

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

**Substantive Hearing  
Monday 21 February – Wednesday 23 February 2022**

Virtual Hearing

<b>Name of registrant:</b>	Sally Omotoye
<b>NMC PIN:</b>	99J0867E
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Mental Health Nursing – 23 October 2002
<b>Area of registered address:</b>	London
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Debbie Hill (Chair, lay member) Yvonne O'Connor (Registrant member) Janine Green (Lay member)
<b>Legal Assessor:</b>	Laura McGill
<b>Hearings Coordinator:</b>	Jennifer Morrison
<b>Nursing and Midwifery Council:</b>	Represented by Michael Smalley, Case Presenter
<b>Ms Omotoye:</b>	Not present and unrepresented
<b>Facts proved:</b>	All
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Omotoye was not in attendance and that the Notice of Hearing letter had been sent to Ms Omotoye's registered email address on 21 January 2022.

Mr Smalley, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Ms Omotoye's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Ms Omotoye has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Ms Omotoye**

The panel next considered whether it should proceed in the absence of Ms Omotoye. It had regard to Rule 21 and heard the submissions of Mr Smalley, who invited the panel to continue in the absence of Ms Omotoye. He submitted that Ms Omotoye had voluntarily absented herself.

Mr Smalley submitted that it appeared that Ms Omotoye had disengaged from these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. He referred the panel to the Case Management Form (CMF) that was sent to Ms Omotoye on 21 June 2021, which had not been completed and returned to the NMC. Mr Smalley also

referred to correspondence which indicated that the Royal College of Nursing (RCN) had come off the record as Ms Omotoye's representative on 27 August 2021, as well as unanswered attempts by the NMC to contact Ms Omotoye on 10 December 2021.

In response to the panel's questions, Mr Smalley stated that the most recent attempts by the NMC to contact Ms Omotoye appeared to have been made by email only. The Hearings Coordinator also confirmed that she had recently attempted to contact Ms Omotoye by email.

The panel accepted the advice of the legal assessor, who referred the panel to *R v Jones (Anthony William) (No.2)* [2002] UKHL 5, *General Medical Council v Adeogba* [2016] EWCA Civ 162 and *GMC v Visvardis* [2016] EWCA Civ 162.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

The panel has decided to proceed in the absence of Ms Omotoye. In reaching this decision, the panel has considered the submissions of Mr Smalley and the advice of the legal assessor. It has had particular regard to the factors set out in the decisions cited above and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Omotoye;
- There appears to have been a lack of recent engagement from Ms Omotoye;
- There is no reason to suppose that adjourning would secure Ms Omotoye's attendance at some future date;
- Three witnesses have attended today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Ms Omotoye in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Ms Omotoye at her registered email address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Ms Omotoye's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Ms Omotoye. The panel will draw no adverse inference from Ms Omotoye's absence in its findings of fact.

### **Decision and reasons on application to amend the charge**

The panel heard an application made by Mr Smalley to amend the wording of charges 5 and 7, pursuant to Rule 28.

Mr Smalley submitted that the proposed amendments were necessary to correct inconsistencies in drafting that had arisen after further charges had been added. He submitted that the amendments would amend simple typographic errors in the charge numbers and would reflect the obvious intent of the charges. Mr Smalley submitted that although Ms Omotoye was not present, she was aware of the charges against her and the evidence the NMC intended to rely upon.

The proposed amendments were as follows:

*'That you, a registered nurse:*

5) Your actions in charge 3)a) and or 3)b) **and or charge 4)** were dishonest in that you deliberately sought to represent that you had taken those readings when you knew that you had not.'

and:

*'That you, a registered nurse:*

7) Your actions in charge ~~5)a)~~ **6)a)** and or ~~5)b)~~ **6)b)** and or ~~5)c)~~ **6)c)** and or ~~5)d)~~ **6)d)** **and or 6)e)** were dishonest as you knew that one or more of those accounts were false and you intended to cover up your failures in charges 1) and or 2).'

The panel accepted the advice of the legal assessor.

The panel was of the view that such amendments, as applied for, were in the interest of justice. The panel was satisfied that, as there was no material change to the charges, there would be no prejudice to Ms Omotoye and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to reflect the intent of the charges and to ensure clarity and accuracy.

### **Details of charge**

*'That you, a registered nurse:*

- 1) On the 26 November 2019 you failed to take a blood sugar reading from Resident A at 2200 hrs.
  
