

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

**Substantive Meeting  
Tuesday 30 April 2024 – Thursday 2 May 2024**

Virtual Meeting

**Name of Registrant:** David G Lloyd

**NMC PIN** 78C1302E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
RN1: Adult Nurse L1 – February 1992  
Registered Nurse – Sub Part 2  
RN2: Adult Nurse L2 – May 1980

**Relevant Location:** Leicester

**Type of case:** Misconduct

**Panel members:** Bryan Hume (Chair, lay member)  
Kate Jones (Registrant member)  
Kiran Bali (Lay member)

**Legal Assessor:** Angus Macpherson

**Hearings Coordinator:** Shela Begum

**Facts proved:** Charges 1, 3a, 3b, 5, 9, 10, 11a, 11b, 11c and 11d

**Facts not proved:** Charges 2, 4, 6, 7, 8, 11e and 11f

**Fitness to practise:** Impaired

**Sanction:** Striking off order

**Interim order:** Suspension order (18 months)

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

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Lloyd's registered address by recorded delivery and by first class post on 6 March 2024.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing (the Notice) was sent to Mr Lloyd's registered address, as well as an alternative address, on 6 March 2024. The panel noted that the tracking for the Notice which was sent to Mr Lloyd's registered address shows that on 7 March 2024, at 13:03 the parcel was refused at the address. At 14:26 on 7 March 2024, delivery was reattempted at Mr Lloyd's registered address but the recipient was not at the address. The Notice was subsequently returned to the sender and delivered on 13 March 2024.

The panel noted that the tracking for the Notice sent to the alternative address for Mr Lloyd shows that on 7 March 2024, delivery was attempted but there was no answer. On 11 March 2023, at 09:01, delivery was reattempted but there was again no answer. At 14:47, the parcel was marked as available for redelivery or collection. On 30 March 2024, the parcel was returned to sender as the retention of the parcel had been exceeded.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Mr Lloyd has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was satisfied that, on the basis of the ample material before it, the Notice was sent and delivery of the notice was attempted in excess of 28 days of this meeting being heard. The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

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

The panel decided to make an amendment to charge 3b. It determined that the proposed amendment would accurately reflect the medical terminology. The proposed amendment was as follows:

3. On 3 May 2020 in relation to patient A:
  - a. [...]
  - b. Put orange juice down the patients ryles tube which was incorrect.

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 satisfied that there would be no prejudice to Mr Lloyd and no injustice would be caused to either party by the proposed amendment being made. It was therefore appropriate to make the amendment.

## **Details of charge (as amended)**

That you a registered nurse:

1. Did not disclose to Your World Nursing Agency the fact that you had been subject to a caution order imposed by the NMC.
2. Your actions at charge 1 were dishonest in that you sought to conceal the fact that you had been subject to caution order imposed by the NMC in order to gain employment.
3. On 3 May 2020 in relation to patient A:
  - a. Incorrectly assessed the patient as having a hypo.
  - b. Put orange juice down the patients ryles tube which was incorrect.
4. On an unknown date in April 2020 stood very close to colleague 1 and put your hand on their shoulders which was inappropriate and/or unprofessional.

5. On one or more occasions gazed at colleague 2's chest which was inappropriate and/or unprofessional.
6. Your actions at charge 5 intended to cause colleague 2 harassment and /or distress and/ or alarm.
7. Your actions at charge 5 were sexually motivated in that you sought sexual gratification.
8. On an unknown date placed your hand on an unknown patients' chest without the patients knowledge and or consent.
9. On an unknown date in May 2020 on being asked how you were, responded by saying 'I'm about as much use on the ward as a condom in a whore house' which was inappropriate and/or unprofessional.
10. On 29 May 2020 showed colleague 2 a video of a woman breastfeeding for no reason which was inappropriate and /or unprofessional.
11. On 2 June 2020:
  - a. On being asked to get an Anaesthetist from theatre 8, told colleague 3 that the Anaesthetist was not in theatre 8 which implied that you had checked.
  - b. Your actions at charge 11 a were dishonest in that the information you gave to colleague 3 was misleading as you knew that you had not checked whether the Anaesthetist was in theatre 8.
  - c. Said to colleague 4 'I'm coming into theatre with you two because if I stay in recovery I'm going to strangle somebody' or words to that effect which was inappropriate and/or unprofessional.
  - d. On being spoken to about the incident by colleague 5 commented to them that he thought he has seen them on the Jeremy Kyle show which was inappropriate and/or unprofessional

- e. Lifted a patients bed sheet to inspect her leg and/or legs without clinical justification
- f. On being questioned in relation to your actions at charge 11e by colleague 3, invaded colleague 3's personal space which was inappropriate and/or unprofessional.

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

## **Background**

On 23 August 2020, the NMC received a referral from the Associate Director at The Countess of Chester Hospital NHS Foundation Trust (the Trust) in relation to Mr Lloyd.

It is alleged that on 3 May 2020, Mr Lloyd incorrectly concluded that a patient was hypoglycaemic based on the patients blood sugar reading and subsequently administered orange juice via the patients ryles tube.

In May 2020, after a meeting with the Recovery Team Leader and the Theatre Matron, it transpired that Mr Lloyd failed to disclose during the job interview for his role that he had been subject to an NMC caution order for a period of two years in July 2017.

Mr Lloyd is alleged to have acted inappropriately and unprofessionally towards colleagues on several occasions in May 2020. It is alleged that he gazed at Colleague 2's chest area, showed a colleague a video of a woman breastfeeding without any reason for doing so, invaded Colleague 2's personal space by placing his hands on their shoulders. He is also alleged to have made comments of an inappropriate and unprofessional nature.

It is also alleged that Mr Lloyd carried out assessments on patients without obtaining prior consent. It is alleged that he placed his hands on the chest of one patient when there were alternative methods of checking the patients breathing and on another occasion he allegedly lifted a patients bed sheet to inspect her leg without clinical justification.

## Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

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

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Colleague 1: Recovery Nurse, Countess of Chester Hospital (at the time of the incidents)
- Colleague 2: Theatre Recovery Nurse, Countess of Chester Hospital
- Colleague 3: Theatre Recovery Nurse, Countess of Chester Hospital (at the time of the incidents)
- Colleague 4: Staff Nurse, Countess of Chester Hospital
- Witness 1: Recruitment Consultant, Your World Nursing Agency (at the time of incidents)
- Witness 2: Staff Nurse, Theatre Recovery, Countess of Chester Hospital

- Witness 3: Case Coordinator, The Nursing and Midwifery Council
- Witness 4: Matron, Countess of Chester Hospital
- Witness 5: Staff Nurse, Countess of Chester Hospital
- Witness 6: Recovery Team Leader, Countess of Chester Hospital
- Witness 7: Theatre Matron, Countess of Chester Hospital

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by the NMC and took into account the registrant's bundle.

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

### **Charge 1**

1. Did not disclose to Your World Nursing Agency the fact that you had been subject to a caution order imposed by the NMC.

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

In reaching this decision, the panel took into account the documentary evidence before it which included the written witness statements of Witness 1 and Witness 3.

The panel noted the written witness statement of Witness 1 which stated:

*"I can recall having an onboarding telephone interview with David Lloyd sometime between February and March 2020. I can recall asking David about the gaps in his employment. I think he said that he took some time out from nursing and was*



*working in non-nursing roles during a period of time. This wasn't unusual as I have spoken to other nurses before who take a few years away from the profession and work elsewhere then come back. From memory, David had worked in a nursing home just before he took the time out or just after. [...]*

*David told me that the reason he took time out from nursing was because he mentally needed a break from nursing.*

*I cannot be sure if I asked David if he had been subject to any previous NMC disciplinary action. We normally do as part of the interview but I cannot recall if I specifically asked him this during our conversation. He would have sent me proof of his NMC PIN. We would have also checked his PIN online.*

*[...]*

*I was asked by the NMC investigator whether I recalled David disclosing anything about previous NMC proceedings or any regulatory bodies. David did not disclose anything like that to me.”*

The panel had regard to the witness statement of Witness 3 which stated:

*“I am making this statement to produce the NMC decision letter to the Registrant dated 16 June 2017 informing him about the caution order imposed.”*

The panel had regard to the redacted NMC decision letter to Mr Lloyd which informed him of the imposition of the caution order dated 16 June 2017. The letter stated:

*[...]*

***Notice of decision to impose a caution order***

*I am writing to inform you of the outcome of the panel's consideration of your case at the Conduct and Competence Committee hearing on 30 January 2017 – 2 February 2017, 21 April 2017 and 12 – 14 June 2017. You were present at the hearing and were represented by Mr Philip Bown. Mr Paul Andrews presented the case to the panel on behalf of the NMC.*

*At the end of the hearing the panel made the decision detailed below. Where reference is made to a witness or third party an identifier key has been used in place of their name within the decision and reasons document. Please refer to the determination key enclosed for the full name of the party concerned.*

[...]

