

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

Substantive Hearing

Tuesday, 5 November 2024 – Wednesday, 6 November 2024

Virtual Hearing

Name of Registrant:	Andy Leslie Bath
NMC PIN	16E0105W
Part(s) of the register:	Nurses part of the register Sub part 1 RNMH: Mental health nurse, level 1 (8 January 2018)
Relevant Locations:	Wakefield and Cardiff
Type of case:	Misconduct/Caution/Health
Panel members:	Anthony Kanutin (Chair, Lay member) Carole McCann (Registrant member) Margaret Wolff (Lay member)
Legal Assessor:	Gerard Coll
Hearings Coordinator:	Amira Ahmed
Nursing and Midwifery Council:	Represented by Giedrius Kabasinskas
Mr Bath:	Not present and not represented
Consensual Panel Determination:	Accepted
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing for Misconduct and Health charges

The panel was informed at the start of this hearing that Mr Bath was not in attendance and that the Notice of Hearing letter had been sent to Mr Bath's registered email address by secure email on 2 October 2024.

Further, the panel noted that the Notice of Hearing was also sent to Mr Bath's representative at the Royal College of Nursing (RCN) on 2 October 2024.

Mr Kabasinkas 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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Bath's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

Decision and reasons on service of Notice of Hearing for Caution charge

The panel was informed by Mr Kabasinkas that a second Notice of Hearing letter had been sent to Mr Bath's registered email address by secure email on 2 October 2024 which included the caution charge.

Further, the panel noted that the Notice of Hearing including the caution charge was also sent to Mr Bath's representative at the Royal College of Nursing (RCN) on 2 October 2024.

Mr Kabasinkas 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 this Notice of Hearing provided the same details as mentioned above. In the light of all of the information available, the panel was satisfied that Mr Bath has been served with the Notice of Hearing in relation to the caution charge in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Bath

The panel next considered whether it should proceed in the absence of Mr Bath. It had regard to Rule 21 and heard the submissions of Mr Kabasinkas who invited the panel to continue in the absence of Mr Bath. He submitted that Mr Bath had voluntarily absented himself.

Mr Kabasinkas informed the panel that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Mr Bath on 27 September 2024.

Mr Kabasinkas also referred the panel to the email dated 8 October 2024 from Mr Bath's representative at the RCN to the NMC case officer which stated:

"Dear Emdadur

Thank you for your email.

Please note that we will not be in attendance at the hearing but I will be available should the panel have any queries.

Kind regards”

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 has decided to proceed in the absence of Mr Bath. In reaching this decision, the panel has considered the submissions of Mr Kabasinskas, the email from the RCN, and the advice of the legal assessor. It noted that:

- Mr Bath has engaged with the NMC and has signed a provisional CPD agreement which is before the panel today;
- Mr Bath has indicated through his RCN representative that he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Bath.

Details of charge

That you, a registered nurse on an unknown date, between 2012-2016 whilst working at [PRIVATE];

- 1) Attempted to put your penis in Patient A's mouth.
- 2) Attempted to grab/touch Patient B's genitals.
- 3) Your actions in one or more of charges 1 & 2 above were sexually motivated, in that you sought sexual gratification from such acts.

Whilst working at [PRIVATE];

- 4) On or around 10 August 2020 took £10 belonging to Service User C, from your employer's safe.
- 5) Your actions in charge 4 above were dishonest in that you without permission, appropriated money belonging to a patient, for your personal use.

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

6) [PRIVATE]

7) On 24 March 2022, at [PRIVATE] were cautioned for the following offence;

- a) Between 13/05/2015 -12/10/2016 at [PRIVATE], having care of Patient A by virtue of being a carer, ill-treated or wilfully neglected Patient A. Contrary to section 20(1) and (2) of the Criminal Justice and Courts Act 2015.

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

Schedule 1

[PRIVATE]

Consensual Panel Determination

At the outset of this hearing, Mr Kabasinskas informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Mr Bath.

The agreement, which was put before the panel, sets out Mr Bath's full admissions to the facts alleged in the charges, that his actions amounted to misconduct, and that his fitness to practise is currently impaired by reason of misconduct, health and his caution.

