Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 16 June 2025 – Friday, 27 June 2025

Virtual Hearing

Name of Registrant:	Gabriela Alistar
NMC PIN:	22A0483O
Part(s) of the register:	Sub part 1 RNA, Registered Nurse - Adult (11 January 2022)
Relevant Location:	Coventry
Type of case:	Misconduct
Panel members:	John Millar (Chair, Lay member) Helen Chrystal (Registrant member) Matthew Wratten (Lay member)
Legal Assessor:	Oliver Wise
Hearings Coordinator:	Monowara Begum
Nursing and Midwifery Council:	Represented by Isabella Kirwan, Case Presenter
Ms Alistar:	Present and represented by Ben Edwards, instructed by the Royal College of Nursing (RCN)
Facts proved by way of admission:	Charge 3(a), 3(b), 3(c)
Facts proved:	Charges 1, 2
Fitness to practise:	**Impaired**
Sanction:	**Conditions of practice order (12 months)**
Interim order:	**Interim conditions of practice order (18 months)**

Details of charge

That you, a registered nurse:

Whilst working at Abbey Park Nursing Home ('the Home') on 20 December 2022;

1) Hit Resident A on the head, using a pen.
2) Threw an elastic band at Resident A.
3) Raised your voice at Resident A using words to the effect of;
    a) 'Leave me alone!'
    b) 'Get away from me!'
    c) 'Go away!'

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

Background

The Nursing and Midwifery Council (NMC) received a referral on 17 March 2023 by the HR advisor at Abbey Park Nursing Home (the Home).

The alleged incidents took place in December 2022 while you were working at the Home as a senior nurse.

It is alleged that you shouted at a resident (Resident A) telling them to "go away" "leave me alone" and "get away from me", hit Resident A on the head with a pen and threw an elastic band at Resident A.

Resident A was a vulnerable resident who suffered from dementia and was under your care.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Edwards, on your behalf, who informed the panel that you made full admissions to charge 3.

The panel therefore finds charge 3 proved in its 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 Ms Kirwan on behalf of the NMC and by Mr Edwards.

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: Family member of a resident at the Home at the time of the incidents
- Witness 2: Housekeeper at the Home at the time of the incidents
- Witness 3: Housekeeper at the Home at the time of the incidents

The panel heard evidence from you under oath.

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

- Witness 4: Current Deputy manager at Birchmere House Care Home

- Witness 5: Current Manager at Birchmere House Care Home

Before making any findings on the facts, the panel accepted the advice of the legal assessor. He advised that the panel should take into account your good character, both in assessing your evidence and in considering the likelihood that you were guilty of the charges. He also advised that, given the seriousness of the charge amounting to an assault, the panel should not find that proved without cogent evidence.

The panel considered the witness and documentary evidence provided by both the NMC and Mr Edwards.

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

Charges 1 and 2

"That you, a registered nurse, on 20 December 2022,

1. Hit Resident A on the head, using a pen.
2. Threw an elastic band at Resident A."

These charges are found proved.

The panel noted that these charges are part of a single incident and relate to a short passage of time, therefore the following reasoning applies to both charges.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1 and the oral and documentary evidence from you.

Witness 1 in her evidence stated that she heard continual shouting from Resident A and this is corroborated by you and other members of staff. Witness 1 in relation to charge 3 stated she heard you shouting at Resident A "*go away*", and you have admitted to this charge in its entirety. Witness 1 in her evidence stated that you are a good nurse and that this was out of character for you.

In your oral and documentary evidence you spoke about the working environment at the time of the incidents. You described that it was a very stressful day, in that you were balancing numerous tasks and patients. Moreover, this situation was compounded with ongoing performance issues involving two carers under your supervision, a situation which you considered that your management team had failed to provide you with adequate support to resolve. Due to the arguments between these two carers, and the lack of overall support you received, you reacted under pressure. In your initial evidence you denied shouting at Resident A, but later changed your account and admitted to charge 3 in its entirety.

In your evidence you stated that Witness 1 was not present at the time of the alleged incident, however you stated that she may have been in the main lounge from where she would have a restricted view of where you were sitting at the time of the incident. Therefore, you are adamant that Witness 1 could not have seen you hit Resident A with a pen or throw an elastic band at Resident A.

