Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
25, 26, 27 and 28 September 2023
12 and 13 December 2023

Holiday Inn Newcastle – Jesmond

Jesmond Road, Jesmond, Newcastle-Upon-Tyne, NE2 1PR

Name:	**Biju Joseph**
NMC PIN:	03F0622O
Part(s) of the register:	Registered Nurse – Adult Nursing
Relevant Location:	Newcastle
Type of case:	Misconduct
Panel members:	Dave Lancaster (Chair – Lay member) Suzanna Jacoby (Lay member) Claire Matthews (Registrant member)
Legal Assessor:	Charles Parsley
Hearings Coordinator:	Vicky Green
Nursing and Midwifery Council:	Represented by Laurence Harris, Case Presenter
Mr Joseph:	Present and represented by Matthew Rudd, Counsel, instructed by the Royal College of Nursing
Facts proved by admission:	Charge 3(a)
Facts proved:	Charges 1(a), 1(b) and 2(a)
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Conditions of practice order (18 months)
Interim order:	Interim conditions of practice order (18 months)

Details of charge

That you being a registered nurse

1.In or about the end of August 2020

(a) Without clinical justification took hold of Resident A's nose. **[Proved]**
(b) Applied a medication cup too forcefully against Resident A's lip and/or mouth so as to cause bleeding. **[Proved]**

2.On a date unknown,

(a) Failed to clean Resident B's wound by her coccyx with water or other cleansing agent before re-applying any dressing. **[Proved]**

3. On the 9th April 2019

(a) Administered oral paracetamol to Resident C on the early morning round without recording it on Resident C's MAR chart. **[Proved by way of admission]**

And in the light of the above misconduct, your fitness to practise is impaired.

Decision and reasons on application to admit the witness statement of Ms 3 into evidence as hearsay

On day three of the hearing, Mr Harris made an application for the witness statement of Ms 3 to be adduced as hearsay evidence pursuant to Rule 31(1) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules). He submitted that Ms 3 is unwell and, as a consequence, she is unable to attend the hearing to give evidence. Mr Harris submitted that she is not an eyewitness, and her witness statement relates to the documents she has exhibited. He submitted that Ms 3 had provided some direct evidence in relation to charge 3.(a) but this charge is admitted. Mr Harris submitted that it is fair to admit the written statement of Ms 3 into evidence as hearsay in these circumstances.

Mr Rudd did not oppose this application. He submitted that Ms 3 does not provide any direct evidence to the charges. Mr Rudd submitted that while he has some points he would have put to Ms 3 during cross examination, he did not object to her witness statement being accepted into evidence as hearsay and the appropriate weight being attached to it.

The panel accepted the advice of the legal assessor who referred it to the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)*. The panel also had regard to the NMC guidance on *'Evidence'* (Reference: DMA-6 Last Updated 01/07/2022).

The panel was satisfied that the NMC had made reasonable efforts to secure the attendance of Ms 3. The panel was also satisfied that having heard information about Ms 3's current health condition, there was a good and cogent reason for her non-attendance.

The panel found that while the witness statement of Ms 3 was relevant, it was not the sole or decisive evidence in respect of any of the remaining charges. The panel was of the view that Ms 3's evidence does not go directly to the remaining charges, and she was not an eyewitness to any of the incidents which led to the charges. The panel noted

that Ms 3's evidence was not contentious, and your representative did not object to having this witness statement accepted into evidence as hearsay. Having regard to all of the above the panel decided to allow Ms 3's witness statement into evidence as hearsay. The panel will consider what weight to attach to this evidence at a later stage.

Decision and reasons on application of no case to answer

After the NMC had closed its case, Mr Rudd made an application of no case to answer in respect of charges 1.(a) and 1.(b) and 2.(a). This application was made pursuant to Rule 24(7) of the Rules.

Mr Rudd first addressed the panel on charge 2.(a). He submitted that as indicated at the start of the hearing, you accept that you did not clean Resident B's wound near her coccyx but you do not accept that you had a duty to clean it in the circumstances. Mr Rudd informed the panel that prior to this hearing an amendment to this charge had been sought by you but not accepted by the NMC. He submitted that an amendment to this charge at this stage would be unfair to you. Mr Rudd submitted that the NMC had not presented any evidence that you were under an obligation or duty to clean Resident B's wound before reapplying her dressing. He therefore submitted that charge 2.(a) is not made out and invited the panel to find that there is no case to answer.

