

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Hearing**  
**26 July 2019**

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

<b>Name of registrant:</b>	Beverley Shirley Thompson
<b>NMC PIN:</b>	08B0135S
<b>Part(s) of the register:</b>	Registered Nurse - Sub Part 1 RNA: Adult nurse (8 June 2011)
<b>Area of Registered Address:</b>	Scotland
<b>Type of Case:</b>	Conviction
<b>Panel Members:</b>	Julia Thompson (Chair, Registrant member) Mary Jane Scattergood (Registrant member) Julius Komorowski (Lay member)
<b>Legal Assessor:</b>	Gerard Coll
<b>Panel Secretary:</b>	Tara Hoole
<b>Miss Thompson:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Alastair Kennedy, NMC Case Presenter
<b>Facts proved:</b>	1
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim Order:</b>	Interim suspension order

**Details of charge:**

That you, a registered nurse:

1. On 13 November 2018 at Livingston Sheriff Court, were convicted of four offences under section 315 (Ill-treatment and wilful neglect of mentally disordered person) of the Mental Health (Care and Treatment) (Scotland) Act 2003. **Found proved**

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Thompson was not in attendance and that written notice of this hearing had been sent to Miss Thompson's registered address by recorded delivery and by first class post on 24 June 2019. Further, the panel noted that notice of this hearing was also sent to Miss Thompson's representative instructed by the Royal College of Nursing (RCN) on 24 June 2019.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Thompson's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Kennedy submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Thompson has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

## **Decision on proceeding in the absence of the Registrant**

The panel next considered whether it should proceed in the absence of Miss Thompson.

The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
  - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
  - (c) may adjourn the hearing and issue directions.

Mr Kennedy drew the panel's attention to the correspondence from Miss Thompson's representative in which he stated that Miss Thompson would not be attending the hearing. The representative went on to confirm that they would not be attending in her absence and were no longer instructed on her behalf.

Mr Kennedy invited the panel to continue in the absence of Miss Thompson on the basis that she had voluntarily absented herself. Mr Kennedy submitted that there had been no engagement at all by Miss Thompson with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "*with the utmost care and caution*" as referred to in the case of *R. v Jones (Anthony William)*, (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Miss Thompson. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones*. It has had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Miss Thompson;
- Miss Thompson's representative confirmed that Miss Thompson would not be attending the hearing and that they were no longer going to be representing her; further she had not directly engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- the charges relate to events which occurred in 2017;
- there is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Thompson.

## **Background**

The charges arose whilst Miss Thompson was employed as a staff nurse on duty in the Dementia Unit (the Unit) at Livingston Care Home (the Home) by Four Season's Health Care. Miss Thompson self-referred to the NMC by way of her representative on 25 January 2018. She was suspended by her employers shortly thereafter and was dismissed in April 2018.

The details of the incidents which led to Miss Thompson's conviction are as follows:

On a nightshift between 15 and 30 September 2017, Miss Thompson was witnessed approaching a resident (who was using a Zimmer frame and walking along a corridor

towards their bedroom) from behind, taking hold of the resident and forcibly pushing them towards their bedroom causing their legs to give way. The resident became distressed during the incident and remained distraught for some time after.

On a nightshift between 28 and 29 October 2017 Miss Thompson was witnessed with her knee and lower leg against a resident's chest and stomach, pinning them to the chair. Later during the same nightshift Miss Thompson was witnessed grabbing a different resident by the wrists, dragging them across the lounge area and forcibly sitting them in a chair. Approximately 10 minutes later Miss Thompson was witnessed grabbing the same resident by the sleeves of their dressing gown and dragging them to their bedroom. The resident was visibly distressed by this. Miss Thompson is then said to have wrestled the resident into bed, manhandling and manoeuvring them before pinning them into their bed and not allowing them to move.

On 13 November 2018, at Livingston Sheriff Court, she was convicted of four offences under section 315 (Ill-treatment and wilful neglect of mentally disordered person) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

On 13 December 2018, Miss Thompson was sentenced to a community payback order with a supervision period of 12 months and a requirement to complete 200 hours of unpaid work or activities.

### **Decision on the findings on facts and reasons**

Mr Kennedy took the panel through the background of this case. He told the panel that Miss Thompson had not admitted to the charges but was found guilty after trial.

In light of extract conviction, Mr Kennedy, invited panel to find charge proved.

The panel accepted the advice of the legal assessor.