- 2) On 27 November 2019 you failed to take a blood sugar reading from resident A at 0600 hrs.

- 3) *On or around 27 November you made the following entries in Resident A's Blood Sugar Monitoring Record;*
- a) *7.4mmol/l at 2200 hrs on 26 November 2019*
  - b) *6.4mmol/l at 0600 hrs on 27 November 2019*
- 4) *On 27 November 2019 you told Colleague A that Resident A's blood sugar reading were in the normal range.*
- 5) *Your actions in charge 3)a) and or 3)b) and or charge 4) were dishonest in that you deliberately sought to represent that you had taken those readings when you knew that you had not.*
- 6) *On or around the 27 November you gave the following accounts;*
- a) *You told Colleague A that you did not take the reading because you could not find the glucometer;*
  - b) *You told Colleague A that Colleague C came into the building and stole the glucometer so that you could not find it or words to that effect;*
  - c) *You told Colleague B that you did take the 2200 hrs reading but had not taken the 0600 hrs reading or words to that effect;*
  - d) *You told Colleague B that you did take the readings but used another glucometer or words to that effect;*
  - e) *You told Colleague C that you took both readings but had forgot to write them down or words to that effect.*

7) *Your actions in charge 6)a) and or 6)b) and or 6)c) and or 6)d) and or 6)e) were dishonest as you knew one or more of those accounts were false and you intended to cover up your failures in charges 1) and or 2).*

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

### **Decision and reasons on facts**

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Smalley.

The panel has drawn no adverse inference from the non-attendance of Ms Omotoye.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Colleague A: Agency Nurse, CTS Recruitment;
- Colleague B: Registered Manager, Ashbrook Court Nursing Home (at time of incidents);
- Colleague C: Unit Manager, Ashbrook Court Nursing Home

## **Background**

Ms Omotoye was referred to the NMC on 16 January 2020 by Carebase, the operator of Ashbrook Court Nursing Home ('the Home'). It is alleged that on two occasions between 26 and 27 November 2019, Ms Omotoye failed to monitor Resident A's blood glucose levels. Furthermore, on 27 November 2019, Ms Omotoye allegedly falsified Resident A's blood glucose level readings by recording that Resident A's glucose levels were within normal range, and confirmed as such to a colleague. She later gave conflicting accounts of her actions to colleagues.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC.

In examining the evidence, the panel conducted a full and comprehensive assessment to establish the credibility and motives of the witnesses when coming to its decision.

The panel then considered each of the disputed charges and made the following findings.

### **Charge 1**

- 1) *'On the 26 November 2019 you failed to take a blood sugar reading from Resident A at 2200 hrs.'*

### **This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. The panel considered the written evidence of Colleague C, who stated that Ms Omotoye had provided contradictory information. She had initially confirmed that she had assessed Resident A's blood glucose level but then said she had been unable to find Resident A's glucometer and had used another machine. However, Colleague C further confirmed that she and Colleague A checked Resident A's blood glucose machine and other

machines in the unit, but found no indication that any of those machines had been used to take blood glucose levels throughout the night. Colleague A confirmed these events in her written evidence.

The panel found Colleagues C and A to be reliable and their evidence credible. It noted an inconsistency in their written statements as to who had taken the last recorded entry on Resident A's blood glucose machine, and that Colleague C admitted in her oral evidence that she could not recall the dates of the incidents. However, the panel concluded that these inconsistencies had arisen from fading memories resulting from the passage of time, and had no reason to doubt either of their accounts. The panel heard nothing to suggest that Colleagues C and A had colluded in their evidence. It therefore concluded that on the balance of probabilities, this charge is found proved.

## **Charge 2)**

*2) 'On 27 November 2019 you failed to take a blood sugar reading from resident A at 0600 hrs.'*

### **This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. The panel considered the written evidence of Colleague A, who stated that Ms Omotoye had told her that she had not taken Resident A's blood glucose readings during her shift because she could not find Resident A's blood glucose machine. It also took into account the written evidence of Colleague B, who met with Ms Omotoye, and whose account was supported by contemporaneous notes of that meeting. These notes recorded Ms Omotoye confirming that she had not taken Resident A's blood glucose readings that morning. The panel found the evidence of Colleague A and Colleague B to be credible, and saw no reason to doubt their accounts.