In respect of charge 1.(a), Mr Rudd submitted that the two witnesses called by the NMC have provided contradictory evidence. He submitted that in the light of the differences in the evidence of Ms 1 and Ms 2, it is not reliable and even if taken at its highest, the panel could not reasonably find that the facts alleged in this charge are likely to have occurred.

Mr Rudd submitted that in respect of charge 1.(b), there is no evidence that the medication cup caused Resident A to bleed. He submitted that neither of the NMC witnesses could be sure that the bleeding was caused by the medication cup and not from Resident A biting herself. Mr Rudd submitted that it would be unfair in these circumstances to take this charge forward when the evidence clearly does not support it.

Mr Harris referred the panel to the test as set out in the case of *R v Galbraith [1981] 1 WLR 1039*. He submitted that notwithstanding some inconsistencies in the evidence, it is ultimately a matter for the panel to consider and evaluate. Mr Harris submitted that it is not a case where the evidence is of such a tenuous quality that it need not proceed any further in respect of all three charges.

Mr Harris drew the panel's attention to the evidence presented in respect of charge 1.(a), namely the witness statement and oral evidence of Ms 2. He submitted that Ms 2 gave truthful and honest evidence about what she could recall, and she was clear in her recollection of you holding Resident A's nose. Mr Harris submitted that the lack of corroborative evidence does not render the evidence of Ms 2 to be tenuous and that this charge should proceed.

In respect of charge 1.(b), Mr Harris referred the panel to the evidence of Ms 1 and Ms 2. He submitted that there is evidence from both Ms 1 and Ms 2 who witnessed you pressing a medication cup to Resident A's mouth and both saw blood on Resident A's lip/mouth after the incident. Mr Harris submitted that Ms 1 in her evidence, told the panel that there was no information on the handover about a pre existing injury on Resident A's mouth/lip. Mr Harris submitted that there is some evidence to support this charge and that the NMC should proceed with this charge and consider all of the evidence before it and make a determination on the facts.

Mr Harris submitted that in respect of charge 2.(a) there is evidence that you were under a duty to clean Resident B's wound before applying the dressing. He submitted that the NMC has adduced evidence of policies at the Home that set out the process for carrying out wound dressing. Mr Harris therefore submitted that there is some evidence on which the panel could find this charge proved.

In summary, Mr Harris submitted that there is some evidence which goes to all of the charges. He submitted that the evidence is not so tenuous that when taken at its highest, no reasonable and properly directed tribunal could not find these charges proved. He therefore invited the panel to find that all of the charges should be taken

forward and the case should progress to hear your evidence if you decide to give evidence.

The panel took account of the submissions made by Mr Rudd and Mr Harris and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer in respect of charges 1.(a), 1.(b) and 2(a).

The panel was of the view that there was evidence on which the charges could be found proved. As such, it was not prepared to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Background

The charges arose whilst you were employed as a registered nurse by Windsor Nursing Home (the Home).

Resident A was a resident at the Home, and she was deaf and was suffering from dementia. It is alleged that whilst administering medication to Resident A, you took hold of her nose and applied a medication cup with force which caused her lip and/or mouth to bleed.

Resident B was a resident at the Home and had a pressure ulcer near her coccyx. It is alleged that you failed to clean a wound near Resident B’s coccyx with water or another cleaning agent before re-applying any dressing.

Decision and reasons on facts

At the outset of the hearing, Mr Rudd informed the panel that you admitted charge 3.(a). The panel therefore finds charge 3.(a) proved by way of your admission.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Harris on behalf of the Nursing and Midwifery Council (NMC) and those made by Mr Rudd on your behalf.

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

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

- Ms 1: Laundry department worker at Windsor Care Home.

- Ms 2: Care assistant at Windsor Care Home.

The panel also heard evidence from you under affirmation.

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 1.(a)

1.In or about the end of August 2020

(a) Without clinical justification took hold of Resident A's nose.

This charge is found proved.

