

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Meeting
Wednesday, 17 September 2025 – Thursday 18 September 2025**

Virtual Meeting

Name of Registrant:	Paul Johnston
NMC PIN:	82A1910E
Part(s) of the register:	Nurses part of the register Sub part 1 RN1: Adult nurse, level 1 Nurses part of the register Sub part 2 RN2: Adult nurse, level 2
Relevant Location:	Hatfield
Type of case:	Misconduct
Panel members:	Wayne Miller (Chair, Lay member) Rosalyn Mloyi (Registrant member) Carson Black (Lay member)
Legal Assessor:	Charles Parsley
Hearings Coordinator:	Monowara Begum
Consensual Panel Determination:	Accepted
Facts proved:	Charges 1a, 1b, 1c, 1d
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Johnston's registered email address by secure email on 7 August 2025.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the date after which and the fact that this meeting would be heard virtually.

In light of all the information available, the panel was satisfied that Mr Johnston has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse,

- 1) On 14 March 2020, in relation to resident A,
 - a) Grabbed him by his shoulders.
 - b) Pushed him down on the chair.
 - c) Put your knee on his thigh.
 - d) Said "you might be able to hit the girls, but you won't be able to hit me", or words to that effect.

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached regarding this case between the Nursing and Midwifery Council (NMC) and Mr Johnston.

The agreement, which was put before the panel, sets out Mr Johnston's full admissions to the facts alleged in the charges, that his actions amounted to misconduct, and that his fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Mr Paul Johnston PIN 82A1910E ("Mr Johnston"), (collectively "the Parties") agree as follows:

- 1. Mr Johnston is content for his case to be dealt with by way of a CPD meeting.*
- 2. Mr Johnston understands that if the panel wishes to make amendments to the provisional agreement that are not agreed by Mr Johnston, the panel will refer the matter to a substantive hearing.*

The charge

- 3. Mr Johnston admits the following charges:*

That you, a registered nurse,

- 1) On 14 March 2020, in relation to Resident A,*
 - a) Grabbed him by his shoulders.*

- b) Pushed him down on the chair.*
- c) Put your knee on his thigh.*
- d) Said “you might be able to hit the girls, but you wont be able to hit me”, or words to that effect.*

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

The facts

- 4. Mr Johnston appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered nurse and has been on the NMC register since 4 January 1982.*
- 5. Mr Johnston was referred to the NMC on 16 April 2020 by the Home Manager at [a] Care Home (“the Home”). The Home is a nursing and residential care facility that supports individuals aged 65 and over, specialising in dementia, end of life and elderly mental health. The residents need close monitoring, and staff are trained in dealing with challenging behaviour.*
- 6. Mr Johnston was employed by the Home as a registered nurse from August 2019 to April 2020, when he was summarily dismissed.*
- 7. The Parties agree the following facts in relation to the specific charges:*

Charges 1(a)-(c)

- 8. On 14 March 2020, during a night shift, a carer was present in the lounge with Resident A when the resident began exhibiting challenging behaviour. Due to cognitive impairment and a high risk of falls, Resident A is subject to 1:1 care. He frequently displays both*

verbally and physically challenging behaviours which are attributed to his complex needs.

9. *Mr Johnston was the nurse on duty on the day in question and was in the office whilst the carer was in the lounge area with Resident A. As the carer was moving the resident from the wheelchair to a chair, the resident started kicking and pushing, trying to stand up, when the carer tried to communicate to the resident to calm down. Upon attending the lounge, Mr Johnston grabbed Resident A by the shoulders and pushed him down into an armchair and put his knee on Resident A's thigh.*

Charges 1(d)

10. *Resident A went on to remove his jumper but Mr Johnston tried to put it back on. Whilst his knee was on the resident's thigh, Mr Johnston said, "you might be able to hit the girls but you won't be able to hit me", or words to that effect.*
11. *On 16 March 2020, the carer reported the incident to the Home Manager who notified the directors.*
12. *There were no injuries noted to Resident A.*

Misconduct

13. *The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:*

'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule

and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances’.

