

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

**Substantive Meeting  
Tuesday 5 – Wednesday 6 April 2022**

Virtual Meeting

<b>Name of registrant:</b>	Lohan Monalisa Maria
<b>NMC PIN:</b>	16G0730C
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 RN1: Adult Nurse – 15 July 2016
<b>Area of registered address:</b>	Romania
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Sadia Zouq (Chair, lay member) Sharon Peat (Registrant member) Margaret Wolff (Lay member)
<b>Legal Assessor:</b>	Cyrus Katrak
<b>Hearings Coordinator:</b>	Sherica Dosunmu
<b>Facts proved:</b>	Charges 1a, 1b, 1c
<b>Facts not proved:</b>	Charges 1d, 2
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-Off Order</b>
<b>Interim order:</b>	<b>Interim Suspension Order (18 months)</b>

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

The panel considered whether Ms Monalisa Maria's case was suitable for a substantive meeting or a substantive hearing and concluded that it was appropriate to consider this case at a substantive meeting.

The panel was informed that the Notice of Meeting had been sent to Ms Monalisa Maria's registered email address by secure email on 2 March 2022 and sent to her registered address with recorded delivery by airmail on the same date. The panel had sight of an airmail delivery confirmation.

The panel took into account that the Notice of Meeting provided details of the allegation, all of the evidence related to this matter, and informed Ms Monalisa Maria that this meeting would take place on or after 5 April 2022. Ms Monalisa Maria was also asked to provide comments by using the response form attached to the Notice of Meeting, if she had anything that she wanted the panel to take account of in considering this matter. This response form was not returned by Ms Monalisa Maria.

The panel accepted the advice of the legal assessor.

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

The panel noted that the Rules do not require proof of delivery and that it is the responsibility of a registrant to maintain an effective and up-to-date registered address.

## **Decision and reasons on Rule 19**

In its written submissions, the Nursing and Midwifery Council (NMC) made a request that this case be held entirely in private on the basis that Ms Monalisa Maria's case is subject to an ongoing police investigation. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the circumstances of this case, the panel determined to hold the entirety of the meeting in private to avoid risk of prejudice to the ongoing police investigation.

### **Decision and reasons to admit additional evidence**

During the course of the meeting it became apparent that Ms Monalisa Maria's revalidation with the NMC on 26 June 2019, was referred to within the NMC's Statement of Case in relation to charge 2. In its written submissions, the NMC referred to Ms Monalisa Maria's online revalidation as providing confirmation that she expected to have Professional Indemnity Insurance by virtue of her employment contract. However, this was not the case when working at Birch Tree Manor Care Home.

The panel noted that although this was referred to, it was not provided with Ms Monalisa Maria's revalidation submission for 26 June 2019 as evidence to consider.

The panel accepted the advice of the legal assessor.

The panel considered whether it would be appropriate to request Ms Monalisa Maria's revalidation submission. The panel, in making its decision, bore in mind the principles of relevance and fairness. The panel was of the view that Ms Monalisa Maria's declaration in respect of her professional indemnity arrangements, in her revalidation submission would be relevant in the circumstances of this case. In particular, this relates to charge 2, as the charges alleges that Ms Monalisa Maria did not have in place professional indemnity insurance while working at Birch Tree Manor Care Home.

The panel next considered whether it would be fair to request Ms Monalisa Maria's revalidation submission, without causing prejudice. The panel noted that Ms Monalisa Maria was provided with all of the evidence related to this matter, which is evident from the evidence matrix sent to Ms Monalisa Maria in the Notice of Meeting on 2 March 2022. It

also took into account that the online revalidation was completed and submitted by Ms Monalisa Maria, so she would be aware of the content of her revalidation submission.

In these circumstances, the panel determined that it was appropriate to request and admit Ms Monalisa Maria's revalidation submission for 26 June 2019 as evidence, but it would give this evidence the weight that it deemed appropriate once the panel was able to see and evaluate it.

The NMC provided Ms Monalisa Maria's revalidation submission as evidence to be considered in this case.

### **Details of charge**

That you, a registered nurse, on 28 October 2019:

- 1) On 28 October 2019;
  - a) Slapped Resident A on the side of the head.
  - b) Punched Resident A in the back.
  - c) Kicked Resident A in the buttock.
  - d) Left Resident A in soiled clothing.
  
- 2) Whilst working at Birch Tree Manor Care Home, did not have in place professional indemnity insurance.