The panel also had sight of Resident A's blood sugar monitoring record, on which the 06:00 entry for 27 November 2019 was crossed out. It heard evidence about how the 06:00 entry came to be crossed out from Colleague A, who provided a clear, detailed

and credible account of her interaction with Ms Omotoye whilst she was conducting a medication round:

*'...a little later Sally returned to the unit as she had found out that the machines had been checked and it would be known she had not actually taken the blood test and the results she had written would then be known to be false. She snatched the blood monitoring sheet from me and crossed out the information she wrote on there, deleting only the 06:00 entry. Sally then stated that she did not actually take the reading for that time.'*

### **Charge 3a)**

3) *'On or around 27 November you made the following entries in Resident A's Blood Sugar Monitoring Record;*

*a) 7.4mmol/l at 2200 hrs on 26 November 2019'*

### **This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It took into account Resident A's blood sugar monitoring record, which showed that an entry had been made by Ms Omotoye as described in the charge. Colleague B, in her written evidence, described how Ms Omotoye had confirmed she had taken the blood glucose recordings of Resident A, but had not detailed them in the records. In the presence of Colleague A and Colleague B, Ms Omotoye made the entry in Resident A's record. The panel found Colleague B and Colleague A to be reliable witnesses, and both their written and oral evidence to be credible. It had no reason to doubt their accounts.

### **Charge 3b)**

3) *'On or around 27 November you made the following entries in Resident A's Blood Sugar Monitoring Record;*

b) *6.4mmol/l at 0600 hrs on 27 November 2019'*

**This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It took into account Resident A's blood sugar monitoring record, which showed that an entry had been made by Ms Omotoye as described in the charge. Colleague B, in her written evidence, described how Ms Omotoye had confirmed she had taken the blood glucose recordings of Resident A, but had not detailed them in the records. In the presence of Colleague A and Colleague B, Ms Omotoye made the entry in Resident A's record. The panel found Colleague B and Colleague A to be reliable witnesses, and both their written and oral evidence to be credible. It had no reason to doubt their accounts.

**Charge 4)**

4) *'On 27 November 2019 you told Colleague A that Resident A's blood sugar reading were in the normal range.'*

**This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It considered the written evidence of Colleague A, who stated, *'I recall that Sally said Resident A was ok and that he was within normal ranges.'* Colleague A also stated that *'During the handover, Sally gave a reading which was within normal parameters...'* The panel also considered the written evidence of Colleague B, who stated that:

*'When we asked Sally if she had checked Resident A's blood glucose levels, she said she did check it but she forgot to write it down on Resident A's notes. Sally then wrote down numbers as Resident A's blood glucose levels. The numbers were within the normal levels for blood glucose.'*

The panel found Colleagues A and B to be reliable witnesses, and both their written and oral evidence to be credible. It had no reason to doubt their accounts.

### **Charge 5)**

5) *'Your actions in charge 3)a) and or 3)b) and or charge 4) were dishonest in that you deliberately sought to represent that you had taken those readings when you knew that you had not.'*

### **This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. The panel accepted the written evidence of Colleague A and Colleague B as outlined in charge 4. It considered its previous findings that Ms Omotoye had failed to take Resident A's blood glucose readings and falsified entries as referenced in charges 1, 2, 3a and 3b, and concluded that the only plausible explanation for Ms Omotoye's actions in this respect was an intent by her to mislead. It had regard to the test of dishonesty in *Ivey v Genting Casinos* [2017] UKSC 67, and concluded that Ms Omotoye's actions were dishonest by the standards of *'ordinary, decent people'*.

### **Charge 6a)**

6) *'On or around the 27 November you gave the following accounts;*

a) *You told Colleague A that you did not take the reading because you could not find the glucometer'*

### **This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It accepted the account of Colleague A, who stated that Ms Omotoye had told her that *'she did not take Resident A's blood glucose reading during her shift because she could not find Resident*

*A's machine.*' The panel found Colleague A to be a reliable witness, and both her written and oral evidence to be credible. It had no reason to doubt her account.

**Charge 6b)**

6) *'On or around the 27 November you gave the following accounts;*

*b) You told Colleague A that Colleague C came into the building and stole the glucometer so that you could not find it or words to that effect'*

**This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It accepted the account of Colleague A, who stated that:

*'[Ms Omotoye] said that she believed that [Colleague C] came into the Unit at night to take the blood glucose machine away...Sally insisted that [Colleague C] was "out to get her and had crept in at 03:00 and it must have been her that had taken the machine though she did not actually see her."*

In her oral evidence, Colleague A stated that it was "*ludicrous*" to suggest that events could have happened as Ms Omotoye had described, and it would be "*absurd*" for anyone to have taken the glucometer. The panel noted that according to Colleague A, Ms Omotoye acknowledged that she had not actually seen Colleague C take the machine. The panel found Colleague A to be a reliable witness, and both her written and oral evidence to be credible. It had no reason to doubt her account. The panel also noted that Colleague C denied under affirmation taking the glucometer.