14. *As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively*

‘[Misconduct] connotes a serious breach which indicates that the doctor’s (nurse’s) fitness to practise is impaired’.

And

‘The adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner’.

15. *Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council’s Code of Conduct 2021 (“the Code”).*

16. *At all relevant times, Mr Johnston was subject to the provisions of the Nursing and Midwifery Council’s Code of Conduct (10 October 2018). Based on the charges, the parties agree the following provisions of the Code have been breached in this case:*

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

2. Listen to people and respond to their preferences and concerns

To achieve this, you must:

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

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

13. Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

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

14. Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

To achieve this, you must:

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm

14.2 explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers

20. Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honest and integrity at all times, treating people fairly and without...harassment

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

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

- 17. The parties agree that Mr Johnston's behaviour was unprofessional and involved physical aggression, the use of force and verbal intimidation, all of which fall outside the scope of acceptable nursing practice.*
- 18. Mr Johnston's significant departure from the principles of prioritising people, promoting professionalism and trust, put the patient at risk of harm, therefore not being able to deliver the fundamentals of care effectively and endanger patient welfare. It is agreed that such conduct would be seen as deplorable by fellow practitioners and would damage the trust that the public places in the profession. Prioritising people, practising effectively and preserving patient safety are integral to the standards expected of a registered nurse and central to the Code.*
- 19. It is agreed that the Registrant's conduct fell far below the standards expected of registered nurses and as such, a finding of misconduct is required in all the circumstances.*

Impairment

- 20. Mr Johnston admits that his fitness to practise is currently impaired by reason of his misconduct.*
- 21. At the material time, Mr Johnston was subject to an NMC Caution Order which was imposed on 30 May 2019 for a period of 5 years. The charges that resulted in the Caution Order were as follows:*

That you, a registered nurse:

- 1) On 16 December 2017:*

a) *said to Patient A, 'Do you know how long a giraffe's neck is because if you hit me you'll have a neck like a giraffe by the time I will be done with you' or words to that effect.*

b) *said to colleagues, about Patient A:*

- i. *'lucky he's in here and not on the outside or I would have knocked his head off' or words to that effect.*
- ii. *that he needed 'seven bells knocking out of him' or words to that effect.*

c) *slept whilst on duty.*

2) *On 17 December 2017:*

a) *conveyed Patient B from a wheelchair to an armchair using an inappropriate moving and handling technique.*

b) *slept whilst on duty.*

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

22. *The registrant admitted the charges and a CPD hearing was held whereby the 5 year Caution Order was imposed as sanction. The Home were aware of the caution order prior to employing Mr Johnston.*

23. *The NMC's guidance entitled 'Impairment (Reference: DMA-1)'¹ explains that impairment is not defined in legislation but is a matter*

for the Fitness to Practise Committee to decide. This involves a consideration of both the nature of the concern and the public interest. The question that will help decide whether a professional's fitness to practise is impaired if:

“Can the nurse, midwife or nursing associate practice kindly, safely and professionally?”

24. *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.*
25. *Answering this question involves a consideration of both the nature of the concern and the public interest.*
26. *When determining whether Mr Johnston's fitness to practise is impaired, the questions outlined by Dame Janet Smith in her 5th Report from Shipman, (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) by Cox J are instructive. Those questions as are relevant in this case:*
- a. Has [Mr Johnston] 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 [Mr Johnston] in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
 - c. Has [Mr Johnston] in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or*
 - d. Has [Mr Johnston] in the past acted dishonestly and/or is liable to act dishonestly in the future?*

27. *The Parties have also considered the comments of Cox J in Grant at paragraph 101:*

“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.”

