

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

**Substantive Hearing
Monday 22 May 2023 to Friday 26 May 2023**

Virtual Hearing

Name of registrant:	Natalia Dooley
NMC PIN:	12F0438E
Part(s) of the register:	Registered Nurse – Adult Nursing (February 2013)
Relevant Location:	Essex
Type of case:	Misconduct
Panel members:	Geraldine O'Hare (Chair, Lay member) Jane Scattergood (Registrant member) Robert Fish (Lay member)
Legal Assessor:	Martin Goudie KC
Hearings Coordinator:	Petra Bernard (22 - 24 May 2023) Alice Byron (25 – 26 May 2023)
Nursing and Midwifery Council:	Represented by Kamran Khan, Case Presenter
Miss Dooley:	Present and not represented
Facts proved:	1a(i), 1a(ii), 1a(iii), 1b, 1c
Facts not proved:	2
Fitness to practise:	Impaired
Sanction:	Conditions of Practice Order (12 months)
Interim order:	Interim Conditions of Practice Order (18 months)

Details of charges (as amended)

That you, a registered nurse:

- 1) a) On or around 14 or 15 October 2020, failed to treat Colleagues with kindness, respect, and compassion in that you said to Colleague 1, in the presence of one or more Resident's, words to the effect of:
 - i) "have you no common sense, are you stupid"
 - ii) "fucking stupid"
 - iii) "fucking useless"
 - b) attempted to close a door whilst Colleague 2 was standing in the doorway, making contact with their body;
 - c) shouting and being abusive towards Colleague 2;
- 2) On an unknown date in September 2021, you failed to provide an adequate level of care in that you attempted to remove a surgical drain from Patient A without stopping the suction first;

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

Decision and reasons on application to amend the charge 1 (Day 2)

The panel heard an application under Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) made by Mr Khan, on behalf of the NMC, to amend the wording of charge 1a.

The proposed amendment was to amend the date of the incident from 15 October 2020 to read '*on or around 14 or 15 October 2020*'. It was submitted by Mr Khan that the proposed amendment would provide clarity and more accurately reflect the evidence.

"That you, a registered nurse:

- 1) a) On **or around** ~~15~~ **14 or 15** October 2020, failed to treat Colleagues with kindness, respect, and compassion in that you said to Colleague 1, in the presence of one or more Resident's, words to the effect of:
 - i) "have you no common sense, are you stupid"
 - ii) "fucking stupid"
 - iii) "fucking useless"

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

The panel accepted the advice of the legal assessor and had regard to the Rules. The panel noted that you and Witnesses 1 and 3, have declared that the incident in question took place on 14 October 2020. It further noted that the amendment does not affect the substance of the charge. The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on application for hearing to be held in private (Day 3)

During the hearing, the panel heard an application made on behalf of both parties, for this case be held partly in private, on the basis that proper exploration of your case involves

reference to your 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.

Having heard that there will be reference to your health, the panel determined to hold such parts of the hearing in private, in order to protect your right to privacy and confidentiality. The panel agreed to go into private session as and when matters relating to your health are raised.

Decision and reasons on facts

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

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 Khan on behalf of the NMC and those made by you.

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 oral evidence under oath from the following witnesses called on behalf of the NMC:

- Witness 1: Registered Manager for Parklands Nursing Home (the Home), at the relevant time.
- Witness 2: Ward Manager and your direct line manager at the Nuffield Brentwood Hospital, at the relevant time.
- Colleague 1: Health Care Assistant at the Home, at the relevant time.

The panel heard oral evidence under affirmation from the following witness called on behalf of the NMC:

- Colleague 2: Carer at the Home, at the relevant time.

The panel also heard evidence from you under oath.

Background

Parklands Nursing Home

Charge 1 arose whilst you were employed by Canaryford Limited as a Band 5 Registered Nurse at the Home from February 2020, until your resignation on 16 October 2020. You were subject to a conditions of practice order and the Home supported you to strengthen your practice, the order was subsequently revoked in August 2020.

