

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

**Substantive Hearing  
12 –14 April 2022  
19 – 20 April 2022**

Virtual Hearing

**Name of registrant:** **Robin Kay Harrower**

**NMC PIN:** 10B0233E

**Part(s) of the register:** Registered Nurse  
Adult Nursing – (February 2011)

**Area of registered address:** Essex

**Type of case:** Misconduct

**Panel members:** Suzy Ashworth (Chair, lay member)  
Rosalyn Mloyi (Registrant member)  
David Newsham (Lay member)

**Legal Assessor:** Ian Ashford-Thom

**Hearings Coordinator:** Shela Begum

**Nursing and Midwifery Council:** Represented by Gabriel Adedeji, Case Presenter

**Mrs Harrower:** Not present and unrepresented.

**Facts proved:** All

**Fitness to practise:** Impaired

**Sanction:** **Suspension order with review (1 year)**

**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 Mrs Harrower was not in attendance and that the Notice of Hearing letter had been sent to Mrs Harrower's registered email address by secure encrypted delivery on 10 March 2022.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and details of the virtual hearing and, amongst other things, information about Mrs Harrower's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Adedeji, on behalf of the Nursing and Midwifery Council (NMC), indicated that the notice 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.

In the light of all of the information available, the panel was satisfied that Mrs Harrower 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 Mrs Harrower**

The panel next considered whether it should proceed in the absence of Mrs Harrower. It had regard to Rule 21 and heard the submissions of Mr Adedeji who invited the panel to continue in the absence of Mrs Harrower.

Mr Adedeji reminded the panel that the principle governing proceeding in absence is one of fairness to the registrant. He further informed the panel that this is to be balanced against fairness to the regulator and the interest of the wider public.

Mr Adedeji submitted that it was in the interest of justice to proceed. In respect of fairness to the regulator, he submitted that witnesses have been arranged and warned to attend this hearing. He submitted that the charges are serious involving potential harm to a patient and therefore it is in the public interest for this hearing to proceed. Mr Adedeji invited the panel to proceed in the absence of Mrs Harrower in the interests of safeguarding the reputation of the profession and in fairness to the regulator.

Mr Adedeji referred the panel to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162 which confirms that whilst the discretion to proceed in the absence of the registrant is one which should only be exercised using great caution, and rarely, the panel should not allow the regulatory process to be frustrated. Mr Adedeji reminded the panel that whilst the registrant has the right to be present at a hearing regarding their fitness to practise, it is not an absolute right and is one which must be weighed against the duty of regulatory bodies to conduct a robust and timely investigatory process.

In closing, Mr Adedeji submitted that Mrs Harrower has had due notice of the hearing, documents have been provided to her and indeed she has provided documents to go before the panel. Mr Adedeji submitted that there is no explanation available to the panel today for her absence and that she has the details of the hearing and the contact details of the case coordinator to reach out to them in the event of any problem, medical or otherwise. On this basis, Mr Adedeji submitted that the balance of fairness falls towards proceeding in the absence of Mrs Harrower.

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.

Before retiring to making its decision, the panel requested further documentation from Mr Adedeji to support his application to proceed in the absence of Mrs Harrower. Mr Adedeji provided a schedule which documented the NMC's attempts to contact Mrs Harrower before this hearing.

The panel noted that the case coordinator had informed Mrs Harrower of the proposed dates of her hearing in an email dated 14 February 2022, and had commented, *"I understand that you did not want to participate in the hearing. If you change your mind, do let me know."*

Mrs Harrower replied to this email on the same date and stated:

*"I have decided to attend. At least i will be able to have my say.  
I wont[sic] be represented as i am no longer with the rcn."*

The panel noted that the most recent email from Mrs Harrower to her case coordinator is dated 28 February 2022 in which she provides documentation to submit to the panel as part of her defence. The panel further noted that the Notice of Hearing was sent to Mrs Harrower on 10 March 2022.

The panel had regard to an email from the hearings coordinator to Mrs Harrower dated 11 April 2022, the day before the hearing commenced, which included the joining details of this hearing. It also had regard to the documentation outlining a call made by the hearings coordinator to Mrs Harrower on 11 April 2022 which indicated that there was no answer from Mrs Harrower.

