Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 19 – Wednesday, 28 May 2025

Virtual Hearing

Name of Registrant:	Raymond Ndubueze Ehiemere
NMC PIN:	98C1450E
Part(s) of the register:	Nurses Part of the Register-Sub Part 1 RNMH: Mental Health Nurse, Level 1 (4 May 2001)
Relevant Location:	Teeside
Type of case:	Misconduct
Panel members:	Patricia Richardson (Chair, Lay member) Corinne Foy (Registrant member) David Anderson (Lay member)
Legal Assessor:	Jayne Salt
Hearings Coordinator:	Rodney Dennis (19-27 May 2025) Samantha Aguilar (28 May 2025)
Nursing and Midwifery Council:	Represented by Stephen Earnshaw, Case Presenter
Mr Ehiemere:	Present and represented by Joseph Okaigbe on 19 May 2025 Present and not represented from 20 – 28 May 2025
Facts proved:	Charges 1, 2a, 2b, 3a(i) and (ii)
Fitness to practise:	Impaired
Sanction:	**Suspension order (12 months)**
Interim order:	**Interim suspension order (18 months)**

Detail of charges:

That you a registered nurse:

1. On or about 31 October 2023, you intentionally struck Patient A on the head with a sharps tray.

2. On or around 6 November 2023, provided a statement to Colleague A, which incorrectly stated that:

    a. You did not strike Patient A on the head with a sharps tray.

    b. Patient A snatched the sharps tray from you and hit you with it.

3. Your conduct in Charge 2 was dishonest in that you:

    a. intended to mislead your colleagues into believing that:

    i) You did not strike Patient A on the head with a sharps tray.

    ii) Patient A snatched the sharps tray from you and hit you with it.

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

Decision and reasons on application to admit unredacted witness statement

The panel considered an application by Mr Okaigbe which was made on your behalf under Rule 31 of the *'Nursing and Midwifery Council (Fitness to Practise) Rules 2004',* as amended (the Rules) to admit into evidence the full unredacted witness statement of Witness 1.

Mr Okaigbe submitted that paragraphs 14 and 15 of the witness statement from Witness 1 should be taken into account as part of his cross-examination of the witness.

Mr Earnshaw on behalf of the Nursing and Midwifery Council (NMC) submitted that the redacted paragraphs referred to by Mr Okaigbe are not relevant or admissible.

The panel heard and accepted the legal assessor's advice on the issues it should consider in respect of this application. This included that Rule 31 provides that evidence is admissible in so far as it is relevant and fair to admit it.

The panel decided that the redacted paragraphs 14 and 15 were not relevant to the charges and accordingly determined that those paragraphs should remain redacted and were not admissible.

Decision and reasons on application to amend the charge

Having retired to consider the facts of the case, the panel were of the view that the wording of charges 2(a), 2(b) and 3a (i) and (ii) did not accurately reflect the evidence contained within your statement upon which the NMC sought to rely. The panel decided to invite submissions from the parties as to whether the charge should be amended and if so, whether the amendments could be made without injustice to either party.

Mr Earnshaw submitted that whilst the wording of charge 2(a) did not replicate the words contained within your statement, the fact that the allegation preceded your response to it, was sufficient for the panel to infer that you were stating in your response at paragraph (1) of your statement that you did not hit Patient A on the head with the sharps tray, as per the wording of the charge.

In relation to charge 2(b), Mr Earnshaw submitted that the charge as worded did not accurately reflect your statement and made an application to amend the charge to include the words "*tried to"*.

Mr Earnshaw further submitted that as charge 3a(ii) mirrored charge 2b, his submissions also related to that charge.

In response to the submissions, you agreed that the charges did not accurately reflect what you had written in your statement and that you agreed that it was fair to

amend the charge as proposed by the NMC. You were satisfied that there was no injustice in allowing the amendment.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

Having considered the submissions, the panel determined that in relation to charge 2(a), the wording of the charge did not accurately reflect your statement and decided of its own volition to amend the charge to provide clarity. The panel being of the view that this was preferable to having to draw an inference. The panel decided to delete the words *'with a sharps tray'*. The panel was satisfied that in light of its finding in charge 1, the amendment of charge 2(a) was fair and would not cause injustice to any of the parties.

