

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

**Substantive Hearing  
Monday 8 July 2024 – Tuesday 16 July 2024  
Thursday 14 November 2024 – Thursday 28 November 2024**

Virtual Hearing

**Name of Registrant:** Paul Robert Crow

**NMC PIN:** 17F1330E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – (September 2017)

**Relevant Location:** Cornwall

**Type of case:** Misconduct

**Panel members:** Deborah Jones (Chair, Lay member)  
Carol Porteous (Registrant member)  
Alex Forsyth (Lay member)

**Legal Assessor:** Juliet Gibbon

**Hearings Coordinator:** Charis Benefo

**Nursing and Midwifery Council:** Represented by Simran Ghotra, Case Presenter  
(8 – 16 July 2024)  
Represented by Tom Hoskins, Case Presenter  
(14 – 28 November 2024)

**Mr Crow:** Present and represented by Catherine Collins,  
Counsel instructed by the Royal College of  
Nursing (RCN)

**Facts proved by admission:** Charges 1a, 2a, 2b, 3b, 4a, 4b, 5a, 5c, 6a and 6b

**No evidence offered:** Charges 1b and 1c

**Facts proved:** Charges 4d and 5b (in respect of charges 2a and  
2b)

<b>Facts not proved:</b>	Charges 2c, 3a, 4c, 5b (in respect of charges 1a, 3b, 4a, 4b and 4d) and 5d
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Conditions of practice order (12 months)</b>
<b>Interim order:</b>	<b>Interim conditions of practice order (18 months)</b>

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

At the outset of the hearing, Ms Collins, on your behalf, made a request that this case be held in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Collins submitted that it might be difficult to identify a discrete section of the hearing that deals with [PRIVATE] in advance. She submitted that in those circumstances it was a matter for the panel to decide whether to hold the entire hearing in private or only those parts that refer to [PRIVATE].

Ms Ghotra, on behalf of the Nursing and Midwifery Council (NMC), indicated that she supported the application. She submitted that only those parts of the hearing that involve reference to [PRIVATE] should be held in private, rather than the entire hearing.

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

The panel determined to hold in private the parts of this hearing that involve reference to [PRIVATE] as and when such issues are raised, in order to protect your privacy. It was satisfied that this course was justified and that the need to protect your privacy outweighed any prejudice to the general principle of public hearings.

The panel decided that if the hearing became difficult to manage due to references to [PRIVATE], then it would revisit the decision on whether to hold the entirety of the hearing in private instead.

## Details of charge

That you, a registered nurse:

1. On 15 August 2021 at Kernow House in relation to Colleague A
  - a. Shouted at them
  - b. Backed them into a corner
  - c. Pointed a finger in their face
  
2. On 16 December 2021 at Kernow House
  - a. Shouted at Colleagues B and C
  - b. Refused to follow Colleague B's instructions to leave
  - c. Leaned towards Colleague B with clenched fists
  
3. On 23 September 2022 at Beech Lawn in relation to Colleague D
  - a. Shouted 'don't undermine me, I am the nurse in charge', or words to that effect;
  - b. stated 'it is my turn now' or words to that effect.
  
4. On 27 November 2022 at Beech Lawn
  - a. Used offensive language
  - b. Shouted at Colleague E
  - c. Backed Colleague E into a corner
  - d. Threw a strip of Paracetamol in Colleague E's direction
  
5. The acts specified in any or all of the charges 1 to 4 amounted to behaviours which were
  - a. Unprofessional and/or
  - b. Aggressive and/or
  - c. Intimidating and/or
  - d. Bullying

6. On 29 October 2022 breached the interim conditions of practice order imposed on 24 October 2022, in that you worked as
  - a. the sole nurse in charge; and/or
  - b. without supervision.

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

At the outset of the hearing, the panel heard from Ms Collins, who informed the panel that you made admissions to charges 1a, 2a, 2b, 3b, 4a, 4b, 5a, 5c, 6a and 6b.

The chair therefore announced charges 1a, 2a, 2b, 3b, 4a, 4b, 5a, 5c, 6a and 6b proved, by way of your admissions.

### **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Ghotra under Rule 31 to allow the hearsay evidence of Colleague A, Colleague F, Colleague G, Colleague H, Patient D, Colleague I and Colleague J into evidence. She invited the panel to consider relevance and fairness, and referred to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin).

Ms Ghotra then made submissions in respect of each of the following hearsay documents:

1. The notes of the local investigation meeting with Colleague A dated 16 August 2021

Ms Ghotra submitted that these meeting notes should be adduced as hearsay evidence.

Ms Ghotra referred the panel to the hearsay bundle which contained details of the attempts made by the NMC to contact Colleague A. The NMC attempted to make contact

with Colleague A by email and telephone on numerous occasions between 12 December 2022 and 21 March 2023. Aside from his responses on 20 December 2022 (to state that he was busy and ask for a call back the following day) and 21 December 2022 (to indicate that he will follow up regarding his availability), there had been no engagement from Colleague A.

In relation to the factors set out in the case of *Thorneycroft v NMC*, Ms Ghotra submitted that the meeting notes were the sole and decisive evidence in relation to charges 1b and 1c. She submitted that the notes were supported by Colleague F's evidence, but that evidence was also subject to a hearsay application. Ms Ghotra referred to Witness 1's written statement dated 2 February 2023 which set out what Colleague A told him about the incident on 15 August 2021 when they spoke the following day. She submitted that whilst Witness 1 was not a direct witness to the incident, he was due to attend the hearing to give live evidence and would be able to recount what he had been told by Colleague A. Ms Ghotra submitted that Ms Collins would also have the ability to cross-examine Witness 1 about what he was told by Colleague A. She submitted that Colleague A's meeting notes were reliable and could be tested against the other evidence for charge 1.

Ms Ghotra submitted that in your local investigation meeting, you stated that you '*flipped*' and you described it as '*an explosive incident*'. She submitted that in these proceedings, you accepted shouting at Colleague A, but denied that you backed him into a corner and pointed a finger in his face. Ms Ghotra submitted that there had been no suggestion that Colleague A had any reason to fabricate his allegation. She submitted that charge 1 was a serious charge, and if the facts were to be found proved, the NMC's position was that regulatory intervention would be necessary, which would have an effect on your career.

Ms Ghotra submitted that Colleague A had not provided any reason for his lack of engagement. She submitted that the NMC had made several attempts over a number of months to arrange an interview with him and to speak to him about the alleged incidents, but to no avail. Ms Ghotra submitted that the NMC had hoped that Colleague A would engage, but after multiple failed attempts to secure his attendance or to obtain an

interview with him for the purposes of obtaining a written statement, the decision had been made to make a hearsay application in respect of his local investigation evidence. She submitted that your representatives were put on notice of this application last week.

Ms Ghotra submitted that in those circumstances, it would be fair to admit the notes of Colleague A's investigation meeting or any such part of it which the panel considered to be fair.

2. The email from Colleague F to Colleague K dated 16 August 2021, regarding the incident on 15 August 2021
3. The notes of the local investigation meeting with Colleague F dated 16 August 2021

Ms Ghotra submitted that Colleague F's evidence should be adduced as hearsay evidence.

In relation to the factors set out in the case of *Thorneycroft v NMC*, Ms Ghotra submitted that Colleague F's evidence was the sole and decisive evidence in relation to charges 1b and 1c. She submitted that it was supported by Colleague A's investigation meeting notes, but that evidence was also subject to a hearsay application. Ms Ghotra submitted that the notes of Colleague F's local investigation meeting had been signed by Colleague F and two other colleagues, and contained a signed declaration that she agreed with the contents of the notes. She submitted that Colleague F had provided her account on two separate occasions, one via email and one during the meeting, and that this evidence was reliable.

Ms Ghotra reminded the panel of the extent of your challenge to the allegations, namely that you accepted shouting at Colleague A but you denied backing him into a corner and pointing a finger in his face. She submitted that there had been no suggestion that Colleague F had any reason to fabricate her evidence. Ms Ghotra submitted that charge 1 was a serious charge, and if the facts were to be found proved, the NMC's position was

that regulatory intervention would be necessary, which would have an effect on your career.