**Charge 6c)**

6) *'On or around the 27 November you gave the following accounts;*

- c) *You told Colleague B that you did take the 2200 hrs reading but had not taken the 0600 hrs reading or words to that effect'*

**This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It considered the written evidence of Colleague B, who stated that:

*'I then said to Sally that she wrote down figures for Resident A's bloods glucose levels, thereby indicating that she did take his readings at 22:00 on 26 November and at 06:00 on 27 November. Sally then said yes, it was 12.6 or something around that figure.'*

Colleague B also stated that prior to this, *'initially Sally stated that she had not taken the reading that morning and she just wrote a random number down as she thought this was Resident A's normal readings.'*

The panel found Colleague B to be a reliable witness, and both her written and oral evidence to be credible. It had no reason to doubt her account. The panel noted that Colleague B's evidence was supported by contemporaneous notes of her conversation with Ms Omotoye.

**Charge 6d)**

- 6) *'On or around the 27 November you gave the following accounts;*

- d) *You told Colleague B that you did take the readings but used another glucometer or words to that effect'*

**This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It considered Colleague B's evidence, which was supported by contemporaneous notes. In the

meeting notes, Colleague B wrote that after Ms Omotoye confirmed that Resident A's reading was 12.6 or around that figure, Ms Omotoye stated that *'we don't always use the same [blood sugar machine].'* When asked why not, Ms Omotoye replied *'because they hide it. I don't always use his [blood sugar machine].'* According to Colleague B, Ms Omotoye then stated that she had used another blood glucose machine.

The panel found Colleague B to be a reliable witness, and both her written and oral evidence to be credible. It saw no reason not to rely on her evidence.

### **Charge 6e)**

6) *'On or around the 27 November you gave the following accounts;*

*e) You told Colleague C that you took both readings but had forgot to write them down or words to that effect.'*

### **This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It considered the written evidence of Colleague C, who stated that *'when we asked Sally if she had checked Resident A's blood glucose levels, she said she did check it but she forgot to write it down on Resident A's notes.'* The panel found Colleague C to be a reliable witness and her evidence to be credible. It had no reason not to accept her account.

### **Charge 7)**

7) *'Your actions in charge 6)a) and or 6)b) and or 6)c) and or 6)d) and or 6)e) were dishonest as you knew one or more of those accounts were false and you intended to cover up your failures in charges 1) and or 2).'*

### **This charge is found proved.**

In reaching this decision, the panel had regard to all the evidence. It considered its previous findings of fact, and the various accounts provided by Ms Omotoye to Colleagues A, B and C. It concluded that the only reasonable explanation for Ms Omotoye's actions as described in the other charges found proved was an attempt by her to conceal her failure to conduct observations of Resident A as required.

In this respect, the panel considered Colleague A's clear and detailed description of her encounter with Ms Omotoye after the machines had been checked. Colleague A stated that *'after pushing me to access the MAR folder, [Ms Omotoye] scribbled out her entry admitting she had not taken ant [sic] readings on Patient A.'* The panel considered Ms Omotoye's actions towards Colleague A to be indicative of someone who was aware that the cover up of her failures was about to be discovered.

The panel concluded that Ms Omotoye's actions in the stems of charge 6 were dishonest by the standards of ordinary, decent people, and as such, this charge is found proved.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Ms Omotoye's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the

circumstances, Ms Omotoye's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.' It also had regard to the case of *Johnson and Maggs v Nursing and Midwifery Council (N02)* [2013] EWHC 2140, in which it was accepted that the failure had to be such that it would be seen as deplorable by fellow practitioners and as involving a serious departure from acceptable standards.

Mr Smalley invited the panel to determine that the facts found proved amount to misconduct. The panel had regard to the terms of the Code: Professional standards of practice and behaviour for nurses and midwives [2015] ('the Code') in making its decision. Mr Smalley then directed the panel to specific paragraphs and identified where, in the NMC's view, Ms Omotoye's actions amounted to misconduct.

