

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

**Substantive Hearing
Monday, 06 November 2023 –
Monday, 13 November 2023**

Virtual Hearing

Name of Registrant: Adekunle Bolawaye Ojedokun

NMC PIN 07G0364E

Part(s) of the register: Registered Nursing – RNMH, Mental Health Nurse (September 2007)

Relevant Location: Kent

Type of case: Misconduct/ Conviction

Panel members: Shaun Donellan (Chair, lay member)
Manjit Darby (Registrant member)
Susan Ellerby (Lay member)

Legal Assessor: Patricia Crossin

Hearings Coordinator: Muminah Hussain

Nursing and Midwifery Council: Represented by Sally Denholm

Mr Ojedokun: Not present and unrepresented

Facts proved: Charges 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15.1, 15.2, 15.3, 15.4, 15.7, 15.11, 15.13, 15.14, 15.16, 15.17, 15.18 & 15.19
Charge 1 (conviction)

Facts not proved: Charges 5, 6, 15.5, 15.6, 15.8, 15.9, 15.10, 15.12, 15.15 & 16

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order:

Interim 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 Ojedokun was not in attendance and that the Notice of Hearing letter had been sent to Mr Ojedokun's registered email address by secure email on 2 October 2023, as confirmed by the Nursing and Midwifery Council (NMC) case officer's statement dated 2 October 2023.

Ms Denholm, on behalf of the 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 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 Ojedokun'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 Ojedokun has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Private

Before deciding to proceed in absence, Ms Denholm informed the panel that they may have to go into private to consider the application to proceed in absence, as it makes reference to Mr Ojedokun's personal matters.

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

The panel, in accordance with Rule 19, determined to go into private to consider proceeding in absence.

Decision and reasons on proceeding in the absence of Mr Ojedokun

The panel next considered whether it should proceed in the absence of Mr Ojedokun. It had regard to Rule 21 and heard the submissions of Ms Denholm who invited the panel to continue in the absence of Mr Ojedokun. Ms Denholm submitted that Mr Ojedokun has acknowledged receipt of the final hearing bundles and has confirmed that he will not be able to attend the hearing. She submitted that there has been no request for an adjournment.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Ojedokun. In reaching this decision, the panel has considered the submissions of Ms Denholm and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5) and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and 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 Ojedokun;
- Mr Ojedokun has informed the NMC that he has received the Notice of Hearing and confirmed he is unable to attend;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses have been warned to give live evidence;
- Not proceeding may inconvenience the witnesses and their employer(s);
- 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 Ojedokun in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC and will not 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 Ojedokun'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 Ojedokun. The panel will draw no adverse inference from Mr Ojedokun's absence in its findings of fact.

Details of charge

That you, a registered nurse:

1. Did not disclose to Westmeria Agency that you were subject to a police investigation in a timely manner.
2. Your actions at charge 1 were dishonest in that you sought to conceal from Westmeria Agency the fact that you were subject to a police investigation.
3. Did not disclose to Westmeria Agency that you had been referred to the NMC in a timely manner.
4. Your actions at charge 3 were dishonest in that you sought to conceal the fact that you were under investigation by the NMC.

5. On 2 August 2019, allowed a panel of the investigating committee to be misled in that they were told that your employer was aware of your NMC referral when they were not.
6. Your actions at charge 5 were dishonest in that you sought to mislead a panel of the investigating committee that your employer was aware of the referral when you knew they were not.
7. Did not disclose to Westmeria Agency that you had been made subject to an interim order imposed on your registration on 2 August 2019 by the NMC in a timely manner
8. Your actions at charge 7 were dishonest in that you sought to conceal the fact that you had been made subject of an interim order.
9. On 6 September 2018, claimed that you had completed a shift for Lime Social Care Agency at 9.20am whilst also claiming that you had started a shift at 9am for Westmeria Agency.
10. Your actions at charge 9 were dishonest in that you knew you had left your shift at Lime Social Care Agency prior to 9.20am, or in the alternative had started your shift at Westmeria Agency later than 9.00am.
11. On 1 November 2018 claimed that you had started a shift with Westmeria Agency at 9am whilst also claiming to have completed a shift with Lime Social Care Agency at 9.45 am.
12. Your actions at charge 11 were dishonest in that you knew you had left your shift at Lime Social Care Agency prior to 9.45am, or in the alternative had started your shift at Westmeria Agency later than 9.00am.