***Determination on sanction***

*The panel considered this case very carefully and decided to impose a caution order for a period of two years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.”*

The panel considered the evidence before it. It noted that Mr Lloyd was subject to a caution order for a period of 2 years from June 2017. The panel took into account that Witness 1 does not recall specifically asking Mr Lloyd about previous NMC disciplinary action but Witness 1 does confirm that Mr Lloyd did not disclose any of those details himself during the interview.

The panel concluded that, on the balance of probabilities, it is more likely than not, that Mr Lloyd did not disclose to Your World Nursing Agency the fact that he had been subject to a caution order imposed by the NMC.

The panel therefore finds this charge proved.

**Charge 2**

2. Your actions at charge 1 were dishonest in that you sought to conceal the fact that you had been subject to caution order imposed by the NMC in order to gain employment.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the documentary evidence before it.

The panel accepted that when he was interviewed by Witness 1 of Your World Nursing Agency (the Agency) in early 2020, Mr Lloyd would have known that he had been subject to a caution order imposed by the NMC, and that he would have had an obligation to disclose that caution order to the Agency.

The panel noted that during the interview Mr Lloyd is reported to have provided explanations for the gaps in his employment when questioned by Witness 1. However, it noted that there is no contemporaneous record of the questions asked and responses received during this interview.

The panel had regard to Mr Lloyd's Curriculum Vitae (CV) in which he stated:

*“After falling ill in Oct 2015 until April 2016 I worked in a variety of non-Nursing roles, including as a Prison Officer and in airport security”*

The panel took into account that being subject to a caution order would not have restricted Mr Lloyd from obtaining nursing employment and that he was able to do so during the period of any caution order. Although the panel recognised that he had an obligation to disclose the caution order to the Nursing Agency, it was not satisfied that there is any actual link between the reported responses by Mr Lloyd during the interview about the gaps in his employment and an intention to conceal the caution order. His failure to do so could have been occasioned by forgetfulness or by a mistaken notion that he had only to disclose it if he was asked about it.

The panel determined that, based on the evidence before it, the NMC has not discharged its burden of proof in respect of this charge and that there was not adequate evidence before it to conclude that Mr Lloyd's actions as set out in charge 1 were dishonest in that he sought to conceal the fact that he had been subject to a caution order imposed by the NMC.

### **Charge 3a and 3b**

3. On 3 May 2020 in relation to patient A:
  - a. Incorrectly assessed the patient as having a hypo.

- b. Put orange juice down the patients ryles tube which was incorrect.

**These charges are found proved.**

In reaching this decision, the panel took into account the documentary evidence which included Patient A's medical notes, the written statement of Witness 5 and the DATIX form.

The panel noted that Mr Lloyd observed a 4.7mmol blood sugar reading which he thought was indicative of hypoglycaemia and that Witness 5 said that a reading of 4.7mmol would not constitute hypoglycaemia. In her written statement she stated:

*"David took the patient's blood sugar reading without me there. I can't remember if I told him to do that or not.*

*He came to me and informed me that the patient was having a hypo. This means that the blood sugar drops below a certain amount which is too low. It can cause dizziness and the patient may feel faint and unwell.*

*Looking at the patient notes, I can see the blood sugar level was 4.7 which is not classed as hypo anyway. I wouldn't have been worried about that result. Anything below 4 is concerning but you sometimes just need the patient to eat something sugary. This patient was unable to eat though as they had the ryles tube in.*

*David told me that he had put orange juice down the patient's tube as she was hypo.*

*As a nurse, I had a lot of experience with ryles tubes and I was always told by consultants that you never put anything down the tube. However, it's not unheard of that a doctor will put stuff down there, we are just told as nurses not to do it.*

*17. I explained this to David and that the reason we don't do this is because if the tube is draining vomit and the tube becomes dislodged, the liquid can go into the lungs. Sometimes the patient might aspirate or in the worst case, choke on their own vomit. A fluid build-up in the lungs is not very pleasant for the patient.*

*18. I can't recall David's exact response but I got the impression that he believed he hadn't done anything wrong and he genuinely thought he was helping the patient. What David should have done was taken the blood sugar reading and if he had concerns with it, then he should have approached me to talk about it. If he had*

*come to me and said the patient had a reading of 4.7 I would have told him that was fine.”*

The panel also had regard to the patient notes in which Witness 5 had made an entry on 3 May 2020 which stated:

*“Supernumary[sic] nursing staff on the ward went ahead and put 260ml of fluids down ryles tube – I have raised this concern with DR who said should be fine and just to monitor for night time to aspirate on their shift”*

Witness 5 had also produced a local written statement which stated:

*“During a long day on ward 41, David was asked to work with me as he was still in supernumerary on the wards. We were looking after a patient who had a ryles tube insitu and was also an ICU stepdown that day. Toward the end of the day David had informed me that he had took it upon himself to give this patient some orange juice and water and had given it via her ryles tube as he believed she was having a hypo when he checked her sugar. Told him we don’t ever give things down ryles as its an exit tube and we are never sure if it is sitting in someones lung.” [sic]*

The panel also had regard to The Countess of Chester Hospital DATIX Feedback Form completed by Witness 5 which stated:

*“I had a patient who was an icu stepdown this afternoon with a ryles tube in place. Supernumerary staff nurse on the ward went a head and put down 250ml of fluid down ryles tube without any indication of being told to do so.” [sic]*

The panel noted that there is some variation within the evidence in relation to what specifically was put through the ryles tube. It noted that on some occasions it is referred to as a ‘fluid’ and other times it is referred to as ‘orange juice’. However, the panel was satisfied that on the balance of probabilities, it is more likely than not that it was orange juice.

The panel found that there is sufficient evidence before it, included contemporaneous documentation of the incidents, to prove that on the balance of probabilities, Mr Lloyd incorrectly assessed the patient as having a hypo and put orange juice down the patients ryles tube which was incorrect. The panel therefore finds these charges proved.

#### **Charge 4**

4. On an unknown date in April 2020 stood very close to colleague 1 and put your hand on their shoulders which was inappropriate and/or unprofessional.