Ms Ghotra submitted that there had been email correspondence between the NMC and Witness 1 about whether Colleague F was still employed at Kernow House Care Centre in order to obtain her contact details, but Witness 1 had indicated that she was no longer employed there. Ms Ghotra submitted that this was the extent of the efforts made by the NMC to contact Colleague F. She submitted that your representatives were put on notice of this application last week.

Ms Ghotra submitted that it would be fair to admit Colleague F's evidence or any such part of it which the panel considered to be fair.

4. The notes of the local investigation meeting with Colleague G dated 18 August 2021
5. The notes of the local investigation meeting with Colleague H dated 20 August 2021
6. The notes of the local investigation meeting with Patient D dated 16 August 2021

Ms Ghotra submitted that Colleague G, Colleague H and Patient D's evidence should be adduced as hearsay evidence. She submitted that this evidence was relevant to charge 1 and provided information as to the background and your demeanour at the time.

In relation to the factors set out in the case of *Thorneycroft v NMC*, Ms Ghotra submitted that their evidence was not the sole and decisive evidence in relation to charges 1b and 1c. She reminded the panel of the extent of your challenge to the allegations at charge 1.

Ms Ghotra submitted that it appeared that no attempts had been made to engage with Colleague H and Patient D. In relation to Colleague G, Ms Ghotra submitted that she had been in contact with the NMC, with the last date of contact being 14 June 2024. She submitted that Colleague G had shown some reluctance to be an NMC witness and stated



that she did not remember the incident as it took place a long time ago. Ms Ghotra submitted that your representatives were put on notice of this application last week.

Ms Ghotra submitted that it would be fair to admit Colleague G, Colleague H and Patient D's evidence or any such part of it which the panel considered to be fair.

7. The notes of the local investigation meeting with Colleague I dated 22 December 2021
8. The notes of the local investigation meeting with Colleague J dated 23 December 2021

Ms Ghotra submitted that Colleague I and Colleague J's evidence should be adduced as hearsay evidence. She submitted that this evidence was relevant to charge 2 and provided information as to the background and your demeanour at the time.

In relation to the factors set out in the case of *Thorneycroft v NMC*, Ms Ghotra submitted that their evidence was not the sole and decisive evidence in relation to charge 2. She submitted that Colleague B and Colleague C, who were direct witnesses to the incident, were due to attend to give live evidence.

Ms Ghotra submitted that charge 2 was a serious charge, and if the facts were to be found proved, the NMC's position was that regulatory intervention would be necessary, which would have an effect on your career. She accepted that Ms Collins would be deprived of the opportunity to cross-examine Colleague I and Colleague J.

Ms Ghotra submitted that no attempts had been made to engage with Colleague I and Colleague J. She submitted that in light of the fact that two direct witnesses were due to attend the hearing to give live evidence, it would not be proportionate or reasonable to call Colleague I and Colleague J too. Ms Ghotra submitted that your representatives were put on notice of this application last week.

Ms Ghotra submitted that it would be fair to admit Colleague I and Colleague J's evidence or any such part of it which the panel considered to be fair.

Ms Ghotra submitted that it was a matter for the panel to decide whether the evidence of Colleague A, Colleague F, Colleague G, Colleague H, Patient D, Colleague I and Colleague J could be fairly admitted as hearsay evidence. She submitted that if the panel was concerned about gaps in the evidence, it was in line with the NMC guidance for the panel to request the NMC to obtain further evidence.

Ms Collins indicated that she opposed the application in respect of the evidence relating to charge 1. She submitted that this objection also extended to those parts of Witness 1's written statement which amounted to hearsay evidence.

Ms Collins reminded the panel that you were facing serious allegations relating to your conduct on a number of occasions. The NMC had indicated that if the matters were to be found proven, it would be inviting the panel to take regulatory action, which could have a reputational impact and an impact upon your ability to work as a nurse. Ms Collins submitted that it was important for the panel to have fair and reliable evidence before it.

In relation to fairness, Ms Collins submitted that the NMC was inviting the panel to adduce the hearsay evidence of every single witness (other than yourself) who was directly involved in the incident on 15 August 2021, and none of these witnesses were available for cross-examination. She submitted that the differences in these witnesses' accounts and what they had been told by other people before giving their own accounts had not been considered. Ms Collins submitted that it was not clear how much of the witnesses' accounts was independent recollection.

Ms Collins submitted that Witness 1 was not a direct witness to the incident and so questioning him on the evidence of the witnesses that were present would not be an effective challenge.

Ms Collins submitted that the evidence was sole and decisive in relation to charges 1b and 1c. She submitted that you were not asked about the allegation of pointing a finger at Colleague A in your local interview, neither were you asked about the position in which you were stood. Ms Collins submitted that you have never had the opportunity of challenging the allegations at charges 1b and 1c directly with the witnesses, as the matter did not progress to a local disciplinary hearing.

Ms Collins submitted that it would not be fair to allow the NMC to rely on those witnesses' evidence without you being able to cross-examine and put any contextual, mitigating or other factors to them.

Ms Collins submitted that no steps had been taken to engage with Colleague A since March 2023. In relation to Colleague G's attendance, she submitted that the NMC did not attempt to make any contact with her until June 2024, and despite having been told that she still works at Kernow House Care Centre, there had been no real further effort to secure her attendance at this hearing. Ms Collins submitted that the same point could be made in relation to Colleague F, Patient D and Colleague H.

Ms Collins submitted that in addition, there were areas in Colleague H's statement which included multiple hearsay, relating to what Colleague A had told him.

Ms Collins submitted that she would strenuously object to the suggestion of an adjournment to secure the attendance of these witnesses on the basis of the impact it would have on you.

In relation to the application in respect of the evidence relating to charge 2, Ms Collins submitted that this was slightly different because the panel was due to hear from Colleague B and Colleague C, who were direct witnesses to the incident. She submitted that the evidence in relation to Colleague I and Colleague J was not sole and decisive, and they set out some context about the difficulties you were experiencing on the night shift of 16 December 2021.

Ms Collins therefore submitted that her objection was not as strong in relation to Colleague I and Colleague J's evidence.

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

The panel gave the application regarding the hearsay evidence serious consideration.

The panel first considered the evidence relating to charge 1, namely:

1. The notes of the local investigation meeting with Colleague A dated 16 August 2021
2. The email from Colleague F to Colleague K dated 16 August 2021, regarding the incident on 15 August 2021
3. The notes of the local investigation meeting with Colleague F dated 16 August 2021
4. The notes of the local investigation meeting with Colleague G dated 18 August 2021
5. The notes of the local investigation meeting with Colleague H dated 20 August 2021
6. The notes of the local investigation meeting with Patient D dated 16 August 2021

The panel was satisfied that this evidence was relevant to charge 1. It noted that you admitted to shouting at Colleague A (charge 1a), but denied backing him into a corner and pointing your finger at his face (charges 1b and 1c).

The panel considered that the allegations at charge 1 are serious, but none of the direct witnesses to the incident would be attending this hearing to give live evidence. It took into account that whilst the NMC had attempted to secure the attendance of Colleague A from

December 2022, it had not made any attempts in relation to the other witnesses until June 2024. The panel considered that none of these witnesses would be challenged or cross-examined on their evidence, and whilst the panel was due to hear from Witness 1, he was only the note-taker at the meetings and was not present during the incident itself.

There was no evidence to suggest that the hearsay evidence had been fabricated, but the panel considered that it would not be fair if you did not have the opportunity to challenge it. In addition, the panel noted that the accounts were not fully consistent with each other and it was also concerned that Colleague H's evidence included multiple hearsay which would not be tested.

In these circumstances, the panel was not satisfied that it would be fair to admit the hearsay evidence in respect of charge 1. The panel therefore refused the application in respect of these documents, as well as the corresponding parts of Witness 1's written statement which related to the evidence of those witnesses.

The panel then considered the hearsay evidence relating to charge 2, namely:

7. The notes of the local investigation meeting with Colleague I dated 22 December 2021
8. The notes of the local investigation meeting with Colleague J dated 23 December 2021

The panel noted that Colleague I and Colleague J's evidence was not the sole and decisive evidence for charge 2. In the panel's view, this evidence provided background information and in some ways could be considered helpful to your case, in light of your admissions and the seriousness of the allegations of bullying and aggressive behaviour.

