Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

Monday 28 October – 8 November 2024
and
Monday 30 June – 3 July 2025

Virtual Hearing

Name of Registrant:	Karen Chamberlain
NMC PIN	16I1996S
Part(s) of the register:	Registered Nurse Adult Nursing – (25 September 2019)
Relevant Location:	Fife
Type of case:	Misconduct
Panel members:	Marnie Hayward (Chair, Lay member) Louise Poley (Registrant member) David Newsham (Lay member)
Legal Assessor:	Trevor Jones
Hearings Coordinator:	Monsur Ali
Nursing and Midwifery Council:	Represented by Jerome Burch, Case Presenter
Miss Karen Chamberlain:	Present and represented by Jennifer McPhee, Instructed by Anderson Strathern
Facts proved:	Charges 1, 4a, 4c, 5b, 5c, 6a, 6b, 6c, 6d and 6e
Facts not proved:	Charges 2, 3, 4b, and 5a
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) On 10 July 2020 said to Patient B words to the effect of *'get back in bed' 'you fucking old bag' and/or 'you are a liar'*

2) On 17 November 2020 said to Patient C, words to the effect of, *'I have already told you-you are not at home, you are in hospital now get back to bed and shut up'*

3) On 17 November 2020 said to Colleague 1 in relation to Patient C, she '*just needs to go to sleep. She's getting annoying'*

4) Between 20-23 February 2022 used inconsiderate and uncompassionate language on several occasions in that you;
    a) said *'shut up'* directed towards Patient A
    b) said *'stop that'* and shoved Patient A's arm away and
    c) stated words to the effect of, *'for fucks sake I've got better things to do I'm busy'* in relation to removing Patient F's catheter.

5) On 15 May 2021 spoke in a rude tone and/or manner towards Patient D and their relative by;
    a) putting a painkiller pot down and saying '*there you are'*
    b) saying to Patient D's daughter *'I gave her paracetamol tablets this morning and she managed them with no problems'*
    c) putting liquid form paracetamol down onto the table and said *'there's your paracetamol it's liquid'*

6) On the dates below worked when it was unsafe for you to do so, in that you worked a day shift immediately after you had completed a night shift;
    (a) 12 and 13 November 2021
    (b) 20 and 21 November 2021

(c) 21 and 22 January 2022
(d) 6 and 7 February 2022
(e) 16 and 17 February 2022

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

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

Ms McPhee, on your behalf, made an application that parts of this case may need to be held in private on the basis that proper exploration of your case involves reference to your health. The application was made pursuant to Rule 19 of the Nursing and Midwifery (Fitness to Practise) Rules 2004 (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Mr Burch, on the behalf of the Nursing and Midwifery Council (NMC) did not object to the application.

The panel decided to hold parts of the hearing which refer to your health in private because it concluded that this was justified by the need to protect your private health matters and that this outweighed any prejudice to the public interest in holding those parts of the hearing in public. However, where there is no reference to your health matters, the hearing would be held in public.

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

Mr Burch on behalf of the NMC made an application pursuant to Rule 31 (1). His application was for the panel to admit as hearsay evidence the witness statement of Witness 14 who has indicated he is unable to attend the proceedings and give oral evidence. Mr Burch supplied information as to endeavours to contact the witness. Initially, it appears the witness did not have all the documents he might be required to refer to in the hearing and was in some difficulty downloading them. Notwithstanding all endeavours to contact the witness, his position is ultimately that he cannot attend *'for personal reasons'*. There is no further information in this regard.

Mr Burch also referred to a number of legal authorities and the panel took full account of the same.

As a result, the NMC submitted the hearsay evidence may not be the sole or decisive evidence, as the panel will hear evidence from another witness in respect of Charge 2, but it is important to admit this hearsay evidence which may lend support to the oral evidence received. This would not in itself be unfair to you as you will give evidence yourself and you will be able to present your case. The weight to be attached to such hearsay evidence will in any event be limited.

In light of all of the circumstances and the efforts made to secure the attendance of the witness it was submitted that the application should be granted.

Alternatively, Mr Burch submitted that the panel could consider its powers under Rule 22. When asked to give more information in this regard Mr Burch indicated that he was unaware of any power for panel to directly secure the attendance of the witness. It could, pursuant to Rule 22, request the NMC to take such steps as it may see fit to secure attendance. For the benefit of the panel he did confirm there is nothing else he or the NMC could do at this stage to secure the witnesses attendance.

On your behalf, Ms McPhee submitted that the admission of this hearsay evidence would be wholly unfair. She (with reference to a number of legal authorities which the panel has taken account of) submitted that the efforts that have been ongoing this week have established firstly, that seemingly the witness was not supplied with the information he might require to give his evidence; and secondly, that latterly he has declined to appear. In those circumstances, within the criteria and guidance that the panel might consider as to what would be just, fairness dictates that the hearsay application should be rejected.

