

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

**Restoration Hearing
Thursday 6 June and Friday 7 June 2024**

Virtual Hearing

Name of Applicant: Abimbola Evelyn Ogunye

NMC PIN 05G2283E

Part(s) of the register: Registered Nurse – RNA – Adult

Relevant Location: Newham

Panel members: Sue Heads (Chair, Lay member)
Elizabeth Coles (Registrant member)
Jennifer Portway (Lay member)

Legal Assessor: Monica Daley

Hearings Coordinator: Tyrena Agyemang

Nursing and Midwifery Council: Represented by Jerome Burch, Case Presenter

Ms Ogunye: Present and unrepresented

Outcome: Application granted with a conditions of practice order for a period of 12 months

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 Conduct and Competence Committee directed on 12 April 2017 that your name be removed from the register based on its 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 (“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.

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

During the course of the hearing, the panel raised of its own volition and invited submissions on the basis that proper exploration of your case involves references to your health and private life. The application was made pursuant to Rule 19 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

Mr Burch supported the application to the extent that any reference to your health and private life should be heard in private.

You also supported the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be references to your health, the panel determined to hold those parts of the hearing in private.

Background

The background as set out at the substantive hearing is as follows:

At the time of the alleged incidents you were employed as a Band 6 TB Nurse at Barts Health NHS Trust. You were based at Whipps Cross Hospital, Leytonstone.

The NMC received a referral from your employer in February 2014. It is alleged that you did not follow the Royal College of Nursing ("RCN") guidelines and management instructions in that you did not repeat liver function tests (LFTs) for Patient A despite instruction from medical staff; did not visit Patient A in his home to assess the home situation in order to identify any reasons why compliance to medication may be at risk and that patient's safety was thereby potentially compromised by your lack of action. Further, it is also alleged that you did not complete Patient A's nursing record to an adequate standard.

You were the case manager for Patient A and you conducted an initial assessment with the patient on 9 July 2013. Evidence from Patient A's medical records indicated that he had a complex medical history including schizophrenia, deliberate self-harm resulting in blindness and serious abdominal injury together with a recent history of heavy alcohol use. In addition, he was non-English speaking and has been diagnosed with Hepatitis C.

Patient A was seen by Dr 1 on 9 July 2013. Dr 1 made a decision to commence TB treatment for the patient. Following an abnormal LFT result, Dr 1 left a note for the TB nurses to repeat LFTs for Patient A. However, this was not repeated before you went on annual leave on 17 July 2013.

During a multidisciplinary Team (MDT) meeting on 18 July 2013, it was identified that Liver Function Tests (LFTs) had not been repeated for Patient A within one week as requested by the medical team and in accordance with local protocol and national guidelines. It was also identified that a home visit had not been conducted within five working days as per RCN guidelines.

In the course of her investigation within the Trust, Ms 2 identified that you had not conducted home visits in a timely manner for a number of other patients. The allegations against you were upheld and it was held that the patient's safety was potentially compromised by your lack of action. You were dismissed by the Trust following a disciplinary hearing.

The panel at the substantive hearing on 14 July 2015, considered the following charges:

That you whilst working as a registered nurse at Barts Health NHS Trust between June and August 2013:

- 1. Failed to repeat liver function tests for Patient A between 9 July 2013 and 26 July 2013.*
- 2. Failed to conduct a home visit for Patient A.*
- 3. Failed to complete Patient A's nursing record to an adequate standard in that you:*
 - 3.1. Did not record Patient A's mental health diagnosis within the case notes section of Form 1*
 - 3.2. Did not complete the boxes in Form 1 to indicate if enhanced case management was required for Patient A*
 - 3.3. Incorrectly documented that Patient A's blindness and abdominal injury was caused by road traffic accident when his medical records indicated self-harm was the cause.*
 - 3.4. ...*
 - 3.5. ...*

3.6. Incorrectly indicated on Form 2 reverse that Patient A had no mental health diagnosis within the psychosocial assessment section of Form 2 reverse when his medical records indicated otherwise.

4. ...

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

You attended your substantive hearing which concluded in July 2015 and made admissions to charges 1 and 2. The panel at the substantive hearing found all of the charges proved save for charges 3.4, 3.5 and charge 4 in its entirety, which were removed due to a successful no case to answer application. The panel subsequently decided to impose a conditions of practice order for a period of 12 months.

At the first review of this order on 9 June 2016, the panel replaced the conditions of practice order with a six-month suspension. At the second review on 10 January 2017, the panel extended the suspension order by a further three months. At the third review meeting 12 April 2017, the panel imposed a striking off order. You chose not to engage with the NMC review process and the only contact you had with the NMC, was on two occasions to request, that your order was reviewed at a meeting and not a hearing.