The panel took into account that it was due to hear the live evidence of Colleague B and Colleague C who were directly involved in the incident, and so it did not find any unfairness in the admission of Colleague I and Colleague J's hearsay evidence.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Colleague I and Colleague J, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

## **Background**

The NMC received a referral in respect of you on 12 September 2022. You first entered onto the NMC's register on 18 September 2017.

The first set of allegations in this case arose whilst you were employed as a Registered Nurse by Barchester Healthcare at Kernow House Care Centre (Kernow House). You started working at Kernow House in May 2021.

The allegations are that on 15 August 2021, you asked a healthcare assistant (Colleague A) about the weight of two residents and after he informed you that he had weighed one but not the other, you started shouting at him and became aggressive. You then allegedly moved closer to Colleague A until he was backed into a corner and pointed a finger in his face.

It is further alleged that during the night shift of 16 December 2021, Colleague B, who was a Clinical Lead, had concerns about [PRIVATE]. Colleague B approached Colleague C, who was also a Clinical Lead, to inform him of your behaviour and seek advice. You allegedly followed Colleague B and started shouting at her and Colleague C. Colleague B instructed you to go home and return the next day as [PRIVATE]. It is alleged that you refused to follow Colleague B's instructions and argued that you were able to work. You are alleged to have leaned towards Colleague B with clenched fists and aggressive body language, which caused Colleague C to get involved.

You were interviewed at the local level on 24 December 2021 and following this interview, did not return to work at Kernow House as you resigned from your role.

During the NMC's investigation into your case, similar concerns came to light from your subsequent employer, Beech Lawn Nursing Home (Beech Lawn), where you were employed as a nurse from June 2022.

On 23 September 2022, you were working on the same wing with Colleague D, who was a healthcare assistant at Beech Lawn. During a discussion with Colleague D about the testing of a resident's urine sample, you allegedly became angry and aggressive towards Colleague D and shouted "*don't undermine me, I am the nurse in charge*", or words to that effect, and then walked away. Colleague D reported the incident to the Home Manager (Witness 4) who was in the office at the time. When Colleague D came out of the office, you allegedly said "*it is my turn now*", or words to that effect.

On the morning of 27 November 2022, Colleague E, a registered nurse at Beech Lawn, was leading the handover where you and a number of other members of staff were in attendance. During the meeting, Colleague E noticed you writing in the home's handover diary and said "*what are you writing in there, boy*", or words to that effect. In response, you allegedly slammed the diary shut, used offensive language, and then left the room. After the handover, Colleague E went to talk to you out of concern to offer support. You told Colleague E that the term "*boy*" was offensive in your home country of New Zealand. You are then alleged to have shouted at Colleague E and backed her into a corner. [PRIVATE]. You then allegedly picked up a strip of paracetamol lying on the side and threw it in Colleague E's direction shouting "*this shouldn't be there*", or words to that effect. The strip of paracetamol did not hit Colleague E.

It is alleged that your behaviour at one or more of these incidents at Kernow House and Beech Lawn was unprofessional, aggressive, intimidating and amounted to bullying.

In addition, it is alleged that while subject to an interim conditions of practice order imposed on 24 October 2022, following the instruction of your manager who was unable to find cover for the night shift, you practised in breach of the conditions of practice on 29 October 2022 by working a night shift at Beech Lawn as the sole nurse in charge without supervision.

You resigned from Beech Lawn in November 2022.

### **Decision and reasons on application to offer no evidence on charges 1b and 1c**

In light of the panel's decision on Ms Ghotra's application to admit hearsay evidence, she made an application to offer no evidence on charges 1b and 1c.

Ms Ghotra referred the panel to the NMC guidance on '*offering no evidence*'.

Ms Ghotra submitted that as the hearsay evidence had been found inadmissible, there was no longer a realistic prospect of the facts of charges 1b and 1c being proved.

Ms Collins indicated that she supported the application.

The panel accepted the advice of the legal assessor.

The panel had regard to the NMC guidance on '*offering no evidence*'.

In light of its earlier decision not to admit the hearsay evidence of Colleague A, Colleague F, Colleague G, Colleague H and Patient D, as well as the corresponding parts of Witness 1's written statement, the panel considered that there was no longer any evidence to support charges 1b and 1c.



The panel therefore found that there was no longer a realistic prospect of some or all of these allegations being proved, and acceded to the application to offer no evidence on charges 1b and 1c.

**Decision and reasons on adjourning the hearing on the basis of the panel's concerns about [PRIVATE]**

[PRIVATE]

This hearing is therefore adjourned.

This will be confirmed to you in writing.

**The hearing resumed on 14 November 2024.**

Mr Hoskins, on behalf of the NMC, addressed the panel on the outcome of its directions from the last sitting of the hearing.

[PRIVATE]

**Decision and reasons on application of no case to answer**

The panel considered an application from Ms Collins that there is no case to answer in respect of charge 5d, namely the allegation that your actions in any or all of the charges 1 to 4 amounted to bullying behaviour. This application was made under Rule 24(7).

In relation to this application, Ms Collins submitted that there was no legal definition of bullying. She submitted, however, that it was accepted that it could be a one-off incident, although there must be an abuse of power. Ms Collins submitted that charge 5d would need to be considered in relation to four separate and isolated incidents involving separate individuals.

Ms Collins submitted that the panel had heard and received evidence from those witnesses, who indicated that they had no problems with you prior to or after the incident of which they make complaint. She reminded the panel of the evidence from your line managers at Kernow House and Beech Lawn that there were no ongoing problems with your attitude nor any difficulties or problems with how you presented yourself generally towards the staff, residents and their families within the respective homes.

Ms Collins asked the panel to carefully consider whether it had sufficient evidence of a prima facie case to suggest that your actions could be properly described as bullying behaviour. She submitted that the charge at 5d was in addition to allegations of unprofessional (charge 5a), aggressive (charge 5b) and intimidating (charge 5c) behaviour, and so it required something more than each of those allegations. Ms Collins submitted that the panel had not heard or received any evidence to suggest, even on a prima facie basis, that your alleged conduct against your colleagues amounted to bullying behaviour.

In these circumstances, it was submitted by Ms Collins that this charge should not be allowed to remain before the panel.

Mr Hoskins indicated that the application was opposed. He submitted that there was sufficient evidence upon which the panel could make a finding in respect of charge 5d.

Mr Hoskins referred the panel to the case of *R v Galbraith* [1981] 1 WLR 1039 which required the panel to consider the following two questions or limbs:

1. Whether there is any evidence of the complaints raised; if not, the facts should be deemed not to have been proven.
2. Whether the evidence taken at its highest is such that a panel properly directed could not properly convict upon it; it is the panel's duty in such circumstances to deem the facts not to have been proved.

Mr Hoskins submitted that Ms Collins' application was on the basis of limb 1, namely that there was no evidence of bullying behaviour. He submitted, however, that this application related to the question of the definition of bullying and how bullying is different from the other matters in charges 5a, 5b, and 5c. Mr Hoskins accepted that on charge 5d, your actions must have added something more than unprofessional, aggressive or intimidating behaviour. He submitted that if the panel found that the issue was one of definition or a lack of clarity, then the proper approach would be an objection to the charge itself, for example due to duplicity.

Mr Hoskins submitted that the definition of bullying was a matter for the panel. He set out the dictionary definition and submitted that the crucial point about this definition was not repetition towards the victim, but repetition by the bully. Mr Hoskins acknowledged Ms Collins' submission that your conduct related to four separate instances, however, the common factor was that you had allegedly demonstrated a pattern of bullying behaviour. He submitted that the other point about the dictionary definition of bullying was the difference in terms of power. Mr Hoskins highlighted that across charges 1 to 4, two of the allegations related to healthcare assistants, one to a more senior person and the other to a [PRIVATE].