Ms McPhee submitted that Witness 14's evidence is the sole and decisive evidence in respect of Charge 2.

The panel took into account the submissions made by both parties and accepted the advice of the legal adviser. The panel had regard to the interests of justice and remained mindful of the principle of fairness. It balanced the interests of the NMC with your interests.

The panel considered all the case law to which it was referred and this included amongst others citied by the parties: *El Kharout V NMC* [2019] EWHC 28, *R (Bonhoeffer v General Medical Council* [2011] EWHC 1585 (Admin); *Thorneycroft v Nursing Midwifery Council* [2014] EWHC 1565 (Admin). The panel also had regard to NMC Guidance at DMA - 6.

The panel has considered the submissions and material before it very carefully.

The panel noted that it is not routine to admit hearsay evidence, however, where hearsay evidence is admissible, relevance and fairness need to be considered carefully.

The panel considered that the allegations are serious and have the potential for a serious outcome for you. The panel reminded itself that issues of admissibility and weight must be properly separated, and consideration given firstly to whether or not it was relevant and then if it was fair to admit the hearsay evidence. The panel was mindful of the observations of Mr Andrew Thomas QC (sitting as a judge of the High Court) in *Thorneycroft v Nursing Midwifery Council*.

The panel first considered the content of the hearsay evidence and deemed it to be relevant.

The panel was mindful that fairness was also a key issue and that this meant not only fairness to you, but fairness to the NMC and a proper consideration of the public interest in the panel being able to resolve disputed allegations in substantive hearings. It bore in mind that each case was fact specific and turned on its own merits as to what was fair in the circumstances.

Whilst the NMC have taken a number of steps during the course of the hearing so far to secure the attendance of Witness 14, the panel was without any cogent reason for his failure to attend. It considered that any further efforts were unlikely to bring about attendance without adjourning the proceedings to the inconvenience of all parties and proper and timely disposal of the case.

The panel considered there was no basis for Witness 14 to fabricate their evidence.

The panel having considered all of the evidence before it, is satisfied that Witness 14's evidence is sole and decisive in respect of Charge 2 and it is contested by you. Whilst the weight to be attached to the hearsay evidence may be limited, the opportunity to consider reliability of the witness accounts, if there is disparity between them, would be lost if the witness statement was admitted as hearsay. The panel put into the balance the consequences of admitting this evidence which would mean that the evidence could not be tested under cross examination.

Considering all the prevailing factors upon which it has been addressed, the panel decided that it would be unfair to you to permit the NMC to rely on Witness 14's written statement and its exhibits. In reaching its decision, the panel took into account that, were the hearsay evidence to be admitted, it would be unfair as you would be denied the opportunity to test it. The panel had regard to the fact that these allegations are strongly contested, go to serious allegations and could be potentially career ending.

Accordingly, the panel determined that it was in the interests of justice not to grant the NMC's application to admit the hearsay evidence of Witness 14.

Background

You qualified as a nurse in September 2019 and had been working for NHS Fife at the [PRIVATE] (the Hospital), where the allegations against you originated. You began working there around 2017, prior to your qualification. NHS Fife referred the matter to the NMC on 4 January 2023. The concerns listed in the allegations include verbal and physical abuse toward patients, including an instance of allegedly *'shoving a patient's arm away'*. Additionally, there are claims of rude, inappropriate, and unprofessional conduct directed toward both patients and a patient's relative.

One particular concern relates to working back-to-back night and day shifts, which could be interpreted as prioritising personal interests over patient safety. The incidents primarily took place on Ward 41 (Medicine for the Elderly) at the Hospital. The time frame of the concerns is from 2020 to 2022, when you were employed as a staff nurse.

The first charge dates back to 10 July 2020, concerning Patient B. On 17 November 2020, additional allegations arose regarding unprofessional conduct toward Patient C. Further incidents occurred in February 2022, involving uncompassionate language and the alleged shoving of Patient A's arm.

In May 2021, there were allegations related to Patient D and their relative, where you were accused of responding in a rude manner. Concerns about consecutive night and day shifts also arose, with specific incidents recorded between November 2021 and February 2022. There were five occasions when you allegedly worked day shifts immediately after a night shift.

Decision and reasons on facts

With regards to Charge 6, the panel heard from you initially that although you admitted working these shifts, you denied that this was unsafe. However, during the course of your oral evidence you conceded that it was unsafe. Ms McPhee did not address the panel further in respect of this charge on your behalf and the panel has recorded that you have admitted Charge 6 in its entirety.

The panel therefore finds Charges 6a, 6b, 6c, 6d, and 6e proved in their entirety, by way of your admissions.

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 Burch on behalf of the NMC and those made by Ms McPhee on your behalf.

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

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

- Witness 1: Employed as a Clinical Nurse Manager at the Hospital.
- Witness 2: Employed as a Healthcare Support Worker on ward 41 at the Hospital.
- Witness 3: Employed as a Staff Nurse on Ward 41 at the Hospital.