13. On 27 December 2018 claimed that you had started a shift at Westmeria Agency at 9.00am whilst also claiming that you had finished a shift with Lime Social Care Agency at 9.00am

14. Your actions at charge 13 were dishonest in that you knew you had left your shift at Lime Social Care Agency prior to 9.00am, or in the alternative had started your shift at Westmeria Agency later than 9.00am.

15. On one or more of the following occasions between 5 September 2018 and 4 February 2019 worked consecutive shifts:

15.1 5 September 2018 to 7 September 2018;

15.2 24 September 2018 to 26 September 2018;

15.3 3 October 2018 to 5 October 2018;

15.4 8 October 2018 to 10 October 2018;

15.5 14 October 2018 to 15 October 2018;

15.6 22 October 2018 to 24 October 2018;

15.7 31 October 2018 to 2 November 2018;

15.8 5 November 2018 to 7 November 2018;

15.9 11 November 2018 to 12 November 2018;

15.10 28 November 2018 to 30 November 2018;

- 15.11 12 December 2018 to 14 December 2018;
- 15.12 17 December 2018 to 19 December 2018;
- 15.13 23 December 2018 to 24 December 2018;
- 15.14 26 December 2018 to 28 December 2018;
- 15.15 14 January 2019 to 16 January 2019;
- 15.16 20 January 2019 to 21 January 2019;
- 15.17 23 January 2019 to 25 January 2019;
- 15.18 28 January 2019 to 30 January 2019;
- 15.19 3 February 2019 to 4 February 2019.

16. Your actions at charge 15 created an unsafe environment in that you failed to take sufficient rest periods between shifts on one or more of the dates listed.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Denholm, on behalf of the NMC, to amend the wording of charge 15.15.

The proposed amendment was to change the year on the date to accurately reflect the timings of the charge. It was submitted by Ms Denholm that the proposed amendment would provide clarity and more accurately reflect the evidence.

“That you, a registered nurse:

15. On one or more of the following occasions between 5 September 2018 and 4 February 2019 worked consecutive shifts:

15.15 14 January 2018~~9~~ to 16 January 2018~~9~~”

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Ojedokun and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Background

In April 2018, Westmeria Agency (Westmeria) employed Mr Ojedokun as a Band 6 Community Psychiatric Nurse (CPN). His contracted hours of work were Monday to Friday from 9am to 5pm.

Mr Ojedokun also accepted a placement at a hospital through another agency - Lime Social Care Agency (Lime), working shifts between September 2018 and March 2019.

Mr Ojedokun was referred to the NMC in March 2019 following an incident that occurred on 17 March 2019. The NMC’s investigating committee held an interim order hearing on 2

August 2019. Mr Ojedokun attended that hearing and was represented. At the conclusion of that hearing, he was made subject to an interim conditions of practice order.

It is alleged that when Westmeria recruited Mr Ojedokun in 2018, he signed a “self-declaration” at the recruitment meeting on 5 April 2018 and at this meeting, they informed Mr Ojedokun that he, “*must keep Westmeria informed immediately if he was under investigation*” and it was checked that he understood this.

On 1 August 2019, Mr Ojedokun telephoned Westmeria and spoke to a Recruitment Manager. At this stage it is alleged that Mr Ojedokun advised Westmeria that, in March 2019, while working through another agency, he was assaulted by a patient and would not be attending his Westmeria placement on 2 August 2019 as he was attending in front of an NMC panel the following day.

It is alleged that Westmeria had no previous knowledge of the incident or NMC referral concerning Mr Ojedokun, which was in breach of their policies and procedures. During communications and investigation by Westmeria, it was alleged Mr Ojedokun told the agency that the NMC were looking into the service where he had been assaulted, to make sure that they had done all they could and whether they needed to make any changes for the safety of staff. Westmeria agency raised concerns that he had not been open and transparent about either the original incident in March 2019, his referral to the Police, his referral to the NMC and the nature of the concerns he was facing.

It is alleged that Mr Ojedokun attended his placement through Westmeria on 2 August 2019, following the imposition of the interim conditions of practice order but did not inform Westmeria of his interim conditions of practice order until 5 August 2019.

It is further alleged that Westmeria having become aware that he had been engaged by another agency and was undertaking work on top of his full time hours, contacted Lime to establish the hours that Mr Ojedokun had been working. Having reviewed time sheets for both agencies, it is alleged that Mr Ojedokun worked back-to-back shifts through another agency and falsified time sheets.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Denholm under Rule 31 to allow the hearsay evidence, namely a statement made in relation to a telephone call produced as part of a local investigation written by Manager 1, a Recruitment Manager at Westmeria. Despite numerous attempts, the NMC had not been able to obtain a signed, written statement from Manager 1. Ms Denholm submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the Westmeria internal investigation.