#### **This charge is found NOT proved.**

In reaching this decision, the panel took into account the written witness statement of Colleague 1 in which she stated:

*“Unfortunately, due to the passage of time, I cannot recall some specific details of the incidents involving David.*

*The NMC investigator has presented me with a copy of an email that I sent to Witness 6 which is dated 14 September 2020. I have read this email and it has assisted my recall of the events that took place.*

*[...]*

*I was standing at the computer to the ride side of the child’s bed. Each bay has curtains pulled between them so I was standing next to the curtain that separated Bay 2 and 3 facing the back wall, looking at the computer.*

*David came up behind me and put his hands on my shoulders. He then said, “Stop right there, I want to do that.” I think he was trying to be proactive but the manner in which he did it made me feel very uncomfortable as he was invading my personal space. He also had to lean over me to see the screen so his face was very close to mine.*

*David’s body was not touching mine, only his hands on my shoulders.*

*This contact made me jump. I didn’t know how to react as I hadn’t met him before this interaction. I didn’t know who he was.*

*His hands remained on my shoulder for about 10-15 seconds. I think at the time, I kept thinking to myself that he’ll let go any second now but he didn’t and it became more and more uncomfortable for me that I eventually had to shrug him*

*off and move to the side.*

*It made me feel uncomfortable as I didn't know David and anybody who knows me, knows that I don't like to be touched anyway, regardless of how close we are. The fact he was stood peering over his shoulder with his face close to mine made me feel very uncomfortable. I don't think this was sexual in nature. It felt more like he was socially unaware that this wasn't appropriate in the workplace."*

The panel had regard to the email from Colleague 1 to Witness 6 dated 14 September 2020 in which she stated:

*"1. April 2020*

*I returned to work for my first shift following annual leave. SN Lloyd had started as a new member of staff during my annual leave but I had not yet met or been introduced to him.*

*I was working alongside [Colleague 4] recovering a paediatric patient in Bay 3. I was facing the computer, just about to log in, when he approached me from behind, placed his hands on my shoulders and said "stop right there, I want to do that". He continued to stand very close behind me with his hands still on me as he leant over my shoulder and went on to say that he wanted to do the documentation so he could practice Meditech. This was the first time I had met him and his actions made me feel immediately very uncomfortable due to his invasion of my personal space."*

The panel noted that this incident made Colleague 1 uncomfortable. However, the panel also noted that Colleague 1 describes Mr Lloyd as trying to be 'proactive' which, the panel found, is not suggestive of inappropriate and unprofessional behaviours. Further, the panel considered that, Mr Lloyd appears to have been unaware of the fact that his placing his hands on her shoulders made Colleague 1 uncomfortable. The panel determined that, whilst Mr Lloyd may have placed his hands on Colleague 1's shoulder, there is not sufficient evidence before the panel to suggest that that fact, or the manner in which this was done was either inappropriate or unprofessional. The panel therefore finds this charge not proved.

## **Charge 5**

5. On one or more occasions gazed at colleague 2's chest which was inappropriate and/or unprofessional.

**This charge is found proved.**

In reaching this decision, the panel took into account the written statement of Colleague 2 in which she stated:

*“On 25 May 2020, David had asked for my help with something on his laptop. David was sitting down at his desk. I agreed to help David, in doing so I stood beside him and looked at his laptop screen. Throughout the conversation, David turned to speak to me, however he did not look at my face. David gazed at my chest throughout the conversation. The interaction made me feel very uncomfortable and vulnerable.*

*David had gazed at my chest on a number of occasions. It was not a nice feeling. I would wear scrubs to work that were too big and a t-shirt under my scrubs so that I would not show any part of my body. I dreaded going to work if David was on shift and I would did not want to ever be alone with him in a room.”*

The panel noted Colleague 4 also reported similar behaviour by Mr Lloyd and in her written statement to the NMC she stated:

*“Non-patient wise David was just a bit odd. It's not a problem being odd, but there was just something about him that made me wary. David never looked at my face and it felt as though he was talking to my chest. He was always licking his bottom lip which made me feel uneasy.”*

The panel also noted that Colleague 2 reports Mr Lloyd to have gazed at her chest on more than one occasion. It noted that there is no record for this having been reported apart from her written statement to the NMC. However, it has also taken into account that it has been reported by more than one member of staff that Mr Lloyd never looked directly at colleagues faces but instead looked elsewhere and specifically the chest area.



The panel determined that, based on the evidence before it, it is more likely than not that Mr Lloyd inappropriately gazed at Colleague 2's chest. However, the panel did not conclude that Mr Lloyd was acting unprofessionally in respect of his actions as there is not sufficient evidence to determine that he was knowingly and intentionally directing his gaze at Colleague 2's chest rather than her face.

### **Charges 6 and 7**

6. Your actions at charge 5 intended to cause colleague 2 harassment and /or distress and/ or alarm.
  
7. Your actions at charge 5 were sexually motivated in that you sought sexual gratification.

### **These charges are found NOT proved.**

In respect of charge 6, the panel found that there was insufficient evidence before it to be able to determine that Mr Lloyd was completely aware of his actions at charge 5 and the resulting discomfort that his actions caused colleague 2.

In respect of charge 7, the panel took the view that directing a gaze towards what is considered as someone's 'private parts' is an action that is capable of being sexually motivated for the purposes of sexual gratification. However, the panel concluded that, in this case, there could be an alternative explanation. It was not satisfied that there is adequate evidence before it to conclude that Mr Lloyd was intentionally directing his gaze at colleague 2's chest for the purposes of seeking sexual gratification. The panel was not satisfied that there is evidence before it which suggests that Mr Lloyds actions were sexually motivated and therefore finds this charge not proved.

### **Charge 8**

8. On an unknown date placed your hand on an unknown patients' chest without the patients knowledge and or consent.

### **This charge is found NOT proved.**

In reaching this decision, the panel took into account the written witness statement of Colleague 2 which stated:

*“I do not recall the date, however there was an occasion when David assisted [Nurse 1] with a patient respiration check. I witnessed the incident from my desk [...] [Nurse 1] then asked David for the patient’s respiration (breathing) rate. The monitor displayed the respiration rate. However, instead of confirming the information displayed on the monitor, David placed his hand firmly on the patient’s chest. David did so, without the patients consent or knowledge that he was going to put his hand on their chest. I do not recall the gender of the patient.*

*It is good practice to check a patients respiration rate by watching them breathe and their chest rise and fall. However, you can monitor the patient’s respiration rate from a distance or by standing beside them. There is no need to place a hand on the patient’s chest. This is only necessary when you cannot observe the patient with your eyes and you cannot see the patient breathing. Nevertheless, you would inform the patient of your actions.”*

The panel considered that the evidence in relation to this charge was lacking specificity. It noted that the evidence emanates not from Nurse 1 whom Mr Lloyd was assisting but from Colleague 2 who was seated at her desk. There was not any evidence confirming the gender of the patient nor was there any information confirming the distance between Colleague 2 and Mr Lloyd and the patient. The panel considered that the fact that Colleague 2 could not recall the gender of the patient is suggestive of the possibility that she was not close enough to be able to properly observe the procedure being done.

The panel did not have any information before it which confirms how Colleague 2 was sure that consent to place his hands on the patient’s chest was not obtained by Mr Lloyd or how she knew that the patient was not aware that he was going to do so. Further, the panel did not have information before it about the patient’s reaction to this action by Mr Lloyd to determine whether or it was more likely than not that consent was not obtained. The panel noted that Colleague 2’s rationale was that if consent was given, she would have heard this. However, it was not satisfied that this in itself proves that consent was in fact not obtained.

In light of the insufficient detail in the evidence in support of this charge, the panel concluded that the NMC has not discharged its burden of proof and therefore finds this charge not proved.

### **Charge 9**

9. On an unknown date in May 2020 on being asked how you were, responded by saying 'I'm about as much use on the ward as a condom in a whore house' which was inappropriate and/or unprofessional.

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

The panel determined that the comment 'I'm about as much use on the ward as a condom in a whore house' is wholly inappropriate and unprofessional.

In reaching its decision as to whether or not the comment was made by Mr Lloyd, the panel took into account the written statement of Colleague 1 in which she stated;

*"We were all surprised to see David as we did not know why he had come to the recovery unit and he no longer worked in recovery.*

*I recall one of my colleagues, I am not sure who, asked David "Are you okay? Having a good day" to which David responded, "I'm about as much use on the ward as a condom in a whore house".*

*I cannot recall whether anybody responded to David or not or how the interaction ended. I think perhaps our patient came out and we got to work. I can't recall when he left or how he left."*

The panel also had regard to the near contemporaneous email from Colleague 1 to Witness 6 dated 14 September 2020 in which she stated:

*"I was working on a Sunday day shift with [Nurse 2], [Nurse 3] and [Nurse 4]. We were waiting for a patient to arrive in recovery when he appeared in the department. We questioned why he was here but the reason wasn't clear. One of my colleagues asked if his day was going ok and he commented that he was "as much use on the*

*ward as a condom in a whore house". The comment was completely uncalled for and, once again, his actions made me feel very uncomfortable."*

The panel noted that Colleague 1 suggests that others were present in the room when Mr Lloyd is reported to have made the comment as alleged in the charge. It noted that none of the other people who are said to have been present have reported the comment being made or provided statements to say that this did occur.

