Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 28 March 2022 – Thursday 31 March 2022

Virtual Hearing

Name of registrant:	Nicola Jane Lovell	
NMC PIN:	91I0085E	
Part(s) of the register:	Registered Nurse - Adult Nursing - August 1994	
Area of registered address:	Lincolnshire	
Type of case:	Misconduct	
Panel members:	Anthony Mole Pauleen Pratt Mel Swinnerton	(Chair, Lay member) (Registrant member) (Lay member)
Legal Assessor:	Charles Conway	
Hearings Coordinator:	Alice Byron	
Nursing and Midwifery Council:	Represented by Aoife Kennedy, Case Presenter	
Miss Lovell:	Not present and unrepresented	
Facts proved:	Charges 1a(i), 1a(ii), 1b(i), 1b(ii), 1c, 1d(i), 1d(ii), 1d(iii), 1d(iv)	
Facts not proved:	N/A	
Fitness to practise:	Impaired	
Sanction:	**Suspension order with review (12 months)**	
Interim order:	**Interim suspension order (18 months)**	

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

At the outset of the hearing, Miss Kennedy, on behalf of the Nursing and Midwifery Council (NMC) made a request that part of this hearing be heard in private on the basis that exploration of the issue of proceeding in absence in this matter involves reference to Miss Lovell's health. The application was made pursuant to Rule 19 of the '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.

The panel determined to go into private session in connection with Miss Lovell's health as and when such issues are raised.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Lovell was not in attendance and that the Notice of Hearing letter had been sent to Miss Lovell's registered address by recorded delivery and by first class post on 14 February 2022.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Miss Lovell's registered address on 15 February 2022. It was signed for against the printed name of 'Lovell'.

Miss Kennedy submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Miss Lovell 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 Miss Lovell

The panel next considered whether it should proceed in the absence of Miss Lovell. It had regard to Rule 21 and heard the submissions of Ms Kennedy who invited the panel to continue in the absence of Miss Lovell. She submitted that Miss Lovell had voluntarily absented herself.

Ms Kennedy submitted that, up until 25 March 2022, Miss Lovell had not engaged at all with the NMC in relation to these proceedings. Ms Kennedy invited the panel to consider the contemporaneous note of a telephone conversation between Miss Lovell and the hearings coordinator, which states:

> *'Registrant confirmed that she will not be attending and [PRIVATE] has not renewed her registration and is not intending to practise as a nurse.'*

Ms Kennedy said that Miss Lovell is aware of the hearing and has voluntarily absented herself and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel noted the telephone note, dated 25 March 2022, and had regard to [PRIVATE]. The panel considered that Miss Lovell's lack of engagement, including her non-attendance at the hearing today, may be as a result of her current health issues. In light of this, the panel decided to adjourn the hearing for an hour to afford the NMC the opportunity to make enquiries as to whether Miss Lovell is content for the hearing to proceed in her absence, or if she would be likely to attend a substantive hearing at a future date.

When the hearing resumed, Ms Kennedy told the panel that an NMC case officer had contacted Miss Lovell, and provided the panel with two telephone notes, which state:

> *'[…] I managed to get hold of the Registrant, she said she already confirmed in a telephone call on Friday 25 March 2022 that she is happy for the hearing to proceed in her absence, [PRIVATE].*
>
> *I also asked the Registrant if she was interested in VR if she wants to voluntary remove herself from the Register, she said that her PIN expires at the end of March 2022 & therefore it doesn't really matter.'*
>
> *'[…] Called the Registrant again again [sic] and asked her if she wanted the hearing to adjourn for a later date to allow her to participate, but she confirmed she is happy for the hearing to proceed as she would not participate at the hearing if adjourned and listed for a future date.'*

Ms Kennedy therefore invited the panel to proceed in Miss Lovell's absence.

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'*.