In relation to charge 2(b), the panel accepted the application by the NMC to amend the charge, as it was satisfied that the amended charge was not substantially different from the original charge, accurately reflected what was said in your statement and that the amendment would cause no prejudice or injustice to either party. It was therefore appropriate and fair to allow the amendment as applied for, to ensure accuracy.

In relation to charge 3a (i) and (ii) the panel accepted that it was appropriate and fair for these charges to be amended in accordance with the amended wording of charges 2(a) and (b).

Details of charges as amended

Accordingly, the charges now read as follows:

That you a registered nurse:

1. On or about 31 October 2023, you intentionally struck Patient A on the head with a sharps tray.

2. On or around 6 November 2023, provided a statement to Colleague A, which incorrectly stated that:
    a. You did not strike Patient A on the head. ~~with a sharps tray~~.
    b. Patient A snatched the sharps tray from you and **tried to** hit you with it.
3. Your conduct in Charge 2 was dishonest in that you:
    a. intended to mislead your colleagues into believing that:
        i) You did not strike Patient A on the head. ~~with a sharps tray~~.
        ii) Patient A snatched the sharps tray from you and **tried to** hit you with it

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

Background

The charges arose while you were employed as a Mental Health Agency Nurse working at [PRIVATE] (the Trust). You had been employed by [PRIVATE] (the Agency) since June 2023.

The alleged incident took place at 02:25 on 1 November 2023 whilst you were on a night shift. During your shift, you were due to administer PRN (Pro Re Nata) medication to Patient A. Before you could do so, Patient A threw a cup of water at you. It is alleged that in response, you hit Patient A on her head with a sharps tray and after this incident took place, your shift was cancelled and you were sent home.

On 3 November 2023, you submitted a written statement in response to the incident to the Clinical Lead of the Agency you were employed by. This statement was subsequently forwarded to the Trust and due to the nature of the incident, a referral was made to the NMC and the police.

A request was made by the Clinical Lead of the Agency to view footage of the CCTV that was in operation in the corridor at the time of the incident. After watching the footage, you were contacted by the Clinical Lead who informed you that the

statement you had given did not accurately reflect the footage that they had observed.

Your response was to repeat your claim that you did not hit Patient A and that Patient A had hit you. A meeting was then arranged with the Safeguarding team from the Trust to discuss the incident. Following this meeting, a decision was made that the matter should be referred to the NMC and the police.

Decision and reasons on facts

In reaching its decision on disputed facts, the panel took into account all the oral and documentary evidence, as well as the CCTV footage provided. The panel also took into account submissions made by Mr Earnshaw on behalf of the NMC and you.

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

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

- Witness 1: Clinical Lead

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

- Witness 2: Witness providing character reference

The panel also heard evidence from you under oath

Charge 1

1. On or about 31 October 2023, you intentionally struck Patient A on the head with a sharps tray.

This charge is found proved

In reaching this decision, the panel considered the totality of the evidence including oral evidence from Witness 1, your own oral evidence, the witness statement bundle and the exhibit bundle together with the CCTV footage of the alleged incident. The panel is of the view that the CCTV footage of the incident which was not disputed by you, was of good quality and the best evidence available.

In your oral evidence and written statement, you stated that you did not assault the patient by hitting her across the head or any part of her body. You went on to say you could not have hit the patient with the sharps tray.

The panel carefully considered the CCTV evidence and were satisfied that Patient A had picked up the cup of water and thrown it in a downward motion onto your chest area. The panel did not find your oral evidence and written statement where you stated it splashed on to your glasses and temporarily blinded you to be consistent with the CCTV footage.

The panel note that the CCTV footage reveals that on no occasion were you seen to wipe your eyes or your glasses in response to water being thrown or splashed on them.

Your actions of lifting the sharps tray upwards and towards the head of Patient A suggests that there was an intention to strike her head. The panel was of the view that having viewed the CCTV footage, your hand was still on the tray as it connected with the patient's chest and head area, which was contrary to your evidence at paragraph 15 of your statement, in response to the allegation in which you stated *"the tray fell off my hand".*

The panel accept that you were in a highly stressful situation but note that the patient only had use of one arm as she had a coat and bag in her other arm. The panel also

considered that you were aware that the cup contained water, having yourself filled the cup to give to her to keep her hydrated. The panel also noted that it is clear from the CCTV footage that there were other members of staff in the corridor not far away at the time.