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

### **Background**

The NMC received a referral from Birch Tree Manor Care Home (the Home) on 29 October 2019. Ms Monalisa Maria commenced employment at the Home on 26 September 2016. At the time of the concerns raised in the referral, Ms Monalisa Maria was working at the Home as a Registered Nurse and was caring for residents with dementia.

The concerns arise from the events of a night shift on 28 October 2019, when Ms Monalisa Maria was working as nurse in charge. On the night in question, Ms Monalisa Maria was providing care for Resident A, a vulnerable elderly resident with dementia at the Home.

The referral alleges that, during the night shift, two Healthcare Assistants (HCA), Colleague B and Colleague C, observed Ms Monalisa Maria physically assaulting Resident A while she was working with another colleague (who was a HCA), by slapping, punching and kicking him. It is also alleged that Ms Monalisa Maria and the colleague left Resident A in soiled clothing.

The alleged incidents were reported by Colleague B and Colleague C during their shift change and both wrote statements at the time. Ms Monalisa Maria was suspended by the Home with immediate effect and the police were contacted regarding the concerns raised.

During the NMC's investigation of the allegations, the NMC was informed by the Home that Ms Monalisa Maria was self-employed but they were unable to find evidence that she had personal indemnity insurance.

There is currently an ongoing police investigation regarding the allegations of abuse. However, the police have confirmed that they have not been able to make contact with Ms Monalisa Maria as she has left the country.

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

In reaching its decisions on the facts, the panel took into account all the documentary evidence adduced in this case.

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

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

- Colleague B: Healthcare Assistant at Birch Tree Manor Care Home;
- Colleague C: Healthcare Assistant at Birch Tree Manor Care Home;
- Colleague D: Regional Support Manager at Birch Tree Manor Care Home at the time.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

### **Charge 1a**

- 1) On 28 October 2019;
  - a) Slapped Resident A on the side of the head.

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

In reaching this decision, the panel took into account the evidence of Colleague B and Colleague C.

The panel noted the following evidence from Colleague B's witness statement, which indicated that Ms Monalisa Maria slapped Resident A:

*'I witnessed Lohan slap Resident A on the side of his head on a number of occasions. Lohan slapped Resident A on the side of head. She slapped him with one hand and then used her other hand and she did this on at least 3 times Resident A shouted "get off, Fuck off" repeatedly and was very angry. I did not witness Resident A hit Lohan.'*

The panel further noted Colleague B's contemporaneous statement to the Home on 28 October 2019, in which she states:

*'Just after 1am I heard shouting from another unit. when I looked out the window I saw RGN Mona lisa hitting a resident [Resident A] on the head.'*

The panel also considered that Colleague B's account is supported by Colleague C's witness statement, which states:

*'To my absolute shock Ms Maria approached [Resident A] from behind and whilst she was standing behind [Resident A] she slapped both sides of his head a few times. I could not believe what I had witnessed, I felt absolutely disgusted and words cannot describe how sad I felt for [Resident A]. [Resident A] wobbled when Maria slapped him and I was scared that [Resident A] may fall.'*

The panel further noted Colleague C's contemporaneous statement to the Home on 28 October 2019, in which she states:

*'What I saw was Resident A walking around the lounge and Moaria approached Resident A from behind and hit him about the head and lower back...'*

The panel considered that Colleague B and Colleague C's witness statements and contemporaneous statements generally corroborate one another's account of the assault. The panel was of the view that both Colleague B and Colleague C provided very detailed accounts of the way Ms Monalisa Maria physically assaulted Resident A, which it regarded as compelling.

The panel took into account that Colleague B and Colleague C's witness statements were broadly consistent with their statements written contemporaneously. The panel acknowledged that Colleague B and Colleague C's contemporaneous statements refer to Ms Monalisa Maria hitting Resident A, as opposed to slapping him as written in their witness statement. However, the panel determined that the word hit can be used as a

general descriptive term when referring to a slap and does not negate the cogency of the evidence.

The panel accepted Colleague B and Colleague C's evidence that Ms Monalisa Maria slapped Resident A on 28 October 2019.

Accordingly, the panel finds charge 1a proved.

### **Charge 1b**

- 1) On 28 October 2019;
- b) Punched Resident A in the back.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague B and Colleague C.

