

# Nursing and Midwifery Council Fitness to Practise Committee

## Substantive Hearing 9-12 August 2021

Virtual Hearing

**Name of registrant:** **Kenneth Peter Brambles**

**NMC PIN:** 81Y0107E

**Part(s) of the register:** Registered Nurse sub part 2 – RN2: Adult nurse-  
Level 2 (21 March 1984)  
Registered Nurse sub part 1- RN1: Adult nurse  
Level 1 (19 September 1994)

**Area of registered address:** Lincolnshire

**Type of case:** Misconduct

**Panel members:** Adrian Smith (Chair, Lay member)  
Linda Tapson (Registrant member)  
Suzanna Jacoby (Lay member)

**Legal Assessor:** Richard Miller

**Panel Secretary:** Holly Girven

**Nursing and Midwifery Council:** Represented by Rakesh Sharma, Case Presenter

**Mr Brambles:** Present and represented by Nicholas Hall,  
instructed by the Royal College of Nursing (RCN)

**Facts proved by admission:** Charges 2 and 3

**Facts proved:** Charges 1a and 1b

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** Suspension order (6 months)

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

## **Details of charge**

That you, a registered nurse:

1. On 6 February 2019 whilst attending to the personal care of Patient A:
  - a) slapped Patient A's bottom approximately 20 times;
  - b) repeated the words "you naughty girl" or words to that effect;

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

## **Decision and reasons on application for hearing to be held in private**

During the course of your evidence reference was made to your health and private information about your family. As a result, Mr Hall, on your behalf, made a request that any reference to your health or private information about your family be heard in private. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Sharma, on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported the application.

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

The panel determined that any reference to your health or private information about your family should be heard in private to protect the confidentiality of such matters.

## **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Sharma on behalf of the NMC and by Mr Hall on your behalf.

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: Student Nurse on the Stroke Unit at the time of the incident;
- Ms 2: Ward Manager of the Stroke Unit;
- Mr 3: Deputy Head of Nursing in Medicine at Northern Lincolnshire and Goole NHS Foundation Trust and the local investigator.

The panel also heard evidence from you under affirmation.

## **Background**

The charges arose whilst you were employed as a registered nurse at Scunthorpe General Hospital (the Hospital) working on the Stroke Unit (the Unit). You were employed as a bank nurse and had worked on the Unit since December 2018.

The allegations concern your treatment of Patient A on 6 February 2019, when Ms 1 was shadowing you as a Student Nurse. You attended Patient A's bay to provide her with pressure area care. Patient A was sat in a chair at the side of the bed, and it is agreed that you hoisted Patient A up in order to transfer her to the bed. You were stood near to Patient A whilst Ms 1 was stood near the control part of the hoist.

It is alleged by Ms 1 that when Patient A was in the hoist, you slapped her bottom approximately 20 times and stated '*this is how we give pressure relief. Naughty girl, naughty girl*'. It is alleged by Ms 1 that she stated '*I don't really agree with what you're doing. Can we do the correct moving and handling technique?*' You have stated that you were performing a cupping technique as part of pressure area care and did not slap Patient A. Further, you stated you did not recollect saying '*you naughty girl*'.

Ms 1 reported the alleged incident to Ms 2 the following morning, 7 February 2019 and filled in a DATIX incident form. Ms 2 spoke to Patient A on 7 February 2019 and enquired if she had any concerns about her care, to which she responded that she did not.

Mr 3 was sent the DATIX incident form and subsequently decided that you should be suspended from your role at the Hospital. He met with you on 8 February 2019 to suspend you. It is alleged that during that meeting you stated the incident had been taken out of context.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Mr Hall.

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

### **Charge 1a**

1. On 6 February 2019 whilst attending to the personal care of Patient A:

- a) slapped Patient A's bottom approximately 20 times;

**This charge is found proved.**

In reaching this decision, the panel took into account the live and documentary evidence. The panel considered the submissions of Mr Sharma and Mr Hall, particularly with regard to the meaning of '*slapped*'.

The panel considered that the dictionary definition of '*slapped*' is '*hit or strike with the palm of the hand or a flat object.*' The panel noted that Mr Sharma agreed with this definition, but Mr Hall submitted that slapping indicates some force was used.

