

Nursing and Midwifery Council

Fitness to Practise Committee

Restoration Hearing

4 August 2020

Virtual Hearing

Name of Applicant: Mrs Tracy Irene Pini

Former NMC PIN: 83Y3039E

Former Part(s) of the register: RN1: Registered Nurse – Sub part 1
Adult – Level 1
(4 September 2003)

RN2: Registered Nurse – Sub part 2
Adult – Level 2
(2 November 1985)

Area of Registered Address: Kent

Panel Members: Alison Stone (Chair, lay member)
Jonathan Coombes (Registrant member)
Alexandra Ingram (Lay member)

Legal Assessor: Sean Hammond

Panel Secretary: Parys Lanlehin-Dobson

Nursing and Midwifery Council: Represented by Dulcie Piff, Case Presenter

Ms Pini: Present and unrepresented

Outcome: **Application granted subject to the completion of a return to practice 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 Fitness to Practise Committee directed on 13 July 2012 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 NMC Register.

Background

On 5 April 2011, you pleaded guilty at Canterbury Magistrates' Court for failing to disclose information to make gain for self between 21 December 2007 and 1 June 2010.

The facts that led to this conviction were as follows: on 16 November 2007 you, at the time were employed as a Band 5 nurse by NHS Eastern and Coastal Kent, resigned from the out of hours service within the Trust with effect from 27 December 2007 and continued to work as a community nurse.

In June 2010, the Trust discovered that you were still being paid for your employment in the out of hour's service and your salary was then stopped. You were interviewed under caution on 14 October 2010 when you admitted you had received payments of salary to which you were not entitled.

The total loss to the Trust was estimated at £6,762.61. The net gain to you was estimated at £4,795.45.

You were sentenced on 3 May 2011 to an 18 month community order, with a requirement to undertake 240 hours unpaid work within 12 months, to pay compensation of £3,218.52 at a rate of £200 per month and costs of £100.00.

The panel at the substantive hearing on 13 July 2012, considered the following charges:

Details of charge as read:

That you, a registered nurse,

On 5th April 2011 at Canterbury Magistrates Court pleaded guilty to fraud, in that between 21 December 2007 and 1 June 2010 you dishonestly failed to disclose to NHS Eastern Coastal Kent information, namely that you were in receipt of a monthly salary when you were no longer employed in that position, thereby intending to make a gain for yourself, contrary to sections 1 and 3 of the Fraud Act 2006; and that on 3rd May 2011 you were sentenced to an 18 month community order with a requirement to undertake 240 hours unpaid work, to pay compensation of £3,218.52, and to pay costs of £100.

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

You did not attend the substantive hearing on 13 July 2012. The panel at the substantive hearing found the charge proved.

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

“The panel gave careful consideration to all the evidence, together with the submissions made by Mr Mills on behalf of the NMC and the written representations submitted by Ms Pini. Given that the conduct which led to the conviction took place between December 2007 and June 2010 the panel had regard to both the 2004 and 2008 codes. It accepted the legal assessor’s advice. The panel exercised its professional judgement in considering the matter of impairment.

The panel bore in mind the following areas of the code and case law;

As a registered nurse... you are personally accountable for your practice. In caring for patients and clients, you must:

- *be trustworthy*

(The introduction to the 2004 code)

The people in your care must be able to trust you with their health and wellbeing

To justify that trust, you must:

- *be open and honest, act with integrity and uphold the reputation of your profession.*

You must always act lawfully, whether those laws relate to your professional practice or personal life.

(The introduction to the 2008 code)

49 You must adhere to the laws of the country in which you are practising. (2008 code)

61 You must uphold the reputation of your profession at all times. (2008 code)

The panel also had regard to the judgement of Mrs Justice Cox in the case of Grant in reaching its decision. In paragraphs 74 and 75 she said;

74. 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.

75. I regard that as an important consideration in cases involving fitness to practise proceedings before the NMC where, unlike such proceedings before the General Medical Council, there is no power under the rules to issue a warning, if the committee finds that fitness to practise is not impaired. As Ms McDonald observes, such a finding amounts to a complete acquittal, because there is no mechanism to mark cases where findings of misconduct have been made, even where that misconduct is serious and has persisted over a substantial period of time. In such circumstances the relevant panel should scrutinise the case with particular care before determining the issue of impairment.

Mrs Justice Cox went on to say in Paragraph 76:

76. I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

“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.”*

The panel's view was that this conviction dealt with an offence which was very serious involving the dishonest retention of thousands of pounds overpaid by Ms Pini's

employer to which she was not entitled. The panel considered that Ms Pini had clearly breached the fundamental tenets of the profession in her lack of integrity and honesty.