The third substantive order review panel, determined the following with regard to impairment:

The panel considered whether Miss Ogunye's fitness to practise remains impaired. It noted that since the substantive hearing, Miss Ogunye had only communicated twice with the NMC, both times to request that the review of her substantive order take place at a meeting. The panel therefore had nothing to suggest that Miss Ogunye had engaged in any reflection or training which would address the concerns identified by the substantive panel, such as her decision making skills. The panel also had no evidence that Miss Ogunye had developed insight into her misconduct or shown any remorse. Without this, the panel could not be satisfied that there was no risk of repetition of Miss Ogunye's misconduct, and determined that a risk of harm to the public remains.

The panel bore in mind the overarching objective of the NMC: to protect, promote and maintain the health safety and well-being of the public and patients and the wider public interest which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, in the absence of any remediation and insight, a finding of continuing impairment on public protection and public interest grounds is required.

For these reasons, the panel finds that Miss Ogunye's fitness to practise remains impaired.

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

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition identified and the risk to patient safety. The panel decided that it would be neither proportionate nor in the public interest to take no further action. The panel determined that a caution order would be inappropriate for the same reasons.

The panel next considered replacing the current suspension order with a conditions of practice order. However, the panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest in light of Miss Ogunye's continuing lack of engagement, and lack of any indication of her current intentions with regard to her practice or of her willingness to comply with the conditions.

The panel went on to consider a further period of suspension, but determined that this would serve no useful purpose. The panel considered that Miss Ogunye had been given numerous opportunities to engage with the NMC and develop her insight and remediation to the point where it is safe for her to return to unrestricted practice, but had chosen not to do so. The panel was of the view that considerable evidence would be required to show that Miss Ogunye no longer posed a risk to the public.

The panel determined that it was necessary to take action to prevent Miss Ogunye from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

Opening submissions and evidence

Mr Burch opened the hearing and provided the panel with the background to your application and the circumstances which led to you being struck off the register. The panel took into account the documentary evidence, which included the contents of your application for restoration which you submitted to the NMC, three written references and your reflective piece dated 7 March 2024.

The panel had regard to the submissions of Mr Burch the Case Presenter, on behalf of the NMC, those made by you and evidence from Witness 1 on your behalf. You also gave oral evidence.

The panel heard from Witness 1 who confirmed that although, she did not have direct knowledge of you in your nursing capacity, she could attest to your character and commitment to the nursing profession.

You provided evidence under affirmation. You told the panel that you are a people person and that you get along with everyone you come into contact with whatever their background. You explained that you really enjoyed working as a nurse.

You told the panel that after the findings of the original hearing, you felt very hurt and let down by the profession. You further explained [PRIVATE] and you felt you were not appreciated and this is why you did not engage further with the process.

You told the panel that at the time you could not see what you had done wrong, but after some considerable time of reflection, discussions with other registered nurses, family and friends, you are now able to see what you did wrong. You told the panel that after this reflection, you are now ready to return to nursing. You explained that you

really love the profession and that during the COVID Pandemic you really wanted to put your nursing skills to use and help, but as you were struck off the register, you knew you could not.

You told the panel that you are willing to do anything to be able to be readmitted to the register.

In answer to questions, you told the panel that you realise the NMC gave you several chances to write a reflective piece and to explain yourself, but you were just too upset and you felt cheated. You described that you gave your all whilst you were nursing and never refused any task, you were always willing and able to carry out your duties and you wanted your department to be the best. You told the panel that when you joined the team there were some issues, which you helped to correct and at the time you felt like the nursing profession did not have your back, which left you bitter. [PRIVATE] and did not want to nurse in the future.

You told the panel that you have since reflected and you now realise the mistakes you made and steps you could take to ensure those mistakes were not repeated.

You told the panel that you recently completed a short course unrelated to nursing and you applied for the Return to Practice Course, but you were rejected. You told the panel that you started your buying and selling business but due to the pandemic, the business failed. You then explained that you went on to volunteer in a youth centre called Nexus.

Lastly you reiterated that you love nursing, you are a people person and you like helping people. You now realise your faults, have thought over everything and you would do anything in order to return to nursing the profession you love.

Closing submissions

Mr Burch, on behalf of the NMC, outlined the background of the case and the facts that led to the striking-off order. He referred this panel to the previous panel's decision which

resulted in your removal from the NMC's register. Mr Burch referred the panel to the test set out in Article 33(5) of the Order.

Mr Burch submitted the NMC takes a neutral position in the case. He referred the panel to the NMC guidance on Restoration (APP-2) which states:

“The purpose of a restoration hearing is to consider whether, looking at the circumstances that led to the striking-off order, the applicant is a fit and proper person to practise as a nurse, midwife or nursing associate, and whether they meet the other requirements for restoration.”

Mr Burch also referred the panel to NMC guidance Powers of the Fitness to Practise Committee at a restoration hearing (APP-2b) for the panel's consideration. He referred the panel today, to the decision of the previous panel's decision to strike you off the register, which stated:

“The panel considered that Miss Ogunye had been given numerous opportunities to engage with the NMC and develop her insight and remediation to the point where it is safe for her to return to unrestricted practice, but had chosen not to do so. The panel was of the view that considerable evidence would be required to show that Miss Ogunye no longer posed a risk to the public.”