- Witness 4: Employed as a Staff Nurse at the Accident and Emergency department at the Hospital.
- Witness 5: Employed as a Staff Nurse at the Ear, Nose and Throat department at the Hospital.
- Witness 6: Employed as a Charge Nurse on Ward 41 at the Hospital.
- Witness 7: Patient D's daughter
- Witness 8: Employed as a Senior Charge Nurse on ward 41 at the Hospital.
- Witness 9: Employed as a Clinical Nurse Manager at the Hospital.
- Witness 10: Employed as a Clinical Nurse Manager for the NHS Fife nurse bank.
- Witness 11: Employed as the General Manager for the Emergency Care Directorate at the Hospital.
- Witness 12: Employed as a Bank Nurse Auxiliary at the Hospital.

The panel also heard evidence from you under affirmation.

The panel also heard live evidence from the following witness called on your behalf:

- Witness 13: Employed as a Bank Nurse Auxiliary at the Hospital.

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 by you.

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

Charge 1

"On 10 July 2020 said to Patient B words to the effect of 'get back in bed' 'you fucking old bag' and/or 'you are a liar"

This charge is found proved.

In reaching this decision, the panel carefully considered your evidence alongside the evidence of Witnesses 2 and 3.

Witness 2, in her written statement dated 5 May 2023, which she confirmed during her oral evidence, stated:

> *'I heard Ms Chamberlain say, 'Get back to bed.' She shouted this in a firm tone… I saw Ms. Chamberlain get up from the red team's desk and walk toward the red team bay. I then heard the patient say loudly, 'Remove your hands from me.'… I then heard Ms Chamberlain say, 'You fucking old bag, stop lying.' She said this very loudly and in an aggressive tone.'*

In her written statement dated 14 April 2023, Witness 3 also reported:

‘Around 04:30, I was sitting at the green team's nursing station which is situated at the bottom of the ward. Ms Chamberlain was at the other end of the ward at the red nursing station… I heard her shout, 'You fucking old bag,' She shouted this abruptly and I heard it all the way from the other end of the ward.’ I was very surprised by what I had heard, it did not sound right or like something that should have been said. I recognised the voice as Ms Chamberlain’s.’

You told the panel that you had heard the witnesses colluding to fabricate their accounts. However, in response to panel questions, your account was at times contradictory, and the panel found your evidence in this respect implausible.

The panel was mindful that you do not have to prove anything but when considering all the available evidence, it found the NMC witnesses to be consistent overall, in particular, that they heard you saying *“you fucking old bag”,* despite having been cross-examined closely on your behalf.

The panel preferred the witnesses’ evidence over yours. Therefore, on the balance of probabilities, the panel determined that this charge is found proved.

Charge 2

“On 17 November 2020 said to Patient C, words to the effect of, 'I have already told you-you are not at home, you are in hospital now get back to bed and shut up”

This charge is found NOT proved.

In reaching this decision, the panel carefully considered your evidence alongside that of Witness 4.

The panel noted that Witness 4’s evidence was the sole evidence in relation to this incident. Witness 4 stated that you said to Patient C *“go to sleep and shut up”.* In her oral evidence Witness 4 stated that she did not hear ‘*'I have already told you-you are not at*

home, you are in hospital now get back to bed…'. She stated that Patient C was already in bed at this time which was consistent with your account. The panel heard no further evidence in support of this charge and therefore based on all the available evidence this charge is found not proved.

Charge 3

> *"On 17 November 2020 said to Colleague 1 in relation to Patient C, she 'just needs to go to sleep. She's getting annoying"*

This charge is found NOT proved.

In reaching this decision, the panel carefully considered your evidence alongside that of Witness 4.

In her written statement, Witness 4 described an exchange as follows*:*

> *'..As we were walking to the clean utility where the controlled drugs cupboard is, I said to Ms Chamberlain, 'You can't speak to patients like that.' I recall she rolled her eyes at me and replied, 'She (Patient C) just needs to go to sleep. She's getting annoying.' She said this in an annoyed tone.'*

You told the panel that Patient C was throwing tea and toast across the ward which was disturbing other patients, and you were concerned for their safety. You stated that you had told Witness 4 that *"it's getting annoying"* referring to the situation rather than the patient. You said that Witness 4 may have misheard you because you were wearing a mask.

The panel considered that both interpretations are equally plausible and determined that the NMC has not discharged its burden of proof and therefore found this charge not proved.

Charge 4a

"Between 20-23 February 2022 used inconsiderate and uncompassionate language on several occasions in that you;

a) said 'shut up' directed towards Patient A"

This charge is found proved.

In reaching this decision, the panel carefully considered your evidence alongside that of Witnesses 5, 6 and 13.