On 14 October 2020, you were working a day shift alongside Colleague 1 and Colleague 2. Both Colleague 1 and Colleague 2 were assigned to Willow ward, and

delivering care to Resident A. When they entered Resident A's room they suspected that the resident was "*having a hypo*" (Hypoglycaemia) and you were called to assist.

Colleague 1 and Colleague 2 state that you came into Resident A's room and began shouting at Colleague 1 calling him stupid and swearing at him. To de-escalate the situation Colleague 1 left the room and you attended to Resident A. When you came out of the room, you continued shouting at Colleague 1 claiming you would report him to the Home Manager.

Witness 1 (the Home Manager) was working in her office when Colleague 1 and Colleague 2 informed her of your behaviour. You were also present in the office and began shouting for Colleague 1 and Colleague 2 to get out of the office, ushering them towards the door. You then made a number of attempts to shut the door on them, hitting the door into Colleague 2's arm each time.

Witness 1 told you that your behaviour was unacceptable and sent you home from the shift. You had resigned and did not return to the Home. Witness 1 referred the matter to the NMC on 2 November 2020.

Nuffield Brentwood Hospital

Charge 2 arose whilst you were employed by Nuffield Health as a Band 5 Registered Nurse at Nuffield Brentwood Hospital from May 2021 until you resigned on 24 September 2021.

Witness 2 was your manager and she described how initially you were polite to work with but then colleagues began to comment on your attitude and behaviour towards staff, saying that you were rude and abrupt with your colleagues.

In relation to your clinical practice Witness 2 states that in September 2021, you had attempted to remove a patient's drain but had not released the suction so the drain

would not move. You asked a doctor to assist, who also pulled on the drain whilst the suction remained on and was unable to move it.

Ms 1, a ward sister, went to assist and immediately noticed the suction was still switched on. The suction was released and the drain slipped out. The incident caused no harm to the patient. The patient's recovery was not affected in anyway and the matter was very low risk.

Following the incident Witness 2 spoke with you. You denied the suction had been left on. You then removed your badge and said you were leaving your shift. Witness 2 had sufficient cover for your patients, so she allowed you to go.

[PRIVATE]. You subsequently resigned and did not return to Nuffield.

Regulatory concerns

Failure to treat people with kindness, respect and compassion. In that you:-

- Used offensive language and / or shouted at your colleague in the presence of patients.
- Behaved inappropriately towards your colleague by attempting to shut a door on their face several times whilst shouting and / or using offensive language hitting the colleague on their arm several times

Poor patient care. In that you:-

- Failed to follow correct procedure regarding the removal of a patient's drain.

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

Charge 1

That you, a registered nurse:

a) On or around 14 or 15 October 2020, failed to treat Colleagues with kindness, respect, and compassion in that you said to Colleague 1, in the presence of one or more Resident's, words to the effect of:

- i) "have you no common sense, are you stupid"
- ii) "fucking stupid"
- iii) "fucking useless"

This charge is found proved.

The panel took account of the background materials provided by the NMC and you. It noted details of your ability to work with other members of staff in a proper manner. It noted general background information of your poor communication issues detailed in your supervision notes and feedback. Whilst the panel noted that there is a theme that indicates you may have communication issues within the workplace, it has focussed on the allegations in charge 1 and the evidence provided in relation to this charge, rather than other allegations that are not fully covered within the evidence.

In reaching this decision, the panel took into account of the respective contemporaneous notes and written statements of Colleague 1 and Colleague 2 and their oral evidence. The panel noted that the Colleague 1 and Colleague 2's oral evidence was consistent with their contemporaneous notes and written statements. The panel noted that both Colleague 1 and Colleague 2 came across as truthful, were persuasively consistent and their respective accounts of events corroborate with one another.

The panel noted that you flatly deny that you lost your temper, however you gave the panel no reason or alternative explanation as to why Colleague 1 and Colleague 2 have

both said what they say that you said. The panel were of the view that you were given the opportunity to cross-examine Colleague 1 and Colleague 2's version of events following their oral evidence, however you did not do so. Rather, you simply asked Colleague 2 to confirm whether her relationship with Colleague 1 was solely on a professional basis. The panel were of the view that you did not put forward an alternative version as to why you consider you did not say the words they alleged you had said. The panel noted that you were confident and competent when asking questions on other matters during the hearing, however you did not have a cogent argument to challenge or rebut this allegation, only a denial.