Mr Burch also reminded the panel of Witness 1's evidence. He told the panel that she was positive and believed you could nurse again. Further he outlined the options open to the panel today and reiterated the NMC's neutral position. He reminded the panel of your evidence and your circumstances during 2015 and 2017 which was the period of the proceedings against you and which led to the striking-off order. Lastly he submitted that the restoration decision is a matter for the panel today.

You again outlined the reasons for your lack of engagement and that you felt like you were treated unfairly. You have since reflected and realise that you love nursing, you are a good nurse and you have always been very careful and dedicated to your patients.

You told the panel that you are aware you will need to complete the Return to Practice Course because you have not nursed for some time. You told the panel that you had applied for a course, but had been unsuccessful. However, you stated that you are willing to complete any other training required of you.

You explained that you are a very engaging person, that gets along with everyone. You also love mentoring students and noticed that students would regularly confide in you and the families of your clients would also feel comfortable talking with you.

You told the panel that you have tried to secure other employment, but you could not let go of nursing. You acknowledged that you made mistakes and you now know you would never make them again.

You told the panel that you have considered members of the public in your care, and you are certain they would not be in danger in your hands.

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 2017, 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.

The legal assessor also referred the panel to the case of *Balamoody v NMC* [2009] EWHC 3235 Admin for its consideration.

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 with a conditions of practice order.

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 first considered the extent to which you had demonstrated insight and had addressed the concerns which led to the original striking-off order. It had regard to your written reflection, which reflected on the matters found proved and your oral evidence which further supported the insight you had shown in your reflective piece. The panel was satisfied that you had demonstrated an understanding of the potentially serious impact of your actions on patients, colleagues, members of the public and the nursing profession as a whole. You had reflected on your lack of engagement which ultimately led to you being struck off.

The panel found that you have demonstrated a sufficient level of insight into your actions and have a greater level of acceptance in relation to the issues you faced at the time. You gave evidence to the panel about the personal circumstances you were going through at the time which led to the reasons for your lack of engagement. You told the panel that you have taken time to consider the findings of the previous panel and had found it to be a fair decision.

The panel also had regard to your desire to return to nursing practice, however it noted that you have not worked in a clinical setting since 2015. The panel considered that you could have found some employment opportunities, in which your nursing skills may have been transferrable and that you could have also kept your nursing knowledge up to date by reading nursing publications.

The panel acknowledged the voluntary work you undertook with your church and NEXUS and that this is further evidence of your desire to care and support others. The

panel was of the view that this also supports the notion that you have not demonstrated any deep-seated attitudinal issues and credit you for this work, which was also unpaid.

The panel next considered whether, in the context of the concerns that led to the striking-off order, public confidence in the nursing and midwifery professions would be undermined, if you were to be restored to the Register.

The panel was of the view that the conduct that led to you being struck off the Register was not related to your clinical practice as the original panel had determined that your conduct was remediable. However, due to your lack of engagement you were not able to demonstrate that you had strengthened your practice and this resulted in the decision to make an order striking you off the register. You have now demonstrated that you understand the gravity of your actions and how this was likely to have negatively impacted the public confidence and trust in the nursing profession.

The panel was satisfied that you have demonstrated that you are a fit and proper person for the purposes of being restored to the register. It was satisfied that fully informed members of the public, with knowledge of your level of insight since the original misconduct and continued determination to reflect, and knowledge that you had remedied the concerns, would be reassured that you were capable of returning to the Register.

The public would be satisfied that, having been struck off some seven years ago, you had been given ample opportunity to reflect on, and learn from, your past misconduct and lack of engagement, and you have now done so. However, during that period you have not been working in a clinical environment since 2015 and you have not demonstrated that you have kept yourself up to date with current nursing practice. The panel concluded that it was necessary and proportionate for your practice to be subject to conditions in order to strengthen your practice.

The panel accordingly directs the Registrar under Article 33(7) and in accordance with Article 33(6) of the Order, to restore your name to the register subject to you fulfilling the

specific conditions of practice as to additional education, training and experience as the Council has specified under Article 19(3) of the Order.

Upon restoration of your name to the Register your registration will be subject to a conditions of practice order in the following terms:

‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.

1. At any time that you are employed or otherwise providing nursing or midwifery services, you must place yourself and remain under the indirect supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse who is physically present in or on the same ward, unit, floor or home that you are working in or on.
2. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your performance.
3. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance to the NMC at least 14 days before any NMC review hearing or meeting.
4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.

- b) Giving your case officer your employer's contact details.
5. You must keep the NMC informed about anywhere you are studying by:
- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
6. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
7. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.

- c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this conditions of practice order is 12 months. The panel determined that such a period would satisfy the public interest and provide you with sufficient time to find employment as a registered nurse and demonstrate your safe practice.

This order will be reviewed before its expiry. You can apply for the order to be reviewed before the expiration of the order if you consider that it is appropriate in the circumstances.

This decision will be confirmed to you in writing.

That concludes this determination.