In reaching this decision, the panel took into account all of the evidence before it, having particular regard to the evidence of Ms 2. It also had regard to your evidence.

In your evidence you told the panel that you did not take hold of Resident A's nose and that there would be no reason for you to have done this.

The panel had sight of Ms 2's witness statement and noted the following:

> *'About 2030hrs/2045hrs it was time for to be given her medication. She was in the lounge with Biju and I could see that he was trying to get her to take her medication. She was sitting in a chair. Biju was just on his own with her.[sic] was telling him to go away and she was kicking out and trying to punch him. She was distressed. I had brought something into the kitchen which is joined onto the lounge so I was really close to them.*
>
> *I went over and tried to reassure and calm her down. Biju tried again to give her the medication. There was a little clear pot which would have had either tablets or liquid medication in, I don't know which and he was holding it up to her lip. He held her nose and I challenged him and said no you can't do that. He let her nose go and took the pot away from her mouth.'*

The panel also had sight of the local statement gave by Ms 2 dated 8 September 2020 in which she stated the following:

> *'On Monday 31st August I witnessed the night shift nurse Biju attempting to administer medication from a medication pot to Resident A.*

Resident A was sat in a chair in the lounge. The nurse pressed the medication pot to Resident A's mouth and also tried to hold her nose to make her take the medication.'

In her oral evidence Ms 2 was adamant that she saw you hold Resident A's nose. The panel found Ms 2's evidence to be consistent, credible and reliable in respect of this charge. Whilst the panel acknowledged that, Ms 1 who was also present, did not see you holding Resident A's nose, Ms 2 was closer to the resident and therefore would have had a clearer view. The panel also determined that Ms 2 appeared to be genuine in her motives for giving evidence, namely that it was in Resident A's interests, and she was considerably distressed by what she said she saw. The panel found Ms 2's evidence to be persuasive in her stating that:

'Can I also say before I go, I would never have done anything like this or whistleblown if I hadn't seen what I'd seen. But I've been in care work, working in care for 14 years and if I saw anything bad, I would say, and that's the only time I have. That's why I came here today. I came here for the resident, not for myself and not for the person here.'

In the light of this, while you denied anything of this nature occurred, the panel preferred the evidence of Ms 2.

The panel therefore determined that it was more likely than not that you did hold Resident A's nose whilst attempting to administer medication on the date in question. The panel also found that there was no clinical justification for holding Resident A's nose. Accordingly, the panel found this charge proved on the balance of probabilities.

Charge 1.(b)

1.In or about the end of August 2020

(b) Applied a medication cup too forcefully against Resident A's lip and/or mouth so as to cause bleeding.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 2 and Ms 1. It also had regard to your evidence.

In your evidence you denied this charge.

The panel had regard to the witness statement of Ms 2 in which she stated the following:

> *I went over and tried to reassure and calm her down. Biju tried again to give her the medication. There was a little clear pot which would have had either tablets or liquid medication in, I don't know which and he was holding it up to her lip. He held her nose and I challenged him and said no you can't do that. He let her nose go and took the pot away from her mouth. That's when I first saw blood on her bottom lip. That's where he had been pressing the pot against her lip to try and force it into her mouth. I haven't see anyone's lip ever bleed like that before when they have had the pot held at their lips. I think he must have been pressing too hard. I didn't see him at any point hit the pot onto her lip.*
>
> *When I saw the blood I got a tissue and gently dabbed her lip. I tried to calm her down. I think I said something like 'you've made her lip bleed'. He didn't say a word, he just stood there staring at me, he might have been shocked. He then just walked out.'*

The panel also had sight of the local statement gave by Ms 2 dated 8 September 2020 in which she stated the following:

> *'I said to the nurse that he shouldn't be holding Resident A's nose and he let go I noticed when he took away the medication pot I noticed Resident A's lip was bleeding.*

I got a tissue and pressed gently on Resident A's lip to mop a small amount of blood I believe was caused by pressing the medication pot too hard against Resident A's mouth.'

The panel had regard to the witness statement of Ms 1 in which she stated the following:

'[Resident A] was resisting, Biju shoved a glass at mouth and tipped it then walked away.

We used plastic cups so this is what it would have been. I am sure it was blue and had no lid.

