

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

**Substantive Hearing
Tuesday, 27 February – Friday, 1 March 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Tuesday, 23 April – Thursday, 25 April 2024

Virtual Hearing

Name of Registrant:	Charlotte Matumaini Basedeke
NMC PIN	20G0635E
Part(s) of the register:	Registered Nurse – Adult 1 March 2023
Relevant Location:	Cambridgeshire
Type of case:	Misconduct
Panel members:	Anne Ng (Chair, Lay member) Philip Sayce (Registrant member) James Carr (Lay member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Sharmilla Nanan
Nursing and Midwifery Council:	Represented by Nicola Kay, Case Presenter (27 February – 1 March 2024) Represented by Ben Edwards, Case Presenter
Miss Basedeke:	Present and not represented at the hearing
Facts proved by admission:	Charges 1a, 1d and 1e
Facts proved:	Charges 1b and 1c

Fitness to practise:	Impaired
Sanction:	Caution Order (3 years)
Interim order:	N/A

Details of charge

That you, a registered nurse:

1. On 27th March 2023 in relation to Person A:
 - a. Shouted at her “suck your mum” or words to that affect.
 - b. Pulled her hair.
 - c. Hit her with an iron.

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

Background

You entered the NMC register on 1 March 2023 as a registered nurse. On 6 April 2023 a referral was made to the NMC by Genell Support (Genell), a supported living service for young people under the care of the local authority.

At the time of the incident, you were employed as a Support Worker by Genell, and not in the role of a registered nurse. You were however, subject to the NMC’s code of conduct.

On 27 March 2023, you were allocated to work at one of Genell’s houses [PRIVATE] (“the Home”), where Person A was living. Person A was a young person who required one to one care. The incident arose after some initial conversation between you and Person A in which she expressed her desire not to speak with you. The situation between you and Person A quickly deteriorated. Person A told you to ‘*suck your mum*’ and you allegedly responded to Person A, ‘*suck your mum*’. The incident escalated when Person A left the room returning to throw a glass bottle at you. A physical altercation occurred between you and Person A in which it is alleged you pulled Person A’s hair and hit her with an iron. The

incident reflected in charges 1b and 1c was captured on CCTV and took place over a brief period of 30 seconds.

Person A continued to goad and mock you verbally and filmed you on her mobile phone after the incident. It is alleged that you responded by saying '*I'll fucking smoke you again*' and told Person A to '*fuck off*'.

The NMC does not dispute that Person A was rude, challenging and physically aggressive toward you and had assaulted you first.

The matter was immediately reported to management at Genell and also reported to the police. You accepted an '*out of court*' disposal by way of a Community Remedy Agreement which you signed to accept your responsibility in this incident.

Decision and reasons on application to admit Witness 1's supplementary statement and corresponding exhibit

The panel heard an application made by Ms Kay, on behalf of the Nursing and Midwifery Council (NMC), under Rule 31 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules), to allow into evidence the supplemental statement of Witness 1. Witness 1's supplemental statement exhibits '*Snapchat*' video footage recorded by Person A immediately after the physical altercation between you.

Ms Kay submitted that you had been sent Witness 1's supplemental statement and the corresponding exhibit 25 days prior to the hearing date. She noted that you had said you not been able to open the exhibit of the '*Snapchat*' video footage. She submitted that you had viewed the '*Snapchat*' video footage on Day 1 of the hearing, in the morning prior to the start of the hearing. She submitted that the '*Snapchat*' video footage did not show the whole incident but captured the type of threatening language that you used with Person A and that this footage was crucial evidence in the case. She submitted that the panel must consider fairness to all parties, including the NMC. She submitted that for the panel to

reach the correct determination of the charges there must be proper consideration of all of the evidence available and invited the panel to admit the supplemental statement of Witness 1 and the corresponding exhibit of the '*Snapchat*' video footage into evidence.

You told the panel that you were content for the panel to see this '*Snapchat*' video footage. You accepted that the language that you used with Person A was not correct but stated that you had just been attacked and injured by Person A. You told the panel that you were not in the right frame of mind when you said these things.

The panel had sight of Witness 1's supplemental statement and the corresponding exhibit, '*Snapchat*' video footage, was played in the hearing.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is '*fair and relevant*', a panel may accept evidence in a range of forms and circumstances, whether or not it would be admissible in civil proceedings.