Mr Hoskins submitted that if the panel was not of the view that the dictionary definition was the appropriate definition, then it could consider Beech Lawn's '*Bullying and Harassment Policy*' dated June 2018. He submitted that this definition did not require repetition either. Mr Hoskins submitted that the definition in the policy provided examples of unacceptable behaviour such as insulting somebody, offensive language, swearing, unfair treatment and overbearing supervision. He submitted that many of these examples are potentially found in this case, both through the admitted and denied facts.

Mr Hoskins submitted that whilst it was the case that similar conduct may give rise to more than one finding in respect of charge 5, this did not prevent the panel from making a

finding, for example, in respect of aggression and bullying based on the same or similar conduct because those two concepts are different.

Mr Hoskins therefore submitted that there is a case to answer on charge 5d, and he invited the panel to allow the charge to remain before it.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel considered that this application turned on the definition of bullying. It noted that there were many definitions of bullying, but for the purpose of this case, it looked to the definition provided in the NMC guidance.

The NMC guidance on '*how we determine seriousness*' (FTP-3) sets out that:

*'Bullying can be described as unwanted behaviour from a person or a group of people that is either offensive, intimidating, malicious or insulting. It can be an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone. It can be a regular pattern of behaviour or a one-off incident and can happen face-to-face, on social media or over emails or telephone calls. Usually bullying would be a pattern of behaviour, but an example of when it could be a one off incident could be if a member of the public felt that they had been bullied into agreeing to a do not resuscitate decision by a healthcare professional.'*

In light of this definition, the panel considered that there was some evidence that was capable of supporting charge 5d at this stage, including your admission at charge 5c that

your actions in any or all of the charges 1 to 4 amounted to intimidating behaviour. The panel therefore decided that it would be appropriate to consider whether or not to find charge 5d proved at the fact-finding stage, after having considered and reviewed all of the evidence before it.

As such, the panel was not prepared to accede to Ms Collins' application of no case to answer in respect of charge 5d. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

### **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Collins under Rule 31 to admit into evidence the notes of the local investigation meeting with Colleague L dated 24 December 2021. Ms Collins informed the panel that Colleague L was a healthcare assistant at Kernow House. She submitted that the notes were initially in the NMC bundle, but were redacted prior to the opening of the hearing. Ms Collins submitted that the notes set out a further explanation of what Colleague L observed of you on 16 December 2021, as well as the circumstances around staffing at Kernow House that night.

Ms Collins submitted that this was not the sole and decisive evidence in relation to the matters charged, and that it was obtained by Kernow House as part of an internal investigation. She reminded the panel that it had already admitted into evidence other parts of the internal investigation records. Ms Collins submitted that Colleague L had direct contact with you that night and she was still on shift after you went home in the evening. She submitted that Colleague L's evidence was important for background context in relation to [PRIVATE].

Ms Collins submitted that you do not have Colleague L's contact details and you no longer work at Kernow House. She submitted that, in the circumstances, you could not be expected to find Colleague L to give oral evidence in the hearing.

Mr Hoskins indicated that he did not contest the application. He submitted that the NMC had originally sought to include the notes of the local investigation meeting with Colleague L in the exhibit bundle, and it notified you of this. Mr Hoskins submitted that it was clearly the NMC's position that this evidence was relevant and that it was fair to admit it. He submitted that it spoke to the staffing issues and your demeanour at Kernow House on 16 December 2021. Mr Hoskins accepted that Colleague L's evidence was not the sole and decisive evidence.

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

The panel noted that Colleague L's evidence was not the sole and decisive evidence for charge 2. It considered that this evidence provided background information and context into the staffing issues and your demeanour on 16 December 2021. The panel also took into account that the NMC had originally included it in the exhibit bundle, but redacted it before the start of this hearing. In addition, the panel noted that it had previously admitted the hearsay evidence of the notes of investigation meetings with other colleagues in relation to charge 2.

In these circumstances, the panel was satisfied that the notes of the local investigation meeting with Colleague L were relevant to the charges, and that it would be fair to accept it into evidence. The panel would give what it deemed appropriate weight once it had heard and evaluated all the evidence before it.

### **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 Hoskins on behalf of the NMC, and by Ms Collins on your behalf.

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: Deputy Home Manager of Kernow House at the time of the concerns;
- Witness 2/Colleague C: Clinical Lead at Kernow House at the time of the concerns;
- Witness 3/Colleague B: Clinical Lead at Kernow House at the time of the concerns;
- Witness 4: Registered Manager of Beech Lawn at the time of the concerns;
- Witness 5: Clinical Lead at Beech Lawn at the time of the concerns;
- Witness 6: Nursing Associate at Beech Lawn at the time of the concerns;
- Witness 7/Colleague E: Registered Nurse at Beech Lawn at the time of the concerns; and
- Witness 8/Colleague D: Health Care Assistant at Beech Lawn at the time of the concerns.

[PRIVATE]

The panel then heard evidence from you under oath.

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

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

### **Charge 2c**

*That you, a registered nurse:*

2. *On 16 December 2021 at Kernow House*
  - c. *Leaned towards Colleague B with clenched fists*

### **This charge is found NOT proved.**

In reaching this decision, the panel took into account your admissions to charges 2a and 2b that you shouted at Colleague B and Colleague C, and that you refused to follow Colleague B's instructions to leave Kernow House on 16 December 2021. However you disputed leaning towards Colleague B with clenched fists. You told the panel that at the time, you had keys in your one hand while you were gesticulating with both hands. You said that you were holding onto the keys tightly, which may have been perceived as a clenched fist.

The panel considered the notes of Colleague C's investigatory meeting on 22 December 2021:

*'Paul turned to [Colleague B] and looked very angry, at this point I was ready to intervene as he was presenting in a very confrontational stance with his body language... he was leaning forwards towards [Colleague B], very close with clenched fists and clenched jaw'.*



The panel also took into account Colleague C's witness statement dated 19 February 2023 which stated:

*'...Mr Craw's body language at that time was very confrontational, as they were leaning towards [Colleague B], with clenched fists and jaw...'*

In oral evidence, however, Colleague C told the panel that you were waving your hands around and gesticulating. Colleague C also appeared to accept that your hands could have been clenched because you were holding the keys.

The panel noted that Colleague B did not mention you having clenched fists in her local statement and her witness statement. Colleague B's oral evidence was that you were waving your hands around and pointing, however she did not mention your fists being clenched and did not remember whether you had the keys in your hand.

The panel noted that this part of the incident occurred in a small room and within close proximity of each other. It accepted the account of Colleague L set out in her local interview notes and your evidence that [PRIVATE] due to a lack of staff on your ward at the beginning of your shift.

The panel therefore was not satisfied that there was sufficient evidence before it to prove on the balance of probabilities that you had leaned towards Colleague B with clenched fists.

### **Charge 3a**

*That you, a registered nurse:*

3. *On 23 September 2022 at Beech Lawn in relation to Colleague D*
  - a. *Shouted 'don't undermine me, I am the nurse in charge', or words to that effect*

**This charge is found NOT proved.**

In reaching this decision, the panel took into account your admission that you said the words “*don’t undermine me, I am the nurse in charge*” to Colleague D, but you denied shouting it.

The panel noted Colleague D’s witness statement dated 15 February 2023, which stated:

*‘Mr Craw came very close to my face and shouted "don't you dare undermine me, I am the nurse in charge", and they walked away from me. I was very shocked by Mr Craw's behaviour and I followed them and said to them "how dare you speak to me like that, that is not professional". I raised my voice at Mr Craw when I said that.’*

However, Colleague D told the panel in oral evidence that you did not shout, but you raised your voice. Colleague D stated that you were annoyed, but you were not aggressive or threatening. Colleague D said that aside from this incident, you both got on well and there had been no previous issues between the two of you. Colleague D stated that you were a team player and on that day, [PRIVATE].

The panel also had evidence from Witness 4’s witness statement dated 9 February 2023, which stated:

*‘From listening to both [Colleague D] and Mr Craw's accounts of events it is unclear who raised their voice first, [Colleague D] or Mr Craw. As a result, I do not consider Mr Craw to be solely responsible, however they should have dealt with the situation in a more professional manner by privately speaking to [Colleague D] in a professional advisory way especially as Mr Craw is the more senior member of staff.’*

The panel heard evidence that due to your hearing impairment, you can often speak loudly.