The panel also note that you have given differing accounts of the incident, in your second written statement after the incident and your oral evidence before the panel.

In paragraph 17 of your second written statement evidenced at exhibit EH/02, you stated that:

> *'I did not grab the patient's wrists but held out my own hand in prevention and mitigation of any danger against me by the patient.'*

However, the CCTV footage shows you clearly grabbing Patient A's hand and holding on to it for a number of seconds.

You said that after the water was thrown on you by the patient, you were caught by surprise of this action. Whilst not wishing to minimise the incident, the panel did not accept your account given in oral evidence, and at paragraph 14 of your statement:

> '*I was disorientated, confused, taken aback and blinded by the water and in the spontaneity of the moment, sought to defend myself…'*

The panel does not accept your account that your actions were an appropriate response to defend yourself. The panel noted that by your own admissions, you had undertaken Prevention and Management Of Violence And Aggression (PMVA) training a number of years ago and you had undertaken yearly refresher courses with the most recent to this incident taking place one month before. You therefore would have been aware that in these circumstances, you should have sought to de-escalate the situation by removing yourself from the patient after they had thrown the water at you. In addition, having considered the CCTV footage, the panel noted that there was an opportunity for you to distance yourself from Patient A immediately

after they threw the water at you. Your actions were not in accordance with your training or level of experience.

On the balance of probabilities, the panel determined that you did intentionally strike the patient with the sharps tray and accordingly find this charge proved.

Charge 2a

2. On or around 6 November 2023, provided a statement to Colleague A, which incorrectly stated that:
    a. You did not strike Patient A on the head.

This charge is found proved

In light of the panel's finding of Charge 1, and having considered the wording in your statement, exhibited '[Witness 1's initials]/02' the panel find Charge 2a is proved.

Charge 2b

    b. Patient A snatched the sharps tray from you and tried to hit you with it.

This charge is found proved

In reaching this decision, the panel considered all the evidence including oral evidence from Witness 1, your own oral evidence, the witness statement bundle and exhibit bundle, together with the CCTV footage of the alleged incident.

The panel have referred to page 10 of the exhibit bundle '[Witness 1's initials]/02' where you referred to the patient throwing water over you. In that statement, you said:

> *'….she snatched the sharp tray that contained the tablet and water from me. She threw the cup of water on my face and tried to hit me with the tray'*

Having considered this part of your statement, along with the CCTV footage, the panel is satisfied that on the balance of probabilities, your statement made on or around the 6 December 2023 was incorrect and accordingly find this charge proved.

Charge 3

3. Your conduct in Charge 2 was dishonest in that you:

    a. intended to mislead your colleagues into believing that:

        i) you did not strike Patient A on the head.

        ii) Patient A snatched the sharps tray from you and tried to hit you with it

This charge is found proved

In reaching this decision, the panel considered all the evidence including oral evidence from Witness 1, your own oral evidence, the witness statement bundle and exhibit bundle, together with the CCTV footage of the alleged incident.

You told the panel that your statement was written soon after the incident took place. You have said that trying to remember the exact details of everything that had happened was difficult and this explains the reason for any inaccuracies with the evidence from the CCTV footage.

In your oral evidence, you said that you did not have the opportunity to view the CCTV footage before you wrote your first statement. You have said it was not your intention to make anything up and added that you had nothing to gain from providing a false account of what took place. You said that you believed you were trying to tell the truth in your first statement but due to not having the opportunity to view the CCTV footage, you did not give an accurate account of what happened.

You accept that you did not give an accurate account but denied that your intention was to mislead your colleagues.

However, the panel has considered that the incident involved a vulnerable patient throwing a cup of water over you. The panel acknowledge that whilst this may have been upsetting to you, the panel find it difficult to accept your account of the level of confusion and trauma that you say that you experienced, which ultimately caused you to go into a "*fight or flight mode"*, would result in you not being fully aware of your actions approximately 24 hours later.