The panel has decided to proceed in the absence of Miss Lovell. In reaching this decision, the panel has considered the submissions of Ms Kennedy and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 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 Miss Lovell;
- Miss Lovell has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses are due to attend today to give live evidence;
- Not proceeding may inconvenience the witnesses, her employers and, for those involved in clinical practice, the clients who need her professional services;
- The charges relate to events that occurred in 2020;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Lovell in proceeding in her absence and because she is unrepresented. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations to the NMC. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. 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

Miss Lovell's decision 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.

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

Details of the charges

That you, a registered nurse:

1) On 08 June 2020:
    a) in response to Resident A having suffered an unwitnessed fall:
        i) Said the words set out in Schedule 1, or words to that effect, to Resident A.
        ii) Lifted Resident A:
            (1) Without speaking to Resident A to offer her verbal reassurance.
            (2) Without performing any, or in the alternative, any adequate assessment and/or observations
            (3) Using a clinically inappropriate technique in that you and a colleague lifted Resident A when it would have been clinically appropriate to use a hoist.
    b) Having lifted Resident A from the floor, conveyed her to her room:
        i) Without speaking to Resident A to offer her verbal reassurance.
        ii) Using a clinically inappropriate technique in that you dragged Resident A or, in the alternative, did not move at a pace Resident A could match.
    c) Having conveyed Resident A to her room, said the words set out in Schedule 2, or words to that effect, to Resident A.
    d) Subsequent to Resident A's fall, did not:
        i) Document Resident A's fall in her notes and/or on a body map.
        ii) Update Resident A's care plan and risk assessment.
        iii) Escalate Resident A's fall to a medical professional and/or the home

manager.

iv) Inform Resident A's next of kin that she had suffered a fall.

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

Schedule 1

1) 'For fuck's sake'

Schedule 2

2) 'You might fucking sleep now'

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Kennedy.

The panel has drawn no adverse inference from the non-attendance of Miss Lovell.

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

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

- Witness 1: Carer at Westfield Nursing Home at the time of the charges.

- Witness 2: Operational Support Manager for Country Court Care.

Background

The charges arose whilst Miss Lovell was employed as a registered nurse by Country Court Care, within Westfield Nursing Home ('the Home').

It is alleged that, during the night shift on 8 June 2020, Miss Lovell used incorrect manual handling techniques following Resident A having suffered an unwitnessed fall, did not make an adequate assessment before moving Resident A, failed to carry out the required documentation in relation to the fall, and subsequently conveyed Resident A to her room in an inappropriate manner by dragging Resident A and/ or not ensuring that they moved at a pace which she could match.

It is further alleged that Miss Lovell used inappropriate language towards Resident A, by using the words 'for fuck's sake' and 'you might fucking sleep now'.

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 before it.

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

The panel noted that the documentation relating to the fall records the time of the accident to be 19:40, which differs from Witness 1's evidence that the fall occurred at or around 21:30. The panel were unable to determine the exact time at which the incident took place, and noted that the fall was unwitnessed. The panel did not consider that this discrepancy undermined the credibility of Witness 1's evidence in respect of the charges. It was clear from the evidence of Witnesses 1 and 2 and the documentation from Witness 2, that there was only one fall regarding Resident A on 8 June 2020. The panel had no doubt that the incident had occurred at some time during the evening on 8 June 2020.

Charge 1a)(i)

1) On 08 June 2020:
    a) in response to Resident A having suffered an unwitnessed fall:
        i) Said the words set out in Schedule 1, or words to that effect, to Resident A.

This charge is found proved.

In reaching this decision, the panel found the documentary evidence provided by Witness 1 to be consistent and credible. The panel noted the email sent by Witness 1 to staff members at Country Court Care on 12 June 2020, in which she reported: *'…. said come on Resident A for fuck sake walk [sic]'.* The panel found Witness 1's account of this incident consistent throughout her written and oral evidence and noted that Witness 1 provided a clear account of the language used, and the impact which witnessing this incident had upon her.

