Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
12 October 2020 – 14 October 2020
19 October 2020 – 20 October 2020

Virtual Hearing

Name of registrant:	**Michael Catherall**	
NMC PIN:	78I0018W	
Part(s) of the register:	RN6: Registered Nurse - Learning Disabilities (Level 2) (18 December 1980)	
Area of registered address:	Conwy	
Type of case:	Misconduct	
Panel members:	Trevor Spires Susan Tokley Georgina Foster	(Chair, Lay member) (Registrant member) (Lay member)
Legal Assessor:	Suzanne Palmer	
Panel Secretary:	Max Buadi	
Nursing and Midwifery Council:	Represented by Zahra Evans, Case Presenter	
Mr Catherall:	Not present and not represented in his absence	
Facts proved by admission:	1.1, 1.3, 2.1 and 2.2	
Facts proved:	Charge 1.2	
Facts not proved:	Charge 2.3	
Fitness to practise:	Impaired	
Sanction:	**Suspension order (4 months)**	
Interim order:	**Interim suspension order (18 months)**	

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Catherall was not in attendance, nor was he represented in his absence. Notice of this hearing had been sent via email to an email address held on the NMC register on 10 September 2020.

The panel took into account that the notice of hearing provided details of the date and time of the hearing and that it was to be held virtually. In addition it contained information about Mr Catherall's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

The panel accepted the advice of the legal assessor.

The panel was mindful that Rule 33(1)(c) provides that service of the notice can be to an email address that a registrant has notified to the NMC as an address to which communications can be sent. In those circumstances, Rule 33(4)(b) provides that service may be proved by confirmation of receipt of the email. The panel was informed that there was no download receipt or express confirmation by Mr Catherall of his receipt of the email in which notice was sent. However, there was email correspondence between the NMC and Mr Catherall shortly after it was sent, which referred to the hearing date, and in which Mr Catherall referred to the fact that he would not be attending the hearing. In that correspondence it was clear that he was aware of the hearing dates. In the circumstances, the panel considered that it could infer from the email correspondence that Mr Catherall had received the notice of hearing. It therefore regarded the correspondence in this case as evidence of confirmation of receipt.

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

Decision and reasons on proceeding in the absence of Mr Catherall

The panel next considered whether it should proceed in the absence of Mr Catherall. It had regard to Rule 21 and heard the submissions of Ms Evans. She drew the panel's attention to an email from Mr Catherall dated 16 July 2020 which stated:

> "…and no I wont be attending…"

Ms Evans also drew the panel's attention to another email from Mr Catherall, dated 23 September 2020, which stated:

> "…I WILL NOT be attending the hearing…" [sic]

Ms Evans also cited Mr Catherall's Case Management Form, where he stated that he would not be attending a hearing for this case.

Ms Evans submitted that there has been no application made for a postponement or a change of date. She further submitted that the allegations relate to public protection and public interest concerns so there is a public interest in an expeditious disposal of this hearing. Ms Evans invited the panel to continue in the absence of Mr Catherall.

The panel accepted the advice of the legal assessor.

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

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

The panel has decided to proceed in the absence of Mr Catherall. In reaching this decision, the panel has considered the submissions of Ms Evans, emails from Mr Catherall, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of R v Jones and R v Hayward & Ors [2001] 3 WLR 125 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Catherall;
- Mr Catherall has been consistent, over a period of time, in saying that he does not intend to attend or participate in today's hearing. He is clearly aware of the hearing dates and has chosen not to attend;
- There is no reason to suppose that adjourning would secure his attendance at some future date. On the contrary, it appears unlikely that he would attend on a future occasion, particularly as he has said that he now considers himself retired from the healthcare profession;
- The panel acknowledged that there would be some disadvantage to Mr Catherall in not being present, because it is clear from his responses that he denies some of the allegations and raises issues in respect of some of the witnesses. By not being present, he is not able to challenge witnesses or give his own account of events. However it is his choice not to attend or participate. In addition, the panel would be able to ensure that any prejudice to Mr Catherall was minimised, by taking into account the points he has raised on his behalf and by exploring some of the issues he has raised with the witnesses, as far as is reasonable;
- There is a public interest in the expeditious disposal of the case. In addition, the panel noted that Mr Catherall has also complained in correspondence about the length of time for which the proceedings have been ongoing, and appears anxious for the case to come to an end.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Catherall. The panel will draw no adverse inference from his absence in reaching its findings of fact.

Details of charges

That you, a registered nurse, on unknown dates between January and October 2018:

1. Behaved inappropriately towards service users in that you:

    1.1. Called Resident A “a pain in the arse”, or words to that effect; ***[PROVED BY ADMISSION]***

    1.2. Called Resident B “a prick” and/or “numb nuts”, or words to that effect; ***[PROVED]***

    1.3. On being informed that a resident was having a medical episode, responded “there is no rush, it’ll be over before I get there”, or words to that effect. ***[PROVED BY ADMISSION]***

2. Behaved inappropriately towards colleagues in that you:

    2.1. said in respect of a colleague that you would ‘break their legs’, or words to that effect; ***[PROVED BY ADMISSION]***

    2.2. said to Colleague B that her “top with pompoms on looked nice”, or words to that effect; ***[PROVED BY ADMISSION]***

    2.3. said to Colleague B that if she were younger that you would “do her”, or words to that effect; ***[NOT PROVED]***

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

Decision and reasons on application to admit hearsay evidence

Ms Evans informed the panel that Mr Catherall has made what is in effect an application under Rule 31. He sought to have admitted into evidence, and place reliance upon, the written witness statement of Ms 4. The NMC prepared a bundle on Mr Catherall's behalf which included email correspondence between him and the NMC in relation to this application, as well as a copy of the witness statement. The panel had sight of that bundle when reaching its decision.

Ms Evans explains that Ms 4 is a carer at the Home who worked alongside Mr Catherall. This witness was approached by the NMC as a witness and provided a statement. However the NMC decided not to use that statement in support of its case. To some extent Ms 4's witness statement comments on Mr Catherall's character. It does not relate directly to the charges before the panel. However, Ms Evans accepted that, in a broad sense, it may have some relevance to wider issues which Mr Catherall has raised in his defence.

Ms Evans informed the panel that the NMC opposed this application. She submitted that the NMC are not relying on this statement to support the allegations. She referred the panel to the NMC Guidance "Documents panels use when deciding cases" and more specifically "Documents not originally in the hearing bundle". It states:

> "…[where the NMC] and…the nurse or midwife, or their representative, does not agree on the addition of the document, the panel, after hearing [submissions from the NMC and the registrant themselves and] the advice of the legal assessor, will consider whether it is fair and relevant for it to be considered as evidence…"

Ms Evans submitted that the only evidence that should be admitted is that which is relevant to the issues. Fairness also needs to be considered, which includes fairness to all parties. She submitted that Mr Catherall wants to rely on the evidence of Ms 4 without calling her to give oral evidence today. She further submitted that evidence can be unfair when it cannot be challenged which is the case here as Ms 4's evidence cannot be questioned as she is not in attendance.

Ms Evans informed the panel that the NMC did make enquiries with Mr Catherall to explain to him how he could ask for Ms 4's attendance to be secured or to offer him assistance in making an application to that effect. However the NMC received no reply to this enquiry and Mr Catherall appeared to have taken no steps to secure the witness's attendance or to make any application. She submitted that Mr Catherall has not provided a reason as to why Ms 4 is not going to attend.