The panel considered that in her live evidence Ms 1 stated that you hit Patient A with the palm of your hand and when directly questioned about this, denied that your hand was in a cupping position. The panel considered that her live evidence was consistent with her witness statement and the DATIX incident form that was submitted on 7 February 2019, the day after the incident. The panel noted that Ms 1 has consistently stated that you slapped Patient A around 20 times. The panel considered that in Ms 2's witness statement she states that Ms 1 told her on 7 February 2019 that you slapped Patient A. The panel determined that Ms 1 has provided a consistent account relating to your actions.

The panel considered that during your evidence you stated that you had worked with Ms 1 on a few occasions before the incident and that there was no '*bad blood*' or arguments between you and Ms 1. The panel noted that you stated that you had encountered some hostility from some of the staff on the Unit, but that this did not include Ms 1. The panel also noted that Ms 1 stated in her evidence that she had worked with you before and there had been no previous issues between you.

The panel considered your evidence that you did not slap Patient A but were instead using a cupping technique. The panel noted that Ms 1, Ms 2 and Mr 3 stated that they had never heard of a cupping technique for pressure area care. The panel noted that Mr 3 stated that

when you were suspended you told him the incident had been taken out of context. You stated that you did not get the opportunity to explain what this meant at the time, as you were escorted off the premises. The panel also noted that you stated that you had not used the cupping technique since the 1990s, and this was the first time you had used the technique on the Unit. The panel noted that you stated that you had seen Health Care Assistants using this technique on the Unit, which you said had prompted you to think the technique was still in use.

The panel took into account the evidence relating to Patient A and her capacity, including her memory. The panel considered that Ms 1 stated in her evidence that Patient A could not vocalise and did not react to the incident. The panel noted the evidence of Ms 2 and you about Patient A's condition, including that she was able to have a conversation with her and that she did have capacity. The panel also noted that Ms 2 stated that when asked, Patient A said she did not have concerns about her care. However, the panel noted that Ms 2 acknowledged that Patient A's condition did fluctuate and that she had issues with her short term memory. Ms 2 also stated that Patient A would often be very disturbed at night and that this could affect her for days after, indicating that this would make her very tired and could also affect her memory. The panel therefore concluded that it was possible Patient A would not remember the incident when asked the next day. The panel considered that if you did not use significant force when slapping Patient A, she may not have reacted to it. Furthermore, the panel also noted that it was not possible to determine the reason why Patient A did not indicate a reaction at the time of the incident.

The panel determined that Ms 1's evidence regarding your actions in slapping Patient A was credible. It considered she has consistently provided the same account. She gave evidence in a clear, straight-forward manner which did not alter under cross-examination. The panel considered that your evidence that you were using a cupping, or patting, technique was consistent. However, the panel considered that you acknowledged that this was an outdated technique and that you had not updated your knowledge of pressure area care. Your evidence was less clear and at times you were unable to recall relevant matters about the incident whilst providing detail about less significant areas.

While the panel finds that your actions were an effort to provide pressure area relief, the panel determined that it was more likely than not that you slapped Patient A with the palm of your hand approximately 20 times, as described by Ms 1, whose evidence the panel accepted on this point. The panel considered your evidence about your intentions, which it considered to be credible, and determined that while you did slap Patient A, this was not with significant force but was a misguided and careless attempt to implement an inappropriate pressure area care technique unknown to the other professionals who gave evidence, two of whom had significant nursing experience. Therefore, this charge is found proved.

### **Charge 1b)**

1. On 6 February 2019 whilst attending to the personal care of Patient A:
  - b) repeated the words “you naughty girl” or words to that effect;

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

In reaching this decision, the panel took into account the evidence of Ms 1 and your evidence. The panel also considered the documentary evidence.

The panel considered that in her live evidence Ms 1 stated that you used the words ‘*naughty girl*’ and that this evidence was consistent with her witness statement and the DATIX incident form that was submitted on 7 February 2019, the day after the incident. The panel considered that in Ms 2’s witness statement she states that Ms 1 told her on 7 February 2019 that you said ‘*naughty girl*’. The panel determined that Ms 1 has provided a consistent account of the event, including the words she says you used.

