Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing
Tuesday, 8 August 2023 – Friday, 11 August 2023
Friday, 13 October 2023

Name of Registrant:	**Allan Robert Hall**
NMC PIN	99B0454E
Part(s) of the register:	Registered Nurse – Sub part 1 (Level 1) Adult Nursing – 3 February 2002
Relevant Location:	Staffordshire and Stafford Borough
Type of case:	Misconduct
Panel members:	Sophie Lomas (Chair, lay member) Marcia Smikle (Registrant member) Margaret Wolff (Lay member)
Legal Assessor:	Christopher McKay (8 to 11 August 2023) Angus Macpherson (13 October 2023)
Hearings Coordinator:	Deen Adedipe
Nursing and Midwifery Council:	Represented by Case Presenter Nicola Kay (8 to 11 August 2023) Matthew Kewley (13 October 2023)
Mr Hall:	Present and accompanied by Mrs Hall (mother)
Facts proved by admission:	Charge 1.1
Facts proved by evidence:	Charge 1.2
Fitness to practise:	Impaired
Sanction:	**Conditions of practice order (12 months)**

Interim order:	**Interim conditions of practice order (18 months)**

Details of charge

That you a Registered Nurse

1. During a shift in or around June 2018, spoke to Resident A in a manner which:

1.1 Included shouting **[PROVED BY WAY OF ADMISSION]**;

1.2 was threatening and/or degrading to them **[PROVED]**;

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

Decision and reasons relating to prejudicial material in the initial bundles received

The panel noted that it had read information which related to other allegations and was unrelated to this case. It believed that this information should have been redacted. During extensive preliminary meetings involving Ms Kay on behalf of the Nursing and Midwifery Council (NMC), you and the legal assessor it was established that redacted versions of the material which was intended for the panel and these proceedings had been prepared. The unredacted version had been sent out in error.

The panel heard the advice of the legal assessor.

The panel considered the matter carefully. The considerations for the panel given the high volume of the prejudicial information contained in the initial bundles which it had read, were:

- It was an experienced professional panel and as such was able to put prejudicial material out of its mind. It would work off the redacted material which it had now received.

- whether you would be disadvantaged and could be given a fair hearing, especially as you were not legally represented by a lawyer who could make submissions not to proceed.
- the length and age of the case which has taken over 5 years to get to this hearing.
- the time it would take the NMC to constitute another panel if it decided to recuse itself.
- how an informed member of the public would view the situation.

Your views were sought, and the unredacted material was sent to you and Mrs Hall to review and provide your comments. You did not object to the case proceeding as you were concerned about getting this long outstanding matter over with. The panel, however, bore in mind that you may not be qualified to make a fair assessment on legal matters you are not familiar with. The panel was satisfied that you had seen what they had been privy to and had been informed of the options available under the circumstances, which included the case being adjourned to be heard by another panel as soon as possible. You were unequivocal in your preference to proceed.

The panel decided that as an experienced professional panel, it could proceed by regarding only the matters related to the charge in this case. It determined it was fair to you to proceed with the hearing and that it would ignore the evidence relating to other allegations which it had read.

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

At the outset of the hearing, Ms Kay on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be held partly in private on the basis that proper exploration of your case involves reference to your [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application to the extent that any reference to your health should be heard in private.

Ms Kay also made a Rule 19 application in relation to the hearsay evidence of Witness 2 which she intended to adduce. [PRIVATE]

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 references to your [PRIVATE] and also references to Witness 2's [PRIVATE] the panel determined to hold such parts of the hearing in private in order to protect their respective rights to privacy and confidentiality.

Background

The charges arose whilst you were employed as a registered nurse by Methodist Homes, (the Home). A referral was received from the referrer on 16 April 2019.

On a night shift around June 2018, you were tending to Resident A in his room, with the help of Witness 1, a health care assistant. Resident A is an elderly patient with advanced dementia.