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

The panel considered whether the hearsay evidence of Ms 4 was relevant to the charges and to its consideration on misconduct and impairment. The panel took account of an email sent from the NMC case officer to Mr Catherall, dated 2 July 2020, which stated:

> "…I would also like to inform you that the statement will be redacted so that only the information contained within the statement which relates to the charges will be available for the panel to review…"

The panel had heard, and had seen from its own consideration of the document, that the statement had some potential relevance to issues raised by Mr Catherall in response to the allegations, particularly in relation to his character, the way he worked and the working arrangements and atmosphere at the Home. The statement referred to Mr Catherall acting

professionally, to Ms 4 having no concerns about his attitude or behaviour, and to there being justification for his presence on the Arfon Unit. This painted a somewhat different picture to the picture portrayed by some of the NMC's other witnesses. Therefore, although not directly relevant to the factual allegations in this case, the panel considered that the evidence was relevant to some extent, and might be helpful to Mr Catherall.

The panel went on to consider whether it was fair to admit the evidence. The panel bore in mind that Mr Catherall had been consistent in his stated intention not to attend or participate in today's proceedings. Further, he had been provided with guidance by the NMC on how to raise evidence for the hearing and he had not followed that guidance beyond simply asking the NMC to include Ms 4's statement. However the panel bore in mind that Mr Catherall is not legally represented and would not necessarily be familiar with the process. In addition, the panel noted that Ms 4 was not a witness who had been "sprung" on the NMC by Mr Catherall. She was someone who had been approached by the NMC in the course of its own investigation and a statement taken from her.

The panel bore in mind that because no steps had been taken by Mr Catherall to secure Ms 4's attendance, there would be no opportunity to test her evidence and it would only be hearsay evidence. However the panel noted that the NMC was also placing reliance on hearsay evidence in this case. In addition, the fact that evidence was hearsay was not itself a reason to exclude it. The panel bore in mind that it would be able to consider, at the appropriate stage of the proceedings, what was the appropriate weight to give to the evidence in light of the fact that it was hearsay.

Having balanced all these factors, the panel considered that the evidence was potentially relevant and that it would be fair and proportionate to admit it. It would decide what weight it would be appropriate to give this evidence once it had heard all the evidence and was in a position to evaluate all the evidence put before it.

Background

Mr Catherall was employed by Leonard Cheshire Disability, based at their Eithinog & Arfon Care and Nursing Home (the Home). This is a care home for 34 adults with learning difficulties and physical disabilities. The Home was divided into two units. The larger unit was Eithinog and there was a smaller unit called Arfon. On the night shift there would be one nurse present on the Eithinog unit, assisted by 4 or 5 carers. On the Arfon unit, there would be one carer on a night shift. However, other members of staff (the nurse and/or carers) would attend the Arfon unit as required to provide additional support, either for tasks requiring two people (for example hoisting patients) or for tasks requiring nursing skills (for example providing medication or clinical care or assessment). Contact between the two units appears to have taken place during the shift by telephone and by a walkie-talkie carried by the nurse.

Mr Catherall was a night nurse in the Home, working two or three shifts per week. When he was on duty, he was the only night nurse on shift, therefore he would have been responsible for the care of all the patients (in both units) during the night shift, and would have had supervisory responsibility over all of the carers during the shift.

The charges arise from allegations that, during his employment on a number of unknown dates between January and October 2018, Mr Catherall behaved inappropriately towards colleagues and service users.

Ms 1, a resident at the Home, describes Mr Catherall coming to the Arfon unit where she is a resident and sitting on a sofa in the reception area with female members of staff during the night shift. Ms 1 stated that he made comments about staff members and residents. She overheard Mr Catherall say to Colleague B that her “top with pom poms on looked nice” or words to that effect. Ms 1 also heard the Mr Catherall say to Colleague B, a carer at the Home, that if she were younger he would “do her” or words to that effect. Ms 1 also describes hearing Mr Catherall refer to Resident A as “a pain in the arse” or words to that effect. Ms 1 also describes hearing the Mr Catherall respond “there is no rush, it’ll

be over before I get there" when he was informed that a resident was having a medical episode. This was said to have been over the walkie-talkie.

Ms 2, the service manager at the Home, was informed by staff members of a number of accusations in relation to inappropriate behaviour by Mr Catherall. She then conducted an investigation. During the course of her investigation she was made aware of allegations including the alleged matters referred to by Ms 1, and allegations made by two members of care staff (one of whom was Colleague B). They also included an allegation that Mr Catherall had made a comment in respect of an unspecified colleague that he would "break their legs", or words to that effect, if he found out who had reported him.

Ms 3, a registered nurse in the Home who worked the night shifts which Mr Catherall did not work (4 to 5 nights per week), received disclosure from a carer colleague that Mr Catherall had called Resident A "a prick", or words to that effect. She was also informed that Mr Catherall had commented in respect of an unspecified colleague that he would "break their legs if he found out who reported him" or words to that effect. Ms 2 also received disclosure from Colleague B that Mr Catherall would make sexual comments that made her feel uncomfortable. Ms 3 told the panel that when she was on duty, she would sometimes have reason to visit the Arfon unit to provide assistance, although on occasions she would send a carer instead, depending on the task. She explained that there were patients on the Eithinog unit who required assistance that could only be provided by a registered nurse and she did not like to be away from the Eithinog unit for extended periods of time.

Ms 4 was a carer who worked alongside Mr Catherall on the Eithinog unit. She provided a statement in which she said that she had no problems with Mr Catherall, considered him professional and had no concerns about his attitude or behaviour. She explained that he would visit the Arfon unit during the night shift and remain there for periods of time. She considered that he went to provide assistance with tasks which required it, such as giving medications or assisting with hoisting which required two people. She considered that he would sometimes remain to chat to the carer on duty on the Arfon unit. She commented that it could be lonely working as the sole carer on the Arfon unit at night.

Decision and reasons on the facts

At the outset of the hearing, Ms Evans drew the panel's attention to Mr Catherall's case management form (CMF). Within this form Mr Catherall made full and unequivocal admissions to charges **1.1, 1.3, 2.1 and 2.2**.

The panel therefore finds the facts of charges **1.1, 1.3, 2.1 and 2.2** proved in their entirety, by way of Mr Catherall's admissions. As part of its deliberations, however, the panel went on to consider whether the conduct in question was inappropriate, because the stem of both charges 1 and 2 alleged that the behaviour concerned was inappropriate.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case, together with the submissions made by Ms Evans on behalf of the NMC and the witness statement of Ms 4 provided by Mr Catherall. The panel also accepted the advice of the legal assessor.

The panel has drawn no adverse inference from the non-attendance of Mr Catherall.

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

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

- Ms 1: A full time resident at the Home at the time of the concerns raised;

- Ms 2: Service Manager at the Home at the time of the concerns raised. She

also conducted the investigation into the matters raised;

- Ms 3: A nurse at the Home at the time of the concerns raised.