The panel had regard to Miss Lovell's witness statement for the purpose of the disciplinary investigation carried out by Witness 2 on 23 June 2020, in which she stated *'I have never, never ever have I sworn I might have said 'Duck and she misheard for 'Fuck'. I am a professional.'* The panel looked at the context in which the word 'duck' was alleged to have been said and did not find Miss Lovell's explanation to be logical or credible, and therefore preferred the evidence of Witness 1. The panel therefore determined that, on the balance of probabilities, Miss Lovell used the words specified in Schedule 1.

The panel therefore found this charge proved.

Charge 1a)(ii)(1)

1) On 08 June 2020:
   a) in response to Resident A having suffered an unwitnessed fall:
      […]
      (ii) Lifted Resident A:
        (1) Without speaking to Resident A to offer her verbal reassurance.
        […]
        […]

This charge is found proved.

In reaching this decision, the panel noted the witness statements and oral evidence given by Witness 1. The panel had regard to Witness 1's NMC witness statement in which it is stated that:

> *'Resident A fell over on the Friday Both the Registrant and Mr 1 picked Resident A up off the floor by holding her under her armpits. They did not speak to her or assess her for any injuries'*

The panel noted that this statement was supported by the earlier email sent by Witness 1, dated 12 June 2020, which sets out:

> '*[…] I rang the alarm bell and nicola [sic] and Mr 1 came … the nurse did not check her over or ask if she was ok before they both lifted her up and under arm dragged her to her bedroom nicola said come on for fuck sake Resident A walk but her feet were just being dragged as they were walking a lot faster than she even can'*

The panel found that Witness 1's account remained consistent throughout her documentary and oral evidence. The panel found Witness 1's evidence to be clear and credible. The panel therefore determined that, on the balance of probabilities, Miss Lovell lifted Resident A without speaking to Resident A to offer her verbal reassurance.

The panel therefore found this charge proved.

Charge 1a)(ii)(2)

1) On 08 June 2020:
    a) in response to Resident A having suffered an unwitnessed fall:
    […]
    (ii) Lifted Resident A:
    […]
    (2) Without performing any, or in the alternative, any adequate assessment and/or observations
    […]

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it. The panel had regard to the Country Court Care's falls procedure which sets out action which staff at the Home should take when a resident suffers a fall. The panel found the evidence of Witness 2 in relation to this policy to be clear and credible, and accepted that Miss Lovell had a duty to perform an adequate assessment and/or observation following Resident A's fall.

The panel further took into account the evidence of Witness 1, who directly observed Miss Lovell's response to Resident A's fall. The panel found Witness 1's evidence to be clear, credible and compelling in respect of this charge. Witness 1 was clear in her observations that no assessment had taken place and that Miss Lovell had not checked Resident A for any injuries.

> '*[…] nicola [sic] and Mr 1 came … the nurse did not check her over or ask if she was ok before they both lifted her up […]'*

The panel also noted the responses provided by Miss Lovell in which she accepted that she had not complied with Country Court Care's fall procedure. Witness 2 in oral evidence and in the transcript of the local investigation, dated 23 June 2020, reminded Miss Lovell of the correct policy:

> *'I just need to inform you that this is not the correct way that we would move a resident who has just sustained a fall and when internal injuries are still unknown, if Resident A was able to assist herself off the floor using maybe a chair or some sort of aid then this is fine but if unable to do so staff must always follow the falls policy.'*

The panel had regard to the fact that a post-accident observation record had been completed in respect of Resident A's fall. The panel accepted that this documentation may indicate that a basic assessment was carried out after moving Resident A, but noted that the records do not show a adequate or holistic assessment was made, for example by completing Resident A's body map demonstrating any injuries. In light of this the panel concluded that, on the balance of probabilities, Miss Lovell may have performed a visual observation and assessment prior to lifting Resident A, however any observation and assessment she may have performed was not in compliance with Country Court Care's policy, and therefore inadequate.