You said that Patient A was shouting, and you told him to *"stop shouting, I've just been in to you".* You denied saying *"shut up".*

In her written statement dated March 24, 2023, Witness 5 stated:

> *'I cannot recall exactly what Patient A was shouting, but it was for help, and he shouted this several times. I do not recall hearing him shout for help prior to this. Ms. Chamberlain responded to Patient A by saying something along the lines of, 'Oh shut up, will you,' in an abrupt tone, and she repeated this a few times.'*

The panel found that Witness 5 provided clear and consistent evidence during cross-examination. This was further supported by a contemporaneous Datix report submitted by Witness 5 in respect of the incident. Additionally, Witness 6 informed the panel that Witness 5 reported the incident to her the following day.

The panel also considered the testimony of Witness 13, who stated that she did not hear anything. However, it acknowledged that Witness 13 was occupied within the ward at the time and may simply have missed the words in question.

Based on the above evidence, the panel determined that this charge is found proved.

Charge 4b

b) *“said ‘stop that’ and shoved Patient A's arm away and”*

This charge is found NOT proved.

In reaching this decision, the panel carefully considered your evidence alongside that of Witnesses 5 and 13.

In her written statement, Witness 5 described the incident as follows:

> *‘… I heard Ms Chamberlain say, ‘Stop that,’ maybe two times. She said it firmly. I thought it was because Patient A was flailing his arms around. I did see that with both hands, Ms Chamberlain shoved his left arm. It was not a light shove but it was forceful and excessive force. I said ‘Oi steady’ to her because her action took me by surprise.*

Conversely, Witness 13 stated that she did not observe any shoving and believed she would have noticed if it had occurred because she was also attending to the patient’s personal care at that time.

After thoroughly reviewing both accounts, the panel recognised that Witness 5’s testimony described seeing the alleged shove, while Witness 13’s account conflicted, suggesting she did not see the arm being pushed despite being near the patient. Given the conflicting nature of these testimonies and your denial of this charge, the panel could not determine, on the balance of probabilities, that the incident occurred as described. Therefore, it found this charge not proved.

Charge 4c

c) *“stated words to the effect of, 'for fucks sake I've got better things to do I'm busy' in relation to removing Patient F’s catheter.”*

This charge is found proved.

In reaching this decision, the panel carefully considered your evidence alongside that of Witness 12.

It noted that Witness 12’s evidence that she approached you for assistance with the catheter on more than one occasion was consistent with your account.

In her written statement dated 9 August 2023, Witness 12 stated:

> *‘Ms Chamberlain said to me that she did not have time to take the catheter out for this patient and that she had other things to do. Her words were 'For fuck sake I've got better things to do, I'm busy.' She was busy doing medications at the time. She sounded ratty and she said this outside the patient's room, in the doorway. The patient may have therefore heard her and other patients may also have overheard her talking.’*

It was submitted on your behalf that the identity of Patient F was not established in the evidence. The panel did consider the available evidence and found that the patient is identified in the evidence of Witness 9 as Patient F.

You explained to the panel that this was the first occasion you had been in charge of the ward and that it was very busy.

The panel concluded that there was no reason for Witness 12 to fabricate this allegation as she had not worked with you before. Having considered the above, the panel found this charge proved.

Charge 5a

"On 15 May 2021 spoke in a rude tone and/or manner towards Patient D and their relative by;

a) putting a painkiller pot down and saying 'there you are"

This charge is found NOT proved.

In reaching this decision, the panel carefully considered your evidence alongside that of Witness 7.

In her written statement dated 4 March 2023, Witness 7 stated:

> *On 15 May 2021, it was around lunchtime and I was visiting my mother. The nurse looking after her was Ms Chamberlain. I had not previously met Ms Chamberlain. I cannot recall if I asked Ms Chamberlain if my mother could have paracetamol or if Ms Chamberlain brought it to my mother because it was due. She brought a medicine pot containing paracetamol to my mother and put the pot down on her bedside table. She then walked off.'*

The panel noted that you put the paracetamol pot down on the bedside table. However, there is no evidence before the panel which suggests that this was done in a rude manner towards Patient D or Witness 7. The panel therefore determined that this charge is found not proved.

Charge 5b and 5c

b) "saying to Patient D's daughter 'I gave her paracetamol tablets this morning and she managed them with no problems'

c) *putting liquid form paracetamol down onto the table and said 'there's your paracetamol it's liquid"*

These charges are found proved.

In reaching this decision, the panel carefully considered your evidence alongside that of Witness 7.

