Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 29 July 2024 – Wednesday, 7 August 2024

Virtual Hearing

And

Physical Hearing

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

Name of Registrant:	Katie Blinston
NMC PIN:	09H3047E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nurse – Level 1 (13 April 2010)
Relevant Location:	Merseyside
Type of case:	Misconduct
Panel members:	Derek McFaull (Chair, Lay member) Cora Presley (Registrant member) Suzanna Jacoby (Lay member)
Legal Assessor:	Tim Bradbury
Hearings Coordinator:	Eyram Anka
Nursing and Midwifery Council:	Represented by Eugene MacLaughlin, Case Presenter
Miss Blinston:	Not present and not represented at this hearing
Facts proved:	Charges 1 and 3
Facts not proved:	Charges 2, 4a, 4b, 4c, 5, 6
Fitness to practise:	Impaired

Sanction:	**Conditions of practice order (12 months)**
Interim order:	**Interim conditions of practice order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Blinston was not in attendance and that the Notice of Hearing letter had been sent to Miss Blinston's registered email address by secure email on 20 June 2024.

Further, the panel noted that the Notice of Hearing was also sent to Miss Blinston's representative at the Royal College of Nursing (RCN) on 20 June 2024.

Mr MacLaughlin, on behalf of the Nursing and Midwifery Council (NMC), submitted that it 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.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing, including instructions on how to join and, amongst other things, information about Miss Blinston's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Blinston has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Blinston

The panel next considered whether it should proceed in the absence of Miss Blinston. It had regard to Rule 21 and heard the submissions of Mr MacLaughlin who invited the panel to continue in the absence of Miss Blinston.

Mr MacLaughlin referred the panel to a letter from the RCN dated 22 July 2024, which stated:

> *'Our member will not be attending the hearing nor will they be represented. No disrespect is intended by their non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in her absence.'*

Mr MacLaughlin submitted that Miss Blinston is fully aware of these proceedings and there is no prejudice to her by the panel proceeding in her absence.

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'*.

The panel decided to proceed in the absence of Miss Blinston. In reaching this decision, the panel considered the submissions of Mr MacLaughlin, the representations made in correspondence on Miss Blinston's behalf, and the advice of the legal assessor. It had particular regard to the relevant case law and the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Blinston;
- The RCN has informed the NMC that Miss Blinston has received the Notice of Hearing and confirmed that she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure Miss Blinston's attendance at some future date;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;

- The charges relate to events that occurred in 2022
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Blinston in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Blinston's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, Miss Blinston, through her representative provided submissions to the panel regarding the allegations.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Blinston. The panel will draw no adverse inference from Miss Blinston's absence in its findings of fact.

Details of charge (as amended)

That you, a registered nurse

1) On 24 February 2022 swore at Patient A

2) On 24 February 2022 taunted Patient A by offering, but not providing a cup of water

3) On a date before 24 February 2022 shouted at Patient A

4) On a date unknown in relation to Patient B

a) Raised your voice and argued with Patient B
b) Called Patient B a ‘pathetic man’ or words to that effect.
c) Told Patient B to ‘grow up’ or words to that effect.

5) On an unknown date during a strip search of Patient C, spoke in an aggressive and/or disrespectful manner to the patient.

6) On a date unknown used prisoner medication, namely Voltarol gel on a colleague.

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

Background

Miss Blinston was referred to the NMC on 6 July 2022 by G4S Allied Universal Company (G4S) in relation to allegations that arose whilst she was working as a registered nurse in the Healthcare department at HMP Altcourse (the Prison).

On 24 February 2022, Miss Blinston was involved in an incident with Patient A. At the time, Patient A had the water to his cell cut off because Patient A had previously flooded his cell. Miss Blinston allegedly held a glass of water at the cell hatch, allegedly taunting him by not giving him the water, when Patient A then grabbed Miss Blinston's jacket and pulled it through the hatch. Miss Blinston then allegedly swore at Patient A. Further, on a date before 24 February 2022, it is alleged that Miss Blinston and Patient A were shouting at each other.

It is also alleged that on a date unknown, Miss Blinston was heard to have raised her voice at Patient B, calling him a ‘pathetic man’ and telling him to ‘grow up’ or words to that effect.