28. *It is agreed that limbs (a) to (c) can be answered in the affirmative in this case. Dealing with each one in turn:*

Limb (a)

29. *Resident A was a patient who had complex needs and required 1 to 1 care which Mr Johnston was aware of. Grabbing the patient, pushing them down, placing a knee on their thigh and shouting, constitute a serious breach of professional standards and represent clear examples of aggression, loss of control and physical intimidation. These actions violate the patient’s right to be treated with dignity and respect, show a failure to prioritise patient safety and demonstrate a serious lapse in judgement, emotional regulation, and professional conduct.*

30. *Although it has been accepted that Resident A did not have any visible injuries, such behaviour is likely to cause physical injury. Whilst there is no evidence that Resident A suffered from emotional harm as a result of Mr Johnston’s action, inappropriate physical restraint can place vulnerable patients, as Resident A was, at risk of emotional harm due to e.g., cognitive impairment and an inability to understand what is happening.*

Limb (b)

31. *Registered nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Members of the public must be able to trust registered nurses with their lives and the lives of their loved ones. Upon learning of Mr Johnston's treatment of a vulnerable patient, members of the public would be understandably concerned and would most likely lose their confidence in the profession resulting in a reluctance to seek care from a care or residential home as a result.*
32. *Mr Johnston's conduct has brought the profession into disrepute. His conduct is of a serious nature as such aggressive and abusive behaviour towards a vulnerable patient is likely to damage the trust and confidence the public places in the profession. Mr Johnston has failed to keep to, and uphold, the standards and values set out in the Code, and as such has failed to uphold the reputation of the profession. The public has the right to expect high standards of registered professionals.*

Limb (c)

33. *Mr Johnston's actions demonstrate a flagrant departure from the standards expected of a registered nurse and are a breach of the fundamental tenets of the profession. All nurses must act first and foremost to care for and safeguard the public. Prioritisation of people, effective and safe practice, and professionalism are fundamental tenets of the Code. By physically grabbing, pushing and shouting at a vulnerable patient suffering from dementia, Mr Johnston placed the resident at risk of harm and thereby breached these fundamental tenets.*

Public protection

34. *Impairment is a forward thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions which the court set out as being 'highly relevant' to the determination of the question of impairment, these are:*
- i. Whether the conduct that led to the charge(s) is easily remediable*
 - ii. Whether it has been remedied*
 - iii. Whether it is highly unlikely to be repeated.*

Limb (i)

35. *The NMC's guidance entitled 'How we determine seriousness (Reference: FTP-3)', has been considered. It states, 'Failure to [protect people from harm, abuse and neglect], or intentionally causing a person harm, will always be treated very seriously due to the high risk of harm to those receiving care, if the behaviour is not put right.'*
36. *The NMC's guidance entitled 'Serious concerns which are more difficult to put right' (FTP-3a) stipulates that some concerns are so serious that it may be less easy for the registered professional to put right the conduct or aspect of their attitude which led to the incident(s) happening. Examples provided for such cases are 'deliberately causing harm to people receiving care', and 'being directly responsible... for exposing people receiving care to harm or neglect...' Insight, along with tangible and targeted remediation such as training and demonstrable nursing competency, cannot remedy this type of concern.*

37. *Having regard to the guidance set out above, in addition to the NMC's guidance 'Can the concern be addressed?' (FTP-15a), the Parties agree that abuse, violence or mistreatment is not easily remediable. Mr Johnston has agreed that the correct technique was not used. When residents display challenging behaviour, staff at the Home are expected to use a breakaway technique which involves leaving the resident and going back when they are calmer. Alternatively, staff can consider contacting the community psychiatric nurse to prescribe medication. Residents should be approached in line with their risk assessment and care plan. The Home does not use restraints. There would need to be a risk assessment in place in order to use a strap on a wheelchair or to use a floor sensor.*
38. *The incidents are directly related to Mr Johnston's clinical practice.*

Limb (ii)

39. *Consideration has been given to the NMC guidance entitled 'Has the concern been addressed?' (FTP-15b). It is agreed that the concern has not been addressed. During the internal and NMC investigation, Mr Johnston has accepted that he did not use the correct technique but denied losing his temper and meant no harm. Mr Johnston apologised at a local level. However, Mr Johnston has not provided any evidence of any relevant training undertaken to address the concerns e.g., training in de-escalation techniques, safeguarding vulnerable adults, reflective practice and professional boundaries.*

Limb (iii)

40. *The Parties have considered the NMC guidance entitled 'Is it highly unlikely that the conduct will be repeated? (Reference FTP-15c)'. Mr Johnston accepts that he did not use the correct technique. He has not provided a reflective piece to express remorse, demonstrate*

insight into the seriousness to prevent recurrence. Mr Johnston has not provided evidence of any training undertaken to address the concerns.