The panel took account of the stem of the charge is that you used '*...word to the effect of...*'. The panel determined that in oral evidence, Colleague 2 may have used similar language in evidence but the substance of what was said did not change.

The panel therefore found that this charge proved.

Charge 1b

That you, a registered nurse:

- b) attempted to close a door whilst Colleague 2 was standing in the doorway, making contact with their body;

This charge is found proved.

In reaching this decision, the panel took into account of Colleague 2's written statement and oral evidence and had regard to the room in question during the course of Witness 1 and Colleague 2's oral evidence. The panel noted that when questioned, you offered no alternative explanation as to what took place, other than a flat denial that this incident did not occur.

The panel noted that Colleague 1's statement was consistent with her oral evidence and that her evidence corroborated with Witness 1 and Colleague 2. The panel noted that Colleague 2 was clear on her recollection of the incident and was adamant that she would not be modifying any part of her statement in relation to this incident.

The panel determined that the account heard by the witnesses about you not letting them into Witness 1's room was plausible. Further, it determined that three of the four witnesses gave the same version of events in their respective witness statements and oral evidence and they each were consistent with one another.

The panel therefore found that this charge proved.

Charge 1c

That you, a registered nurse:

- c) shouting and being abusive towards Colleague 2;

This charge is found proved.

In reaching this decision, the panel took into account Witness 1, Colleague 1 and Colleague 2's respective written statements and oral evidence. The panel noted that each of the witnesses stated that you were pushing the door on Colleague 2. Colleague 2 stated that you tried to shut the door in her face and Witness 1, in her oral evidence stated that you were '*screaming*' and that she saw you were pushing the door on Colleague 2. Each witness testified that you were shouting at this time.

The panel therefore found this charge proved.

Charge 2

- 2) On an unknown date in September 2021, you failed to provide an adequate level of care in that you attempted to remove a surgical drain from Patient A without stopping the suction first;

This charge is found not proved.

In reaching this decision, the panel took into account the written statement and oral evidence of Witness 2. The panel heard evidence that the surgical drain is the only type of drain used on the ward. The panel determined that there has been insufficient evidence put before it to prove that you tugged on the drain without turning off the suction.

The panel heard persuasive evidence from you that you had turned off the suction and when Ms 1 asked the patient to stand, the drain was assisted by gravity to be released from the patient. The panel determined that this was a plausible explanation and is a known technique.

The panel noted that in Witness 2's written statement she stated that she did not complete an incident report, nor was a record made of the incident on the patient's notes, and in her oral evidence Witness 2 stated that the matter was low risk, low impact and that the patient was not told about what happened.

The panel considered that you did seek assistance from another healthcare professional to assist with removing the drain from the patient. The panel was of the view that to seek assistance from another healthcare professional, a doctor in this case, was the appropriate course of action to take.

Witness 2 told the panel that escalation of difficulties experienced in removing drains should properly be via the more senior nurse. However, the panel noted that the Hospital

had no policy in place to show that there is a particular escalation procedure which should be routed via a nurse. The panel determined that your escalation to another regulated healthcare professional with a duty of care for the same patient, was appropriate and therefore it determined that your actions do not demonstrate inadequate care.

The panel was of the view that you were instructed to remove the drain, you tried to remove the drain, ran into difficulty and sought help. The panel accepted that at the time there was not another nurse around hence why you sought assistance from the doctor. The panel determined that the doctor was not the preferred person from Witness 2's perspective however this does not amount to a failure to provide adequate care.

The panel also had regard to the '*The Code: Professional standards of practice and behaviour for nurses and midwives* (2015' (the Code), in particular:

'13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence'

The panel determined that you acted in a reasonable, professional manner, in the best interests of the patient and in adherence to the Code.

