Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing
Monday, 13 February 2023 – Friday, 17 February 2023
Wednesday, 11 October 2023- Friday, 13 October 2023

Virtual Hearing

Name of Registrant:	**Dora Margaret Pasirayi**
NMC PIN	98E0136E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nurse (Level 1) - 6 October 2001
Relevant Location:	Essex and Tendring
Type of case:	Misconduct
Panel members:	Bryan Hume (Chair, lay member) Richard Lyne (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Michael Hosford-Tanner
Hearings Coordinator:	Nandita Khan Nitol
Nursing and Midwifery Council:	Represented by Dan Santos-Costa, Case Presenter
Ms Pasirayi:	Present and represented by Jennifer Agyekum, instructed by the Royal College of Nursing (RCN) (13 February 2023 – 17 February 2023) Present and represented by Sam Shurey, instructed by the Royal College of Nursing (RCN) (11 October 2023 – 13 October 2023)
Facts proved by admission:	Charges 1b), 1d)ii) and 2 (in relation to physical abuse only)
Facts proved:	Charge 3
Facts not proved:	Charges 1a), 1c), 1d)i) and 1d)iii)

Fitness to practise:	Impaired
Sanction:	**Suspension order (6 months)**
Interim order:	**Interim suspension order (18 months)**

Details of charge

That you, a registered nurse:

1. On 17/18 July 2020:

    a. Having witnessed Colleague A be verbally abusive to Patient A, failed to intervene and/or escalate.

    b. Having witnessed Colleague A be physically abusive to Patient A, failed to intervene and/or escalate.

    c. Allowed Patient A to be secluded when there was no clinical reason for seclusion.

    d. Failed to report:

        i. the verbal abuse;

        ii. physical abuse;

        iii. inappropriate seclusion;

        of Patient A to safeguarding or at all.

2. Subsequent to the events set out at charge 1, created an inaccurate statement in that you omitted to record the verbal and/or physical abuse of Patient A and/or Patient A's inappropriate seclusion.

3. Your actions at charges 1d and 2 were dishonest in that you were seeking to conceal the abuse Patient A had suffered and/or Patient A's inappropriate seclusion.

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

Background

The NMC received a referral on 27 July 2020 from Cygnet Health Care

Services. You had worked at Yew Trees Hospital (the Hospital) as an agency nurse where you picked up regular shifts and were the nurse in charge on the night of the incident. It is alleged that on the night of 17 - 18 July 2020 at 01:07 am, you witnessed an assault on a vulnerable patient (Patient A) with a learning disability at the Hospital and allegedly did nothing to stop the incident. The assault is alleged to have been both physical and verbal abuse by a male support worker (Colleague A) in that they slapped, kicked and dragged Patient A by the arms around the floor which you witnessed.

After the assault took place, Colleague A kept Patient A in her room in seclusion. The incident was captured on CCTV footage. You had allegedly made no adequate record of this incident at the time as required within the policy at the Hospital.

The Hospital had requested a statement from you. You allegedly provided an inaccurate account of the events within this statement.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Agyekum on your behalf, who informed the panel that you made admissions to charges 1b), 1d)ii) and 2 in relation to physical abuse only.

The panel therefore finds charges 1b), 1d)ii) and 2 in relation to physical abuse only, by way of your admissions.

Decisions and reasons on facts

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 Santos-Costa on behalf of the Nursing and Midwifery Council (NMC), Ms Agyekum on behalf of you and Ms Catherine Collins on behalf of Ms Damilola Akinkugbe (another registrant involved in this case).

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

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

- Witness 1: Operations Director of Cygnet Health Care at the time

The panel also heard evidence from both the registrants under oath.

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

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

Charge 1a)

That you, a registered nurse:

1. On 17/18 July 2020:

    a. Having witnessed Colleague A be verbally abusive to Patient A, failed to intervene and/or escalate.

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral and documentary evidence and the CCTV footage.

The panel comprehensively viewed the CCTV footage and noted that the video did not have any sound to consider the verbal aspect of the conversation. The panel took account of the documentary evidence and heard in evidence that Patient A was profoundly deaf and required the assistance of Makaton as a visual tool for communication. The panel noted from the CCTV that Colleague A was using exaggerated hand gestures in order to communicate with Patient A. The panel also heard in evidence that there was a lot of noise in that Patient A was shouting and the patient from the adjacent room (room 7) was also shouting at the time of the incident.