The panel had regard to a further two emails which were sent to Mrs Harrower on the morning of the hearing, 12 April 2022, by the hearings coordinator and her case coordinator. The panel also noted that several attempts to call Mrs Harrower on her registered mobile and landline number were made that morning but there was no response.

In light of all the information before it, the panel has decided to proceed in the absence of Mrs Harrower. In reaching this decision, the panel has considered the submissions of Mr Adedeji, 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 *General Medical Council v Adeogba* 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 Mrs Harrower;
- Mrs Harrower has indicated she has received the Notice of Hearing;
- Mrs Harrower has previously indicated that she wishes to attend the hearing;
- Several attempts to contact Mrs Harrower were made by the NMC on the day before and the morning of the hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Three witnesses have been scheduled to attend this hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019;
- Further delay may have an adverse effect on the ability of witnesses to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Harrower in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated in terms of procedural safeguards. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination

and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Harrower's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

The panel considered the matter of fairness to Mrs Harrower who is not present nor represented at this hearing, and noted that it has received a bundle of documents from her for its consideration. It determined that fairness to the regulator and the wider public interest outweighs any disadvantage to Mrs Harrower caused by proceeding at this point.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Harrower. The panel will draw no adverse inference from Mrs Harrower's absence in its findings of fact.

### **Details of charge**

That you, a registered nurse, on the 11th December 2019:

- 1) Shouted at and/or made threats towards patient 1 in that you said to Patient 1:
  - a) "I am American you know and if you hurt me I will smack you between the eyes!" or words to that effect.
  - b) "Do that again and I will smash you in the face" or words to that effect.
  
- 2) Applied an inappropriate restraint on Patient 1 in that you:
  - a) Put your hands underneath Patients 1's chin and/or
  - b) Forced Patient 1's head back. and/or
  - c) Used excessive force

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

## **Background**

The charges arose whilst Mrs Harrower was employed as a registered nurse by Southend University Hospital NHS Foundation Trust ('the Trust').

On 11 December 2019 Mrs Harrower was called to support on the high dependency unit (HDU) to cover breaks. It is reported that Mrs Harrower did not receive a handover at this time. Mrs Harrower was asked to support with looking after Patient 1 who was described as vulnerable and agitated and was being attended to by Nurse 1 at the time.

The charges relate to alleged inappropriate and aggressive behaviour, both verbal and physical, from Mrs Harrower towards Patient 1.

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

At the facts stage of the hearing, Mr Adedeji made a request that this case be held in private on the basis that proper exploration of Mrs Harrower's case involves making reference to matters relating to her health. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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.

Having heard there will be some reference to Mrs Harrower's health during the course of the hearing, the panel determined to go into private session in connection with such matters as and when they are raised in order to protect Mrs Harrower's privacy.

## **Decision and reasons on facts**

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 Mr Adedeji on behalf of the NMC.

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

- Witness 1: Deputy Sister for Critical Care Outreach, Southend General Hospital.
- Witness 2: Clinical Fellow, Southend University Hospital.
- Witness 3: Interim Deputy Director of Nursing, Southend General Hospital.

The panel also had regard to Mrs Harrower's written response, prepared for the panel, which included her reflections on the incident that took place on 11 December 2019.

The panel has drawn no adverse inference from the non-attendance of Mrs Harrower.

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.

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 the NMC and the documents provided by Mrs Harrower.

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

### **Charge 1a**

- 1) Shouted at and/or made threats towards patient 1 in that you said to Patient 1:
  - a) “I am American you know and if you hurt me I will smack you between the eyes!” or words to that effect.

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

In reaching this decision, the panel took into account the evidence from Witness 1, the incident record and the transcripts of Witness 3’s interviews with Witness 1, Nurse 1 and Mrs Harrower. The panel also took into account Mrs Harrower’s written response.

The panel considered that the evidence given by Witness 1 in support of this charge was credible and reliable. Witness 1 was clear in her evidence in that she could see Mrs Harrower during the incident and that Mrs Harrower was close to Patient 1’s bedside. Witness 1 confirmed that she could not see Mrs Harrower’s face whilst she said the words as set out in Charge 1a but she could clearly hear them being said and was able to identify an accent that she attributed to Mrs Harrower. The panel noted that Witness 1’s recollection of the words used by Mrs Harrower has been consistent as she has reported the same words being used in the incident report which was produced a few days after the events, in her interview conducted by Witness 3 and also in her written statement provided to the NMC.