In her written statement dated 4 March 2023, Witness 7 stated:

> *On 15 May 2021, it was around lunchtime and I was visiting my mother. The nurse looking after her was Ms Chamberlain. I had not previously met Ms Chamberlain. I cannot recall if I asked Ms Chamberlain if my mother could have paracetamol or if Ms Chamberlain brought it to my mother because it was due. She brought a medicine pot containing paracetamol to my mother and put the pot down on her bedside table. She then walked off.'*
>
> *'I said to Ms Chamberlain, 'Excuse me my mother does not take paracetamol tablets, she needs liquid..' but before I could finish she had walked away from me and was in the middle of the ward. From there she said abruptly, words to the effect of; 'well I gave her paracetamol tablets this morning and she managed them with no problem.'*
>
> *'… I took the pot off my mother and said to her, it is okay, I will go and get her, meaning Ms Chamberlain. Before I could get her, I heard a 'tap' on the bedside table and Ms Chamberlain had whacked down another medicine pot and said, 'there's your paracetamol, it's liquid.' Again she left the medicine pot and walked off straight away.'*

Witness 7 further stated that because you did not listen to her and she had to address you while speaking to your back, she [PRIVATE]. Witness 7 made a complaint about the way she had been treated by you, and you were subsequently asked to apologise to Witness 7 for your behaviour.

Witness 7 had not met you before and the panel could find no reason for her to fabricate her version of events. Additionally, you acknowledge that whilst you did not intend to be rude, you may have sounded abrupt. You stated that you were responding to Witness 7 in the manner in which you were spoken to which you described as being rude. In your oral evidence you conceded that you were "*annoyed*" that Witness 7 had spoken to you from across the ward. Witness 7 was cross-examined with care but remained consistent in her account.

After considering all the evidence, the panel considered Witness 7 to be credible and determined that it was more likely than not that you did speak in a rude tone towards Witness 7 and therefore found these charges 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 ability to practise kindly, safely and professionally.

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

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

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

Mr Burch submitted that in *Roylance,* Lord Clyde observed that misconduct involves *'some act or omission which falls short of what would be proper in the circumstances,'* and that the standard of propriety is measured by reference to the rules and standards expected of a professional in the relevant field. Furthermore, only serious professional misconduct qualifies for consideration by this panel.

Mr Burch submitted that in *Nandi v GMC* [2004] EWHC 2317 (Admin), Collins J described serious misconduct as *'conduct which would be regarded as deplorable by fellow practitioners.'* He said that applying that to this case, the NMC submits that the facts found proved against you clearly fall within the scope of serious professional misconduct.

He said the facts found proved includes:

- Swearing at patients and colleagues;
- Using inconsiderate and uncompassionate language towards both patients and staff;
- Speaking in a rude tone to a patient and their relative; and
- Working day shifts immediately after completing night shifts, thereby compromising patient safety.

Mr Burch submitted that these are not isolated incidents, but rather a pattern of unacceptable behaviour involving at least three different patients, spanning a period from 2020 to 2022. The repeated nature of the conduct, across multiple settings, further exacerbates the seriousness of the misconduct. Mr Burch submitted that this represents a serious departure from the standards set out in the Code, particularly those relating to prioritising people, practising safely, and promoting professionalism and trust.

Mr Burch stated that you admitted Charge 6 (working excessive hours), which in itself had the potential to compromise patient safety and care. Although you have given oral evidence acknowledging the seriousness of some of the conduct, it remains the NMC's submission that these repeated and wide-ranging breaches of professional standards constitute serious professional misconduct.

Ms McPhee began her submissions by stating that the panel has been asked to make a two-fold determination: first, whether the facts found at Stage 1 amount to misconduct, and second, whether that misconduct results in your fitness to practise currently being impaired. These are two distinct considerations, both of which require the panel to exercise professional judgment.

Ms McPhee submitted that it is not disputed that the findings amount to serious misconduct. She said you have yourself acknowledged this in your written reflective statement. She said in your oral testimony, you confirmed that, looking back, your conduct represented a serious departure from the standards expected of a nurse.

Ms McPhee stated that you have demonstrated an understanding that your actions were not in line with professional expectations and that they fell significantly short of the standards set out in the Code. In support of this position, she made references to the case of *Johnson & Maggs v Nursing and Midwifery Council* [2013] EWHC 2140 (Admin), where the court reaffirmed that misconduct must involve a serious departure from acceptable professional standards. She said in your case, the misconduct included inappropriate language towards a patient, specifically, a single instance involving offensive language, disruptive, dismissive or abrupt communication towards patients and a relative, and unsafe working practices such as working consecutive night and day shifts. She said that

collectively, these actions represent a serious breach of the standards of professional conduct and behaviour expected of a nurse.

Submissions on impairment

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

Mr Burch submitted that the purpose of these proceedings is not to punish you, but rather to protect the public and maintain confidence in the profession. He said that as stated in the NMC's impairment guidance DMA-1 the central concern is whether a professional can practise kindly, safely, and professionally.

Mr Burch submitted that although you have demonstrated some engagement with this process and expressed remorse, the NMC submits that this is not, at present, sufficient to demonstrate that your fitness to practise is not impaired for the following reasons:

- The conduct occurred over a prolonged period, involving multiple patients, colleagues, and a relative.
- There is evidence of an attitudinal issue, particularly in your approach to communication and professional behaviour.
- While you have undertaken some training and have been working in a different sector (the airline industry), this is not equivalent to practising in a regulated healthcare environment where patients' safety and trust are paramount.

