

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

**29 June 2021**

**5 July 2021**

Nursing and Midwifery Council, Virtual Hearing

<b>Name of Applicant:</b>	Mrs Folasade Balogun
<b>NMC PIN:</b>	99B0101E
<b>Part(s) of the register:</b>	Registered Nurse – sub part 1 Adult Nursing (11 March 2003)
<b>Area of Registered Address:</b>	Essex
<b>Panel Members:</b>	Nicholas Cook (Chair, Lay member) Shorai Dzirambe (Registrant member) Alison Lyon (Lay member)
<b>Legal Assessor:</b>	Mark McEvoy
<b>Panel Secretary:</b>	Anjeli Shah
<b>Applicant:</b>	Present and represented by Dr Abbey Akinoshun, Employment Rights Representation and Advisory Services (ERRAS)
<b>Nursing and Midwifery Council:</b>	Represented by Richard Webb, Case Presenter
<b>Outcome:</b>	Application granted with a conditions of practice order for 3 years

## **Rule 19**

During the course of the hearing, the panel of its own volition, determined to hold parts of the hearing in private, on the basis that there were references to your health and personal circumstances. It was satisfied that this would protect your right to privacy and confidentiality, which outweighed the public interest in these matters being heard in public.

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

### **Determination of application for restoration to the register:**

This is a hearing of your first application for restoration to the Nursing and Midwifery Council (“NMC”) Register. A panel of the Conduct and Competence Committee directed on 6 October 2015 that your name be removed from the register based on its findings with regard to the facts of your case and your impairment. This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001 (“the Order”), as at least five years have now elapsed since the date of the striking-off order.

On 15 April 2021 your application was due to be considered but was withdrawn, due to a lack of information provided in respect of the original clinical concerns in your case.

At this hearing the panel may reject your application or it may grant your application unconditionally. It may grant your application subject to your satisfying the requirements of Article 19(3) and it may make a conditions of practice order.

The panel has considered your application for restoration to the NMC’s register.

### **Background**

You were first referred to the NMC in 2012, in respect of incidents which occurred when you were working as a registered nurse at Derham House, a nursing home owned by

Barchester Healthcare Ltd. At the material time you worked primarily on the Foxhall Unit, where elderly patients with dementia were cared for.

On 30 September 2011 Patient A was taken to hospital after her son notified the nursing home that the patient was complaining of pain. An x-ray revealed that Patient A had suffered a fractured femur. An investigation led to the discovery that Patient A had fallen out of her bed in the Foxhall Unit during the night of 27-28 September 2011. You had been the nurse in charge of the Foxhall Unit that night, and you had not reported the incident.

Barchester Healthcare Ltd conducted an investigation, which revealed that Patient A had been found on the floor of her room by one of the care assistants, who then notified you. After checking Patient A for injuries, you instructed the care assistants to help put Patient A back to bed, without the use of a hoist. You also gave Patient A paracetamol.

It was alleged that you did not record the incident or the administration of paracetamol in Patient A's records, and that you did not notify staff of Patient A's fall when performing the handover at the end of your shift.

Your case was considered at a substantive meeting on 2 April 2013. At this meeting, the panel considered the following charges:

*That you, while employed as a registered nurse by Barchester Healthcare Ltd on the Foxhall unit of Derham House between the 27th September 2011 and 28<sup>th</sup> September 2011:*

- 1. failed to record that a resident in your care, Patient A, had suffered a fall;*
- 2. failed to record in Patient A's progress records that you had checked Patient A for injuries;*
- 3. failed to record in Patient A's progress records that you had administered paracetamol to Patient A;*
- 4. instructed the care assistants under your supervision to put Patient A back to bed without using a hoist;*

5. *did not inform your relief of Patient A's fall when conducting the handover at the end of your shift;*
6. *failed to adequately check the resident's care plan.*

You made admissions to charges 1, 2, 3, 5 and 6, which the panel found proved by way of your admissions. The panel also found charge 4 proved. The panel determined that the facts found proved amounted to misconduct, and that your fitness to practise was currently impaired. The panel imposed a conditions of practice order for a period of 12 months, as follows:

1. *You must notify the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
2. *At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer and who is aware of these conditions. Such supervision to consist of:*
  - *Working at all times on the same shift as but not necessarily under the direct observation of a registered nurse who is physically present in or on the same ward, unit, or floor which you are working in or on.*
3. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to address the deficiencies in the following areas of your practice:*
  - *Record keeping*
  - *Risk assessment*
4. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan to the NMC at least 14 days before any NMC review hearing or meeting.*

5. *You must submit to the NMC at least 14 days before any NMC review hearing or meeting a reflective piece demonstrating you are learning from the incident that lead to this case.*
  
6. *You must immediately inform the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to [5] above, to them:*
  - *Any organisation or person employing, contracting with, or using you to undertake nursing or midwifery work*
  - *Any agency you are registered with or apply to be registered with (at the time of application)*
  - *Any prospective employer (at the time of application),*
  - *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application)*
  
7. *You must inform the NMC of any criminal or professional investigation started against you and any criminal or professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*

The conditions of practice order was reviewed at a substantive order review hearing on 3 April 2014, and it was extended for a further 12 months. This was then reviewed at a second substantive order review hearing on 1 April 2015, and the panel imposed a suspension order for 12 months.