Further, during a strip search of Patient C on a date unknown, Miss Blinston is alleged to have spoken to Patient C in a disrespectful and aggressive manner.

On an unknown date, Miss Blinston allegedly used prisoner medication, namely Voltarol gel on a colleague.

On 15 March 2022, an initial email received by the management team at the Prison raised concerns about Miss Blinston. The email raised allegations of misconduct towards vulnerable patients including the use of foul language and issuing medication to a member of prison staff.

On 18 March 2022, a fact-finding investigation was commenced by Witness 1, Head of Healthcare. As part of the investigation, Miss Blinston was interviewed. The issues with Miss Blinston's conduct related to her allegedly using foul language and behaving inappropriately towards patients.

The investigation found it difficult to identify specific dates and times that these alleged incidents occurred. Miss Blinston handed in her resignation letter on 28 March 2022. Despite her resignation, Miss Blinston engaged with the investigation and attended meetings as required.

On 10 June 2022, Miss Blinston was sent a letter informing her that the matter would proceed to a disciplinary meeting. Miss Blinston left her employment before a disciplinary hearing could be held.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr MacLaughlin on behalf of the NMC and the written submissions from the RCN on Miss Blinston’s behalf.

The panel has drawn no adverse inference from the non-attendance of Miss Blinston.

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

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

- Witness 1: Head of Healthcare at the Prison, at the relevant time
- Witness 2: Safer Custody, Equalities and Diversity Officer at the Prison, at the relevant time
- Witness 3: Duty Operations Manager at the Prison, at the relevant time
- Witness 4: Healthcare Assistant at the Prison, at the relevant time
- Witness 5: Nurse at the Prison, at the relevant time

Decision and reasons on application to amend the charge

The panel requested for the exhibit of the complete record of interviews conducted in this case (LM/04) to be made available for it to consider as part of the documentary evidence. The panel discovered that charge 3 no longer made sense factually as it was clear within

the exhibit that the alleged incident occurred prior to the date stated in the charge. The panel put it to Mr MacLaughlin and asked the NMC to decide what to do with the charge.

Mr McLaughlin submitted that he had been instructed to make an application to amend the wording of charge 3, but questioned whether or not the application should be made without notice of it being given to Miss Blinston and the RCN.

The proposed amendment was to change charge 3 from reading 'on a date after' to 'on a date before' in the light of evidence in Exhibit LM/04. It was submitted by Mr MacLaughlin that the proposed amendment would provide clarity and more accurately reflect the evidence. He submitted that it would be in the interest of justice to do so both for Miss Blinston and for the NMC.

> "That you, a registered nurse:
>
> 3. On a date ~~after~~ **before** 24 February 2022 shouted at Patient A

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The legal assessor referred the panel to the following cases: *Sanusi v The General Medical Council* [2019] EWCA Civ 1172, *Elliot, R (on the application of) v Solicitors Disciplinary Tribunal & Anor* [2004] EWHC 1176 (Admin) and *General Medical Council v Adeogba* [2016] EWCA Civ 162. The legal assessor advised the panel to derive the principle from Senusi that there was no requirement for a tribunal to refer back to a registrant during the course of a hearing in which the panel has already determined to proceed in absence. He referred to paragraph 70 in which Lady Justice Simler states,

> *'It seems to me that in a case where a registrant chooses not to attend a tribunal hearing (for good or bad reason) he or she must be taken to appreciate that if adverse findings are made, they will not be in a position to address the Medical Practitioners Tribunal on matters of mitigation in any changed circumstances*

flowing from those adverse findings and will be entirely reliant on any written submissions or representations made by the registrant in advance of the hearing. As Leveson J (as he then was) expressed the point (in Elliott v Solicitors Disciplinary Tribunal & another [2004] EWHC 1176 (Admin)): "those who fail to attend lose the right to participate and explain, and they do so at their peril. As [was] conceded, if, without more, a solicitor deliberately absented himself it would not be feasible to argue that he was entitled to a rehearing"'

The legal assessor reminded the panel that Miss Blinston voluntarily absented herself. He told the panel that Miss Blinston was given the Exhibit LM/04 prior to this hearing and had the means to discover the error in charge 3. Based on the authorities set out above, there is therefore no requirement in law for Miss Blinston to be given notice of this application.