The panel took into account Mrs Harrower’s interview in the investigation conducted by Witness 3, during which she stated she was talking to Nurse 1 about a different patient that they had dealt with previously. Mrs Harrower’s written reflections stated:

*“...I should not have discussed previous patient in vicinity of another patient...”*

The panel noted that in Nurse 1's interview with Witness 3 she stated she did not recall this conversation taking place and it further noted that Witness 1 identified that Mrs Harrower was in close proximity to Patient 1 when the words were heard.

The panel determined that the evidence provided by Witness 1 was more credible, reliable and coherent, and that it preferred Witness 1's evidence to the version of events put forward by Mrs Harrower.

In light of this, the panel concluded that on 11th December 2019, Mrs Harrower shouted at and/or made threats towards patient 1 in that she said to Patient 1 "*I am American you know and if you hurt me I will smack you between the eyes!*" or words to that effect.

The panel therefore found this charge proved.

#### **Charge 1 (b)**

- 1) Shouted at and/or made threats towards patient 1 in that you said to Patient 1:
  - b) "Do that again and I will smash you in the face" or words to that effect.

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

In reaching its decision, the panel had regard to the evidence from Witness 1 and Witness 2 who were both eyewitnesses to this incident and were in close proximity to Mrs Harrower and Patient 1. The panel also took into account the evidence of Witness 3, including notes of interviews with Witnesses 1 and 2, Nurse 1 who was also present, and Mrs Harrower. The panel further had regard to the documentation provided by Mrs Harrower.

The panel considered that the evidence given by Witnesses 1 and 2 in support of this charge was credible and reliable.

Witness 1 gave evidence about the words Mrs Harrower used to Patient 1. She stated that the comments were made in a threatening manner and that Mrs Harrower's hand was raised in a fist at the time.

Witness 2 was clear in her evidence that Mrs Harrower's demeanour towards the patient was threatening and that her tone of voice was raised and also threatening. The panel noted that Witness 2's recollection of the exact words used by Mrs Harrower was not clear.

The panel considered the inconsistencies in the words described by Witness 1 and Witness 2 in relation to Charge 1b. It considered that in the circumstances described, the ability to recall the exact words used by Mrs Harrower may have been weakened due to the witnesses turning their focus to the needs of Patient 1 at the time. Both Witnesses 1 and 2 were clear that the words Mrs Harrower used were inappropriate.

Witness 3 gave evidence that Nurse 1 who was also present with Mrs Harrower during the incident stated in her investigation interview:

*"Yes she did say something but I didn't understand what was said"*

Witness 3 gave evidence that during Mrs Harrower's interview in relation to this incident she stated:

*"I did shout at the patient, I was probably loud but I was not aggressive. I was scared for a few seconds."*

The panel noted that Mrs Harrower's written reflections explain that she shouted at Patient 1 as she attempted to grab her scissors. Mrs Harrower's reflections stated:

*“The patient grabbed my arm that had the scissors and dug into my arm. I told her to stop and let go.”*

The panel noted that no other witness reported seeing any scissors.

The panel preferred the evidence provided by Witnesses 1, 2 and 3 to the accounts provided by Mrs Harrower.

The panel therefore found this charge proved.

**Charge 2 (a), (b) and (c)**

- 2) Applied an inappropriate restraint on Patient 1 in that you:
  - a) Put your hands underneath Patients 1’s chin and/or
  - b) Forced Patient 1’s head back. and/or
  - c) Used excessive force

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Witnesses 1, 2 and 3, and the information before the panel from Mrs Harrower.

Witness 1 stated that Mrs Harrower had one hand under Patient 1’s chin and also that she had pushed Patient 1’s head back.

Witness 2 indicated that Mrs Harrower had her hands on Patient 1’s neck.

Both Witness 1 and Witness 2, who both directly observed the incident, stated that Mrs Harrower did use excessive force on the patient.

The panel considered Mrs Harrower’s account of this incident and note that she stated:

*“I’m not sure who was around at this particular time but the patient then grabbed the scissors out of my pocket and I carried out exactly what I was taught in conflict resolution physical training”*

Neither Witness 1 nor Witness 2 recalled seeing any scissors which Mrs Harrower said were bright pink.