Mr Burch submitted that your own evidence included references to externalising blame, citing unsupportive teams and cliques on the ward, which may arise again in future roles.

He said that there is not sufficient evidence before the panel as to how you would now manage such challenges within a clinical setting.

He said you have not worked as a nurse for two years, and there is limited evidence of how your practice has been strengthened since the time of the allegations.
Mr Burch submitted that while you have shown some insight, the NMC submits that this has not yet translated into demonstrated, sustained improvement in a clinical setting.

Mr Burch submitted that according to DMA-1, the likelihood of repetition is a key factor. The guidance states that conduct is less likely to be repeated if it was an isolated incident. That is clearly not the case here.

Mr Burch submitted that the panel cannot, at this stage, be satisfied that the risk of repetition is low or that sufficient remediation has occurred. He therefore submitted that your fitness to practise is currently impaired on the grounds of public protection and also in the wider public interest.

Ms McPhee submitted that while misconduct is accepted, your fitness to practise is not currently impaired. She referred the panel to the case of *Grant*, which asks whether a registrant has in the past, or is likely in the future, to put patients at unwarranted risk of harm, bring the profession into disrepute, or breach fundamental tenets of the nursing profession. It also considers whether the misconduct is remediable, has been remedied, and whether there is a risk of repetition. She said public protection and wider confidence in the profession are key considerations.

Ms McPhee submitted you have fully accepted the panel's findings and provided detailed oral and written evidence of genuine insight and remorse. She said you reflected on the impact of your actions, especially on vulnerable patients and families, and recognised that they had a right to expect compassion and professionalism. She said you have shown a commitment to ensuring your behaviour now reflects those values in all interactions.

Ms McPhee submitted that in the case of *Blakely v GMC* [2019] EWHC 905 (Admin), the court confirmed that insight can be demonstrated even without full acceptance of dishonesty, so long as the registrant understands the seriousness of their conduct and is committed to change. Ms McPhee submitted that you have exceeded that threshold, showing not just acceptance but clear evidence of learning, self-awareness, and professional growth.

Ms McPhee submitted that your insight meets the test in the case of *McCarvey v GDC* [2012] EWHC 2967 (Admin), which defines it as an understanding of the conduct, its causes, and a willingness to behave differently. She said you have identified what you would now do differently. These are clear indicators that the risk of repetition is low.

Ms McPhee submitted that since the incidents in question, you have worked without incident in customer-facing roles, including for a commercial airline, under high pressure. She said that this supports the conclusion that the misconduct was isolated and not reflective of your general professional attitude. Ms McPhee stated that the conduct occurred five years ago, with the most recent events over three years ago, which further reduces any concern of ongoing risk.

Ms McPhee submitted that despite an interim suspension order imposed by the NMC, you remained active and professionally engaged, applying nursing values, compassion, professionalism, and effective communication in your subsequent roles. This shows that the issues were context-specific and are unlikely to be repeated.

Ms McPhee submitted you have demonstrated meaningful remorse, mature insight, and a track record of safe, professional conduct since the incidents. She submitted that the risk of repetition is low, and there is no ongoing threat to public safety or trust. Ms McPhee therefore submitted that your fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance*, *Nandi*, and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that 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 hold up their dignity***

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively.'

*'**2 Listen to people and respond to their preferences and concerns***

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

2.6 recognise when people are anxious or in distress and respond compassionately and politely.'

*'**8 Work co-operatively***

To achieve this, you must:

8.2 maintain effective communication with colleagues'

*'**13 Recognise and work within the limits of your competence***

To achieve this, you must:

13.4 take account of your own personal safety as well as the safety of people in your care'

*‘**19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice***

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place’

*‘**20 Uphold the reputation of your profession at all times***

To achieve this, you must:

20.1 keep 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

20.8 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 the charges found proved, whether taken individually or collectively, amount to serious professional misconduct.

The panel noted that there were multiple breaches of the Code. These breaches reflected clear departures from the professional standards and behaviours required of someone in your position. Your conduct did not align with the fundamental tenets of nursing profession, including treating patients with kindness, compassion, and respect.

The panel determined that your actions were unprofessional and placed patients at risk of harm. The panel was particularly concerned by instances of rude and inappropriate communication towards patients and their relatives. Such conduct is not only unacceptable in itself but also undermines the trust and safety that patients and families expect from healthcare professionals.

The panel also noted that the misconduct spanned a period of approximately two years and involved multiple individuals, including three patients, one patient’s relative, and a colleague. Specific incidents included speaking inconsiderately and uncompassionately to

a colleague, swearing at a patient, and failing to show basic kindness and compassion in your interactions. In addition, working day shifts immediately after night shifts without adequate rest was deemed unsafe and indicative of poor professional judgement, further compromising patient care.