The panel noted the following evidence from Colleague B's witness statement, which indicated that Ms Monalisa Maria punched Resident A three times using both hands interchangeably:

*'Lohan then punched the resident in the middle of his back. She punched him with each hand three times (she punched using one hand and then used her other hand left hand punch right hand punch)'*

The panel further noted Colleague B's contemporaneous statement to the Home on 28 October 2019, in which she states:

*'Mona then punched him on the back a few times.'*

The panel also considered that Colleague B's account is supported by Colleague C's witness statement, which states:

*'Ms Maria then punched [Resident A] to the left side of his back. I vividly recall thinking she had used some force to punch him'*

The panel further noted Colleague C's contemporaneous statement to the Home on 28 October 2019, in which she states:

*'What I saw was Resident A walking around the lounge and Moaria approached Resident A from behind and hit him about the head and lower back...'*

The panel considered that Colleague B and Colleague C's witness statements and contemporaneous statements generally corroborate one another's account of Ms Monalisa Maria punching Resident A in his back. The panel was of the view that both Colleague B and Colleague C provided detailed accounts of the way Ms Monalisa Maria physically assaulted Resident A, which it regarded as compelling.

The panel considered Colleague B and Colleague C's contemporaneous statements. It noted that Colleague B and Colleague C's witness statements refer to Resident A getting punched in different areas of the back. The panel had regard to the circumstances as a whole in which Ms Monalisa Maria was observed physically assaulting Resident A, and considered the evidence of Colleague B and Colleague C credible overall.

In addition, the panel acknowledged that Colleague C's contemporaneous statement refer to Ms Monalisa Maria hitting Resident A, as opposed to punching him as written in her witness statement. However, the panel determined that the word hit can be used as a general descriptive term when referring to a punch and does not negate the cogency of the evidence.

The panel accepted Colleague B and Colleague C's evidence that Ms Monalisa Maria punched Resident A in the back on 28 October 2019. Accordingly, the panel finds charge 1b proved.

### **Charge 1c**

- 1) On 28 October 2019;

c) Kicked Resident A in the buttock.

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague B and Colleague C.

The panel noted the following evidence from Colleague B's witness statement, which indicated that Ms Monalisa Maria kicked Resident A in the buttocks:

*'Lohan then stood still and I witnessed her kick Resident A in buttocks. I cannot remember if she used her left or right leg. Resident A stumbled forward [...] witnessed the kick but she did not intervene and carried on pulling Resident A by his hands manoeuvring him towards his room.'*

The panel further noted Colleague B's contemporaneous statement to the Home on 28 October 2019, in which she states:

*'Then he was forced to his room, mona then kicked him from behind.'*

The panel considered that Colleague B's witness statement was generally consistent with her contemporaneous statement written on 28 October 2019.

The panel further considered that in her witness statement and contemporaneous statement, Colleague C does not recount Resident A being kicked in the buttocks. The panel had regard to the circumstances as a whole in which Ms Monalisa Maria was observed physically assaulting Resident A, and considered the evidence of Colleague B and credible overall.

The panel accepted Colleague B's evidence and determined that, on the balance of probabilities, Ms Monalisa Maria kicked Resident A in the buttocks on 28 October 2019.

Accordingly, the panel finds charge 1c proved.

## Charge 1d

- 1) On 28 October 2019;
- d) Left Resident A in soiled clothing.

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

In reaching this decision, the panel took into account the evidence of Colleague B and Colleague C.

The panel noted the following evidence from Colleague B's witness statement:

*'After approximately 30 minutes later we heard shouting again and it was the same voice. [Colleague C] and I run straight to the big window and kept the light off. We could see Resident A was lying on the floor in the green lounge in a pool of liquid and Lohan was stood in front of Resident A I do not know what the liquid was however I presumed [Resident A] had urinated himself.*

*[...] that I needed to book the day off and she went and got the holiday diary. In the time she was gone I went to [Resident A]. [Resident A] was asleep and had a blanket over his legs. I picked up the blanket and saw his trousers were set he had urinated himself. I placed the blanket back and Lohan had returned and we discussed my holiday and I returned to my unit. Lohan seemed her normal self and she did not suspect anything.'*

The panel further noted Colleague B's contemporaneous statement to the Home on 28 October 2019, in which she states:

*'Shortly after I heard more shouting from other unit and when I looked out the window and Resident A was lying on floor in lounge in a pool of liquid.'*

The panel also considered Colleague C's witness statement, which states:

*'Approximately 15 minutes later we again heard shouting coming from the direction of the Green Lounge. [Colleague B] and I ran to the bathroom window and saw Resident had returned to the lounge. We ran to room 32 as the visibility was much better. [Resident A] was on the floor with his face up, his knees were bent and his arms were to his side. It looked as though [Resident A] had slipped on a liquid.'*

The panel further noted Colleague C's contemporaneous statement to the Home on 28 October 2019, in which she states:

*'... approximately 15 minutes Resident A came back to the lounge I heard shouting again my colleague [Colleague B] went to the bathroom in [...] lounge and [Colleague B] shouted me [...] to come see this but I went to another window which was bigger and I saw what look like [Resident A] on the floor then I saw Moaria and [...] pick [Resident A] off the floor and put him in a reclining chair and [Resident A] fell asleep.'*

The panel considered that Colleague B and Colleague C's witness statements are inconclusive on the matter of whether Resident A was left in soiled clothing.

The panel noted that Colleague B describes two HCAs assisting Resident A off the floor and into a chair and stated that after watching this Ms Monalisa Maria left the room. Colleague B stated that she later went into the lounge and lifted the blanket covering Resident A and saw that his trousers was wet with urine. However, the panel noted that Colleague C stated that she saw Resident A in boxer shorts and with no blanket. Further, the panel noted that neither Colleague B nor Colleague C had Resident A in their site for the whole of the rest of the shift after he was placed in the chair.

The panel concluded that it was therefore not able to determine if Ms Monalisa Maria left Resident A in soiled clothing.

The panel therefore finds charge 1d not proved.

## **Charge 2**

2) Whilst working at Birch Tree Manor Care Home, did not have in place professional indemnity insurance.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the documentary evidence exhibited by Colleague D, which included email correspondence with the NMC on 11 February 2020 in relation to the NMC's investigation. The panel also took into account Ms Monalisa Maria's revalidation submission to the NMC on 26 June 2019.

The panel considered that in Ms Monalisa Maria's 26 June 2019 revalidation submission, she declared in the '*Professional Indemnity Arrangement*' section that her professional indemnity arrangement is by virtue of '*Employment contact(s)*'.

The panel noted the following email, dated 11 February 2020, from Colleague D to the NMC:

*'This is the responsibility of the Nurse, as she was self employed, there is nothing in her file as to say we had a copy of any insurance.'*

The panel considered that Ms Monalisa Maria was self-employed whilst working at the Home and as such, she was required to obtain the relevant Personal Indemnity Insurance (PII). The panel noted that Colleague D, on behalf of the Home, confirmed that there was nothing in Ms Monalisa's file to say they had a copy of any insurance.

However, the panel was not satisfied that there is enough evidence to determine that Ms Monalisa Maria did not have PII on the sole basis of the Home not having a record of this at the time of the NMC's investigation.

Therefore, in the absence of any further evidence, the panel finds charge 2 not proved.

**Fitness to practise**

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

### **Representations on misconduct and impairment**

In coming to its decision, the panel had regard to the following written submissions contained within the NMC's Statement of Case:

#### **'Misconduct**

*20. It is submitted that the facts amount to misconduct.*

*21. Whether the facts found proved amount to misconduct is a matter entirely for the panel's professional judgment. There is no burden or standard of proof (per Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas [2006] EWHC 464 (Admin)).*

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

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

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

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

*And*

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

*23. Where the acts of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to. Inter alia, the Nursing and Midwifery Council’s Code of Conduct (2015) (‘the Code’).*

*24. The Code sets out professional standards that nurses must uphold. These are the standards that patients and members of the public expect from health professional. On the basis of the charges alleged, it is submitted, that the following parts of the code are engaged in this case:*

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

*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*

*1.5 respect and uphold people’s human rights*

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

*2.1 work in partnership with people to make sure you deliver care effectively*

*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 addressed and responded to**

*3.3 act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it*

*3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care*

**12) Have in place an indemnity arrangement which provides appropriate cover for any practice you take on as a nurse, midwife or nursing associate in the United Kingdom**

*12.1 make sure that you have an appropriate indemnity arrangement in place relevant to your scope of practice*

**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*

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

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

*20.4 keep to the laws of the country in which you are practising*

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

*25. It is submitted that the Registrant's conduct detailed in charges 1 and 2 fell short of what would have been expected of a registered nurse. The Registrant's actions amount to bullying, harassment and abuse of an elderly vulnerable dementia patient under her care. Her actions cause direct harm to Resident B and would be seen as deplorable by fellow practitioners, thereby damaging the trust that the public places*