The panel determined that the tendency and or need to be loud and expressive was to communicate with Patient A and due to all the noises at the time of the incident in conjunction with the fact Patient A was deaf. The panel received no evidence to assist as to whether the hand gestures used were consistent with the use of Makaton.

The panel took into account the background information that it heard in evidence and the evidence of the two registrants, and it determined that in the absence of any independent witnesses, the panel was not satisfied to infer from the soundless CCTV that the verbal communication was abusive.

Therefore, the panel was not satisfied that you were in breach of any duty by not intervening or escalating the issue on the basis of Colleague A being verbally abusive to Patient A.

Accordingly, this charge is found not proved.

Charges 1c), 1d)i), 1diii)

That you, a registered nurse:

1. On 17/18 July 2020:

   c. Allowed Patient A to be secluded when there was no clinical reason for seclusion.

   d. Failed to report:

      i. the verbal abuse;

iii. inappropriate seclusion;

of Patient A to safeguarding or at all.

This charge is found NOT proved.

The panel took into account of the definition of seclusion from the Hospital policy guidance, which states that:

> *'Seclusion refers to supervised confinement and isolation of the individual, away from other individuals, in an area from which the individual is prevented from leaving, where it is of immediate necessity for the purposes of containment of severe behavioural disturbance which is likely to cause harm to others.'*

The panel considered the definition from the Hospital policy and determined that by that definition, and by the plain meaning of the word, Patient A was secluded as she was prevented from leaving her room and did not have the free will to wander around in the hospital which was a deprivation of liberty.

However, the panel determined that there were clinical reasons behind Patient A's seclusion.

The panel considered the CCTV footage along with the oral evidence of Witness 1 and the evidence from both the registrants. The panel heard in oral evidence, which was not challenged, that the patient in room 7 made threats to harm Patient A, who had disturbed her and was trying to enter her room. It also heard in evidence that prior to the incident in question earlier in the evening, Patient A behaved similarly. At that previous incident, the Hospital staff struggled to get her to come away from room 7 and the patient in Room 7 was making threats. They managed to get Patient A to her bed at 11:00 pm and settled her.

The panel noted the evidence of Witness 1, where he said that there was no clinical reason for seclusion, and that Patient A was at no immediate harm to herself or

anybody else. However, it also noted that Witness 1 was not aware of any earlier incidents, nor was he aware of Patient A's care plan.

The panel accepted the oral evidence from you that there was a clinical reason to seclude Patient A for her own safety and for the safety of others. The patient in room 7 was threatening to attack her and that Patient A was continually going back to the door of room 7, which resulted in her being put at risk.

The panel did not find that Colleague A was verbally abusive to Patient A in 1a) and that the seclusion was inappropriate. Therefore, the panel was not satisfied that you were in breach of any duty to report the matters alleged and did not amount to a failure.

Accordingly, this charge is found not proved.

Charge 2

That you, a registered nurse:

2. Subsequent to the events set out at charge 1, created an inaccurate statement in that you omitted to record the verbal and/or physical abuse of Patient A and/or Patient A's inappropriate seclusion.

This charge is found proved.

In reaching its decision the panel considered its previous decision for charge 1a), 1d). The panel did not find the charge in 1a), 1d)i) and 1d)iii) proved and therefore, did not consider the omission of the record of verbal abuse or inappropriate seclusion to be inaccurate.

The panel took into account your admission at the hearing in relation to Charge 2 in respect of physical abuse.

Accordingly, this charge is found proved in relation to the omission to record physical abuse.

Charge 3

That you, a registered nurse:

2. Your actions at charges 1d and 2 were dishonest in that you were seeking to conceal the abuse Patient A had suffered and/or Patient A's inappropriate seclusion.

This charge is found proved.

In reaching its decision the panel considered its previous decision for charge 1d). The panel did not find the charge in 1d)i) and 1d)iii) proved and therefore, did not consider the lack of reference to verbal abuse or seclusion to be dishonest.