Taken together, the panel was of the view that these actions brought the nursing profession into disrepute. They represented a serious breach of the fundamental tenets of nursing, including the duty to prioritise patient welfare, and act with integrity and professionalism.

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.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must act with integrity and professionalism. 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 carefully considered whether your fitness to practise is currently impaired and concluded that it is. This decision is based on concerns relating to both public protection and the wider public interest.

You have accepted the findings of facts made by the panel, expressed remorse and apologised for your actions.

The panel considered that showing kindness and compassion should be demonstrated by a nurse as part of professional practice. However, your repeated misconduct over a prolonged period of time demonstrated a concerning lack of compassion towards patients, a patient's relative, and a colleague. This absence of empathy is inconsistent with the standards expected of a registered nurse.

While the panel acknowledged that you have undertaken some online training in an effort to remediate your misconduct, it considered this to be brief and limited in its ability to address the issues of demonstrating empathy and compassion in order to practise safely, kindly and professionally in the future.

The panel also identified multiple disconnects between your written reflective statement and your oral evidence. Although your written reflection was structured, your oral evidence at times demonstrated a continued lack of compassion and did not reflect a sufficient understanding of the impact of your actions. One notable example was, during your oral evidence while describing how you dealt with a pregnant passenger who you stated was *"agitated"* and had asked for orange juice due to the flight being delayed, you said *"she was demanding freebies…"*

The panel recognised that you were dealing with multiple personal and professional challenges at the time of the misconduct, including a lack of support, feeling excluded from your team [PRIVATE]. Additionally, the panel has taken full account of the positive feedback you have received in your current public facing role. However, the panel considers you have not otherwise demonstrated that you have strengthened your practice in order for you to work kindly, safely and effectively in similar circumstances in the future.

In addition, the panel was not sufficiently assured that you have appropriate safeguards in place to ensure that your actions are not repeated. Instead, you appear to rely on the fact that the multiple stressors will not recur, and you hope that you would work in an environment that was not lacking in support. This raises a concern about the risk of repetition.

The panel also determined that your actions breached fundamental tenets of the nursing profession, particularly the duty to treat patients with respect, kindness, and compassion, and to uphold public trust in the profession.

Given the lack of meaningful insight, the panel could not be satisfied that the misconduct is highly unlikely to be repeated. For that reason, the panel concluded that your fitness to practise is currently impaired on the grounds of public protection.

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

The panel determined that given the seriousness and the nature of your misconduct a finding of impairment on public interest grounds is required to uphold public confidence in the profession and to maintain proper standards.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

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

Submissions on sanction

Mr Burch submitted that the appropriate sanction in your case is a suspension order for a period of 12 months, subject to review. He said this recommendation is based in the current guidance on suspension (SAN-3d). Mr Burch stated that the seriousness of your misconduct, as accepted by all parties, includes repeated and wide-ranging incidents over a two-year period, involving patients, their relatives, colleagues, and a sustained failure to demonstrate appropriate insight and accountability. These aggravating factors point to attitudinal concerns and a pattern of behaviour rather than isolated lapses.

Mr Burch submitted that while some personal and professional mitigation has been presented, including limited reflection and training, the panel has found this remediation to be insufficient. He said the findings emphasise a continuing lack of empathy and compassion, both in your oral evidence and in specific examples such as your response in regard to a pregnant passenger whom you described as *“demanding freebies.”*

He said the panel concluded that your practice remains impaired, citing a lack of meaningful insight and the risk of repetition. These factors support the need for a sanction that addresses the risk to patient safety and public confidence in the profession.

Mr Burch submitted that lesser sanctions such as taking no action, issuing a caution, or imposing conditions of practice would not adequately protect the public or serve the public interest in this case. While a strike-off remains open to the panel, the NMC does not seek that outcome at this time. However, given the ongoing attitudinal issues and risk to patients, a 12-month suspension order with review is the proportionate and appropriate sanction.

Ms McPhee invited the panel to consider the NMC's sanction guidance in determining the appropriate and proportionate response to your misconduct. She said that it is accepted that findings of both misconduct and current impairment have been made. However, the purpose of sanction is not to punish you but to protect the public, maintain confidence in the profession, and uphold proper standards. This must be achieved by applying the least restrictive sanction necessary, in line with the principles laid out in *Grant* and the NMC guidance.

Ms McPhee submitted that a caution order would sufficiently mark the seriousness of your past behaviour while recognising the significant progress you have made. She said that you have not repeated any of the misconduct over the past three years, have undertaken extensive reflection and training, and have worked safely in a public-facing role without further incident. While your insight is still developing, it is clearly present, and you have taken active steps to remediate and rebuild trust. Ms McPhee submitted that a caution order may be appropriate even where misconduct has occurred, provided there is insight and a low risk of repetition.