You were referred to the NMC on 3 June 2014 by Tandridge Heights Care Home in respect of separate matters. At the time, you were employed at this home as a registered nurse through Global Care Link ("the Agency"). It was alleged that you had not informed the care home that you were subject to a conditions of practice order, following the substantive order review hearing which took place on 3 April 2014.

The NMC contacted the Agency, who confirmed that you had been employed with them since November 2011. The Agency confirmed that you had not informed them of the previous NMC referral and that you had not disclosed the conditions of practice order which was first imposed at the substantive meeting on 2 April 2013.

The Agency told the NMC that they only became aware of your registration status in May 2014, and that between April 2013 and June 2014 you were placed to work in five care homes. The NMC spoke to staff at four care homes and the Agency, all who confirmed that you had not informed them that you were subject to a conditions of practice order. It was also confirmed that you had not worked under the supervision required by the conditions of practice order.

At the substantive order review hearing on 3 April 2014 you instructed your representative to inform the panel on your behalf that you were not in employment, despite the fact that you had been working as a registered nurse since the substantive meeting on 2 April 2013.

On 5-6 October 2015 a panel considered these matters at a substantive hearing. The panel considered the following charges:

*That you, whilst registered as a nurse with Global Care Link recruitment and providing nursing services for other organisations:*

- 1. Following your Notice of Referral to the Investigating Committee on 15 May 2012, did not disclose that you were subject to a NMC Fitness to Practise referral to the following organisations with whom you were registered/for whom you provided nursing services:
  - 1.1. Global Care Link recruitment agency*
  - 1.2. Tandridge Heights Care Home*
  - 1.3. Betsy Clara Nursing Home**
- 2. Your actions in charge 1 above were dishonest, in that you were attempting to conceal that your fitness to practise had been called into question.*

3. *On or after 2 April 2013, did not disclose to the following organisations with whom you were registered/for whom you provided nursing services, that your registration was subject to a substantive conditions of practice order (COPO), contrary to condition 6 of your COPO:*
  - 3.1. *Global Care Link recruitment agency*
  - 3.2. *Tandridge Heights Care Home*
  - 3.3. *Cheverton Lodge Care Home*
  - 3.4. *Southgate Beaumont Care Home*
  - 3.5. *Betsy Clara Nursing Home*
  - 3.6. *Reigate Beaumont Care Home*
  
4. *Your actions in charge 3 above were dishonest in that you were attempting to conceal that your registration was subject to a COPO.*
  
5. *Worked unsupervised at the following organisations, contrary to condition 2 of your COPO:*
  - 5.1. *Tandridge Heights Care Home on the dates set out in Schedule 1*
  - 5.2. *Cheverton Lodge Care Home on the dates set out in Schedule 2*
  - 5.3. *Southgate Beaumont Care Home on the dates set out in Schedule 3*
  - 5.4. *Betsy Clara Nursing Home on the dates set out in Schedule 4*
  - 5.5. *Reigate Beaumont Care Home on 16 February 2014*
  
6. *Your actions in charge 5 above were dishonest in that you knew your practice should be supervised.*
  
7. *Permitted your representative to incorrectly inform a panel of the Conduct and Competence Committee ("the Panel") of the Nursing and Midwifery Council on 03 April 2014 that you were not working as a nurse.*
  
8. *You actions in charge [7] above were dishonest in that you knew that you were working as a nurse and intended to conceal this information from the Panel.*

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

**Schedule 1:**

*28 April 2013*

*5 November 2013*

*20 November 2013*

*25 November 2013*

*28 November 2013*

*3 December 2013*

*4 December 2013*

*5 December 2013*

*22 December 2013*

*2 January 2014*

*9 January 2014*

*16 January 2014*

*26 January 2014*

*2 February 2014*

*4 February 2014*

*5 February 2014*

*7 February 2014*

*10 February 2014*

*15 February 2014*



*18 February 2014*

*19 February 2014*

*20 February 2014*

*21 February 2014*

*22 February 2014*

*25 February 2014*

*28 February 2014*

*3 March 2014*

*4 March 2014*

*5 March 2014*

*6 March 2014*

*7 March 2014*

*10 March 2014*

*11 March 2014*

*13 March 2014*

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*24 March 2014*

*26 March 2014*

*27 March 2014*

*29 March 2014*

*31 March 2014*

*1 April 2014*

*2 April 2014*

*3 April 2014*

*4 April 2014*

*8 April 2014*

*12 April 2014*

*13 April 2014*

*22 April 2014*

*30 April 2014*

*3 May 2014*

*17 May 2014*

*18 May 2014*

*20 May 2014*

*22 May 2014*

*23 May 2014*

*27 May 2014*

*29 May 2014*

*31 May 2014*

*1 June 2014*

**Schedule 2:**

*9 July 2013*

*26 September 2013*

*3 February 2014*

**Schedule 3:**

*4 August 2013*

*14 April 2014*

*15 April 2014*

**Schedule 4:**

*22/23 April 2013*

*15/16 August 2013*

*18 September 2013*

*20 September 2013*

*24 September 2013*

*17 November 2013*

*26 November 2013*

*10 December 2013*

You were in attendance and represented at the substantive hearing on 5-6 October 2015. You made admissions to all of the charges, and the panel therefore found all the charges proved by way of your admissions.