The panel therefore found this charge not proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to

practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts 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.

Summary of your evidence on misconduct and impairment

You gave evidence on the issues of misconduct and impairment. You told the panel that 2020 was a difficult time for you due to the Covid-19 pandemic [PRIVATE]. However, you said that [PRIVATE], you have always been passionate about your role as a nurse since you qualified in 2013.

You said that, since the incident, which is the subject of the charge found proved, you have worked for an agency in large hospitals in Central London for both the NHS and private hospitals. You said that you have always acted professionally and never let the agency down when accepting work.

You told the panel that you have a permanent job offer as a clinical educator, which you are eager to take up in order to improve your practice as a nurse and consolidate your nursing skills. You said that you would also undertake ad hoc locum shifts in order to keep your clinical skills up to date.

You accepted that there were difficulties in your work environment when the incident arose. You said that your manager supported you through your clinical competency, but you did not feel that she had your welfare at heart. You said that you now have coping mechanisms in place, including undertaking courses on managing stress and taking regular annual leave. You recognise stressful situations [PRIVATE] You said that if you feel stressed you would speak to your manager. In respect of your prospective role, you said that you will have a supervisor from whom you may seek guidance if you are stressed. You also said that you would work in isolation so there is a low risk of repetition of the concerns alleged.

You told the panel about the evidence you have produced before it at this stage, which included training certificates, testimonials from clinical colleagues including doctors and other nurses and your reflections on the charge found proved. You accepted that communication is not directly addressed by any of the training certificates before the panel, but that you have undertaken training in communication skills and stress management, although you said that you could not remember the stress management techniques from this course. Further, you accepted that some of the testimonials provided on your behalf pre-date your referral to the NMC in respect of this incident, you said that these references demonstrate your skills as a nurse and demonstrate your clinical competencies.

When asked by Mr Khan if the facts found proved at charge 1 amount to serious misconduct, you said that you disagreed. You said that this was an isolated incident which took place in a difficult time. You said that your reflection demonstrates your insight which, alongside the testimonials and training certificates before the panel, amounts to sufficient evidence that your fitness to practise is not currently impaired.

NMC Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect,

involving some act or omission which falls short of what would be proper in the circumstances.'

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

Mr Khan identified the specific, relevant standards where your actions amounted to misconduct. He submitted that the concerns in this matter relate to your attitude, which he submitted are more difficult to put right, given the protracted history of this matter. In respect of charge 1, Mr Khan said that the panel have found proved a number of different instances where abusive language was used toward colleagues, as well as a physical altercation in slamming a door shut. He described these as areas of concern which must be prevented before they get worse.

Mr Khan further referred the panel to the meeting notes exhibited by Witness 1, which he said demonstrated that even where improvements were noted in your practice, questions were still raised about your temperament and communication with colleagues. He said that all of the witnesses who gave evidence before this panel expressed concerns about your ability to work within a team. Mr Khan said that the facts found proved relate to instances of abuse to colleagues, and the panel therefore should consider the implications of such conduct on other nurses and their abilities to confidently and independently exercise their own judgment when undertaking their duties.

Further, Mr Khan invited the panel to consider the public perception of your actions. He said that a fair-minded member of the public would be concerned given the panel's findings on facts. Accordingly, and for the reasons as outlined above, Mr Khan submitted that misconduct is proven in this matter.

NMC Submissions on impairment

Mr Khan 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).

Mr Khan submitted that your fitness to practise remains currently impaired. He invited the panel to have regard to the test established by *CHRE v NMC and Grant*, namely:

'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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Mr Khan submitted that, at the very least, limbs (a) and (b) of the test have been satisfied on the basis of the panel's findings on the facts, and his submissions in relation to misconduct.

Mr Khan said that the panel may consider if there is evidence of any insight, remediation and further learning and development before it. He acknowledged that you have provided a reflective piece, however he invited the panel to consider what weight to attribute to this, given that such reflection was provided in May 2023. He said that [PRIVATE] you were unable to describe or demonstrate what mechanisms you have in place to manage stress and act differently if a situation like this arose again. Further, he submitted that the panel does not have before it any evidence of thorough insight or remediation, alongside the fact that you could not remember, or do not know, how to deploy such stress management techniques. In light of this, Mr Khan said that you remain in the same situation as before this incident arose, and a risk remains that you may deal with matters inappropriately.