The panel considered the evidence of the witnesses and made the following conclusions:

The panel considered Ms 1 to be clear and straightforward with all her answers and endeavoured to help the panel. The panel noted several points in relation to this witness however. She appeared a little uncertain at times. It was curious that she appeared to have quite a bit of clarity in relation to some dates but not others. The panel heard evidence from another witness that Ms 1 tends to be a somewhat anxious person, and this accorded with the panel's own impression of her evidence. The panel noted that her concerns were in relation to people who were important to her living environment at the Home, specifically Colleague B, and to whom she understandably felt close and protective. In broad terms, the panel considered Ms 1's evidence to be credible and broadly reliable. However, it considered that the circumstances of her living arrangements and her anxiety meant that it had to have some degree of caution as to the weight it could give to her evidence. Additionally, in light of her giving oral evidence virtually, it noted that it was somewhat difficult to assess this witness given the poor internet connection issues during her evidence. It considered that the connection was sufficient to form a view about her evidence, but that it was a harder task than usual to assess the witness's reliability.

The panel considered Ms 2 to be professional in her approach, credible and reliable. It considered her to have a clear grasp and overview of what was happening in the Home as its manager. The panel considered her to be balanced and fair in her view of Mr Catherall. She referred to having had no issues with him herself prior to these allegations being reported to her, and to him having responded politely and positively when she raised issues with him in her role at local level as his supervisor. She made balanced observations on his character, noting that he had a "dry sense of humour" which some

people could consider sarcastic, but commenting on the fact that she had been a little surprised that he had maintained that attitude during the disciplinary investigation. The panel could see no evidence of prejudice or ill-will towards Mr Catherall on her part. Overall, the panel considered her evidence credible and reliable. However it noted that her evidence was of limited assistance because Ms 2 was not a direct witness to any of the alleged incidents, so there was a limit to how much weight the panel could apply to it.

The panel considered Ms 3 to be professional, clear and credible in her evidence. She was able to provide the panel with clear and helpful information about the shift patterns and way of working at the Home from the perspective of another nurse working on night shifts. The panel saw no evidence of prejudice or ill-will towards Mr Catherall, noting that Ms 3 accepted that she was not able to comment on his character because she had never worked alongside him and had very limited interaction with him, having seen him only twice, very briefly, during her tenure at the Home. There was no evidence of embellishment in Ms 3's evidence, and she acknowledged the areas where she could not assist. The panel considered that Ms 3 came across as supportive of her colleagues and caring about her patients. She appeared to be open, straightforward and helpful in her evidence. Overall, the panel considered her evidence to be credible and reliable. Again, however, the panel noted that Ms 3 was not a direct witness to any of the alleged incidents so there was a limit to how much assistance the panel could derive from her evidence.

In relation to Ms 4, the panel noted that she had not attended as a witness and her evidence could not be tested or explored. There was therefore a limit on what weight could be attached to it. However, her evidence was to some extent corroborated by that of Ms 2, in particular Ms 4's comments that she had encountered no difficulties working alongside Mr Catherall and had found him to be polite and appropriate in her interactions with him. Ms 4 said that Mr Catherall had a good relationship with patients. The panel noted that her evidence could only be given limited weight, but saw no reason to disbelieve what she said. Again, it was of limited assistance because she was not a direct witness to any of the allegations.

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

Charge

1. Behaved inappropriately towards service users in that you:

Sub-charge

1.2. Called Resident B “a prick” and/or “numb nuts”, or words to that effect:

This sub-charge is found proved.

In reaching this decision, the panel took account of the evidence of Ms 2, Ms 3, Ms 6 and Mr Catherall’s response to the charge in the CMF.

The panel noted that Ms 2 was not a witness to this alleged incident. It noted that her witness statement corroborates and confirms what Ms 6 is said to have witnessed:

> “…[Ms 6] also stated that on 7 September 2018 [Mr Catherall] was sitting in the nursing corridor. She was in the carer's office around the corner. She heard [Mr Catherall] call a resident a "fucking prick"…”

The panel also noted that Ms 3 confirmed in her oral evidence that she was informed by Ms 6 of this incident. However, the panel bore in mind that, like Ms 2, Ms 3 did not actually witness the incident. Both of them were entirely reliant on the account of Ms 6.

The panel was mindful that the account from Ms 6 was hearsay. She had told Ms 2 and Ms 3 that she heard Mr Catherall say this. She had not attended to give evidence at this hearing and had not even provided a formal witness statement. There was no way to test what she said and no corroborating evidence. Mr Catherall had denied this allegation in his CMF. In a letter, dated 25 October 2019, he stated:

> "…In relation to Resident B I didn't call him a prick…"

It also bore in mind the witness statement of Ms 4, a healthcare assistant at the Home, where she stated:

> "…I never witnessed [Mr Catherall] acting inappropriately, nor did I hear anyone else say this. I confirm that I had no concerns about him at all…"

The panel noted that there was conflicting, vague and unsatisfactory evidence about precisely when, how and in what circumstances or context this incident was said to have taken place. The one person said to have witnessed it had not provided evidence about it. The panel concluded, on the balance of probabilities, that the evidence adduced by the NMC was insufficient to establish that Mr Catherall called Resident B "a prick" or words to that effect.

However, the panel took account of Mr Catherall's CMF where he admitted to calling Resident B "numb nuts" where he stated:

> "…called him "numb nuts" a term I use frequently even my own son…" [sic]

This is reaffirmed in his letter dated 25 October 2019. In light of this the panel accepted that Mr Catherall did call Resident B "numb nuts".

The panel turned its attention to the stem of the charge. The panel noted that Mr Catherall appeared to consider "numb nuts" to be acceptable because he uses it, apparently in the context of affectionate banter, with his own son. It also noted that Mr Catherall stated in his letter dated 25 October 2019:

> "…what staff don't appreciate is having been in the "armed forces" and in the "ambulance service" we have a very different vocabulary to other people and no malice or threat is intended…"

The panel considered that the relationship between carer and resident is different from that which may exist between family members, or people who live or work together over long periods of time and may develop an informal two-way relationship based on equality of response, trust and affection. The panel noted that Mr Catherall was not a live-in carer and that there was evidence that service users at the home were vulnerable, with learning difficulties. There was evidence that Resident B had difficulties verbalising and responding. The panel considered that in the context of a caring relationship in a residential home with a vulnerable patient, the relationship should be professional and respectful, and that behaviours which might be acceptable at home should be modified to that working environment. The panel considered that the term which Mr Catherall accepted he had used was one which was inappropriate and unprofessional.

The panel concluded that Mr Catherall, by his own admission, called Resident B "numb-nuts", and that this amounted to inappropriate behaviour on his part.

Therefore, this sub-charge is found proved.

Charge

2. Behaved inappropriately towards colleagues in that you:

Sub-charge

2.3. said to Colleague B that if she were younger that you would "do her", or words to that effect;

This sub-charge is found not proved.

In reaching this decision, the panel took account of the evidence of Ms 1, who was the only direct witness to this alleged incident, and the statement made by Colleague B within the investigation report conducted by Ms 2.

The panel noted that in Ms 1's witness statement she stated:

> "…I was again sitting in the main reception area next to the first floor of the Unit in my wheelchair and [Colleague B] was sat speaking with [Mr Catherall] on the sofa in the same area. I was sat in close enough proximity to both [Colleague B] and [Mr Catherall] that I could overhear what they were saying…I remember that [Mr Catherall] said to [Colleague B] in a loud voice that if she was younger he would "do her"…"

The panel also noted that Ms 1 slightly changed her statement in her oral evidence. Ms 1 said that although she had accurately recorded what Mr Catherall had said, she thinks that he must have meant "if he was younger", rather than "if she was younger", because she accepted that Mr Catherall was considerably older than Colleague B and that the comment as she had recorded it in her witness statement did not make sense in the context in which she had understood it. The panel also noted that, when the panel probed Ms 1's evidence about this incident, she was adamant that Mr Catherall made the comment.