The panel found that the charges amounted to misconduct, and it found your fitness to practise to be impaired. In respect of impairment, it determined the following:

*“The panel find that all these criteria apply in this matter. The panel considered that your misconduct put patients at unwarranted risk of harm. You were subject to a conditions of practice order imposed on your registration by the regulator as a panel of the Conduct and Competence Committee had identified deficiencies in your practice. The panel considers that you brought the nursing profession into disrepute and breached fundamental tenets of the profession by acting dishonestly in continuing to work in the full knowledge that you had not informed your employer that you were the subject of a conditions of practice order and furthermore, you were not complying with it. Further, you led your legal representative to believe that you were not working knowing that you were and knowing that the information you provided to your legal representative would be submitted on your behalf to a panel of the Conduct and Competence Committee.*

*The panel next considered whether it is likely that you would repeat this conduct in the future. The panel bore in mind that dishonest actions are difficult to remedy. The panel considered that while you have shown remorse you have demonstrated very little insight and reflection into your misconduct and the negative effects that your actions had on confidence in the profession and the regulatory process. In your evidence to the panel, you said that you were sorry for your actions, however, you sought to blame others and minimised events in order to justify your behaviour. The panel formed the opinion that the focus of your evidence was on the impact these events had on you and your family rather than accepting responsibility and accountability for your own acts and omissions and their wider impact.*

*The panel noted that you made early admissions to all of the charges and that you have engaged fully with these proceedings and gave evidence to the panel. However, the panel considered that in your oral evidence you were unable to adequately demonstrate any understanding of the impact of your actions on the patients in your care or their effect on undermining confidence in profession and the regulatory process.*

*The panel was presented with a number of positive references and testimonials from members of your community who attested to your honesty and integrity, however, the panel noted that these references do not address your honesty as a registered nurse. The panel considered that you have not remedied your misconduct. The panel therefore could not conclude that the risk of repetition was low. The panel concluded that you are liable in the future to act in such a way as to breach the tenets of the profession, bring it into disrepute or act dishonestly.*

*In light of the panel's findings, the panel considered that this is a case which requires a finding of current impairment of fitness to practise on the ground of public protection and the public interest in order to declare and uphold proper professional standards and confidence in the profession and regulatory process.*

*For these reasons the panel found that your fitness to practise is currently impaired by reason of your misconduct.”*

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

*“The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the ISG at paragraphs 69 – 71.7. The panel noted that there was prolonged dishonesty and the demonstration of attitudinal issues. The panel was not satisfied that you have demonstrated insight and considers that you pose a significant risk of repeating your behaviour. The panel concluded that the conduct in this case is fundamentally incompatible with continuing to be a registered nurse because the misconduct is such a serious departure from the standards to be expected that the public interest would not be satisfied by you continuing to remain on the register albeit suspended. The misconduct found is of such a serious nature striking at the heart of the honesty required of a nurse. You showed a total disregard for an order imposed on your registration and lied to your legal representative in order to mislead a panel of the Conduct and Competence Committee to make it appear*

*that you were not employed knowing full well that you were working as a nurse without telling your employers that you were subject to a conditions of practice order.*

*The panel next considered a striking off order. The panel considered in particular paragraphs 74 – 76 of the ISG.*

*Your dishonesty persisted over 2 years. The panel has no evidence of any meaningful insight from you into the seriousness of your actions or their potential consequences for the patients in your care, your employer, your regulator or the nursing profession. The panel is of the view that your behaviour is fundamentally incompatible with continuing to be registered with the NMC.*

*Given the nature of the misconduct found proved, the panel has concluded that confidence in the profession and its regulator would be undermined if you were to remain on the Register.*

*The panel has carefully applied the principle of proportionality in weighing up the public interest with your interests and in so doing it has recognised and taken into account the impact such a sanction may have on you. However, in carrying out this balancing exercise the panel concluded that in the particular circumstances of this case a striking off order is justified.*

*The panel has therefore determined that a striking-off order is the only sufficient and proportionate sanction which will uphold professional standards and maintain confidence and trust in the profession.”*

## **Submissions and evidence**

The panel took into account the documentary evidence, which included the contents of your application for restoration dated 19 November 2020 (within which there was a reflective piece), the determinations from the previous hearings, three written references in support of your application, a reflective piece written by you dated 20 June 2021,

references from colleagues and testimonials from residents and relatives at Springfield Care Home.

The panel had regard to the submissions of Mr Webb, on behalf of the NMC, and those made by Dr Akinoshun, on your behalf. You also gave oral evidence under affirmation.

You informed the panel that over the past seven years you have been working as a Healthcare Assistant (“HCA”) at Springfield Care Home (“the Home”). You said this was a similar setting to the home you worked in which led to your first referral to the NMC, and you have had the opportunity to learn from and correct the mistakes you made when you were previously working as a registered nurse. You explained that the Home has 80 beds, with a dementia, COVID-19 and nursing unit on the top floor, and a nursing and disability unit on the top floor, as well as a unit for those who are semi-independent and have some nursing needs. You initially worked on different units, and for the past three to four years you have been working on the nursing unit, alongside the registered nurses. Your responsibilities include peg feeding, wound dressing, documentation and assisting the nurses with medication.