The charges concern Miss Thompson's conviction and, having been provided with a copy of the extract of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3) of the Rules which states:

- (2) Where a registrant has been convicted of a criminal offence—
  - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
  - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

Charge 1 was therefore found proved.

### **Submissions and Decision on Impairment**

Having announced its finding on the facts, the panel then moved on to consider whether Miss Thompson's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

In his submissions Mr Kennedy invited the panel to take the view that Miss Thompson's actions amount to a breach of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2015* (the Code).

He then 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. Mr Kennedy referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

Mr Kennedy submitted that Miss Thompson's actions had put patients at unwarranted risk of harm, amounted to a breach of the fundamental tenets of the profession and had brought the profession into disrepute.

He told the panel that at a case management meeting, Miss Thompson had informally and through her representative admitted the charge. However, this was the last contact she had with this process.

Mr Kennedy submitted that there is no information before the panel as to whether Miss Thompson accepts the underlying behaviour behind the charges. Further there is nothing before the panel to suggest Miss Thompson has shown any insight into the effects of her actions on patients, their family members, her colleagues, the reputation of the home or the reputation of the profession nor has she expressed any remorse for her actions.

Mr Kennedy submitted that the behaviours exhibited by Miss Thompson over a period of time strongly suggest an attitudinal problem and raise questions as to the extent she can be trusted to provide safe and competent care to service users. Mr Kennedy submitted that there was nothing before the panel in terms of remediation and reminded the panel that attitudinal problems are difficult to remediate.

Mr Kennedy therefore invited the panel to find that Miss Thompson's fitness to practice was currently impaired on both public protection and public interest grounds.



The panel has accepted the advice of the legal assessor.

Having heard Mr Kennedy's submissions the panel went on to decide if as a result of this conviction Miss Thompson's fitness to practise is currently impaired.

The panel had regard to the Code and concluded that Miss Thompson's actions clearly breached sections 1 and 20 of the Code:

### **1 Treat people as individuals and uphold their dignity**

To achieve this, you must:

- 1.1 treat people with kindness, respect and compassion

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

To achieve this, you must:

- 20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment
- 20.4 keep to the laws of the country in which you are practising
- 20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

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. Nurses 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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 he/she:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. ...

The panel finds that limbs a, b and c of the “Grant test” are engaged in this case.

Regarding insight, the panel considered that there is no evidence before it that Miss Thompson has any insight into the effects of her behaviour. The panel accepted Mr Kennedy’s submission and agreed that the behaviour underlying the charges was indicative of an attitudinal problem. The panel has no evidence before it of any remediation of the concerns identified.

The panel is of the view that there is a risk of repetition based on the lack of evidence of insight, remorse or remediation. The panel considered that the nature of the repeated instances of ill-treatment of vulnerable residents in Miss Thompson’s care indicated a risk of repetition of such behaviour in future and therefore a risk of harm to patients should Miss Thompson be allowed to practise unrestricted. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the pursuit of the NMC’s overarching objective to protect the public involves the pursuit of the following objectives; 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 noted that Miss Thompson has broken the law, put patients at a risk of harm, breached fundamental tenets of the profession and brought the profession into disrepute. The panel considered Miss Thompson’s behaviour to be deplorable. The panel considered that there was no evidence of Miss Thompson having shown any insight into the seriousness of her actions and the impact that these have had on their residents, their relatives, her colleagues, the reputation of the home or the reputation of the profession.

The panel determined that, given the nature and gravity of the charges Miss Thompson was convicted, in this case, a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Miss Thompson's fitness to practise is currently impaired.

### **Determination on sanction:**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Thompson off the register. The effect of this order is that the NMC register will show that Miss Thompson has been struck-off the register.

In his submissions Mr Kennedy took the panel through the aggravating factors in this case. He told the panel that he had been unable to identify any mitigating factors in this case.

Mr Kennedy submitted that Miss Thompson's behaviour was fundamentally incompatible with that of a registered professional. He submitted that her behaviour was a serious departure from the relevant standards of the profession and, at the very least, had the potential to cause physical and psychological harm to residents.

In reaching this decision, the panel has had regard to all the evidence that has been presented in this case, as well as the submissions by Mr Kennedy. The panel accepted the advice of the legal assessor.