The panel considered the application to allow Witness 1's supplemental statement and the corresponding exhibit, of the '*Snapchat*' video footage, into evidence. The panel noted that Witness 1's supplemental statement provided the provenance of her exhibit (the '*Snapchat*' video footage). The panel noted that the '*Snapchat*' video footage related to the immediate aftermath of incident and provided some context of the incident between you and Person A. The panel noted that you were provided with this evidence 25 days prior to the hearing but that you had not been able to access the video footage prior to the hearing. The panel was disappointed that the NMC did not ensure you had access to this evidence until a late stage in these proceedings especially as you are unrepresented at the hearing. However, the panel bore in mind that you did not object to it being admitted into evidence. The panel concluded that it is fair and relevant to admit Witness 1's supplemental statement and the corresponding exhibit (the '*Snapchat*' video footage) into evidence. The panel determined that it would give the footage what it deemed appropriate weight when considering all the evidence before it at each appropriate stage.

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

Ms Kay submitted that during the course of the hearing she had received CCTV footage which captures the incident. She made a request that this case be held partly in private on the basis that proper exploration of your case involves viewing CCTV footage which may identify Person A. The application was made pursuant to Rule 19 of the Rules.

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

The panel determined to go into private session to view the CCTV footage in order to protect the privacy of Person A, a third party to this hearing and, at the material time of this incident was a 17 year old adolescent.

Decision and reasons on application to admit CCTV footage from Genell

The panel heard an application made by Ms Kay under Rule 31 to allow two short CCTV clips of the incident into evidence. Ms Kay submitted that the footage had been sent to her at midday, on day 1 of the hearing whilst she was presenting this case to the panel. She submitted that the clips had been sent to the NMC by Genell and that the footage covers the incident in question and shows the acts alleged in the charges. She submitted that as soon as she received the CCTV footage, you had been shown the footage and informed that an application would be made to the panel to admit the CCTV clips into evidence. She accepted that you had been provided a short and limited time to consider the CCTV clips.

Ms Kay submitted that it is crucial, relevant and fair to admit into evidence these two short CCTV clips. She submitted that whilst the CCTV footage was new evidence, there has always been a description of the CCTV which covered the incident which took place in the

evidence. She reminded the panel of its requirement to be fair to all parties to the hearing, including the NMC. She submitted that in the circumstances it is fair to admit the two short CCTV clips.

You told the panel that you are content for this footage to be shown to the panel and confirmed that you had had enough time to view the footage. You stated that you had no questions.

The panel viewed the two short CCTV clips of the incident which was played in the hearing.

The panel heard and accepted the legal assessor's advice on the factors it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it would be admissible in civil proceedings.

The panel considered the application to allow into evidence the two short CCTV clips of the incident. The panel took into consideration that the two short CCTV clips show the entirety of the incident between you and Person A. The panel was disappointed that this footage was not obtained or provided to you earlier in the NMC's preparation of this case. The panel took into consideration that you are content for these clips to be admitted into evidence. The panel bore in mind that the NMC's overarching objective is the protection of the public and that on this basis, it determined that it is necessary and fair to admit the two short clips into evidence. The panel therefore concluded that it was fair to admit the two short clips of CCTV footage into evidence.

Decision and reasons on application to amend the charges

The panel heard an application made by Ms Kay, on behalf of the NMC, to amend the wording of charges 1a and to include two further charges 1d and 1e.

The proposed amendment to charge 1a was to correct a typographical error. It was submitted by Ms Kay that the proposed additional charges 1d and 1e, would more accurately reflect the evidence. She reminded the panel of the test that it must consider when deciding whether to amend the charges. She submitted that the NMC informed you of these amendments to the charges on 2 February 2023. She submitted that these additional charges did not amount to a new case against you but encapsulated the same type of behaviour of verbal abuse and the threat of physical abuse already outlined in the charges. She submitted that these charges were consistent with the evidence in the case. She invited the panel to allow these amendments to be consistent with the charges.

Original wording of the charges

“That you, a registered nurse:

1. On 27th March 2023 in relation to Person A:

- a. Shouted at her “suck your mum” or words to that affect.*
- b. Pulled her hair.*
- c. Hit her with an iron.*

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

Proposed amendments to the charges

“That you, a registered nurse:

1. On 27th March 2023 in relation to Person A:

- a. Shouted at her “suck your mum” or words to that ~~affect~~ **effect**.*
- b. Pulled her hair.*

- c. *Hit her with an iron.*
- d. ***Said to her “I’ll fucking smoke you again” or words to that effect.***
- e. ***Told her to “fuck off”.***

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

You told the panel that you don’t remember saying these things, but you were content for the charges to be amended.