Ms 1 said that the comment took place at a time when Mr Catherall was sitting next to Colleague B on the sofa in the reception area, with darkened lighting, and that this context made her feel uncomfortable because Colleague B was alone with Mr Catherall and most of the service users were asleep. She clearly inferred that the alleged reference to "do you" in the conversation had a sexual connotation or subtext.

The panel took account of the statement Colleague B made in the investigation report. It noted that Ms 1's witness statement conflicts with the Colleague B who provided a very different context to the alleged incident when she stated:

> "…One night I called out to [Mr Catherall] to come and see [a resident]'s bright red eyes, I shouted [Mr Catherall] come on, come here, don't be lazy". When I found

him he walked with me to [the resident]'s room and said "You're gonna get it". In context I felt this was wrong, not normal and it wasn't banter…" [sic]

Clearly, if the comment was made in this context, it would not appear on the face of it to have the sexual connotation ascribed to it by Ms 1, but was instead a response to being called lazy by Colleague B.

The panel noted that there appeared to be conflict between Ms 1 and Colleague B over the precise words used and the context in which they occurred, if indeed they were referring to the same incident. While the panel found Ms 1 to be broadly credible, this was the most unconvincing area of her evidence. She accepted that the way this sub-charge was worded was not what was said at that time as recorded in her witness statement. She appeared to have drawn an inference about the meaning of the phrase which may have been partly based on her anxiety about Colleague B's wellbeing, working alone with an older male colleague at night. This had to be viewed with a degree of caution in the context of the observations about Ms 1's credibility outlined above. It did not accord with and was not corroborated by Colleague B's apparent understanding of the context of the comment when she reported her concerns.

The panel also noted that there was no further evidence beyond these two very different accounts, and that the allegation was denied by Mr Catherall, who comments that he is old enough to be Colleague B's grandfather. Ms 1's interpretation was also at odds with the evidence of both Ms 2 and Ms 4 that they had found Mr Catherall to be polite and professional in their interactions with him, although Ms 2 had found him to have a dry, or sarcastic, sense of humour at times. It also bore in mind the witness statement of Ms 6, a healthcare assistant at the Home, where she stated:

"…I never witnessed [Mr Catherall] acting inappropriately, nor did I hear anyone else say this. I confirm that I had no concerns about him at all…"

The panel also noted that there appeared to be conflict relating to the location the incident allegedly occurred in. Ms 1 stated that the alleged incident occurred while Mr Catherall and Colleague B were sitting on a sofa, Colleague B stated that this alleged incident occurred in a resident's room while attending to a resident. However, the panel noted that there is no corroboration either way.

The panel weighed up all the evidence. It found, based on the evidence it had heard and seen, that it was possible that Mr Catherall had made some sort of comment to Colleague B along the lines that she was going to "get it". However the panel considered it significant that the alleged recipient or victim of this comment had not interpreted it with the apparently sexual connotation attributed to it by Ms 1 and in the charge as drafted (based on Ms 1's evidence). The panel considered that it was possible that Ms 1 had overheard a comment along those lines, but because of her heightened anxiety had taken it out of context, misconstrued it or ascribed an interpretation about its motive which was not warranted.

The panel considered that the clear implication of the words alleged in the charge was that they were a veiled sexual threat. It considered that, viewed in that light, the words recorded by Colleague B herself, in the context they were used, could not be regarded as "words to that effect".

The panel considered that the evidence of Ms 1 and Colleague B was inconclusive and contradictory, and the situation was not assisted by the fact that Colleague B had not provided a witness statement or attended the hearing to give evidence. Even if some form of words was used, there was a lack of clarity about the location and context, and insufficient evidence to establish that the words used were to the effect clearly attributed to them by the charge. In light of the conflicting and unsatisfactory evidence in support of this charge, the panel concluded that the NMC had provided insufficient evidence for the panel to be able to find it proved on the balance of probabilities.

Therefore, this sub-charge is found not proved.

The panel noted that Mr Catherall admitted to sub-charges 1.1, 1.3, 2.1 and 2.2. However, it noted that he may not have understood the nuance that admitting this amounted to an admission that by acting as he did, he acted inappropriately. Some of his responses indicated that he did not regard his behaviour as inappropriate. The panel therefore decided to consider whether Mr Catherall behaved inappropriately for these charges:

1. Behaved inappropriately towards service users in that you:

    1.1. Called Resident A “a pain in the arse”, or words to that effect:

The panel considered that this was inappropriate. It considered that this was a disrespectful and undignified way to talk about a service user, particularly when the comment could have been (and was) overheard by another service user. It should have been apparent to Mr Catherall that his comment could be overheard by other service users and by junior staff, and that it was an inappropriate way to speak about a service user.

    1.3 On being informed that a resident was having a medical episode, responded “there is no rush, it’ll be over before I get there”, or words to that effect:

The panel considered that this was inappropriate. The panel noted that Mr Catherall was the senior clinical professional on the shift, with responsibility for the clinical care and assessment of vulnerable service users. He was the first responder in any clinical emergency, and care staff were reliant on him fulfilling that function. To respond as he did was demeaning to the service user and to the staff members seeking his assistance, and belittled the nature of the incident. It was not an appropriate response.

2. Behaved inappropriately towards colleagues in that you:

    2.1 said in respect of a colleague that you would ‘break their legs’, or words to that effect,

The panel considered that this was inappropriate. The panel noted that there was evidence that Mr Catherall was referring to an unspecified, unknown colleague, saying that he would “break their legs” if he found out who had reported him. There was also evidence that he had discussed the fact that he was qualified in martial arts and referred to an incident in which he had broken someone’s leg in a dispute. The implication of this comment was threatening and clearly designed to discourage people from reporting and raising legitimate concerns, or would have that effect. As such, it was clearly intimidating, detrimental to team working, and inappropriate.

2.2 said to Colleague B that her “top with pompoms on looked nice”, or words to that effect;

The panel noted that, in his CMF, Mr Catherall stated that Colleague B’s attire was inappropriate for the workplace. There was no detailed evidence about the context of this incident. On the face of it, the comment was a relatively innocuous complimentary comment about Colleague B’s attire. Colleague B had not attended to give evidence about the manner or context in which it was made. However it appears that she had found it uncomfortable. Viewed overall, the panel considered that it did not have sufficient evidence before it to conclude that the comment was necessarily significantly inappropriate in this instance. However it was arguably ill-advised to make a comment about a colleague’s personal appearance or attire in the workplace, particularly given the isolated nature of the working arrangements on the night shift, as this was capable of making a junior colleague feel uncomfortable even if this was not articulated at the time. It was therefore inappropriate to some extent.

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 Catherall'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.

Submissions on misconduct and Impairment

Ms Evans referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Ms Evans invited the panel to take the view that the facts found proved amount to misconduct. She directed the panel to specific paragraphs within 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) and identified where, in the NMC's view, Mr Catherall's actions amounted to misconduct.

