Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing
Monday 17 July - Thursday 20 July 2023

Virtual Hearing

Name of Registrant:	Joseph Adekunle Bankole
NMC PIN	95F0041O
Part(s) of the register:	Nurses part of the register, sub part 1 RN1: Adult nurse, level 1 (07 June 1995)
Relevant Location:	Stockport
Type of case:	Misconduct
Panel members:	Caroline Jones (Chair, Registrant member) Laura Scott (Registrant member) Robert Cawley (Lay member)
Legal Assessor:	Charles Apthorp
Hearings Coordinator:	Amie Budgen
Nursing and Midwifery Council:	Represented by Chantel Gaber, Case Presenter
Mr Bankole:	Not present and was not represented
Facts proved:	Charges 1c, 1e, 1f, 1g, 1h, 1i and 1j
Facts not proved:	Charges 1a,1b, 1d
Fitness to practise:	**Impaired**
Sanction:	**Strike-off Order**
Interim order:	**Suspension Order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Bankole was not in attendance and that the Notice of Hearing letter had been sent to Mr Bankole's registered email address by secure email on 5 June 2023. Further, the Notice of Hearing was also sent to Mr Bankole's representative at the Royal College of Nursing (RCN).

Ms Gaber, on behalf of the Nursing and Midwifery Council (NMC) informed the panel that the NMC received emails from the RCN on 3 July 2023 and 6 July 2023 stating that they were originally engaged but are no longer being called to represent Mr Bankole at today's hearing.

Ms Gaber 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 allegations, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Bankole's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

In the light of all of the information available, the panel was satisfied that Mr Bankole 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 Mr Bankole

The panel next considered whether it should proceed in the absence of Mr Bankole. It had regard to Rule 21 and heard the submissions of Ms Gaber who invited the panel to continue in the absence of Mr Bankole.

Ms Gaber submitted that there had been no engagement from Mr Bankole with the NMC in relation to these proceedings since the Notice of Hearing was sent on 5 June 2023 and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion. Further, that the last correspondence from Mr Bankole was on 8 March 2023.

The panel accepted the advice of the legal assessor.

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'* as referred to in the case of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Bankole. In reaching this decision, the panel has considered the submissions of Ms Gaber, and the advice of the legal assessor. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Bankole;
- Mr Bankole has not engaged with the NMC since 8 March 2023 and has not responded to any of the letters sent to him since then about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at a future date;
- There are two witnesses scheduled to attend the hearing today and tomorrow to give live evidence;
- Not proceeding may inconvenience the witnesses, their employers, those involved in clinical practice and the clients who need their professional services;

- 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 Mr Bankole in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he has only made a written response and will not be able to challenge the evidence relied upon by the NMC in person, nor be able to give evidence on his 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 Mr Bankole's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Details of charge

That you, a registered nurse, whilst working at Lynmere Nursing Home:

1. On 7 August 2019, failed to provide adequate care to Resident A, in that you failed to:

    a. Record the Resident's observations on the notes.

    b. Take a third set of observations as requested to do so or make a record of those observations.

c. Inform the Resident's GP that an urgent visit was required and / or call an ambulance when it would have been clinically appropriate to do so in light of the resident's condition.

d. Give the paramedics the correct Do Not Attempt Resuscitation ('DNAR') form.

e. On 18 February 2020, said in evidence at the Coroner's Inquest that Colleague B had instructed you not to call Resident A's GP and / or an ambulance when this was not accurate.

f. Your actions at charge 1(e) above were dishonest in that you knew Colleague B had not instructed you not to call Resident A's GP and/or an ambulance.

g. On 18 February 2020, said in evidence at the coroner's inquest that you called the GP surgery twice.

h. Your actions at charge 1(g) above were dishonest in that you knew that you only called the GP surgery once.

i. On 18 February 2020, said in evidence at the coroner's inquest that you escalated the urgency of the Resident's condition to the GP.

j. Your actions at charge 1(i) above were dishonest in that you knew that you did not escalate the urgency with the GP surgery.

