

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

**3 September 2020**

Virtual Hearing

**Name of Registrant Nurse:** Miss Doreen Mutasa

**NMC PIN:** 06B1914E

**Part of the register:** Former Registered Mental Health Nurse

**Area of Registered Address:** Scotland

**Panel Members:** David Boden (Chair, Lay member)  
Christine Callender (Registrant member)  
Dorothy Keates (Registrant member)

**Legal Assessor:** Gerrard Coll

**Panel Secretary:** Leigham Malcolm

**Miss Mutasa:** Present and unrepresented

**Nursing and Midwifery Council:** Represented by Ms Ruth Alabaster, NMC  
Case Presenter

**Outcome:** Application accepted

## **Determination on 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 10 October 2014 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.

The panel at the substantive hearing on 10 October 2014 considered the following charges:

*That you, a registered nurse:*

- 1. On 9 June 2008 declared in your application form to NHS Scotland that you were eligible to work in the UK and did not require a work permit to take up the post – **proved by admission***
- 2. Your conduct as set out in charge 1 was dishonest in that you were not eligible to work in the UK and did not have a valid work permit– **proved by admission***
- 3. On 20 December 2012 were convicted at Glasgow Sheriff Court of the following offence:*

*“Between 1 May 2011 and 31 May 2011, both dates inclusive, at Stobhill Hospital, 133 Balornock Road, Glasgow, did with an improper intention have in your possession or under your control an identity document, namely a UK Residence*

*Permit UK0658110 that was false and that you knew or believed to be false contrary to the Identity Documents Act 2010 section 4(1)(a).” – **proved by admission***

*And in light of the above, your fitness to practise is impaired by reason of your misconduct in relation to charges 1 and 2 and your conviction in relation to charge 3.*

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

*Having found misconduct, the panel had to decide whether your fitness to practise is currently impaired. The NMC defines fitness to practise as a registrant’s suitability to remain on the register unrestricted, and in this regard the panel took into account the following;*

*In relation to your conviction the panel had regard to the following preamble and paragraph of the code:*

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

*49 You must adhere to the laws of the country in which you are practising  
61 You must uphold the reputation of your profession at all times”.*

*The panel was satisfied that you breached these standards of the code by virtue of your conviction.*

*In relation to current impairment the panel had in mind the remarks in the case of Grant in relation to the appropriate guidance identified by Dame Janet Smith in the Fifth Shipman report:*

*“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 was satisfied that limbs b, c and d were engaged in this case.*

*The panel accepted the preamble of the code as reflecting the fundamental tenets of the profession. The panel reflected on the above in relation to your conviction and the reasons for the findings of misconduct and was satisfied that you breached fundamental tenets of the profession. Further the panel determined that your dishonesty and your conviction brought the profession into disrepute.*

*The panel next considered your insight. The panel formed the view from your oral evidence that you knew at the time that what you did was wrong but you felt this was a difficult decision you had to make in the circumstances. The panel accepted your obvious remorse and regret. It noted your apology for your dishonesty and related conviction. [Private]. It notes there were no criticisms of your clinical abilities and no suggestion of patient harm. You have sought to reassure the panel that the risk of repetition is low and that circumstances have*

*improved. However, the panel has taken into account that your status in the UK is at present undecided.*

*In any event the panel determined that the important consideration in this case is the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. In this regard the panel noted the seriousness of the dishonesty and of the offence for which you were convicted.*

*The panel has therefore determined that your fitness to practise is currently impaired by reason of your misconduct and conviction.*

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

*Having determined that your fitness to practise is impaired, the panel has now considered what sanction, if any, it should impose. The panel can dispose of the case by taking no action, imposing a caution order for one to five years, a conditions of practice order for no more than three years, a suspension order for a maximum of one year or a striking-off order. In reaching its decision, the panel has considered all the information before it, including Mr Kennedy's submissions on behalf of the NMC and those of Ms Wall on your behalf. It has accepted the advice of the legal assessor.*

*Mr Kennedy submitted that the appropriate sanction was a matter for the panel. He referred the panel to relevant guidance in the Indicative Sanctions Guidance (ISG) and outlined the aggravating and mitigating features of this case.*

*Ms Wall highlighted the differences between your case and that of Parkinson and Gitau v NMC [2014] EWHC 2581 (Admin). She invited the panel to adopt a more lenient outcome rather than erasure from the register. She submitted that your conduct stemmed from a single act and that a period of suspension was proportionate in the public interest. She submitted that you have been punished by the Court and have served your Community Service sentence and that a more severe sanction would be punitive in the circumstances. Ms Wall further*