The panel considered matters relating to the offence itself, including the fact that Ms Pini had not brought the salary overpayment to anyone's attention except on one disputed occasion at a very early stage. The panel noted that Ms Pini had not, for example, followed up her alleged call with an email. There was repeated lack of integrity as, month after month for two and a half years she received and kept money to which she was not entitled. The offence was therefore repeated and not a single incident. This demonstrates a serious departure from the standards required of a registered nurse.

The panel also considered submissions from Ms Pini. In the panel's judgement these demonstrated only limited evidence of remorse, insight into her offence, and acceptance personal accountability.

The panel was mindful of the requirement in Grant that the question of impairment should address not only the likelihood of recurrence but also whether the reputation of the profession in the eyes of the public would be undermined if no finding of impairment were made.

The panel therefore concluded that Ms Pini's fitness to practise is currently impaired."

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

"In reaching the decision the panel had regard to all the evidence in this case, and the submissions made by Mr Mills and the written submissions received from Ms Pini. The panel accepted the advice of the legal assessor.

The panel bore in mind that any sanction imposed must be reasonable, appropriate and proportionate, and is not intended to be punitive in its effect but may have such consequences.

Following the Indicative Sanctions Guidance, the panel considered all sanctions options, starting with the least severe. The panel first considered whether to take no action but concluded that this would be inappropriate. It considered that the conviction was too serious and it would not be proportionate or in the public interest to take no further action.

The panel next considered whether a caution order would be appropriate. The relevant paragraph of the Indicative Sanctions Guidance states that 'a caution may be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel is of the view that this case is not at the lower end of the spectrum. This is a case involving a criminal conviction for a serious offence of dishonesty. That dishonesty continued over a period of approximately 2 ½ years and involved the dishonest retention of about £4,500. Further the panel noted that the Community Order made on 3rd May 2011 by Canterbury Magistrates Court continues until the 2nd November 2012. The panel referred back to the statement of general principles in Fleischmann that a practitioner who has been convicted of a serious criminal offence should not be permitted to resume practice until he or she has satisfactorily completed the sentence of the court. While Ms Pini appears to have completed the unpaid work requirement element of the Community Order the order itself will remain in force for a number of months and Ms Pini has not as yet completed her sentence.

In this case a caution order was therefore not an appropriate or proportionate sanction.

The panel next considered whether imposing a conditions of practice order would be a sufficient and appropriate response. The panel considered that conditions of practice are inherently more appropriate for cases involving competence than those involving a criminal conviction. The panel concluded that there are no conditions that could be formulated to address the protracted dishonesty in this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel took into account the guidance issued by the NMC in

relation to dishonesty, that 'Dishonesty, even where it does not result in direct harm to patients but is related to matters outside of a nurse or midwife's professional practice, for example, fraudulent claims for monies, is particularly serious because it can undermine the trust the public place in the profession. Honesty, integrity and trustworthiness are to be considered the bedrock of any nurse or midwife's practice.'

In Parkinson v NMC [2010] EWHC 1898 (Admin) Mr Justice Mitting said: "A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than direct erasure."

The Indicative Sanctions Guidance identifies key considerations as being;

69.1 Does the seriousness of the case require temporary removal from the register?

69.2 Will a period of suspension be sufficient to protect patients and the public interest?

The guidance goes on to indicate that a suspension order may be appropriate where (but not limited to);

71.1 A single instance of misconduct but where a lesser sanction is not sufficient.

71.2 The misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register.

71.5 The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.

The panel is of the view that a suspension order would not be sufficient to protect the public confidence in the NMC as a regulator and nursing as a profession. The aggravating features in this case included the facts that Ms Pini did not admit to the fraud until it was discovered by her employer; the repetition on a regular basis over 2 ½

years when she was in receipt of monthly payslips; the sum of money involved; the breach of trust; the lack of insight; and Ms Pini's attempt to diminish the seriousness of the offence through her lack of personal accountability, in particular by stating that she knows 'of many nurses and managers that have done far worse and got away with it'. The panel carefully considered the mitigating factors to which it had been referred but it is not satisfied that these excuse Ms Pini's failure to ensure that her employer was aware of the overpayments at the earliest possible opportunity. Further that the offence that led to the conviction was so serious that any mitigating factors had little impact on the panel's decision.

Ms Pini did not appear before this panel and the panel has already determined that she had not shown any genuine remorse in the documentation that she provided and it could not be assured that there would be no repetition. In her letter, received by the NMC on 11th July 2012, Ms Pini wrote 'I understand ethically what I did was very wrong'. However, she went on to qualify this statement by writing 'But I feel the trust has used me as an example'.