Ms Denholm advanced the argument that there was no lack of fairness to Mr Ojedokun in allowing Manager 1's hearsay evidence, in that it was not the sole or decisive evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Manager 1 serious consideration. The panel noted that Manager 1's statement had been prepared for Westmeria's internal investigation, and signed by Manager 1.

The panel considered whether Mr Ojedokun would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Manager 1 to that of allowing documentary hearsay evidence.

The panel noted that Mr Ojedokun had been provided with a copy of Manager 1's statement in the bundle of documents and had raised no objections to the inclusion of this document. The panel noted there was no suggestion that Manager 1 had reason to fabricate this evidence. The panel took into account the steps taken by the NMC to secure Manager 1 as a witness. The panel considered that Manager 1's internal investigation

statement did not comprise any sole or decisive evidence in support of charge 1, 2, 3, 4, 7 and 8.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Manager 1, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

The panel heard a further application by Ms Denholm under Rule 31 to allow the written statement of Witness 3, an NMC officer into evidence. Witness 3 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, they were unable to attend today and no longer work for the NMC.

Despite knowledge of the nature of the evidence to be given by Witness 3, Mr Ojedokun made the decision not to attend this hearing. On this basis Ms Denholm advanced the argument that there was no lack of fairness to Mr Ojedokun in allowing Witness 3's written statement into evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Witness 3 serious consideration. The panel noted that Witness 3's statement had been prepared in anticipation of being used in these proceedings. This statement exhibited formal NMC documentation and this witness did not provide any direct evidence with regards to the contents of the NMC documentation.

The panel considered whether Mr Ojedokun would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 3 to that of a written statement. The panel noted that as Mr Ojedokun had been provided with a copy of Witness 3's statement and it noted that Mr Ojedokun had not raised any objection to the

inclusion of this witness statement in the hearing. The panel accepted there was no reason to suggest the content of this statement was fabricated. The panel noted this witness was no longer employed by the NMC and their evidence comprised of the production of NMC documentation. In these circumstances, the panel therefore considered that this evidence was not the sole and decisive evidence in support of charge 5 and 6. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Witness 3, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application to amend the charge

Before determining facts, the panel was of the view that amendments to the below charges were required in order to accurately reflect the time frames, and were minor in nature.

“That you, a registered nurse:

9. On ~~56~~ September 2018, claimed that you had completed a shift for Lime Social Care Agency at 9.20am whilst also claiming that you had started a shift at 9am for Westmeria Agency.

11. On ~~31 October 2018~~ **1 November 2018** claimed that you had started a shift with Westmeria Agency at 9am whilst also claiming to have completed a shift with Lime Social Care Agency at 9.45 am.

15. On one or more of the following occasions between 5 September 2018 and 4 February 2019 worked consecutive shifts:

- Witness 2: Head of HR and Compliance at Westmeria (at the time of the incident).

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel considered the witness and documentary evidence provided by both the NMC and Mr Ojedokun, including the hearsay evidence of Manager 1 and the written statement of Witness 3.

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

Charge 1 and 2

That you, a registered nurse:

- 1. Did not disclose to Westmeria Agency that you were subject to a police investigation in a timely manner.*
- 2. Your actions at charge 1 were dishonest in that you sought to conceal from Westmeria Agency the fact that you were subject to a police investigation.*

These charges are found proved.

In reaching this decision, the panel took into account the interim order review hearing dated 2 August 2019, Witness 1's oral evidence and, the phone call record between Mr Ojedokun, Witness 1 and Manager 1 on 5 August 2019, and 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code).

The interim order review hearing on 2 August 2019 reflects the date that the NMC knew about the charge:

“On 27 June 2019, the NMC were informed by Hampshire Police that Mr Ojedokun had been charged with an offence ...”

The panel determined that Mr Ojedokun must have known about the police investigation prior to 27 June 2019, yet it was not until 5 August 2019 that he informed Westmeria. The investigation meeting minutes noted Witness 1 as saying:

“First we were aware of the nature of the incident was on Monday 5th August 2019 accurately about the referral to the NMC and with regards to the Police charges.”