However, the panel concluded that Colleague 1's evidence has been consistent in support of this charge and she was a direct eyewitness who reported hearing the comment being made by Mr Lloyd. Further, the panel took into account that whilst she was not directly involved in the interaction, having observed it Colleague 1 is able to recall details about the impact of hearing such a comment and how it made her feel.

Based on the evidence before it, the panel concluded that, on the balance of probabilities, it is more likely than not, in response to being asked how he was, Mr Lloyd responded by saying 'I'm about as much use on the ward as a condom in a whore house' which was inappropriate and/or unprofessional.

### **Charge 10**

10. On 29 May 2020 showed colleague 2 a video of a woman breastfeeding for no reason which was inappropriate and /or unprofessional.

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

In reaching its decision, the panel took into account the written statement of Colleague 2 which stated:

*"On 29 May 2020, I was in the recovery room with a few of my colleagues. David was also there. During this time, David came over to me and said that he wanted to show me a video that he thought I would appreciate. The video was of a woman breastfeeding her child, titled 'Belfast'. The video had no sound to it. At the time I was really taken off guard as it was inappropriate behaviour from a colleague. I did*

*not understand why David had showed me the video and I told him that I did not appreciate the video or understand why he had showed me it. David then said 'oh' and walked away."*

The panel took into account that Colleague 2 was able to provide some detail around this incident which included the date, the reaction from both her and Mr Lloyd, the title of the video and also where the incident occurred.

The panel noted that Colleague 2 says that this occurred within the recovery room, where patients would have been present, and that there was not any real explanation or justification from Mr Lloyd as to why he showed the video. The panel determined that in the context of this being shown in a part of the workplace where patients would have been present, Mr Lloyd's actions were inappropriate and unprofessional.

The panel determined that, on the balance of probabilities, it is more likely than not that, Mr Lloyd showed colleague 2 a video of a woman breastfeeding for no reason which was inappropriate and /or unprofessional.

### **Charge 11a**

11. On 2 June 2020:

- a. On being asked to get an Anaesthetist from theatre 8, told colleague 3 that the Anaesthetist was not in theatre 8 which implied that you had checked.

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

In reaching this decision, the panel took into account the written statement of Colleague 3 in which it stated:

*"I asked David to go and get the anaesthetist from theatre 8 where the patient had come from. I cannot remember what his response was but he stormed off through the door to the theatre rooms. I thought he was going to get the*

*anaesthetist from theatre 8. [Witness 2] and I stayed with the patient who remained the same. The patient did not deteriorate whilst David was gone. David came back after a couple of minutes and told me that the anaesthetist was not in theatre 8. This could be the case sometimes if theatre had finished or the anaesthetist was having a break so I believed him.*

*[...]*

*I was informed by one of the recovery nurses that David hadn't actually gone into theatre 8 to check for the anaesthetist. I cannot remember which colleague this was. I think one of the nurses had already completed a clinical incident form but now I had found out he hadn't actually gone to theatre 8 and I had trusted him but he had lied to me, I thought I should complete a clinical incident form too."*

The panel took into account the witness statement of Witness 6 which stated:

*"[Witness 2] informed me that David had been assisting Colleague 3e, another nurse, with looking after a patient. [Colleague 3] didn't appear particularly happy with the comments that David was making towards her and [Witness 2] had noticed this so had gone over to help her. [Witness 2] noticed that the patient's heartrate was low and she wanted an anaesthetist to come and check on the patient. She asked David to go and seek the assistance of the anaesthetist from the theatre room the patient had come from.*

*She told me that David didn't do this.*

*[Colleague 4] told me that she had been waiting in the theatre corridor for a patient. David had walked up the theatre corridor towards her and been quite aggressive in his body language. He said to her that he wanted to strangle another member of staff. [Colleague 4] wasn't even aware that he had been sent to look for an anaesthetist at this point. [Colleague 4] was concerned about the comment David had made and so raised this with me."*

The panel also had regard to the document in which Witness 6 reported several concerns about Mr Lloyd in which she stated:

*“We did have an incident on the 2nd June 2020, which is still under investigation where he did not get an anaesthetist for patient that required a very urgent review”*

The panel took into account the Trust’s investigation interview notes with Witness 6 dated 27 July 2020 in which she stated:

*“DL was working alongside a colleague in theatre recovery. The staff member had concerns about the heart rate of the patient and they wanted to seek advice from the anaesthetist who was located in theatre 8. David went to seek the anaesthetist and left the recovery area. To my understanding he did not go to look for the anaesthetist he started a conversation with two staff members stood in the corridor.”*

The panel had regard to further investigation interview notes dated 29 July 2020 in which Witness 6 stated:

*“The staff that were directly involved were concerned that when asked, David had not gone to seek the anaesthetist who would have remained in theatre 8. Knowing the staff in recovery that day they would not have requested assistance and advice unless the situation was serious-they are experience staff.*

*[...]*

*If an anaesthetist was unable to be found then you would have continued to look for one. If required they might be bleeped.”*

The panel also had regard to the written statement of Colleague 4 in which she stated:

*“We were just chatting when I glanced down the corridor and saw David walking very fast down the corridor towards us. I think by the time I saw him he must have been walking past Theatre 6 or 7. I kept watching him as he approached and did not see him look into Theatre 8 on his way to us.”*

The panel found that contemporaneous evidence in relation to this incident is consistent with the statements provided to the NMC. It concluded that, based on the evidence before it, it is more likely than not that Mr Lloyd, when asked to get an Anaesthetist from theatre 8, told colleague 3 that the Anaesthetist was not in theatre 8 thereby implying that he had checked. The panel therefore finds this charge proved.

### **Charge 11b**

11. On 2 June 2020:

- b. Your actions at charge 11 a were dishonest in that the information you gave to colleague 3 was misleading as you knew that you had not checked whether the Anaesthetist was in theatre 8.

**This charge is found proved.**

In reaching this decision, the panel considered that there is abundant evidence before it to conclude that Mr Lloyd was being asked to leave the room to locate an anaesthetist and returned without one. The panel determined that Mr Lloyd knew that he was leaving the room in order to locate an anaesthetist for the patient. The panel considered whether Mr Lloyds actions in stating that there was no anaesthetist in theatre when he had not checked would be considered dishonest by the standards of ordinary decent people. The panel therefore finds that Mr Lloyds actions as set out in charge 11a were dishonest. It therefore finds this charge proved.

### **Charge 11c**

11. On 2 June 2020:

- c. Said to colleague 4 'I'm coming into theatre with you two because if I stay in recovery I'm going to strangle somebody' or words to that effect which was inappropriate and/or unprofessional.

**This charge is found proved.**



In reaching this decision, the panel took into account the witness statement of Colleague 4 in which she stated:

*“When he reached us, he appeared angry in his manner. His shoulders were squared, his jaw clenched and his chest was puffed up. He then said to us, “I’m coming into theatre with you two because if I stay in recovery I’m going to strangle somebody”.*

*I put my hand up in front of his face and said, “you can’t talk like that”. He then tried to repeat what he had said. I said “you need to stop now, you’re looking after a patient and you’re working with two other colleagues. You need to go back to that patient and finish that patient’s care.”*

The panel had regard to an email from Colleague 4 addressed to Witness 6 dated 3 June 2020 which stated:

*“Yesterday I was in the theatre corridor with [Person 2] waiting to recover a patient in Theatre A. Staff Nurse David Lloyd approached us and declared forcibly that he was going to come into theatre with us, as if he carried on working with 'her' he was going to strangle her. I stopped him at this point and said he was not to talk about colleagues like that. He tried to repeat what he said, but again I stopped him from speaking and sent him back to recovery to continue with his care of the patient he had walked away from.”*

The panel also had regard to the written statement of Witness 6 which stated:

*“[Colleague 4] told me that she had been waiting in the theatre corridor for a patient.*

*David had walked up the theatre corridor towards her and been quite aggressive in his body language. He said to her that he wanted to strangle another member of staff. [Colleague 4] wasn’t even aware that he had been sent to look for an anaesthetist at this point. [Colleague 4] was concerned about the comment David had made and so raised this with me.*

The panel took into account the email from Witness 2 to Witness 6 dated 4 June 2020 which was a statement regarding the incidents of 2 June 2020. She stated in the email that:

*“He had stated to them as ‘If he stayed any longer working with her, i’m going to strangle her’, at which point [Colleague 4] stated that he should not act in this threatening manner and bad mouthing experienced colleagues.”[sic]*

The panel was satisfied that, based on all the evidence before it, that it is more likely than not that Mr Lloyd said to Colleague 4 words to the effect of ‘I’m coming into theatre with you two because if I stay in recovery I’m going to strangle somebody’. Further, the panel concluded that this comment was both inappropriate and unprofessional. It therefore finds this charge proved.