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

Background

Mr Bankole was referred to the NMC on 22 August 2019 by the former Home Manager (Witness A) of Lynmere Nursing Home (the Home). The alleged facts are:

On 7 August 2019, Mr Bankole was working as an agency nurse, via Royal Health Care Private Ltd (the Agency), at the Home. At approximately 10:45 on that day, Witness A went to see Resident A, who was feeling unwell. Witness A asked a carer to get Mr Bankole in order for him to review the resident. When Mr Bankole arrived, Witness A asked him to take the resident's observations and left the room in order for him to do so. Mr Bankole appeared to have taken the observations on a scrap piece of paper, so Witness A asked him to transfer these onto the resident's care plan. Witness A asked Mr Bankole to recheck the resident's observations and to let them know if they had not improved, but Mr Bankole did not do this.

At approximately 15:00, one of the care staff came to Witness A to raise concerns about Resident A's health, so Mr Bankole was asked to recheck Resident A's observations again and to contact Witness A. However, Mr Bankole did not conduct these observations again and although he did contact the General Practitioner (GP), he did not tell them the resident required seeing to urgently. Mr Bankole told the GP it was a non-urgent call and could wait until the next day when the GP would be conducting their regular visit to the Home.

Witness A left the Home at approximately 15:00 but asked Mr Bankole to call if there were any problems. Mr Bankole did not do so, a carer phoned Witness A instead to inform them that 999 had been called and that when they arrived, Mr Bankole had given them another resident's Do Not Attempt Resuscitation (DNAR) form. Witness A then called the Home at approximately 18:00 to obtain an update about the Resident A. She asked Mr Bankole why he did not make contact earlier and Mr Bankole said he was going to do so.

Further, Mr Bankole told Witness A he had contacted the GP, but when he asked them to come to the Home, they refused to do so, saying they were going to attend the Home the following day. It later became apparent during the coroner's inquest that Mr Bankole did not ask the GP to attend and had told the GP the matter was non-urgent and provided a

pulse rate of 142. During the inquest, Mr Bankole also said that Witness A advised him not to call the GP which Witness A said was untrue.

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 Ms Gaber on behalf of the NMC.

Ms Gaber submitted that the live evidence from Witness A and Witness B were accompanied by written statements, providing the same recall of events. She submitted that Witness A and Witness B are credible sources from the time of the incident.

Ms Gaber referred the panel to the evidence matrix which set out the evidence related to each charge.

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 the 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:

- Witness A: The Home manager who referred Mr Bankole and was present at the time of the incidents.

- Witness B: The paramedic who was provided with the incorrect DNAR form from Mr Bankole when the ambulance

arrived to treat Resident A at the Home.

The panel also considered evidence in written form from:

- Witness C — The receptionist at the GP Surgery (who took the call from Mr Bankole on 7 August 2019)
- Witness D — Resident A's named GP
- Witness E — The cook at the Home

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. In respect of the charges dealing with dishonesty, the legal assessor referred the panel to extracts from the following relevant case law:

Dishonesty – *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67

The Court held that the panel:

'…*must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held*.'

Once that had been established the panel:

'…must determine '*whether his conduct was dishonest by applying the objective standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, dishonest.'*

The panel accepted this advice and then went on to consider each of the disputed charges and made the following findings.

Charge 1a

"1) On 7 August 2019, you failed to provide adequate care to Resident A, in that you failed to:

a. Record the Resident's observations on the notes;"

This charge is found not proved.

In reaching this decision, the panel took into account the written statement and live evidence from Witness A.

The panel considered that Witness A's statement and oral evidence indicated that Mr Bankole had written down Resident A's observations on a paper towel before being asked to transfer these recordings onto an official clinical document, which he did at a later time. The panel also took into consideration that the clinical records provided as evidence, proved that Mr Bankole did record Resident A's observations. The handwritten notes were dated 7 August 2019. The records show that five observation levels were recorded all at the same time.

The panel therefore determined that Charge 1a is not proved due to the wording of the charge suggesting that he had *'failed to record Resident A's observations on the notes'*.

Charge 1b)

b. "Take a third set of observations as requested to do so or make a record of those observations;"

This charge is found not proved.

In reaching this decision, the panel took into account the written statements from Witness A, Witness C and Witness D.