It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

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

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Andy Leslie Bath ('Mr Bath'), PIN 16E0105W ("the Parties") agree as follows:

- 1. Mr Bath is content for his case to be dealt with by way of a CPD meeting. Mr Bath and his representative, ... at the Royal College of Nursing ('RCN') will be available by telephone should clarification on any point be required, or should the panel wish to make amendments to the provisional agreement that are not agreed by Mr Bath.*

Preliminary issues

- 2. [PRIVATE].*
- 3. [PRIVATE].*

4. *Rule 29(2) of the Fitness to Practise Rules provides that where there is more than one category of allegation, a panel should hear any conviction/caution allegation after a misconduct allegation.*
5. *In this case a caution allegation is addressed after the misconduct and health allegations in this document, so allowing the Panel to act in accordance with the provision.*

Charges – misconduct and health

6. *Mr Bath admits the following charges:*

That you, a registered nurse on an unknown date, between 2012-2016 whilst working at [PRIVATE];

- 1) *Attempted to put your penis in Patient A's mouth.*
- 2) *Attempted to grab/touch Patient B's genitals.*
- 3) *Your actions in one or more of charges 1 & 2 above were sexually motivated, in that you sought sexual gratification from such acts.*

Whilst working at [PRIVATE];

- 4) *On or around 10 August 2020 took £10 belonging to Service User C, from your employer's safe.*
- 5) *Your actions in charge 4 above were dishonest in that you without permission, appropriated money belonging to a patient, for your personal use.*

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

- 6) *[PRIVATE].*

[PRIVATE] Schedule 1

[PRIVATE]

Facts – misconduct and health

7. Mr Bath joined the NMC register on 8 January 2018 as a mental health nurse. On 17 March 2021 the NMC received a referral from South West Yorkshire Partnership NHS Foundation Trust ('the Trust'), concerning Mr Bath's fitness to practise. On 23 April 2022, a duplicate referral was received from Patient A's sister.

Charges 1-3

8. Between 24 June 2006 and 11 June 2018, Mr Bath was employed as a Support Worker in [PRIVATE]. He worked full-time until 2012, after which he was a casual zero-hours contract worker.

9. The unit that Mr Bath worked in was a three bedroomed house which provided 24-hour support including a sleep-in facility, to three men with learning disabilities. The service provision was in the way of social care domiciliary support that emulated typical day to day living patterns. The team, including Mr Bath, worked various shifts in twos or threes, or alone at night.

10. Two of the men ('Patients A and B') are profoundly disabled with minimal communication abilities and limited understanding. Both have mobility difficulties and are extremely vulnerable, requiring constant support and supervision with their day-to-day living requirements. Patient A has cerebral palsy and needs a walker to be mobile. He communicates using sign language and a single sound, to indicate that he wants something.

11. On an unknown date between 2012 and 2016, Mr Bath approached Patient A and offered his penis for Patient A to place in his mouth. He did this to seek sexual gratification. In response Patient A closed his mouth and turned away. Mr Bath did not persist after this reaction.

12. *On an unknown date between 2012 and 2016, Mr Bath tried to touch the penis of Patient B after Patient B came out of the bath and was naked. He did this to seek sexual gratification. In response Patient B pushed Mr Bath's hand away and said "no". Mr Bath did not persist after this reaction.*

13. *[PRIVATE]*

Charges 4 and 5

14. *Following qualification as a registered mental health nurse, Mr Bath was employed by the Trust from 1 April 2019 to around 31 May 2021 as a Band 5 nurse completing a two-year rotation post. In around April 2020 he commenced his rotation duty at [PRIVATE], which is a medium secure ward with a learning disability pathway. [PRIVATE]*

15. *Service users keep money used for personal spending in the ward's safe for safekeeping. The safe has a keycode, known to staff. Each service user typically keeps around £30 in the safe each week, stored in an envelope. The front of the envelope has an audit sheet that is filled out if money is deposited or removed, recording the date, amount, and balance. The information is confirmed through the signature of a staff member and the service user or, if the service user is unable to sign, another staff member. Two signatures are required for each transaction for audit trail purposes. Money in the safe is counted nightly.*

16. *Service User C was an inpatient on the ward from 2014. He has a learning disability and paranoid schizophrenia. He is also very anxious and requires lots of reassurance. Service User C is vulnerable to being exploited and assaulted due to his presentation. At the time of the incident, his mental state was fluctuating significantly and he was someone who was prone to leaving money lying around, so his money would be kept in the safe at Newton Lodge.*

17. *On or around 10 August 2020, staff on the ward ordered a takeaway and Mr Bath needed money to pay for it. He removed £10 of Service User C's money from the safe, unbeknownst to anyone else, to pay for the meal. Mr Bath states that he*

intended to return the money the following night on 11 August 2020 but forgot to do so.