The panel therefore found this charge proved.

Charge 1a)(ii)(3)

1) On 08 June 2020:
   a) in response to Resident A having suffered an unwitnessed fall:
      […]
      (ii) Lifted Resident A:
        […]
        […]
        (3) Using a clinically inappropriate technique in that you and a colleague lifted Resident A when it would have been clinically appropriate to use a hoist.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it. The panel had regard to the Country Court Care's falls procedure which sets out action which staff at the Home should take when a resident suffers a fall. The panel found the evidence of Witness 2 in relation to this policy to be clear and credible, and accepted that Miss Lovell had a duty to use a clinically appropriate technique, namely a hoist, in assisting Resident A to her feet.

The panel noted the comment made, during the local investigation interview on 23 June 2020, by Miss Lovell during the investigation interview in that she stated *'Resident A was very easy to stand so we assisted her by the elbow and her lower back'.* It further noted that there was no evidence before it which suggested that a hoist was used.

The panel further took into account the evidence of Witness 1, who directly observed Miss Lovell's response to Resident A's fall. The panel found Witness 1's evidence to be clear, credible and compelling in respect of this charge.

The panel noted the evidence before it was not clear as to the position in which Resident A fell and, however concluded that Resident A's position on the floor would not make a material difference to whether an appropriate technique should have been used to lift the registrant. The panel accepted that Resident A was on the floor, and Country Court Care's falls policy should have been adhered to.

The panel therefore found this charge proved.

Charge 1b)(i)

1) On 08 June 2020:
    b) Having lifted Resident A from the floor, conveyed her to her room:
        i) Without speaking to Resident A to offer her verbal reassurance.
        ii) Using a clinically inappropriate technique in that you dragged Resident A or, in the alternative, did not move at a pace Resident A could match.

This charge is found proved in its entirety.

In reaching this decision, the panel noted the witness statements and oral evidence given by Witness 1. The panel had regard to Witness 1's witness statement in which it is stated:

> '*Resident A fell over on the friday [sic] her eyes swelled so bad [sic] and on monday [sic] were both black and again on the monday [sic] she fell I found her on the floor in Resident C's room I rang the alarm bell and nicola [sic] and Mr 1 came … the nurse did not check her over or ask if she was ok before they both lifted her up and under arm dragged her to her bedroom nicola said come on for fuck sake Resident A walk but her feet were just being dragged as they were walking a lot faster than she even can'*

The panel noted that Witness 1's account remained consistent throughout her documentary and oral evidence. The panel found Witness 1's evidence to be credible and compelling as she provided a clear account of what she witnessed, including that no verbal reassurance was given to Resident A, and a clear description of the dragging pace at which the Registrant moved with Resident A. Witness 1 further gave clear evidence about Resident A's mobility, and the pace at which she usually travelled.

The panel further considered the impact witnessing this incident had on Witness 1, resulting in her decision to cease her employment at the Home. The panel found this compelling and noted that it was supported by the evidence of Witness 2, who described how upset Witness 1 became when she was interviewed during the local investigation on 23 June 2020.

The panel noted that, during the local investigation interview, dated 23 June 2020, Miss Lovell denied the allegation, in that she said *'absolutely disgusting this is an absolute fabrication of the truth, there is no way anything like that happened'.* Looking at the evidence in the round, the panel preferred Witness 1's consistent and detail account. The panel therefore determined that, on the balance of probabilities, Miss Lovell conveyed Resident A to her room without speaking to her to offer any verbal reassurance, and by using a clinically inappropriate technique by dragging Resident A, as described by Witness 1.

The panel therefore found this charge proved in its entirety.

Charge 1c)

1) On 08 June 2020:
    c) Having conveyed Resident A to her room, said the words set out in Schedule 2, or words to that effect, to Resident A.

This charge is found proved.