*in the profession. Acting with care and keeping patient's safe from harm are integral to the standards expected of a registered nurse and central to the code. The Registrant's conduct as set out in charge 1 fell far below what would be expected of a registered nurse and a finding of misconduct must follow.*

*26. It is further submitted that the Registrant's conduct detailed in charge 2 amounts to a serious departure from the standards expected of a registered nurse. Registrants are required to have an appropriate indemnity arrangement in place when they practise in the UK. The Registrant indicated that she did have PII in place by virtue of her employer when she did not.*

*27. The Registrant's conduct in these charges fell far below what would be expected of a registered nurse and a finding of misconduct must follow.*

### **Impairment**

*28. It is submitted that the Registrant's fitness to practice is impaired by reason of her misconduct on both grounds of public protection and public interest.*

*29. Impairment needs to be considered as at today's date, i.e. whether the nurse's fitness to practice is currently impaired. The NMC defines impairment as a nurse's suitability to remain on the register without restrictions.*

*30. Additionally, the questions posed by Dame Janet Smith in the Fifth Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions as are relevant in this case being:*

*a. has [the Registrant] 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 [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*

*c. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future; and/or*

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

*31. In this case limbs a, b and c are engaged.*

*32. The Registrant's actions, failings as set out in the charges directly harmed a vulnerable patient and indicate deep seated attitudinal problems. NMC guidance (FTP-3a) indicates that deliberately causing harm to patients is serious and is difficult to put right.*

*33. The public has a right to expect that those who care for patients will be kind and compassionate. The Registrant's misconduct undermines public confidence in the nursing profession and, as a consequence has brought the profession into disrepute.*

*34. With regard to future risk it may assist to consider the comments of Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin), namely, whether the concerns are easily remediable, whether they have in fact been remedied and whether they are highly unlikely to be repeated.*

*35. Regulatory concerns of the type identified in this case are not easily remediable. The Registrant's actions are indicative of serious deep-seated attitudinal concerns. She has not engaged with the NMC and has left the country. She has not demonstrated any remorse, insight or taken any steps to address her conduct through remediation. There is a high risk of repetition should the Registrant be allowed to practice unrestricted.*

*36. The case of Grant also makes it clear that the public interest must be considered paramount (at paragraph 74):*

*" In determining whether a practitioner's fitness to practise is impaired...the relevant panel should generally consider...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"*

37. *It is submitted that the reputation of the nursing profession would be damaged if the Registrant were to be permitted to practice unrestricted: the public expect patients to receive care and be free from harm, abuse and bullying treatment. The Registrant's actions put patients and direct risk of harm and breach the fundamentals of nursing care. In light of her misconduct, a finding of current impairment is necessary to declare and uphold proper standards.*

38. *For the reasons above, it is submitted that the Registrant's fitness to practice is currently impaired, on both the grounds of public protection and the wider public interest.'*

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*, *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, and *Calhaem v General Medical Council [2007] EWHC 2606 (Admin)*.

## **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 Ms Monalisa Maria's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Monalisa Maria'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*

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

*1.5 respect and uphold people's human rights*

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

*2.1 work in partnership with people to make sure you deliver care effectively*

*2.2 recognise and respect the contribution that people can make to their own health and wellbeing*

*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 addressed and responded to**

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

*3.2 recognise and respond compassionately to the needs of those who are in the last few days and hours of life*

*3.3 act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it*

*3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care*

**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*

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

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

*20.4 keep to the laws of the country in which you are practising*

*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'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered the charges individually and collectively. It took account of all the evidence before it and the circumstances of the case as a whole.

The panel was in no doubt that Ms Monalisa Maria's actions found proved in charges 1a – 1c individually amounted to serious misconduct, given its nature and context. The panel considered that Ms Monalisa Maria's actions amounted to bullying, harassment and

physical abuse of an elderly vulnerable patient with dementia under her care. It took into account that Ms Monalisa Maria's actions caused direct harm to Resident A. The panel was of the view that acting with care and keeping patients safe from harm are integral to the standards expected of a registered nurse and central to the code. The panel determined that Ms Monalisa Maria's actions found proved would be seen as deplorable by fellow practitioners, thereby damaging the trust that the public places in the profession.

The panel concluded that Ms Monalisa Maria's actions found proved in charges 1a – 1c 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, Ms Monalisa Maria'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. 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 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) ...'*

The panel determined that limbs a, b and c in the above test were engaged both in the past and in the future.