18. On the night shift of 12 August 2020, Senior Health Care Assistant, Ms 1 was undertaking a count of the money in the safe and found that £10 was missing from Patient C's money. Ms 1 asked Mr 2 to double check the count and Mr 2 also confirmed that £10 was missing from Patient C's money. At this point Mr Bath informed Ms 1 that he had taken the £10 for a takeaway the night earlier. Mr Bath then went and informed Advanced Nurse Practitioner/Senior Clinical Practitioner, Ms 2 who arrived on the morning shift, that he had removed £10 from Service User C's monies to pay for the takeaway, with the intention of replacing the money. Ms 2 gave Mr Bath £10 to replace the amount taken from Service User C to avoid him being disadvantaged by Mr Bath's actions.

19. Ms 2 logged a DATIX and reported the issue as a safeguarding incident. She informed Service User C as to what had happened. Service User C was upset, stating 'That's unacceptable, that's my money'. He declined to report the incident to the police but requested that it be investigated by the Trust.

20. The Trust's investigation commenced on 20 August 2020 and Mr Bath as interviewed on 9 October 2020. He acknowledged that he had taken £10 of Service User C's money to pay for a takeaway and claimed that it had been his intention to return the money before it was identified as missing. Mr Bath left the Trust's employ on or around 31 May 2021 following a local investigation and suspension on 29 April 2021.

Charge 6 [PRIVATE]

21. [PRIVATE]

22. On 25 July 2024 the RCN returned a completed case management form to the NMC, in which Mr Bath admitted the charges in full and conceded impairment.

Misconduct

23. *The Parties agree that the facts in relation to charges 1 to 5 amount to serious professional misconduct.*

24. *The Parties note that the misconduct as set out in charges 1 to 3 took place before Mr Bath came onto the register. However, it is agreed that the panel is not excluded from considering them as per [Article 22\(3\) of the Nursing and Midwifery Order 2001](#), which states:*

(3) This article is not prevented from applying because the allegation is based on a matter alleged to have occurred... at a time when the person against whom the allegation is made was not registered.

25. *Furthermore, between 2012 and 2016, when the incidents at charges 1 to 3 took place, Mr Bath was a student nurse.*

26. *The comments of Lord Clyde in [Roylance v General Medical Council \[1999\] UKPC 16](#) provide some assistance when seeking to define misconduct:*

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

27. *As do the comments of Jackson J in [R \(Calhaem\) v General Medical Council \[2007\] EWHC 2606 \(Admin\)](#) and Collins J in [Nandi v General Medical Council \[2004\] EWHC 2317 \(Admin\)](#) respectively:*

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

And

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

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

29. Mr Bath was and is subject to the provisions of the Code. The Code sets out the professional standards that nurses must uphold. These are the standards that patients and members of the public expect from health professionals. On the basis of the charges admitted, it is agreed that the following provisions of the Code have been breached in this case:

7) Prioritise people

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.4 respect and uphold people's human rights

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.4 act as an advocate for the vulnerable...

4 Act in the best interests of people at all times

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 *take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect, or abuse*

8) Promote professionalism and trust

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

To achieve this, you must:

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

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

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

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

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

20.8 *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

21 *Uphold your position as a registered nurse, midwife or nursing associate*

To achieve this, you must:

21.3 *act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care.*

[PRIVATE]

30. *With reference to charge 6, on the basis of the charge admitted, it is agreed that the following provisions of the Code have been breached in this case:*

9) Promote professionalism and trust

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

To achieve this, you must:

20.9 [PRIVATE]

31. [PRIVATE].

Charges – Caution

32. *Mr Bath admits the following charge:*

10) *On 24 March 2022, at [PRIVATE] were cautioned for the following offence;*

b) *Between 13/05/2015 -12/10/2016 at [PRIVATE] having care of Patient A by virtue of being a carer, ill-treated or wilfully neglected Patient A. Contrary to section 20(1) and (2) of the Criminal Justice and Courts Act 2015.*

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

Facts – Caution

33. *Between 2012 and 2016 Mr Bath also hit Patient A in anger on the buttocks and legs on around 20 occasions to stop him from screaming during the night. He did this because he had been unable to sleep due to Patient A's screaming.*

34. *On 3 March 2021 Mr Bath disclosed to his then Line Manager at the Trust, Mr 1, what he had done to Patient A physically and sexually. Mr 1 encouraged Mr Bath to report himself to the police.*

35. *To his credit, on 9 March 2021 Mr Bath reported his acts as described in charges 1 to 3 to [PRIVATE] and was arrested. He was interviewed by [PRIVATE] on 10*

March 2021, during which he admitted that he had attempted to place his penis in Patient A's mouth by offering it to him and attempted to grab Patient B's penis. He however then went on to say that he could not be sure that the incident with Patient B had happened.

