied with by 12 months unless a shorter period or date was specified.*

*AND in light of the matters set out above, your fitness to practice is impaired by reason of your misconduct and your conviction.*

You did attend the substantive hearing on 27-30 January 2009, and you made no admissions to charge 1a, 1b and 2. The panel at the substantive hearing found all of the charges proved.

The substantive hearing panel, in making its decision on impairment, stated the following with regard to impairment:

*'In considering this the panel took into account the terms of the NMC code of Professional Conduct: Standards for Conduct, performance and ethics (November 2004 editions) and in particular the following paragraphs:*

*1.2 As a registered nurse, midwife or specialist community public health nurse, you must:*

- act in such a way that justifies the trust and confidence the public have in you*
- uphold and enhance the good reputation of the professions.*

*1.5 You must adhere to the laws of the country in which you are practising.*

*7 As a registered nurse, midwife or specialist community public health nurse, you must be trustworthy*

*7.1 You must behave in a way that upholds the reputation of the professions.*

*Behaviour that compromises this reputation may call your registration into question even if is not directly connected to your professional practice.*

*In view of the panel's findings on fact the panel find the registrant's fitness to practise is impaired by reason of her misconduct and her conviction.'*

The substantive panel went on to say with regard to sanction:

*'The panel has taken its decision on the information that was before it today which included written testimonials, details of the assault and affray incidents that took place in 2002 and 2003 and the further evidence of the registrant. The panel also took into account the submissions made by the NMC and the registrant's representative.*

*The panel noted:*

- First, that the registrant was repaying the Council benefit through deductions from her income support;*
- Secondly, the assessments made during the registrant's training were positive;*
- Thirdly, that the testimonials supplied were personal rather than professional or academic.*

*No Action*

*The panel first considered whether it was appropriate to take no further action in this case and came to the conclusion that this would be inappropriate in a case of such serious charges being proven.*

*Caution Order*

*The panel then considered whether a Caution Order was an appropriate level of sanction in this instance but having considered carefully the various indicators listed in the Indicative Sanctions Guidance under this section came to the view that there was insufficient evidence of positive elements that would support the panel taking this course of action.*

*In reaching this conclusion the panel noted that there clearly was regret at getting caught and the impact that this had on her professional career however the panel had been left in some doubt about the genuineness of the registrant's insight and*

*remorse. The panel had some concerns that given the nature of the offences and the period of time over which they had occurred there remained the possibility of repetition which in relation to offences involving physical assault and dishonesty could have an adverse impact on patients and the profession.*

#### *Conditions of Practice Order*

*In relation to the imposition of conditions of practice the panel considered that in a case involving convictions including dishonesty and where the registrant is not in employment, such a measure is not practical.*

#### *Suspension Order*

*The panel then moved on to consider a sanction of a suspension order. The panel believes that the registrant's misconduct involving dishonesty was fundamentally incompatible with continuing to be registered with the NMC and that a suspension order was not sufficient.*

#### *Striking-off Order*

*The seriousness of the charges and the fact that this behaviour could be repeated in the future led the panel to the decision that the registrant's name must be removed from the register and so the panel is imposing a Striking-off Order.*

*This sanction will uphold the standing the reputation and standards of the profession and is in the public interest. Whilst the registrant had spoken about her passion for nursing and her profound wish to be given a further opportunity to pursue that passion the panel questioned whether this was going to be practical given the need for full disclosure to any potential employer. The panel fully appreciated the energy, focus and tenacity that Miss Higgins has displayed in achieving her academic and professional qualifications whilst raising a family and trying to distance herself from her previous life of deprivation and crime.'*

### **Application for witness to give evidence via telephone under Rule 31(1)**

The panel heard an application made by Mr Kewley, on your behalf, under Rule 31 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules) to allow Mr 1 who is your manager at Swan Care to give evidence via telephone.

Mr Kewley submitted that it would be fair to allow Mr 1 to provide his evidence via telephone, and that his evidence could still be tested under cross-examination.

Mr Kewley therefore applied under Rule 31(1) for Mr 1 to use the telephone to give his evidence.