You were referred to the incidents which led to your first referral to the NMC, whilst working at Derham House, when Patient A experienced a fall and asked what you have learnt in respect of these clinical matters since working at the Home as a HCA. You explained that you had had the opportunity to learn how to appropriately respond to a fall, and provided the panel with examples of when residents at the Home experienced falls, and how you responded, alongside the nurses. You told the panel that if you discovered that a resident has fallen, you would call for a nurse, and would undertake thorough checks and observations of the resident. This would involve looking at the resident’s facial expression, checking for bleeding, checking for broken bones and checking for pain. If there was nothing of concern, you would assist the resident back to bed using a hoist, with the assistance of another HCA. If there were any concerns, the nurse would contact a GP, and if the resident needed to go to hospital, you would call an ambulance. You also apologised for this incident at Derham House, explaining that you felt ashamed for putting Patient A through this experience, who was entrusted in your care. You said there was not one day when you had not reflected on this incident,

that you were determined to put this right, and you were lucky to use the opportunity of working as a HCA to learn from your mistakes.

In terms of record keeping, you explained that your role as a HCA involves documenting everything which affects the residents in your care throughout the day, including fluid intake, food consumption, whether there was anything of concern such as an injury, their mood and bowel movements. Your training has allowed you to appreciate that in nursing, the understanding is that if something is not documented, it has not been undertaken. You have understood how important it is to ensure everything is documented, which also includes when you assist nurses with giving medication to residents. You explained that from undertaking moving and handling training and working as a HCA at the Home you have learnt that you are not allowed to lift residents, and that in order to move a resident, this must be done with a hoist and with the assistance of another member of staff.

You told the panel that you undertook training in communication, and if you were to witness anything of concern, you would immediately escalate this to a nurse, and then document what has happened. You also explained it is your responsibility to keep the care plans of the residents in your care up to date, and this includes documenting if a resident is having any difficulties, and what actions and referrals have been taken as a result.

In terms of the charges which led to you being struck off the register, you apologised repeatedly for your actions and the disrespect you showed to the NMC, the public, patients, your fellow nurses and the Agency, and said that you felt ashamed and embarrassed. You were taken through all aspects of your dishonest behaviour. [PRIVATE]. You said you felt under a lot of pressure, and as a result you were not thinking straight, and were not in the right state of mind to see that what you were doing was wrong. Despite being under conditions of practice, with a requirement to be supervised, you thought that if you could work a number of shifts as a nurse you could provide for your family, as well as demonstrating to the NMC that the initial incidents which led to your referral (at Derham House) were a one off, and that no further mistakes would arise. You did not seek to put forward your financial circumstances at



the time as a justification for your actions, but more as an explanation for your state of mind.

You said your dishonesty was a serious offence, and you understood that rules and regulations are put in place to protect patients, the public, the NMC and yourself. You said you were behaving selfishly, putting your family and your own interests first and above those of patients, the public and the NMC. You said that as a Christian you had always been brought up to tell the truth, but the circumstances you were going through at the time did not allow you to see that what you were doing was wrong, and just how wrong it was. You said that not one day has gone by in the last seven years where you have not reflected on the dishonesty, and that seven years on, you are a different person. You explained that honesty was part of how you lived your daily life, both in and outside of work, that no further dishonest incidents had occurred since being struck off the register and you pledged to always act with honesty and integrity.

You explained that you knew better now, and you prayed to be forgiven for what you had done, and to be given the chance to show the NMC and your profession that you are a different person. You accepted all the findings made by previous panels. You said that your restoration application was written in the manner in which it was to show the difference between who you were then and who you are now and to demonstrate how remorseful you are. You accepted that your dishonesty damaged public confidence in and the reputation of the nursing profession. You also accepted that working without the supervision required by your conditions of practice order put patients at risk of harm, although your state of mind at the time was such that you did not see it this way then. You acknowledged that many things could have gone wrong, as the conditions of practice were put in place to protect patients under your care. You explained that patients and members of the public place trust in nurses, to care for those who are vulnerable, and that you broke this trust through your actions. You accepted that as a result patients and members of the public would lose trust in the nursing profession.

You were asked how you could assure the panel that if you were experiencing similar financial difficulties that you would not repeat similar dishonest behaviour. You confirmed that during seven years of working as a HCA, with a drop in your salary, you

had not behaved dishonestly. You said being removed from the register allowed you to look objectively at the situation, to reflect and to undertake a lot of training, including on law and ethics. You said this opened your eyes to a lot of things you did not know, and your knowledge base is now better. You said it helped you understand that you are accountable for your actions, and whilst working as a HCA, you have always had this in your mind. You agreed with the panel that many people experience financial difficulties but do not go on to behave dishonestly. [PRIVATE]. You therefore said that if you were to experience similar difficulties in the future, you were now aware of the avenues for support, which you were not aware of at the time. You also informed the panel that you had been open with residents, their families and newly qualified nurses about your dishonest behaviour. You had explained to nurses the importance of the NMC Code of Conduct, being open and honest and to always seek help if they were unsure of something.

When asked what lessons you have learned, you said you understood that rules, regulations and laws are put in place for a reason, to not only protect patients, but also to protect yourself, other nurses and the NMC, and that you ensure these are followed both at work and in your private life. When asked whether you think you have remediated your failings, you said that you would never forget this experience, and that you have used it to demonstrate to other nurses that rules are in place for a reason, as well as using it to guide you throughout your life. You said that nursing and helping people during a time of need is a privilege, and that you love your job. You wished for the opportunity to make the NMC and the profession “proud” of you again.