In reaching this decision, the panel took account of the evidence before it. The panel found Witness 1's account of this incident consistent throughout her written and oral evidence. While Witness 1 acknowledged that she was not in the room at the time, she was close by and able to clearly hear the conversation in the room. The panel determined that Witness 1 provided a clear and credible account of her proximity to the Registrant and Resident A and the exact language used by Miss Lovell during this incident.

The panel had regard to Miss Lovell's statement for the purpose of the local disciplinary investigation carried out by Witness 2 on 23 June 2020, in which she stated *'I have never, never ever have I sworn I might have said 'Duck and she misheard for 'Fuck'. I am a professional.'* The panel asked witness 1 if it was possible that she had misheard and if Miss Lovell had said 'duck'. Witness 1 was very clear that this was not the case. The panel did not find Miss Lovell's explanation to be logical or credible, and therefore preferred the evidence of Witness 1. The panel therefore determined that, on the balance of probabilities, Miss Lovell used the words specified in Schedule 2, or words to that effect.

The panel therefore found this charge proved.

Charge 1d)

1) On 08 June 2020:
    d) Subsequent to Resident A's fall, did not:
        i) Document Resident A's fall in her notes and/or on a body map.
        ii) Update Resident A's care plan and risk assessment.
        iii) Escalate Resident A's fall to a medical professional and/or the home manager.
        iv) Inform Resident A's next of kin that she had suffered a fall.

This charge is found proved in its entirety.

In reaching this decision, the panel considered whether Miss Lovell had a duty to take the actions as specified in charge 1d). It considered the evidence before it, including Country Court Care's Falls Management Policy and Procedure and the evidence of Witness 2, which set out that Miss Lovell had viewed and signed a copy of this policy, but failed to follow the correct procedure in respect of the incident on 8 June 2020. The panel found Witness 2's evidence on this issue to be clear and credible, and therefore determined that, on the balance of probabilities, Miss Lovell had a duty to take the action specified in charge 1d).

The panel took account of the evidence of Witness 2, it noted her witness statement which states:

> *'I had a copy of Resident A's care plan and I went through it with the Registrant. There was no body map within the resident's notes of that specific fall; there was no completion [sic] post falls observations; there was no documentation in relation to the fall on 08 June 2020; there was no evidence that the falls care plan and risk assessment had been reviewed; there was no evidence that the information was handed over to the next team; there was no evidence that the accident had been escalated to a medical professional. On the adverse events form there was a box that was ticked to say the manager was informed.'*

In respect of charge 1d)(i), the panel accepted the evidence of Witness 2, which it found to be credible. It noted that there is no evidence before it today which demonstrates that Resident A's fall had been documented in her notes and/ or on a body map. In light of this, the determined that, on the balance of probabilities, Miss Lovell did not document Resident A's fall in accordance with Country Court Care's policy.

In respect of charge 1d)(ii), the panel accepted the evidence of Witness 2, which it found to be credible. It noted that there is no evidence before it today which demonstrates that Resident A's care plan and risk assessment had been updated following Resident A's fall.

In light of this, the determined that, on the balance of probabilities, Miss Lovell did not update Resident A's care plan and risk assessment in accordance with Country Court Care's policy.

In respect of charge 1d)(iii) the panel accepted the evidence of Witness 2, which it found to be credible. The panel noted the policy that a medical professional should be called when a resident suffers a fall was implemented in the home following a Coroner's finding in respect of a different resident. The panel found Witness 2 to be clear in respect of this policy, and accepted her evidence that Miss Lovell had signed a copy of a document setting out this policy. Furthermore, the panel had regard to Miss Lovell's response when questioned on this issue during the investigation carried out by Witness 2. She stated:

> *'Well I can understand that but wouldn't be before every fall, I swear to god if I thought there was an injury, I would escalate but this just does not happen as the norm.'*

The panel noted that Miss Lovell had indicated on the adverse events form that the Home Manager had been informed of Resident A's fall on 8 June 2020. In light of the above, the panel determined that, on the balance of probabilities, Miss Lovell did not escalate Resident A's fall to a medical professional.