The panel took into account your admission to charge 1d)ii). The panel also took account of the CCTV footage and the documentary evidence produced by both the registrants.

The panel is satisfied that you were dishonest in seeking to conceal the physical abuse that Patient A had suffered.

The panel took into account that you admitted that you failed to report the physical abuse of Patient A. The panel accepted the evidence that an incident report was produced which would lead to a CCTV review, but the panel considered that there was a need to identify the physical abuse and alert any management reviewer to this. This would have been appreciated you.

The evidence from the registrants was that the two registrants acted as a team although technically, you were nurse in charge. The electronic incident report was made by Ms Akinkugbe, but her evidence was that she consulted others including you when

compiling it. You gave evidence that your verbal handover to the next shift had included more detailed reference to the incident and had mentioned that Patient A had been dragged. However, the panel concluded that it is unlikely that the matters handed over differed significantly from the incident report or your handwritten statement.

With regards to handwritten statements, the panel considered that they were evidence of a continuation of the intention by each of the registrants to conceal the physical abuse suffered by Patient A.

The panel found that the circumstances and background are such that when the incident report was logged, you knew about your error of not taking any action about the physical abuse at the time of the incident. The report was designed to conceal and create misleading impression that it would seem so minor that CCTV would not get reviewed with the full vigour that would follow if physical abuse on a patient by a member of staff had been clearly identified.

In reviewing the evidence, the panel determined that it was reasonable to infer that as a registered nurse you would have known that the incident amounted to a physical abuse. The panel noted that you had a duty to report under the policy and also based on registered nurse's wider duty of candour. The panel considered carefully the alternative explanations that your course of action might have been innocent, with no intention to conceal the physical abuse, but no such explanation was credible. The panel is satisfied that each of the registrants intended to conceal the physical abuse and knew that was dishonest.

In light of the above, the panel found your actions were dishonest according to the standards of ordinary decent people.

The panel therefore found charge 3 proved in respect of charges 1d)ii) and 2 (in relation to physical abuse) on the balance of probabilities.

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 has considered your case separately from that of Ms Akinkugbe.

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 and impairment

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 further took into account the test of '*a serious departure from acceptable standards*' approved in case of *Johnson and Maggs v NMC* [2013] EWHC 2140 (Admin).

Mr Santos-Costa invited the panel to take the view that the facts found proved amount to misconduct. Mr Santos-Costa referred to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in

making its decision. He identified the specific, relevant standards where your actions amounted to misconduct.

In respect of charge 1b) Mr Santos-Costa submitted that the conduct constitutes neglect of a vulnerable adult. He said that Patient A was especially vulnerable as she was detained under section 3 of the Mental Health Act 1983 including being profoundly deaf and suffering from learning difficulties. Mr Santos-Costa drew the panel's attention to the CCTV footage where it showed that Patient A was physically abused by Colleague A. He submitted that Patient A was struck on the arms multiple times and kicked once in the leg when Colleague A pulled her and dragged Patient A across the floor and eventually dragged her into the bedroom with the assistance of another member of staff.

Mr Santos-Costa submitted that this was an undeniable incident of physical abuse where Patient A was at risk of psychological and physical harm. He also submitted that it has never been part of the NMC's case that either you or Ms Akinkugbe were responsible for that physical abuse. However, Mr Santos-Costa submitted that Patient A was in the care of both you and Ms Akinkugbe and that there was no contextual background which could justify your and Ms Akinkugbe's failure to intervene and escalate having witnessed the incident.

Mr Santos-Costa submitted that both you and Ms Akinkugbe failed to report the physical abuse at all. On the contrary, he submitted that at the fact stage there were repeated mentions of a desire not to upset or arouse another volatile patient which suggested that both you and Ms Akinkugbe were more concerned with maintenance of peace and stability on the ward at the expense of Patient A in those circumstances. Mr Santos-Costa submitted that this behaviour suggested attitudinal issues.

Mr Santos-Costa pointed out to the panel that it is a fundamental duty of a practitioner to maintain and prioritise patient safety and part of that maintenance is timely reporting of incidents involving abuse of patients. Mr Santos-Costa submitted that both you and Ms Akinkugbe were responsible for leaving Patient A exposed to an unwarranted risk of harm due to both of your failing to intervene in the physical abuse along with the

subsequent failure to report the incident and thereafter creating inaccurate statements which omitted to record the physical abuse.