You said you believe you are safe to be put back on the register without restrictions, without putting the public at risk, stating that within the last seven years, no further dishonesty has occurred. You confirmed that you had been fully open and honest with your representative and the panel today. You accepted your history, but said that you are a new person now, and you told the panel this will never happen again. Whilst you felt you did not need any restrictions on your practice, having worked in the same home for the last seven years with the chance of repetition being nil, you said you would be happy to comply with restrictions if the panel felt they were required.

You accepted that you last worked as a registered nurse seven years ago and said you were prepared to undertake a return to practice (“RTP”) course, if the panel decided to restore you to the register. You explained that you had made initial enquiries with universities regarding undertaking such a course, however those enquiries had not proceeded much further without a letter from the NMC to confirm your restoration had been granted. You said if you were restored to the register, you intended to continue making such enquiries in order to gain a place on a RTP course.

You informed the panel that the managers where you are working are supportive of you taking up a role as a nurse within the Home if you were to be restored back to the register. You said this was evident in the reference provided by the floor manager, who was aware of today’s hearing and your previous NMC history, as well as in the feedback provided from residents and their relatives, who saw that you could give more to residents if you were able to work as a nurse. If you were offered a position at the nurse in the Home, it was your intention to stay there in the future.

Mr Webb, on behalf of the NMC, outlined the background of the case. He referred the panel to the decisions of previous panels, which initially resulted in conditions of practice being placed on your registration, the review hearings for that order, as well as the decision of the substantive hearing panel on 5-6 October 2015, which resulted in a striking-off order being imposed.

Mr Webb informed the panel that a restoration hearing had been scheduled earlier this year, however the panel considering the case did not have information regarding the circumstances leading to a conditions of practice order originally being imposed on your registration in April 2013. In preparation for today’s hearing, a new bundle was put together with the additional information, which was considered essential for a panel to consider this case.

Mr Webb referred the panel to the test set out in Article 33(5) of the Order, the powers it has in relation to this application as well as the NMC’s guidance on: 1) restoration hearings (dated 11 January 2018), 2) deciding on applications for restoration (dated 28 January 2020) and 3) the powers of the Fitness to Practise Committee at a restoration

hearing (dated 28 January 2020). He invited the panel to consider the extent to which you have demonstrated insight, and in this respect to have regard to your oral evidence, your written reflective pieces, the references and the theoretical knowledge you have demonstrated through your training. In terms of your employment history, Mr Webb submitted that you have been working as a HCA since your removal from the register, in the same location. He submitted that the supporting evidence is somewhat limited, as although there were references, there was a lack of detailed information from a manager or a supervisor in relation to your time working as a HCA.

In terms of efforts to keep up to date with professional practice, Mr Webb submitted that you have provided a number of training certificates. He also referred to your own comments in your written reflective pieces, as well as those in your oral evidence, which addressed your efforts to keep up to date. Mr Webb invited the panel to consider whether you would be able to practise safely in the future, and whether in the context of the concerns which led to the striking-off order, public confidence in the profession would be undermined if you were restored to the register. He submitted it was clear that you are remorseful, and you had made a number of apologies in your written reflective pieces and in your oral evidence. In terms of the references provided in support of your application, Mr Webb submitted that although the authors of these references were able to comment on your integrity and work as a HCA it was relevant that none of them had attended today's hearing to give evidence on your behalf, and that one of them raised concerns about your ability to work well in a team. He also invited the panel to bear in mind that the misconduct which led to the striking-off order was at the higher end of the spectrum of seriousness given that it involved sustained dishonesty, in various forms, over a significant period of time.

Mr Webb invited the panel to consider the material before it, in assessing your level of remorse and insight. He submitted that if the panel considered that the dishonesty has been remediated, it was the NMC's position that the panel should then assess the unresolved impairment which resulted in a conditions of practice order being imposed on your registration in 2013. He submitted that those conditions had not been fully complied with, and a panel had not reached a point where it decided that your fitness to practise was no longer impaired in relation to those clinical failings. Mr Webb invited the

panel to consider whether there was sufficient evidence of remediation such that it could be satisfied that there would be no repetition of the original clinical failings if you were to return to the register. In this respect, he reminded the panel that as you were struck off the register, you had not had the opportunity to demonstrate safe practice as a nurse, but had been working as a HCA.

Dr Akinoshun submitted, on your behalf, that you qualified as a nurse in 2005, and you worked in that capacity until you were suspended in 2014. He therefore submitted that you worked safely and without incident for around nine years before you were first referred to the NMC.

Dr Akinoshun submitted that it was to your credit that you gave oral evidence, so that a proper assessment of your level of insight could be made by the panel. He submitted that you demonstrated a high level of insight and understanding into your mistakes, as well as showing in hindsight what you have been doing differently to prevent their recurrence. Dr Akinoshun submitted that you have accepting the findings of previous panels in your application for restoration, as well as addressing the charges which led to your first referral to the NMC. He submitted that you have constantly reflected, developed further insight about the need to act with honesty and integrity at all times as well as delivering care in a safe manner, and assured the panel how you have been doing things differently. Dr Akinoshun submitted that you have been very remorseful, accepting full responsibility for your dishonesty and unsafe practice. He submitted that you have acknowledged the need for nurses to engage in continual reflective practice, and that the public interest must be at the forefront of the panel's mind. For these reasons, Dr Akinoshun submitted that you do not pose a significant risk of repeating the behaviour as of today.