#### **Charge 11d**

11. On 2 June 2020:

- d. On being spoken to about the incident by colleague 5 commented to them that he thought he has seen them on the Jeremy Kyle show which was inappropriate and/or unprofessional

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

In reaching this decision, the panel took into account the witness statement of Colleague 4 in which she stated:

*“I explained that we are in the public eye as nurses so we need to maintain professionalism at all times. We finished the meeting quite positively. But then he turned to [Witness 6] and said “don’t I know you from somewhere?” [Witness 6] said she didn’t think so but then he said “Jeremy Kyle, you were on there!” [Witness 6] said she wasn’t.”*

The panel took into account the witness statement of Witness 6 which stated:

*“The meeting was about to come to an end when David said that he thought he had recognised me from somewhere. Perplexed as to where this conversation was going, he went on to tell me he thought I had been on the Jeremy Kyle show and he had seen me there! I was taken aback as I was not sure why he would say something so odd at the end of such a serious discussion. Our meeting ended after that.”*

The panel noted that Mr Lloyd had made this comment to Witness 6 who has provided a statement in relation to the incident. It also noted that Colleague 4 was a direct eye witness to the incident and has also provided a statement about the incident. Further, the panel considered that both Colleague 4's and Witness 6' statements are consistent with each other.

Based on the evidence before it, the panel concluded that on the balance of probabilities, it is more likely than not that Mr Lloyd, when being spoken to about an incident, made a comment to colleague 5 that he thought he has seen them on the Jeremy Kyle show.

The panel noted that this comment occurred during a serious conversation about an incident which had occurred and the comment was made towards a senior staff member who had concerns about him. The panel found that in these circumstances the comment made by Mr Lloyd was both inappropriate and unprofessional. The panel therefore finds this charge proved.

### **Charge 11e**

11. On 2 June 2020:

- e. Lifted a patients bed sheet to inspect her leg and/or legs without clinical justification

**This charge is found NOT proved.**

The panel took into account the witness statement of Colleague 3 which stated:

*“I remember at some point he lifted up the patient’s bed sheet from one leg to the other, exposing each leg at a time and appeared to be inspecting her lower leg from the knee onwards. I thought that was very strange as it was obvious the patient hadn’t had an operation to their legs.”*

The panel was satisfied that the evidence before it established that Mr Lloyd had lifted up the patients bed sheet given that Colleague 3 was an eyewitness to it having occurred. However, it was not satisfied that the NMC’s evidence has satisfactorily established that there was not any clinical justification for Mr Lloyds action. The panel therefore finds this charge not proved.

### **Charge 11f**

11. On 2 June 2020:

- f. On being questioned in relation to your actions at charge 11e by colleague 3, invaded colleague 3’s personal space which was inappropriate and/or unprofessional.

### **This charge is found NOT proved.**

In reaching this decision, the panel took into account the witness statement of Colleague 3 which stated:

*“I questioned him on this and asked why he was doing it. I can’t recall what his response was. I think I said to him something like that wouldn’t be my priority. That’s when David started to get angry. His body language changed. He was quite close to me, not giving me any personal space and his tone of voice was quite angry. He gave me a look of disapproval and glared at me. I felt really uncomfortable.*

*Witness 2, another recovery nurse, came across to us as she saw from a distance that I was uncomfortable and David was getting angry.”*

The panel considered that Colleague 3’s statement does not provide a definitive account of what occurred and she uses words like “I think I said” and “I can’t recall what his response was”.

Further, the panel took into account that Colleague 3 described feeling uncomfortable but the panel was not satisfied that there is sufficient evidence to suggest that Mr Lloyd was acting neither inappropriately nor unprofessionally in respect of this charge.

Based on the evidence before it, the panel concluded that in relation to this charge, the NMC has not discharged its burden of proof. The panel therefore finds this charge not proved.

## **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mr Lloyd'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 Lloyd's fitness to practise is currently impaired as a result of that misconduct.

## **NMC representations on misconduct**

The panel had regard to the NMC's statement of case in which it stated, in respect of misconduct:

*"The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:*

*'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.*

*As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively*

*'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*

*And*

*'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.*

*Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.*

*At the relevant time, Mr Lloyd was subject to the provisions of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code'). The Code divides its guidance for nurses into four categories which can be considered as representative of the fundamental principles of nursing care. These are:*

- a) Prioritise people;*
- b) Practice effectively;*
- c) Preserve safety and*
- d) Promote professionalism and trust.*

*We consider the misconduct serious for the following reasons.*

*Charges 1, [...] and 11(b)*

*The above referenced charges relate to dishonesty.*

*We consider the following provision(s) of the Code have been breached with reference to these charges:*

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

*To achieve this, you must:*

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with honesty and integrity at all times...*

*20.8 act as a role model of professional behaviour for students and newly*

*qualified nurses, midwives and nursing associates to aspire to*

*23 Cooperate with all investigations and audits*

*To achieve this, you must:*

*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.*

*23.4 tell us and your employers at the first reasonable opportunity if you are or have been disciplined by any regulatory or licensing organisation, including those who operate outside of the professional health and care environment.*

*It is submitted that Mr Lloyd's conduct in the above referenced charges fell far short of what would be expected of a registered nurse. Honesty is a fundamental tenet of the profession. We consider that the guidance on cases involving dishonesty at the sanction stage [SAN-2] is equally relevant to assessing the seriousness of the misconduct in this case. The guidance sets out that honesty is of central importance to a nurse's practice and that, as a result, allegations of dishonesty will always be serious.*

*The NMC's guidance on serious concerns which are more difficult to put right [FTP-3a] sets out a small number of concerns that are so serious that it may be less easy for the nurse to put right the conduct or the aspect of their attitude that led to the incident occurring. One such example closely engages Mr Lloyd's conduct in dishonestly failing to disclose his caution order:*

*"deliberately using false qualifications or giving a false picture of employment history which hides clinical incidents in the past, not telling employers that their right to practise has been restricted or suspended, practising or trying to practise in breach of restrictions or suspension imposed by us".*

*In this case, the dishonesty was work-related. Mr Lloyd sought to conceal the reason for the gap in his CV i.e., that he had received a sanction from his regulator, with a view to obtaining employment and thus financial gain. He also sought to deceive colleagues, indicating that an anaesthetist who was required to review a patient was unavailable. This ultimately caused a delay in the patient being reviewed, which placed the patient at risk of peri-arrest and cardiac arrest.*



*His actions demonstrate a significant departure from the principles of promoting professionalism and trust, and call into question his integrity and trustworthiness as a registered nurse.*

*Charge 3 [...]*

*31. The above referenced charges relate to patient care.*

*32. We consider the following provision(s) of the Code have been breached with reference to these charges:*

*1 Treat people as individuals and uphold their dignity*

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

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

*1.5 respect and uphold people's human rights*

*4 Act in the best interests of people at all times*

*To achieve this, you must:*

*4.2 make sure that you get properly informed consent and document it before carrying out any action*