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

The panel considered the amendments, as applied for. The panel was satisfied that the typographical amendment to correct ‘*affect*’ to ‘*effect*’ in charge 1a would not cause any unfairness to you and no injustice would be caused to either party by this proposed amendment being allowed.

The panel next considered the proposed amendments to include charges 1d and 1e. The panel noted that you had been provided notice of these amendments on 2 February 2023, 25 days prior to this hearing. It noted that you did not resist this application during the hearing or when you were initially notified about these amendments to include the additional charges. The panel noted that the proposed additional charges reflect an alleged course of conduct over a single incident. The panel determined to allow the amendment to the charges, as applied for, to include charges 1d and 1e.

Details of charge (AS AMENDED)

That you, a registered nurse:

1. On 27th March 2023 in relation to Person A:

- a. Shouted at her “suck your mum” or words to that effect.
- b. Pulled her hair.
- c. Hit her with an iron.
- d. Said to her “I’ll fucking smoke you again” or words to that effect.
- e. Told her to “fuck off”.

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

Admissions

You informed the panel that you made full admissions to charges 1a, 1d and 1e.

The panel therefore finds charges 1a, 1d and 1e proved in their entirety, by way of your admissions.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Kay under Rule 31 to allow hearsay evidence, in the form of an Incident Report dated 27 March 2023, completed by an eyewitness, Mr 2. Ms Kay submitted that you did not oppose this application and noted that Witness 1 exhibited the Incident Report but was not the author of this document and accepted that the NMC had not obtained a witness statement from Mr 2. Ms Kay submitted that the Incident Report was completed by Mr 2 as part of his professional duties and that it gives a balanced account of what took place between you and Person A. She submitted that it was fair and relevant to allow the Incident Report into evidence.

You stated that you did not have any questions or comments in relation to the Incident Report being allowed into evidence.

The panel heard and accepted the legal assessor's advice.

The panel considered this application carefully and returned from its private deliberations to request further information from the NMC in regard to what efforts had been made to secure a witness statement from Mr 2. It noted that Mr 2 appears to be the person present in the CCTV clips, with you and Person A, when the incident happened.

The panel heard and accepted the advice of the legal assessor who referred to the judgment in the case of *NMC v Jozi* [2015] EWHC 764 Admin.

Ms Kay took further instructions from the NMC. On her return, she submitted that a witness statement from Mr 2 was not pursued by the NMC as he had left Genell and there were no contact details available for him, although the NMC were already in possession of his contact details. She submitted that it was not proportionate during the course of these proceedings to obtain a witness statement from Mr 2, in light of the charges that you have admitted. She submitted that on this basis, it was a matter for the panel to consider whether to admit the Incident Report.

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

The panel took into account that the NMC has not clarified who Mr 2 was. It noted that Mr 2 appears to give an eyewitness account in the Incident Report which took place between you and Person A. The panel was of the view that the Incident Report was not the sole and decisive evidence in this case as it had the two clips of the CCTV footage which show the incident. The panel bore in mind that it did not have any information about the provenance of the Incident Report and author of the document may or may not be a witness to the incident. The panel therefore determined that it would not allow the Incident Report into evidence as hearsay out of fairness to you as Mr 2 was not available at the hearing to give evidence and be cross examined.

Further, the panel determined that if you choose to rely on or use the Incident Report as part of your case, you can do so, as you are not able to request the author to attend the hearing. However, if you do rely on the Incident Report, this would then enable the NMC to address the document.

Decision and reasons on application to include a further additional charge

The panel heard an application made by Ms Kay, on behalf of the NMC, to include an additional charge, charge 1f.

It was submitted by Ms Kay that the proposed additional charge would encapsulate the evidence before the panel as seen in the CCTV footage. Ms Kay acknowledged that the CCTV footage was not available in a viewable form when the charges were initially drafted for this case, and only became available at midday on day 1 of the hearing. She noted that you received the CCTV footage yesterday and had been informed that the NMC intended to add an additional charge on day 2 of the hearing in the morning. She acknowledged the unfairness to you and submitted that it was in the public interest to allow this amendment, to ensure the seriousness of your actions could be properly assessed. She submitted that this outweighs the unfairness to you.