Dr Akinoshun submitted that you have been practising safely as a HCA at the Home since you were struck off the register, without any further concerns raised about your practice, honesty or integrity. He submitted that there was no evidence of repetition of similar behaviour, nor any evidence of engaging in any criminal behaviour. Dr Akinoshun submitted that even in your private life you are considered to be honest and to act with integrity, and he referred to references which testify to you being honest and

caring, as well as to the reference of a previous line manager who confirmed you demonstrated remorse into the incidents which led to you being struck off the register.

Dr Akinoshun submitted that the public interest may include the safe return to practice of an experienced nurse like yourself. He submitted that there was evidence regarding your good work as a HCA at the Home, which was reflected in the positive feedback from residents and their relatives, as well as positive references from the floor manager. Dr Akinoshun submitted that you have continued to undertake mandatory and other relevant training to keep your knowledge and skills up to date, which was evidenced in the certificates before the panel. He referred to your oral evidence, on how informative you found those training courses, and informed the panel that you self-funded these courses due to your determination to learn from the misconduct and develop yourself further.

Dr Akinoshun submitted that your application for restoration was written in a reflective manner, in order to demonstrate your developed level of insight and remediation. He invited the panel to take into account your state of mind when you engaged in dishonest behaviour, including your financial circumstances. Dr Akinoshun submitted that you had been clear that this was not an excuse to justify your dishonesty, but an explanation for what was happening in your life and what was going through your mind at the time, which influenced the way you made decisions. He submitted that you are in a completely different place to where you were seven years ago, and if you were to face a similar situation again, you now know where to go to seek support and assistance. Dr Akinoshun invited the panel to bear in mind the gap in salary between a registered nurse and a HCA, and that despite this gap, you have been able to manage during the last seven years on a lesser salary, without any further acts of dishonesty. He therefore submitted that you have generally learnt to live within your means. This alongside knowing where to reach out for support, Dr Akinoshun submitted, should alleviate any concerns the panel have in terms of repeating the dishonest behaviour if you find yourself in a similar situation.

Dr Akinoshun submitted that your passion for nursing was reflected in your oral evidence, as well as the various positive feedback and testimonials from residents and

relatives in terms of the way you conduct yourself at work and the support you give to vulnerable residents. He submitted that this demonstrated that you are making a difference in the lives of these residents.

Dr Akinoshun submitted that you have been working in a similar setting to the one where Patient A experienced a fall, the incident which led to the first referral to the NMC. He submitted that you have looked after similar types of residents, and felt privileged to work in a similar environment, to learn, to reflect, to undergo training and to be able to put your learning into practice in order to rectify those clinical concerns.

Dr Akinoshun submitted that whilst the initial conditions of practice order imposed upon your registration in 2013 required you to be under supervision, for the last seven years you have been working under the guidance of registered nurses. He submitted that you have addressed the panel in terms of what you have been doing differently whilst working as a HCA, in order to address the clinical concerns. Dr Akinoshun submitted that you have provided examples, such as how you have managed falls, and how you take responsibility for record keeping with all the residents allocated to you. He submitted that given the various training you have undertaken in order to develop your practice, working under the guidance of registered nurses and your efforts to address the initial clinical concerns, your fitness to practise can no longer be said to be impaired in relation to those concerns (as it had been said to be impaired by panels from 2013 until 2015). Dr Akinoshun invited the panel to allow you to return to nursing practice, so that you could undertake a RTP course, continue looking after your patients and do a job which you love, given that you still have a lot to give to the nursing profession.

The panel accepted the advice of the legal assessor, who referred to the cases of *Banerjee v GMC* [2017] EWCA Civ 78, *GMC v Chandra* [2018] EWCA Civ 1898, *Nooh v GMC* [2017] EWHC 2948, *Lamming v GMC* [2017] EWHC 3309 and *Varghese v NMC* [2017] EWHC 1612.

The legal assessor referred the panel to the test provided in Article 33(5) of the Order. Firstly, you must satisfy the panel that you satisfy the requirements of Article 9(2)(a) (approved qualification and prescribed education, training and experience) and Article

9(2)(b) (capable of safe practice). Secondly, you must satisfy the panel whether, having regard in particular to the circumstances which led to the making of the striking-off order in 2015, you are a “fit and proper person to practise as a registered nurse”. The legal assessor advised the panel that it is for you to satisfy the panel of these matters and it is for the panel to use its own independent judgment as to whether it is so satisfied.

### **Decision on the application for restoration**

The panel has considered your application for restoration to the NMC register very carefully. It has decided to grant the application with a conditions of practice order for a period of three years.

In reaching its decision the panel recognised its statutory duty to protect the public as well as maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that the burden was upon you to satisfy it that you are a fit and proper person who is able to practise safely and effectively as a nurse.

In assessing whether you are a fit and proper person, the panel considered the extent to which you have demonstrated remorse and insight into the original clinical concerns, as well as the dishonest behaviour which led to you being struck off the register. The panel considered that you had made apologies and expressed regret on numerous occasions, both within your written reflective pieces and in your oral evidence. It noted that you carried these incidents with you daily, and the panel considered that it was evident that you were clearly very remorseful for these incidents.