36. On 24 March 2022 Mr Bath admitted the offence set out in charge 7 above and was issued a conditional caution by the police for hitting Patient A.

Caution

37. On the basis of the admitted charge 7, it is agreed that the following provisions of the Code have been breached in this case:

11) Promote professionalism and trust

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

Impairment

38. The Parties agree that Mr Bath's fitness to practise is currently impaired by reason of his misconduct, health, and caution.

39. The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. A 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?"

40. *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired. Answering this question involves a consideration of both the nature of the concern and the public interest.*

41. *When determining whether Mr Bath's fitness to practise is impaired, the Parties considered the questions outlined by Dame Janet Smith in [the 5th Shipman Report](#) (as endorsed in the case of [Council for Healthcare Regulatory Excellence v \(1\) Nursing and Midwifery Council \(2\) Grant \[2011\] EWHC 927 \(Admin\)](#)) as instructive. Those questions were:*

- (a) has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- (b) has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- (c) has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- (d) has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

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

Limb (a)

43. *The conduct is a serious breach of trust and professional boundaries. Mr Bath's physical and sexual assaults of Patient A, and the sexual assault of Patient B, will have caused them harm – both physical and psychological. His taking of Service User C's money without his consent caused Service User C distress and would have affected the trust he placed in ward staff to safeguard his finances.*

44. *It is agreed that Mr Bath poses a future risk of unwarranted harm to patients in his care. It is also agreed that members of the public being made aware of Mr Bath's actions would be at a risk of being deterred from accessing necessary health services for themselves or their loved ones, placing them at risk of harm.*

Limbs (b) and (c)

45. *Registered professionals occupy a position of privilege and trust in society. Safeguarding the most vulnerable members of society, acting with honesty and integrity, being professional and trustworthy and upholding the law, are integral to the standards expected of a registered nurse and are fundamental tenets of the Code.*

46. *Mr Bath took advantage of vulnerable patients either through sexual assault or theft. He received a caution for physically assaulting Patient A. His behaviour was in abject discord with the key qualities and standards expected of a registered nurse responsible for caring for others' physical and emotional wellbeing. Mr Bath's actions would be seen as deplorable by fellow practitioners. He has brought the profession into disrepute and undermined the trust that members of the public place in nurses.*

47. [PRIVATE]

Limb (d)

48. *Mr Bath took Service User C's money, without permission, for his personal use. He was aware that this was inherently dishonest because he claimed to have planned to return the money before anyone noticed.*

49. *Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance at ([DMA-1](#)) adopts the approach of Silber J in the case of [R \(on application of Cohen\) v General Medical Council \[2008\] EWHC 581 \(Admin\)](#) by asking the questions:*

- (i) *whether the concern is easily remediable;*

- (ii) whether it has in fact been remedied; and
- (iii) whether it is highly unlikely to be repeated.

Limb (i)

50. The Parties have considered the NMC's guidance entitled: [Can the concern be addressed? \(Reference: FTP-14a\)](#) and guidance entitled '[Serious concerns which are more difficult to put right](#)' (FTP-3a). Both provide that some concerns are so serious that it may be less easy for the registered professional to put right the conduct or attitude concerned. Examples include criminal cautions for sexual offences, where a patient has suffered harm, where the nurse abused their position of power to exploit, coerce, or obtain a benefit, sexual misconduct, dishonesty directly linked to a nurse's professional practice, and incidents of abuse or neglect towards vulnerable patients.

51. The Parties have also assessed the caution against the NMC Guidance on Convictions and Cautions ([FTP-2c](#)). The guidance states:

'When offending has occurred in professional practice, it's very likely this would be serious enough to affect fitness to practise.'

Offences which involve neglecting, exploiting, assaulting or otherwise harming people receiving care provide particularly strong evidence of risk to the public and are so serious that we are also likely to take regulatory action to maintain public confidence in nurses, midwives or nursing associates.'