In all the circumstances, the panel was not satisfied that there was sufficient evidence to support the allegation that the words “*don’t undermine me, I am the nurse in charge*” were shouted at Colleague D. It therefore found charge 3a not proved.

#### **Charge 4c**

*That you, a registered nurse:*

4. *On 27 November 2022 at Beech Lawn*
  - c. *Backed Colleague E into a corner*

#### **This charge is found NOT proved.**

In reaching this decision, the panel took into account that it is not disputed that during the staff handover on 27 November 2022, Colleague E had referred to you as “*boy*”, which you say is a derogatory term where you come from, and you left the room visibly upset. It noted that Colleague E, of her own volition, approached you in the treatment room/storeroom after the handover to discuss her concerns with you. It was further accepted that this treatment room was small and that there was limited space due to cupboards and a large medicine trolley.

The panel had regard to Colleague E’s witness statement dated 12 January 2023, which stated:

*‘On 27 November 2022, Mr Craw behaved in an aggressive manner towards me... Mr Craw then began shouting at me aggressively and they were coming closer and closer until I was backed into a corner against the storeroom. Mr Craw came so close to my face that whilst they were shouting at me, their spit was going on my face. Mr Craw told me that I had abused them by calling them "boy" during handover, and I tried to explain to them that it was a common term of endearment used in Cornwall... I asked Mr Craw to back away from me as they were being*

*abusive towards me, however Mr Craw continued to shout at me, and they had me backed into a corner... I was afraid of him and wanted him to back off... Mr Craw not only aggressively shouted at me, they also came very close to my face and cornered me in the nurses' office so that I could not leave'.*

In oral evidence, Colleague E told the panel that she had felt trapped. However, she accepted that, when asked, you had backed away from her. She also told the panel that you had opened the door to check whether there were any residents or staff in the vicinity when Colleague E raised concerns that the discussion might be overheard, and that it had been her who had closed the door again.

The panel took account of your admission that you used offensive language and shouted at Colleague E during this altercation when you explained to her why you were upset at her using the term “boy”. However, you denied backing Colleague E into a corner.

The evidence before the panel was consistent that you stepped out of the treatment room/storeroom to check if anyone was nearby and in earshot of the conversation, and that when you came back in, Colleague E closed the door.

The panel noted the evidence that Colleague E had the opportunity to leave after you briefly stepped out of the room, but she had closed the door after you returned and had remained in the room with you. It took into account that this incident took place within a short period of time and within a confined space. The panel considered it inherently unlikely that Colleague E would have remained in the room with you if you had previously backed her into a corner.

In all the circumstances, the panel determined that there was insufficient evidence to find on the balance of probabilities that you backed Colleague E into a corner. It therefore found charge 4c not proved.

#### **Charge 4d**

*That you, a registered nurse:*

4. *On 27 November 2022 at Beech Lawn*
  - d. *Threw a strip of Paracetamol in Colleague E's direction*

**This charge is found proved.**

In reaching this decision, the panel took into account your admission that you threw the strip of Paracetamol towards the medication trolley, but that it was not in Colleague E's direction.

The panel noted Colleague E's local statement about the incident on 27 November 2022, which stated:

*'... He picked up a strip of Paracetamol which to be fair shouldn't have been there but he picked it up and threw it in my direction, it missed me not that it would have caused any harm but I felt at the time that intention was there...'*

The panel also took into account Colleague E's oral evidence:

*"It was towards my direction but no, please understand that I think in no way did he intend to throw it at me. It was just in a temper thing. I feel absolutely confident that he would not have thrown it in my direction in order for it to hit me. No, no way. No way. He just threw it in a fit of temper. But I think as it there was no malice directed towards me as he did it, I don't think right. I feel absolutely confident he wouldn't have thrown it at me deliberately."*

The panel accepted Colleague E's evidence that you threw the strip of Paracetamol in her direction, but she was adamant that you did not throw it at her deliberately and you did not intend for it to hit her. Colleague E stated that she could not remember where the strip of Paracetamol landed after you threw it. It also accepted your evidence that you had thrown

the strip of Paracetamol towards the trolley, which must have been in Colleague E's direction. The panel accepted that you had not deliberately thrown it at her.

On this basis, and in light of the wording of the charge, the panel found charge 4d proved.

### **Charge 5b**

*That you, a registered nurse:*

*5. The acts specified in any or all of the charges 1 to 4 amounted to behaviours which were*

*b. Aggressive and/or*

**This charge is found proved in relation to charges 2a and 2b only.**

In reaching this decision, the panel took into account the charges which had been found proved.

### Charge 1a

The panel took into account your admission that you shouted at Colleague A as set out at charge 1a.

The panel noted that the only other direct evidence in relation to this charge, namely the notes of the local investigation meeting with Colleague A, had not been admitted into evidence.

On this basis, the only relevant evidence before the panel in respect of this charge was your account of the incident.

The panel considered your admission that your conduct was unprofessional and intimidating (as alleged at charges 5a and 5c). However, given the context of your

disagreement with Colleague A and the limited evidence before it in relation to charge 1a, the panel was not satisfied that your conduct at this charge also amounted to aggressive behaviour. It therefore found this charge not proved in respect of your actions at charge 1a.

### Charges 2a and 2b

The panel took into account your admission that you shouted at Colleagues B and C and refused to follow Colleague B's instructions to leave as set out at charges 2a and 2b. There was no dispute that there had been a heated exchange between you and Colleagues B and C. In addition, you had admitted that your conduct was unprofessional and intimidating (as alleged at charges 5a and 5c).

In considering whether your actions were aggressive, the panel first considered the evidence of Colleague C. Colleague C's evidence was that he was ready to intervene while you were shouting at Colleague B because he was concerned for her safety. Colleague C told the panel in oral evidence that you had an "*aggressive approach*".

The panel then considered Colleague B's evidence that she felt intimidated, at risk of being harmed and she was afraid that you were going to hit her. Colleague B said that she was too afraid to walk to her vehicle on her own at the end of her shift and so had to be escorted by Colleague C. [PRIVATE].

The panel noted that this incident with Colleague B and Colleague C was borne out of [PRIVATE] that there were not enough members of staff on shift to care for the residents, and your belief that your concerns were not being taken seriously.

However, in light of the evidence before it, the panel determined that your actions at charge 2a and 2b towards Colleague B amounted to aggressive behaviour. It therefore found this charge proved in respect of charges 2a and 2b.

### Charge 3b

The panel took into account your admission that you had stated to Colleague D *“it is my turn now”* or words to that effect, as set out at charge 3b.

The panel considered the overall context of the incident with Colleague D, including its finding that you did not shout *“don’t undermine me, I am the nurse in charge”* at her during the incident. In light of the context, the panel was not satisfied that your actions at charge 3b amounted to aggressive behaviour. It therefore found this charge not proved in respect of your actions at charge 3b.

### Charges 4a, 4b and 4d

The panel took into account Colleague E’s consistent account throughout her witness statement and oral evidence that your actions towards her were not aggressive. In particular, it noted her oral evidence that *“I think he was just a bit kind of... rattled. You know you can just see in people like when they’re... The demeanour, the face, everything, it wasn’t like an aggressive demeanour it was just angry.”*

The panel took into account its findings that you had not backed Colleague E into a corner and that although you had thrown a strip of Paracetamol in her general direction, this had not been deliberately thrown at her.

The panel was therefore not satisfied that your actions at charges 4a, 4b and 4d amounted to aggressive behaviour. It found this charge not proved in respect of your actions at charges 4a, 4b and 4d.

### **Charge 5d**

*That you, a registered nurse:*

- 5. The acts specified in any or all of the charges 1 to 4 amounted to behaviours which*



were

*d. Bullying*

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the charges which had been found proved.

Charge 1a

The panel had limited evidence in respect of this incident with Colleague A. However, it considered the context of you being the registered nurse and Colleague A being the care assistant, and any potential power imbalance that might have been present.