It is alleged that Resident A became agitated and raised his hand aggressively to Witness 1's face. You allegedly reacted angrily to this and spoke in an inappropriate manner both in terms of what you said and how you said it. It is alleged that you spoke to Resident A in a manner which included shouting and the manner was threatening and/or degrading to Resident A .

You are alleged to have said to Resident A , *'do you think it's ok to hit a woman, it's fucking not'*, and also told Resident A that you would be telling his wife, and that Resident A would *'learn the hard way'* that his actions were unacceptable. This was allegedly overheard by another member of staff, Witness 2 who was the Senior Night Nurse on duty for the floor below.

When Witness 2 asked Witness 1 what had happened, Witness 1 told her that you had lost your temper.

The matter was reported and in due course an investigation was undertaken by Witness 3 who was the Home's Manager at the time. During the investigation, several investigation meetings were held by Witness 3 which included a meeting between Witness 3 and Witness 2 on 22 August 2018 and between Witness 3 and Witness 1 on 24 August 2018. In that meeting Witness 1 had stated that you had behaved in a way that was abrupt and that in addition to shouting, your manner was disgusting, and you were swearing. She described the incident as *'it's not how you speak to a resident or anybody'.*

You have admitted to shouting as set out in charge 1.1 but dispute charge 1.2.

Decision and reasons on application to admit written statement and hearsay evidence

Ms Kay in setting out procedural rules underlying the basis for allowing hearsay evidence referred the panel to the cases of *El-Karout v NMC [*2019] EWHC 28 and *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565.

Ms Kay made an application under Rule 31 to allow the written accounts of Witness 1 to be admitted as evidence. She referred the panel to the background of the case and told the panel that she would like to rely upon the accounts given in the internal investigation meeting minutes held with Witness 1 as hearsay evidence.

Witness 1 was not present at this hearing. Despite numerous attempts, the NMC had not been able to obtain a signed, written statement from Witness 1. The NMC had written and sent her four letters and made phone calls seeking her engagement to provide a witness statement but Witness 1 made it clear, through her partner, that she did not wish to participate in the NMC investigation. The NMC could not serve her a Witness Summons as she was a care assistant who was not on the NMC Register and was thus not obliged under The Code of Conduct to assist the NMC with its investigations.

Ms Kay submitted that the account of Witness 1 in the internal investigation minutes was highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations. She submitted that you will be able to cross examine Witness 3 who conducted the meeting.

Ms Kay also sought to admit the witness statement of Witness 2 who is unable to attend the hearing [PRIVATE], into evidence. In addition to Witness 2's statement, she exhibited the minutes of her local interview in the local investigation. Witness 2 had been scheduled to attend the hearing [PRIVATE], the NMC were only apprised of the full details and the current position late in the afternoon, the day before the hearing commenced.

Ms Kay told the panel that Witness 2 [PRIVATE]. Ms Kay submitted that there is a good and cogent reason for the absence of Witness 2 at this hearing.

You told the panel that although you will not be able to question either witness, you wished their accounts to be read into evidence.

The panel accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Witness 1 and Witness 2 careful consideration. It noted it was unusual that both witnesses whose oral evidence had been anticipated were not in attendance.

The panel had regard to the case of *Thorneycroft*. It determined that Witness 1's evidence was a significant part of the case as she was the only one who could attest to your demeanour at the time of the incident. However, her account was not the sole or decisive evidence relating to the charges. The panel had information contained in the witness statement of Witness 2 as well as your partial admissions that there was an incident in which you were shouting at the Resident A. There, however, remained disputes relating to whether your behaviour was threatening or degrading. Witness 1's account had suggested in part that you had not been aggressive, and taking into account fairness to you, the panel noted that this may be a part of her evidence you wish to rely on.

The panel noted that Witness 2's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, '*This statement … is true to the best of my information, knowledge and belief*' and signed by her.

The panel considered whether you would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 2 to that of a written statement and allowing hearsay testimony in relation to both witnesses into evidence. In advance of the hearing, you had been provided with a copy of the internal investigation minutes as well as Witness 2's statements. The panel was conscious that you sought to rely on elements of the accounts given and had prepared to cross-examine Witness 2 . This course of action would no longer be available to you. You had suggested some collusion between the two witnesses.