Proposed additional charge:

“That you, a registered nurse:

1. *On 27th March 2023 in relation to Person A:*

a. ...

b. ...

c. ...

d. ...

e. ...

f. ***On one or more occasion you struck her***"

You told the panel that you opposed this application.

The panel accepted the advice of the legal assessor.

The panel took into consideration that the NMC had received the original footage of the CCTV in either April or May 2023. It noted that the original CCTV that the NMC received was not in a viewable form. The panel took into account that the NMC had 10 months to review the CCTV and/or request it in an alternative format prior to this current hearing date and did not do so. The panel concluded that it was clearly unfair and unjust to you, to amend the charges to extend and widen the nature of the allegations, particularly as an unrepresented registrant. The panel determined that the injustice to the NMC and the public could have been remedied by adequate and proper preparation of this case. The panel therefore rejected the NMC's application to further amend the charges to include charge 1f.

Decision and reasons on facts

In reaching its decision on the remaining charges, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Kay on behalf of the NMC and your submissions.

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: Employed by Genell as an Operations Manager at the material time and not present at the time of the incident.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and you.

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

Charge 1b

“That you, a registered nurse:

- 1. On 27th March 2023 in relation to Person A:
b. Pulled her hair.”*

This charge is found PROVED.

In reaching this decision, the panel took into account the evidence of Witness 1 and the CCTV footage.

The panel bore in mind the evidence of Witness 1. It noted that Witness 1 was not an eyewitness to this incident and that she had observed the CCTV footage of the incident between you and Person A. The panel noted it saw the same footage as Witness 1.

The panel considered that the CCTV clip, showed that the incident happened over a matter of seconds. The panel was of the view that one of the CCTV clips it observed showed at 14.46.00, for a period of three seconds, that you pulled Person A's hair.

The panel took into account that you chose not to give evidence in relation to this incident. The panel did however hear in your closing submissions you said that you did see yourself pulling Person A's hair and that you had no intention of hurting her.

The panel considered the evidence before it. It determined that on 27 March 2023 in relation to Person A, you pulled her hair. The panel therefore found this charge proved.

Charge 1c

"1. On 27th March 2023 in relation to Person A:

c. Hit her with an iron."

This charge is found PROVED.

In reaching this decision, the panel took into account the CCTV footage.

The panel considered the CCTV footage which showed the incident which took place between you and Person A. The panel was of the view at 14.46.09, it observed that you picked up the iron, which had been discarded by Person A, by its cord and swung it at Person A hitting her twice.

The panel took into account that you did not provide evidence in relation to this incident. The panel noted in your closing submissions you said that you wanted to get away from Person A as you were fearful of the damage that Person A could do with the iron and that was why you picked the iron up. You stated that you had no intention of doing any harm to Person A.

The panel considered the evidence before it. It determined that on 27 March 2023 in relation to Person A, you hit her with an iron. The panel therefore found this charge proved.

This hearing was adjourned part heard on 1 March 2024 at the conclusion of submissions on misconduct and impairment by both parties. The hearing resumed on 23 April 2024 with the panel assembling in camera to deliberate and having received a further reflective statement from Miss Basedeke.

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.

You provided evidence under oath in relation to your misconduct and impairment. You spoke about your passion for nursing and provided detail regarding your employment

history. You said that you intended to return to working in a nursing home that you had previously worked in for four years. You provided details regarding your nursing training.

Submissions on misconduct

Ms Kay referred the panel 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.*' She also referred the panel to the case of *R (Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin).

Ms Kay invited the panel to take the view that the facts found proved amount to misconduct. Ms Kay referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision. She identified the specific, relevant standards where your actions amounted to misconduct. She noted that you were not employed as a registered nurse at the material time however she submitted that you were on the NMC register and you are expected to uphold the standards set out in the Code. She acknowledged that Person A demonstrated challenging and aggressive behaviour however, she submitted that you should not have responded in the manner that you did. She submitted that your actions, as found proved, are directly linked to your professional practise and a departure from the standards expected of a registered nurse. She submitted that your actions undermine public confidence in the nursing profession.

You told the panel that you have been able to practise as a nurse in the last six months. You noted that the incident took place before you began practising as a nurse.