The panel considered the legal test for dishonesty in the case *of Ivey v Genting Casinos UK limited* [2017] UKSC 67*.* It considered what you knew or believed and whether in the light of that knowledge or belief an ordinary decent person would consider your actions to be dishonest.

The panel does not accept that you genuinely thought at the time of making the statement that you had not assaulted the patient.

The panel took the view that you were aware of the seriousness of the incident that had taken place and having found Charge 1 proved, namely that you intended to strike the patient, the panel found that your statement was made with the intention of misleading your colleagues. Accordingly, the panel found this charge 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 Earnshaw 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 Earnshaw identified the specific, relevant standards where your actions amounted to misconduct.

Mr Earnshaw submitted that the charges made against you are serious and that any physical assault on a patient must always be treated seriously. Patient A was a challenging patient but she was also vulnerable and should not have been treated in the way that you treated her.

Mr Earnshaw made specific reference to the sanctions guidance and in particular SAN-2 which states:

> *"Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore, allegations of dishonesty will always be serious."*

In response to the NMC submissions, you stated that you had not breached the Code and your actions had not amounted to misconduct. Upon probing by the panel, you agreed that if a registrant had assaulted a patient it would amount to a breach of the Code and serious misconduct.

Submissions on impairment

Mr Earnshaw 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. He referred to various case laws including *Cheatle* v *General Medical Council* [2009] EWHC 645 (Admin). *Cohen* v *General Medical Council* [2008] EWHC 581 (Admin).

Mr Earnshaw submitted that you have shown engagement but little reflection and the panel is obliged to consider your misconduct in light of all the relevant factors known to the panel and whether the conduct is *'easily remediable'*.

Mr Earnshaw made references to your previous work record and character. Mr Earnshaw referred to the oral evidence provided by Witness 2 about your honesty and integrity and that this should be taken into account.

Mr Earnshaw submitted that the panel should consider any remorse and insight that you have shown in response to the incident that took place with Patient A.
Mr Earnshaw submitted that you have denied the charges that have been found proved and have only shown little insight and remorse regarding your conduct.

In response to the NMC submissions, you stated that you have been a devoted nurse for a number of years and you have indicated that you would like to continue your career in nursing in the near future. You further stated that you are not a risk to patients or the public and that your fitness to practise is not impaired.

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. It also had regards to the case of Roylance v General Medical Council (No.2) [200] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

> *'1.1 Treat people with kindness, respect and compassion.*
>
> *20.1 Keep and uphold the standards and values set out in the Code.*
>
> *20.5 Treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the charges found proved and your actions amount to misconduct.

The panel carefully considered the CCTV evidence and were satisfied that Patient A had picked up the cup of water and thrown it in a downward motion onto your chest area. However, despite this having preceded your actions towards Patient A, the panel believe that striking Patient A on the head was a completely disproportionate response to the situation you found yourself in.

The panel determined that your actions amount to serious misconduct in that you assaulted a vulnerable female patient and subsequently gave an inaccurate account of the incident. It is the panel's view that this was in order to minimise the seriousness of your actions.

The panel heard your oral evidence given under oath during which you repeatedly emphasised what a challenging and difficult environment working with mental health patients can be and that nurses can and often are physically assaulted by patients.

The panel acknowledge the challenging working environment that you and all nurses face. However, the panel note that by your own admission, you are an experienced mental health nurse with 24 years professional experience.

Furthermore, the panel considered that you have been trained to work in difficult and challenging environments, your experience and level of training mean that you should have had the expertise and knowledge to deal with the situation you found yourself in with Patient A.

During oral evidence, you informed the panel that due to your experience you have taken on a leadership and mentoring role to colleagues, yet your reaction to Patient A pouring a cup of water over you was in the view of the panel unacceptable, disproportionate and not the behaviour expected from someone in a leadership position.

The panel was of the view that fellow registrants and members of the public would find your actions, which resulted in a vulnerable female patient in care being assaulted by someone with a duty of care towards them, deplorable and below the standards expected of any registered nurse. Patients should expect the highest amount of trust and integrity from nurses and in this instance, you did not provide this to Patient A.