The panel found that Resident A was put at risk and caused physical harm as a result of Ms Monalisa Maria's misconduct. The panel was of the view that Ms Monalisa Maria's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel noted that it had not received any evidence to suggest that Ms Monalisa Maria has demonstrated an understanding of how her actions put patients at a risk of harm or how this impacted negatively on the reputation of the nursing profession. The panel has no evidence before it from Ms Monalisa Maria regarding insight, remorse and steps taken to remediate. The panel bore in mind that Ms Monalisa Maria has failed to engage with the NMC since the referral of the case in October 2019.

The panel was satisfied that the misconduct in this case was indicative of an attitudinal issue and therefore more difficult to remediate.

The panel was of the view that there is a high risk of repetition based on the lack of evidence of any insight, remorse or remediation. The panel noted that Ms Monalisa Maria's actions set out in the charges found proved directly harmed a vulnerable patient. On the basis of all the information before it, the panel decided that there is a risk to the public, if Ms Monalisa Maria was allowed to practise without restriction. The panel therefore determined that a finding of current impairment on public protection grounds is necessary.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds Ms Monalisa Maria's fitness to practise is also impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Ms Monalisa Maria's fitness to practise is currently impaired.

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Ms Monalisa Maria off the register. The effect of this order is that the NMC register will show that Ms Monalisa Maria has been struck-off the register.

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

## **Representations on sanction**

The panel noted that in the Statement of Case attached to the Notice of Meeting, dated 2 March 2022, the NMC had advised Ms Monalisa Maria that it would seek the imposition of a striking-off order if it found Ms Monalisa Maria's fitness to practise currently impaired. No representations were received from Ms Monalisa Maria.

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

Having found Ms Monalisa Maria'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:

- Abuse of position of trust;
- Deliberate conduct which put patients at risk of harm and caused actual harm and distress to Resident A;
- Evading responsibility by immediately leaving the country;
- Non engagement with the NMC;
- Lack of insight, remorse and remediation.

The panel did not identify any mitigating features in this case.

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 not protect the public or satisfy 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 Ms Monalisa Maria'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 Ms Monalisa Maria's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Monalisa Maria's registration would be a sufficient and appropriate response. The panel considered that the concerns related to abuse of a patient, which indicates harmful deep-seated personality and attitudinal problems. The panel did not receive any evidence of insight, remorse or remediation and was not aware if Ms Monalisa Maria would be willing to submit to and comply with conditions. 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 and risk of repetition. Furthermore, the panel concluded that the placing of conditions on Ms Monalisa Maria's registration would not adequately protect the public and meet the public interest.

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

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

The panel determined that abuse of any patient is inherently serious and found that the misconduct in this case reflected harmful deep-seated personality and attitudinal problems. It also found no evidence of insight or remorse, and a consequent risk of repetition.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that there was no

evidence to suggest that Ms Monalisa Maria would use a period of suspension to address the specific concerns raised about her conduct in this matter. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction to mark the gravity of this misconduct in order to maintain public confidence in the nursing profession and in the NMC as its regulator.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Ms Monalisa Maria's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Monalisa Maria's actions were serious and to allow her to continue practising would put patients at risk of serious harm and undermine public confidence in the profession and in the NMC as a regulatory body.

The panel received no evidence that Ms Monalisa Maria has developed any insight or demonstrated any remorse into her misconduct. Nor has she demonstrated that she has developed any understanding of the requirement, as a registered nurse, to act with care and keep patients safe from harm. In addition, the panel has had no information to indicate that Ms Monalisa Maria has done anything at all to remediate her misconduct. The panel was of the view that members of the public would be shocked if a registered nurse who physically abused a vulnerable patient was allowed to remain on the register. Taking account of the SG, the panel could not be satisfied that anything less than a striking-off order would maintain professional standards, keep the public protected and address the public interest in Ms Monalisa Maria's case.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms Monalisa Maria's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that a striking-off order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Ms Monalisa Maria's own interest until the striking-off order takes effect.

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

### **Representations on interim order**

The panel took account of the written representations made by the NMC that it is also necessary for the protection of the public and otherwise in the public interest for there to be an interim suspension order of 18 months to cover the appeal period.

### **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 allow for any possible appeal period.

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

This will be confirmed to Ms Monalisa Maria in writing.

That concludes this determination.