The panel found some deficiencies in the internal investigative minutes which did not indicate the precise date of the incident, and which had not been signed and dated by the witnesses as a true account. The panel, however, determined that the evidence is not

unhelpful to you and that if admitted it would very carefully consider what weight and reliability to attach to it, in order to mitigate any element of unfairness to you.

[PRIVATE].

The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from hearing the live evidence of Witness 2 and the opportunity of questioning and probing her testimony. The panel also determined that there was public interest in the issues being explored which supported the admission of this evidence into the proceedings.

The considerations were finely balanced, but the panel has decided to admit the hearsay evidence for the reasons already discussed. It also noted that you had put forward a detailed defence in your written submissions in relation to the disputed facts and areas which you seek to challenge the evidence of Witness 2 for the panel's consideration, and that you would still be able to do this in submissions.

In these circumstances, the panel came to the view that the hearsay evidence was relevant to the issues in the case, and it would be fair to accept it into evidence. This evidence is the hearsay evidence of Witness 1, the written statement and the hearsay evidence of Witness 2.The panel would give what it deemed appropriate weight once it had heard and evaluated all the evidence before it.

Decision and reasons on facts

At the outset of the hearing, the panel heard that you made full admissions to charge number 1.1.

> 'That you a Registered Nurse
>
> 1. During a shift in or around June 2018, spoke to Resident A in a manner which:

1.1 Included shouting;'

The panel therefore finds charge number 1.1 proved in its entirety, by way of your admission.

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the submissions made by Ms Kay on behalf of the NMC and 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.

From the NMC the panel heard oral evidence from Witness 3 and admitted hearsay evidence from Witness 1 and Witness 2:

- Witness 1: Previous Care Assistant, Methodist Homes
- Witness 2: Previous Senior Night Nurse , Methodist Homes
- Witness 3: Home Manager, Methodist Homes

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and you.

The panel then considered the disputed charge and made the following findings.

Charge 1.2

‘That you a Registered Nurse

1. During a shift in or around June 2018, spoke to Resident A in a manner which:

1.2 was threatening and/or degrading to them;’

This charge is found proved.

In reaching this decision, the panel took into account all of the oral and documentary evidence before it. The documentary evidence included the investigation meeting minutes for Witnesses 1 and 2 and the witness statement of Witness 2 which are summarised earlier in this determination in the section entitled ‘Background’.

Witness 3 gave evidence to the panel.

She explained that the home catered for vulnerable and elderly patients over the age of 65 with enduring mental health conditions such as dementia, schizophrenia, and bipolar disorder, who required full support. She stated that these were challenging conditions that produced challenging behaviour. She confirmed that your training in handling challenging behaviour and the Home’s policies was up to date.

The panel considered your oral evidence detailing your reasons for becoming a nurse which included caring for vulnerable people. It noted that you had been employed at the Home since 11 May 2015, were up to date in your mandatory training and were fairly experienced in caring for vulnerable patients. The panel acknowledged that you requested for training in advanced dementia care from your supervisor as most of your prior experience was with less severe cases.

You set out to demonstrate that the location of Witness 2 who was in the smoking area at the back of the building was a considerable distance from Resident A's room where the incident had occurred and on the opposite side of the building. This was ostensibly to challenge the likelihood of her being able to hear you using specific words as she had alleged in her written accounts.

You told the panel you had hearing issues and were subject to speaking loudly or shouting on occasion due to build-up of wax in your ears. Mrs Hall confirmed that the family had also noticed this. You said you had reacted to Resident A raising his hands in an aggressive manner towards Witness 1 when you were both providing care and recall saying something to Resident A, which at the time would have been out of your nature and character due to the sudden reaction from Resident A. You think you may have raised your voice as you wanted the resident to follow what you were saying and were trying to protect your colleague as Resident A had demonstrated unusually challenging behaviour and you had reacted in a shocked manner and *'could have said inappropriate words'* for which you have apologised and that you did not do anything intentionally.