The panel also took into consideration that the clinical records provided as evidence, proved that Mr Bankole did record Resident A's observations. The handwritten notes were dated 7 August 2019. The records show that five observation levels were recorded all at the same time. The panel concluded that Mr Bankole had recorded observations in the records.

The panel noted in the handwritten clinical notes an entry made by Mr Bankole which indicated that he had contacted the GP Surgery at 15:45 as a result of Resident A's earlier observations.

Therefore, the panel finds this charge not proved.

Charge 1c)

c. "Inform the Resident's GP that an urgent visit was required and / or call an ambulance when it would have been clinically appropriate to do so in light of the resident's condition;"

This charge is found proved.

The panel considered the contemporaneous written statements from Witness C and evidence presented in the coroner's court, which showed that Mr Bankole had made a phone call to the GP. The record of the phone call states that Mr Bankole said the deterioration in Resident A's health was not serious and he could be reviewed the following day when the GP made their routine visit to the Home.

The panel also considered the contemporaneous statement of Witness E and determined that it was Witness E that called the ambulance, and not Mr Bankole.

Therefore, the panel found this charge proved.

Charge 1d)

d. “Give the paramedics the correct Do Not Attempt Resuscitation (‘DNAR’) form;”

This charge is found not proved.

In reaching this decision, the panel took into account the written statement, the contemporaneous safeguarding referral (completed within thirty minutes of dropping Resident A off at the hospital) and the live oral evidence from Witness B, stating that they were unable to recall which member of staff at the Home handed over the DNAR form which was in place for a resident who was not Resident A.

The panel therefore determined that charge 1d is found not proved.

Charge 1e)

e. “On 18 February 2020, said in evidence at the Coroner’s Inquest that Colleague B had instructed you not to call Resident A’s GP and / or an ambulance when this was not accurate;”

This charge is found proved.

In its consideration, the panel had regard to the transcript of the coroner’s inquest. It was recorded that when asked why he didn’t call an ambulance, Mr Bankole said the following:

'It's because I was told by the manager not to do so. I was told not to do so, that they know him better than I do…'

The panel therefore determined that charge 1e is found proved.

Charge 1f)

f. "Your actions at charge 1(e) above were dishonest in that you knew Colleague B had not instructed you not to call Resident A's GP and/or an ambulance;"

This charge is found proved.

In reaching this decision, the panel took into account the transcript of the coroner's inquest dated 17 October 2019.

The panel took into account that charge 1f is a serious charge, alleging that Mr Bankole was dishonest in relation to the series of events that lead to the death of Resident A. It determined that the transcript of the coroner's inquest is a reliable source of evidence, the panel concluded that Mr Bankole was aware when giving evidence under oath at the coroner's court that what he was saying was untrue.

The panel considered Witness A's statement:

'The registrant was trying to place the blame on me by saying I advised him not to call the GP. This is completely incorrect and is certainly not something I would have advised. I was really shocked when I heard this.'

The panel considered Mr Bankole's handwritten statement dated 9 August 2019, in which he stated the following:

‘I suggested that we had to call the ambulance or his GP (General Practitioner) but she said there was no need for that…’

The panel also noted the evidence Mr Bankole gave in the coroner’s court as outlined in charge 1e.

The panel preferred the account of Witness A. The panel was of the view that Mr Bankole provided a false account of events in order to excuse his lack of action at the time of the incident.

The panel considered that ordinary decent people would find this to be dishonest. Therefore, the panel found Mr Bankole’s actions in charges 1e to be dishonest, in that he had intentionally misrepresented what had occurred on 7 August 2019.

The panel therefore determined that charge 1f is found proved.

Charge 1g)

g. “On 18 February 2020, said in evidence at the coroner’s inquest that you called the GP surgery twice;”

This charge is found proved.

In reaching this decision, the panel took into account the transcript of the coroner’s inquest dated 17 October 2019, which recorded that Mr Bankole said that he called the GP twice.

The panel therefore determined that charge 1g is found proved.

Charge 1h)

h. “ Your actions at charge 1(g) above were dishonest in that you knew that you only called the GP surgery once;”

This charge is found proved.