*5 Respect people's right to privacy and confidentiality*

*To achieve this, you must:*

*5.1 respect a person's right to privacy in all aspects of their care*

*8 Work cooperatively*

*To achieve this, you must:*

*8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*

*8.5 work with colleagues to preserve the safety of those receiving care*

*13 Recognise and work within the limits of your competence*

*To achieve this, you must, as appropriate:*

*13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*

*18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations*

*To achieve this, you must:*

*18.3 make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines.*

*Nurses occupy a position of trust and are required to keep to and uphold the standards expected of them in the Code. This is to ensure members of the public feel confident in placing their and their loved ones' health in the hands of clinical professionals. Actions which undermine that public confidence therefore pose an indirect, but real risk to the public. The public should reasonably expect that a nurse would provide uphold patients' basic human rights and deliver competent care.*

*Mr Lloyd's actions demonstrate conduct that has fallen significantly short of the standards expected of a registered nurse. During his supernumerary period, he incorrectly assessed a patient and consequently administered inappropriate treatment without authorisation. Additionally, on more than one occasion he did not uphold patients' human rights by failing to obtain consent and violating another's dignity. These failings relate to fundamental nursing knowledge.*

*Charges [5] 9, 10, and 11(a), (b), (c), (d) [...]*

*The above referenced charges relate to Mr Lloyd's attitude and behaviour towards colleagues.*

*We consider the following provision(s) of the Code have been breached with reference to these charges:*

*1 Treat people as individuals and uphold their dignity*

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

*8 Work cooperatively*

*To achieve this, you must:*

*8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

*8.2 maintain effective communication with colleagues*

*8.5 work with colleagues to preserve the safety of those receiving care*

*9 Share your skills, knowledge and experience for the benefit of people*

*receiving care and your colleagues*

*To achieve this, you must:*

*9.2 gather and reflect on feedback from a variety of sources, using it to improve your practice and performance*

*9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

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

*To achieve this, you must:*

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

*20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

*20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

*Mr Lloyd has breached fundamental tenets of the profession, such as professionalism and trust.*

*The concerns raised are serious and fall far below the standards expected of a registered professional. Mr Lloyd repeatedly behaved in an aggressive and belligerent manner with his colleagues. Furthermore, on more than one occasion he acted in an inappropriate and/or sexual manner with colleagues, which had an impact of their wellbeing.*

*Fellow registered professionals have the right to work in a conducive environment and be treated with respect by their colleagues. Several of his colleagues describe feeling uncomfortable as a result of Mr Lloyd's behaviour. Furthermore, some of Mr Lloyd's actions could be described as sexual harassment, which is defined in section 26 of the Equality Act 2010 "unwanted conduct specifically of a sexual nature ... and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or violating his or her dignity."*

*In all these circumstances, not only is the conduct a serious departure from the Code, but a serious departure from the standards expected of a registered professional and as such amounts to serious misconduct.”*

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, *Walker v. Bar Standards Board*, 19 September 2013, unreported; *R (on the application of Remedy UK Ltd) v. GMC* [2010] EWHC 1245 (Admin)

### **Decision and reasons on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.’

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

The panel found that Mr Lloyd’s actions amounted to a breach of the Code. Specifically:

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

*1.1 treat people with kindness, respect and compassion*

*[In respect of charges 9, 11c and 11d]*

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

*[in respect of charge 3]*

*1.5 respect and uphold people’s human rights*

*[in respect of charge 3]*

#### ***8 Work cooperatively***

*8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

*[in respect of charges 11a, 11b and 11d]*

*8.2 maintain effective communication with colleagues*

*[in respect of charges 3, 9, 11a, 11b, 11c and 11d]*

*8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*

*[in respect of charges 3 and 11a]*

*8.5 work with colleagues to preserve the safety of those receiving care*

*[in respect of charges 3, 11a, and 11b]*

## **9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues**

*9.2 gather and reflect on feedback from a variety of sources, using it to improve your practice and performance*

*[in respect of charges 9 and 11c]*

*9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

*[in respect of charges 9, 11c and 11d]*

## **13 Recognise and work within the limits of your competence**

*13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*

*[in respect of charge 3]*

## **18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations**

*18.3 make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines.*

*[in respect of charge 3]*

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

*20.1 keep to and uphold the standards and values set out in the Code*

*[In respect of charges 1, 11a, 11b, 11c and 11d]*

*20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

*[in respect of charges 1, 9, 11a, 11b, 11c]*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

*[in respect of charges 1, 5, 10, 11c and 11d]*

*20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

*[in respect of charges 11c and 11d]*

*20.7 make sure you do not express your personal beliefs [...] to people in an inappropriate way*

*[in respect of charges 1, 9 and 11d]*

*20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to [in respect of charges 9, 10, 11a, 11b, 11c]*

### **23 Cooperate with all investigations and audits**

*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.*

*[In respect of charge 1]*

*23.4 tell us and your employers at the first reasonable opportunity if you are or have been disciplined by any regulatory or licensing organisation, including those who operate outside of the professional health and care environment.*

*[in respect of charge 1]*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Lloyd's actions did fall significantly short of the standards expected of a registered nurse. The panel considered each of the charges individually.

In respect of charge 1, the panel noted that Mr Lloyd did not disclose the caution order which was imposed by the NMC during a job interview: he may not have been directly asked about this. However, the panel took into account that Mr Lloyd had attended the previous NMC proceedings. The panel determined that, being fully aware of the caution

order, Mr Lloyd should have disclosed this during his interview. Whilst the panel noted that it did not find that Mr Lloyd was intentionally trying to conceal the caution order which he had been subject to, it concluded that the onus was on Mr Lloyd to make any prospective employer aware of its existence. The panel found that Mr Lloyd's actions as set out in charge 1 demonstrated an omission which fell short of what would have been proper in the circumstances. The panel concluded that Mr Lloyd's actions were so serious to amount to misconduct.

In relation to charges 3a and 3b, the panel took into account that Mr Lloyd had incorrectly assessed a patient as having hypoglycaemia and subsequently administered orange juice down the patient's Ryles tube based on this assessment. The panel determined that Mr Lloyd's actions did place the patient at a risk of harm as fluids were not supposed to have been put through the Ryles tube and if they were then this action was not to be carried out by a nurse in any case. The panel concluded that this was sufficiently serious to constitute misconduct.

The panel next considered whether charge 5 amounted to misconduct. It noted that it did not have evidence that Mr Lloyd was intentionally gazing at Colleague 2's chest and may have done so not completely aware of his actions or their impact on Colleague 2. The panel therefore concluded that this did not amount to misconduct.

In respect of charges 9, 10, 11c and 11d, the panel took into account that these charges involved Mr Lloyd using language which was inappropriate and unprofessional and showing a video to Colleague 2 of a woman breastfeeding within the work environment which was also inappropriate and unprofessional. The panel determined that nurses are expected at all times to act professionally towards their colleagues and to set an example for fellow nursing colleagues. The panel found that Mr Lloyd's actions as set out in these charges fell far below the proper standards expected of a nurse and was so serious that it amounted to misconduct.

In relation to the charges 11a and 11b, the panel took into account that an anaesthetist was required to attend to a patient; Mr Lloyd failed to look for one and dishonestly misled his colleagues by creating the impression that he had done so. The panel found that Mr

Lloyd's actions fell seriously short of what would be expected of him in the circumstances and found that his actions were so serious to amount to misconduct.



## **Decisions and reasons for Notice of Meeting for Mr Lloyd's conviction case**

After making its decision in relation to misconduct for the first set of charges, the panel was informed that there is another case in relation to Mr Lloyd. The panel was informed that this case relates to a conviction.

Before making any findings on fact, the panel considered whether the Notice of Meeting was served in accordance with the rules.

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

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was heard virtually. It was satisfied that Mr Lloyd has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

### **Details of charge:**

That you, a registered nurse

1. On 19 January 2021, at Chester Crown Court were convicted of the following offence:
  - a. Wound/inflict grievous bodily harm without intent.

AND, in light of the above your fitness to practice is impaired by reason of your conviction.