[Resident A] spat the liquid out and I went over to help clean it up.

What Biju did should never happen in my experience as a carer. It should never happen to a resident or anyone else for that matter.

[Resident A] didn't say anything. All [Resident A] really do was mumble. could just about say yes or no generally.

I didn't say anything.

I noticed blood. There was not a lot of blood. It looked fresh like a new cut or a wound re-opened.'

The panel acknowledged that there were some inconsistencies in the evidence of Ms 2 and Ms 1 namely, that they had a different recollection of the size of the medication cup, however, the panel was of the view that these inconsistencies did not discredit the evidence of either witness. The panel noted that the witnesses saw the incident from different viewpoints and Ms 2 was closer to the resident than Ms 1. As set out in charge 1.a), the panel found Ms 2 to be a credible witness with no motive or reason to fabricate her evidence. Whilst the panel found that there were inconsistencies in the evidence of

Ms 2 and Ms 1, it noted that that both witnesses were clear that they saw blood on Resident A's lip after you attempted to administer medication. The panel also heard evidence that the cut in Resident A's mouth was a thin horizontal line which would be consistent with a cut made by the edge of a medication cup or from pressure against a tooth.

In your evidence you accepted that at a later stage you noticed a hairline cut on Resident A's lip.

On the basis that it appeared that Resident A did sustain a cut to her mouth, the panel concluded that it was more likely than not that this was the result of your having applied the medication cup too forcefully which caused her lip and/or mouth to bleed. Accordingly, the panel found this charge proved.

Charge 2.(a)

2.On a date unknown,

(a) Failed to clean Resident B's wound by her coccyx with water or other cleansing agent before re-applying any dressing.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it, in particular, the evidence of Ms 4, Resident B's Wound Management Programme and your evidence.

In your evidence you told the panel that you accept that when you re-applied Resident B's dressing you did not clean the wound. You said that when you checked the wound it was not dirty and there was no need for you to clean it before re-applying the dressing. You said that you can tell by looking at a wound whether it is contaminated or not. You also told the panel that there was no saline solution or anything else to clean the wound at the Home on the date in question.

The panel had regard to the evidence of Ms 4, a tissue viability nurse, who said that a wound should be cleaned before applying dressing and not cleaning a wound could cause infection.

The panel had sight of Resident B's care plan and it noted that when the wound dressing was re-applied on other occasions it had been cleaned. The panel noted that in Resident B's care plan it is recorded that saline solution had been used to clean the wound around the time when you said that there was none in the Home. In the light of the evidence that there had been saline available in the Home in the period before and after the event in question, the panel was sceptical about your assertion that there was none available. The panel heard evidence from you that you had recorded the lack of supplies on various handover notes but subsequently you changed this and stated you had informed the day shift nurse at the handover following this incident.

Despite your apparently ambiguous view of whether you should have cleaned the wound, the panel decided that you were under a duty to clean the wound before re-applying the dressing. The panel was of the view that whilst the wound may have appeared to be clean, bacteria and other debris may have not been visible. Having regard to all of the above, the panel found this charge proved.

[This hearing resumed on 12 December 2023]

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 your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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, your 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.'* The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Mr Harris drew the panel's attention to the Code and identified the specific, relevant standards where in his submission, your actions and omissions fell short of the standards expected. He submitted that your actions at charge 1 demonstrated a failure

to treat Resident A with kindness, respect and compassion and fell far below the standards expected. Mr Harris submitted that your conduct in respect of charge 2, in failing to ensure clean and hygienic conditions, fell far below the standards expected in that you failed to deliver a fundamental element of care. He also submitted that your conduct in respect of charge 3 in failing to record that you had administered medication to a resident fell far below the standards expected of a registered nurse.

Mr Harris submitted that all of the charges found proved evidence a broader failure to uphold the reputation of the nursing profession and fell far below the standards expected.

Mr Rudd acknowledged that the charges found proved and admitted could amount to misconduct.

Submissions on impairment

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

Mr Harris submitted that limbs a, b and c are engaged. He submitted that your misconduct was serious and had the potential to cause patient harm, it brought the profession into disrepute and breached fundamental tenets of the profession. Mr Harris submitted that the misconduct is serious and involved vulnerable patients in your care.