Rule 31 (1) states:

*“Upon receiving the advice of the legal assessor and subject to the requirements of relevance and fairness, the Practise Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings”.*

Mr Jeffs did not oppose the application.

The panel accepted the advice of the legal assessor. This included that Rule 31 of the Rules provides that, so far as it is ‘*fair and relevant,*’ a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel determined that the evidence of Mr 1 is relevant and it then went on to consider whether it would be fair to admit his evidence via telephone.

The panel determined that neither you nor the NMC would be disadvantaged by allowing the application. In determining fairness, the panel considered whether telephone would be an appropriate means to receive Mr 1’s evidence, and whether this would enable the parties and the panel to question Mr 1 and for the panel to assess his demeanour and form a view as to his credibility. The panel determined that telephone was fair, reasonable and manageable. The panel therefore granted the application to hear Mr 1’s evidence via telephone.

### **Submissions and evidence**

This panel has had regard to the submissions of Mr Jeffs, on behalf of the NMC. It also took account of Mr Kewley’s submissions, your sworn evidence and Mr 1’s oral evidence by telephone. It took into account your restoration application form and your

documentation provided today which included six written references, an extensive reflective piece and a number of training certificates.

Mr Jeffs outlined the background of the case to the panel. He stated that all charges were found proved on the evidence at the original substantive hearing in February 2009. He stated that charges 1a and 1b relate to your dishonesty in falsely completing a job application form by failing to disclose your full conviction history. Charge 2 relates to your conviction at the Birmingham Magistrates Court on 27 October 2006.

You gave evidence under oath.

You told the panel that you fully accept the previous panel's findings in their entirety. You said that the striking off order was the right and fitting sanction for you in light of the NMC code and the standards required for nurses. You explained to the panel the importance of honesty and integrity to nurses and how you had lapsed in those areas prior 2009.

You told the panel that although you were experiencing difficult circumstances at the time of your criminal convictions, you did not originally want to include these circumstances in your reflective piece because you are solely responsible for your actions and the decisions you made. You do not wish to use your personal circumstances as any form of an excuse for your dishonest behaviour.

You told the panel that the death of your mother in 2002 inspired you to pursue a career in nursing. You had also been working as a care worker and it felt natural for you to become a nurse. Four years after completing a degree in sociology, with support from your employer at the time, you decided to undertake the graduate diploma in nursing whilst continuing to work as a care worker.

In relation to your dishonesty, you told the panel that you focused on wanting to obtain a job that was sustainable for the long term future. You said that the reality of disclosing your convictions filled you with absolute fear and panic. You felt that you would be viewed as a criminal instead of a person and you made the decision to hide the convictions instead in an attempt '*to mislead and disguise*'. You accepted that your convictions are serious, wide ranging and took place over an extended period. You accepted that you put your own interests above the reputation of the profession. You

said you acted selfishly. However, you explained that through the process of the NMC proceedings, making your employer aware of your convictions, and writing your reflective piece, you have learnt to accept your convictions as part of your past. You said that you feel liberated now and you no longer feel scared to discuss or disclose your convictions. You said that you began reflecting on your behaviour shortly after the striking off order because it had such profound effects on your life.

In relation to Disclosure and Barring Service (DBS) checks, you told the panel that you have undertaken research and have fully understood the importance of DBS checks. You said that you learnt that employers must make informed decisions about who they employ in order to protect the public and serve the public interest. You said that without DBS checks, unsuitable characters may be employed in posts which jeopardise the reputation of the nursing profession.

You began working at Swan Care in 2016 as a care worker and you have recently been promoted to senior care worker. You told the panel that you disclosed your convictions and strike off order to Swan Care at the application form stage and discussed this when you were invited for interview. You said that your responsibilities involve caring for elderly members of the community in their own homes. You provide personal care, assist with medication, monitor dementia patients, prepare meals, and liaise with doctors' district nurses and hospitals on behalf of vulnerable service users. You said that you visit homes of vulnerable service users to deliver care both independently and with colleagues. As a senior care worker, you provide training to care workers and you described this as very rewarding. You referred the panel to the PowerPoint presentation you delivered on 'medicine matters'. You also created a written questionnaire for the care workers to complete following the session. You said that you work approximately 16 hours a week at Swan Care and you also have your own cleaning business where you work for approximately 8 hours a week.