The panel had regard to the oral evidence given by Witness 1, in which they clearly informed the panel that they undertook the face to face meeting with Mr Ojedokun when he began working for Westmeria. The panel found the evidence from Witness 1 to be clear and very definite as regards to their recall in relation to Westmeria’s policies and practices. Witness 1 recalled telling him that if there were any DBS changes then he needed to let them know.

The panel reminded itself of the provisions in the NMC Code in relation to obligations on registrants to inform their employer as regards any criminal charge.

The panel considered that as Mr Ojedokun has been a qualified nurse for 12 years, he should be aware of his obligations and was dishonest in not informing his employer of the Police investigation. The evidence clearly shows that over a month had passed before Mr Ojedokun informed Westmeria about his Police investigation, and did not disclose it in a timely manner. The panel decided that ordinary decent people would consider Mr Ojedokun’s failure to inform Westmeria as being dishonest. Mr Ojedokun told Westmeria that he did not know he had to inform them. However, the panel considered he was aware of the impact this information would have on his employment and deliberately failed to

inform them in a timely manner. In all the circumstances, the panel finds his actions to be dishonest. Therefore the panel finds these charges proved.

Charge 3 and 4

That you, a registered nurse:

- 3. Did not disclose to Westmeria Agency that you had been referred to the NMC in a timely manner.*
- 4. Your actions at charge 3 were dishonest in that you sought to conceal the fact that you were under investigation by the NMC.*

These charges are found proved.

In reaching this decision, the panel took into account Witness 1's oral evidence, the email from Mr Ojedokun to the NMC dated 6 August 2019 and the phone call record between Mr Ojedokun, Witness 1 and Manager 1 on 5 August 2019, and the minutes of the investigation meeting dated 6 August 2019.

The email from Mr Ojedokun stated:

“With reference to condition 4 of the New interim Order Hearing of 2nd August 2019, I will like to inform you that I'm currently under investigation by my current agency Westmeria recruitment agency. This is because I failed to inform them of my NMC fitness to practise referral in March 2019. I called them on the 1st of August 2019 to inform them of the NMC hearing scheduled on the 2nd August 2019, However my telephone call was deemed too late and they stated that I did not give enough information.”

The minutes of the investigation meeting dated 6 August 2019 noted:

*“[Witness 1]: **Policies and procedures** – Self declaration form, discussed at meeting of registration gone through is signed and agreeing to do so – as well as the handbook and LPP form to declare this is read.*

You knew exactly that you needed to inform us, and you chose not to. I understand that you are saying you mismanaged this but when we met at your registration, I cannot understand that this has been failed to report the NMC Referral and Police was Monday ...”

[Mr Ojedokun]: I understand your position and am at fault. Yes, I knew, and I can only say I’m sorry and do not contest

[Witness 1]: I need to understand why; we feel this has been purposely kept this from us

[Mr Ojedokun]: The only thing I thought to do was inform my line manager ... my intention was not to hide anything from you at all.”

When questioned further, Mr Ojedokun said:

“Yes, I mentioned it to him [his line manager], but I didn’t give him full details it is my responsibility and I am sorry as there was no reason.”

Witness 1, in her oral evidence, made it clear that if Mr Ojedokun was subject to any concerns of investigation, he should let Westmeria know. The exhibit bundle and witness statement bundle both reflect this as it is mentioned throughout.

The panel determined that Mr Ojedokun’s actions were dishonest in that he purposely withheld information from Westmeria. The panel decided that ordinary decent people would consider Mr Ojedokun’s failure to inform Westmeria as being dishonest. Mr Ojedokun told Westmeria that he did not know he had to inform them, however during the

investigation he did accept that he had failed to report as required. The panel considered that Mr Ojedokun was aware of the impact this information would have on his employment and deliberately failed to inform them. In all the circumstances, the panel finds his actions to be dishonest. Therefore the panel finds these charges proved.

Charge 5 and 6

That you, a registered nurse:

5. *On 2 August 2019, allowed a panel of the investigating committee to be misled in that they were told that your employer was aware of your NMC referral when they were not.*
6. *Your actions at charge 5 were dishonest in that you sought to mislead a panel of the investigating committee that your employer was aware of the referral when you knew they were not.*

These charges are found NOT proved.

In reaching its decision, the panel took into account the written record from Manager 1, in relation to conversation with Mr Ojedokun. In this note, Manager 1 states that Mr Ojedokun at 14:45 on 1 August 2019 had telephoned Westmeria asking to speak with Witness 1, they were unavailable and so he spoke to Manager 1. The conversation note stated:

“he is going to attend in front of an NMC panel tomorrow ... he has been told that tomorrow is nothing for him to worry about but that he should let his Agency know.”