The panel first considered whether it was required to give notice to Miss Blinston of the application to amend the charge, notwithstanding the decision to proceed in her absence, as had been queried by Mr MacLaughlin. The panel had regard to the authorities the legal assessor presented and determined that there is no such obligation upon the panel to give notice of the application as it previously decided to proceed in Miss Blinston's absence.

The panel was satisfied that there would be no prejudice to Miss Blinston and no injustice would be caused to either party by the proposed amendment being allowed as it does not go to the substance of the charge. The panel noted that Miss Blinston stated in her written submissions and during the local internal interview that there was no occasion where that incident occurred, either before or after 24 February 2022. Accordingly, the date is irrelevant and does not add or detract from the substance of the allegation. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

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 the RCN, on Miss Blinston's behalf.

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

Charge 1

> "That you, a registered nurse, on 24 February 2022 swore at Patient A".

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's witness statement, Witness 1's investigation report dated 25 August 2022, the notes from the internal interviews conducted by Witness 1 on 25 March 2022 and Miss Blinston's written submissions.

The panel had regard to Witness 1's investigation report dated 25 August 2022 in which she states that during the internal interview on 25 March 2022, Miss Blinston admitted to possibly using profanity during the incident with Patient A but expressed that it was a reaction to an assault by Patient A.

The panel also considered Miss Blinston's written submissions in relation to this charge, in which she stated, *'[PRIVATE].'*

Accordingly, based on the evidence before it, the panel found charge 1 proved.

Charge 2

> "That you, a registered nurse, on 24 February 2022 taunted Patient A by offering, but not providing a cup of water"

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral and documentary evidence of Witnesses 2 and 3, the Night notes for the shift on 24 February 2022, the Incident report dated 24 February 2024 and the interview notes (LM/04).

The panel considered that the only people present when this incident occurred was Miss Blinston and Patient A. It noted that there is no direct evidence from Patient A about Miss Blinston 'taunting' him, besides the account that was given to Witness 2 during the Assessment, Care in Custody and Teamwork (ACCT) assessment. This assessment although sought by the panel was not available to it. The panel considered Witness 2's account to be hearsay. The panel took the view that it had no way of verifying Patient A's allegations. The panel was aware that Patient A had significant mental health issues but had no evidence of the nature or extent of those issues or the impact they might have had on his reliability as a witness. Although this did not discount the seriousness of the allegation made by Patient A, the panel was unable to attach significant weight to this hearsay evidence.

The panel took into account that the CCTV footage of this incident was, for reasons unexplained, no longer available and the panel was told that contemporaneous notes describing the content of this footage had been destroyed for 'data protection reasons'. Accordingly, the panel was reliant upon the evidence of Witnesses 2 and 3 who had seen this footage close to the time of the incident and their descriptions of what it showed.

The panel noted that the night notes and the incident report from 24 February 2022 make no mention of Miss Blinston taunting Patient A. The panel considered the consistent narrative in both documents suggests that Miss Blinston was the victim and Patient A was the aggressor in this situation.

It was of note to the panel that Witness 2 gave evidence that Miss Blinston appeared to be taunting Patient A in the CCTV footage. However, in response to panel questions she admitted that there could be an alternate interpretation of the footage. The panel considered that Witness 3 stated in his oral evidence that Miss Blinston did not appear to

be taunting Patient A. The panel had regard to the contradicting interpretations of the footage.

The panel determined that there is insufficient evidence to come to a definitive conclusion on this charge. Since there is no CCTV footage or contemporaneous notes before it, it could not determine whether Miss Blinston was 'taunting' Patient A. Therefore, the panel found this charge not proved.

Charge 3

> "That you, a registered nurse, on a date before 24 February 2022 shouted at Patient A".

This charge is found proved.

In reaching this decision, the panel took into account Witness 3's oral and documentary evidence, Witness 1's investigation report dated 25 August 2022 and Miss Blinston's written submissions.