The panel considered the written statement of Witness C, the transcript of the coroner’s inquest dated 17 October 2019, the log of phone calls shared at the inquest and the letter from the GP Surgery dated 9 June 2023.

The panel noted that there was no log of a second call being made to the GP surgery by Mr Bankole. The panel was of the view that Mr Bankole knew that he only called the surgery on one occasion and therefore determined that Mr Bankole provided a dishonest account of events in order to excuse his lack of action at the time of the incident.

The panel considered that ordinary decent people would find this to be dishonest. Therefore, the panel found Mr Bankole’s actions in charges 1g to be dishonest, in that he had intentionally misrepresented what had occurred on 7 August 2019.

Charge 1i)

i. “On 18 February 2020, said in evidence at the coroner’s inquest that you escalated the urgency of the Resident’s condition to the GP;”

This charge is found proved.

In reaching this decision, the panel took into account that Witness C documented that Mr Bankole had stated that Resident A’s deterioration was not an urgent matter which required a GP to attend the Home for an assessment that day, included in the transcript of the coroner’s inquest on 17 October 2019.

The panel also considered that there is no further evidence to suggest that Mr Bankole escalated Patient A's deterioration as urgent to any other healthcare professional, including Witness A, despite Witness A asking him to do so.

The panel therefore determined that charge 1i is found proved.

Charge 1j)

j. "Your actions at charge 1(i) above were dishonest in that you knew that you did not escalate the urgency with the GP surgery."

This charge is found proved.

In reaching this decision, the panel took into account that the notes of Witness C, the transcript of the coroner's inquest dated 17 October 2019, Witness A's written statement and live evidence.

The panel determined that this evidence is from a variety of sources who documented an account of the incident at the time of the event.

The panel was of the view that Mr Bankole knew that he did not escalate the urgency with the GP Surgery and therefore determined that he provided a dishonest account of events in order to excuse his lack of action at the time of the incident.

The panel considered that ordinary decent people would find this to be dishonest. Therefore, the panel found Mr Bankole's actions in charges 1i to be dishonest, in that he had intentionally misrepresented what had occurred on 7 August 2019.

The panel therefore determined that charge 1j is found proved.

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 Mr Bankole'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, Mr Bankole's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

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.'*

Ms Gaber invited the panel to take the view 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.

Ms Gaber submitted that Mr Bankole's actions breached several parts of the Code and referred the panel to the NMC's published guidance on Impairment.

Ms Gaber 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 profession and in the NMC as a regulatory body. She referred the panel to the cases of '*Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin)'.

Ms Gaber submitted that all four limbs of the *Grant* test are engaged.

Ms Gaber submitted that any act of dishonesty in a clinical setting is enough to warrant impairment. She invited the panel to consider that Mr Bankole's fitness to practice is impaired on the grounds of public protection and is also otherwise in the wider public interest.

In relation to public protection, Ms Gaber submitted that the incidents were serious in nature, relating to dishonesty, a lack of conduct and Mr Bankole's failure to apply duty of candour to his care. Further, that Mr Bankole's failure to escalate and act honestly resulted in direct harm to Resident A, and a risk of unwarranted harm to other residents at the Home. Ms Gaber invited the panel to consider whether Mr Bankole is liable to repeat the conduct, which was found proved, relating to dishonesty. She submitted that Mr Bankole has not provided the NMC with evidence which can demonstrate his remorse, insight, nor strengthened practice. Ms Gaber submitted that therefore, there is a risk of repetition of the charges found proved, inviting the panel to consider that Mr Bankole's fitness to practise is impaired on the ground of public protection.

Ms Gaber submitted a finding of impairment is also otherwise in the wider public interest as a well-informed member of the public would be concerned to learn that Mr Bankole was continuing to work as a registered nurse without any form of restriction in place in light of the seriousness of the charges found proved. She submitted that Mr Bankole's actions breached the Code and have brought the profession into disrepute and therefore, his fitness to practice is also impaired on public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (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 Mr Bankole's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Bankole'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.

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay.

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

15 Always offer help if an emergency arises in your practice setting or anywhere else

To achieve this, you must:

15.2 arrange, wherever possible, for emergency care to be accessed and provided promptly.