### **Background**

In August 2020, Mr Lloyd had been living in Person B's home. Person A, who was also residing here, was considered to be a vulnerable person in that they had a number of health conditions which included previous strokes, arthritis and restricted mobility.

On 20 August 2020, Mr Lloyd had consumed alcohol, as had Person A. Mr Lloyd was at Person B's home and when Person A arrived at the home, following an argument between the two, Mr Lloyd followed Person A into the hallway and hit him from behind over the head with a glass bottle. When Person A turned around to face him, Mr Lloyd continued to hit him over the head approximately four times. After the bottle had smashed, Mr Lloyd repeatedly punched Person A in the face, head and body. When Person B, who was also at the home, found Mr Lloyd beating Person A in the hallway Person B tried to stop him. Person B was pushed by Mr Lloyd and sustained an injury to her knee. After stopping, Mr Lloyd had called 999 for an ambulance reporting that he had "*just beaten the shit*" out of Person A. The Police arrived on the scene and Mr Lloyd was arrested.

Person A and Person B were both taken to the Emergency Department (A&E) of the Trust. Upon assessment at the A&E it appeared that Person A sustained a 3cm wound to the left ear, a 4 – 5cm incised full thickness wound to the lower lip, and a fracture to the eighth rib.

On 19 January 2021, Mr Lloyd was convicted of wound/inflict grievous bodily harm without intent. On 28 January 2022, Mr Lloyd was sentenced to 20 months imprisonment.

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

The only charge in this case concerns Mr Lloyd's conviction. Having been provided with a copy of the certificate of conviction, the panel found the facts proved in accordance with Rule 31 (2) and (3). These state:

- '31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
  - (b) *the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) *The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with*

*paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

## **NMC representations on impairment**

The panel had regard to the NMC's statement of case. In relation to impairment in respect of the misconduct charges, the NMC stated:

*"The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:*

*"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*

*If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.*

*Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.*

*When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:*

- a) has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- b) has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- c) has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*

*d) has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

*It is the submission of the NMC that (a) to (d) can be answered in the affirmative in this case. Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

*Honesty has been described as the bedrock of nursing. The actions of Mr Lloyd undermine the promotion of professionalism and trust and constitute a breach of one of the fundamental tenets of the nursing profession. In the absence of genuine remorse, reflection, insight and strengthening of practice, there is every reason to consider that the dishonest conduct is liable to be repeated in the future. Mr Lloyd has not engaged with the NMC's proceedings. We therefore consider he has displayed no insight. He has not provided any evidence to demonstrate he has undertaken relevant training in respect of the issues of concern.*

*We note there is no evidence to suggest that Mr Lloyd has worked since the issues of concern. Therefore, the risk of repetition remains.*

*We consider there is a continuing risk to the public due to Mr Lloyd's lack of full insight, failure to undertake relevant training, and having not had the opportunity to demonstrate strengthened practice through work in a relevant area.*

*Public interest*

*In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:*

*"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."*

*Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper*

*professional standards and conduct and/ or to maintain public confidence in the profession.*

*In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

*However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

*We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Mr Lloyd's conduct engages the public interest because it placed patients at risk of harm, violated patients' basic human rights, and undermined the fundamental tenet of professionalism."*

The panel had regard to the NMC's statement of case. In relation to impairment in respect of the conviction case, the NMC stated::

*"[...]*

*In the case of Meadows & the General Medical Council [2006] EWCA Civ 1390 the following important observation was made about the purposes of this stage of the proceedings:*

*'The purpose of fitness to practise proceedings is not to punish a practitioner for past misdoing but to protect the public from the acts and omissions of those who are not fit to practise. The Fitness to Practise Panel therefore looks forward not back. However in order to form a view as to the fitness to practise of a person to practise today it is evident that it will have to take account of the way in which a person concerned has acted or failed to act in the past.'*

*When determining the issue of current impairment, matters of purely personal mitigation, which do not go directly to the circumstances of the conviction or Mr Lloyd's current impairment, are not to be taken into account by the Panel at this stage.*

*[...]*

*Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

#### *Public protection*

*The NMC acknowledges that the conduct underpinning the conviction took place in Mr Lloyd's private life. However, nurses and midwives occupy a respectable position in society and accordingly are held to a high professional standard because of the trust and confidence colleagues, patients and members of the public place in them. As such, the NMC submit that members of the public aware of the particular circumstances of this offence would be deterred from accessing healthcare services as a result. The NMC further submits that public confidence in the nursing profession and in the NMC as regulator would be undermined if a finding of impairment were not made in this case. Consequently, a finding of impairment is necessary to protect the public.*

#### *Public interest*

*Additionally, the NMC have considered Mrs Justice Cox's following comments in Grant at paragraph 74:*

*"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.”*

*Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.*

*In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

*However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

*Nurses are required to promote professionalism and trust. This includes behaviour in their private life. As such, there is a duty to consistently display a personal commitment to the standards of practice and behaviour set out in the Code, and act as a model of integrity for others to aspire to.*

*Mr Lloyd's conviction breaches those fundamental tenets. The nature of his offending is in abject discord with the key qualities expected of a registered nurse responsible for caring for others' physical and emotional wellbeing.*

*The NMC consider conduct arising from reprehensible behaviour in a nurse's private life which leads to a criminal conviction is conduct which is more difficult to put right because it is not directly linked to his clinical practice. Insight, along with tangible and targeted remediation such as training and demonstrable nursing competency, cannot remedy this type of concern.*

*Mr Lloyd has not engaged with the NMC's proceedings. Notwithstanding his guilty plea, for which he received a reduced sentence, we therefore consider he has displayed no insight and that the risk of repetition remains.*

*Consequently, the NMC submit that Mr Lloyd's conduct breached fundamental tenets of the profession and has brought the reputation of the profession into disrepute. A finding of impairment is therefore also necessary on the ground of public interest."*

## **Decision and reasons on impairment**

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

The panel next went on to decide if as a result of the misconduct and/or the conviction, Mr Lloyd'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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses/midwives 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/their fitness to practise is impaired in the sense that S/He/They:*

- 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.'*

In respect of Mr Lloyds misconduct, the panel found that limbs a – d of the “test” were engaged. The panel found that as a result of his incorrect assessment and subsequent administration of orange juice via the ryles tube, a patient was put at an unwarranted risk of harm. Further, the panel determined that Mr Lloyd’s inappropriate and unprofessional behaviour towards his colleagues had the potential to cause them emotional harm. The panel determined that Mr Lloyd’s misconduct breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

In respect of Mr Lloyd’s conviction, the panel found that limbs a – c of the “test” were engaged. The panel found that both Person A and Person B were caused actual physical harm as a result of Mr Lloyd’s actions. The panel had regard to the sentencing remarks dated 28 January 2022 in which the Judge described Mr Lloyd’s actions as “a ferocious attack” and “a dreadful attack committed in [Person A’s] own home”. The panel also took into account that Person A was deemed vulnerable due to health conditions. The panel

concluded that your actions breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered whether or not Mr Lloyd has demonstrated any insight in respect of his misconduct and/or his conviction. The panel did not have any evidence before it which showed that Mr Lloyd understood why his actions were wrong and how his actions placed patients and colleagues at a risk of harm. Further, the panel did not have any evidence before it which showed that Mr Lloyd has shown any remorse for the actual harm caused to Person A and Person B as a result of his actions. The panel did not have any evidence before it which showed that Mr Lloyd understood how his actions, both in his misconduct and his conviction, impacted negatively on the nursing profession. The panel noted that there has been no evidence before it which showed that Mr Lloyd has provided apologies to any of those persons impacted by his actions. In light of there being no evidence of insight before the panel from Mr Lloyd, the panel concluded that Mr Lloyd has not demonstrated that he would act differently in the future.