52. The Parties agree that this is a case in which the concerns are more difficult to put right as it relates to the neglect and abuse (physical, sexual, and financial) of vulnerable patients, which caused them harm. The dishonesty was directly related to Mr Bath's professional practice and was for his own benefit. His actions were an abuse of his position. The caution was for the ill-treatment or wilful neglect of Patient A, which indicates a deep-seated personality and attitudinal problems. Insight, along with tangible and targeted remediation such as training and demonstrable nursing competency, cannot remedy this type of concern.

53. It is therefore agreed that the concerns are not easily remediable.

Limbs (ii) and (iii)

54. The Parties have considered the NMC's guidance entitled ['Has the concern been addressed?' \(FTP-14b\)](#) and ['Is it highly unlikely that the conduct will be repeated?' \(FTP-14c\)](#).

55. Mr Bath has engaged in the NMC's proceedings. In a document dated 05 April 2021 submitted to the NMC, Mr Bath wrote:

12) *'I admit to the allegations made by the referrer... I believe that I was under several important stressors that led me to become mentally unwell and act grossly out of character without me fully realising the extent of the condition. I am not sure if my actions will be able to be fully remediated, however, I have addressed many of the precipitating factors over the time I have worked as a nurse. Making the disclosure of abuse to my employer was part of this remediation and I am willing to work with any ensuing investigations and the results of these...'*

56. In the attached reflective account form, he wrote:

13) *'I remember that over the period from 2012 – 2014 (approximately) I physically assaulted a service user at night time [sic] in his bedroom whilst working in a care home that I had worked in for several years prior and was very familiar with.*

14) *I do not remember how often exactly I assaulted that service user, an estimate would be 20 times. I would go into his room and hit him on the legs and backside.*

15) *This only happened at night and during a sleeping shift when I was supposed to be sleeping. I would often work a long shift during the day and by sleeping time (23.00pm) I was exhausted. The service user's bedroom was located immediately next to the staff bedroom, and the service user*

would often begin to scream in his room. He did this for many years of working with him and it would often lead to me losing several hours of sleep which would then concern me as I would have to work the next day and I didn't want to be tired for work.

16) *I often felt that the service user was screaming at me personally and was upset because I was working with him on shift. Eventually I went into his room and hit him to try and make him stop screaming.*

17) *One night, during this time, I'm guessing in 2014 I sexually assaulted two service users who lived in the same house. I do not clearly remember the details of the assaults, but I have two memories: one is of myself offering my penis to the same service user as above to put in his mouth and him turning his head away and on the same evening I attempted to touch another service users [sic] penis after bathing him, to which he said no and moved my hand away. Both of the service users said no to me and so I discontinued and did not push the assaults.*

18) *With regards to the money taken from a service user. I took ten pounds from the patient safe kept in a ward office to pay for a takeaway for my dinner. I intended to bring the money back for the next shift and replace the cash, which I forgot to do. At the end of that next shift I asked the nurse in charge of the next shift if I could go to the cashpoint and replace the money. The NIC then reported me for theft. The money was not found to be missing during safe checks, I had just asked to replace the money so it wouldn't be missing on safe checks. I felt the need to take money from a service user as the night shift was busy across the hospital and I did not want to bother the team leader in the hospital to replace me whilst I left site to get cash for food.*

19) *[PRIVATE].*

20) *I feel as if the patient's [sic] I abused could be severely traumatised by my behaviour and this would then have a ripple effect on families and carers of those patients. This would be compounded by the patient's inability to talk about what was wrong or express themselves verbally.*

21) *I feel unbearably ashamed and guilty for my actions. I also have felt [PRIVATE] about the hypocrisy and dishonesty about working as a nurse and not being able to hold myself accountable.*

22) *[PRIVATE]*

23) *I believe that there are several ways I could have managed the above factors better, [PRIVATE]*

24) *...*

25) *I would never put myself in the same situation... now. I feel more equipped to manage and spot manipulative behaviour and discriminate safe and unsafe therapeutic practices for myself. I am more open with my employers now and communicate fully about any issues I have with regards to work and [PRIVATE]. Ultimately this openness is what has led to me making the disclosure of abuse.'*

57. *In a separately attached document expanding on the responses in the attached context form provided on the same date, Mr Bath wrote:*

26) *'[PRIVATE]*

27) *[PRIVATE].*

28) *[PRIVATE]*

29) *[PRIVATE].*

30) *Eventually I quit work for this care company entirely and moved away from Cardiff in 2018. For two reasons:*

a) *I didnt [sic] want the service user I had hurt to be re traumatised by seeing me.*

b) *To remove myself from the situation, to lessen personal stress, and reconstruct personal boundaries with regards to care work.*