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices.

16.4 acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so.

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse.

17.2 share information if you believe someone may be at risk of harm, in line with the laws relating to the disclosure of information.

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 was of the view that Mr Bankole's actions did fall seriously short of the conduct and standards expected of a nurse and therefore all of the

charges found proved, namely charges, 1c, 1e, 1f, 1g, 1h, 1i and 1j, amounted to misconduct.

In reaching its decision, the panel considered Mr Bankole's written statement, the live evidence from Witness A and Witness B, as well as the transcript of the coroner's inquest and the written testimonials from Witness A, Witness B, Witness C and Witness D.

In relation to Mr Bankole's written statement, the panel considered that he had stated that he was concerned about Resident A's health deterioration. However, the panel determined that Mr Bankole's failure to escalate his concerns breached the Code and amounts to serious misconduct, breaching the fundamental tenets of the nursing profession.

Further, the panel determined that the evidence of Mr Bankole's dishonesty at the coroner's court after the incident with Resident A occurred, which resulted in charges 1e, 1g and 1i being proved, can be viewed as serious misconduct and a failure to act with duty of candour.

In all the circumstances, the panel determined that all the charges found proved mount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Bankole's fitness to practise is currently impaired. The panel were aware that the NMC usually defines misconduct as the suitability of a registrant to remain on the register without restriction.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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.'*

The panel next had regard to paragraph 76, where Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

> *'Do our finding 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 and/or is liable in the future to be dishonest.'*

The panel considered that all four limbs were engaged with regards to the past and then considered the issue of the future.

The panel considered the factors set out in the case of *Cohen* and considered whether Mr Bankole's misconduct is such that it can be addressed. The panel took into account all of the documentation before it, including Mr Bankole's written statement, the transcript of the coroner's inquest, the live evidence from Witnesses A and B and the written statements from Witness A, B, C and D. The panel also had regard to the submissions made by Ms Gaber, when determining whether Mr Bankole has addressed his misconduct.

The panel determined that Resident A was caused serious physical harm and other residents were put at unwarranted risk as a result of Mr Bankole's misconduct. It determined that Mr Bankole's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

In relation to insight, the panel considered that Mr Bankole has not demonstrated an understanding of how his actions caused Resident A harm and put other residents at a risk of harm, nor has he demonstrated an understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, the panel determined that Mr Bankole has not apologised, shown insight, nor remorse. The panel also determined Mr Bankole has not demonstrated how he would handle the situation differently in the future.

The panel carefully considered the evidence before it in determining whether or not Mr Bankole has taken steps to strengthen his practice. The panel took into account that Mr Bankole has not engaged with the NMC proceedings since March 2023, has not provided a reflective piece, nor has he provided evidence of additional, relevant training he has undertaken to strengthen his practise. Therefore, the panel is of the view that there is a

serious risk of repetition based on Mr Bankole's lack of engagement, and failure to evidence any acts of remediation. Consequently, the panel decided 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; 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 due to the serious risk of repetition of the charges found proved and the consequential risk of harm to the residents and/or patients in his care. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment was not made in this case and therefore finds Mr Bankole's fitness to practise is also impaired on the ground of the wider public interest.

Having regard to all of the above, the panel was satisfied that Mr Bankole'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 Mr Bankole off the register. The effect of this order is that the NMC register will show that Mr Bankole 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.

Submissions on sanction

Ms Gaber invited the panel to impose a striking-off order, as it found Mr Bankole's fitness to practise currently impaired. Ms Gaber referred the panel to the NMC Guidance SAN-1 in respect of the factors to consider before deciding on sanction.

Ms Gaber submitted that the charges found proved are very serious in nature, relating to dishonesty.

Ms Gaber outlined mitigating and aggravating features:

Mitigating

- It was an isolated clinical incident;
- There is evidence to suggest that Mr Bankole did complete Resident A's observations when asked, although the observations were not timed;
- Mr Bankole has not engaged with the proceedings so has been unable to give his own oral evidence;
- Mr Bankole is not currently subject to an Interim Order.