Mr Smalley submitted that Ms Omotoye had breached paragraphs 1.2, 8.2, 10.3, 20.1 and 20.2 of the Code, and her actions amounted to misconduct. He submitted that Resident A was placed at an unwarranted risk of harm through Ms Omotoye's failure to take his blood glucose readings. This risk was increased by Ms Omotoye's subsequent dishonest acts in covering up her failures. Through her cover up, Ms Omotoye breached fundamental tenets of the profession by failing to display honesty and integrity, and as a result of that breach, she brought the profession into disrepute.

### **Submissions on impairment**

Mr Smalley moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the professions and in the NMC as a regulatory body. The panel was referred to the case of

*Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Smalley submitted that dishonesty was difficult to remediate, because it often is indicative of underlying attitudinal problems, as opposed to clinical errors which can be addressed through retraining. He submitted that there is no evidence that Ms Omotoye has made efforts to strengthen her practice; therefore, there is a risk of repetition. Consequently, Ms Omotoye's fitness to practise is impaired on public protection grounds.

Mr Smalley further submitted that a finding of impairment was necessary in the wider public interest. He submitted that should impairment not be found, public confidence in the profession would be undermined, leading to members of the public being less likely to seek health care when necessary.

The panel accepted the advice of the legal assessor, which included reference to a number of relevant judgements. These included *Roylance*, *Cohen v GMC* [2008] EWHC (Admin), *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *CHRE v NMC and Grant* and *Zygmunt v GMC* [2008] EWHC 2643 (Admin).

## **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Ms Omotoye's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Omotoye's actions amounted to a breach of the Code. Specifically:

**'1 Treat people as individuals and uphold their dignity**

*To achieve this, you must:*

1.2 *make sure you deliver the fundamentals of care effectively.'*

**‘3 Make sure that people’s physical, social and psychological needs are assessed and responded to**

*To achieve this, you must:*

- 3.1 *pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages.’*

**‘8 Work cooperatively**

*To achieve this, you must:*

- 8.2 *maintain effective communication with colleagues.’*

**‘10 Keep clear and accurate records relevant to your practice**

*To achieve this, you must:*

- 10.3 *complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.’*

**‘20 Uphold the reputation of your profession at all times**

*To achieve this, you must:*

- 20.1 *keep to and uphold the standards and values set out in the Code*  
20.2 *act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.’*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that Ms Omotoye’s failure to assess Resident A’s blood glucose levels as required placed Resident A at an unwarranted risk of significant harm. The panel also considered that Ms Omotoye’s dishonest behaviour in falsely claiming that she had taken Resident A’s blood glucose level when she had not further increased the clinical risk to Resident A, as staff assessment of Resident A’s blood sugar reading could have resulted in serious mismanagement of his diabetes. Furthermore, Ms Omotoye’s dishonest behaviour in falsely claiming that Colleague C stole Resident A’s glucometer in order to cover up her failures would have a significant

impact on colleagues working with Ms Omotoye. It concluded that Ms Omotoye's conduct would be seen as deplorable by members of the public and of the profession.

The panel found that Ms Omotoye's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Ms Omotoye's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'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.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'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 finds that Resident A was put at an unwarranted risk of harm as a result of Ms Omotoye's misconduct. Ms Omotoye's misconduct had breached the fundamental tenets of the nursing profession, and therefore brought its reputation into disrepute. Her misconduct was of a significantly dishonest nature, and in the panel's view, the lengths Ms Omotoye went to in order to cover up her failures suggest a lack of personal responsibility. The panel therefore concluded that all four limbs of the 'test' outlined in *Grant* were engaged.

As a result of Ms Omotoye's disengagement, the panel has not heard any evidence of how Ms Omotoye may have developed insight into how her actions put Resident A at a risk of harm, or how her behaviour has impacted negatively on colleagues and harmed the reputation of the nursing profession. Nor has the panel heard any evidence of steps Ms Omotoye may have taken to improve her practice. Therefore, the panel has concluded that there is a risk of repetition, and as such, has determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety, and well-being of the public and patients, and

to uphold and protect the wider public interest. This 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 a finding of impairment on public interest grounds is also required. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Having regard to all of the above, the panel was satisfied that Ms Omotoye's fitness to practise is currently impaired.