31) *In 2019 I became a nurse. [PRIVATE].*

32) *[PRIVATE].*

33) *[PRIVATE]*

34) *[PRIVATE]*

35) *[PRIVATE]*

36) *... Both of the service users said no to me and so I discontinued and did not push the assaults. I thought that this would be a line that if I crossed I would never come back from.*

37) *I cannot give clear reasoning as to why I committed those sexual assaults. I feel they were grossly out of character for me... [PRIVATE]. Im [sic] not clear on this...*

38) *I accept that my actions have caused considerable harm to service users and have the potential to damage public respect in the nursing profession. By not disclosing the nature of these historical incidents in a timely fashion I have also not acted in line with the NMC's "duty of candour" ... I feel that in reflection, [PRIVATE]. I should have disclosed that I was having thoughts to harm a service user before I did, and also I should have disclosed that I was harming a service user when I began to do it.*

39) *[PRIVATE].*

40) Also, since the time of the incidents, I have worked for several years as a support worker and two years as a nurse with no major incidents or disciplinaries to note despite working in very hostile environments as nurse. [PRIVATE] ... moving away from Cardiff enable me to draw a line under that behaviour. I don't feel as if I would repeat that behaviour again [PRIVATE] However, I do appreciate that my actions could damage the public confidence in nursing.'

58. On 9 February 2024 Mr Bath submitted an agreed removal application to the NMC, which was refused on 13 March 2024. In this, he admitted the charges and impairment, and wrote:

1. I am applying for a removal from the register because my fitness to practice is currently under review by the NMC due to several concerns. I agree that my ability to practice is impaired [PRIVATE] and as such have no intention of practising as a nurse in the future.
2. Currently I am working part time work as a telephone researcher and using my spare time to complete courses in software development with a view to pursue a career in software development. As such I do not have any plans to go back into nursing or reapply with the register in the future.

59. The Parties agree that Mr Bath has expressed remorse and demonstrated some insight. However, it is agreed that the concerns are so serious that they are fundamentally incompatible with continued registration. Mr Bath has not worked as a nurse since January 2021 and has been subject to an interim suspension order since 13 April 2021. There is thus a continuing risk to the public. A finding of impairment is therefore necessary for the protection of the public.

Public interest impairment

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

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

61. *A consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to maintain public confidence in the profession and to declare and uphold proper professional standards and conduct.*

62. *This case involves Mr Bath’s abuse (physical, sexual, and financial) of vulnerable patients, which caused them harm. The dishonesty was directly linked to his professional practice and involved financial gain. His actions were antithetical to nursing duties. Such conduct in respect of vulnerable patients entrusted to the care of nurses undoubtedly undermines the public trust and confidence in nurses. The Nursing & Midwifery Council is tasked by statute to declare and uphold proper professional standards. As such, the Parties agree that a finding of impairment on the grounds of public interest is required in this case.’*

Sanction

63. *It is agreed that in consideration of the NMC’s sanctions guidance ([SAN-3e](#)) the appropriate and proportionate sanction in this case is **a striking-off order**.*

64. *The public interest must be at the forefront of any decision on sanction. The public interest includes the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour in the profession. The public interest in this case lies with maintaining public confidence in the profession and upholding proper professional standards by declaring that the registrant’s behaviour was unacceptable.*

65. *To achieve this the panel is invited to consider each sanction in ascending order of seriousness.*

66. *The NMC's serious sanctions guidance ([SAN-2](#)) states, with reference to dishonesty:*

... Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- misuse of power*
- vulnerable victims*
- personal financial gain from a breach of trust*

67. *The Parties agree that Mr Bath's actions involved a misuse of power with reference to vulnerable victims and, with reference to Service User C, he had personal financial gain from a breach of trust.*

68. *With reference to sexual misconduct, the guidance states:*

The Fitness to Practise Committee should be mindful of the following aggravating factors:

- situations where the nurse, midwife or nursing associate has abused a position of trust they hold as a registered professional or a position of power.*

69. *The Parties agree that this case relates to sexual misconduct involving an imbalance of power/exploitation/predatory behaviour, consequent to an abuse of Mr Bath's superior position of power.*

70. *With reference to abuse or neglect of vulnerable people, the guidance states:*

... any allegation involving the abuse or neglect of ... vulnerable people will always be treated seriously... any nurse, midwife or nursing associate who is

found to have behaved in this way will be at risk of being removed from the register.