The panel acknowledged the NMC Sanction Bid of a striking-off order, but was not bound by such a bid, and has exercised its independent judgement. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, is

intended to protect the patients and public by restricting the practice of a registered nurse. Although not intended to be punitive in its effect, any sanction may have such unintended consequences. The panel had careful regard to the Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel has also taken account of the aggravating and mitigating factors in this case.

The aggravating factors which the panel took into account, in particular, were that Miss Thompson's actions were deliberate and amounted to the ill-treatment of particularly vulnerable residents in her care. Miss Thompson abused her position of trust, as the only nurse on duty in the Unit, and there is a lack of evidence of insight into the impact of her actions on the residents, their relatives, her colleagues and reputation of both the Home and the profession.

The panel was unable to identify any mitigating factors in this case given the lack of engagement from Miss Thompson.

The panel is aware that it can impose any of the following sanctions; take no further action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

The panel considered the potential sanctions in ascending order of restrictiveness.

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 has already found that Miss Thompson's fitness to practise is impaired on the grounds of public interest as well as on public protection grounds. As such, the panel concluded that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 Miss Thompson's actions were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. In addition, having found Miss Thompson's fitness to practise is impaired on public protection grounds a caution order would provide no restriction on her practice. 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 Miss Thompson's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that there have been no issues raised regarding Miss Thompson's clinical practice. The concerns identified in this case are not something that can be addressed through retraining. The panel is therefore of the view that there are no practical or workable conditions that could be formulated, given the nature of the convictions in this case. Furthermore the panel concluded that the placing of conditions on Miss Thompson's registration would not adequately address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to):

- 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
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel noted that Miss Thompson's actions were not an isolated incident but rather demonstrated a pattern of behaviour over a period of time which put vulnerable residents at risk of suffering harm. The panel considered that there is no evidence of remorse or insight into the distress and potential harm Miss Thompson may have caused to residents in her care. The panel considered that the repeated instances of ill-treatment were indicative of an attitudinal problem.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Miss Thompson's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that such a serious breach of the fundamental tenets of the profession evidenced by Miss Thompson's actions is incompatible with her remaining on the register.

Furthermore, in looking at a striking-off order, the panel took note of the following questions from the SG:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

The panel was of the view that the findings in this particular case demonstrate that Miss Thompson's actions were extremely serious, and that to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction

is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Thompson's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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.

Accordingly the panel is satisfied that a striking off order is necessary on the grounds of both public protection and public interest.

The panel was mindful of the potential impact that such an order may have on Miss Thompson but taking full account of the important principle of proportionality, the panel was of the view that the interests of the public outweighed Miss Thompson's own interests.

The panel, therefore, directs the Registrar to strike Miss Thompson's name from the Register. She may not apply for restoration until five years after the date that this decision takes effect.

### **Determination on Interim Order**

The striking off order will not take effect until the end of the appeal period (28 days after the date on which the decision letter is served) or, if an appeal has been lodged, before the appeal has concluded.



The panel considered the submissions made by Mr Kennedy that an interim suspension order should be made to cover the 28 day appeal period. He submitted that this was appropriate given the panel's findings.

The panel heard and accepted the advice of the legal assessor and took account of the guidance issued to panels by the NMC when considering interim orders and the appropriate test as set out at Article 31 of The Nursing and Midwifery Order 2001. It may only make an interim order if it is satisfied that it is necessary for the protection of members of the public, is otherwise in the public interest or is in Miss Thompson's own interests.

The panel considered that an interim order is required for the protection of the public and is otherwise in the public interest. It concluded that to not make such an order would be incompatible with the panel's earlier findings and with the substantive sanction that it has imposed. The panel first considered whether it was appropriate to impose an interim conditions of practice order, but considered that no workable conditions could be formulated as identified at the sanction stage.

Therefore the panel decided to impose an interim suspension order for the same reasons as it imposed the substantive order and, having accepted Mr Kennedy's submissions, to do so for a period of 18 months in light of the likely length of time that an appeal would take to be heard if one was lodged.

The panel recognises the impact that an interim suspension order may have on Miss Thompson, however the panel had no information as to the impact of such an order on her. However, it concluded the public interest outweighed hers in this regard.

The effect of this order is that, if no appeal is lodged, the substantive striking off order will come into effect 28 days after notice of the decision has been served on Miss Thompson and the interim suspension order will lapse. If an appeal is lodged then the interim suspension order will continue until the appeal is determined.

The panel's decisions will be sent to Miss Thompson in writing.

That concludes this determination.