In these circumstances, the panel determined that the information given during the NMC hearing on 2 August 2019, that his employer was aware of an NMC referral, was not incorrect.

On the balance of probabilities, the panel found neither of these charges proved.

Charge 7 and 8

That you, a registered nurse:

- 7. Did not disclose to Westmeria Agency that you had been made subject to an interim order imposed on your registration on 2 August 2019 by the NMC in a timely manner*
- 8. Your actions at charge 7 were dishonest in that you sought to conceal the fact that you had been made subject of an interim order.*

These charges are found proved.

In reaching this decision, the panel took into account Witness 1's written statement and oral evidence, as well as the phone call record between Mr Ojedokun, Witness 1 and Manager 1 on 5 August 2019.

The panel also had regard to Witness 1's oral evidence, in which she said that she had to repeatedly question Mr Ojedokun to disclose that he was subject to an NMC interim order. Witness 1 in the telephone record documented as follows:

"I spoke to [Mr Ojedokun] with regards to the NMC hearing on Friday and questioned him with regards to why he has to attend a hearing. I asked him if his practice has been called into question of which he tried to avoid answering and said, "what do you mean called into question?"

I stated trying to be clearer, was this hearing anything to do with your practice during the incident that occurred, again he avoided the question and said he has

spoken with his manager and the Line Manager 1 needs to meet with him and write up notes on this meeting once a month and then the NMC will review it.

I then asked him outright, so you have conditions to your practice and have you been referred to the NMC, he then answered yes”

The panel noted that Mr Ojedokun had attended his work placement after the hearing, on the same day (2 August 2019) and had a conversation with his line manager about the interim conditions of practice, however, he did not inform Westmeria at this time. On 5 August 2019, the panel noted he was not forthcoming to Witness 1 about the nature of the interim order he was placed under. The panel decided that ordinary decent people would consider Mr Ojedokun’s failed to fully inform Westmeria in a timely manner and that this was dishonest. The panel considered that Mr Ojedokun was aware of the impact this information would have on his employment and deliberately failed to inform them. In all the circumstances, the panel finds his actions to be dishonest. Therefore the panel finds these charges proved.

Charges 9, 10, 11, 12, 13, and 14

That you, a registered nurse:

9. On 6 September 2018, claimed that you had completed a shift for Lime Social Care Agency at 9.20am whilst also claiming that you had started a shift at 9am for Westmeria Agency.

10. Your actions at charge 9 were dishonest in that you knew you had left your shift at Lime Social Care Agency prior to 9.20am, or in the alternative had started your shift at Westmeria Agency later than 9.00am.

11. *On 31 October 2018 to 1 November 2018 claimed that you had started a shift with Westmeria Agency at 9am whilst also claiming to have completed a shift with Lime Social Care Agency at 9.45 am.*

12. *Your actions at charge 11 were dishonest in that you knew you had left your shift at Lime Social Care Agency prior to 9.45am, or in the alternative had started your shift at Westmeria Agency later than 9.00am.*

13. *On 27 December 2018 claimed that you had started a shift at Westmeria Agency at 9.00am whilst also claiming that you had finished a shift with Lime Social Care Agency at 9.00am*

14. *Your actions at charge 13 were dishonest in that you knew you had left your shift at Lime Social Care Agency prior to 9.00am, or in the alternative had started your shift at Westmeria Agency later than 9.00am.*

These charges are found proved.

In reaching its decision, the panel took into account the timesheets from both Westmeria and Lime.

The timesheets reflected that Mr Ojedokun had attended work for both agencies on these days and that he had submitted claims for overlapping hours of work.

The panel determined that he had not been honest in completing his time sheets as the end and start times of shifts would mean he would have been required to be at both places of work at the same time. There was sufficient evidence to confirm that Mr Ojedokun had attended shifts for both Westmeria and Lime on these days and claimed for overlapping time periods. The panel noted that the distance between the two work sites was estimated by Witness 2 as being at least an hour by car.

The panel determined that Mr Ojedokun's actions were deliberate and that an ordinary decent person would consider them to be dishonest. The panel had no evidence from Mr Ojedokun as regards any explanation for his actions. The panel therefore, found these charges proved.