41. Whilst the parties agree that Mr Johnston's acceptance of this CPD goes some way to demonstrating insight, the parties accept that grabbing, pushing and placing your knee on a vulnerable resident, is inherently difficult to remediate.

42. In light of this, the parties agree that a panel could reasonably conclude that a risk of repetition remains. A finding of current impairment is accordingly necessary on public protection grounds.

Public interest

43. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

"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."

44. Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.

45. In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to

Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.

46. However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession, such as the concerns in the present case.

47. It is agreed that there is a public interest in a finding of impairment being made to declare and uphold proper standards of conduct and behaviour. Nurses must ensure that their conduct at all times justifies the public's trust in the profession. It is submitted that members of the public appraised of the facts, would be shocked to hear that a registered nurse grabbed a vulnerable patient by the shoulders, pushed the patient down on a chair and put his knee on the patients thigh whilst shouting. As such, the need to protect the wider public interest calls for a finding of impairment to uphold standards of the profession, maintain trust and confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession, and the regulator, would be seriously undermined, particularly where there is a risk of repetition, as is present in this case.

48. Consequently, the Parties agree that a finding of impairment is therefore also necessary on the grounds of public interest.

Sanction

49. *The Parties agree that the appropriate sanction in this case is a striking-off order. In reaching this agreement, the parties have considered the NMC's sanction guidance.*
50. *The public interest must be at the forefront of any decision on sanction. The public interest includes protection of members of the public, including patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The public interest in this case lies with maintaining public confidence in the profession and upholding proper professional standards by declaring that the registrant's behaviour was unacceptable.*
51. *Any sanction imposed must do no more than is necessary to meet the public interest and must be balanced against Mr Johnston's right to practice in their chosen career. In order to achieve this the panel is invited to consider each sanction in ascending order.*
52. *The NMC Sanction Guidance in cases involving abuse of vulnerable people (SAN-2) states:*
- "When considering sanctions in cases involving the abuse or neglect of children or vulnerable adults, panels will, as always, start by considering the least severe sanction first and move upwards until they find the appropriate outcome. However, as these behaviours can have a particularly severe impact on public confidence, a professional's ability to uphold the standards and values set out in the Code, and the safety of those who use services, any nurse, midwife or nursing associate who is found to have behaved in this way will be at risk of being removed from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision clearly and carefully. This will allow people who have not heard all of the*

evidence in the case, which may include those directly affected by the conduct in question, to properly understand the decision.”

53. In their contemplation, the Parties have considered the following aggravating and mitigating factors:

Aggravating factors:

- Resident A was vulnerable*
- Mr Johnston used an inappropriate restraint method*
- Mr Johnston was subject to a Caution Order at the time of the events*
- Mr Johnston abused his position of trust*
- Mr Johnston is an experienced nurse*
- No evidence of training or insight*
- Mr Johnston’s actions indicate a deep-seated attitudinal or behavioural problem*

Mitigating factors:

- Mr Johnston has engaged with the NMC investigation.*

50.1 Taking no further action would not be appropriate in the circumstances of this case. The allegations are too serious to take no further action. So as to achieve the NMC’s overarching objective of public protection, action does need to be taken to secure public trust in nurses and to promote and maintain proper professional standards of conduct.

50.2 A Caution Order is only appropriate if there is no risk to the public or the patients requiring the nurse’s practice to be restricted. There is a risk of repetition present in this case as Mr Johnston’s behaviour and conduct is such that it is not possible to remediate and therefore

a future risk remains present. In those circumstances, a caution order would not be appropriate as it would not be a sufficient sanction to ensure the public are protected, and the conduct cannot be regarded as being at the lower end of impaired fitness to practise.

50.3 Imposing a Conditions of Practise Order is not appropriate or proportionate, in that there are no identifiable areas of nursing practise which require assessment and/or retraining. There are no workable or measurable conditions that could be imposed to address the conduct demonstrated by Mr Johnston in this case.