### **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Ms Omotoye off the register. The effect of this order is that the NMC register will show that Ms Omotoye has been struck off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance ('SG') published by the NMC. The panel accepted the advice of the legal assessor, who referred it to the case of *Jerry v Nursing and Midwifery Council* [2016] EWHC 681 (Admin).

### **Submissions on sanction**

Mr Smalley informed the panel that in the Notice of Hearing, dated 21 January 2022, the NMC had advised Ms Omotoye that it would seek the imposition of a striking-off order if the panel found that Ms Omotoye's fitness to practise was currently impaired.

Mr Smalley submitted that the only appropriate sanction was a striking-off order. He referred the panel to the SG, which states that *'the most serious kind of dishonesty is when a nurse, midwife or nursing associate deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone's care.'* Mr

Smalley submitted that the dishonesty displayed by Ms Omotoye was at the most serious level, and the law around health care regulation makes it clear that a nurse who has acted dishonestly will always be at risk of removal from the register.

Mr Smalley submitted that taking no action or imposing a caution order would not address the public protection concerns or be in the public interest and would therefore be inappropriate. He submitted that a conditions of practice order would also be inappropriate, as no workable conditions could be formulated to address the underlying attitudinal concerns. A suspension order, of which the maximum length is 12 months, would not reflect the seriousness of the dishonesty. Mr Smalley submitted that only a striking-off order would protect the public and meet the public interest considerations of this case.

Mr Smalley submitted that the aggravating factors were: charges of dishonesty which involved Ms Omotoye deliberately breaching the duty of candour to cover up a failure in care and the vulnerability of Resident A. He submitted that a mitigating factor was the misconduct taking place on a one-off basis on a single shift. Notwithstanding, the only appropriate sanction remained a striking-off order.

### **Decision and reasons on sanction**

Having found Ms Omotoye's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate, and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following to be aggravating features:

- Ms Omotoye's dishonest behaviour was of the utmost seriousness. It included an attempt to falsely implicate a colleague in her clinical failures; and

- Resident A was placed at a direct, significant risk of harm. This risk was compounded, as colleagues would have interpreted the false blood glucose readings and adjusted Resident A's care plan accordingly.

The panel considered that the initial clinical errors in failing to take Resident A's blood glucose levels took place on a single shift and involved only one patient. However, the panel determined that the significantly serious level of dishonesty displayed in Ms Omotoye's subsequential cover up of her actions diminished this as a mitigating factor.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the charges found proved and its finding of current impairment. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the charges found proved, an order that does not restrict Ms Omotoye's practice would not be appropriate in the circumstances. The SG states that a caution order 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 considered that Ms Omotoye's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Omotoye's registration would be a sufficient and appropriate response. The panel considered that conditions may have been appropriate to address the initial clinical failures, but determined that no practical or workable conditions could be formulated to address Ms Omotoye's significantly dishonest behaviour. Furthermore, the panel concluded that the placing of conditions on Ms Omotoye's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It was satisfied that, whilst the misconduct in this case was very serious, it may have been capable of remediation. However, the panel has heard no evidence of any remorse expressed by Ms Omotoye, or of any insight Ms Omotoye may have developed into how her actions impacted Resident A, her colleagues and the reputation of the nursing profession. The panel also has heard no evidence about any efforts Ms Omotoye may have made to improve her practice. The panel noted that Ms Omotoye's last communication with the NMC was in January 2021, and, in the absence of any engagement from Ms Omotoye over the past 12 months, it was not satisfied that imposing a suspension order would have any useful purpose. There was nothing before the panel to suggest that Ms Omotoye would engage in the future, and would provide information to a future panel that would suggest her insight has developed or that she has strengthened her practice.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Ms Omotoye's actions is fundamentally incompatible with Ms Omotoye remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Ms Omotoye's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was satisfied that the findings in this particular case demonstrate that Ms Omotoye's actions were serious, and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors, and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Ms Omotoye's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Ms Omotoye in writing.

### **Interim order**

As the striking-off order cannot take effect until the conclusion of any appeal that is lodged, the period of which is 28 days, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Ms Omotoye's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Smalley. He submitted that, based on the panel's previous decision on the necessity of a striking-off order, an

interim suspension order of 18 months was necessary in order to protect the public. It was also in the wider public interest.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the charges found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to protect the public and to uphold the public interest.

If no appeal is made, then the interim suspension order will be replaced by the striking-off order 28 days after Ms Omotoye is sent the decision of this hearing in writing.

That concludes this determination.