In the panel's judgement, as you have clearly disclosed, and as corroborated by others, you were in a particularly stressful environment at the time. You stated that you were engaged in completing an electronic referral form for an ill resident, receiving numerous linked phone calls from other agencies, whilst simultaneously trying to contend with Resident A who was shouting continuously and demanding your attention. Furthermore, the panel took into consideration the investigation notes of Person 1 with regard to the two carers who were not getting along and were coming to you with complaints about each other.

‘She has two carers that do not get along, [Person 2] will go to Gabriela often with the issues that she has with [Person 3] and [Person 3] about [Person 2].’

You described that you were having a “*breakdown*” at the time due to the environment:

‘They carried on arguing, I had a breakdown…’

This description accords with the Investigation Meeting Minutes with Person 1:

‘…I didn't understand what had happened she was laughing and happy in the morning and now she was crying, she said she cant cope with her carers or the unit and it is too stressful…’

The Investigation Meeting Minutes record that you denied shouting at Resident A:

‘…I did not shout’
…
‘I raised my voice, I was under pressure…’

You later changed your account in your written statement and admitted to charge 3 in its entirety:

‘I unintentionally shouted due to the frustration.’

The panel determined that you were not consistent in your evidence in relation to shouting.

The panel took into account the very complimentary evidence in relation to your capabilities and conduct as a nurse, given by Witnesses 4 and 5. Those witnesses are your deputy manager and line manager and have worked with you for over two years.

The panel bore in mind that there are no previous findings against you and no subsequent incidents after these alleged incidents. Both witnesses attest to you being a very good nurse who is kind and compassionate. Witness 5 stated in her supervision record:

> *'Gabriela was praised by the resident's relatives she'd looked after on several occasions. They've expressed their gratitude towards her and also said how grateful they were to have their loved ones cared with such respect and dignity during their final stage in life.'*

Witness 1 gave a balanced account of the alleged incidents. Witness 1's evidence is consistent with the contemporaneous evidence. Witness 1 went into convincing detail in her account in the NMC statement and to the Home.

The panel determined that Witness 1 was resolute in her cross-examination and showed no signs of animosity or malice towards you. It noted that Witness 1 in her evidence stated that this was completely out of character for you. Witness 1 in her oral evidence praised you for being a good nurse, and stated that her father, who was a resident at the Home at the time of the incident, liked you. Witness 1 stated she heard you shout at Resident A and used the words you have admitted to as part of charge 3. Witness 1 was calm at the time of the incident and was just observing from a neutral perspective whereas you were in a high state of emotion, in your words having a '*breakdown'* and maybe could not accurately recall the incident. Therefore, the panel were more inclined to accept Witness 1's account of what took place.

The panel was satisfied with the accuracy of Witness 1's evidence. She had no reason to fabricate her evidence. The panel was satisfied that Witness 1 gave an accurate account of your actions.

Accordingly, the panel found charges 1 and 2 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's 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 and impairment

Ms Kirwan 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.

Ms Kirwan identified the specific, relevant standards where your actions amounted to misconduct. She told the panel that at the time of the incidents you were on shift providing care for residents at the Home, and Resident A, who is a vulnerable patient with dementia, was seeking your attention. There were other vulnerable patients present in the room when the events took place.

Ms Kirwan told the panel that your actions caused actual physical harm to Resident A, and this is corroborated by Witness 1's evidence who heard Resident A say words to the effect of '*that hurt, why did you do that?*' She submitted that your actions also put other patients at risk of mental or physical harm.

Ms Kirwan told the panel that your conduct was wide-ranging. This included verbal comments made and physical abuse, in that you threw an elastic band, and used a pen to hit Resident A. These incidents occurred in front of other residents, staff members and relatives of residents. She invited the panel to find that this was a pattern of conduct.

Ms Kirwan told the panel that you were responsible for looking after and caring for the residents in a professional way. She submitted that you abused your position as a registered nurse and failed to follow proper procedures and polices in the workplace.