Witness 2’s evidence indicated that the medical interventions which were being carried out by Mrs Harrower on Patient 1 did not require a pair of scissors nor did they require Mrs Harrower to be holding or touching Patient 1.

The panel preferred the evidence of Witnesses 1 and 2 over the version of events put forward by Mrs Harrower.

The panel determined that Mrs Harrower did put her hands underneath Patients 1’s chin, forced Patient 1’s head back and used excessive force.

It next considered whether the actions taken by Mrs Harrower represented inappropriate restraint. The panel noted the evidence of Witness 3 in relation to the Trust’s policies and procedures on appropriate use of restraint and in what circumstances restraint can be applied.

Witness 3, in her evidence, informed the panel that Patient 1 was bedbound and that there would be no reason to try to restrain such a patient. Witness 1 informed the panel that as a nurse you would try to reassure a patient and try to calm them down verbally. She explained that Patient 1 had grabbed her lanyard but she responded in a very different manner to manage the situation.

Mrs Harrower said in her response for the panel, *“My instincts and actions are from the instruction I received from 1988 onwards.”*

However, Witness 3 informed the panel that in this context restraint training had not been part of the Trust's practice since 2016. Witness 3 informed the panel that in order to practise independently in the HDU, Mrs Harrower is likely to have been assessed as competent in respect of policies and procedures.

The panel considered that Patient 1, who was coming out of anaesthesia, was vulnerable, confused, and distressed. The panel was satisfied that the behaviour exhibited by Patient 1 did not necessitate any type of restraint.

The panel also noted that Mrs Harrower identified in her written reflections that she had not received a handover when she arrived on the HDU to provide support. Witness 3 identified in her evidence that it was usual practice for a handover to be given, however the lack of the handover would not give rise to or justify Mrs Harrower's actions.

The panel therefore determined that in these circumstances Mrs Harrower's actions represented an inappropriate restraint of Patient 1.

The panel therefore found this charge proved.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs Harrower's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no

burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Harrower's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct and impairment**

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 Adedeji submitted that the failings identified in this case were extremely serious and that Mrs Harrower's actions were incompatible with practising as a registered nurse. He submitted that threatening a vulnerable patient with violence and using an inappropriate restraint in an aggressive and angry manner undermined section 1.1 of the NMC Code, as these actions showed failures of the kindness and compassion that were fundamental to nursing practice. He reminded the panel that the patient in this case had limited capacity and was in distress. He acknowledged that although Mrs Harrower's actions had the potential to cause physical harm, there was no evidence that harm occurred.

Mr Adedeji reminded the panel that the incidents occurred in the course of Mrs Harrower's duties as a nurse, and were considered serious by those who witnessed the events. He submitted that Mrs Harrower's behaviour would shock the public.

Mr Adedeji 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.

Mr Adedeji referred the panel to the reflective piece provided by Mrs Harrower and submitted that there must be questions about her reasoning behind why her actions were wrong. Mr Adedeji submitted that whilst Mrs Harrower has identified some of the areas of concern within the reflective piece, there is indication of a clear lack of insight.

Mr Adedeji referred to Charge 1(a) and submitted that Mrs Harrower has denied making verbal threats to Patient 1 although they were clearly heard being said. Mr Adedeji submitted that in relation to Charge 1(a), Mrs Harrower has not demonstrated any insight. Mr Adedeji submitted that there is no plausible excuse for the words set out in Charge 1(a) to have been said to a patient.

In light of Mrs Harrower's lack of insight in respect of Charge 1(a), Mr Adedeji submitted that there is impairment.

In relation to Charge 1(b), which relates to a threat of violence, Mr Adedeji submitted that this had not been denied by Mrs Harrower and referred the panel to the reflective piece in which she states:

*“During the fist[sic] part of episode I was acting according to the code, but once she dug in her fingernails in my arm, I lost the ability to step back objectively. I became totally reactionary in fear of her harming herself or one of us. It was an unfounded fear as she probably did not have the strength to do any of us real harm and we could have stopped blood flow had she caught any of her lines and cut them. Stepping back at that moment would have allowed me to take a deep breath and to lessen the fear of the patient. My only explanation is I was terribly afraid she was going to do herself serious harm. [PRIVATE].”*

Mr Adedeji noted that Mrs Harrower acknowledged that she had an unfounded fear and submitted that there is some insight in relation to charge 2 and her reasons for using an unnecessary physical intervention on a patient.