71. *Patients A and B and Service User C were vulnerable. Mr Bath sexually assaulted Patients A and B. He physically assaulted Patient A and received a caution for the assaults.*

72. *With reference to cautions, the guidance states:*

In the criminal courts, one of the purposes of sentencing is to punish people for offending. When making its decision passing sentence, the criminal court will look carefully at the personal circumstances of the offender. In contrast, the purpose of the Fitness to Practise Committee when deciding on a sanction in a case about criminal offences is to achieve our overarching objective of public protection. When doing so, the Committee will think about promoting and maintaining the health, safety and wellbeing of the public, public confidence in nurses, midwives and nursing associates, and professional standards...

Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'.

73. *Mr Bath's caution is directly linked with his clinical practice, albeit it took place whilst he was a student nurse, and the nature of the offending gives rise to public safety and public interest concerns.*

74. *The Parties have considered the following aggravating and mitigating factors:*

Aggravating factors:

- *Sexual assault of Patient A & Patient B, both residents were profoundly disabled, suffered from mobility difficulties and extremely vulnerable.*

- *Physical assault of Patient A, a vulnerable patient.*
- *Financial abuse of Service User C, who suffered from learning difficulties and paranoid schizophrenia.*
- *Theft of patient money amounting to an abuse of a position of trust.*
- *Theft for personal financial gain.*
- *The dishonesty is linked directly to the registrant's clinical practice.*
- *A pattern of abusing patients financially, sexually and physically between 2012-2020*
- *Deep seated personality issues and attitudinal problems in respect of abusing vulnerable patients.*

Mitigating factors:

- *Mr Bath has admitted all the charges and expressed remorse.*
 - *Mr Bath admitted the sexual and physical abuse of Patient A & B to his line manager resulting in the NMC referral.*
75. *With regard to the NMC's sanctions guidance, the available sanctions have been considered in ascending order of seriousness.*
- 75.1. ***Taking no further action** or imposing a **caution order** would be wholly inappropriate as they would not (1) reflect the seriousness of the misconduct and caution, (2) protect the public or (3) maintain public trust and confidence in the profession.*
- 75.2. *Imposing a **conditions of practice order** would be inappropriate given the circumstances of this case. The Guidance ([SAN-3c](#)) says that a conditions of practice order is appropriate when the concerns can easily be remediated and when conditions can be put in place that will be sufficient to protect the public*

and address the areas of concern to uphold public confidence. The Parties agree that the concerns cannot easily be remediated and there are no conditions which can be formulated to address the concerns. The concerns in this case do not involve clinical failings, but rather misconduct and a caution, both linked to a deep-seated personality/attitudinal issue [PRIVATE], which cannot be addressed through retraining. There are no measurable, workable or proportionate conditions that can be imposed to reflect the seriousness of the facts of this case or address public protection and public interest concerns.

*75.3. A **suspension order** would be inappropriate as the misconduct and caution are fundamentally incompatible with continued registration. It would only temporarily protect the public. Having reviewed the guidance at ([SAN-3d](#)), it is agreed that a suspension would be insufficient to protect the public and uphold the public's confidence in the profession and the NMC as a regulator. This is not a single instance of misconduct but in effect a pattern of behaviour which includes a wide range of concerning acts against patients over a period of approximately 10 years. A lesser sanction would be insufficient and there is evidence to suggest a harmful deep-seated personality problem.*

*75.4. A **striking-off order** is the appropriate order in this case. The misconduct and caution are fundamentally incompatible with staying on the register. Having reviewed the key considerations set out in the NMC guidance at [SAN-3e](#), the Parties agree that Mr Bath's actions raise fundamental concerns about his professionalism and trustworthiness, and the public's confidence in the profession and the NMC as a regulator would be undermined if he were not removed from the register. Furthermore, it is agreed that a striking-off order is the only sanction which will be sufficient to not only protect patients and members of the public, but to maintain professional standards.*

75.5. Moreover, and as per the NMC's guidance, the Parties are mindful of and refer to the case of [Bolton v Law Society \[1994\] 1 WLR 512](#) which illustrates the principle that the reputation of the professions is more important than the

fortunes of any individual member of those professions. Here, and as mentioned above, although there were no concerns around Mr Bath's clinical skills, it can nonetheless be argued that a strike-off is still appropriate because this is the 'price' you pay for being a registered professional and maintaining the reputation of the profession. Mr Bath's actions raise fundamental concerns about his professionalism and public confidence in nurses cannot be maintained if he is not removed from the register. A striking-off order is the only sanction which will be sufficient to protect patients and members of the public, maintain professional standards, and address the public interest in this case.