As set out above, the panel reminded itself that there was no ‘*bad blood*’ between you and Ms 1.

The panel considered that in your evidence when directly questioned about what you said, you did not deny saying the words '*naughty girl*'. When asked specifically on two occasions if you denied saying these words, or if you just did not remember, you stated you did not remember saying these words and that this is not the sort of thing you would ever say to a patient. The panel noted that you provided detailed explanations and recollections of other aspects of your actions, including the position of Patient A when placed on the bed. Therefore, the panel considered your inability to recollect what was said at the time to lack credibility.

The panel also noted that Ms 2 mentioned in evidence that you were '*a bit of a character*' and that you yourself had said you liked to use humour and '*banter*' on the ward. The panel took this into account when considering the question of your propensity to utter the words as charged at 1b. It determined that you might have used this phrase in a misguided attempt at humour.

As set out above, the panel took into account Patient A's condition relating to her capacity and memory. The panel noted that Ms 2 stated that when asked, Patient A said she did not have concerns about her care. The panel further noted that Ms 2 acknowledged that Patient A's condition did fluctuate and it was possible that Patient A would not remember the incident when asked the next day.

The panel determined that Ms 1's evidence about what you said was credible. It considered that she has consistently provided the same account and the panel accepted her evidence. The panel considered that it was inconsistent that while you were able to recollect detailed aspects of your actions during the incident, you were not able to recollect what you or Ms 1 said during the incident. While there is some inconsistency between the witnesses about Patient A's capacity and capability to vocalise, Ms 2 stated in her evidence that Patient A's condition fluctuated.

The panel determined that it was more likely than not that you used the words '*you naughty girl*' or words to that effect and therefore this charge is found proved.

## **Conviction charges**

Following the panel's finding on charges 1a and 1b, the panel were informed of two further charges.

## **Details of charge**

That you, a registered nurse:

2. On 8 June 2017 at Humber Magistrates' Court were convicted of driving after consuming so much alcohol that the proportion of it in your breath, exceeded the prescribed limit contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.
3. You failed to inform the NMC of your conviction as required to do so under the NMC Code of Conduct.

And in light of the above, your fitness to practise is impaired by reason of your conviction in relation to charge 2 and by reason of your misconduct in relation to charge 3.

## **Decision and reasons on facts**

The panel heard from Mr Hall, who informed the panel that you made full admissions to charges 2 and 3.

Charge 2 concerns your conviction and, having been provided with a copy of the memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

The panel therefore finds charges 2 and 3 proved in their entirety, by way of your admissions and the memorandum of conviction.

## **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 at charges 1a, 1b and 3 amount to misconduct and, if so, whether your 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 at charges 1a, 1b and 3 found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct and the conviction set out at charge 2.

## **Submissions on misconduct**

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

Mr Sharma invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Mr Sharma identified the specific, relevant standards where your actions amounted to misconduct. He submitted that your actions at charges 1a and 1b are misconduct as although performing the wrong technique is not always misconduct, your actions combined with the words used increase the seriousness as he submitted that you demonstrated a lack of respect regarding Patient A's dignity. He submitted that charge 3 also amounted to misconduct as you had a duty to inform the NMC of any convictions and by not doing so it meant employers were at risk of employing an unsuitable person.

Mr Hall accepted that charge 3 did amount to misconduct. He provided a background to your conviction, including your personal circumstances at the time, and stated you accept you had a duty to inform the NMC of the conviction and not doing so amounted to misconduct. He submitted that charges 1a and 1b did not amount to misconduct. He submitted that whilst you may have breached the standards set out in the Code, the breaches were not serious enough to amount to misconduct. He reminded the panel of its findings that you were attempting to perform a pressure area care technique and that you made the comments in a misguided attempt at humour. He submitted that this mitigated the seriousness of the actions.