Mr Harris submitted that a finding of impairment is also required on public interest grounds. He submitted a reasonable member of the public would be shocked to hear the charges found proved and would expect a finding of impairment. Mr Harris submitted that a finding of impairment was also required to maintain trust and confidence in the profession, as well as to uphold proper standards.

Mr Rudd told the panel that in respect of charge 3(a), your record keeping error occurred on 9 April 2019, you received a final written warning about this on 30 April 2019 and continued working at the Home without any further concerns about your record keeping. Mr Rudd told the panel that you left employment at the Home in October 2020 and started working at Marigold Care Home for three months and no concerns about your record keeping were raised. Given that you worked without any further concerns about your record keeping being raised at the Home and then at Marigold Care Home, Mr Rudd submitted that you have demonstrated that you have remediated these concerns and that errors in record keeping are highly unlikely to be repeated.

In respect of charges 1 and 2, Mr Rudd submitted that these were isolated incidents and there is no evidence that you have repeated this conduct. He drew the panel's attention to your bundle of documents and invited the panel to have regard to the training that you have undertaken. He submitted that in the light of the training you have completed and in view of the period of time that you worked without further incident, the risk of repetition is low. Mr Rudd submitted that you have insight into your misconduct and that you have demonstrated remorse for your failings. He therefore invited the panel to find that your fitness to practise is not currently impaired.

In response to questions from the panel, Mr Rudd told the panel that you worked at Marigold Care Home for three months and that this employment ended in October 2021 due to reasons relating to your health. He also told the panel that you have not been able to work since due to your health.

Mr Rudd recognised that having denied charges 1 and 2, you were limited in your ability to demonstrate insight, but the training courses you completed have assisted you in developing insight.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

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

1 Treat people as individuals and uphold their dignity. To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people's human rights

4 Act in the best interests of people at all times. To achieve this, you must:

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

10 Keep clear and accurate records relevant to your practice

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

20 Uphold the reputation of your profession at all times

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. However, the panel was of the view that your actions and your omissions were serious and caused harm to Resident A and placed vulnerable residents in your care at risk of serious harm. The panel was of the view that you failed to provide basic nursing care in that you failed to treat residents with dignity and respect, ensure that wounds were kept clean and that medication was recorded. The panel therefore found that your actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

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.

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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

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

would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

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

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

d) *...'*

The panel found that your actions in holding Resident A's nose without clinical justification and applying a medication cup too forcefully against Resident A's lip and/or mouth so as to cause bleeding caused actual harm to Resident A. The panel found that in failing to clean Resident B's wound you placed them at a risk of harm as not cleaning the wound could have caused infection. The panel also found that your actions in giving Resident C paracetamol and not recording it on the MAR chart placed Resident C at an unwarranted risk of harm. The panel was of the view that not recording what medication has been given to a resident presents the risk of overdosing and a consequent risk of harm. The panel determined that the misconduct found in this case was serious, it

breached fundamental tenets of the profession and brought the profession into disrepute.

The panel determined that the clinical failings are remediable, however it was of the view that attitudinal concerns are inherently more difficult to remediate. The panel found that you caused distress and injury to a vulnerable resident in your care, and although it acknowledged that Resident A suffered from dementia and had complex needs, you are a trained professional and should have the skills and compassion to be able to manage these situations appropriately.

In considering future risk, the panel had regard to your evidence provided at the facts stage and your bundle of documents. It noted that you appear to have insight into your record keeping error and demonstrated remorse for your actions in relation to this. The panel did however note that you have not provided any reflection or insight into the misconduct found at charges 1 and 2. The panel found that there was no evidence of how you put any learning from your training into practice and there were no references or testimonials from employers or other independent sources. Further, the panel is not aware of your attitude or current approach towards administering medication to vulnerable patients. The panel therefore concluded that there is a risk of repetition of your misconduct and a consequent risk of harm to patients. Accordingly, the panel found that your fitness to practise is currently impaired on public protection grounds.