Aggravating

- Mr Bankole deflected the blame during and after the incident;
- Has not demonstrated any insight into his failings;
- Mr Bankole's dishonesty breached the duty of candour;
- Mr Bankole's actions fell short of the fundamental tenets of the nursing profession.

Ms Gaber submitted that it is the NMC's position that a substantive striking off order is necessary on the grounds of public protection and in the wider public interest.

In relation to public protection, Ms Gaber submitted that the charges found proved are serious in nature, relating to dishonesty and amounted to direct harm caused to Resident

A. Ms Gaber submitted that Mr Bankole has not engaged with the NMC proceedings and has not provided evidence to demonstrate his insight, remorse or strengthened practice.

Ms Gaber submitted that the risk of repetition and risk of harm to the public in light of Mr Bankole's dishonesty and lack of remediation cannot be addressed with a caution order, conditions of practice order, nor a suspension order. Further, Ms Gaber informed the panel that the NMC has not received information on Mr Bankole's current employment status and that he was last noted to have been an agency nurse but not practising.

Ms Gaber submitted that the imposition of a substantive striking off order is also otherwise in the wider public interest to maintain public confidence in the profession. She submitted as a well-informed member of the public would be concerned to learn that Mr Bankole was continuing to work as a registered nurse on the NMC register in light of the seriousness of the charges found proved.

Ms Gaber submitted that in all the circumstances, it is the NMC's position that a substantive striking off order is the only sanction which is appropriate and capable of protecting the public and maintaining public confidence in this case.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mr Bankole'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 took into account the following aggravating features:

- Mr Bankole deflected the blame for the incident;
- Has not demonstrated insight into his failings;
- Lack of duty of candour;
- His lack of conduct caused Resident A harm and put residents at risk of harm;
- Mr Bankole has not apologised or shown evidence of remorse or strengthened practice;
- Mr Bankole was dishonest under oath at the coroner's court.

The panel also took into account the following mitigating features:

- It was a one-off clinical incident;
- There are no previous regulatory findings.

The panel first considered whether to take no action but concluded that this 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 take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Bankole'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 Mr Bankole'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 Mr Bankole's registration would be a sufficient and appropriate response. The misconduct identified in this case involved clinical concerns and dishonesty and lack of candour; whist the clinical

concerns have the potential to be addressed through conditions of practice, both the seriousness of the case and the finding of dishonesty pose significant issues for conditions of practice, bearing in mind the registrant has not provided insight, shown any remediation or demonstrated how these concerns can or have been addressed since they first occurred in 2018.

The panel also considered that both dishonesty and clinical errors are present. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Furthermore, the panel concluded that the placing of conditions on Mr Bankole's registration would not adequately address the seriousness of this case and would not protect the public or the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*

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 Mr Bankole's actions is fundamentally incompatible with Mr Bankole remaining on the register. The panel determined that a member of the public will have a serious concern about Mr Bankole continuing as a registered nurse due to the concerns raised against him and the lack of insight into his failings.

The panel have no evidence to suggest that Mr Bankole has taken steps to strengthen his practice. The panel noted that Mr Bankole has had ample opportunities since the first referral to make improvements or developments within his career and evidence this to the NMC but has failed to do so.

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?'*

It is important to note that a registered nurse should work with honesty, integrity and trustworthiness. Further, Mr Bankole had multiple opportunities to provide an honest account, both at the time of the incident and up until this substantive hearing, either directly or through counsel. The panel's view is that there was evidence of dishonesty in trying to cover up his part in the incident with Resident A.

Mr Bankole's actions were a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that its findings demonstrate that Mr Bankole's actions were serious and to allow him 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. The panel had regard to the effect of Mr Bankole's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves. The panel concluded that nothing short of this would be

sufficient in this case on the grounds of both public protection and public interest and in upholding proper standards of professional conduct.

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. Again, the panel noted the lack of any substantive engagement by Mr Bankole with these proceedings which involved serious charges.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, 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 Mr Bankole'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 Ms Gaber. She submitted that it is necessary to impose an interim suspension order to cover the appeal period on the grounds of public protection and 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 facts 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 striking off order. The panel therefore imposed an interim suspension order for a period of 18 months in order to cover the appeal period.

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

That concludes this determination.