Therefore, Mr Santos-Costa submitted that your actions in the charges found proved/admitted did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

Mr Santos-Costa moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2007] EWHC 581 (Admin).

Mr Santos-Costa submitted that all four limbs of *Grant* are engaged in this case. Mr Santos-Costa submitted that both your and Ms Akinkugbe's actions in failing to intervene in the physical abuse and the subsequent concealment of the nature of the physical abuse breached the professional duty of candour. He further submitted that your failings put Patient A at a real risk of harm, your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

However, Mr Santos-Costa submitted that it is a matter for the panel's own judgement as to whether and to what extent you have demonstrated insight, and what significance to attach in this case to the presence or lack of insight.

Mr Santos-Costa submitted that you have given some evidence of insight but that has been insufficient. He submitted that your evidence was more around regret at being labelled dishonest and less about the need to protect the patient. He submitted that you have not yet been able to demonstrate that you have sufficiently strengthened your practise. You have not practised since October 2020 and have therefore not had the opportunity to strengthen your practise with the interim conditions imposed. Mr Santos-Costa further submitted that the panel do not have the reassurance of any period of

incident free practice without further concern, to assure them of no risk of repetition. Therefore, Mr Santos-Costa submitted that there is a risk of repetition based on the developing insight and the lack of full remediation or strengthened practise which requires a finding of impairment on public protection grounds.

Mr Santos-Costa submitted that in view of the seriousness of the case, public confidence in the profession would be undermined and a finding of impairment is required on the grounds of public interest.

Having regard to all of the above, Mr Santos-Costa invited the panel to make a finding that your fitness to practise is currently impaired.

Mr Shurey's submissions on misconduct and impairment

Mr Shurey accepted that your actions amounted to misconduct, although he submitted that your failings should not be conflated with the physical abuse by Colleague A and then moved on to the submissions on impairment.

Mr Shurey submitted that your fitness to practise is currently not impaired.

In respect of public protection, Mr Shurey submitted that there is no risk of repetition or risk of harm. Mr Shurey drew the panel's attention to your good character and the fact that you have no prior or subsequent regulatory hearings indicating that this was a one-off incident and that the misconduct in this case is unlikely to be repeated again.

Mr Shurey submitted that you are remorseful of what happened. Whilst you had contested the dishonesty charge, Mr Shurey referred to the case of *Sawati v The General Medical Council* [2022] EWHC 283 (Admin) and said a distinction needs to be made between primary and secondary dishonesty allegations. He pointed out to the panel that in this case the dishonesty is in the category of secondary dishonesty such as aggravating a primary allegation of misconduct.

Mr Shurey drew the panel's attention to the fact that apart from the dishonesty charge you made full admissions to the proven charges, and he invited the panel to attach significant weight to your admissions. He submitted that you have acknowledged where things have gone wrong at the outset of the proceedings and have a better understanding of the impact of the incident. Therefore, Mr Shurey submitted that there a reduced chance of doing the same again. Additionally, Mr Shurey submitted that there had never been any suggestion of any kind of personal gain or benefit arising from particularly the dishonesty in relation to this case and let alone any kind of financial impropriety.

Mr Shurey submitted to the panel that although, unfortunately you were not able to secure employment and did not have the opportunity to work in a similar environment, you have shown genuine motivation through your continuous effort to obtain a nursing role. Mr Shurey drew the panel's attention to the positive testimonials and completed additional training.

Mr Shurey submitted that you are an experienced nurse, and you know what is expected of you and you have given evidence that you have learned from this incident. He further submitted that you have shown high levels of insight which is consistent with your previous good character and early admissions.

Finally, Mr Shurey submitted that there is no risk of public protection and considering your insight, training and testimonials a member of the public would not be surprised, notwithstanding a possible finding of misconduct, that you are not currently impaired in your ability to practise safely and contribute properly to the nursing profession.