[PRIVATE]

However, Mr Adedeji submitted that it is necessary for any registrant including Mrs Harrower to take such steps so that they are not working in high intensity positions unless they are appropriately prepared. Mr Adedeji informed the panel that Mrs Harrower was familiar with the condition of patients within the HDU and that they were often disorientated and confused.

Mr Adedeji submitted that there being a lack of handover cannot be considered as a mitigating factor for the incidents that occurred as it would have been Mrs Harrower's responsibility to make enquiries as to the condition of the patient and any surrounding factors. Mr Adedeji further submitted that if Mrs Harrower did not feel that she was in a position to deal with Patient 1, then it was her responsibility to remove herself from that situation and not to react in the manner that the panel have found proved.

Mr Adedeji referred to Mrs Harrower's comments in relation to effective communication with colleagues. He submitted that she did not address in her reflective piece the steps she could have taken to remove herself from the situation and/or avoid placing herself in this position in the first place. Mr Adedeji submitted that whilst there is some insight, Mrs Harrower has not taken full responsibility for where she went wrong.

[PRIVATE]

Mr Adedeji submitted that Mrs Harrower's reflections do not go far enough to exclude the possibility of the misconduct displayed by her to recurring if she were allowed to return to unrestricted practice.

Mr Adedeji submitted that the words used by Mrs Harrower were of a threatening nature, including threats of physical violence and occurred more than once in the same incident. He submitted that the panel cannot be satisfied that Mrs Harrower no longer poses a risk or that the risk of repetition is low. Mr Adedeji submitted that there is nothing to show that if Mrs Harrower was placed in a similar situation that she would not react in a similar manner.

In closing, Mr Adedeji submitted that Mrs Harrower's fitness to practise is impaired by reason of her serious professional misconduct. Mr Adedeji submitted that a finding of impairment is in the public interest and that the public would be shocked to learn that a nurse was behaving in the manners described. Mr Adedeji finally submitted that there is clear ongoing impairment and a clear lack of insight from Mrs Harrower.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). The legal assessor reminded the panel that it should have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

### **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 Mrs Harrower's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Harrower's actions amounted to a breach of the Code. Specifically:

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

*1.1 treat people with kindness, respect and compassion*

*1.5 respect and uphold people's human rights*

**2 Listen to people and respond to their preferences and concerns**

*2.6 recognise when people are anxious or in distress and respond compassionately and politely*

**3 Make sure that people's physical, social and psychological needs are assessed and responded to**

*3.1 pay special attention to promoting wellbeing, preventing ill-health and meeting the changing health and care needs of people during all life stages*

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

*4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment*

**19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice**

*19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

*19.2 take account of current evidence, knowledge and developments in reducing mistakes and the effect of them and the impact of human factors and system failures (see the note below)*

*19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public*

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

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

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

**24 Respond to any complaints made against you professionally**

*24.2 use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice*

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 the behaviour and actions found proved amount to misconduct as defined in the case of *Roylance v General Medical Council* as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

The panel noted that Mrs Harrower was verbally aggressive and threatening towards a patient more than once during the same incident and also applied an inappropriate restraint. It noted that the incident occurred during the course of Mrs Harrower's professional duties as a nurse. The panel further noted that Mrs Harrower's aggression was directed towards a patient who was vulnerable, disorientated and confused and that her actions had potential to cause harm to the patient.

In her reflective statement, although Mrs Harrower did not evidence full insight, she did note a number of times that she had failed to act in accordance with the standards expected of a registered nurse as set out in the Code.

The panel found that Mrs Harrower's actions 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, Mrs Harrower's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

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

d) ...

Having carefully reflected on the facts and the evidence relied upon in this case, the panel determined that limbs a – c of Dame Janet Smith’s test are engaged in relation to charges 1 and 2.