Ms Kirwan submitted that the wording that was used, '*leave me alone'*, '*get away from me'* and *'go away'* was inappropriate. She told the panel that your actions left the colleagues very concerned, and two of the staff members raised their concerns with you directly. She told the panel that relatives of residents including Witness 1 were left shocked and concerned to see this take place, placing them in a difficult position. Witness 1 did not know how to act in that situation, and she did not tell her father about this as he really liked you, and her daughter who was also there at the time of the incidents wanted to leave immediately because she was feeling scared and uncomfortable.

Ms Kirwan told the panel that the Home had to undertake a large-scale investigation and during the investigation you did not admit to what had happened, therefore you were not candid as to what had taken place on that day.

Ms Kirwan submitted that your actions failed to uphold public confidence in the nursing profession and to maintain the professional standards. She submitted that there may be underlying attitudinal issues that could put people receiving care at risk. Ms Kirwan referred the panel to the NMC misconduct guidance in particular the section relating to

deep-seated attitudinal issues. She further referred the panel to the sections titled ‘Abuse or Neglect of Children or Vulnerable People’, ‘Violence’ and ‘Public Confidence’.

Ms Kirwan invited the panel to determine that your actions did fall significantly short of the standards expected of a registered nurse and amounted to breaches of the Code, in particular:

1. Treating people as individuals and uphold their dignity.

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.

20. Uphold the reputation of your profession at all times.

Ms Kirwan submitted that the facts found proved in this case amount to serious professional misconduct.

Ms Kirwan 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).

Ms Kirwan referred the panel to the NMC guidance DMA-1, which refers to the question, ‘can the nurse, midwife or nursing associate practise kindly, safely and professionally?’ She submitted that you cannot practise kindly, safely and professionally, and are currently impaired.

Ms Kirwan invited the panel to consider the words of Mrs Justice Cox at paragraphs 74 and 76 of her judgment, in the case of Grant referred to above, as follows:

“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.”

"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."

Ms Kirwan submitted that your conduct put Resident A and others in unwarranted risk of harm. She submitted that you have brought the nursing profession into disrepute and have breached the fundamental tenets of the nursing profession, and therefore your misconduct engages limbs a-c of the Grant test.

Ms Kirwan told the panel that actual patient harm was caused and submitted that other patients were put at risk of harm by your conduct. She told the panel that the misconduct

occurred whilst you were on shift caring for highly vulnerable patients with complex needs. She submitted that your misconduct had the potential of disrupting colleagues from properly undertaking their caring tasks and also had the potential to affect the overall reputation and running of the Home.

Ms Kirwan submitted that your actions disregarded the safety of Resident A, other residents and that of your colleagues, as well as the policies and procedures in your workplace.

Ms Kirwan submitted that your misconduct breached the fundamental tenets of the nursing profession, and a finding of impairment is required on the grounds of public protection and in the wider public interest.

Ms Kirwan referred the panel to the NMC guidance documents FTP15 on ‘Insights and Strengthened Practice’ in particular, the section titled, ‘Can the concern be addressed?’ She further referred the panel to the guidance document on ‘Making Decisions on Dishonesty Charges and the Professional Duty of Candour’. She told the panel that dishonesty is not a charge in this case and referred the panel to the section on duty of candour, in particular, section DMA-8. She told the panel that you admitted charge 3 at the start of this hearing, however you did not readily admit this charge when concerns were raised by the Home initially.

Ms Kirwan told the panel that you have provided an updated reflective piece and have reflected to some extent on the impact charges 1 and 2, which have now been found proved, could have had on the patients and residents in your care. Ms Kirwan submitted that you did not comply with your duty of candour to be open and honest as to what had happened. She submitted that the insight you have shown can only be very limited. She submitted that the concerns are so serious that the risk of repetition remains due to the difficulty in addressing the concerns. She further submitted that acting in this way indicates that there are underlying attitudinal issues which are particularly difficult to address.

Ms Kirwan referred the panel to the NMC guidance titled ‘Has the Concern Been Addressed’. Ms Kirwan submitted that the limited insights shown in the updated reflective piece should be given limited weight and there is a public interest in restricting your right to practise even if the panel do consider that you have shown some insight.