50.4A Suspension Order would be inappropriate. The guidance at SAN-2 indicates that temporary removal from the register is required at the very least. This case does not involve a single instance of misconduct but a previous FtP referral of a similar nature as well as a breach of an existing Caution Order. Mr Johnston's actions indicate a harmful deep-seated personality or attitudinal problem. Combined with a lack of remorse and/or sufficient insight, and relevant training, there is a risk of repetition. With regard to the guidance at SAN-3d. it is agreed that Mr Johnston's actions fell far short of the standards expected of a registered nurse, breach the fundamental tenets of the profession, and call into question his professionalism in the workplace.

50.5 The only appropriate and proportionate sanction in this case is a Striking-Off Order. As per the guidance on striking-off orders at SAN-3e, in conjunction with the guidance on seriousness at FTP-3, Mr Johnston's conduct raises fundamental questions about his professionalism and trust. Consequently, the public may be led to avoid using health and care services. The concerns are directly

linked to a risk to public safety and of damaging the public's confidence in the profession. The parties agree that a striking-off order is the only order that would protect the public, maintain professional standards, and uphold public confidence in the profession and the NMC as a regulator.

Maker of allegation comments

51 *On 10 December 2024, the NMC wrote to the Home to seek their comments on Mr Johnston's request to remove him from the NMC register.*

52 *On 15 December 2024, the NMC received a response. The following comments were made:*

"We remember this case some years back about inappropriate behaviour/remarks towards a resident and complaint received from co-workers. Whilst this behaviour would have warranted a warning or a slap on the wrist, it may perhaps be a good idea to try and retain him in the service, if feasible, given the shortages and also knowing that his nursing skills may not be an issue. We are not entirely convinced that his action would have resulted in his being removed from the register.

It is entirely your call and that of Paul but would suggest that a discussion be had with him as he may be acting in disgust and frustration. We are also not in a position to determine the action outcome based on the gravity of his actions, it is just a thought."

Interim Order

53 *An interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest for the reasons given above. The interim order should be for*

a period of 18 months in the event that the registrant seeks to appeal the panel's decision. The interim order should take the form of an interim suspension order.

The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Mr Johnston. The provisional CPD agreement was signed by Mr Johnston on 7 August 2025, and on 13 August 2025 for and on behalf of the NMC.

Decision and reasons on the CPD

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Johnston. Further, the panel should be mindful of the overarching objectives of the NMC and should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel decided to accept the CPD.

The panel noted that Mr Johnston admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Mr Johnston's admissions as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Mr Johnston's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Johnston, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel accepted the advice of the legal assessor who referred the panel to the cases of *Roylance v General Medical Council* (No. 2) [2000] 1 AC 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) and *GMC v Meadow* [2006] EWCA Civ.

In respect of misconduct the panel had regard to the terms of the Code. It determined that the following standards of the Code were engaged:

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:

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

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

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

Subject to the above qualifications in respect of paragraph 16, the panel endorsed paragraphs 13 to 15 and paragraphs 17 to 19 of the provisional CPD agreement in respect of misconduct.

The panel determined that Mr Johnston's actions toward the vulnerable patient in his care was aggressive and is not what is expected of a registered nurse. It determined that his conduct was a serious breach and does contravene the standards that are expected of a nurse. It determined that Mr Johnston's conduct raises fundamental questions about his ability to maintain the standards and values required by the Code. The panel therefore determined that his actions did fall significantly short of the standards expected of a registered nurse. The panel further determined that his actions would be seen as deplorable by fellow practitioners and would damage the trust that the public place in the profession.

The panel then considered whether Mr Johnston's fitness to practise is currently impaired by reason of misconduct. 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.'

The panel determined that Mr Johnston's fitness to practise is currently impaired. It determined that limbs a to c of the *Grant* test are engaged in this case.

The panel took into account paragraphs 20 to 22 of the provisional CPD agreement. It noted that at the time of the incident, Mr Johnston was subject to a caution order, imposed in 2019, for a period of five years. It determined that there are similarities between the previous incidents which led to the caution order and the current incident, however, the current incident amounted to an escalation to physical aggression in the form of the inappropriate restraint of a vulnerable resident.