You told the panel that you have given yourself 11 years before deciding to come to the NMC for restoration because you felt you needed sufficient time to grow and plan for the future.

In relation to undertaking a Return to Practice (RTP) course, you said that you understand the requirements to update your skills and learn the new practises and techniques having not worked as a nurse in over ten years. You said that you are

financially stable and would cover the cost of undertaking the course with your savings, reduced hours at Swan Care and your cleaning business.

You referred the panel to your written references and testimonials from managers, colleagues and friends who are all aware of your convictions, striking off order and your application for restoration. You referred the panel to your certificate entitled 'Prevent For Practitioners' dated 13 August 2019 and your certificate of the stroke core competencies dated 12 February 2018. Whilst working as a manager and cook at Abbeyfield Society in 2016, you undertook online training in health and safety essentials programme, data protection, food safety and hygiene dated April and May 2016.

You told the panel that you will never repeat your dishonesty or convictions in the future. You said that you have a teenage child with special needs dependent on you. You said that over the past nine years, you have developed strategies to manage stress and demanding situations. You said that you engage in relaxation techniques such as meditation and take regular exercise. You have four adult children whom you talk to regularly and who provide a very supportive family unit. You have also attended counselling sessions which gives you the opportunity to talk openly about stressors in your life and how to cope with these. You said that if you faced difficult circumstances in the future you would always remain honest and would seek advice and guidance.

- Mr 1, Manager at Swan Care.

Mr 1 said that he is your manager at Swan Care. He said that he is aware of your convictions and that you had been struck off as a nurse in 2009. Mr 1 said that he *'has absolutely no concerns about your honesty and integrity'* and trusts you fully to perform your duties including visiting the homes of vulnerable service users.

Mr 1 said that you are passionate and your performance at Swan Care has been impeccable. He said that you undertook an informal role as a mentor for other care workers. Mr 1 said that you are an integral part of Swan Care and although he will lose you as an employee if you were given the opportunity to become a nurse, the nursing profession would benefit from a passionate aspiring nurse like yourself.

Mr 1 said that he has had conversations with you regarding your convictions and your struggle to be open about them. He said that you always expressed the desire to return to nursing but you were embarrassed by your convictions and your fear of being judged.

He said that after a period of time and multiple conversations, you became more confident in accepting your convictions as your past.

Mr 1 reiterated that he has no concerns about your honesty and integrity. He stated that you are a trustworthy individual.

### **Closing submissions**

Mr Jeffs invited the panel to consider whether you are a fit and proper person to become a member of the nursing profession in the light of all the evidence put before it today, including your oral evidence. He reminded the panel that in reaching its decision it must consider your understanding, remorse, insight and remediation in relation to the charges found proved against you and the findings of the 2009 NMC panel that your fitness to practise was impaired to a level which required a striking off order. He submitted that dishonesty is inherently difficult to remediate, and asked the panel to consider this when making its deliberations.

Mr Kewley invited the panel to grant your application for restoration to the register, subject to your successfully completing a Return to Practice Course. He reminded the panel of its duty today, in that this is an opportunity for you to demonstrate to the panel that you are a fit and proper person to become a member of the nursing profession. Mr Kewley directed the panel to the various documents submitted by you, including your reflective piece, positive testimonials and training certificates. He asked that the panel attach significant weight to such documents, as they are demonstrative of someone who has fully accepted and owned her failings.

Mr Kewley submitted that you have demonstrated significant insight during your oral evidence and have undertaken research to fully understand the importance of DBS and you have clearly grappled why your misconduct harmed the reputation of the profession.

Mr Kewley reminded the panel of your successful years in your role as a care worker at Swan Care and that you are permitted and trusted to visit the homes of vulnerable service users independently. Mr Kewley reminded the panel of Mr 1's oral evidence in which he stated that he is putting his reputation on the line by trusting you and he does

not have any concerns about your professionalism, honesty or integrity. Mr Kewley submitted that you are currently performing as close as you are able to that of a nurse and have been consistently using transferrable skills required for nursing such as record keeping and dealing with medication.