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 accepted the advice of the legal assessor which included reference to a number of additional relevant judgments namely Remedy *UK Ltd v GMC* [2010] EWHC 1245 (Admin), *Sayer v General Osteopathic Council*

[2021] EWHC 317 (Admin) and *Amao v NMC* [2014] EWHC 147(Admin).The panel took account of additional authorities referred to in submissions above.

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:

> *'1.1 treat people with kindness, respect and compassion.*
> *1.2 make sure you deliver the fundamentals of care effectively.*
> *1.5 respect and uphold people's human rights.*
>
> *3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care.*
>
> *10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need.*
> *10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.*
>
> ***14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place.***
> *To achieve this, you must:*
> *14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm.*
> *14.3 document all these events formally and take further action (escalate) if appropriate so they can be dealt with quickly.*
>
> ***16 Act without delay if you believe that there is a risk to patient safety or public protection.***
> *To achieve this, you must:*
> *16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other*

healthcare setting and use the channels available to you in line with our guidance and your local working practices.

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.
20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress'.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the breaches of the Code did amount to misconduct due to the extent of omissions on your part and the dishonesty. The panel noted that you initially witnessed the assault but refrained from taking any immediate action to intervene or halt the incident. Furthermore, in the panel's judgement your failure to report and record the incident, when you were the nurse in charge and also when you gave a statement to your employer, were acts of concealment of the assault which constitutes a dishonest action.

The panel considered that Patient A was exposed to an unwarranted risk of harm through your failure to intervene and then the subsequent failure to report and/or escalate this. The panel noted that you took no steps to minimise the unwarranted risk of harm that Patient A had been exposed to and, your failure to record and report it left other patients at risk of similar behaviour from Colleague A.

The CCTV evidence showed that you witnessed the initial physical assault by colleague A namely by hitting and a kick, although you did not witness Patient A being dragged twice across the floor by Colleague A and another Care assistant. The panel considered that it was not a question of incorrect technique being used by Colleague A, but rather a plain physical assault on a vulnerable patient. The NMC Code provides that nurses must act as advocates for their patients and must do everything possible to protect them from harm.

Based on all the evidence, the panel was of the view that your conduct was deplorable in the particular circumstances of this case.

The panel found that your acts and omissions above did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct in each and all of the charges found proved.

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

The panel determined that all four limbs of the *Grant* test are engaged.

The panel considered Mr Shurey’s submissions, along with the reference to relevant case law, namely, that the panel should not make a determination of impairment on the basis alone of the dishonesty charges being contested.

The panel carefully considered the breaches of the Code and the charges found proved. The panel had regard to the evidence in this case and it found that Patient A was put at risk of unwarranted physical and emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel accepted that it was a one-off incident but it was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to a failure to act to prevent and

escalate the physical assault of a patient by a colleague, compounded by subsequent dishonesty in failing to report and record the assault, as extremely serious.

The panel was of the view that although you have admitted the charges relating to failing to intervene or escalate matters when Patient A was subject to physical abuse and thereafter not reporting the incident or creating an accurate record, you have shown only limited insight to what happened as to how would you have done things differently, how you would approach similar circumstances in the future. The panel found that your responses during your evidence failed to demonstrate sufficient insight into the impact of the assault on Patient A and appeared to be more focused on the unfairness of you being labelled as dishonest.

The panel has accepted the submission of Mr Shurey on your behalf that the fact that you have not admitted the dishonesty charge does not preclude the panel from finding that you have gained full insight. The panel has considered all the evidence when determining whether you have gained full insight and the risk of repetition of your misconduct, including Mr Shurey's submissions to take account of your previous good character and the evidence that this was a one-off incident, and that the dishonesty charge is not the primary matter charged.

The panel considered whether you have taken steps to strengthen your practice. Whilst the panel acknowledged the challenges you faced in securing employment due to practice restrictions, it is pertinent to note that the panel had a very limited number of training certificates and no clear evidence of professional development following the incident. As such, the panel was of the view that you have not been able to demonstrate that he you have strengthened your practise.

On this basis and given your limited level of insight into the matters in charges found proved, the panel decided that there is a risk of repetition 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 and midwifery professions and upholding the proper professional standards for members of those professions.