During cross examination by Ms Kay, you agreed that you were facing significant stressors around the time of the incident. You confirmed that you were providing care in a section of the Home dedicated to patients with dementia who would display a wide range of very challenging behaviour. She referred you to the Home's policy which described some of the expected behaviour from residents due to their dementia such as hitting others, head butting, shouting, swearing, and screaming. You agreed that, as a nurse, you were aware that there were approved ways of dealing with such challenging behaviour.

You confirmed that you had raised the issue of staff shortages having found that you were often stretched as it was becoming increasingly challenging to cover two floors without additional support. Ms Kay referred you to your one-to-one reviews in February and May 2018 which were signed by you. They stated that you had successfully managed to run both floors well and were fully competent in your role. They went on to say, *'Alan continues to keep all mandatory training up to date and we don't need to worry about validation'*. *'Alan does not feel he needs further support in his job other than the flexible working application'*. You agreed with the contents of these documents.

You confirmed that you were facing a number of stressors [PRIVATE].

You described Resident A on the day in question as being difficult and resistant to care, was not doing what he was asked or taking a long time to do it. This culminated in Resident A raising his hand to Witness 1's face as if to strike her, which was out of character. You said that you were scared by his actions. You agreed that Resident A 's behaviour on that day, coupled with all the stressors that you were facing may have pushed you to snap, and say the words that had been attributed to you. You agree that your actions were unacceptable and inappropriate and that you had not meant what you said.

You agreed with Ms Kay's suggestion that your words and manner could be interpreted as threatening and degrading towards Resident A .

Panel's decision on facts

Although you had accepted under cross examination that you were shouting and that your behaviour could have appeared to be threatening and degrading, it was still for the panel to determine whether the facts were proved as set out.

The panel accepted that you did not intend to threaten Resident A and took into account that Witness 1's account had indicated that you were not being aggressive. However, the panel considered that shouting alone can be threatening and degrading depending on context.

The panel determined that on this occasion your use and combination of words, the swearing and shouting behaviour was threatening and belittling. It considered that your saying *'I'll tell your wife',* amounted to a threat and your using your power over a vulnerable person who was incapable of responding cognitively or of defending themselves. The panel determined that this behaviour was threatening and degrading. In determining whether the words were degrading the panel considered the word *'degrading'* to mean causing humiliation or debasing. The fact that you had been working with vulnerable people for a long time and had done requisite training carried with it the expectation of appropriate handling of challenging behaviour.

The panel therefore found charge 1.2 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.

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 Kewley through written submissions referred the panel to the cases of *Cheatle v General Medical Council* [2009] EWHC 645, *Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas* [2006] EWHC 464 (Admin) and *Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin).

Mr Kewley adopted the written submissions of Ms Kay and invited the panel to find that the facts found proved amount to misconduct in that the registrant's actions fell far short of what would be proper in the circumstances. Mr Kewley submitted that treating a resident with dignity and respect is integral to the standards expected of a registered nurse and central to the code.

Mr Kewley identified the specific, relevant standards which he submitted you have breached the Code.

'1 Treat people as individuals and uphold their dignity
20 Uphold the reputation of your profession at all times

Mr Kewley submitted that the NMC accept there was challenging and unexpected behaviour from Resident A. However, he observed that you are a trained nurse of over 20 years' experience and 3 years specific experience working with those with all stages of dementia. Such nurses are expected to have to hand a plethora of professional skills to draw upon, such as interpersonal skills, de-escalation skills and general fundamental nursing skills, particularly when working in an environment such as a care home caring for those with dementia where such challenging behaviour is not unusual.

Mr Kewley submitted that your behaviour undermines public confidence in the profession and is serious as the misconduct occurred within a care home. Resident A, a vulnerable resident with dementia, should not have been treated in such a manner by you, regardless of Resident A's own behaviour.