Ms Evans submitted that Mr Catherall behaved inappropriately towards service users and also behaved inappropriately towards colleagues over an extended period of time. Further, Mr Catherall's behaviour undermined public confidence in the profession and is at the more serious end of the fitness to practise spectrum. This is because the misconduct was prolonged and was directed not just to colleagues but vulnerable residents who were expecting to be cared for by Mr Catherall. He failed to act appropriately and on one occasion did not attend to a resident who was having a medical episode.

Ms Evans moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). She reminded the panel of the Dame Janet Smith test from the Fifth Shipman report and submitted that the first three limbs should be considered.

With regard to future risk, Ms Evans referred to the panel to the question asked by Silber J in Cohen. Is the misconduct easily remediable, has it in fact been remedied and is it is highly unlikely to be repeated.

Regarding the risk of repetition, Ms Evans informed the panel that Mr Catherall is not employed in a nursing capacity. Therefore it is not possible to say whether there are any concerns in respect of the Mr Catherall's current practice. Further, Mr Catherall has not provided the panel with any information to explain how an otherwise ostensibly competent nurse departed so comprehensively from the Code and the fundamental tenets of his profession in respect of his care and behaviour.

Ms Evans submitted that insight is an important concept when considering impairment. She submitted that the panel may consider that by admitting to some of the charges, Mr Catherall has demonstrated some, albeit limited, insight. However he has not provided the panel with any information as to how the incident arose and has provided no assurances that this would not happen again

Ms Evans invited the panel to find that Mr Catherall's fitness to practise is impaired on both public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant cases. These included those referred to by Ms Evans, as well as the cases of

Kimmance v GMC [2016] EWHC 1808 (Admin) and *Lusinga v NMC* [2017] EWHC 1458 (Admin).

The panel, as advised, adopted a two-stage process in its deliberations. First, the panel was required to consider whether the facts found proved amount to misconduct. Secondly, and only if the facts found proved amount to misconduct, the panel was required to decide whether, in all the circumstances, Mr Catherall's fitness to practise is currently impaired as a result of that misconduct. The panel was mindful that both these issues were matters for its judgment and discretion. It had regard to the overarching objective of the regulatory process to protect the public, and to have regard to the wider public interest considerations, which will include declaring and upholding proper professional standards and maintaining public confidence in the profession and in the regulatory process.

Decision and reasons on misconduct

When determining whether the facts found proved amounted, individually or cumulatively, to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mr Catherall's actions departed from the standards expected of a registered nurse, and amounted to a breach of the following provisions of the Code. Specifically:

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

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

8 Work co-operatively

To achieve this, you must:
8.5 work with colleagues to preserve the safety of those receiving care

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

To achieve this, you must:

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

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

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 some of the charges found proved in

this case did fall significantly short of the conduct and standards expected of a nurse, and were sufficiently serious to amount to misconduct.

With regards to charge 1.1, the panel had regard to its reasons at the fact-finding stage for finding that this conduct was inappropriate: "*It considered that this was a disrespectful and undignified way to talk about a service user, particularly when the comment could have been (and was) overheard by another service user. It should have been apparent to Mr Catherall that his comment could be overheard by other service users and by junior staff, and that it was an inappropriate way to speak about a service user*".

The panel considered that this was a serious failing, involving inappropriate language about a vulnerable service user which could have been heard by that service user, was addressed to a junior colleague and was overheard by another service user. It had the potential to cause psychological harm to the patient about which it was used. Members of the public would not expect a nurse in a residential care setting to talk about a vulnerable patient in this way, and the comment was therefore liable to bring the profession into disrepute. It also breached the fundamental tenets of the profession to behave in a caring and courteous manner towards patients, and to treat them with dignity and respect. The panel concluded that Mr Catherall's actions in respect of charge 1.1 therefore fell sufficiently far short of the conduct and standards expected of a nurse to amount to misconduct.

In considering charge 1.2, the panel noted that Mr Catherall admitted to this charge. Again, the panel had regard to its findings at the fact-finding stage in relation to whether this conduct was inappropriate: "*The panel noted that Mr Catherall appeared to consider "numb nuts" to be acceptable because he uses it, apparently in the context of affectionate banter, with his own son. It also noted that Mr Catherall stated in his letter dated 25 October 2019:*

"…what staff don't appreciate is having been in the "armed forces" and in the "ambulance service" we have a very different vocabulary to other people and no malice or threat is intended…"

The panel considered that the relationship between carer and resident is different from that which may exist between family members, or people who live or work together over long periods of time and may develop an informal two-way relationship based on equality of response, trust and affection. The panel noted that Mr Catherall was not a live-in carer and that there was evidence that service users at the home were vulnerable, with learning difficulties. There was evidence that Resident B had difficulties verbalising and responding. The panel considered that in the context of a caring relationship in a residential home with a vulnerable patient, the relationship should be professional and respectful, and that behaviours which might be acceptable at home should be modified to that working environment. The panel considered that the term which Mr Catherall accepted he had used was one which was inappropriate and unprofessional."

The panel considered that, although Mr Catherall did not appear to appreciate that his conduct was inappropriate, members of the public would. It noted that in this instance it seemed that the comment was directed at a vulnerable patient who was unable to verbalise any response. It could not be viewed as banter in that unilateral context. It was heard by a junior colleague. The panel considered that, again, this comment had the potential to cause psychological harm to the patient to whom it was used. Members of the public would not expect a nurse in a residential care setting to talk to a vulnerable patient in this way, and the comment was therefore liable to bring the profession into disrepute. It also breached the fundamental tenets of the profession to behave in a caring and courteous manner towards patients, and to treat them with dignity and respect. The panel concluded that Mr Catherall's actions in respect of charge 1.2 therefore fell sufficiently far short of the conduct and standards expected of a nurse to amount to misconduct.

With regard to charge 1.3, the panel once again had regard to its reasons at the previous stage for finding that this response from Mr Catherall was inappropriate: "*The panel considered that this was inappropriate. The panel noted that Mr Catherall was the senior clinical professional on the shift, with responsibility for the clinical care and assessment of vulnerable service users. He was the first responder in any clinical emergency, and care staff were reliant on him fulfilling that function. To respond as he did was demeaning to the service user and to the staff members seeking his assistance, and belittled the nature of the incident. It was not an appropriate response*".

The panel considered that this was a significant failing. In addition to being an inappropriate response, the comment indicated that Mr Catherall had made assumptions that the service user's condition was not sufficiently serious to warrant his clinical assistance, and had effectively conveyed that message to junior member of staff. This was an unwarranted assumption when he had not been to assess the situation, and had the potential to result in physical harm to the patient. It was a comment which was liable to bring the profession into disrepute, and which breached the fundamental tenet of the profession to put the health and wellbeing of service users first. The panel concluded that Mr Catherall's actions in respect of charge 1.3 therefore fell sufficiently far short of the conduct and standards expected of a nurse to amount to misconduct.

In relation to charge 2.1, the panel again had regard to its findings at the previous stage as to whether this conduct was inappropriate: "*The panel noted that there was evidence that Mr Catherall was referring to an unspecified, unknown colleague, saying that he would "break their legs" if he found out who had reported him. There was also evidence that he had discussed the fact that he was qualified in martial arts and referred to an incident in which he had broken someone's leg in a dispute. The implication of this comment was threatening and clearly designed to discourage people from reporting and raising legitimate concerns, or would have that effect. As such, it was clearly intimidating, detrimental to team working, and inappropriate*".