In this regard, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case, where you did not act to protect a vulnerable patient from physical abuse nor record accurately or escalate the matter. It therefore also finds your fitness to practise impaired on public interest grounds.

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 suspension order for a period of six months. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Submissions on sanction

Mr Santos-Costa's submissions on Sanction

In his submissions on sanction, Mr Santos-Costa invited the panel to impose a striking-off order. Mr Santos-Costa outlined what the NMC considered to be the aggravating and mitigating features of this case, and submitted that, because of the seriousness of the facts found proved in this case, the only sanction that would suitably satisfy the public protection and public interest would be to permanently remove your name from the register.

Mr Santos-Costa invited the panel to consider SAN-2, ‘Considering sanctions for serious cases’, of the fitness to practice library when considering its decision.

Mr Santos-Costa reminded the panel that it is under a duty to make sure that any decision to restrict fitness to practise is justified, and being proportionate means striking a fair balance between the nurse’s rights and an understanding of the overarching objective which is public protection. He submitted that a sanction is not necessarily a punishment, and it must go no further than tackling the reasons why the nurse is not currently fit for practise. Mr Santos-Costa also reminded the panel that the interests of the registrant must be somewhat weighed against the public interest in appropriately sanctioning a registrant whose fitness to practise is currently impaired, taking into account any aggravating or mitigating features. He added that if the sanction is not enough to achieve public protection, the panel should consider the next most serious sanction. He pointed out to the panel that when the panel finds the sanction that is enough to achieve public protection, then it has gone far enough.

Mr Santos-Costa referred to the Guidance which states that the purpose of regulatory proceedings is to protect the public and not to punish the nurse, therefore mitigating features carry less weight than they otherwise would in the Criminal Justice System, for example (*Bolton v Law Society* [1994]1 WLR 512).

Mr Santos-Costa submitted whilst dishonesty will always be serious, that there is no general rule and no general assumption that dishonesty will always attract a striking-off order. The panel must approach it in exactly the same proportionate way that it would with any other type of misconduct.

Mr Santos-Costa referred to the guidance and submitted that dishonest conduct would generally be less serious in cases of one-off incident, opportunistic or spontaneous conduct where there is no direct personal gain. He submitted that your dishonesty was a deliberate breach of professional duty of candour by covering up when things have gone wrong and that is indicative of an attitudinal concern which has not been put right. Therefore, he submitted that there is a risk of repetition and that your conduct

fundamentally undermines public confidence in the nursing profession and the conduct that the public would expect of a nurse namely to act with honesty, integrity and professionalism.

Mr Santos-Costa submitted that any lesser sanction than a striking-off order would be insufficient to protect the public and to meet the public interest as your behaviour was fundamentally incompatible with continued registration.

Mr Shurey's submissions on Sanctions

Mr Shurey requested the panel to impose a sanction that permits you to resume to practice as a nurse without a period of suspension. He echoed the submissions of Mr Santos- Costa regarding seriousness and dishonesty and reminded the panel that it is not bound to confine its consideration of sanction to one that involves a period of suspension or strike off.

Mr Shurey reminded the panel that it has all the sanctions available in ascending order, starting with a caution order, which can be from one to five years, then going up to conditions of practice orders, suspension orders and striking off.

Mr Shurey outlined the possible mitigating features of the case for the panel to consider. He submitted that you are of previous good character and that you have provided positive testimonials and that you have made an effort to obtain employment. Mr Shurey emphasised that you accepted all of the primary misconduct in this case, and that your denial of secondary dishonesty in itself should not be held against you.

Mr Shurey submitted that the charges in this case was related to an isolated incident with absolutely no personal gain, and he reminded the panel not to conflate the actions of Colleague A with yours when interpretating the events of the 17-18 July 2020.
Mr Shurey further submitted that the panel should take into account all the circumstances of the incident which was a highly challenging situation along with shortage of staff.

Mr Shurey invited the panel to impose a caution order for a period between one to five years. He submitted that a caution order would mark the seriousness of the misconduct and that the behaviour was unacceptable. He further submitted that it would be recorded and published on the NMC website and disclosed to anyone inquiring about a nurse's fitness to practise history.

Mr Shurey invited the panel to make a caution order but if the panel decides that an order is necessary then it should impose an interim conditions of practice order rather than a period of suspension.