Charges 15.1, 15.2, 15.3, 15.4, 15.7, 15.11, 15.13, 15.14, 15.16, 15.17, 15.18 and 15.19

15. On one or more of the following occasions between 5 September 2018 and 4 February 2019 worked consecutive shifts:

- 15.1 5 September 2018 to 7 September 2018;*
- 15.2 24 September 2018 to 26 September 2018;*
- 15.3 3 October 2018 to 5 October 2018;*
- 15.4 8 October 2018 to 10 October 2018;*
- 15.7 31 October 2018 to 2 November 2018;*
- 15.11 12 December 2018 to 14 December 2018;*
- 15.13 23 December 2018 to 24 December 2018;*
- 15.14 26 December 2018 to 28 December 2018;*
- 15.16 20 January 2019 to 21 January 2019;*
- 15.17 23 January 2019 to 25 January 2019;*
- 15.18 28 January 2019 to 30 January 2019;*

15.19

3 February 2019 to 4 February 2019.

The panel find these charges proved.

In reaching its decision in relation to each of these occasions, the panel took into account the timesheets completed and signed by Mr Ojedokun, from both Westmeria and Lime and noted the summary shift analysis document produced by Witness 1.

The panel also took account of Mr Ojedokun's email to the NMC dated 6 August 2019 in which he stated:

"The agency is also investigating my back to back work pattern while I engaged on their contract this involve working night shift after my 9-5 shift, contrary to work rule regulation. I very much regret all these actions and I have had an opportunity to reflect on my failings and I have continued to develop insight into what went wrong and what I will do differently in future."

The panel determined that there was clear documentary evidence that Mr Ojedokun had worked consecutive shifts as recorded on the time shifts specified. The panel therefore finds these charges proved

Charge 15.5, 15.6, 15.8, 15.9, 15.10, 15.12 and 15.15

That you, a registered nurse:

15. On one or more of the following occasions between 5 September 2018 and 4 February 2019 worked consecutive shifts:

15.5 14 October 2018 to 15 October 2018;

15.6 22 October 2018 to 24 October 2018;

- 15.8 *5 November 2018 to 7 November 2018;*
- 15.9 *11 November 2018 to 12 November 2018;*
- 15.10 *28 November 2018 to 30 November 2018;*
- 15.12 *17 December 2018 to 19 December 2018;*
- 15.15 *14 January 2019 to 16 January 2019;*

These charges are found NOT proved.

In reaching its decision, the panel had regard to the timesheets from both Westmeria and Lime.

The panel noted that Witness 2 had produced the summary shift analysis document using the agency time sheets produced in evidence today. Although consecutive shifts on the dates above were included in the summary shift analysis, the signed time sheets for these dates were not produced in evidence. Therefore, there is insufficient evidence, on the balance of probabilities, to confirm these consecutive shifts were worked on the dates in the charges. The panel therefore, found these charges not proved.

Charge 16

That you, a registered nurse:

- 16. Your actions at charge 15 created an unsafe environment in that you failed to take sufficient rest periods between shifts on one or more of the dates listed.*

This charge is found NOT proved.

The panel noted that there was no further evidence before it in relation to this charge. The panel noted that for the occasions as found proved at charge 15, there was no evidence of any unsafe practice by Mr Ojedokun. The panel was unaware of Mr Ojedokun's pattern of working whilst on shift. It was unclear what rest periods had been taken and what Mr Ojedokun had been formally told about his ability to work outside his full time post as a CPN, or the shift pattern that would be deemed inappropriate. The panel considered that it was unsafe for any nurse to not take sufficient rest periods between shifts, but the NMC had not satisfied its burden of proof to demonstrate that an unsafe environment had been created through Mr Ojedokun's actions.

The panel therefore, find this charge not proved.

Conviction

That you a registered nurse

1. On 22 February 2021 at Winchester Crown Court were convicted of the offence of ill-treating a patient.

And in light of the above your fitness to practice is impaired by reason of your conviction

The charge concerns Mr Ojedokun's conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

Background

Mr Ojedokun received a criminal conviction for the charge above on 22 February 2021 and he was sentenced on 18 March 2021. He received a 12 month community order sentence, was ordered to complete 60 hours of unpaid work, and pay a victim surcharge of £85.

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, in relation to the charges found proved aside from the conviction, amount to misconduct and if so, whether Mr Ojedokun'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 Ojedokun'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.*'

Ms Denholm 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 in making its decision.

Ms Denholm referred the panel to *Roylance v General Medical Council* [1999] UKPC 16 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). She identified the specific, relevant standards where Mr Ojedokun's actions amounted to misconduct.