Submissions on impairment

Mr Kewley 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), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) also *Zygmunt v General Medical Council* [2008] EWHC 2643 (Admin).

Mr Kewley referred the panel to the NMC guidance on impairment, and particularly to the question that will help decide whether fitness to practice is impaired.

> *'Can the nurse, midwife or nursing associate practise kindly, safely and professionally ?'*

Referring to Grant, Mr Kewley submitted that harm is not just physical harm but includes emotional and psychological harm. Shouting at a vulnerable patient with dementia, swearing and speaking in a manner that was threatening and/or degrading, had the potential to put that Resident A at unwarranted risk of harm.

He submitted that the nursing profession is a caring profession; that you have breached individual provisions of the professional Code which constitute fundamental tenets of the nursing profession.

Mr Kewley submitted that it may be the case that stress caused by difficulties in your personal life, along with your working patterns adversely affected your ability to practise safely and professionally at the time in question. However, such stresses can arise at any point in life, and you have not yet shown that you can appropriately manage such concerns. He submitted that you are not yet able to currently practise kindly, safely and professionally.

Mr Kewley submitted that your insight remains limited although he acknowledged that it is developing. He submitted that you have taken training courses that should help you address the concerns but that there is a risk of repetition as you have not worked in a nursing role since 2018. Therefore, your training has not yet been tested in the pressurised environment of nursing, particularly providing nursing care to dementia patients.

Mr Kewley submitted that the seriousness of the misconduct is such that it calls into question your professionalism in the workplace has had a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.

Mr Kewley submitted that a finding of impairment is required on public protection and public interest grounds.

You told the panel that the experience of dealing with patients with severe dementia was new to you and that you raised this when you first started working at the Home. You accept that your behaviour in shouting and swearing at Resident A was wrong and said that you have reflected on the incident and on the strategies that you should have used in that situation.

You told the panel that you have undertaken a variety of courses since the incident to address and find new ways to cope with challenging behaviour. If a similar situation were to arise again you would seek support.

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

1.5 respect and uphold people's human rights

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that, as an experienced nurse with over 20 years' experience, you were expected to cope with working with vulnerable elderly patients diagnosed with various cognitive impairment conditions. The panel noted that this was an isolated incident, that you did not have malicious intent towards the Resident A and that you had reacted to protect your colleague from a risk of harm. The panel took into consideration that you were working under pressurised working conditions and [PRIVATE].

The panel also took into account your admission that you should not have acted in this manner. However, it has determined that you lost control and shouted at the patient, which is unacceptable. You were in a position of trust and meant to safeguard the interests of vulnerable patients under your care. However, the panel determined that your actions had put the Resident A at a risk of emotional harm.

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

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

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

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

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

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

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

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

d) *…*

The panel finds that limbs a, b and c of Grant are engaged.

The panel determined that Resident A was put at risk of emotional harm as a result of your misconduct in the past. Without full insight and remediation, you are likely to put patients at risk of harm in the future.

Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to harm extremely serious.

Regarding insight, the panel noted that you had eventually, in the course of the hearing, made admissions that your actions were not appropriate and could appear to put patients at a risk of harm.

The panel took account of your oral submissions and your reflective piece outlining what you would do differently, namely, walk away to deescalate the situation. However, the panel determined that your insight is in the developing stages and not yet complete. You still sought to make excuses for your reaction to the situation and questioned the level of

inappropriateness of your behaviour as it was not challenged by your colleague at the time. It determined that you have not shown a sufficient level of insight into the impact that your failings had on patients, colleagues and the wider public.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice.

The panel noted that you had been out of nursing practice for up to 5 years and had not had an opportunity to demonstrate that you would put your new learning to practice. It noted that you had undertaken relevant training courses.

The panel noted that you had no intention to harm Resident A but could not yet be satisfied that if faced with similar [PRIVATE] and a pressurised work environment you would not repeat your actions. The panel therefore determined that there is a risk of repetition of your behaviour and that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 profession and upholding the proper professional standards.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case in order to mark the seriousness of the misconduct. The panel 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 due to your misconduct.