Ms Kirwan concluded that whilst you may have limited insight, this may only marginally reduce the risk of repetition. She told the panel that the context in which you were working then and now is important. You are currently working in a different environment where you feel supported, and previously when these incidents took place, it was a more stressful environment, and you were under a lot of pressure. Ms Kirwan submitted that your levels of stress may be managed now in your current workplace, but this can change and become more stressful. She submitted that given the factors outlined, it is not possible to safely conclude that the concerns are highly unlikely to be repeated.

Ms Kirwan invited the panel to find that your misconduct breached the fundamental tenets of the nursing profession, and further invited the panel to decide that a finding of impairment is necessary for the protection of the public.

Ms Kirwan invited the panel to determine that a finding of impairment is also necessary on the ground of public interest. She submitted that the public confidence in the nursing profession would be undermined, and a well-informed member of the public would be appalled if a finding of impairment were not made in this case.

Ms Kirwan invited the panel to find your fitness to practise currently impaired.

Mr Edwards submitted that you accept that the facts found proved amount to misconduct.

Mr Edwards told the panel that there is no evidence before it that actual physical harm was caused to Resident A. He told the panel that there is no evidence before it that your actions put others in the room at risk of mental or physical harm. He told the panel that

nobody in that room made any report or witnessed the use of a pen or an elastic band, therefore it cannot be said it had an effect on others within the room.

Mr Edwards told the panel that considering impairment is a forward-looking exercise and to consider whether your fitness to practise is currently impaired as of today's date.

Mr Edwards referred the panel to the NMC guidance DMA-1, 'can the nurse, midwife or nursing associate practise kindly, safely and professionally?' Mr Edwards submitted that you have, since the incident took place over two and a half years ago, been practising kindly, safely and professionally. He told the panel that your current employers have given evidence stating that you are working kindly, safely and professionally. He told the panel that the DMA-1 guidance states that if the answer to the above question is yes, then the likelihood is that the professional's fitness to practise is not impaired, and submitted that this is very important to consider.

Mr Edwards told the panel that your current line manager and deputy manager have attested to your excellent work ethic and your calm approach to stressful situations. He reminded the panel that it has highlighted in its decision in the finding of facts stage the favourable feedback that you have received from those that you currently work with on a daily basis and have been employed at that current workplace for the last two and a half years. He told the panel that it has before it testimonials from a whole host of people who have worked with you in the past and at the current moment, and they all attest to your good character, your excellent work as a nurse and your care and compassion.

Mr Edwards submitted that this was a one-off, isolated incident during one shift, and was out of character for you. It was a momentary relapse in otherwise an unblemished good career. He submitted that there have been no issues since and there were no previous issues before this incident.

Mr Edwards submitted that you are a good nurse working without any restrictions and have been throughout. He submitted that you are working well within a team you currently

work in now, you are loved by the residents you work with and care for, and are a valued member of the team. He submitted that there is no evidence before the panel to support any notion that there is a high likelihood of these incidents recurring.

Mr Edwards submitted that you have put in place mechanisms to address stressful situations should they arise in the future. He submitted that in your reflection piece you have stated the effort and coping mechanisms you have put in place to help and support you whilst working. He submitted that you have shown insight and understanding into what it is that affects and causes you to feel stressed and that you have addressed those and are continuing to use those coping mechanisms to ensure you are practising kindly, safely and professionally.

Mr Edwards submitted that you are currently working in a more supportive and caring environment which is a positive thing. He reminded the panel that context is important and the Home in which these incidents took place did have its problems. You were having a bad day and there were two carers who did not work well together which added to your stress, there was another sick patient to deal with, and Resident A was a challenging resident for you as well as others. Mr Edwards submitted that you did not have the support of your team. He submitted that there is no evidence before the panel to suggest that this can or would occur in the future.

Mr Edwards drew the panel's attention to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin). He submitted that the misconduct is easily remediable, and it has been remedied. He submitted that you have strengthened your practice through further training, have provided a reflective piece, and have shown good insight and understanding throughout these proceedings.