The panel determined Witness 3's evidence was clear and consistent. He maintained that he was called to an incident and when he arrived, he witnessed *'Miss Blinston and Patient A shouting at each other'.* The panel noted that this incident was not officially reported or recorded at the time and there was no valid explanation for this other this was something that occurred on a regular basis in the Prison and this particular incident was dealt with verbally. Witness 3 had been consistent with this evidence when interviewed by Witness 1 on 8 April 2022.

The panel considered that in Miss Blinston's written submission she denied this charge, stating,

‘I cannot recall any incident of this type. And I would not have just been arguing and shouting with a patient in that manner. I certainly would not have stated “I know but he's winding me up” the man was in prison and struggling with severe mental health, I would not behave in that manner.’

The panel acknowledged that Miss Blinston denies shouting at Patient A but determined that in her written evidence and the other witness evidence there is a suggestion that Patient A would get Miss Blinston in an agitated state. The panel considered that such behaviour was likely to have provoked a response from her. The panel concluded that on the balance of probabilities this allegation was proved.

Charge 4

“That you, a registered nurse, on a date unknown in relation to Patient B

a) Raised your voice and argued with Patient B.
b) Called Patient B a ‘pathetic man’ or words to that effect.
c) Told Patient B to ‘grow up’ or words to that effect.”

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 4’s oral evidence, Witness 4’s documentary evidence and Witness 1’s investigation report dated 25 August 2022 (LM/04).

The panel noted that Witness 4 is the only direct witness to this incident. His oral evidence of how the incident occurred was consistent with his witness statement in which he states,

‘…Ms Blinston approached cell 12. At this point, an argument started between Ms Blinston and Patient B through the cell door. I did not hear the start of the argument, nor could I hear Patient B. However, during this argument, I heard Ms

Blinston say to [Patient] B, with a raised voice, that he was a "pathetic man" and "grow up", or words to that effect. I do not know why she said this. I do not know what Patient B said in response to this, however, he punched the Perspex window out of his cell flap. I am aware that Patient B had punched the Perspex window out of his cell flap, as it had been placed in the office.'

The panel heard from Witness 4 that he reported this incident to his line manager. However, Witness 4's witness statement indicates that he did not officially report this incident to anyone, nor did he speak to Patient B about this incident. Notwithstanding, the panel acknowledged that Witness 4 was consistent in his account of the incident in his witness statement, his oral evidence and during the internal investigation interview with Witness 1 on 18 March 2022. The panel noted that this interview with Witness 1 is the first time this incident was officially discussed.

Whilst Witness 4 can recall the specific words he alleged were used by Miss Blinston, the panel considered that his recollection of the incident was vague in that there was no specific date or time frame and no supporting evidence from any other witness. The panel noted that there is no evidence from Patient B, no complaint from Patient B and no account of this incident reported by Patient B to another member of staff. It determined this to be a serious allegation, relating to verbal abuse of a vulnerable patient yet there is no record, report or contemporaneous note of this incident. The NMC did not produce any evidence from any other colleagues that this incident was allegedly reported to.

In considering the evidence before it, the panel had regard to *R(Dutta) v GMC* [2020] EWHC 1974 (Admin) which explains the care that should be exercised in relying upon evidence of the demeanour of a witness alone and the importance of considering wherever possible contemporaneous or near contemporaneous documentary evidence.

Given the lack of contemporaneous evidence, the panel could not be satisfied that the NMC had discharged the burden of proof. The panel therefore found charges 4a, 4b and 4c not proved on the balance of probabilities.

Charge 5

> "That you, a registered nurse, on a date unknown during a strip search of Patient C, spoke in an aggressive and/or disrespectful manner to the patient".

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 5's oral and documentary evidence, Witness 1's oral evidence and Witness 1's investigation report dated 25 August 2022.