In assessing your level of insight, the panel bore in mind that at the substantive hearing in October 2015, that panel considered that your reflections were more self-focused, and that you lacked insight into the wider impact of your dishonest behaviour and its effect of undermining of confidence in the nursing profession. That was the starting point from which the panel considered whether your insight had developed, and whether you appreciated the impact your behaviour had on patients, colleagues, members of the public, your employers and the nursing profession. The panel considered that you had accepted all of the findings made by previous panels, reflected on the seriousness of



your actions and demonstrated an understanding that what you did was wrong. You were able to explain to the panel your circumstances at the time, and how this impacted on your state of mind and decision making, whilst not seeking to use this to justify your actions.

The panel considered that you did appreciate the fact that your dishonest behaviour impacted negatively on patients, colleagues, members of the public, your employers, the nursing profession and the NMC, and it noted for this you apologised repeatedly. The panel also noted when you were probed about what the impact could have been for patients when you were working without supervision (as required by your conditions of practice order), and from your dishonest behaviour, you acknowledged that this put patients at risk and you spoke about this undermining the trust that patients and members of the public places in nurses to care for vulnerable people. Whilst the panel would have appreciated further detail in terms of what the impact could have been for patients, colleagues, members of the public, your employers, the nursing profession and the NMC, it did consider that you had come a long way since the substantive hearing in 2015, and that you had learnt a lot about the importance of acting with honesty and integrity, both in work, and in your own private life. The panel therefore considered that whilst not fully complete, your insight into your dishonest behaviour had developed significantly since being struck off the register.

In terms of the original clinical concerns which first led to you being referred to the NMC, the panel had regard to your oral evidence, where you articulated all of the learning and training you have undertaken since being struck off the register, and how you have put this into practice in your work as a HCA. You were able to reflect on the specific charges that the substantive meeting panel considered in 2013, and articulate how you have appreciated the importance of clear and accurate record keeping, responding to falls appropriately including moving and handling of patients, escalating clinical concerns and communicating thoroughly to colleagues. The panel considered that you were able to demonstrate what you have learnt from the original clinical incident, how you have used this to inform and develop your practice, and how you have acted differently in similar scenarios over the last seven years. The panel therefore considered that you had displayed developed insight into the original clinical concerns in this case.

The panel then considered the extent to which the original clinical concerns and the dishonest behaviour had been remediated since you were struck off the register. In terms of the clinical concerns, the panel bore in mind that you remained working in a healthcare setting during the last seven years, as a HCA at the Home. The panel considered that you had made a lot of efforts to keep your clinical skills and knowledge up to date, through a number of mandatory and other relevant training courses (albeit some of the training appeared to be out of date), as well as reading journals to stay up to date with developments in the nursing profession. The panel also noted that you were able to articulate in your oral evidence what you have learnt from the training, and how you have used this to inform your practice and act in a different manner to previously when similar situations have arisen in the Home, in your role as a HCA.

The panel considered that your work as a HCA was supported by the positive references and testimonials from colleagues, residents and relatives. The panel noted that one of the referees in support of your application raised an issue regarding your ability to work as a team, although it noted that no similar comments had been raised within the other references. The panel also noted your oral evidence that the Home would like to offer you a position as a nurse should you be restored to the register. Given you have been employed by the Home for the last seven years, the panel would have liked to see further detail regarding your clinical abilities from managers or supervisors, including written confirmation that this employer is willing to offer you a position as a registered nurse. However, the panel considered that it was to your credit that, as evident from some of the references, the Home has placed a lot of trust in you to perform multiple clinical tasks without supervision. It noted that the floor manager at the Home described you as hard working, caring and reliable. Overall from the material before it, the panel was satisfied that you have been able to demonstrate remediation of the clinical concerns, in so far as you were able to whilst working as a HCA.

In terms of the dishonest behaviour, the panel had regard to the original charges considered by the substantive hearing panel in 2015. The panel considered that this level of dishonesty was at the higher end of the spectrum of seriousness, given that it involved multiple instances of dishonest behaviour. This included not informing the

Agency of the conditions of practice order or the NMC referral, working as a nurse without supervision and thereby breaching a conditions of practice order (over the course of a significant number of shifts) and giving false information to your representative at an NMC hearing, thereby causing misleading information to be presented to a panel. The panel bore in mind that dishonesty is always difficult to remediate. The panel had regard to its earlier assessment of your level of insight, which it considered had developed since you were struck off the register, although it also considered that this was not fully complete. The panel also had regard to the circumstances you faced at the time of this dishonest behaviour, and the assurance you gave to the panel that this would not be repeated. In this respect, you were able to articulate steps you took at the time to seek support, including from charities in relation to your financial situation, [PRIVATE]. The panel noted that you are now aware of these avenues of support available to you, such that if you faced similar difficult circumstances, you would know where to turn to for assistance.