### **Submissions on impairment**

Mr Sharma moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Mr Sharma invited the panel to make a finding of current impairment to protect the public and to maintain public confidence in the nursing profession. He submitted that you had breached fundamental tenets of the nursing profession and brought the profession into

disrepute. He submitted that your misconduct is not easily remediable and there are attitudinal concerns. He submitted that your denial of charges 1a and 1b indicate a lack of acceptance that your actions were wrong, and that you have failed to demonstrate insight into your actions. He submitted that there is a risk of repetition and a risk of harm to patients should a finding of impairment not be made. He submitted that due to the serious nature of all the charges, public confidence in the nursing profession and the NMC as its regulator would be undermined should a finding of impairment not be made.

Mr Hall stated that you concede that your fitness to practise is currently impaired on public interest grounds in relation to charge 3 only. However, he submitted that a finding of current impairment is not necessary to protect the public. In relation to charge 2, he submitted that the conviction dates back to 2017 and there has been no repetition since then, and you were under personal stress at the time of your actions. He stated that it is relevant that the conviction was dealt with in the Magistrates' Court, you pleaded guilty and that the sentence was a fine. In relation to charge 3, Mr Hall stated that you were not aware of the requirement to inform the NMC and you did not act dishonestly. He submitted that there is no risk of repetition, but accepted that a finding of impairment is necessary to maintain public confidence.

Mr Hall submitted that your actions at charges 1a and 1b were a misguided attempt to provide pressure area care and that you did not show a lack of regard for Patient A's dignity. He submitted that you were trying to provide care to Patient A and she did not suffer harm as a result of your actions. He submitted that you have shown insight as in your evidence, you stated that you would not perform the technique again as you know it is inappropriate. Mr Hall submitted there is no risk of repetition, and submitted that no issues have been raised about your practice before this incident. He stated that as you have not worked as a nurse since the incident you have been unable to remediate any concerns. He submitted that if the public were aware of the full circumstances of your actions, including your personal circumstances, public confidence in the nursing profession would be maintained without a finding of impairment in relation to charges 1a and 1b.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance, Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Grant* and *Cohen*.

## **Decision and reasons on misconduct**

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

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach 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*

*1.5 respect and uphold people's human rights*

### ***6 Always practise in line with the best available evidence***

*To achieve this, you must:*

*6.2 maintain the knowledge and skills you need for safe and effective practice*

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

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

*13.5 complete the necessary training before carrying out a new role*

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

*To achieve this, you must:*

*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*

**23 Cooperate with all investigations and audits**

*To achieve this, you must:*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel first considered whether your actions at charges 1a and 1b amounted to misconduct. It determined that your actions were sufficiently serious to amount to misconduct. The panel considered that Patient A was vulnerable and you were providing personal care at the time. Whilst the panel did consider that your actions were a misguided attempt to provide pressure area care, it determined that your actions would still be considered deplorable by the standards of your fellow practitioners.

The panel further considered whether your omission as set out in charge 3 was misconduct. The panel noted your difficult personal circumstances at the time. However, the panel further noted your revalidation date was just prior to your conviction. Therefore, you would have been alerted to the requirement to declare good health and good character. This includes declaring police charges, cautions and convictions. Hence, the panel did not accept that you did not know you had to declare your conviction and considered that failing to inform the NMC about a conviction was serious and did amount to misconduct.

The panel found that your actions as set out in charges 1a, 1b and 3 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and conviction, your 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 keep their nursing practice up to date. 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 *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) ...'

The panel finds that Patient A was put at risk of both physical and emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that you have shown some limited insight, but that this is still developing. In relation to charges 1a and 1b the panel noted that in your evidence you accepted that you used an inappropriate technique and you should have kept your nursing practice updated. However, the panel considered that you have not shown insight into the impact of your actions on Patient A, the nursing profession or the public. The panel considered that you have not provided the panel with evidence of your insight into charges 2 and 3, and you have not provided a reflective statement.

The panel is satisfied that the misconduct in this case is capable of remediation. The panel considered that as you demonstrated limited insight, the concerns about the language used at charge 1b are harder to remediate. Therefore, the panel carefully considered the evidence before it in determining whether or not you have remedied your practice. The panel took into account that you have not been able to work since the incident. The panel considered that you have not provided evidence of any training into pressure area care. The panel noted it has not been provided with any references or testimonials.