The panel heard from Witness 5 that Miss Blinston was present during Patient C's strip search with two prison officers. However, Witness 5 also told the panel that female staff members were not allowed in the room whilst a male prisoner was being strip searched. She further stated that the prison officers would tell female members of staff that needed to walk past the strip search area when they could do so, once the prisoner is decent. Witness 5 told the panel that it would be a breach of policy for a female to be present. This corroborated Witness 1's evidence that it was breach of policy for any female member of staff to be present during a strip search. The panel also had regard to Miss Blinston's written submission in relation to this charge which supports the notion that females would not have been allowed in the room. Miss Blinston states:

> *'As i have previously stated I would not have been allowed to stand and even talk to any prisoner during a strip search the admission prison staff would not have allowed even a pleasant conversation. They certainly wouldn't have stood and allowed me to be aggressive or disrespectful to a prisoner at that time.'*

The panel did not have any evidence of this incident being reported by Witness 5 or by the prison officers present at the time. Although Witness 5 said that she reported this incident

to her line manager, the panel had regard to her witness statement in which she stated, *'I did not report these concerns to anyone at the time'*.

Witness 5 gave evidence that policies were abided by and taken very seriously, however, the panel questioned how that could be when she alleges that two prison officers and a female nurse were in a room where a male prisoner was being strip searched and there was no report of this breach. Witness 5 said that although she did not say anything in the moment, she reported the incident to her line manager.

It was of note to the panel that although Witness 5 said that she reported this incident to Witness 1 during the internal investigation interview on 18 March 2022, there is no evidence of this in Witness 1's investigation report. The panel determined that there was no reason for Witness 1 not to include this allegation in her report. The panel noted that during the investigation interview Witness 5 made general comments about Miss Blinston's behaviour but did not specifically report her presence in the room during Patient's C's strip search. This was of concern to the panel given that this was an opportunity to report such a serious incident.

Based on the evidence before it, the panel on the balance of probability did not find this charge proved.

Charge 6

> "That you, a registered nurse, on an unknown used prisoner medication, namely Voltarol gel on a colleague".

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 4's oral and documentary evidence and Miss Blinston's written submissions.

The panel noted that it had no evidence about which prisoner's medication was taken, there was no stock take after the allegation was raised and no official complaint that any prisoner medication was missing or that anything had been removed.

The panel heard from Witness 4 that he did not see any medication being removed or applied. Therefore, the panel considered that he could not be certain that Miss Blinston had taken prisoner medication.

The panel took into account the explanation put forward by Miss Blinston in regard to this charge, she stated,

> *'I admit allowed [Colleague 1] to use my own voltarol gel. I would never ever give a patient medication out and I would not have administered gel to PCO myself in the middle of a shift.*
>
> *[PRIVATE] I offered this to [Colleague 1]. I would never give prescribed medication to anyone that it wasn't prescribed to.'*

The panel took the view that Miss Blinston's explanation in response to this charge is entirely plausible. It bore in mind that this explanation was not ruled out by Witness 1 during her investigation and could not be rebutted by the NMC.

Accordingly, the panel determined that on the balance of probabilities the NMC has not proved that the Voltarol belonged to a prisoner and therefore this charge is found not proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Blinston'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 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, Miss Blinston's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Mr MacLaughlin invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code)) in making its decision. Mr MacLaughlin submitted that on the basis of the charges found proved Miss Blinston has breached the following sections of the Code: 1.1, 1.2, 1.3, 9, 9.3, 10, 10.1, 10.2, 13, 13.1, 13.2, 15, 15.2, 20, 20.8, 25, 25.1.

Mr MacLaughlin provided written submissions. The following is a summary of his submissions.

‘6.The NMC invites the panel to find that the facts amount to misconduct in that the registrant’s actions fell short of what would be proper in the circumstances.
7.Patient care is integral to the standards expected of a registered nurse and central to the code, which Ms Blinston has fallen short of.
…
10.The misconduct in this case concerns Ms Blinston’s actions and failures when caring for Patient A. They are directly linked to her clinical practice and it this indicated by her willingness to swear and shout at Patient A. By swearing and shouting at Patient A she failed to treat Patient A as and individual and uphold his/her dignity.
11.This behaviour undermines public confidence in the profession and is serious as the misconduct occurred within a prison medical treatment facility. Patient A, a vulnerable person, should have been provided with care and medical attention rather than being swore and shouted at. Ms Blinston failed to act appropriately.
12.Ms Blinston in all the circumstances of this case, departed from good professional practice and the facts as found proved are sufficiently serious to constitute misconduct.’