Ms McPhee submitted if the panel is not minded to impose a caution order, a conditions of practice order would be both sufficient and proportionate. The current interim conditions, such as practising under supervision, undertaking a personal development plan, and undergoing regular reflective practice, may address the panel's concerns around safety and attitude. She said that you have demonstrated a clear willingness to comply with any conditions and a genuine commitment to returning to safe and compassionate practice.

Ms McPhee submitted that a suspension order, particularly one of 12 months, would be disproportionate in this case. She said that you have already served nearly three years under an interim suspension order, and a reviewing panel had deemed conditions to be more appropriate moving forward. Further, you were newly qualified at the time of the events, under significant personal and professional pressure, and have since shown insight, remorse, and remediation. Ms McPhee submitted that a strike-off, the most serious sanction, would be wholly unjustified given your progress, the non-criminal nature of the conduct, and your continued cooperation with regulatory processes.

Ms McPhee invited the panel to impose either a caution or a conditions of practice order to ensure public protection and address the public interests in this case.

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

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Attitudinal issues
- Risk of psychological and physical harm to patients
- Limited insight
- Misconduct occurred over a period of time

The panel also took into account the following mitigating features:

- Experienced multiple personal stressors at the time
- Expressed some remorse and reflected on concerns identified
- Undertaken some training to strengthen practice
- You stated that you worked in an unsupportive environment during the COVID-19 pandemic

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, 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 considered the following aspects of the SG apply in this case:

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice.

In reaching its decision, the panel noted that the incidents occurred some time ago. While attitudinal concerns remain, it acknowledged that you have shown meaningful reflection. The panel considered that a conditions of practice order would allow you to further develop and strengthen your professional practice and provide you with an opportunity that a suspension order would deny, whilst still ensuring the safety of the public. It was of

the view that regular meetings with your line manager, as part of the conditions, will provide the necessary support and structure for continued reflection and professional growth.

The panel was satisfied that, with appropriate safeguards in place, it is in the public interest for you to return to nursing practice. Balancing all the relevant factors, the panel concluded that a conditions of practice order is the appropriate and proportionate sanction.

The panel gave consideration to a suspension order. It took full account of the attitudinal concerns found in this case and that the charges found proved did not relate to a single isolated incident but occurred over a period of time. However, there is no evidence of actual harm, and the panel found that there were no deep-seated personality issues arising. There are no concerns that involve dishonesty, criminality or exploitation, and a lack of clinical competence was not an issue in this case. The panel, taking full account of the principles in the overarching objective of the NMC, guidance in the SG and the principle of proportionality, concluded that a suspension order is not proportionate in this case and that a conditions of practice order would protect the public. Furthermore, 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 limit your nursing practice to one employer. This must not be an agency.

2. You must ensure that you are indirectly supervised any time you are working. Your supervision must consist of:

a) Working on the same shift as, but not always directly observed by, a registered nurse on every shift.
b) You must not be the nurse in charge.

3. You must work with your line manager and/or allocated mentor to create a personal development plan (PDP). Your PDP must address the concerns about communication, attitude, nursing values, and your working hours. You must:
    a) Meet with your line manager or mentor weekly for the first month of employment, and subsequently monthly to discuss your progress against your PDP.
    b) Send your case officer a copy of your PDP once created, and then updates on progress towards achieving the aims set out in your PDP every three months.

4. You must keep a reflective practice profile. The profile will:
    a) Detail your communication with patients, their families and colleagues
    b) Be signed by your mentor or line manager each time.
    c) Contain feedback from your mentor or line manager on how you have communicated with patients, their families and colleagues.
    d) You must send your case officer a copy of the profile every three months.

5. 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.

6. You must keep us informed about anywhere you are studying by:
    a) Telling your case officer within seven days of accepting any course of study.
    b) Giving your case officer the name and contact details of the organisation offering that course of study.

7. You must immediately give a copy of these conditions to:
    a) Any organisation or person you work for.

b) Any employers you apply to for work (at the time of application).
c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

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

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

The period of this order is for 12 months.

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

Any future panel reviewing this case would be assisted by:

- A detailed reflective piece demonstrating more fully your insight into the misconduct found and how you have strengthened your practice;
- References and testimonials from nurses with whom you have worked under the conditions of practice; and
- Your attendance at the review hearing.

This decision will be confirmed to you in writing.

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, is otherwise in the public interest or is in your own interests until the conditions of practice order 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 Burch. He submitted that an interim conditions of practice order is necessary to cover the period until the substantive conditions of practice order comes into effect having regard to the panel's findings. He submitted that if you appeal the decision of the panel, then you would be able to practise without restrictions until the appeal process is finished, and this can take up to 18 months. He therefore invited the panel to impose an order for a period of 18 months to cover the whole of the appeal period.

Ms McPhee did not object to the application.

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.

That concludes this determination.