In respect of the evidence of Continued Professional Development (CPD) which you have undertaken, Mr Khan submitted that, although you have undertaken a lot of CPD, much of this is in relation to practical nursing and lacks insight into the particular circumstances of the specific concerns in this matter, namely the resolution of conflicts in the moment.

Accordingly, Mr Khan invited the panel to make a finding of current impairment.

Your submissions on misconduct and impairment

You said that you accept that charge 1 has been proved and that you have provided the panel with your reflection which shows you have insight into this incident.

You invited the panel to consider a letter from Witness 1 contained within the bundle, which states that your communication improved around July 2020 and the subsequent letter which she wrote the NMC in support of the revocation of your previous conditions of practice order. You described it as strange that she subsequently referred you to the NMC for poor communication after you told her that you no longer wished to work at the Home.

You invited the panel to consider the number of professional and credible references which you have provided from a number of multi-disciplinary team members including;

nurses, consultants, managers and other healthcare professionals. You disputed Mr Khan's submission that you have not undertaken CPD in relation to charge 1. You said that you undertook a module on conflict resolution in May 2023, and said that this is part of your annual training.

You said that you have "huge" insight into the alleged and have reflected.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Cheatle v GMC* [2009] EWHC 645 (Admin), *Cohen v GMC* [2008] EWHC 581 (Admin), *R (on the application of Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin) and *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311.

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*

8 *Work co-operatively*

To achieve this, you must:

- 8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*
- 8.2 maintain effective communication with colleagues*
- 8.7 be supportive of colleagues who are encountering health or performance problems. However, this support must never compromise or be at the expense of patient or public safety*
- 20 Uphold the reputation of your profession at all times**
To achieve this, you must:
- 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 conduct, which involved the verbal abuse of your colleagues and you physically closing the door on Colleague 2 is serious and crosses the threshold of serious misconduct.

The panel found this conduct to be aggravated by the fact that it took place in front of vulnerable residents and was sustained through different rooms within the Home. The panel bore in mind that you took your care and focus away from a vulnerable resident at the time and directed your anger at multiple members of staff at the Home. It also noted that you failed to manage your own emotions and instead relied on several members of staff to diffuse and de-escalate this incident. The panel concluded that fellow nurses would find your conduct to be deplorable, and members of the public would be concerned to learn that this incident took place within a clinical setting, and especially in front of residents.

The panel found that your 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, your fitness to practise is currently impaired.

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

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

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

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

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *[...]*

The panel first considered whether your actions at the time of the incident amounted to conduct which would have justified a finding of impairment at that time. The panel noted that there is no evidence before it any harm was caused to patients by this incident. However, the panel considered that vulnerable residents at the Home were exposed to a risk of harm from witnessing such misconduct, as they may have become fearful of you, which raises a risk that they may become less likely to raise concerns to you, or accept treatment from you.

Further, the panel found that patients were at risk of harm through your failure to work co-operatively with your colleagues. The panel considered that such co-operation affords patient and public safety, and that by losing your temper with your colleagues, could increase the risk of them failing to escalate patient concerns to you, which may have a detrimental impact on patient care. The panel had regard to Colleague 1's evidence in this respect, that he stopped raising his concerns to you and spoke to a different nurse where possible.

Further, the panel finds that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was therefore

satisfied that a finding of impairment was necessary on the grounds of public protection when the incident took place on 15 October 2020.

The panel bore in mind, however, that impairment is a forward-looking exercise and it must consider your fitness to practise as of today's date, and any steps which you may have taken to remediate the concerns present at the time of the incident.