The panel had regard to the representations made in correspondence on Miss Blinston’s behalf.

Submissions on impairment

Mr MacLaughlin moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr MacLaughlin provided written submissions. The following is a summary of his submissions.

'13.If the panel are satisfied that the matters found proved do amount to misconduct the next matter the panel must consider is whether the Registrant's fitness to practise is currently impaired by reason of that misconduct.
14.Impairment is conceptually forward looking and therefore the question for the panel is whether Ms Blinston is impaired as at today's date per Cohen v General Medical Council [2008] EWHC 581 (Admin) also Zgymunt v General Medical Council [2008] EWHC 2643 (Admin)).
15.The panel should note that, in line with rule 31(7)(b) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, a departure from the Code is not of itself sufficient to establish impairment of fitness to practise, that question, like misconduct is a matter for the panel's professional judgment.
18. Current impairment can be found either on the basis that there is a continuing risk or that the public confidence in the nursing profession and the NMC as regulator would be undermined if such a finding were not made.
19.With regard to future risk, it is submitted the panel will likely find assistance in the questions asked by Silber J in Cohen, namely, is the misconduct easily remediable, has it in fact been remedied and is it is highly unlikely to be repeated. As to the risk of repetition, it is understood that currently Ms Blinston is not employed in a nursing capacity.
20. The NMC guidance entitled: "can the concern be addressed?" is also likely to be of assistance: "Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the in the case can be remedied. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious. The first question is whether the concerns can be addressed. That is, are there steps that the nurse, midwife or nursing associate can take to address the identified problem in their practice? It can often be very difficult, if not impossible, to put right the outcome of the clinical failing or behaviour, especially where it has resulted in harm to a patient.

However, rather than focusing on whether the outcome can be put right, decision makers should assess the conduct that led to the outcome, and consider whether the conduct itself, and the risks it could pose, can be addressed by taking steps, such as completing training courses or supervised practice. Decision makers need to be aware of the NMC's role in maintaining confidence in the professions by declaring and upholding proper standards of professional conduct.

Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice. Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

• violence, neglect or abuse of patients. Generally, issues about the safety of clinical practice are easier to address, particularly where they involve isolated incidents. Examples of such concerns include:

• Poor record keeping

• Failings in a discrete and easily identifiable area of clinical practice

• Concerns about incidents that took a significant period of time in the past

21.As to the risk of repetition, it is understood that currently Ms Blinston is currently not employed in a nursing capacity and has notified the NMC that she has found alternative employment outside nursing.

22.Due to the nature of the allegations there is a risk that there could be repetition of her actions in a nursing workplace. The allegations show a conduct that raises concerns about the registrant's professionalism. The misconduct is such that it calls into question her professionalism in the workplace. This therefore has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.

23.The provisions of the code constitute fundamental tenets of the profession and Ms Blinston's actions have clearly breached these in so far as they relate to upholding the reputation of the profession and Ms Ross upholding her position as a registered nurse.

26.Insight is an important concept when considering impairment. The panel is referred to the letter to Ms Mairead Leonard of the NMC from Felicity Crockford-Taylor of the RCN dated 22 July 2024 in this regard.

27.Also relevant are 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 regulator and in the profession would be undermined if a finding of impairment of fitness to practice were not made in the circumstances of this case."

28.For all the reasons detailed above, whatever the panel decide in respect of future risk, it is submitted that, Ms Blinston's actions are such that a finding of current impairment is required in order to maintain public confidence in the profession and NMC and to uphold proper professional standards. The public confidence in the profession and the NMC as its regulator would be undermined if that behaviour was allowed to pass effectively unremarked. A nurse failing to care for a vulnerable Patient by swearing and shouting raises concerns about her safety as a registered professional which can damage the reputation of the profession.

29.Accordingly, this is a matter in which a finding of impairment is required on public protection and public interest grounds.'

The panel had regard to the representations made in correspondence on Miss Blinston's behalf, including her reflective statement.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), General Medical Council v Meadow [2007] QB 462 (Admin) and *Grant*.