Ms Denholm submitted that Mr Ojedokun's failings are clear examples of misconduct, and fall short of what is deemed proper conduct of a professional, and brings the profession into disrepute. She submitted that Mr Ojedokun knowingly concealed information from Westmeria so he could continue to work without any cause for concern. Ms Denholm submitted that his conduct was aggravated further by failing to disclose that he was subject to an interim order.

Ms Denholm submitted that the panel have found Mr Ojedokun's actions to be dishonest in that he purposely withheld information from Westmeria. She further submitted that the panel have found Mr Ojedokun claiming for overlapping periods between two agencies were deliberate and dishonest.

Submissions on impairment

Ms Denholm 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin).

Ms Denholm submitted that Mr Ojedokun is impaired by reason of his misconduct and conviction.

Ms Denholm submitted that Mr Ojedokun's cause for conviction was not premeditated, but that the patient was clearly placed in a position of harm.

Ms Denholm submitted that in relation to the reputation of the profession, the public should feel assured that their needs will be met, and are reliant on the regulator for upholding certain levels of standards. She submitted that the provisions of the NMC Code constitutes fundamental tenets of the profession and Mr Ojedokun has breached those.

Ms Denholm noted that the panel has found that Mr Ojedokun's conduct throughout was dishonest.

Ms Denholm submitted that there is no level of insight at this time. She informed the panel that there is an email from Mr Ojedokun dated 6 August 2019 in which he says he very much regrets his actions at Westmeria, has had an opportunity to reflect on his failings and has continued to develop insight into what went wrong and what he would do differently in the future. Ms Denholm submitted that this does not address the many issues that have arisen in this case, and does not show a level of insight that would satisfy a panel there is no risk of repetition.

Ms Denholm submitted that Mr Ojedokun's misconduct and conviction are serious, and that a finding of impairment is required in order to protect the public, and to uphold proper professional standards.

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 (aside from the conviction) amount to misconduct, the panel had regard to the terms of the Code.

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

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.

20.1 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.

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction).

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body.

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 each of the charges found proved (barring the charges found proved in charge 15), amounted to a level of misconduct. The panel found Mr Ojedokun's behaviour to be very serious and unacceptable for a registrant nurse.

In relation to the proven elements of charge 15, the panel deliberated for some time as to whether or not they constituted misconduct. Whilst a registrant working consecutive shifts on multiple occasions seemed a serious departure from the working norm, the panel had no evidence of what duties the shifts were comprised of, for example were they all within a

clinical setting or were some or all standby work and what rest periods had been taken. Whilst the panel felt that the proven charges within charge 15 appeared to be inappropriate working patterns, they were unable to find that on the balance of probabilities they passed the threshold of misconduct.

However, the panel found that Mr Ojedokun's actions in the remaining charges 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 and conviction, Mr Ojedokun'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 found that (a) to (d) in the above were engaged in this case.

The panel finds that patients may have been put at risk as a result of Mr Ojedokun's misconduct as his employer was not aware of the police and NMC investigations, and falsification of time sheets may have given an inaccurate assessment of staffing levels. Mr Ojedokun'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.

Regarding insight, the panel noted that Mr Ojedokun made some admissions in his email as to what he did was wrong at Westmeria, and that he has developing insight and will do things differently next time. The panel noted that there have been multiple events of dishonesty with no evidence of clear remediation. However, the panel determined that dishonesty is difficult to remediate, given that Mr Ojedokun has not shown adequate insight on the charges relating to his misconduct and in particular to his dishonest behaviour.

As regards, Mr Ojedokun's conviction, the panel noted the comments of the presiding judge in his Sentencing Remarks as follows:

"It seems that you snapped. You grabbed him by the neck area. Bundled him along the corridors into the quiet room. It was a very short incident of no more than about 15 seconds. It was in no way premeditated, but I do take the view that you did cause some minor injury to his neck, that I saw on the photographs..."

... was a patient with complex psychiatric needs, although he is physically well. You had worked well with him, and indeed you were the person best able to deal with him on the unit, and his tendencies, which included a tendency to violence. I have no doubt in your account, when you said that he apologised to you after the event..."

... Most importantly, your records over 30 years of work, and as a mental health nurse, is exemplary. I refer, in particular, to the character reference from the psychiatrist, [Psychiatrist 1], who worked with you in Surrey, described you as safe, reliable, trustworthy and caring, and someone that always strived to do his best for the patients. She said you could always be relied upon to go the extra mile..."