Submissions on impairment

Ms Kay moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need

to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included application of the principles outlined in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). She also referred the panel to the case of *Cohen v GMC* [2008] EWHC 581 (Admin).

Ms Kay submitted that impairment is conceptually a forward-looking exercise. She referred the panel to the relevant NMC guidance. She also reminded the panel of the training that you received at Genell and that you have worked in the care sector since you started working. She noted that you have only recently qualified as a registered nurse. She reminded the panel of the contextual background of the incident that took place. She submitted that you have not demonstrated a full understanding of the language that you used and the impact on Person A and how these words antagonised Person A and escalated the situation. She submitted that your insight is still developing.

You stated that you have reflected on this incident and that this one particular incident did not define you as a nurse. You stated that you were grateful for the feedback you received from your colleagues and patients in your current role. You stated on the day of the incident you did not intend to cause Person A harm. You said that you would accept if the panel found your fitness to practise impaired. You apologised for the incident and that you tried to apologise to Person A as you had recognised your wrongdoing. You stated that you have learned from the incident.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision and reasons on misconduct

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

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

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

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

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

20.4 keep to the laws of the country in which you are practising'

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 your conduct toward Person A, as admitted or found proved in the charges, was inappropriate. The panel was of the view that the language that you used with Person A, as outlined in the charges, was inflammatory and your actions (pulling Person's A hair pulling and hitting her with the iron) went against the online training you received from Genell. The panel concluded that a member of the public fully apprised of the facts of this case would find your reaction and response to Person A inappropriate and fell seriously short of the conduct and standards expected of a registered nurse. The panel determined that your conduct outlined in the charges found proved amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

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

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

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

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

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

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

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

- d) *...'*

The panel found that limbs a, b and c of the test referred to in Grant were engaged in the past. The panel determined that Person A was put at risk and was caused physical harm as a result of your misconduct. It concluded that your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered that your insight primarily is centred around the impact your actions had on Person A. The panel took into consideration that you made admissions to some of the charges at the hearing and that you expressed remorse for your actions outlined in the charges. It noted that you attempted to apologise to Person A for your actions following your acceptance of a community remedy agreement. The panel took into consideration that you've explored how you would approach a similar situation in the future. The panel also had regard to your written reflective statement. However, the panel was not satisfied that you demonstrated a full understanding of how your actions impacted negatively on the reputation of the nursing profession and how a member of the public would view your actions in relation to trust in the profession.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or

not you have taken steps to strengthen your practice. The panel took into account the undated testimonial from your ward manager which states *“Charlotte Besedeke stated with us ... as a junior registered nurse on the 7th August 2023. We have since had three monthly meetings regarding how she is settling in, if there have been any issues or conflicts she needs to raise. There has been nothing raised to me from herself or other staff members. Charlotte is settling in well on the ward, she is out of her supernumerary period and is managing well. I have no capability issues and she appears to be taking her time to safely develop and grow in confidence. She understands the escalation process and I feel she would highlight any future concerns.”*

The panel concluded that there is no longer a risk of repetition based on your nursing practice whilst working on the ward and subject to an interim order for a period of 12 months. You provided the notes of the 1:1 meetings with the ward manager in relation to your nursing practice and a positive testimonial. While the panel considered your reflection omitted to address the impact of your actions on the profession and the public confidence in it, your submissions to the panel and the testimonial provided on your behalf demonstrated that you now put patients at the centre of your work. The panel noted your efforts to gain considerable feedback from those in your care in order to develop yourself and your practice as a nurse. The panel took into consideration that you have completed online training in conflict management on 31 January 2024 and have completed a competency on conflict resolution on 26 October 2023. The panel therefore decided that a finding of impairment is not necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because the conduct outlined in charges found proved amounts to serious misconduct.

The panel was of the view that an informed member of the public as well as a fellow professional would be concerned if the serious misconduct was not marked. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds your fitness to practise impaired on the grounds of public interest alone.

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

Sanction

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

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

Submissions on sanction

Mr Edwards submitted that sanction is a matter for the panel and that his submissions serve to assist the panel in its deliberations. He submitted that this is a serious case and the conduct calls into question your professionalism and your ability to handle difficult situations. He further submitted that your actions as outlined by the charges found proved are evidence that you are not compatible with remaining on the register. He submitted that to impose a striking off order is proportionate and necessary in the circumstances. He outlined what the NMC regarded as the aggravating and mitigating factors of the case. He referred the panel to the relevant NMC guidance.