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 and the NMC guidance on Misconduct (FTP-2a).
The panel was of the view that Miss Blinston's actions in relation to all charges found proved involved breaches of the provisions of the Code. Specifically:

*'**1 Treat people as individuals and uphold their dignity***
To achieve this, you must:
1.1 Treat people with kindness, respect and compassion'
*'**1 Treat people as individuals and uphold their dignity***
To achieve this, you must:
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:
2.6 recognise when people are anxious or in distress and respond compassionately and politely.'
*'**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 Uphold the reputation of your profession at all times***
To achieve this, you must:
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people.'
*'**20 Uphold the reputation of your profession at all times***
To achieve this, you must:
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

Charge 3

The panel considered that this charge relates to a vulnerable patient with significant mental health issues within a prison setting, where Miss Blinston's role was to maintain his care and treat him kindly, effectively and safely. The panel have no evidence of harm caused to Patient A as a result of Miss Blinston's conduct but noted Miss Blinston's conduct may have caused Patient A some distress.

The panel determined that a reasonable member of the public and fellow registered nurses would generally consider it unkind and unacceptable for a nurse to shout at a patient. It is clear that Miss Blinston did not treat Patient A in a kind and effective manner. The panel therefore found that Miss Blinston's actions in charge 3 did fall seriously short of the conduct and standards expected of a nurse and amounts to misconduct.

Charge 1

In considering whether Miss Blinston's actions in charge 1 amounts to misconduct, the panel bore in mind that it is not acceptable for a nurse to verbally abuse patients. The panel took the view that if it was to examine this incident as a single instance of a nurse swearing at a patient, then it would potentially amount to misconduct because Miss Blinston's actions would constitute conduct that falls below the standards expected of a registered nurse.

However, the panel took into consideration the context of this incident, which has been accepted by the NMC, that Miss Blinston swore at a time when she was being physically assaulted by Patient A, when he pulled at her jacket and removed it through the hatch of a prison cell door. The panel had regard to the specific circumstances and determined that although unacceptable, it may be understandable that Miss Blinston would utter some sort of profanity out of fear, whilst being assaulted by a patient with significant mental health issues. The panel was of the view that a reasonable and well-informed member of the public would understand Miss Blinston's reaction to the assault and would not deem her

conduct to be deplorable in that context. Therefore, the panel determined that Miss Blinston's actions in charge 1 does not amount to misconduct.

Decision and reasons on impairment

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

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

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that limbs *a, b* and *c* of Grant are engaged when considering Miss Blinston's past misconduct. The panel had no direct evidence of harm in this case. However, in the panel's judgment, there is always a risk of harm when a nurse verbally abuses a vulnerable patient, particularly those with mental health issues. The panel found that Miss Blinston's misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that limb '*d'* was not engaged in this case because there is no indication of dishonesty.

Regarding insight, the panel determined that Miss Blinston demonstrated developing insight into her misconduct. Although Miss Blinston made no admission to charge 3, the panel noted that there is some form of apology in respect of how she behaved towards Patient A in relation to charge 1 (the incident some days later). It considered that in Miss Blinston's written submissions, she acknowledged some of her failings in dealing with Patient A.

The panel was satisfied that the misconduct in this case is capable of being remedied. It took the view that Miss Blinston demonstrated a general remorse into her interactions with Patient A, but did not specifically address shouting at Patient A.

The panel acknowledged Miss Blinston's reflective statement and determined that it contributed to its finding of developing insight. It considered that Miss Blinston has not undertaken retraining or addressed the concerns identified by any other means. She has not worked as a registered nurse since the allegations were made against her in 2022 and she has stated that she currently has no intention to resume nursing. However, the panel took the view that the scope of the charges does not necessarily require clinical practice to demonstrate that the risks have been addressed.

When considering whether there remains a future risk, the panel had regard to the fact that this was one incident amounting to misconduct in an otherwise unblemished career. However, the panel had insufficient evidence before it to conclude that matters of the kind found proved would not be repeated if Miss Blinston were to be in similar circumstances in the future. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 of Miss Blinston's misconduct and the risk of repetition. The panel concluded that, given the breach of fundamental tenets of the profession, public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds her fitness to practise impaired on public interest grounds.