The panel finds that Mrs Harrower’s actions have in the past placed a patient at an unwarranted risk of harm. The panel noted that no actual harm was caused by the inappropriate restraint applied on the patient by Mrs Harrower but that there was a real risk of significant harm as a result. The panel determined that Mrs Harrower’s misconduct had breached the fundamental tenets of the nursing profession, in particular to provide compassionate care, and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to misconduct extremely serious. In its considerations on whether a finding of impairment is necessary, the panel had regard to *Cohen v General Medical Council*.

The panel was satisfied that the misconduct in this case is capable of remediation. The panel determined that Mrs Harrower’s misconduct was not fundamentally incompatible with remaining on the register. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Harrower has remedied her deficiencies.

Regarding insight, the panel had regard to the reflective piece written by Mrs Harrower and noted that she demonstrates some reflection and insight into her failings as a nurse.

However, it determined that Mrs Harrower has based her reflections on a version of events that the panel has not found to be credible. The panel noted that there was some acknowledgement from Mrs Harrower of her failings and but it was concerned that the reflections provided did not appropriately address the impact of her failings on the patient or how she would handle similar situations differently in the future. The panel further noted that Mrs Harrower has not addressed the inappropriateness of the restraint she used and the potential for harm from using that restraint.

The panel considered that Mrs Harrower did not demonstrate insight into the impact that her verbal aggression and inappropriate behaviour could have on the reputation of the profession, nor did she demonstrate sufficient insight into how her conduct could have negatively impacted upon her colleagues. The panel therefore describes Mrs Harrower's insight as limited and developing. The panel was not satisfied that Mrs Harrower's insight is at a level that demonstrates the conduct is highly unlikely to be repeated.

The panel considered whether Mrs Harrower has demonstrated any evidence of steps she may have taken to strengthen her practice. The panel took into account that Mrs Harrower stated "*My instincts and actions are from the instruction I received from 1988 onwards.*" and that she considered that she may be suited to a less intense working environment. The panel noted that Mrs Harrower indicated in her reflections that she would like to take a refresher course. However, the panel did not have any evidence before it to demonstrate any relevant training Mrs Harrower may have undertaken to bring her skills up-to-date and strengthen her practice. The panel also did not have any evidence before it to demonstrate steps Mrs Harrower has taken to alleviate the stresses that can arise from high intensity situations and how to manage her behaviours in order not to repeat the conduct found proved.

The panel noted that Mrs Harrower wrote "*I asked my manager if I should quit several times, but she laughed the question off*" but it determined that it would be Mrs Harrower's own responsibility to determine whether she is capable of working as a nurse at any given time.

The panel further noted that in her reflections, Mrs Harrower explored areas of work which may be suitable for her and stated “*I like the sound of Hospice work, where my compassion and empathy would fit in nicely.*” The panel noted that Mrs Harrower’s actions during the incident on 11 December 2019 were lacking empathy and compassion for the patient and that nursing practice in any environment requires these qualities to be expressed at all times.

On the basis of the evidence before it, the panel determined that there remains a risk of repetition of the misconduct identified.

[PRIVATE]

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 therefore decided that a finding of impairment is necessary on the grounds of public protection.

In addition, the panel determined that a finding of impairment on public interest grounds is also required because the public would not expect a nurse to act in the way Mrs Harrower did, as it expects nurses to adhere to appropriate professional standards and to safeguard the health and wellbeing of patients at all times. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that Mrs Harrower’s 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 one year. The effect of this order is that the NMC register will show that Mrs Harrower's 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.

### **Submissions on sanction**

Mr Adedeji informed the panel that in the Notice of Hearing, dated 10 March 2022, the NMC had advised Mrs Harrower that it would seek the imposition of a striking off order if it found Mrs Harrower's fitness to practise currently impaired.

Mr Adedeji submitted that the patient was not harmed as a result of Mrs Harrower's actions. However, he reiterated that the potential for physical and mental harm to this vulnerable patient was extremely high. Mr Adedeji noted that it was known to Mrs Harrower that patients within the HDU are expected to be disorientated, confused and of a limited capacity as a result of coming out of sedation.

Mr Adedeji submitted that the conduct demonstrates attitudinal concerns which are more difficult to put right. He invited the panel to consider whether Mrs Harrower has demonstrated that she is capable of remediating the concerns. He submitted that there is not enough put before the panel by Mrs Harrower to determine that the deficiencies identified are capable of remediation.