The panel first considered insight. It took account of your documentary and oral evidence, including your reflection dated 24 May 2023. The panel noted that you have demonstrated some insight into [PRIVATE] the stressors which contributed to your actions at the time, including difficulties in the workplace [PRIVATE]. The panel was encouraged to learn that your employment [PRIVATE] have improved, however, although there is no evidence of any repetition of such concerns, it is mindful that similar stressors can arise unexpectedly at any time.

The panel examined the evidence into your insight into how the charges arose, and how you would act differently in future. The panel found your insight to be very limited. It found that you sought to attribute the blame for your failings onto others, and did not address the impact of your actions on the patients in your care, or your colleagues.

The panel noted that you have provided some positive testimonials, some of which pre-date 15 October 2020. However, in the absence of sufficient insight, it found that limited reliance could be placed upon these.

The panel took into account that you have provided various training documents relating to your CPD, many of which addressed clinical competencies which are not in dispute. It noted that you have attended training on conflict resolution. However, it was concerned that you were unable to articulate any learning, new behaviours or coping mechanisms from attending courses to address the concerns in charge 1. The panel found that this is indicative of you failing to embed such training, learning and benefits into your practice.

Accordingly, the panel is of the view that there is a risk of repetition if similar stressors to those present in 2020 re-occurred either in your home or professional life, based on the actions which led to your referral to the NMC, and your failure to demonstrate sufficient insight or strengthened practice in the period until this hearing. The panel therefore decided that a finding of current 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 determined that a finding of impairment on public interest grounds is required because public confidence in the profession and the NMC as a regulator would be undermined if a finding of impairment were not made in this case due to

- (1) The underlying conduct covered by charge 1; and
- (2) Your current impairment due to a risk of repetition,

and therefore also finds your fitness to practise 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.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this 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 Khan submitted that the appropriate sanction in this matter is a suspension order, he informed the panel that in the Notice of Hearing, dated 13 April 2023, the NMC had advised you that it would seek the imposition of a suspension order for a period of 6 months if your fitness to practise was found to be currently impaired. Mr Khan submitted that a suspension order is still the relevant and appropriate order even when taking into account that only one charge has been found proved in this matter.

Mr Khan submitted that taking no further action or a caution order would be inappropriate in the circumstances of the allegations, as such sanctions would not be in the public interest.

Mr Khan submitted that a conditions of practice order falls short of being the appropriate sanction in this matter as it would be insufficient given the severity of the charge and the public interest in this case. Further, he said that a conditions of practice order could address issues identified by the panel, such as by mandating that regular meetings take place to assist sufficient insight to be developed over time. However, he submitted that such order is not sufficient to guarantee that this behaviour will not happen again.

Accordingly, Mr Khan submitted that a suspension order is the appropriate order in this matter to sufficiently address the public protection and public interest impairment found by the panel. Mr Khan submitted that the seriousness of this matter justifies a temporary removal from the NMC register. He said that, while you have provided evidence of CPD and insight, you have not demonstrated any relevant engagement or insight with the regulatory concerns, save for one isolated instance of conflict resolution contained within one of the certificates. Further, he submitted that there is a lack of contemporaneous

insight into the seriousness of the charges, which he said evidenced serious attitudinal concerns. He said that, whilst you did provide a reflective piece, this was submitted during the course of this hearing and you have not provided any contemporaneous or periodic evidence of your reflection on the incident which resulted in your referral to the NMC. Accordingly, he submitted that some time is required for you to demonstrate that you have undertaken genuine or serious insight.

Mr Khan accepted that the panel must consider your own interests and circumstances in this matter, however the public protection and public interest findings made by the panel outweigh your interests in this regard. He said that the charge found proved does not related to a single instance of you saying the wrong thing to a colleague. Instead, he said that there is evidence of a history of serious attitudinal concerns, together with a lack of insight, which must be addressed by an order which addresses the seriousness of this concern.

Mr Khan submitted that a striking off order would be disproportionate in this matter.

The panel also bore in mind your submissions. You said that you acknowledge that the panel have found a charge proved which may have put the nursing profession into disrepute. However, you said that this was an isolated incident [PRIVATE]. You said that you are currently practising as a nurse and have been without incident since October 2020 whilst working in a team dynamic within emergency departments. You invited the panel to have regard to your clinical references which speak of your contagious positive behaviour and good character.