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.

Submissions on sanction

Mr Kewley informed the panel that in the Notice of Hearing, dated 10 July 2023, the NMC had advised you that it would seek the imposition of an interim conditions of practice order for 12 months if it found your fitness to practice currently impaired. He submitted that this was still the appropriate sanction in light of the panel's findings.

Mr Kewley identified the aggravating features of the case as the vulnerability of Resident A, that it was conduct that was capable of causing emotional harm to Resident A, and the absence of full insight into the concerns.

Mr Kewley identified the mitigating features as a single incident in an otherwise, unblemished and long career as a nurse without any previous regulatory concerns, and some evidence of early recognition by you that your actions were inappropriate. He submitted that there is no suggestion that you had set out intentionally to cause harm. He also submitted that there is some insight, albeit there is no evidence of it being demonstrated in a clinical setting.

He suggested some conditions that will enable you address the concerns. These include:

- Indirect supervision and not being the only nurse on duty
- A personal development plan PDP focussed on responding to challenging behaviour from patients/residents.
- Further training around managing challenging behaviour.

- Regular meeting with line manager and submitting a report commenting on above issues before a review.

You told the panel about your recent care work and highlighted the positive testimonial provided. You told the panel that you were keen to return to nursing, were open to undergo further training and are willing to comply with conditions.

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 Sanction Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- The vulnerability of Resident A
- Your conduct was capable of causing emotional harm to Resident A
- Your insight into the concerns is not yet fully developed

The panel also took into account the following mitigating features

- Single incident in otherwise long and unblemished nursing career
- Evidence of early recognition by you that your actions were inappropriate
- Personal and workplace stressors you faced at the time of the incident
- The incident was unplanned and there was no malice
- Expression of remorse

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the risk of repetition that it had identified. 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 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 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 determined it was reasonable and proportionate and found the following factors, which indicated that such an order may be appropriate, were present in your case:

- *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 practicable conditions which would address the failings highlighted in this case. The panel noted that you would be willing to comply with conditions of practice.

The panel had regard to the fact that these incidents happened around five years ago. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to practise as a nurse.

Balancing all of these factors, the panel determined that 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 would be disproportionate and would not be a reasonable response in the circumstances of your case because it would not strengthen or support your nursing practice. The panel was of the view that there are workable conditions which can be formulated to protect the public and it was in the public interest that you remained practising as a nurse. The panel considered that you have the potential to be a good nurse, once you have had the opportunity to strengthen your nursing practice.

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 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 ensure that you are supervised at 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.

2. You must work with your line manager to create a personal development plan (PDP). Your PDP must address the concerns about:
   - How you will deal with challenging behaviour or difficult situations giving clear examples of the strategies you would use.
   - Managing workplace stressors.

   You must:
   a) Meet with your line manager at least every month to discuss your progress towards achieving the aims set out in your PDP.
   b) Send your case officer a copy of your PDP 2 weeks before the next NMC review hearing.

3. You will send the NMC a report seven days in advance of the next NMC hearing or meeting from your line manager or supervisor.

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.
   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 organisation with which you volunteer in a nursing capacity.
   b) Any current or future employer.
   c) Any educational establishment.

d) Any other person(s) involved in your retraining
and/or supervision required by these conditions.

The period of this order is for 12 months, which is to allow you sufficient time to gain employment and strengthen your practice in the areas of concern.

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 and attendance at hearings
- Testimonials from any paid or unpaid work
- A reflection on the impact of your misconduct on patients, colleagues, and the wider profession/public

Interim order

As the substantive 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 and is otherwise in the public interest or in your own interests until the substantive 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 Kewley. He submitted that an interim order for 18 months was necessary for public protection and otherwise in the public

interest and that the substantive conditions of practice order cannot take effect until the end of the 28-day appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that 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.

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.

This will be confirmed to you in writing.

That concludes this determination.