Maker of allegation comments

76. The NMC has approached the referrer in this matter for comments on 16 September 2024 by way of telephone call and a follow up email, however no comments have been provided.

Interested party comments

77. The sister of Patient A confirms that they agree with the provisional decision to apply for striking off order. Although they feel encouraged that Mr Bath has cooperated with the NMC and is in agreement with the sanction bid, they consider that Mr Bath's conduct is incompatible with the safety of vulnerable people.

Interim order

78. An interim order is required in this case. The interim order is necessary for the protection of the public and is otherwise in the public interest. The regulatory concerns are serious and involve the sexual, financial and physical abuse of vulnerable patients. If Mr Bath were to pursue an appeal and no interim order were put in place, then he would be able to practise without restriction. In view of the agreed sanction the interim order should be an 18-month suspension order in the event that Mr Bath seeks to appeal the panel's decision. The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings of fact, misconduct/impairment and sanction is a matter for the panel. The Parties

understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.

Here ends the provisional CPD agreement between the NMC and Mr Bath. The provisional CPD agreement was signed by Mr Bath on 27 September 2024 and by the NMC on 7 October 2024.

Decision and reasons on the CPD

The panel had regard to the provisional CPD agreement provided by the parties. The panel however approached this matter entirely independently exercising its own professional judgement in the interest of public protection and in the wider public interest. The panel approached each issue incrementally and separately.

The panel decided to accept the CPD.

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

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

Decision and reasons on impairment

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

In respect of misconduct, the panel determined that Mr Bath's actions in relation to charges 1-3 were sexually motivated and were deplorable. The panel also decided that Mr Bath's actions in charge 4-5 were serious and related to dishonesty and do amount to misconduct.

In this respect, the panel endorsed paragraphs 23 to 29 of the provisional CPD agreement in respect of misconduct.

[PRIVATE].

The panel in respect of charge 7 endorsed paragraphs 32-27 of the provisional CPD agreement. It noted that the caution pertained to a vulnerable patient and that the repetitive abuse by Mr Bath was utterly deplorable.

The panel then considered whether Mr Bath's fitness to practise is currently impaired by reasons of his misconduct, health and caution.

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

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

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

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

The panel determined that Mr Bath's fitness to practise is currently impaired by reason of his misconduct, health and caution. It was appalled by the behaviour and actions of Mr Bath and was concerned by the repetitive nature of the charges. It was mindful of the need to protect the public and the wider public interest. In this respect the panel endorsed paragraphs 38 to 62 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Bath'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.

Mr Kabasinkas referred the panel to the case of *PSA v NMC and Jalloh [2023] EWHC 3331 (Admin)* in relation to its decision on sanction.

The panel took into account the following aggravating features:

- Sexual assault of Patient A & Patient B, both residents were profoundly disabled, suffered from mobility and communication difficulties and extremely vulnerable.
- Physical assault of Patient A, a vulnerable patient.
- Financial abuse of Service User C, who suffered from [PRIVATE].
- Theft of patient money amounting to an abuse of a position of trust.

- Theft for personal financial gain.
- The dishonesty is linked directly to Mr Bath's clinical practice.
- A pattern of abusing patients financially, sexually and physically between 2012-2020
- Deep seated personality issues and attitudinal problems in respect of abusing vulnerable patients.

The panel also took into account the following mitigating features:

- Mr Bath has admitted all the charges and expressed remorse.
- Mr Bath admitted the sexual and physical abuse of Patient A & B to his line manager resulting in the NMC referral.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Bath's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Bath's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Bath's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Bath's registration would not adequately address the seriousness of this case and would not protect the public or satisfy the wider public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It took into account the SG in relation to a suspension order and where it may be appropriate.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breaches of the fundamental tenets of the profession evidenced by Mr Bath's actions is fundamentally incompatible with him remaining on the NMC register.

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

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

Mr Bath's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel

was of the view that the findings in this particular case demonstrate that Mr Bath's actions were so serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Bath's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Bath in writing.

Decision and reasons on interim order

As the striking-off 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 Mr Bath's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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

The panel agreed with the CPD that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.