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

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that Miss Blinston's name on the NMC register will show that she is subject to a conditions of practice order and anyone who enquires about her 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

In the Notice of Hearing, dated 20 June 2024, the NMC had advised Miss Blinston that it would seek the imposition of a striking-off order if it found her fitness to practise currently impaired. The NMC revised its proposal and submits that a conditions of practice order is more appropriate in light of the panel's findings.

Mr MacLaughlin summarised and reminded the panel of the provisions of the sanctions guidance and submitted that in the circumstances of this case a conditions of practice order is the most appropriate and proportionate sanction in this case.

Decision and reasons on sanction

Having found Miss Blinston'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:

- Lack of complete insight into failings
- Conduct which put patients at risk of suffering emotional harm.

The panel also took into account the following mitigating features:

- Evidence of developing insight
- Apologies within written reflective statement which expresses remorse
- Isolated incident within a challenging work environment

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the charge found proved. 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 public protection issues identified, an order that does not restrict Miss Blinston'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 although Miss Blinston's misconduct was at the lower end of the spectrum, a caution order would be inappropriate in view of the risk of

repetition. 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 Blinston'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 took into account the SG, in particular:

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

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel had regard to the fact that these incidents happened two years ago and that, other than these incidents, Miss Blinston has had an unblemished career as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, Miss Blinston should be able to return to practise as a nurse if she so chose.

The panel noted that Miss Blinston stated in her written submissions that she does not intend to return to nursing practice. However, the panel also had regard to Miss Blinston's reflective statement where she stated that she has a great love for nursing and is *'terrified of the thought of [n]ever being a nurse again'*. The panel bore in mind that Miss Blinston's misconduct was an isolated incident at the lower end of the spectrum and decided to

afford Miss Blinston the opportunity to return to nursing if she changes her mind in the future. Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Blinston's case. The panel determined that it could manage patient safety with a conditions of practice order. It took the view that imposing a suspension order or a striking off order would be inconsistent with its findings.

Having regard to the matters it has identified and understanding its duty to return nurses to safe and effective practice, the panel concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must ensure that you are supervised by another registered nurse any time you are working. Your supervision must consist of:
    - Working at all times on the same shift as, but not always directly observed by another registered nurse.
    - Monthly meetings with your line manager to discuss and reflect on your communication with patients and how you managed any challenges that arose.

2. You must send your case officer evidence that you have successfully completed courses/training in areas such as:
    - Communication skills
    - Managing challenging behaviour e.g. de-escalation techniques/anger management

    You must provide a reflective statement on how this will impact your practice.

3. You must keep the NMC informed about anywhere you are working by:
    a) Telling your case officer within seven days of accepting or leaving any employment.
    b) Giving your case officer your employer's contact details.

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

5. You must immediately give a copy of these conditions to:
    a) Any organisation or person you work for.
    b) Any agency you apply to or are registered with for work.
    c) Any employers you apply to for work (at the time of application).

d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

6. You must tell your case officer, within seven days of your becoming aware of:
   a) Any clinical incident you are involved in.
   b) Any investigation started against you.
   c) Any disciplinary proceedings taken against you.

7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
   a) Any current or future employer.
   b) Any educational establishment.
   c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 months.

Before the order expires, a panel will hold a review hearing to see how well Miss Blinston has complied with the order. If Miss Blinston decides that she does not wish to return to nursing practice, her attendance would not be necessary, and it would also be open to her to apply for an early review and seek voluntary removal from the register.

At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted:

- Positive evidence of compliance with the conditions set out
- Miss Blinston's attendance at any future review

This will be confirmed to Miss Blinston in writing.

Interim order

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

Submissions on interim order

Mr MacLaughlin invited the panel to consider imposing an 18-month interim conditions of practice, reflecting the terms of the panel's substantive conditions of practice order to cover the amount of time that an appeal may take.

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

Decision and reasons on interim order

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

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months to allow for the appeal period as not to do so would be inconsistent with its previous findings. In making this order, the panel took account of the impact the order will have on Miss Blinston and is satisfied that this order, for this period, is appropriate and proportionate.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Miss Blinston is sent the decision of this hearing in writing.

That concludes this determination.