The panel took into account that you were working in a new environment at the time, having qualified as a nurse in 2017 (just four years prior), and only having worked in a hospital setting prior to joining Kernow House in May 2021. It noted that Colleague A, on the other hand, was a senior care assistant and a long-standing member of staff at Kernow House. In light of this, the panel was not satisfied that there was an abuse or misuse of power that undermined, humiliated, or caused physical or emotional harm to Colleague A.

The panel had no evidence before it that Colleague A had raised the issue of bullying. It determined that your actions at charge 1a did not amount to bullying behaviour, and found this charge not proved in respect of your actions at charge 1a.

Charges 2a and 2b

The panel noted that this incident with Colleague B and Colleague C was borne out of [PRIVATE] that there were not enough members of staff on shift to care for the residents, and your belief that your concerns were not being taken seriously.

There was no evidence before the panel to suggest that anyone had raised the issue of bullying in relation to this incident with Colleague B and Colleague C. In addition, the panel noted that both Colleague B and Colleague C were in positions of seniority in comparison to you.

The panel was therefore not satisfied that your actions at charges 2a and 2b amounted to bullying behaviour, and so it found this charge not proved in respect of your actions at charges 2a and 2b.

### Charge 3b

The panel considered the overall context of the incident with Colleague D, including its finding that you did not shout "*don't undermine me, I am the nurse in charge*" at her during the incident. In light of the context, the panel was not satisfied that your actions at charge 3b amounted to bullying behaviour. It therefore found this charge not proved in respect of your actions at charge 3b.

### Charges 4a, 4b and 4d

The panel took into account that this incident took place after Colleague E had followed you to the treatment room/storeroom, where you had gone after her comment made during the handover had upset you. The panel was of the view that by doing so while you were still upset, Colleague E had provoked a response from you.

The panel considered that there had been no suggestion in the evidence that you had bullied Colleague E. It noted Witness 4's evidence that there was no culture of bullying at Beech Lawn and that you worked well with your colleagues prior to the incident with Colleague E.

The panel was not satisfied that your actions at charges 4a, 4b and 4d amounted to bullying behaviour. It therefore found this charge not proved in respect of your actions at charges 4a, 4b and 4d.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts admitted and the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

### **Your evidence**

The panel heard evidence from you under oath. You told the panel that you accepted the finding in relation to charges 2a and 2b that your behaviour was aggressive. [PRIVATE]. You said that [PRIVATE], unfortunately Colleague B bore the brunt of your frustration which escalated the situation to an angry verbal exchange between you and Colleagues B and C. You issued a "*profound apology*" to Colleague B and said that even though at the time you felt she was not listening to your concerns about staffing, your approach was uncalled for, and it was wrong for you to raise your voice.

You highlighted that it was important for colleagues to be on the same page for the common good of patients, clients or residents. You told the panel [PRIVATE] that you will not be verbally challenging or escalating situations in an argumentative manner.

You described the relevance and purpose of your training and continuing professional development (CPD). You said that were you to return to nursing practice, your CPD certificates would go towards your nursing re-validation. You also described instances where you were able to put the theory from the '*conflict management*' or '*de-escalation*' training into practice, albeit in your non-nursing role. [PRIVATE].

You stated that you have learnt how to say no in situations where your agency put pressure on you to cover shifts, in order to [PRIVATE] to protect the safety of the people you care for. In relation to charge 6, you told the panel that if faced with the situation again, you would have told your manager that you could not work as the sole nurse in charge and without supervision because you were under an interim conditions of practice order which restricted you from doing so.

You told the panel that you would return to nursing practice by following a step-by-step process. [PRIVATE]. You said that you would consider three areas of nursing practice where you are proficient, namely respiratory care, district/community nursing and orthopaedic surgery.

You accepted that raising your voice at colleagues was inappropriate and acknowledged the impact this could have on colleagues, whether or not they were there to witness it.

You also accepted that the work you have been doing as a senior carer did not come with the pressures and stresses of many nursing roles. [PRIVATE].

### **Submissions on misconduct**

Mr Hoskins provided the panel with written submissions on misconduct and impairment. He invited the panel to take the view that the facts found proved amount to misconduct.

Mr Hoskins referred to his written submissions in which he invited the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code), and the extent of your breaches of the Code. In his submission, you had breached parts 1.1, 8.1, 8.2, 8.4, 8.5, 20.2, 20.3, 20.5, 20.8 and 24.2 of the Code. Mr Hoskins submitted that these breaches were significant, widespread and repeated.

Mr Hoskins asked the panel to have regard to the effect on the recipients of your conduct which amounted to intimidation and, in respect of charges 2a and 2b, aggression, as well as the wider externalities of the conduct found proved. He highlighted the specific parts of the NMC witness evidence where they described how your conduct made them feel. Mr Hoskins submitted that each of these incidents required a third party's intervention or the conclusion of the argument, rather than you controlling yourself after initially losing your temper. He submitted that the effect of this was a corrosive and toxic effect on teamwork which was repeated over at least three, if not four, instances. Mr Hoskins submitted that this could have potentially led to harm or negatively affected the care of residents.

In relation to charge 6, Mr Hoskins highlighted that you had breached your interim conditions of practice order by acting as the sole nurse in charge with phone access to a non-nurse manager. He submitted that this was a significant concern and the immediate effect was that there was a corrosion in public trust in effective restrictions being put in place.

Mr Hoskins submitted that your conduct was not just a momentary loss of temper or hot headedness, but there were multiple incidents over a period of 15 months. He submitted that this pointed to more of a personality trait than the "*pressure cooker*" effect of external factors.

Mr Hoskins submitted that the conduct set out at charges 3 and 4 in respect of Beech Lawn occurred after your resignation from Kernow House and your subsequent [PRIVATE] break from nursing. He submitted that your conduct at Beech Lawn indicated that whatever remedial efforts you made in that break were insufficient. Mr Hoskins submitted that this raised the question as to how much confidence the panel could have in you if faced with similar circumstances, despite the remediation you have undertaken.

Mr Hoskins then addressed the panel on the relevant contextual factors. [PRIVATE]. He conceded that a very significant contextual factor to your conduct at charge 6 was that Witness 4 carried a significant part of the responsibility for requesting and allowing you to work, in the full knowledge of the interim conditions of practice being in place. Mr Hoskins submitted that Witness 4's behaviour was not acceptable, but it did not entirely exonerate you. He accepted that you recognised your independent and autonomous role and responsibility as a registered professional with independent obligations pursuant to the Code.

Mr Hoskins submitted that it was of little significance that you felt under pressure because your experience must have told you that you could "*stand up*" to your manager and alternative arrangements would have been put in place. He submitted that you could have ensured that the interim conditions of practice were complied with.

Ms Collins invited the panel to look at each of the charges individually before looking at them as a composite whole. She submitted that looking at the charges individually, there were differences in seriousness. Ms Collins asked the panel to consider whether or not the conduct set out in charge 3b was really seriously deplorable in circumstances where "*it is my turn now*" was said without sarcasm, aggression, or any shouting. She also asked the panel to consider charge 4d, in light of its finding that you threw the strip of Paracetamol in Colleague E's direction, on the wording of the charge, but without any intention to hit her.

Ms Collins addressed the panel's finding at charge 5b in relation to aggressive behaviour. She submitted that you accepted that this amounted to seriously deplorable conduct. Ms

Collins submitted that in addition, the panel had made findings and you had made admissions in relation to shouting and using unprofessional language towards two to three different individuals, which the panel may find amounted to misconduct in all of the circumstances. She asked the panel to find the contextual consideration and to address that when considering misconduct.

### **Submissions on impairment**

Mr Hoskins 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Hoskins submitted that the clear breach of your interim conditions of practice order was such that even with full remediation and no likelihood of repetition, it was so egregious that it needed to be marked in the public interest, irrespective of the lack of future potential for harm.

In relation to your unprofessional, intimidating and, in respect of charges 2a and 2b, aggressive behaviour, Mr Hoskins submitted that the panel would need to consider whether:

- [PRIVATE]; or
- you have a long-standing personality trait that was the cause of the lack of professionalism, lack of control and intimidation, and [PRIVATE] which points to a deep-seated attitudinal issue.