Mr Shurey drew the panel’s attention to the difficulty you are facing in obtaining a nursing job due to your current interim conditions of practice order. He submitted that you are not currently employed and therefore invited the panel to impose less onerous conditions in the substantive order which would maximise your prospect of securing an employment.

Mr Shurey submitted that conditions of practice order would allow you to gain experience and reassure the panel that there will not be any repetition of misconduct. He added that it would give you the opportunity to develop further insight, complete training and contribute to the profession.

Mr Shurey submitted that if the panel should go beyond either the caution or conditions of practice order. He invited the panel to consider suspension for a short period of time without a review rather than a strike -off order which would be disproportionate.

Mr Shurey requested the panel to consider carefully before imposing any onerous order and requested the panel to consider that it was an isolated incident in the context of an otherwise unblemished nursing career.

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:

- Limited insight into your failings
- The incident involved a vulnerable patient.
- You were the nurse in charge and did not ensure correct documentation of the incident.
- Conduct which put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- Early admissions including an acceptance that you should have intervened.
- Not disputing that Colleague A's action was physical abuse.
- Previous good character
- One-off incident where the violence perpetrated was not by you.
- No personal gain in relation to the dishonesty findings.

The panel has weighed the aggravating factors against the mitigating factors and considered that there was significant mitigation despite you not acting promptly when witnessing physical abuse of a vulnerable patient by a colleague.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict 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 bore in mind that your failings in this case, were not related to your clinical practice. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *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 took into account the factors outlined in the SG for imposing a conditions of practice order. It was of the view that workable conditions could theoretically be formulated despite the nature of the charges in this case, if you had demonstrated better insight into your failings. However, noting that you were the nurse in charge, and you failed to act having witnessed an assault namely, striking and kicking a vulnerable patient and thereafter did not report or document the behaviour. The panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

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

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

Having considered that the panel's findings did not fully satisfy the SG relating to a suspension order, the panel went on to consider whether a striking-off order would be proportionate. The panel determined that the regulatory concerns in this case do raise fundamental questions regarding your duty to protect vulnerable patients. However, it took into consideration that the misconduct related to a single incident. The panel determined that public confidence in the nursing profession could be upheld by way of a sanction less than a striking off order given that this was a serious but single incident, set against a long unblemished career as a nurse, supported by some testimonials, and you were the witness to physical abuse rather than the perpetrator. Although you did not promptly report the actual physical abuse you witnessed, you did make early admissions.

The panel decided that a striking off order was not the only order available to protect patients, members of the public, or maintain professional standards.

The panel noted that you were the nurse in charge of shift with a responsibility to ensure patient safety. It determined that your responses during your oral evidence did not adequately demonstrate your insight into the wider impact of your failure to take action regarding the assault of Patient A and your focus appeared to be more on the perceived fairness of being labelled as dishonest. However, the panel concluded, having carefully

considered the guidance in relation to suspension and striking off orders, that the misconduct in this case was not fundamentally incompatible with remaining on the register. In the panel's judgement, this order would provide you with an opportunity for further reflection and to foster the development of further insight.

The panel was of the view that an informed member of the public would be satisfied that this was a reasonable and proportionate sanction in the circumstances. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

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

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

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

Noting the mitigating factors, the panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of testimonials/ references from any current paid or voluntary work.
- A reflective piece addressing the misconduct found by the panel at this hearing.

- Engagement with the NMC and attendance at any future NMC hearing

Interim order

As the suspension 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 suspension sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Mr Santos- Costa. He submitted that an interim order is required as the substantive order will not come into force until the end of the 28-day appeal period. He submitted that an interim suspension order, mirroring the substantive order, for a period of 18 months is required to give assurance that some order would be in place, should you lodge an appeal against this panel's decision. He said that this period is required to allow for this appeal to be heard, and if no such appeal is made, the interim order will fall away in 28-days.

The panel also took into account the submissions of Mr Shurey. He emphasised that the panel should not treat it as an automatic order and that it should make an order as appropriate at this stage.

Decision and reasons on interim order

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

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to cover any potential appeal period.

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

That concludes this determination.

This will be confirmed to you in writing.