The panel found that your actions fell significantly short of the conduct and standards expected of a nurse, and that your actions amounted to serious 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 *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Grant* [2011] EWHC 927 (Admin) in reaching its decision. In paragraph 74, she said:

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*

determination show that his/her/ fitness to practise is impaired in the sense that S/He:

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

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

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

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

The panel determined that limbs a), b), c) and d) are all engaged.

The panel found that Patient A was put at risk of physical and emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty and an assault on a vulnerable patient extremely serious.

The panel then considered whether your fitness to practise was currently impaired. The panel is of the view that the misconduct found proved in the charges are difficult to remediate.

The panel is concerned that you have shown only limited insight and awareness in relation to your actions and in particular the impact on Patient A, and the wider public's confidence and perception of the nursing profession. The panel is of the

view that that you have shown limited willingness to accept and learn from your misconduct.

In response to panel questions, you stated that if you were in this situation again you would approach Patient A's room with other female members of staff, and that in the future, you would assess the risk properly before intervening. You further stated that in response to provocation from a patient, you would walk away and remove yourself from the situation.

In relation to the inaccuracies in your first written statement, you stated that should you find yourself in a similar situation again, you would not complete your statement with as much information if you could not remember, and that you would simply say *"you can't remember"* the full details of the incident.

In your oral evidence, you assured the panel that this incident would not happen again and that you still want to practise as a nurse, continue teaching and uphold the standards of nursing. You acknowledged that patients are vulnerable but stated that nurses are also vulnerable. You referred to Patient A being stronger than you.

The panel are not reassured by your responses to the charges, the panel is of the view that you have shown a very low level of reflection that focussed primarily upon the impact on yourself rather than the patient.

The panel went onto consider whether you had strengthened your practice since the incident. The panel acknowledge that this may have been difficult as you have not practised as a nurse since the incident. The panel had sight of your recent Level 2 qualification in Safeguarding and in oral evidence, you stated that you have completed your refresher training in PMVA in 2024.

The panel was of the view that whilst this demonstrated some evidence of strengthening of practise, it was limited and insufficient to address the concerns in the circumstances of this case.

The panel is of the view that you have shown no remorse, limited insight and reflection, and little relevant evidence of strengthening of your practice.

Based upon all the information provided before it, the panel has found that there is an ongoing risk to the public and therefore decided that a finding of impairment is required 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 is necessary on the grounds of public interest as public confidence in the profession would be undermined if a finding of impairment was not made in this case.

The panel find that you are not capable of practising kindly, safely and professionally and therefore your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Submissions on sanction

Mr Earnshaw informed the panel that in the Notice of Hearing, dated 9 April 2025, the NMC had advised you that it would seek the imposition of a striking-off order if it

found your fitness to practise currently impaired. However, during the course of these proceedings, he invited the panel to impose a suspension order for a time period as considered appropriate by the panel.

Mr Earnshaw drew the panel's attention to the relevant NMC guidance. Mr Earnshaw set out the aggravating features of your case. He submitted that you do not appear to accept that you have been dishonest and that your rejected defence of honesty may be considered as an aggravating feature. He submitted that the charges found proved are serious allegations and have serious consequences. He further submitted that one may say that there had been a misuse of power in that the charges relate to a vulnerable victim. He submitted that the panel may take the view that your actions were premediated, in the sense that emails were written before watching the CCTV. However, he noted that it is a one-off incident. He invited the panel to consider the guidance and the factors set out within the guidance, including that any sanction imposed must not be punitive but appropriate and proportionate.

The panel asked Mr Earnshaw whether he had any mitigating features to submit in respect of your case. Mr Earnshaw informed the panel that you may wish to address this in your response to his submissions. He further submitted that one may take a view that this was not a prolonged incident and it was *"over quickly".*

The panel also bore in mind your submissions. You told the panel that you read the panel's decision and reasons in respect of misconduct and impairment. You said that with a heavy heart you reached a stage in which the panel had found misconduct and your nursing practice impaired. You told the panel that for the past 19 months, you have not been able to earn. You said you have not been deceitful through your documentation, and that this is against what you stood for the past 24 years.