As a result the panel did not feel satisfied that there would be no risk of repetition should Ms Pini be put in a similar situation in the future and therefore determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a Striking-off Order the panel took note of the following paragraphs of the Indicative Sanctions Guidance;

74.1 Is striking-off the only sanction which will be sufficient to protect the public interest?

74.2 Is the seriousness of the case incompatible with ongoing registration (see paragraph 70 above for the factors to take into account when considering seriousness)?

74.3 Can public confidence in the professions and the NMC be sustained if the nurse or midwife is not removed from the register?

75. This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional which may involve any of the following:

75.6 Dishonesty, especially where persistent or covered up

75.8 Convictions or cautions involving any of the conduct or behaviour set out above.

The panel concluded, given all the evidence before it in this case, that Ms Pini's actions in defrauding the NHS constituted a significant departure from the standards expected of a registered nurse, and were fundamentally incompatible with her remaining on the register. The panel was of the view that to allow Ms Pini to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body and bring both the profession and the NMC into disrepute. The panel therefore determined that the appropriate and proportionate sanction was that of a striking-off order."

Submissions and evidence

This panel has had regard to the submissions of Ms Piff on behalf of the NMC. It also took account of your submissions and sworn oral evidence as well as the contents of the application for restoration which you submitted to the NMC which included three written references.

You provided evidence under affirmation.

You told the panel that you had reflected upon your behaviour and now felt deeply ashamed and disgusted for the length of time it had gone on. You understood that your colleagues, patients and the public would be shocked by your actions and that they were damaging to the reputation of the profession as a whole.

You informed the panel of your employment history since being struck off from the NMC Register, which includes your current role as a senior carer at Audley Home.

You said that you have had time to reflect on the concerns that led to you being struck off the NMC Register and what you could have done better. You explained that at the time you were going through some difficult personal issues and 'bottled up' your emotions and buried your head in the sand. You said that you were scared and anxious about your behaviour and the more time that passed the more afraid you became.

Ms Piff asked you questions about your life since you had been struck off. She asked about any training you had undertaken and what you would do differently if you were ever overpaid again.

You responded by informing the panel that you had since moved away and rebuilt your life. You told the panel that you sought help for your personal issues by talking to people and settling yourself back in to society.

You told the panel that you were initially working at a deli, then went on to start up your own business making cakes and took a course in floristry. In the last two years since then you became a carer at Audley Home and got promoted to senior carer.

You informed the panel that since your removal from the NMC Register you have been in several positions of trust and have ensured that you have been honest and reliable. You informed the panel that you are responsible for your clients care, food shopping and medication.

You stated that if you were ever in a situation such as the incident that led to your removal from the NMC Register you would inform the relevant persons as soon as possible and keep on trying until you were able to do so. You told the panel that you always check your payslips, document your mileage and hours to ensure there are no overpayments.

You said that you missed nursing and accept that it would be a challenge to return, but you are up for it.

You said that you feel ashamed about what happened and felt your behaviour let everybody down. You accepted the decision of the striking-off order and felt it was correct due to your lack of insight.

Ms Piff outlined the background of the case and the facts that led to the striking-off. She referred this panel to the previous panel's decision which resulted in your removal from

the NMC's Register. She reminded the panel of the test set out in Article 33(5) of the Order.

As part of her submissions Ms Piff referred to your application, she acknowledged your employment history, your statement and references.

Ms Piff submitted that the panel may consider that you do not have full insight or could explain why your conduct was wrong. She also submitted that the panel may consider that you do not have a full understanding of how your actions could have impacted the public's confidence in the profession.

Ms Piff submitted that it was for the panel using its professional judgement to determine whether you should be restored to the NMC register.

The panel heard and 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 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 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 two 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.

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 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 that while you could not explain why you were dishonest, it is clear you now know your actions and behaviour was wrong and how this impacted negatively on the reputation of the nursing profession. In your oral evidence, the panel determined that you were remorseful and demonstrated good insight. It noted your response to how you would act differently. You stated that you would inform your employer that you had been over paid immediately.

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 had been no concerns raised regarding your clinical care and you were working effectively in your current role as a senior carer, having been promoted within two years.

The panel has carefully considered whether restoring you to the NMC Register would undermine public confidence in the profession and the NMC as its regulator. In light of the evidence it heard from you and the positive testimonials it has received, and in taking account of the length of time that has passed since you were struck off, the panel is satisfied that public confidence would not be undermined by your restoration to the NMC 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 13 July 2012 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 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.