The panel noted that Mr Catherall's comment was not addressed to or about any specific colleague, but was directed, apparently out of anger or frustration, towards an unspecified colleague who had reported concerns about him. However it involved an apparent threat of physical violence in retribution for being reported, against a background context of colleagues being aware that Mr Catherall had experience in martial arts. Its purpose or effect would be to discourage the people who worked with him from reporting concerns. The panel considered that this was liable to bring the profession into disrepute by discouraging a culture of candour about reporting concerns. It also breached the fundamental tenets of treating colleagues with respect and courtesy, and encouraging a culture of openness about any concerns for patient wellbeing. Again, the panel concluded that this incident amounted to a sufficiently serious departure from professional standards to amount to misconduct.

With respect to charge 2.2, the panel had regard to its findings at the previous stage about whether this conduct was inappropriate: "*The panel noted that, in his CMF, Mr Catherall stated that Colleague B's attire was inappropriate for the workplace. There was no detailed evidence about the context of this incident. On the face of it, the comment was a relatively innocuous complimentary comment about Colleague B's attire. Colleague B had not attended to give evidence about the manner or context in which it was made. However it appears that she had found it uncomfortable. Viewed overall, the panel considered that it did not have sufficient evidence before it to conclude that the comment was necessarily significantly inappropriate in this instance. However it was arguably ill-advised to make a comment about a colleague's personal appearance or attire in the workplace, particularly given the isolated nature of the working arrangements on the night shift, as this was capable of making a junior colleague feel uncomfortable even if this was not articulated at the time. It was therefore inappropriate to some extent*".

As set out above, the panel considered that on any view this comment was ill-advised, and could be considered inappropriate or unprofessional to some extent. However the evidence about the context and circumstances in which the comment was made was vague and inconclusive, and it was on the face of it potentially an innocuous, albeit ill-

judged, comment. There was some evidence that the recipient had found it uncomfortable, but this was hearsay evidence and without clear evidence about context, the panel was not in a position to find that this incident, viewed in isolation, was a sufficiently serious departure from professional standards to amount to misconduct. There were no other findings of conduct of a similar nature. The panel concluded that charge 2.2 did not meet the threshold of misconduct going to fitness to practise.

Having considered the proven charges individually, the panel then stepped back and viewed them collectively. It considered that there were two instances of inappropriate or derogatory comments to or about vulnerable service users, made within the earshot of other service users or junior members of staff. There was one instance of a dismissive and derogatory response to being asked by a junior colleague to give clinical care to a vulnerable patient. There was one instance of inappropriate and threatening language used about an unidentified colleague in response to a complaint having been made.

It was clear that the misconduct occurred on several separate occasions, albeit that it was unclear over what period of time the incidents took place. The panel considered that, viewed collectively, these instances showed a pattern of a lack of respect and dignity for colleagues and patients, and a lack of professionalism in the workplace. It was mindful that this was a residential care setting, with vulnerable patients, and that all the comments were made at a time when Mr Catherall, the senior member of staff present, was responsible for the supervision of the staff and the care of the patients during his shift. Viewed both individually and cumulatively, the panel therefore considered that the proven charges in this case amounted to a sufficiently serious departure from appropriate standards to be regarded as misconduct.

Decision and reasons on impairment

The panel next went on to decide whether, as a result of the misconduct found by the panel to arise in respect of charges 1.1, 1.2, 1.3 and 2.1, Mr Catherall'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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *…'*

For reasons already set out above in relation to misconduct, the panel considered that limbs a, b and c were engaged by Mr Catherall's misconduct in this case.

The panel then turned to the issue of whether Mr Catherall was liable to repeat those failings in future. The panel had regard to the case of *Cohen*, and considered whether the areas of concern identified in Mr Catherall's nursing practice are capable of remediation, whether they have been remedied, and whether there is a risk of repetition of similar concerns occurring at some point in the future. The panel noted that evidence of remediation, remorse and insight are key to that exercise.

The panel noted that there was an absence of evidence, in this case, of remorse, remediation or insight.

In relation to remorse, the panel noted that the stance adopted to these allegations in both the Home's investigation and in these proceedings was to seek to deflect blame onto others. He did not express regret at his actions. On the contrary, he had asserted that the allegations against him were part of a "witch hunt", did not appear to recognise that his actions were inappropriate, and in a number of instances sought to justify or minimalise them, for example dismissing them as banter. The panel considered that there was therefore no evidence of remorse.

Regarding insight, the panel noted that Mr Catherall had admitted a number of the factual allegations set out in the charges. However, there was no evidence of any reflection by him on what happened. There was no evidence of any recognition by him of the potential impact of his actions for the safety and wellbeing of vulnerable service users in his care,

for his junior colleagues, or for the reputation of the nursing profession as a whole. There was no evidence of any understanding or appreciation on his part that his actions were inappropriate, of why they happened, or of how he could address his behaviour to ensure that it was not repeated. The panel therefore considered that, notwithstanding Mr Catherall's factual admissions, there was very little evidence of insight.

The panel noted that there was no evidence of any previous regulatory concerns about Mr Catherall. It noted Ms 2's evidence that in the past Mr Catherall had been professional and receptive in response to issues of local concern being brought to his attention in a clinical setting, and had taken those issues on board and addressed them to her satisfaction. It further noted the evidence of Ms 4 that Mr Catherall had, in her view, had a good relationship with patients and had been professional towards her as a colleague. The panel accepted that this provided some evidence that the attitudinal failings evidenced by these charges were not present at all times, and that Mr Catherall was capable of acting professionally on other occasions.

Taking into account that evidence and the nature of the proven charges in this case, the panel was satisfied that all the charges found proved were capable of being remedied. However, in the absence of evidence of insight or evidence of incident-free practice in a healthcare setting subsequent to these incidents, there was no evidence that the concerns had been remedied to date. The panel noted that it had no evidence before it of any action taken by Mr Catherall to acknowledge, address or remedy these failings, or the attitudinal issues which appear to underpin them.

The panel noted that it had no clear information as to whether Mr Catherall is currently employed and in what capacity. It noted that Mr Catherall has stated that he has retired from the nursing profession. However there was no concrete evidence of this, and there was nothing at the present time to prevent him from returning to a nursing role in the future. Were he to do so, the panel considered that in the absence of evidence of remorse, insight and remediation, Mr Catherall was liable to repeat his actions in future. Were those actions to be repeated, there would be a risk of unwarranted harm to patients in his care,

as well as of further damage to the reputation of the profession and further breaches of fundamental tenets of the profession.

In light of the above, the panel had no evidence before it to allay its concerns that Mr Catherall currently poses a risk to patient safety. It therefore found his fitness to practise impaired on that basis. The panel was also satisfied that, having regard to the nature of the misconduct in this case, “the need to uphold proper professional standards and public confidence in the profession would be undermined” if a finding of current impairment were not made. It was of the view that a reasonable, informed member of the public would be concerned if Mr Catherall’s fitness to practise were not found to be impaired and if he were to be permitted to practice as a registered nurse in future without some form of restriction.

For all the above reasons the panel concluded that Mr Catherall’s fitness to practise is currently impaired by reason of misconduct on both public protection and public interest grounds.