The panel noted Mr Ojedokun's reflection in relation to the incident regarding the assault of the patient. This reflection sought to provide an explanation about what happened and his learning shortly after the event. The panel carefully considered the evidence before it in determining whether or not Mr Ojedokun has taken steps to strengthen his practice. The

panel took into account that since the event leading to Mr Ojedokun's conviction, he had worked for almost five months without restriction where no concerns were raised about his practice, before the interim order. The panel noted that in regard to the event leading to his conviction, Mr Ojedokun had started to take steps to remediate the situation as shown through training certificates but there has not been any reflection post-conviction and the panel has not been provided with further information about how he has applied learning into practice. Further Mr Ojedokun has not provided any insight or reflection on how his conviction impacts on patients, colleagues or the reputation of the profession.

The panel is of the view that there remains a risk of repetition given the protracted nature of Mr Ojedokun's dishonesty, the limited acknowledgement of his failings and his lack of insight into the serious criminal conviction. The panel therefore 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.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Ojedokun's fitness to practise impaired on the grounds of public interest.

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

Submissions on sanction

Ms Denholm submitted that a striking-off order is appropriate. She submitted that the following are aggravating factors:

- Conduct which caused a patient harm
- Repeated dishonesty

Ms Denholm submitted that mitigating factors could include:

- Some degree of admissions
- Attempts to remediate the situation as shown through training certificates

Ms Denholm submitted that a caution order would not offer sufficient safeguarding to the public, nor would it satisfy the public interest. She submitted that any conditions imposed should be relevant, proportionate, workable and measurable, but due to the dishonesty in this case, this would not be appropriate. Ms Denholm submitted that it would be difficult to formulate conditions that would be relevant.

Ms Denholm further submitted that a suspension order is not appropriate and does not sufficiently mark the seriousness of Mr Ojedokun's conduct and behaviour. She submitted that the panel has found Mr Ojedokun's behaviour to be very serious and unacceptable for a registrant nurse. Mr Ojedokun's conduct had the potential to put patients at risk of harm,

as his employer was not aware of the police and NMC investigations, and a patient was caused harm resulting in his conviction. Ms Denholm submitted that there is repeated dishonesty in this case. On more than one occasion Mr Ojedokun has falsified time sheets. She submitted that the panel has found Mr Ojedokun to have breached the fundamental tenets of the nursing profession and his conduct has brought the profession and its reputation into disrepute.

Ms Denholm submitted that only removal from the register would mark the conduct appropriately. The conduct is so serious that it cannot be remedied as it raises concerns about Mr Ojedokun's attitude and professionalism. She submitted that his conduct is incompatible with remaining on the register, and in the circumstances, a striking off order would be the proportionate sanction in this case. A striking off order would satisfy the need to maintain and uphold standards in the profession by marking that the conduct found proved is not acceptable.

Decision and reasons on sanction

Having found Mr Ojedokun'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:

- A breach of trust by Mr Ojedokun as a registered nurse
- Mr Ojedokun's lack of insight into his failings
- The persistent repeated dishonesty and pattern of misconduct over a substantial period of time
- Conduct which put patients at a risk of harm

- Mr Ojedokun's criminal behaviour caused an ill-treatment of a patient causing actual harm

The panel also took into account the following mitigating features:

- Years of unblemished clinical practice prior to the event leading to the criminal conviction
- Some degree of admissions
- Attempts to remediate the situation as shown through training certificates

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 Ojedokun'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 Ojedokun'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 Ojedokun's registration would be a sufficient and appropriate response. 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. The misconduct identified in this case is attitudinal in nature, and was not something that can be addressed through retraining. In addition, the panel's findings of repeated dishonesty could not be reflected in appropriate conditions of practice. Furthermore, the panel concluded that the placing of conditions on Mr Ojedokun'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. 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;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident, and;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Mr Ojedokun did not attend the hearing, and the panel had no information as regard his current employment or financial circumstances. The panel again considered the emails from Mr Ojedokun, and also the Sentencing Remarks as referred to above. However, the panel's findings are wide ranging, covering areas of misconduct which involve dishonesty and the ill-treatment of a patient. The panel considered these were serious breaches of fundamental tenets of the profession and were incompatible with Mr Ojedokun 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?*

Mr Ojedokun's actions were significant departures 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 the findings in this particular case demonstrate that Mr Ojedokun'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. Having regard to the effect of Mr Ojedokun's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, 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 Mr Ojedokun in writing.

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 Ojedokun'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 Denholm. She submitted that an interim suspension order is appropriate on both public protection and public interest grounds for a period of 18 months.

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 substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.