The panel is of the view that there is some risk of repetition based on your lack of full insight and remediation. The panel noted your difficult personal circumstances at the time of your conviction but considered that it is not clear to what extent your personal circumstances have improved. The panel also considered that you should have been aware of the duty to inform the NMC of your conviction. The panel considered that as you have not demonstrated sufficient insight into these concerns, there is a risk of repetition and a risk to the public. Whilst the panel considered that you have some insight into your actions at charges 1a and 1b, it determined that you have not yet sufficiently remediated the concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection in relation to all of the charges.

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 your actions were serious and would be considered deplorable by a member of the public. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel is satisfied that your fitness to practise is currently impaired.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months. The effect of this order is that the NMC register will show that your registration has been suspended.

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

### **Submissions on sanction**

Mr Sharma informed the panel that in the Notice of Hearing, dated 10 June 2021, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired. Mr Sharma submitted that either a 12 month suspension order with a review or a striking-off order was appropriate.

Mr Sharma outlined the aggravating and mitigating factors to the panel. He submitted that taking no further action or imposing a caution order would not protect the public. He submitted that it was not possible to formulate workable conditions of practice that would address the concerns in this matter.

Mr Sharma submitted that the charges are serious and warrant at least a temporary removal from the register, but the panel should consider whether a striking-off order is required.

Mr Hall submitted that it is accepted that your practice should be restricted in some manner, but invited the panel to impose a conditions of practice order. He stated that your personal circumstances have improved and no longer impact on your ability to practise. He submitted that the current interim suspension order has had a detrimental impact on your financial situation. He stated that you are excited by the prospect of returning to nursing practice, and acknowledged that you are not yet ready to practise unrestricted. Mr Hall submitted that conditions of practice could be formulated that would protect the public and allow you to develop your insight and remediation. He submitted that the panel should consider that you have practised as a nurse for 40 years without any other issues.

Mr Hall submitted that a suspension order is not necessary, but should the panel be minded to impose a suspension order, this should be for a shorter period than 12 months. He submitted that a striking-off order is not necessary, would be disproportionate and draconian.

### **Decision and reasons on sanction**

Having found your 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:

- Your actions had the potential to cause harm to both Patient A and the wider public
- You have not demonstrated remediation of the concerns
- Patient A was vulnerable at the time, particularly because of the nature of the care being carried out

The panel also took into account the following mitigating features:

- You had difficult personal circumstances at the time of the misconduct
- You had not worked in a clinical environment for a prolonged period prior to the incident set out in charges 1a and 1b
- On your return to work you did not have a structured development plan or training that would support your return to practice

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection concerns

identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict your 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

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 panel considered that you have not yet shown enough insight or remediation that would indicate that conditions of practice would sufficiently protect the public. The panel considered its findings that your actions at charges 1a and 1b were not done with ill intent but considered that the misconduct was serious.

The panel concluded that the placing of conditions on your 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 and considered the factors the SG states are relevant when determining whether to impose a suspension order.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel considered that due to the seriousness of the charges, a temporary removal from the register was required.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. The panel considered your personal circumstances at the time of the conviction, and the hostility you faced on the Unit. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct. The panel considered this would give you an opportunity to develop your insight and remediation.

At the end of the period of suspension, another panel will review the order. At the review hearing the 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:

- Evidence of training, which could be completed online, in areas such as pressure area care and professional conduct and boundaries;
- A written reflective statement that demonstrates your insight into the charges and the impact of your actions on Patient A, the nursing profession and public confidence in the nursing profession. This should include the impact of your drink driving conviction and failing to inform the NMC of this conviction;
- Evidence of training or reading you have done to keep up with nursing practice;
- Any references or testimonials from any paid or voluntary work you complete.

This will be confirmed to you in writing.

### **Interim order**

As the suspension 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 your own interest until the suspension order takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Sharma. He submitted that an interim suspension order of 18 months was necessary to protect the public and maintain public confidence in the nursing profession in light of the panel's findings on current impairment.

Mr Hall made no further submissions.

## **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 protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

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

That concludes this determination.