Given the seriousness of the misconduct, and that it relates to vulnerable residents in a care home where they should feel safe and treated with dignity and respect, the panel was of the view that a fully informed, reasonable member of the public would be shocked if a finding of impairment was not made. The panel determined that public confidence in the profession and the NMC as the regulator would be undermined if a finding of impairment were not made. The panel therefore found your fitness to practise is also impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 18 months. The effect of this order is that the NMC register will show that you are subject to a conditions of practice order.

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

Submissions on sanction

Mr Harris informed the panel that in the Notice of Hearing, the NMC had advised you that it would seek the imposition of either a conditions of practice order or a suspension order if the panel found that your fitness to practise currently impaired.

Mr Harris told the panel that you were informed that the NMC sanction bid would have been a conditions of practice order if you had satisfied the following conditions:

1. Compliance with the interim conditions of practice order.
2. Reflection and insight into misconduct.
3. Testimonials from work after the charges arose.
4. Testimonials that speak to your attitude towards professional duty of care to patients and residents.
5. A Personal Development Plan.

Mr Harris informed the panel that you have been subject to an interim conditions of practice order since 27 October 2020. Mr Harris submitted that you have complied with the interim conditions of practice order, however, as you have not been working as a nurse you have been unable to satisfy all of the conditions set out above. Mr Harris submitted that as you have not satisfied the above conditions, the NMC sanction bid is one of a suspension order.

Mr Harris referred the panel to the NMC Guidance on *'Factors to consider before deciding on sanctions* (Reference SAN-1 Last Updated 01/08/2023) and *'Available sanction orders'* (Reference: SAN-3 Last Updated 28/07/2017). Mr Harris submitted that a suspension order is the most appropriate and proportionate sanction in this case. He submitted that the charges found proved in this case are very serious and involved vulnerable patients in your care. Mr Harris submitted that a suspension order would protect the public and allow you time to fully reflect on your conduct. He also submitted that a suspension order would satisfy the public interest and maintain and uphold proper professional standards.

Mr Rudd submitted that you have fully complied with the interim conditions of practice order that you have been subject to since 27 October 2020. He did however submit that for some of the time that the interim conditions of practice order was in place you were unable to work as a result of your health. Mr Rudd submitted that when you were well enough to work you found that as the interim conditions of practice order was so strict that you were unable to gain employment. He submitted that the condition that required another registered nurse to be on the same shift as you was not workable in care and residential homes as there is only usually one nurse on duty. Mr Rudd submitted that as your area of expertise is in providing care in nursing and residential homes, you have been unable to work in this environment because of the interim conditions of practice order, and it was therefore akin to a suspension order.

Mr Rudd referred the panel to your reflective statement and identified specific paragraphs in which he submitted that you have demonstrated insight into all of the charges. He submitted that following the medication and record keeping error in April 2019, you practised as a registered nurse for a further 18 months at the Home and three months at Marigold Care Home without any similar incidents to those as set out in the charges.

Mr Rudd submitted that as you have demonstrated insight and remediated your practice, as well as having already been subject to an interim conditions of practice order that was akin to a suspension order for a period of over three years, a caution order is the most appropriate and proportionate sanction.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Placed vulnerable residents at a risk of harm and caused actual harm to Resident A who was a very vulnerable resident.
- Wide ranging failures relating to fundamental tenets of basic nursing care.
- The charges did not relate to an isolated incident and arose on three separate occasions involving three different residents.

The panel also took into account the following mitigating features:

- You made an early admission to charge 3 and you have demonstrated some insight into and remorse for your misconduct in respect of this charge.

The panel did not accept Mr Rudd's submission that you have demonstrated full insight through your reflections into the charges. The panel did have sight of your response to regulatory concerns and reflection sent by the RCN on 9 December 2022. As set out previously, the panel did not regard this as full insight into your misconduct. It was of the view that your responses to the misconduct at charges 1 and 2 was broadly academic and lacked a personal understanding and deeper reflection, although, the panel considered that this was understandable given your denial of some of the allegations.

The panel heard some information about potentially difficult working relationships at the Home at the time the charges arose. Whilst it acknowledged these potential difficulties, it heard no evidence that this had directly impacted your practice in relation to the charges.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again'* and '*A caution order is only appropriate if the Fitness to Practise Committee has decided there's no risk to the public or to patients requiring the nurse, midwife or nursing associate's practice'.* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel took into account the SG, in particular:

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

- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings identified in this case. The panel determined that the misconduct identified in this case is capable of being addressed through retraining and assessment. The panel noted that although you have not been practising as a nurse, you have completed a number of training courses which demonstrates that you are willing to respond positively to retraining. The panel determined that workable conditions could be formulated to address the concerns and protect patients.