Sanction

The panel considered this case very carefully and decided to make a suspension order for a period of 4 months with a review. The effect of this order is that the NMC register will show that Mr Catherall's registration has been suspended.

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Evans informed the panel that in the Notice of Hearing, dated 10 September 2020, the NMC had advised Mr Catherall that it would seek the imposition of a 3 month suspension order with a review if it found his fitness to practise currently impaired.

Ms Evans took the panel through the aggravating and mitigating factors she considered to be engaged in this case.

Ms Evans submitted that a caution order is in effect used to address concerns at the lower end of the spectrum and therefore not a suitable sanction in this case. Regarding an interim conditions of practice order, she submitted that there are no conditions which could address Mr Catherall's actions towards residents and colleagues. Further, she submitted that conditions would not adequately address the public protection and public interest concerns in this case. She submitted that Mr Catherall has shown no insight or remorse.

Ms Evans submitted that the public interest and public protection can only be satisfied by a suspension order. She submitted that this case raises concerns about Mr Catherall's attitude. However there have been no previous concerns raised and therefore there is no evidence of harmful deep-seated personality or attitudinal problems. She therefore submitted that the charges that were found proved were capable of being remedied,

although the NMC has no evidence of remediation. She also submitted hat there is no evidence of insight or remorse and as such there remains a risk of these actions being repeated.

Ms Evans submitted that the misconduct found proved against Mr Catherall is serious in its nature. He has shown little remorse however he did make admissions to some of the charges both in these proceedings and within the local investigation. However the fact that some of Mr Catherall's actions were directed to vulnerable residents and could have resulted in harm to a resident is a concern. She submitted that it is these concerns which make the misconduct of Mr Catherall more serious.

Decision and reasons on sanction

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

The panel had regard to its earlier decisions in relation to the facts, misconduct and impairment. It bore in mind its summary of the allegations viewed cumulatively, set out at the misconduct stage: "*It considered that there were two instances of inappropriate or derogatory comments to or about vulnerable service users, made within the earshot of other service users or junior members of staff. There was one instance of a dismissive and derogatory response to being asked by a junior colleague to give clinical care to a vulnerable patient. There was one instance of inappropriate and threatening language used about an unidentified colleague in response to a complaint having been made.*

It was clear that the misconduct occurred on several separate occasions, albeit that it was unclear over what period of time the incidents took place. The panel considered that,

viewed collectively, these instances showed a pattern of a lack of respect and dignity for colleagues and patients, and a lack of professionalism in the workplace. It was mindful that this was a residential care setting, with vulnerable patients, and that all the comments were made at a time when Mr Catherall, the senior member of staff present, was responsible for the supervision of the staff and the care of the patients during his shift".

The panel had regard to the fact that it had found at the impairment stage that there was no evidence of remorse, very little evidence of insight, and that there was no evidence "*of any action taken by Mr Catherall to acknowledge, address or remedy these failings, or the attitudinal issues which appear to underpin them… in the absence of evidence of remorse, insight and remediation, Mr Catherall was liable to repeat his actions in future. Were those actions to be repeated, there would be a risk of unwarranted harm to patients in his care, as well as of further damage to the reputation of the profession and further breaches of fundamental tenets of the profession"*.

However the panel also had regard to its observations at the impairment stage that "*there was no evidence of any previous regulatory concerns about Mr Catherall. It noted Ms 2's evidence that in the past Mr Catherall had been professional and receptive in response to issues of local concern being brought to his attention in a clinical setting, and had taken those issues on board and addressed them to her satisfaction. It further noted the evidence of Ms 4 that Mr Catherall had, in her view, had a good relationship with patients and had been professional towards her as a colleague. The panel accepted that this provided some evidence that the attitudinal failings evidenced by these charges were not present at all times, and that Mr Catherall was capable of acting professionally on other occasions*". On that basis, the panel considered that although the allegations in this case gave rise to concerns of attitudinal failings, there was at the present no evidence that these were deep-seated or irremediable. The panel was mindful that it had found that the concerns and issues arising from these charges were all capable of being remedied, albeit that at the present time there was no evidence that they had been remedied.

The panel started by considering the aggravating and mitigating features which could be identified in this case. It took into account the following aggravating features:

- Mr Catherall's actions took place in the context of a residential setting where the residents were vulnerable and where some were not able to articulate responses;
- The failings involved a lack of dignity, respect and professionalism towards both patients and colleagues;
- Mr Catherall, as the senior member of staff on duty, was responsible for the supervision of staff and the care of patients during his shift;
- There was a pattern of misconduct involving several separate occurrences over an unspecified period of time, and the failings were therefore attitudinal in nature;
- There was an absence of evidence of remorse, reflection, insight or remediation;
- The incidents involved a risk of psychological and/or physical harm to patients.

The panel also took into account the following mitigating features:

- Mr Catherall has demonstrated some engagement with both the local investigation and these regulatory proceedings;
- Mr Catherall had made some admissions in both the local and regulatory proceedings, albeit that his admissions were to the facts and did not demonstrate any significant insight into the underlying inappropriateness of the conduct involved;
- There were no previous regulatory concerns;
- There were positive comments from Ms 2 and Ms 4 in relation to Mr Catherall's character, professionalism and relationship with at least some of his patients and colleagues.

The panel first considered whether to take no action but concluded that this would be inappropriate in this case. The panel had identified a risk of repetition. To take no further action would fail to address the public protection concerns in this case. In addition, it would be inadequate to address the wider public interest considerations arising from the nature and circumstances of the misconduct.

For the same reasons, the panel considered that it would be an inappropriate and insufficient response to impose a caution order in this case. If Mr Catherall had been able to demonstrate significant levels of remorse, reflection, insight and remediation in respect of his past failings, and there had been no identifiable risk of repetition, it was possible that a caution order might have been sufficient to mark the unacceptability of the misconduct and address the wider public interest considerations of declaring and upholding professional standards and maintaining public confidence in the profession and the regulator. However he had not done so, and in the absence of such evidence, the risk of repetition meant that a caution order would be insufficient to protect the public.

The panel next considered whether placing conditions of practice on Mr Catherall's registration would be a sufficient, proportionate and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, and the indicative factors which may indicate that a conditions of practice order is suitable. In particular, the panel noted that although the failings in this case were attitudinal in nature, there was no evidence that they were deep-seated (and some evidence to suggest otherwise). There were no regulatory concerns about Mr Catherall's clinical practice aside from these allegations.

However, the panel considered that the fact that the failings identified in this case were attitudinal rather than clinical in nature meant that it would be difficult, although not impossible, to formulate workable conditions to address the failings and protect the public. In addition, there was no evidence to give the panel any confidence that Mr Catherall would, at this stage, be able or willing to engage or comply with conditions imposed on his practice. His communications with his regulator in respect of this case suggested that he would not, and moreover that he has no intention of returning to the profession. In addition, the panel considered that conditions would only be workable in the presence of remorse and insight, and there was an absence of evidence of those.

If the panel could not be confident that Mr Catherall was able or willing to comply with conditions, then it could not be confident that such conditions, even if they could be formulated, would be adequate to protect the public. Therefore, as with a caution order, the panel considered that although a conditions of practice order might be sufficient to address the wider public interest considerations in this case, such an order would not be adequate to protect the public and would not be an appropriate or sufficient response.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It noted that this was the sanction which the NMC invited it to consider, although it was not bound by that recommendation. Again, the panel had regard to the SG, and the indicative factors which may suggest that a suspension order may be appropriate.