[PRIVATE]. He highlighted that you demonstrated the same kind of behaviour on at least three occasions in two different care environments over a long period of time. Mr Hoskins

submitted that notwithstanding the possibility for reflection and a change in between, this was indicative of a deep-seated attitudinal issue or a lack of insight into really dealing with your issues when the opportunity came to do so. He therefore submitted that there was a real risk of repetition in this case.

Mr Hoskins submitted that if the panel was not satisfied that there was a deep-seated attitudinal issue, but that there were contextual factors [PRIVATE] that you were under, then the panel would have to consider the extent to which those had been remedied. He submitted that your care for patients has never been in dispute, but that your period of caring for a gentleman with Duchenne muscular dystrophy and two children as a senior carer was of a significantly different nature from the situation at both Beech Lawn and Kernow House. Mr Hoskins highlighted that given concentration of the patient profile, you were not working in the same fast-paced environment. In addition, he submitted that incredible familiarity with a single patient was a luxury that nurses up and down the country would seek out, but this was not a common theme in practice. Mr Hoskins submitted that your capacity as a senior carer did not come with some of the additional [PRIVATE] responsibilities that nurses experience. On this basis, he submitted that the issues you faced at the time of the concerns, had not been fully tested to date.

[PRIVATE]

Mr Hoskins submitted that your evidence of training was of limited value in demonstrating remediation, because things such a conflict resolution and other areas of mandatory training had also been undertaken prior to these incidents. He submitted that the issue was not about a lack of knowledge or understanding about how ordinary decent human beings treat each other in the workplace, as you knew this but [PRIVATE].

Mr Hoskins submitted that in fairness to you, you have demonstrated some insight, however, in his submission this insight was not complete and did not remove potential repetition. He referred the panel to your reflections and justification in respect of each of the incidents and asked it to consider whether that was evidence of genuine insight or



evidence of seeking to “*pass the buck*” to some extent. Mr Hoskins invited the panel to find the latter in this case.

Mr Hoskins submitted that in a situation where there had, in the past, been breaches of the Code and acting in a way to put patients and colleagues at risk of harm, bringing the profession into disrepute and breaching the fundamental tenets of the profession, and given the lack of insight and full remediation, the future limb “*test*” set out in the case of *CHRE v NMC and Grant* was also triggered.

[PRIVATE]

Ms Collins submitted that you have also demonstrated insight into the impact of your behaviour on others. She submitted that you have been apologetic throughout these proceedings and you have spoken to and thanked each of the witnesses who came to give evidence with no grudges as to the position that you find yourself. Ms Collins submitted that you remediated your behaviour in the immediate aftermath of the situations by writing a letter of apology to all those that were involved. She submitted that in relation to Colleague A, you apologised to everyone at the home; in relation to Colleagues B and C, [PRIVATE], and you removed yourself from Kernow House by resigning; in relation to Colleague D, you bought her flowers and she accepted your apology; and in relation to Colleague E, you tried to speak to her and to apologise again on the day of the incident.

Ms Collins submitted that there had been acceptance and acknowledgement within a very short period of time and attempts to remediate the situation directly with those who had been impacted by your behaviour.

Ms Collins told the panel that you have not been able to work as a nurse since December 2022, but you remain in the profession on a wider basis by remaining in a healthcare environment and working as a senior carer.

Ms Collins submitted that in relation to how you have dealt with difficult situations that have arisen in the last couple of years, you provided examples in oral evidence of specific instances where you have changed your approach. You now listen and calmly respond without losing your temper or reacting in an unprofessional manner. She submitted that although these had not taken place in a nursing capacity, they were still in a healthcare capacity where you had responsibility for the health and well-being of the individuals under your care. Ms Collins submitted that this also demonstrated insight because you have been able to see what you did incorrectly in the past, and remediation as you have been able to apply the lessons learnt.

In relation to charge 6, Ms Collins submitted that you acknowledged the wrongdoing. She submitted that at the time, you considered that the needs of the residents was the most important factor. Ms Collins submitted that the panel could be confident that you would not make that choice again in the future. She referred to your reflections that you have been able to say no [PRIVATE] in instances where your agency have placed pressure on you to cover shifts, in order to maintain the safety of the patients you look after.

Ms Collins submitted that there was evidence that could satisfy the panel that there was no risk of repetition of the behaviour, and in those circumstances, no risk to the public, colleagues or anybody you look after. She submitted that in the circumstances, there was no need for a finding of current impairment on the grounds of public protection. Ms Collins acknowledged that the breach of the interim conditions of practice order was serious in relation to the public interest, but submitted that the panel could be satisfied that you have learnt your lesson and will not bow to pressure in a similar way in the future

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, *R (On the application of Remedy UK) v GMC* [2010] EWHC 1245 (Admin), *General Medical Council v Meadow* [2007] QB 462 (Admin), *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *CHRE v NMC and Grant*.

## **Decision and reasons on misconduct**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council* 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.'*

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

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

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

*To achieve this, you must:*

1.1 *treat people with kindness, respect and compassion.*

**8 Work co-operatively**

*To achieve this, you must:*

8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate.*

8.2 *maintain effective communication with colleagues.*

**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.*

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

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

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

The panel considered the charges admitted and found proved in this case. It considered each of the charges and their context in turn to determine whether, individually, they amounted to misconduct.

In relation to charge 1a, the panel took into account that leading up to the incident, you had asked Colleague A to do something, but he did not initially respond and when he did, he had done so in a flippant manner. The panel considered your acceptance that shouting at Colleague A was unprofessional, but it found that on its own and in the particular circumstances, your conduct at charge 1a was not serious enough to amount to misconduct.

In respect of charges 2a and 2b, the panel noted that at the time, you were extremely concerned about the insufficient staffing levels on your shift. [PRIVATE]. The panel considered that this was exacerbated when you found out that you had insufficient staff [PRIVATE]. It noted that your argument started with Colleague C, [PRIVATE]. However, Colleague B then came in and asked you to leave the home. You accepted shouting at Colleagues B and C and refusing to follow Colleague B's instruction to leave, and that this was unprofessional and intimidating. In addition, the panel had found that your actions at these charges amounted to aggressive behaviour.

Having considered the context, the panel accepted that you were concerned about the staffing levels on the shift. However, given its finding that this incident demonstrated aggressive behaviour, the panel determined that your conduct at charges 2a and 2b fell seriously short of the standards expected of a registered nurse and therefore amounted to misconduct.

The panel next considered charge 3b and found that there was nothing about stating to a colleague “*it is my turn now*” or words to that effect, that would amount to misconduct in any way.

In relation to charges 4a, 4b and 4d, the panel noted that at the time, interim conditions of practice had been imposed on your nursing registration, and whilst the home management was aware, your colleagues were not. It took into account that you were very offended that Colleague E had called you “*boy*” during the handover, [PRIVATE]. You accepted that when Colleague E called you “*boy*”, you swore under your breath and left the room, [PRIVATE]. However, Colleague E followed you into the treatment room/storeroom to discuss the interaction. You admitted using offensive language and swearing at Colleague E, and the panel accepted your explanation that you threw the strip of Paracetamol in her general direction, but it did not hit her and you did not intend for it to hit her. The panel considered that this behaviour was unacceptable, but it was not satisfied that on its own, it was sufficiently serious enough to amount to misconduct.

The panel then considered charges 5a, 5b and 5c. It took into account your admission that your conduct at any or all of charges 1 to 4 was unprofessional and intimidating. It also took into account its finding that your conduct at charges 2a and 2b was aggressive. The panel considered that, taken as a whole, your conduct at charges 1a, 2a, 2b, 4a, 4b and 4d amounted to misconduct. The panel did not consider that your conduct in respect of charge 3b, notwithstanding your admission, collectively amounted to misconduct.

Regarding charge 6a and 6b, the panel took into account that [PRIVATE] and you were put under pressure by your manager, Witness 4, to work as the sole nurse in charge without supervision. It noted that Witness 4 was aware of the interim conditions of practice which restricted you from doing so. However, the panel considered that any breach of interim conditions of practice, especially those so recently imposed, was inappropriate. It considered that registered nurses have a responsibility to comply with any restrictions imposed on their practice by their regulator, regardless of any pressures from their

employer. The panel therefore determined that your conduct at charges 6a and 6b was sufficiently serious enough to amount to misconduct.