You submitted that you understood the seriousness of the charges found proved. You accepted that you behaved in a way that is unprofessional and it is not how a healthcare professional should behave. You submitted that this was a lapse of judgement and not a reflection of your character. You stated that you have never behaved in this manner throughout your career as a healthcare professional. You reminded the panel of the testimonial from your ward manager who has had no concerns regarding your conduct or practice in the workplace. You stated that after speaking with some members of the public about this case, you felt that they would show you some compassion in light of the circumstances. You stated that you have had positive feedback from your patients about your care. You spoke about your commitment to your nursing practice and the measures you have taken to ensure you do not find yourself in a similar situation. You apologised for your response to Person A and submitted that you accepted that a sanction was necessary but that the sanction did not need to be as severe as a striking off order.

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 reviewed the CCTV footage of the incident to refresh it of the circumstances.

The panel took into account the following aggravating features:

- Person A was a young and vulnerable service user.
- At the material time, you were in a position of trust.

The panel also took into account the following mitigating features:

- You were a newly qualified nurse admitted to the NMC register on 1 March 2023, having never worked in the role as a registered nurse.
- You were working as a healthcare assistant at the material time.
- You reacted impulsively to a violent attack in which you sustained trauma to the head which required hospital treatment.
- You previously expressed concerns to management about working at this location but were reassured as to its safety.
- This was a single, one-off incident.
- The incident took place in a confined space and there was no opportunity which allowed you to escape.
- An experienced member of staff, Mr 2, was present during the altercation with Person A who did not intervene or support you and who had the opportunity to protect you from further attack from Person A. Mr 2 had knowledge of Person A's violent background.
- Person A was the aggressor and you were not informed about Person A's past violent episodes.
- You have provided a reflective piece.
- You have demonstrated significant insight in relation to the impact your misconduct had on Person A.
- The evidence of training and learning in relation to conflict management you have completed since this incident.
- You have demonstrated a commitment and passion for nursing throughout the hearing.

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.

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 noted that you have shown significant insight in relation to the impact your misconduct had on Person A. The panel noted that you made some admissions and apologised to this panel for your misconduct, showing evidence of genuine remorse. It noted that you sought to apologise to Person A for your conduct but that she did not engage with the service which would allow you to do so. You have engaged with the NMC since the referral. The panel noted that you have been working as a registered nurse subject to an interim conditions of practice order. The panel has been told that there have been no adverse findings in relation to your nursing practice since these incidents. It bore in mind its finding that you are not a risk to patients, and you have taken steps to strengthen your practice in the intervening period. The panel had particular regard to the relevant training you have completed following the incident outlined in the charges and the positive testimonial you have from your ward manager. In considering all of these factors alongside the mitigation in this case, the panel determined that your current impairment on public interest grounds alone was at the lower end of the spectrum of impaired fitness to practise.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel determined that it would not be possible to formulate appropriate, measurable, and practical conditions which would address the public interest concerns. A conditions of practice order is not necessary to protect the public and nor would it assist your nursing practice.

The panel also considered the imposition of a suspension order. The panel had regard to the context of the incident that took place and the mitigation before it. The panel bore in mind that you have shown genuine remorse and have demonstrated significant insight into the incident with Person A. The panel took into consideration the measures you have taken to strengthen your nursing practice since the incident. The panel concluded that a suspension order would be disproportionate in this case.

The panel has decided that a caution order would adequately mark the public interest in the case. For the next three years, your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that you are subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of three years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession and the NMC as the regulator, but also send the public and the profession a clear message about the standards required of a registered nurse.

In making this decision, the panel carefully considered the submissions of Mr Edwards in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a striking off order would be disproportionate in the very particular circumstances of this case. The panel had regard to the context of the incident with Person A which took place over a short period of time. The panel bore in mind that you have been working as a nurse whilst subject to an interim order and no further regulatory concerns have been raised about your professionalism.

The panel was not satisfied that a striking off order was the only sanction that would be sufficient to uphold public confidence in the profession and the NMC as the regulator and maintain professional standards.

The panel was of the view that the public interest would not be served by striking off a nurse who has demonstrated she is capable of practising safely and effectively. The panel concluded that confidence in the nursing profession can be maintained by marking the seriousness of your misconduct by way of a caution order for a period of three years.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is

impaired, the record of this panel's finding, and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.