The panel considered that, although serious, the misconduct in this case was not at the top of the scale of seriousness. It had already noted that, had there been sufficient evidence of remorse, insight and remediation to minimise the risk of repetition, a caution order or conditions of practice order might have been sufficient to mark the seriousness of the misconduct and address the wider public interest considerations in this case. It followed that the panel considered that a period of suspension would be sufficient to address the public interest considerations. It also considered that a period of suspension would operate to protect the public whilst it was in force.

The panel further bore in mind that there was no evidence of deep-seated attitudinal failings in this case and that the conduct was remediable. It considered that a period of suspension would allow an opportunity for Mr Catherall to reflect on his actions, the concerns identified in this case, and to develop (and demonstrate to a future panel) an appreciation of the inappropriateness of his behaviour, an understanding of why and how it happened, its actual and potential implications and consequences for patients, colleagues and the reputation of the profession, and the steps which could be taken to ensure that it was not repeated.

The panel was mindful that this was the first instance of regulatory concerns about Mr Catherall, and that there was some positive evidence about his interaction with patients and colleagues on other occasions, including in response to clinical concerns being raised with him. The panel was therefore hopeful that, given a period of suspension in which to reflect further on these events, Mr Catherall would be able to develop sufficient insight to be able to address and remedy them and demonstrate himself capable of embedding the lessons learned into safe and effective practice, should he wish to do so.

In the circumstances set out above, the panel was also satisfied that in this case the misconduct, whilst unprofessional, was not at the top of the scale of seriousness and was not fundamentally incompatible with remaining on the register. It consisted of an accumulation of relatively minor and fleeting misdemeanours which, viewed collectively, disclosed concerns about an unprofessional, disrespectful and inappropriate attitude towards colleagues and patients. These issues were remediable, although they have not to date been remedied. In all the circumstances the panel considered that it would be disproportionate and unnecessarily punitive to impose a striking off order in this case at this stage.

The panel was therefore of the view that a suspension order would be appropriate, sufficient and proportionate response in this case. It was at the present time the only order which would be sufficient to address both the public protection and wider public interest considerations in the light of the absence of evidence of insight, remorse and remediation. A suspension order would send a clear message to Mr Catherall, the profession and the public about the inappropriateness and unacceptability of his actions. Further, it would give Mr Catherall the opportunity to reflect upon and remedy his failings, and to engage with the NMC to demonstrate to a reviewing panel that he recognises the impact that his actions have or could have had on residents, colleagues and the profession in general, as well as providing an assurance that the misconduct would not be repeated. If he was able to achieve this, the public interest could potentially be served by the continuation in practice of an experienced nurse about whom there were no clinical concerns and no prior regulatory concerns. The panel noted the hardship such an order will inevitably cause Mr

Catherall, although this appears to be limited in circumstances where it is his stated intention at the present time to retire from the healthcare profession. In any event, Mr Catherall's interests in this regard are outweighed by the public interest and public protection considerations in this case. The panel considered that a suspension order was necessary to mark the misconduct, send to the public and the profession a clear message about the standard of behaviour required of a registered nurse, and thereby maintain public confidence in the profession and the regulatory process.

The panel considered that it was necessary for there to be a review following the period of suspension. It considered that Mr Catherall needs to develop, and demonstrate, the required levels of remorse, insight and remediation to show a future panel that he is capable of learning from this incident and embedding his learning into consistent professional practice in the future. Without a review, the order would simply lapse on its expiry, and there would be no way to monitor or review the progress made by Mr Catherall.

The panel gave careful consideration to the appropriate duration of the suspension order. It determined that a suspension order for a period of 4 months was appropriate in this case. It had to balance what is necessary to mark the seriousness of the misconduct alongside the likely period of time which will be required for Mr Catherall to undertake the necessary development in his insight and to be in a position to demonstrate his progress to a future panel. Whilst the panel considered that a period of 3 months would be adequate to mark the seriousness of the misconduct and address the public interest considerations, it considered that a longer period was required for Mr Catherall to take the steps he now needs to take to recognise and address his misconduct in order to address the risk of repetition and the public interest considerations. The panel therefore considered that the period of 4 months was necessary, appropriate and proportionate. It was mindful that with the addition of the 28 day appeal period during which the substantive order would not take effect, this would in effect give Mr Catherall nearly 5 months in which to recognise his failings and demonstrate the steps he has taken to address them. It considered that this was the minimum period necessary to address the failings identified in this case.

The panel therefore determined to impose a suspension order for a period of 4 months. At the end of the period of suspension, another panel will review the order. At the review hearing the reviewing panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A comprehensive reflective piece by Mr Catherall demonstrating insight into:
    - Why his behaviour towards service users and colleagues was inappropriate and unprofessional;
    - The actual and potential consequences for service users and colleagues in terms of the impact of his behaviour on them, and the consequences for the nursing profession as a whole;
    - How and why he allowed his standards to fall below what was appropriate and professional;
    - What lessons he has learned from the incident(s) and from these proceedings;
    - What steps he has taken or proposes to take to ensure that this could not happen again in the future;
- Evidence, including references and testimonials, in relation to any work undertaken since these events, whether it be paid or voluntary and whether or not it takes place within a healthcare setting. Such evidence should address in particular Mr Catherall's ability to perform professionally in the context of a team;
- Evidence of any private study, training, counselling or mentoring undertaken to maintain or develop his professional knowledge, skills and judgment, in particular but not limited to the issues of concern identified in this case, namely teamworking, professionalism and workplace conduct;
- Alternatively, if it continues to be Mr Catherall's intention to retire permanently from the nursing profession, he may wish to make this clear to

the NMC, providing any supporting evidence of concrete steps he has taken in this regard. This may include contacting his case officer to explore any options available to him in respect of voluntary removal from the register now that there has been a finding of current impairment of fitness to practise.

This will be confirmed to Mr Catherall in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period (or, if an appeal is lodged, until that appeal is concluded), the panel has considered whether an interim order is required in the specific circumstances of this case to cover the period until the panel's substantive decision on sanction takes effect. The panel 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 is in Mr Catherall's own interests. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Evans. She submitted that an interim order should be imposed in order to allow for the possibility of an appeal to be brought and determined. She submitted that an interim suspension order for a period of 18 months should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel had regard to the seriousness of the facts found proved and the reasons for its findings on the issues of misconduct, impairment and sanction set out in its substantive determination. It noted in particular its conclusion at the impairment stage that until such time as there is evidence of remorse, insight and remediation, there remains a risk of repetition by Mr Catherall of his misconduct. If repeated, further conduct of the type identified in this case could cause a risk of harm to patients in his care, as well as bringing the profession into disrepute and breaching fundamental tenets of the profession. The panel therefore considered that an interim order was necessary on the grounds of public protection and was otherwise in the public interest.

The panel took into account that there had been no interim order restricting Mr Catherall's clinical practice so far. However it was assessing the situation afresh, and in the light of its findings in this hearing that misconduct had taken place and that there was a risk of repetition.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, for the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore considered that it was necessary to impose an interim suspension order. It considered that the appropriate duration of the interim suspension order was for a period of 18 months, because of the length of time likely to be required for any appeal, if brought, to be determined or otherwise finally disposed of.

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

That concludes this determination.