Mr Edwards told the panel that you love your job, and this was a momentary lapse for an otherwise calm and thoughtful woman, who has had no issues since. He told the panel that the regulatory process has had a salutary effect on you, and that you have engaged with the process throughout no matter how difficult it may have been.

Mr Edwards submitted that although you denied charges 1 and 2 which were subsequently found proved, there is no evidence of deep-seated attitudinal issues. He submitted that these kinds of issues normally arise in areas of dishonesty, and this is not the case here. He told the panel that you are entitled to defend yourself and deny allegations where you say it did not happen. He referred the panel to the case of *Sawati v General Medical Council* [2022] EWHC 283 (Admin):

> *"Maintenance of innocence at a Tribunal should not automatically result in a finding of failure of insight"*
> *[paragraph 87-88]*

Mr Edwards submitted that just because you have denied the allegations it does not mean to say you cannot show insight. He submitted that you have shown insight and have shown clear remorse and understanding.

Mr Edwards referred the panel to the NMC guidance on impairment and submitted that there is no future risk of harm, but if the panel were of the view that there is then it can conclude that the risk of future harm would be remote.

Mr Edwards told the panel to consider the context within which these incidents occurred. He reminded the panel that Witness 1 said in her evidence that you were under pressure at the time. Witness 1 also gave evidence to acknowledge that you are an excellent nurse and were loved by her father. He told the panel that this is corroborated in the testimonials provided and in particular by your current deputy manager who gave evidence at this hearing.

Mr Edwards submitted that there is no need to make a finding of impairment on public protection ground as there is no evidence of public protection issues.

Mr Edwards submitted that there is no requirement to make a finding of impairment on public interest grounds as public confidence in the profession would not be undermined if a finding of impairment were not made in this case. He submitted that members of the public will have the facts of this case; the context of what was happening at the time, your background and history, evidence of your excellent work, and that there have been no issues since the incidents. He further submitted that the public would not lose confidence in the NMC as a regulator if a finding of impairment were not made.

Mr Edwards invited the panel to find your fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor, who advised that a breach of duty must be serious if it is to amount to misconduct. In relation to impairment, he referred to: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (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 uphold their dignity***

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

…

1.5 respect and uphold people's human rights

20 Uphold the reputation of your profession at all times

To achieve this, you must:

…

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel bore in mind that you have accepted misconduct in respect of the charges found proved. It was of the view that there was a clear breach of fundamental tenets of the nursing profession.

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 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. At 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.'*

At 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 concluded that limbs a), b) and c) of the Grant test were engaged in this case. Resident A was an extremely vulnerable patient. In the evidence of Witness 1 she stated that you hit Resident A on the head with a pen and she said, *'why did you do that, that hurt'.* The panel considered that your misconduct had breached the fundamental tenets of the nursing profession, as demonstrated by the breaches of the Code.

The panel took into account the context of what was happening at the time of the incidents. You were under significant pressure at the time of the incidents. This was corroborated by Witness 1 in her evidence who stated that this was out of character for you and she could see you were under a lot of pressure. Due to the lack of support you felt deeply frustrated and had a breakdown.

You have been working in a supportive environment for the last two and a half years, and are working well within the team, and have had no issues since the incidents. This is attested to by your line manager and deputy manager who gave evidence stating you are working kindly, safely and professionally. This is also corroborated by the positive testimonials. It determined that there is a low risk of repetition as you are working in a supportive environment.

The panel took into regard your evidence that you have undertaken reflection and have worked out strategies to avoid being in the same situation again. There is no evidence before the panel to suggest that your misconduct is a deep-seated attitudinal issue but instead determined that this was an out of character and isolated incident. Witness 1 in her evidence told the panel that you are a '*nice'* nurse and that her father, who was a

resident at the time, liked you. The panel also took into account that there are no previous issues and no issues since the incidents.

Regarding insight, the panel considered your reflective piece and your witness statement and concluded that you have shown developing insight and understanding. It noted that you stated that you did like Resident A and worked well with her. It further noted that you were appalled by your behaviour when shouting at her and not paying her attention and have expressed remorse. With regard to the incident with the pen and the elastic band, the panel has concluded that you have not demonstrated sufficient insight as to how, despite your views as to the importance of not behaving in the way described, you might react to a similar situation, and reassure the panel that there is no risk of you suffering a *'breakdown'* with adverse consequences to one of your patients.