The panel also noted that you have worked in a healthcare setting for the last seven years, without any further evidence of dishonest behaviour, and with references which have spoken positively in terms of your honesty and integrity. It further noted your comments in your oral evidence about how you have been open and honest about your history with residents, relatives and newly qualified nurses, in particular the latter in terms of the importance of always abiding by rules and regulations, and seeking help if they are unsure of anything. You spoke about the importance of behaving honestly not only at work, but also in your private life, and it considered that these behaviours had actively demonstrated this. The panel considered that given your developing insight into the dishonest behaviour, the proactive steps you have taken to ensure it does not recur, and the evidence of acting with honesty and integrity in your work and private life, you had demonstrated good evidence of remediating the dishonesty. Whilst it had considered that your insight was not fully complete, it considered that you had made a lot of progress in terms of your level of insight and remediation.

The panel considered whether in the context of the concerns which led to you being struck off the register in 2015, public confidence in the nursing profession would be undermined if you were restored to the register. In this respect, the panel had regard to

the serious and significant level of dishonest behaviour, which undermined confidence in the nursing profession and the NMC, and breached the high standards of care and professionalism required of a registered nurse. The panel had regard to all the evidence presented to it, and everything that has occurred since you were struck off the register. This included your continuous good performance as a HCA at the Home over the course of seven years, supported by positive comments and testimonials from colleagues, residents and relatives. The panel had regard to the steps you have undertaken to keep your professional practice up to date, and the application of your training and learning in various clinical situations as a HCA. The panel had regard to your remediation of the clinical concerns and the dishonest behaviour, and your levels of remorse and developing insight into these matters. Taking all of these circumstances into account, the panel considered that you have satisfied it that you are a fit and proper person, who would be capable of practising safely and effectively as a registered nurse. The panel considered that confidence in the nursing profession would not be undermined if you were restored to the register. The panel therefore determined to grant your application for restoration.

Whilst the panel considered that you had demonstrated evidence of remediation through your work as a HCA, your training, your reflections and developed insight, it had regard to the fact that a conditions of practice order was imposed on your registration in 2013 in relation to specific clinical concerns. Two subsequent substantive order review hearing panels determined that your fitness to practise remained impaired, as you had been unable to fulfil the conditions of practice order. It had regard to the fact that you were working in breach of the conditions of practice order, and were struck off the register for this and other dishonest behaviour. Whilst taking account of the evidence of remediation in this case, it noted that given you were struck off the register, you would not have been able to practise as a registered nurse, and you were unable at any time to satisfy the clinical concerns evident within the conditions of practice order.

The panel had regard to Dame Janet Smith's test in the Fifth Shipman Report, as set out in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). The panel considered that there did remain a risk of patients being placed at unwarranted risk of harm, of bringing the

profession into disrepute and of breaching fundamental tenets of the profession in the future. Having regard to the fact that the panel considered that your level of insight into the dishonest behaviour had developed but was not yet fully complete, the panel also considered that a risk, albeit low, remained of you behaving dishonestly in the future.

The panel therefore determined to grant your application for restoration, subject to you fulfilling a conditions of practice order, in similar terms to the one first imposed in 2013. The panel made some additions to the original conditions imposed in 2013, to reflect its remaining concerns regarding your developing, but not fully complete, level of insight into the dishonest behaviour.

The panel accordingly directs the Registrar under Article 33(7) and in accordance with Article 33(6) of the Order, to restore your name to the register subject to you fulfilling the specific conditions of practice order as to additional education, training and experience as the NMC has specified under Article 19(3) of the Order. For this to happen, the panel directs that you must successfully complete and pass a Return to Practice Programme and pay the prescribed fee.

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

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

1. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer and who is aware of these conditions. Such supervision to consist of:
  - a) Working at all times on the same shift as but not necessarily under the direct observation of a registered nurse who is physically present in or on the same ward, unit, or floor which you are working in or on.

2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to address the deficiencies in the following areas of your practice:
  - a) Record keeping;
  - b) Risk assessment; and
  - c) Honesty and integrity.
  
3. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan to the NMC before any NMC review hearing or meeting.
  
4. You must submit to the NMC before any NMC review hearing or meeting a reflective piece demonstrating you are learning from the clinical incident that led to this case, as well as the subsequent acts of dishonesty.
  
5. You must keep us informed about anywhere you are working by:
  - a) Telling your case officer within seven days of accepting or leaving any employment.
  - b) Giving your case officer your employer's contact details.
  
6. You must keep us informed about anywhere you are studying by:
  - a) Telling your case officer within seven days of accepting any course of study.
  - b) Giving your case officer the name and contact details of the organisation offering that course of study.
  
7. You must immediately give a copy of these conditions to:
  - a) Any organisation or person you work for.
  - b) Any agency you apply to or are registered with for work.
  - c) Any employers you apply to for work (at the time of application).

- d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
  - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
8. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
  - b) Any investigation started against you.
  - c) Any disciplinary proceedings taken against you.
9. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
  - b) Any educational establishment.
  - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this conditions of practice order is three years. In considering this length of time, the panel bore in mind the time it would take to undertake a RTP programme, and then work towards fulfilling the conditions of practice order when you take up a position as a registered nurse. The panel considered that three years would be the appropriate length of time to enable all of these steps to be completed. If you are able to satisfy the conditions of practice order prior to the three year period, you have the option of requesting an early review of the order.

This order will be reviewed by a panel before its expiry. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.

The panel considered that any future reviewing panel may be assisted by:

- Up to date references and testimonials, in particular, from the management of your current employer.

This decision will be confirmed to you in writing.

That concludes this determination.