In respect of charge 1d)(iv), the panel accepted the evidence of Witness 2, which it found to be credible. It noted that there is no evidence before it today which demonstrates that Resident A's next of kin had been contacted following Resident A's fall. In light of this, the determined that, on the balance of probabilities, Miss Lovell did not contact Resident A's next of kin in accordance with Country Court Care's policy.

The panel therefore found this charge proved in its entirety.

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 Miss Lovell'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, Miss Lovell's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

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

Ms Kennedy identified the specific, relevant standards where Miss Lovell's actions amounted to misconduct. Ms Kennedy submitted that the misconduct in this case concerns Miss Lovell's demeaning, neglectful treatment of a vulnerable elderly resident under her care, and her failure to deal appropriately with Resident A's fall and follow mandatory post-fall procedures imposed by Country Court Care.

Ms Kennedy told the panel that the role of nurses is to protect and care for those who are vulnerable and in need of care. She told the panel that Miss Lovell's conduct clearly failed that duty, in that she failed to act with care, compassion and treat Resident A with dignity and respect. She submitted that Miss Lovell also failed to follow the required documentation and escalation procedures which had been put in place for patient safety.

Ms Kennedy submitted that Miss Lovell's conduct found proved fell far short of what is expected of a registered nurse and that the facts are sufficiently serious to constitute misconduct.

Submissions on impairment

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

Ms Kennedy first asked the panel to consider whether Miss Lovell had put Resident A at an unwarranted risk of harm. She submitted that charges 1a)(i) and 1c), which relate to Miss Lovell swearing at Resident A, alongside the charges relating to Miss Lovell's failure to assess Resident A, and the inappropriate lifting technique which Miss Lovell used clearly put Resident A at unwarranted risk of harm. She said that Resident A was vulnerable and trust should be placed in nursing staff to act with compassion and provide adequate care and support, which Miss Lovell failed to do.

Ms Kennedy submitted that Miss Lovell's failure to keep accurate records and appropriately escalate the incident following Resident A's fall also placed Resident A at risk of unwarranted harm. She said that nursing demands high standards of record keeping to monitor and minimise patient deterioration and maintain patient safety. She submitted that Miss Lovell's failure to record and escalate Resident A's fall meant that appropriate treatment and precautions were not followed. She invited the panel to consider Country Court Care's falls management policy, which sets out: '*Although most falls result in no physical harm or minor physical injuries, falls do sometimes result in catastrophic injury, including death*'. Ms Kennedy submitted that this policy highlights the serous potential for harm.

Ms Kennedy next invited the panel to consider whether Miss Lovell's actions have brought the profession into disrepute. She said that the public has the right to expect that nurses will provide appropriate and competent care, and treat patients with dignity and respect. She submitted that Miss Lovell's conduct clearly had potential to undermine public confidence in nursing profession and bring the nursing profession into disrepute.

Ms Kennedy submitted that the provisions of the Code constitute fundamental tenets of the profession, and Miss Lovell's actions clearly breached these.

Ms Kennedy invited the panel to consider the test as set out in *Cohen v GMC.* She first asked the panel to consider whether the misconduct is easily remediable. She submitted that the concerns which related to record keeping and Miss Lovell's inappropriate lifting techniques are remediable as they relate to identifiable areas of Miss Lovell's clinical practice which can be addressed through training and supervision. However, she submitted that some of the charges found proved, namely charge 1a)(i) and charge 1c) which relate to Miss Lovell swearing at Resident A, raised attitudinal concerns. She further invited the panel to consider NMC guidance, which provides examples of conduct which may not easily be addressed, which includes 'neglect of patients. She submitted that the facts found proved collectively may be considered neglectful, and that Miss Lovell has demonstrated attitudinal concerns, which are not easily remediable.