*submitted that the sanction imposed by the panel should be proportionate in relation to your conduct and not in relation to your status in the UK.*

*The legal assessor advised the panel to take account of the ISG and to employ the principles of proportionality, weighing the interests of patients and the public with your own interests. She referred the panel to the case of Parkinson and paragraph 28 of Brew v GMC [2014] EWHC 2927 (Admin) and advised that all sanctions are available to the panel.*

*The panel has considered the least restrictive sanctions first, before moving on to consider more restrictive sanctions. It has borne in mind that the purpose of a sanction is not to be punitive, though it may have a punitive effect. The panel has had regard to both the public interest and your own interest and has considered whether there are any mitigating and aggravating factors in this case. The panel has borne in mind that the public interest includes the protection of patients, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.*

*The panel determined that the mitigating factors are:*

- your remorse and reflection*
- full engagement with this NMC process*
- full admissions*
- [Private]*
- this case is not related to clinical practice and patients were not harmed*

*The panel determined that the aggravating factors are:*

- your conduct was deliberate and planned*
- you acted dishonestly to secure employment as a registered nurse*
- this case involves a serious conviction*

*The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of your conviction and that this case involves dishonesty. The panel decided that to take no action would not*

*take into account the need to uphold confidence in the profession and to maintain the standards expected of a registered nurse.*

*The panel next considered whether to impose a caution order but concluded that this would be inappropriate in view of the seriousness of your conviction and that this case involves dishonesty. The panel was mindful that a caution order would place no restriction on your practice. It therefore decided that a caution order would not take into account the need to uphold confidence in the profession and to maintain the standards expected of a registered nurse.*

*The panel next considered a conditions of practice order. This case is not related to your clinical abilities and the panel therefore determined that such a sanction would not be appropriate in the circumstances.*

*The panel next considered a suspension order.*

*The panel took note of the observations of Mr Justice Mitting in the case of Parkinson where he stated, "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 panel had regard to the following as stated in the ISG, "Dishonesty, even where it does not result in direct harm, is particularly serious because it can undermine the trust the public places in the profession. Honesty, integrity and trustworthiness are considered to be the bedrock of any nurse's practice".*

*The panel noted that your dishonesty in relation to charge 1 and your conviction in relation to charge 3 were linked. It was clear that your motive, underpinning the dishonesty on your application form and related conviction for being in*

*possession of false documents, was to gain employment through illegal and deceptive means. In this regard the panel did note your personal mitigation.*

*The panel accepted that you pled guilty at the earliest opportunity and have been dealt with by the Court for your offence. You have made early admissions to this panel and accepted your declarations on the application form were dishonest. You have expressed regret for your actions and sought to reassure the panel there would be no repetition. However, notwithstanding the above, the panel consider that the nature of your dishonesty and your conviction demonstrated planning to gain employment in a privileged profession such as nursing where honesty is the bedrock. The panel therefore determined that a period of suspension would not, in the circumstances of your case, meet the public interest. It was satisfied that a suspension order was not proportionate in this case.*

*The panel concluded that the need to declare and uphold proper standards of conduct and behaviour is such that the seriousness of this case is incompatible with ongoing registration. It determined that striking-off is the only sanction which is sufficient to protect the public interest and that public confidence in the profession and the NMC will only be sustained if you are removed from the register.*

*The striking-off order results in the removal of your name from the register, thus preventing you from working as a registered nurse. You may not apply for restoration until a period of five years has elapsed since the striking-off order was made. An application for restoration will not be granted unless a panel of the CCC is satisfied that you meet the requirements for admission to the register and in addition, are a fit and proper person to practise as a nurse or midwife.*

## **Submissions and evidence**

This panel has had regard to the submissions of Ms Alabaster, on behalf of the NMC. It also took account of your evidence, under affirmation, as well as the contents of the

application for restoration which you submitted to the NMC which included three written references.

Ms Alabaster, on behalf of the NMC, outlined the background of the case and the facts that led to the striking-off. She also referred this panel to the previous panel's decision which resulted in your removal from the NMC's register.

You provided evidence under affirmation. You told the panel that since being removed from the NMC register you have been granted leave to remain by the Home Office, you provided the panel with copies, and you are now entitled to live, work and study in the UK.