The panel was satisfied that the misconduct, whilst involving abuse of a vulnerable patient was in this case still capable of being addressed but has not been fully remediated. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account the further training you have completed and your reflective piece and noted the strategies you have put in place to avoid future recurrence.

The panel determined that you have not fully understood the impact of your actions in regard to throwing an elastic band at Resident A, and hitting Resident A with a pen. The panel was concerned that although you stated the principal cause of your stress on the day of the incidents emanated from the actions of the two carers and the lack of support provided by your manager, the only individual to bear the brunt of your frustration was Resident A, a vulnerable patient with dementia. The panel determined that you have not addressed or fully considered the impact your actions may have had on the members of public visiting their relatives and how they would view your actions. The panel took into account that you have reflected and have developed strategies to help cope with stressful situations. These strategies were those that you initiated and on monitoring yourself without informed overview. In addition, they are not sufficiently structured or specific. The

panel determined that in view of this the risk of repetition remains and that it is not highly unlikely that the conduct will be repeated. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because Resident A was a very vulnerable patient under your care, who was least able to defend themselves in that situation, therefore abusing someone's dignity.

A potential consequence of your conduct is to reduce confidence in care provision and to deter those requiring it. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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

Sanction

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

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

Submissions on sanction

Ms Kirwan drew the panel's attention to the aggravating factors in this case. She submitted that this is a case involving abuse of a position of trust and you were a senior nurse at the time of the incidents. She submitted that the nature of harm in this case is extremely serious involving verbal and physical abuse towards a vulnerable resident.

Ms Kirwan reminded the panel that it found the public interest ground engaged in this case due to the fact that Resident A was a very vulnerable patient who was least able to defend themselves and your actions resulted in an abuse of dignity and lack of respect.

Ms Kirwan told the panel that your actions placed Resident A and other residents at risk of harm and therefore you failed to uphold the reputation of the nursing profession. She submitted that you failed to uphold the dignity of Resident A and treat her with kindness, respect and compassion. She submitted that you failed to deliver fundamental care and failed to ensure that the physical, social and psychological needs of those receiving care were properly responded to.

Ms Kirwan submitted that the risk of repetition remains, and it is not highly unlikely that the conduct will be repeated. She submitted that you have shown very limited insight.

Ms Kirwan told the panel that there is evidence of you being a good nurse and that it was a very stressful shift for you at the time of the incidents. She told the panel that you have undertaken further training and have kept up the training in relation to your practice, however, this is limited mitigation.

Ms Kirwan invited the panel to impose a striking off order.

Ms Kirwan submitted that this is a serious case involving the abuse of a vulnerable patient. She referred the panel to the NMC guidance SAN-2 titled ‘Sanctions for Particularly Serious Cases’ and further referred the panel to the NMC guidance SAN-3E on striking off order.

Ms Kirwan submitted that a striking off order is appropriate as the acts found proved in this case are fundamentally incompatible with being a registered professional nurse on the register.

Ms Kirwan submitted that taking no action or a caution order would not be suitable in this case. She submitted that a conditions of practice order would not be workable, measurable or proportionate to address the concerns identified. She further submitted that a temporary removal by the making of a suspension order would not sufficiently address public protection and the wider public interest in this case.

The panel also bore in mind Mr Edwards submissions that a striking off order does not strike a fair balance between a nurse’s right and the overall protection of the public. He submitted that there is limited evidence of harm caused in this case.

Mr Edwards submitted that you have been working unrestricted for the last two and a half years as a registered nurse with no concerns raised at any point during that time, and there have been no concerns prior to the incidents. He submitted that you continue to work in a supportive and caring environment and referred the panel to the letter dated 26 June 2025, from your current manager who states that they continue to support you.

Mr Edwards submitted that the areas of concerns can be addressed with conditions of practice put in place for a period of six months which could include a Personal Development Plan (PDP) and monthly indirect supervision. He submitted that this would allow you time to fully reflect and develop insight and address the risks identified and

further strengthen your practice. He further submitted that this would adequately protect the public and serve the wider public interest.