Ms Kennedy next invited the panel to consider whether the misconduct has been remedied. She submitted that Miss Lovell has provided no explanation for her actions in her limited communication with the NMC and has not provided a formal response to the charges. She said that Miss Lovell's misconduct is serious and raises attitudinal concerns which are more difficult to remediate.

Ms Kennedy invited the panel to consider what insight, if any, Miss Lovell has demonstrated since the incident on 8 June 2020. She submitted that Miss Lovell has put no information before the panel today to show that she has reflected on her actions or thought about what she would do differently in the future. Ms Kennedy said that the explanations given by Miss Lovell during her local investigation interview on 23 June 2020 also do not demonstrate any insight.

In respect of remediation, Ms Kennedy submitted that the panel has no evidence before it that Miss Lovell has taken any steps to remediate her failings. She told the panel that the information which Miss Lovell has given the NMC is limited but has indicated that she no longer wishes to return to nursing practice. Ms Kennedy submitted that, in light of the lack of information provided by Miss Lovell, the misconduct identified has not been remediated.

Ms Kennedy finally asked the panel to consider whether the misconduct is highly likely to be repeated. She submitted that the concerns are serious and pose risk of unwarranted harm to patients and the reputation of the nursing profession. She said that, in the absence of any explanation, insight or remediation, there remains a risk of repetition.

The panel accepted the advice of the legal assessor which included reference to *Nandi v General Medical Council* [2004] EWHC 2317 (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 Miss Lovell's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Lovell's actions amounted to a breach of the Code. Specifically:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people's human rights

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

To achieve this, you must:

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

10 Keep clear and accurate records relevant to your practice

To achieve this, you must:

10.4 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.5 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.4 keep to and uphold the standards and values set out in the Code

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel acknowledged whilst there was no evidence of actual harm, the panel was of the view that the facts found proved concern demeaning and neglectful treatment of a vulnerable resident with a concerning lack of care and compassion. The panel concluded that Miss Lovell's omissions resulted in a risk of harm which falls seriously short of the conduct required.

The panel noted that the charges relate to a single incident. The panel considered that the care offered by Miss Lovell during this incident amounts to serious misconduct. The panel considered each charge and determined that all the charged are individually serious, as well as collectively serious. However, the panel found the charges which related to Miss Lovell's poor treatment of Resident A, by swearing at her and dragging her across the floor, are particularly serious, and amount to misconduct which the public would find deplorable.

The panel found that Miss Lovell'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, Miss Lovell'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 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*

The panel found that Resident A was put at risk and she could potentially have been caused physical and emotional harm as a result of Miss Lovell’s misconduct. Miss Lovell’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Lovell has not demonstrated any insight. It determined that Miss Lovell has put no information before the panel which has demonstrated an understanding of how her actions put Resident A at a risk of harm, nor has she provided evidence to demonstrate an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession, or how she would handle the same situation differently in the future.

The panel was satisfied that some of the misconduct relating to record keeping and clinical practice in this case is capable of being addressed by training. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Lovell has taken steps to improve her practice. The panel took into account the evidence before it and concluded that there was no information before it to suggest that Miss Lovell has remediated or strengthened her practice in respect of her clinical failings.

The panel considered that the concerns in respect of Miss Lovell's use of swear words towards Resident A relate to attitudinal issues which, although not impossible, are more difficult to remediate. The panel noted that Miss Lovell, during her local disciplinary investigation meeting on 23 June 2020, denied swearing at Resident A, and described herself as a 'professional'. The panel considered that this demonstrated nothing more than a level of awareness of the standard required, in that Miss Lovell recognised that the use of such language was unprofessional. Despite this, there was no evidence before the panel that she has remediated her failings in this respect.