The panel considered whether or not the misconduct and/or the conviction is capable of being addressed by Mr Lloyd. The panel noted that the concerns in both cases arise predominantly from behavioural issues exhibited by Mr Lloyd. Whilst there were some clinical concerns in respect of Mr Lloyd's misconduct, the panel found that most of the charges found proved related to his inappropriate and/or unprofessional comments and behaviours. In relation to his conviction, the panel noted that this related to an act of violence whilst under the influence of alcohol. The panel found that both the misconduct and the conviction were highly indicative of attitudinal issues that are often more difficult to put right. The panel noted that Mr Lloyd has not provided any evidence to the NMC or this panel that he has attempted to address the concerns or taken any steps to strengthen his nursing practice.

At the impairment stage, the panel was provided with the unredacted determination from Mr Lloyd's caution order imposition in June 2017. It noted that the concerns in that case bore some degree of symmetry to the nature of the concerns in this misconduct case in that many of the charges were sexually inappropriate in nature. The panel also noticed that in respect of the misconduct, Mr Lloyd said the words "I'm going to strangle somebody". The panel noted that there is no evidence that Mr Lloyd had acted on his

words or that there was any intention by him to actually carry out this action. However, the panel noted that his conviction related to an act of violence in that he attacked Person A from behind and then repeatedly punched him. The panel found that there was a common theme of violence exhibited in his words and behaviours. Further, the panel concluded that although Mr Lloyd's conviction is not linked with his clinical nursing practice, the nature of his actions which led to the conviction are seriously concerning and give rise to public protection and public interest concerns.

Further, the panel determined that there is a risk of repetition in this case.

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.

The panel determined that a finding of impairment on public interest grounds is required because public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Lloyd's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Lloyd's fitness to practise is currently impaired by way of both his misconduct and conviction.

## 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 Lloyd's name off the register. The effect of this order is that the NMC register will show that Mr Lloyd 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.

## Representations on sanction

The panel noted that in both of the Notices of Meeting, dated 6 March 2024, the NMC had advised Mr Lloyd that it would seek the imposition of a striking off order if it found Mr Lloyd's fitness to practise currently impaired.

The panel had regard to the NMC's statement of case. In relation to sanction, in respect of the misconduct the NMC stated:

*"We consider the following sanction is proportionate: Striking-Off Order.*

*The public interest must be at the forefront of any decision on sanction. The public interest includes protection of members of the public, including patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The public interest in this case lies with maintaining public confidence in the profession and upholding proper professional standards by declaring that the registrant's behaviour was unacceptable.*

*Any sanction imposed must do no more than is necessary to meet the public interest and must be balanced against Mr Lloyd's right to practice in his chosen career. In order to do achieve this the panel is invited to consider each sanction in ascending order.*

*With regard to our sanctions guidance the following aspects have led us to this conclusion:*

*The concerns are of a nature that they are more difficult to put right e.g.,*

*relating to discriminating and harassing behaviour towards female colleagues, and dishonesty in a clinical setting.*

*In 2017 Mr Lloyd received a Caution Order at a Fitness to Practise hearing. The charges were of a similar nature i.e., related to inappropriate behaviour of a sexual nature towards colleagues.*

*Taking no further action would be wholly inappropriate, considering the seriousness of the concerns. Furthermore, imposing a caution order, as per the NMC's guidance (SAN-3a and SAN-3b), would not mark the seriousness of the misconduct and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.*

*Imposing a conditions of practice order would be inappropriate. Whilst the charges relating to patient care are theoretically remediable, when the case is taken as a whole there are no practical conditions that can be imposed to reflect the seriousness of the facts of this case, nor address public interest concerns.*

*A suspension order would be inappropriate. According to the Guidance (SAN-d), a suspension order may be appropriate when the registered professional has shown insight and does not pose a significant risk of repeating the behaviour. However, as Mr Lloyd has not shown any real insight into the concerns raised or provided evidence that the behaviour will not be repeated. The charges relate to multiple and persistent inappropriate and sexual behaviour towards colleagues. Temporary removal is insufficient to reflect the seriousness of the case.*

*Mr Lloyd's behaviour is underpinned by deep-seated personality/attitudinal problems, demonstrated by their repetition.*

*The concerns are directly linked to a risk of damaging the public's confidence in the profession. His behaviour in the workplace undermines professionalism and the right of fellow professionals to work free of harassment and aggression from colleagues.*

*A striking-off order would appear to be the only appropriate to mark the seriousness of the concerns, protect the public, and maintain trust and confidence in the profession.”*

The panel had regard to the NMC's statement of case. In relation to sanction, in respect of the conviction the NMC stated:

*"The NMC Sanction Guidance in cases involving criminal convictions (SAN2) states:*

*In the criminal courts, one of the purposes of sentencing is to punish people for offending. When making its decision passing sentence, the criminal court will look carefully at the personal circumstances of the offender. In contrast, the purpose of the Fitness to Practise Committee when deciding on a sanction in a case about criminal offences is to achieve our overarching objective of public protection. When doing so, the Committee will think about promoting and maintaining the health, safety and wellbeing of the public, public confidence in nurses, midwives and nursing associates, and professional standards...*

*The guidance further states:*

*Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'.*

*Whilst Mr Lloyd's conviction is not directly linked with his clinical practice, the nature of the offending gives rise to public interest concerns.*

*With regard to our sanctions guidance the following aspects have led us to this conclusion:*

*The concerns are of a nature that they are more difficult to put right e.g., criminal offending relating to a violent crime directed at a vulnerable person. Taking no further action would be wholly inappropriate, considering Mr Lloyd has been convicted of a serious criminal offence, for which he received a total sentence of 20-months imprisonment. Furthermore, imposing a caution order, as per the NMC's guidance (SAN-3a and SAN-3b), would not mark the seriousness of the offences and would be insufficient to maintain high standards within the profession or the trust the public place in the profession. Imposing a conditions of practice order would be inappropriate. There are no practical conditions that can be imposed to reflect the seriousness of the*

*facts of this case, nor address public interest concerns.*

*A suspension order would be inappropriate. According to the Guidance (SAN-d), a suspension order may be appropriate when the registered professional has shown insight and does not pose a significant risk of repeating the behaviour. However, Mr Lloyd has not shown any real insight into the concerns raised or provided evidence that the behaviour will not be repeated. The charges relate to a serious criminal offence. Temporary removal is insufficient to reflect the seriousness of the case.*

*The behaviour giving rise to the conviction is fundamentally incompatible with being a registered professional.*

*The concerns are directly linked to a risk of damaging the public's confidence in the profession. Whilst Mr Lloyd's conviction took place in his personal life, it calls into question his professionalism and trustworthiness in the workplace. Consequently, the public may be led to avoiding use of health and care services.*

*A striking-off order would appear to be the only appropriate to mark the seriousness of the concerns, protect the public, and maintain trust and confidence in the profession.”*

## **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- Mr Lloyd has had previous regulatory findings with the NMC and has been subject to a caution order for concerns of a similar nature
- Abuse of a position of trust
- Lack of insight into his failings

- Lack of remorse for misconduct and conviction
- A pattern of misconduct over a period of time
- Misconduct which put patients at risk of suffering harm.
- Misconduct which put colleagues at risk of emotional harm
- Mr Lloyd's actions as set out in his conviction caused actual harm to Person A and Person B

The panel considered whether there were any mitigating features in this case. However, it concluded that there was no evidence before it of mitigation.

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 would it address the public protection issues as identified by the panel. Further, the panel concluded that it would not be 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 Lloyd'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 neither Mr Lloyd's misconduct nor his conviction was 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 Lloyd'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 matters found proved in this case were not something that could be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Lloyd'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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel determined that none of the above factors was present in this case and therefore decided that a suspension order was not the appropriate or proportionate sanction to impose.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breaches of the fundamental tenets of the profession occasioned by Mr Lloyd render him fundamentally incompatible with 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 Lloyd'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 Lloyd'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 matters it identified, in particular the effect of Mr Lloyd's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel 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 Lloyd 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 Lloyd's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Representations on interim order**

The panel took account of the representations made by the NMC which stated:

*“If a finding is made that Mr Lloyd’s fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed, we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.*

*If a finding is made that Mr Lloyd’s fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible with continued registration, we consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest.”*

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

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel’s determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period and any period during which an appeal may be heard and dealt with.

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

That concludes this determination.