Mr Edwards submitted that these proceedings have had an effect on you and a more restrictive sanction would have a detrimental effect.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Resident A was a very vulnerable patient
- Your abuse of a position of trust
- You failed to uphold dignity and respect of Resident A
- Your limited insight

The panel also took into account the following mitigating features:

- The stress that you were experiencing before, and at the time of the incident which was isolated and out of character
- Your admission of charge 3 and evidence of remorse
- You have been working for the last two and a half years with no issues since the incidents

- You have undertaken some reflections and have come up with your own strategies to cope with stressful situations

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 took into account the SG:

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

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

The panel had regard to the fact that these incidents were a '*one-off*' during a stressful shift, and are not reflective of deep-seated attitudinal issues. Other than these incidents, you have had an unblemished career as a nurse. It noted that you are currently working in a very supportive environment, and your deputy manager is a registered nurse therefore would be a good supervisor. It took into account that you have identified and are putting in place coping mechanisms to help you deal with stressful situations. The panel was of the view that with appropriate safeguards, it was in the public interest to allow you to continue to practise as a nurse.

The panel recognise that any abuse of a vulnerable person is serious but determined that the specific circumstances of this case should not result in either your temporary or permanent removal from the NMC register. Your actions were on the spur of the moment caused by an unusual level of frustration brought about by a combination of events that you were not equipped on this day to cope with, ultimately resulting in you having a '*breakdown'*. They were not in any way reflective of your kindly attitude to your patients, as evidenced by witnesses called both for you and the NMC. The impact on Resident A is likely to have been low level and temporary. You understand the seriousness of any type of ill-treatment of anyone in your care. You have not been subject to any interim order. Your employer wishes to continue to employ you and there seems little doubt that would be of benefit to the patients in your care.

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

The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate and is not necessary in the circumstances of your case either to protect the public or to satisfy the wider public interest.

In making this decision, the panel carefully considered the submissions of Ms Kirwan in relation to the sanction that the NMC was seeking in this case. However, the panel considered that having witnessed you throughout this hearing process which has had a major impact on you, it was satisfied that as a result of the process combined with other evidence, that this has made you fully aware of the severity of the concerns in this case, and concludes that it is unlikely to happen again.

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 single employer.

2. You must work under indirect supervision of a clinical supervisor who is a nurse registered with the NMC. You must provide details of that supervisor to the NMC within seven days of this hearing.

3. You must work with your clinical supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns about:
   a) Your ability to cope with stressful situations in your workplace.
   b) Your ability to work in situations where you have exercised leadership to ensure effective multiagency team.

c) Effective use of communication towards colleagues and service users.

4. You will send the NMC a progress of your PDP report seven days in advance of the next NMC hearing or meeting from your clinical supervisor.

5. You will send your case officer evidence that you have successfully completed the PDP prior to the next hearing.

6. You must keep a reflective practice profile in line with the NMC guidance. In this profile:
   a) You should demonstrate any stressful situations occurring in the workplace, detailing your response, what you learnt and how you will apply this learning to strengthen your practice in the future.
   b) You should demonstrate how you have managed a team in the workplace detailing your progress, what you learnt and how you will apply this learning to strengthen your practice in the future.

   You must send your case officer a copy of the profile seven days prior to your next hearing.

7. You must engage with your clinical supervisor on a frequent basis to ensure that you are making progress towards aims set in your PDP.

8. 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.

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

10. 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.

11. 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.

12. 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. This timescale is intended to give you sufficient time to demonstrate your strengthened practice.

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 reflective piece demonstrating your learning and developed insight and strengthening of practise.

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Kirwan. She made an application for an interim conditions of practice order for a period of 18 months on the grounds of public protection and the wider public interest, in order to cover the potential appeal period in this case if an appeal is made.

The panel also took into account the submissions of Mr Edwards. He submitted that you do not object to the application.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

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

The panel concluded that the only suitable order would be that of an interim 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 due to the length of time it can take with the appeal process.

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.