The panel determined that there is a risk of repetition based on Miss Lovell's lack of insight and failure to remediate her failings. The panel considered that there remains a risk of harm to patients and the public in respect of Miss Lovell's clinical and attitudinal failings. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case, which involves a vulnerable elderly resident who had fallen, and therefore also finds Miss Lovell's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case carefully and has decided to make a suspension order for a period of 12 months with review. The effect of this order is that the NMC register will show that Miss Lovell'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. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Kennedy informed the panel that in the Notice of Hearing, dated 14 February 2022, the NMC had advised Miss Lovell that it would seek the imposition of a 12 month suspension with review if it found Miss Lovell's fitness to practise currently impaired.

Ms Kennedy submitted that this sanction is the only appropriate and proportionate sanction to meet the public protection and public interest issues identified by the panel. She told the panel that aggravating features in this matter are Miss Lovell's lack of insight and that her conduct put Resident A at risk of suffering harm. She said that there are no apparent mitigating factors before the panel today.

Ms Kennedy told the panel that it should consider each available sanction in accordance with the SG, and should impose a sanction which is proportionate and goes no further than necessary to meet the objective of public protection and marking the public interest. She submitted that taking no further action or imposing a caution order would be inappropriate in this matter, as these sanctions would not appropriately address the public protection and public interest concerns identified by the panel at the impairment stage.

Ms Kennedy submitted that the panel have identified some concerns to be remediable, therefore the panel may be able to formulate a conditions of practice order that provides the necessary supervision and training in respect of the clinical issues. She said that the attitudinal concerns identified, although not impossible, are more difficult to remediate. However, Ms Kennedy submitted that a conditions of practice order would not be workable in this case. She said that Miss Lovell has not engaged with the NMC or the regulatory process, and informed the NMC that she no longer wishes to work as a nurse. In light of this, Ms Kennedy submitted that, even if suitable conditions of practice were formulated to address the concerns, there is nothing before the panel to suggest that Miss Lovell would engage with such conditions.

Ms Kennedy submitted that, in light of the facts found proved and Miss Lovell's lack of insight, remediation and engagement with the NMC, a suspension order remains the appropriate sanction in this case. She told the panel that the charges found proved, although serious, relate to a single event. She submitted that the attitudinal concerns about Miss Lovell cannot be described as deep seated and incompatible with staying on the register as a nurse. She said that a striking off order would be disproportionate at this stage, as public protection would be satisfied by the order, and the public confidence concerns would be suitably marked by a suspension order, which would give Miss Lovell the opportunity to engage with the NMC, should she wish to in the future.

Decision and reasons on sanction

Having found Miss Lovell'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:

- Lack of insight into her failings
- Conduct which put Resident A at risk of suffering harm.

The panel also took into account the following mitigating features:

- [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 Miss Lovell'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 Miss Lovell'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 Miss Lovell'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:

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated in this case. The panel considered that due to Miss Lovell's lack of engagement and insight, and the fact that she is not currently working as a nurse, the panel would be unable to formulate relevant, proportionate, workable conditions of practice. The panel further considered that a conditions of practice order would not suitably address the attitudinal issues identified.

Furthermore, the panel concluded that the placing of conditions on Miss Lovell's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of repetition of behaviour since the incident;*

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

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate at this time. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Lovell's case to impose a striking-off order.

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

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

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

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct. It further considered that this period of suspension would afford Miss Lovell the opportunity to [PRIVATE], reflect on her failings, and engage with the NMC, should she wish to do so.

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:

- [PRIVATE;
- Evidence of any training and development which Miss Lovell has undertaken;
- A reflective piece which addresses Miss Lovell's failings;
- Engagement at any future review of this order; and/or
- Evidence of Miss Lovell's clear settled intentions of her future in nursing.

This will be confirmed to Miss Lovell in writing.

Submissions on interim order

The panel took account of the submissions made by Ms Kennedy. She invited the panel to impose an interim suspension order for a period of 18 months to satisfy the public protection and public interests grounds identified, pending any appeal of the substantive order which Miss Lovell may make.

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 ensure that an order is in place in the event that Miss Lovell appeals this decision.

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

That concludes this determination.