The panel had regard to the fact that you have worked as a registered nurse in the UK since 2000 and have had an otherwise unblemished career. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

Whilst the panel acknowledged the seriousness of the conduct found proved, it bore in mind the overarching objective to protect patients, and the NMC guidance on imposing the least restrictive sanction to achieve this. Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

In making this decision, the panel carefully considered the submissions of Mr Harris in relation to the sanction that the NMC was seeking in this case. However, the panel considered that to impose a suspension order would be disproportionate and would not be a reasonable response in the circumstances of your case at this stage as it would be punitive and going further than necessary to protect the public and mark the public interest.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse whilst protecting the public.

The panel was mindful of Mr Rudd's submission that a condition requiring supervision from another registered nurse was tantamount to a suspension as in many care homes there is only ever one registered nurse on shift. However, the panel determined that due to the seriousness of the misconduct and patient protection issues identified, you must be supervised by another registered nurse until you have demonstrated that you have addressed the concerns and strengthened your practice. The panel was of the view that this can be done in clinical settings other than care and residential homes and imposing a condition requiring supervision by another registered nurse is therefore not tantamount to a suspension order.

The panel determined that the following conditions are appropriate and proportionate in this case:

> 'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit yourself to working with one substantive employer which must not be an agency.

2. You must ensure that you are supervised by your line manager any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by a registered nurse.

3. You and your line manager, mentor or supervisor must devise a personal development plan (PDP) paying particular attention to the following areas:

a) Patient care.
b) Record keeping.
c) Wound management.
d) Medication administration.

Your PDP must be signed off and monitored by your line manager. You must send a copy of your PDP to your case officer within a month of taking up employment.

4. You must obtain a report from your line manager, mentor or supervisor providing details of your clinical performance in relation to the areas identified in your PDP and send it your NMC case officer prior to any review hearing.

5. You must keep us informed about anywhere you are working by:

a) Telling your case officer within seven days of accepting or leaving any employment.
b) Giving your case officer your employer's contact details.

6. You must keep us informed about anywhere you are studying by:

a. Telling your case officer within seven days of accepting any course of study.
b. Giving your case officer the name and contact details of the organisation offering that course of study.

7. You must immediately give a copy of these conditions to:

a. Any organisation or person you work for.
b. Any employers you apply to for work (at the time of application).

c. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
d. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

8. You must tell your case officer, within seven days of your becoming aware of:
a. Any clinical incident you are involved in.
b. Any investigation started against you.
c. Any disciplinary proceedings taken against you.

9. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
a. Any current or future employer.
b. Any educational establishment.
c. Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 18 months.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A comprehensive reflective statement in relation to all of the charges, following the NMC Guidance on reflection.

- Details of any up-to-date training courses completed and information about how you have put this training into practice.
- Testimonials or references from any place of employment whether paid or unpaid commenting on your standard of patient care.
- Your attendance at or input in any review hearing.

Interim order

As the conditions of practice order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the conditions of practice sanction takes effect.

Submissions on interim order

After the panel had handed down its decision on sanction, it invited submissions from the parties.

Mr Rudd informed the panel that the substantive order will not take effect until the end of the 28 day appeal period. He did not oppose the imposition of an interim conditions of practice order, however he invited the panel to consider reducing the length of the substantive order by one month as you will be subject to the interim conditions of practice order for a month.

Mr Harris invited the panel to impose an interim conditions of practice order to cover the appeal period and submitted that the length of order, substantive or otherwise is a matter for the panel.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. 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 decided to impose an interim conditions of practice order, as to do otherwise would be inconsistent with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months.

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

In response to Mr Rudd's application to reduce the length of the substantive order the panel decided that the length of time originally determined will remain the same. It had previously determined that 18 months would allow you sufficient time to secure employment and demonstrate strengthened practice. It is open to you to ask the NMC for an early review.

That concludes this determination.

This will be confirmed to you in writing.