You also told the panel that in this time you have been employed at a local care home where you have been able to learn and develop skills that will support you in your return to nursing practice. Besides this, you have also volunteered with various charities and have been appointed as a board member to a charity. The panel heard how although you have not been working as a registered nurse since 2014, you have 'kept yourself busy' and developed relevant and transferable skills. You stated that, on this basis, you feel you deserve a 'second chance' to return to nursing practice, which is 'what you love to do'.

You further told the panel that you have undertaken training and applied for four courses of study, all relevant to nursing, three of which you have been accepted onto and provided evidence and details of such courses.

In relation to your past dishonesty, you told the panel that you now have leave to remain and you will not be dishonest in this way again in the future. In response to questions around your integrity, you responded saying that since 2014 you have 'matured as a person', and that you now have more to lose. You admitted that you made mistakes and stated that you regret your actions. The panel heard how you have worked hard since being removed from the NMC register and you have done everything in your power to demonstrate that you are a fit and proper person to practise as a registered nurse. You highlighted to the panel that your clinical practice was never in question. You have

proven yourself to be a good care assistant in your current role and you are confident to raising concerns where you feel you need to.

### **Request for the hearing transcript to be marked as private**

Ms Alabaster, on behalf of the NMC, made a request that part of your case be heard in private, and the transcript marked as such, as matters relating to your health were to be raised.

The legal assessor reminded the panel that although Rule 19 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules) does not apply to this virtual hearing, any matters relating to health ought to be kept private.

Having heard that there will be reference to your health the panel determined to mark such parts as private on the transcript.

[Private].

Ms Alabaster reminded the panel of the test set out in Article 33(5) of the Order and referred the panel to the contents of the application for restoration and the positive testimonials included. She highlighted, to your credit, that you were familiar with, and had clearly reflected upon, the revised NMC Code.

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 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 accept your application.

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 took account of the NMC's guidance on applications for restoration along with your written application and accompanying documents. It also took account of the oral submissions of Ms Alabaster and your evidence under affirmation.

The panel considered the question of whether you are a 'fit and proper person' to practise as a registered nurse. In view of the information provided, the panel considered you to have been extremely proactive since being removed from the NMC Register in 2014. It bore in mind the voluntary work that you have undertaken in addition to your employment as a care assistant.

The panel noted that you were able to talk insightfully and convincingly about the importance of trust within the nursing profession and the need uphold and promote professionalism. The panel was assured that you understood and had full insight into the impact of your past dishonesty on the nursing profession as well as the NMC as a regulator.

The panel highlighted the statements of one reference in particular, from a colleague with whom you had worked:

*"She is fully accepting and incredibly remorseful for her behaviour. She understands that her behaviour was unacceptable and bought her profession of*

*nursing into disrepute. With the benefit of hindsight, Doreen would not have acted as she did. Understandably, she has made a full admission of her failings, reconsidered her choices and has subsequently grown in stature after learning from her mistakes. Her integrity is second to none, and her honesty has never been in question in the time I have known her...*

*...I am fully aware of Doreen's history, her convictions and her life. I have known her for 7 years, and undoubtedly believe she has learned from her past mistakes. I hold Doreen in very high regard. I am certain she is a person of absolute trust, integrity and is truly selfless with a manner and mindset perfectly suited to helping others. She is aware and has owned up to these failings, has taken them on board and I am certain, should she be re-instated, that her name would never appear before a NMC tribunal in any capacity again."*

In view of the positive references, and your oral submissions, the panel was sufficiently satisfied that although you acted dishonestly in the past, and your dishonesty was of a sophisticated nature, you would be open, honest, and act with integrity in future.

The panel considered you to have taken full responsibility for your past dishonesty and declared it openly when it was required. It was clear to the panel, from your voluntary work and the courses of study that you have applied for, that you have made great efforts to demonstrate your commitment to the care profession and your desire to return to nursing practice.

The panel considered you to have demonstrated a real interest and desire to return to nursing practice. In view of all of the information before it, the efforts you have gone to maintain your skills and nursing knowledge, the training you have undertaken, and your insight into your past dishonesty, the panel decided that you are a fit and proper person to practise as a registered nurse. Bearing in mind that you will need to complete a return to practise course, the panel decided to accept your application for restoration.

That concludes this determination.

This decision will be confirmed to you in writing.