You submitted that you consider that a caution order may be necessary in this case, but understand that the panel must uphold the public interest and the reputation of the NMC, therefore a conditions of practice order may also be appropriate.

You said that you do not consider that a suspension order will benefit you, your new employer or the nursing profession as it would remove an experienced nurse from the register. [PRIVATE].

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:

- Lack of sufficient insight into failings
- Conduct which put patients at risk of suffering harm
- Further misconduct committed within two months of being removed from a previous conditions of practice order.

The panel also took into account the following mitigating features:

- Positive testimonials over an extended period of time.
- A commitment to the nursing profession during the Covid-19 pandemic
- [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 and the panel's findings on impairment. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel recognised that your impairment is not as a result of a matter of clinical competence which may be learned and tested, but instead arose as a result of your conduct within a professional and patient facing environment. The panel considered whether the imposition of a caution order alongside advice for your future practice may support you. However, it concluded that, as a result of the level of risk identified by the panel in its findings on impairment, an order which does not restrict your practise in some form and require regulatory oversight would not mitigate this risk. Further, the panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *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 highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice.

The panel had regard to the fact that this incident happened in October 2020, and there has been no evidence of similar attitudinal concerns. It also had regard to your positive testimonials and the evidence before it that you continue to work well as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to continue to practise as a nurse.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case. It had regard to Mr Khan's submissions on the appropriateness of a suspension order; however it considered that a short period of suspension would not assist you to maintain or demonstrate an attitudinal or behavioural change to demonstrate your fitness to practise to a future panel. Additionally, it concluded that a prolonged period of suspension would not allow you to develop and test new learning about your emotional self-regulation in the workplace, and would be disproportionate in this matter, especially taking into account that you have worked without incident since October 2020.

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. The panel was of the view that it is in the public interest to allow a clinically competent nurse to practise in a time of social need.

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 will send your case officer evidence that you have successfully completed:
 - A course on effective communication and teamwork at least 14 days before the next review of this order;
 - A course on conflict resolution in the workplace at least 14 days before the next review of this order; and
 - A course on stress management at least 14 days before the next review of this order.

Following the completion of these courses you must engage in reflective practice and document your learning.

2. You must work with any registered nurse to create a personal development plan (PDP). Your PDP must address:
 - Developing insight into the incidents such as the matter found proved;
 - Reflective conversations to develop workable strategies and mechanisms to improve your interactions and communication in the workplace; and
 - Utilising this dedicated registered nurse in a supportive capacity;
 - Developing a strategy for gathering comprehensive feedback on progress you have made; and
 - Using such reflective learning in your practice.

You must send your NMC case officer a copy of your PDP by at least 14 days before any review of this order.

3. You must ensure that you are supervised by a registered nurse at any time you are working in a point of care environment. Such supervision should consist of working at all times whilst on the same shift as, but not always being directly observed by, a registered nurse.
4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment, this includes any substantive employer or any agency who arranges work for you.
 - b) Giving your case officer your employer's contact details.
5. You must keep the NMC 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.
6. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).

- d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) 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
7. 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.
8. 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 12 months to allow you to meaningfully engage with this order and demonstrate insight into your failings.

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 for another order.

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC;
- Evidence of professional development, including documentary evidence of completion of the above-mentioned courses; and
- The provision of any documentation to be considered by the next panel to be provided to the NMC at least 14 days before the next review of this order.

This will be confirmed to you in writing.

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

Submissions on interim order

The panel took account of the submissions made by Mr Khan. He submitted that, in light of the panel's findings on impairment, an interim conditions of practice order is necessary for the same reasons as the substantive order, namely public protection and public interest, in order to cover the period of any potential appeal of the substantive order.

You said that an interim conditions of practice order is not necessary because you are currently working as a nurse without issue.

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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible 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 to ensure public protection and uphold the public interest throughout the period in which any appeal may be made and heard by the High Court.

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.

That concludes this determination.