Regarding insight, Mr Adedeji submitted that there is some insight demonstrated by Mrs Harrower but that there is inadequate reflection on the impact of her actions on this patient, her colleagues or the profession as a whole.

Mr Adedeji submitted that Mrs Harrower has not taken the opportunity to demonstrate that she realises the impact of her actions. [PRIVATE]. He further submitted that Mrs Harrower has not demonstrated in her reflections that she is able to make a correct judgement regarding whether she is capable of working at any given time.

Mr Adedeji submitted that based on Mrs Harrower's previous actions her conduct is capable of being repeated.

Mr Adedeji submitted that this is conduct that the public would never expect from a registered nurse. He submitted that the public would be concerned to learn that a nurse was verbally and physically attacking not only a patient, but a patient who was coming out of sedation in the high dependency unit. He submitted that a striking off order was therefore the appropriate sanction.

Mr Adedeji submitted that taking no further action or a caution order would not be appropriate in this case as it involves verbal and physical abuse to a patient and would not protect the public or uphold professional standards.

Mr Adedeji submitted that a conditions of practice order could potentially provide some level of public protection and offer Mrs Harrower an opportunity to continue training and remediating the concerns. However, he submitted that the misconduct found proved is worrying and suggests an underlying issue with Mrs Harrower's attitude. He submitted that Mrs Harrower had denied using the abusive words to the patient from the outset and provided a version of events which was not credible. [PRIVATE]. Mr Adedeji therefore submitted that a conditions of practice order would not be appropriate.

Mr Adedeji submitted that imposing a suspension order would provide public protection against a risk of future harm. However he submitted that this would undermine public confidence in the profession and reflect badly on the NMC given the seriousness of the misconduct found proved. He submitted that a suspension order would not satisfy the public interest in this case.

Mr Adedeji therefore invited the panel to impose a striking off order.

The panel accepted the advice of the legal assessor.

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

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

The panel took into account the following aggravating features:

- The conduct placed a vulnerable patient at risk of suffering harm;
- Lack of sufficient insight into the failings and the impact on patients, the profession and colleagues;
- Absence of action taken to strengthen practice; and
- Abuse of a position of trust.

The panel also took into account the following mitigating features:

- Personal mitigation... [PRIVATE].

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Harrower's practice would not be appropriate in the circumstances. The SG

states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Harrower's 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 Mrs Harrower's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be adequately addressed through retraining alone. The panel noted that the misconduct occurred in the presence of a doctor and two other nurses and therefore determined that conditions that include elements of supervision would not sufficiently manage the risk to the patients in Mrs Harrower's care.

The panel therefore concluded that the placing of conditions on Mrs Harrower's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single incident of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident; and*
- *The Committee is satisfied that the nurse or midwife has some insight.*

The panel was satisfied that all the above criteria were met in this case.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

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 Mrs Harrower. 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.

In making this decision, the panel carefully considered the submissions of Mr Adedeji in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a striking off order would be disproportionate at this stage as it is of the view that Mrs Harrower should be given the opportunity to remediate, develop her insight into the incidents and their impact, as well as take steps to strengthen her practice.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Harrower's case to impose a striking-off order. The panel also noted

that the incidents occurred during a short period of time on one single day and that there were underlying personal factors that potentially contributed to the incidents.

The panel determined that a suspension order for a period of one year was appropriate in this case to mark the seriousness of the misconduct.

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:

- Mrs Harrower's attendance at any future hearing;
- Evidence of, or detailed proposals for, training to update her nursing skills and improve her management of anger and stressful situations;
- A detailed reflective piece which addresses her actions at the time of the incident and the impact they had on the patient, the profession and her colleagues. The reflective piece should include how she would handle a similar situation differently in the future; and
- Evidence of references or testimonials from recent paid or unpaid work in a healthcare setting.

This will be confirmed to Mrs Harrower in writing.

### **Interim order**

The suspension order cannot take effect until the end of the 28-day appeal period, or, if an appeal is brought, until it has finally been dealt with. The panel therefore 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 Mrs Harrower's own interest until the suspension sanction takes effect.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Adedeji. He invited the panel to impose a further interim suspension order until the period for appeal has expired. He submitted that it was necessary for the protection of the public and in the wider public interest.

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

### **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. In reaching its decision to impose an interim suspension order, the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order.

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

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

That concludes this determination.