The panel determined that Mr Johnston's conduct was intentional, as he deliberately exposed Resident A to harm by his physical actions of grabbing Resident A by the shoulder, pushing them down onto the chair, putting his knee on Resident A's thigh and being verbally intimidating towards them. It noted that Resident A was a vulnerable patient. It further noted that Mr Johnston had other options available to him at the time but chose to act outside of the care plan and the Home's procedures putting Resident A at risk of harm.

The panel determined that Mr Johnson's conduct is serious and is difficult to address or put right and not easily remediable as it relates to a violent physical act. The panel determined that, Mr Johnston's recent conduct alongside his caution order, demonstrates a deep-seated attitudinal issue. It noted that the time difference between the caution order and the recent conduct was a period of nine and a half months. Therefore, the panel determined that there is a significant risk of repetition.

The panel had no evidence before it that Mr Johnston has remediated his conduct and noted that Mr Johnston has agreed in the provisional CPD agreement that his conduct has not been remediated. The panel had no evidence of further training to address the concerns or any evidence of strengthening of practise. The panel are not aware of any contextual factors in this case. The panel determined that Mr Johnston has limited insight into his conduct.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 in respect of public protection, even though there was no physical harm to Resident A, it recognised the need to protect the public from risk of harm, as there is evidence that Resident A, who was a vulnerable patient, was placed at unwarranted risk of harm. Due to Mr Johnston's conduct, the panel determined that he had breached a fundamental tenet of the nursing profession.

The panel determined that a finding of impairment was necessary on public interest grounds in order to maintain public confidence in the profession and the NMC as a regulator, and to uphold proper standards of conduct. It concluded that Mr Johnston's conduct is very serious, and a well-informed member of the public would find such conduct deplorable.

In this respect the panel endorsed paragraphs 23 to 48 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Johnston's 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 vulnerable
- Conduct which put Resident A at risk of suffering harm
- Mr Johnston was subject to a caution order at the time of the events
- Limited insight
- No evidence of attempts to strengthen practise
- Mr Johnston's actions indicate a deep-seated attitudinal or behavioural problem

The panel also took into account the following mitigating features:

- Mr Johnston made a local apology
- Full admission of the allegations
- Recognition of current impairment

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 Mr Johnston's 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 Mr Johnston's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mr Johnston's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature

and seriousness of the charges in this case. It determined that Mr Johnston's conduct demonstrated deep-seated attitudinal issues. The panel noted that Mr Johnston has shown limited insight, however, it had no information before it that he has undertaken any further training or his willingness to undertake further training to strengthen his practise. The panel further noted that Mr Johnston has admitted the charges, and the fact that he was subject to a caution order at the time of the incident, it was not satisfied that Mr Johnston would comply with any conditions of practice order. Furthermore, the panel concluded that the placing of conditions on Mr Johnston's registration would not adequately address the seriousness of this case and would not protect the public nor meet the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction and had regard to the considerations set out in the SG. While there was no evidence of repetition of behaviour since the incident, the incident itself represented a repetition and an escalation of previous misconduct. The panel considered that there was evidence of harmful deep-seated attitudinal problems. While the panel noted that Mr Johnston has limited insight, he poses a significant risk of repeating this behaviour.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Johnston's actions is fundamentally incompatible with his remaining on the register and determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel had regard to the considerations set out in the SG. Despite the long period of Mr Johnston's registration, the regulatory concerns raise fundamental questions about his professionalism. The panel considered that public confidence in nurses could not be maintained if Mr Johnston is not removed from the register. Accordingly, the panel concluded that striking off is the only sanction which will be sufficient to protect patients, members of the public, uphold professional standards, and maintain public confidence in the profession and the NMC as a regulator.

Balancing all these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order.

The panel considered that this order was 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.

Decision and reasons on interim order

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 Mr Johnston's own interest.

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 interests. 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 agreed with the CPD that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any appeal proceedings that may be made in respect of the striking-off order.

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

That concludes this determination.