Mr Kewley concluded by summarising his submissions, inviting the panel to consider that you are an insightful person, different from that at the time of the charges, and with a clear plan going forward and supportive family unit. He further submitted that this has been a salutary experience, and that you know exactly what you must and must not do in the future; you understand that patients and the reputation of the profession can be put at risk if you do not uphold The Code: Professional standards of practice and behaviour for nurses and midwives (2015).

The panel accepted the advice of the legal assessor.

The legal assessor reminded the panel of the test, as provided in Article 33(5) of the Nursing and Midwifery Order, 2001. Firstly you must satisfy the panel that you meet 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 2009, you are a “fit and proper person to practise as a registered nurse”. He 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. The legal assessor also referred the panel to the case of General Medical Council v Chandra [2018] EWCA Civ 1898 and [2019] EWCA Civ 236 (addendum to judgment)

### **Decision on the application for restoration**

The panel has considered your application for restoration to the NMC Register. It has decided to allow the application with the requirement to successfully complete a recognised Return to Practice course.

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 upon you to satisfy it that you are a fit and proper person who will be able to practise safely and effectively as a nurse.

The panel found Mr 1 to be a credible and reliable witness attesting to your good character. He spoke positively of your practice as a care worker and he was unequivocal about your trustworthiness.

In your oral evidence today, the panel considered that you gave sincere and genuine evidence, demonstrating that you now understand and have taken responsibility for your previous dishonesty and would behave very differently in the future. It found you to be credible and consistent throughout your oral evidence.

The panel accepted that you have spent the last 11 years coming to terms with your acts of dishonesty. The panel formed the view that you have reflected on this part of your life and on the impact such misconduct has on the profession and its reputation. The panel considered that you have demonstrated significant insight and that you are very unlikely to bring the profession into disrepute by further dishonest conduct.

The misconduct which led to you being struck off almost 11 years ago was very serious but not such as to preclude an application for restoration to the register after this period of time in view of your development of appropriate insight.

The panel noted that since you were struck off, you have been working in healthcare roles, and have been promoted to the role of senior care worker at Swan Care. It bore in mind that there has been no concerns raised about your trustworthiness and integrity since 2009. The panel also noted the positive six written references, certificates of training and your insightful reflective piece.

Having heard your oral evidence, the panel was satisfied that you are fully committed to a career in nursing and was satisfied that you will take the necessary steps to restore

your knowledge of nursing practice to an appropriate level. The panel accepted that for many years you thought that you would be unable to apply for restoration to the NMC register because of your shame and embarrassment for the convictions and misconduct to which you referred.

The panel noted that you have undertaken research and fully understand the importance of DBS checks and you are currently employed as a senior care worker. It noted that your personal circumstances have improved and you have a supportive family unit. The panel was mindful that you have a cleaning business, have a teenage child with special needs dependent on you. However, it was satisfied that you would now ask for help and advice in order to cope with stresses if they were to arise in the future. The panel was of the view that you were sufficiently committed to resuming a career in nursing and that it could be confident that you would in due course attain an appropriate level of knowledge and skills.

The panel was aware that your failure to disclose some of your criminal convictions could have had the potential to result in risk of harm to patients. However, it also noted that at no point have any issues with your clinical practice been identified.

The panel was mindful of the public interest in maintaining confidence in the profession and upholding the proper standards required of a registered nurse. The panel also bore in mind that it was in the public interest to restore to the register an otherwise compassionate, caring and committed nurse who has clearly demonstrated a passion for nursing and is in the panel's judgement very unlikely to become involved again in dishonest conduct.

Accordingly, the panel is satisfied that you are a *'fit and proper person'* and it allows your application.

In determining to grant your application for restoration the panel bore in mind that you have not practised as a registered nurse since 2009 and that you no longer meet the requirements for registration with the NMC. You will therefore need to complete an NMC

approved Return to Practice course and to pay 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.