You told the panel that any sanction would cause reputational damage to you and your achievements. You said that you are [PRIVATE] and questioned what a sanction would achieve at this stage in your life. You are still eager to go back to your nursing career despite this *"hiccup".* You asked the panel to consider the patients who have had positive experiences with the care you provided. You said that there were many interpretations of the video and the panel has objectively found

proved the account given by the NMC. You asked the panel to consider that Patient A had been safe whilst in your care.

You told the panel that you did not deceive anyone. Your actions in that particular incident were spontaneous and not premeditated. You said that you have insight of the incident and that the "*patients are right"*, and if you were not insightful of your nursing practice, then you would not be here today.

You told the panel that you are not a risk, you would *"not hurt a fly"*, and did not bring the reputation of the nursing profession into disrepute. You emphasised that the incident was a spontaneous moment which has been difficult to describe. You recognised the need for the profession to be regulated. You asked the panel to consider your age, the reputational and financial impact that a sanction would have on you.

The panel asked you to clarify what you meant by your insight. You again said that if you were not insightful of your practice then you would not be here today. You said that you know that you are accountable for your own actions and take accountability for it. You said that there had been difficulty in the environment that you worked in that particular morning and your actions were not deliberate. You told the panel that you did not intentionally deceive your colleagues or intentionally hurt your patient.

The panel asked if you had an opportunity to check the sanctions guidance and consider the sanction bid from the NMC. You said that you subjectively told the panel what had happened and asked the panel to consider your [PRIVATE] again. You informed the panel that you felt completely accountable for your actions. You realise that you were a risk to yourself and your patient. You mentioned that there had been a difficulty with the environment and you had not deliberately harmed a patient.

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:

- Lack of insight into failings.
- Conduct which led to a vulnerable patient being put at risk of suffering harm.
- A breach of a position of trust.
- Breach of the duty of candour.

The panel also took into account the following mitigating features:

- One-off incident.
- Long unblemished career.

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.

The panel 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, specifically:

- *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;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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 concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel is also of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the fact that this case involves the striking of a vulnerable patient and dishonesty. The panel bore in mind that any conditions formulated must be appropriate and proportionate. It determined that it would not be possible to protect the public through the imposition of practical and workable conditions, given the level of supervision that would be required to ensure that no similar incidents take place.

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

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

The panel was satisfied that, in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel noted that you had previously had an unblemished career. There has been no repetition of the incident, noting that you have not been working in the nursing profession since the incident. It accepted your assertions that your actions in relation to the striking of Patient A were not premeditated but spontaneous. During your oral evidence today, you stated that this was a *"one-off"* incident and that your actions were not done out of malice but during the provision of service and was *"contrary to* [your] *profession of 24 years"*.

In relation to the charge of dishonesty, the panel was satisfied that this was a one-off incident in an otherwise unblemished career. Whilst you maintained that you had no intention of deceiving your colleagues, you then accepted the panel's findings of deliberate dishonesty stating that it is not what you had stood for over 24 years.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

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

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

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

The panel determined that a suspension order for a period of one year is appropriate in this case to mark the nature and seriousness of the misconduct.

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

Any future panel reviewing this case would be assisted by:

- A written reflective statement which addresses the following:
    - Your understanding and insight into the charges found proved including your reflection as to any barriers into your insight into the charges.
    - The impact of the charges found proved on patients, your colleagues and the wider public.
    - Your understanding of the importance of the duty of candour and how you intend to incorporate this into your future nursing practice.
    - References to any training that you have completed in respect of the above bullet points and provide examples of how you will implement your learning into your nursing practice.
- Evidence of further training in relation to dealing with challenging behaviours (such as de-escalation of and managing violence and aggression).

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Earnshaw. He submitted that based on the substantive order made by the panel today and the risks identified, he invited the panel to impose an interim suspension order, for a period to be determined by the panel, to cover the eventuality of an appeal if you were to make an application. He submitted that the application is necessary on the basis of public protection and the wider public interest.

Decision and reasons on interim order

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

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

The panel, having decided to make a suspension order, decided that it must impose an interim suspension order for a period of 18 months on the grounds of public protection and the wider public interest for the same reasons as the substantive sanction imposed. The panel also considered that an interim order would cover the period of appeal in the event that you wished to make an appeal.

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

That concludes this determination.