### **Decision and reasons on impairment**

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 February 2024, which states:

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

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

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

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

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

*‘In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be*

*undermined if a finding of impairment were not made in the particular circumstances.'*

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

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

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

The panel determined that limbs a), b) and c) are engaged in this case. The panel found that there was a potential risk to residents as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered the factors set out in the case of *Cohen v General Medical Council*:

- whether the misconduct is capable of being addressed;
- whether it has been addressed; and

- whether the misconduct is highly unlikely to be repeated.

The panel considered the context surrounding each of the incidents relating to charges 2a, 2b, 5a, 5b, 5c, 6a and 6b. [PRIVATE]. In light of this, the panel was satisfied that the misconduct in this case is capable of being addressed.

The panel carefully considered the evidence before it in determining whether or not you have taken steps to address the misconduct. The panel took into account your reflective statement dated 5 July 2024, [PRIVATE], your evidence of training between December 2021 and May 2024, and your oral evidence. [PRIVATE].

Regarding insight, the panel considered that you made admissions from the outset, and that you have demonstrated an understanding of how your actions put residents at a risk of harm, why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. It was satisfied that you had demonstrated genuine remorse for your actions and you offered apologies to the colleagues who were affected by your actions. The panel was also satisfied that you had described how you would handle situations differently in the future. The panel determined that you have demonstrated good insight.

The panel took into account the context around the charges and how the behaviours arose. [PRIVATE].

The panel considered the evidence of the NMC witnesses that you were a kind and caring nurse who had good relationships with staff, residents and relatives, notwithstanding these incidents which were not a reflection of your normal behaviour. The panel did not accept that these behaviours demonstrated deep-seated attitudinal issues, but rather it found that [PRIVATE].

The panel noted that you are currently working as a senior carer for two paediatric patients. It was satisfied that you have maintained links with the nursing profession by



continuing to work in the healthcare sector and that you have undertaken relevant training in CPD to maintain your knowledge and skills.

The panel considered, however, that your current work as a senior carer did not reflect [PRIVATE] associated with a more pressurised nursing role. [PRIVATE]. The panel was therefore not entirely satisfied that there was no possibility of a repetition of the behaviours you demonstrated at charges 2a, 2b, 5a, 5b, 5c, 6a and 6b.

As such, the panel could not be satisfied that it is highly unlikely that your misconduct would be repeated in the future. It therefore found that there is a risk of repetition and that a finding of current impairment of fitness to practise 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 to mark the unacceptability of your misconduct and to uphold proper professional standards. The panel considered that a well-informed member of the public would be concerned if a finding of impairment were not made in a case where you had demonstrated unprofessional, intimidating and aggressive behaviour towards colleagues, and breached an interim conditions of practice order.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also found your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was not satisfied that at this stage, you can practise kindly, safely and professionally. It therefore determined that your fitness to practise is currently impaired.

## **Sanction**

The panel considered this case very carefully and decided to make a conditions of practice order for a period of 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

In reaching this decision, the panel 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.

## **Submissions on sanction**

In the Notice of Hearing, dated 10 June 2024, the NMC had advised you that it would seek the imposition of a striking-off order if the panel found your fitness to practise currently impaired.

Mr Hoskins referred to the SG and submitted that notwithstanding the panel's finding of impairment on a lesser basis than that on which he made submissions, the appropriate order in this case would be a striking-off order. He conceded that there had been no concerns with your clinical practice, but asked the panel to find a fair balance between your right to continue working as a registered nurse and the overarching objective of public protection, which includes the public interest in the maintenance of "*the regulatory regime*".

Mr Hoskins submitted that the following aggravating factors were present in this case:

- Your underlying unprofessional, intimidating and aggressive behaviour as set out at charge 5 constituted a pattern of misconduct over a period of time;
- There was an indirect risk of residents suffering harm because of the damage done to a fully functioning colleague working relationship which was conceded by you in cross-examination at the misconduct stage and has not been remedied.

Mr Hoskins accepted that, in terms of mitigating factors:

- You have no previous regulatory or disciplinary findings;
- Based on the panel's findings, there was no abuse of a position of trust;
- You made early admissions, apologised for your behaviour and in the panel's view, demonstrated insight;
- There was ample evidence before the panel that, clinically, you are a talented nurse;
- [PRIVATE]; and
- You were pressured by a more senior member of staff to work in breach of your interim conditions of practice order.

In relation to charge 6, Mr Hoskins referred the panel to the NMC guidance on considering sanctions for serious cases (SAN-2), in particular the guidance on the '*deliberate breach of an interim or substantive order*' which made reference to the case of *GMC v Donadio* [2021] EWHC 562 (Admin). Mr Hoskins set out the background of *GMC v Donadio* and highlighted the conclusion that the deliberate breach of a regulatory decision to make a practitioner's ability to practice conditional should be seen as central to the overarching objective and be expressly dealt with as such. He submitted that this also called into question whether the practitioner should remain on the register.

Mr Hoskins submitted that the seriousness of this case necessitates your removal from the register in light of the pattern of unprofessional and intimidating behaviour you demonstrated, the NMC guidance on seriousness and the case of *GMC v Donadio*. He

further submitted that in this case, there are personality and attitudinal issues that have not been adequately addressed and which would make a lesser sanction inappropriate.

The panel also bore in mind Ms Collins' submissions. She also referred the panel to the SG and addressed the panel on proportionality, seriousness and the appropriate sanction to adopt in this case.

Ms Collins asked the panel to consider your right to practise in the profession that you spent a long time training for and working successfully in. She reminded the panel of your testimonials and the comments made by the NMC witnesses about your ability as a registered nurse and their willingness to work with you. Ms Collins accepted that public protection and the public interest in maintaining confidence in the NMC as a regulator were also important considerations. She submitted, however, that proportionality could be met by allowing you to practise, albeit with conditions being placed on your practice.

Ms Collins asked the panel to consider seriousness and reminded it of the contextual matters around the incidents, [PRIVATE]. She submitted that some matters in this case could be distinguished from the case of *GMC v Donadio* which Mr Hoskins had referred the panel to. This included the matters of insight and honesty with the employer. Ms Collins submitted that seriousness does not mandate the imposition of a striking-off order as there are multiple different factors that lead to any decision being made. She submitted that the panel's assessment of those factors would determine the level of seriousness of your breach and what risk there is that you would act in a similar way in the future.

Ms Collins reminded the panel of its findings that there are no deep-seated personality problems in this case; that each of the incidents related in some way to a contextual background; that you worked as a nurse for many years without any issue being raised; and that you have worked as a senior carer since January 2023, without any similar concerns having been raised.

Ms Collins asked the panel to take into account the remedial actions you have taken by speaking to and apologising to those involved in the incidents, [PRIVATE], demonstrating insight, continuing to work in a healthcare environment as a senior carer, and maintaining your CPD.

Ms Collins submitted that a conditions of practice order would be the proportionate sanction in this case. She submitted that there were no issues with your clinical practice, but conditions of practice could be imposed that would protect the public, mark the seriousness of the misconduct, and enable you to demonstrate to a future reviewing panel that you have been able to put measures in place whilst working as a nurse.

Ms Collins invited the panel to impose the following conditions of practice:

- That you work for one substantive employer, who can be made aware of what went wrong in the past, and will be able to ensure that [PRIVATE] and that routes of communication are made available;
- That you work with a mentor on a weekly or monthly basis to address the areas of concern, namely communication, [PRIVATE], and being able to maintain professional boundaries with colleagues in explaining to them if something needs to be done;
- That you complete a personal development plan and provide it to a future reviewing panel to demonstrate what work you have done, and how it has been reviewed and discussed with a mentor to ensure the protection of colleagues and, indirectly, patients.

Ms Collins submitted that the length of the order was a matter for the panel, although she asked it to consider imposing a conditions of practice order for a period of nine months. She submitted that this would allow you the opportunity to work in a nursing environment and prove that you are able to [PRIVATE].

The panel accepted the advice of the legal assessor. It was also provided with a copy of *GMC v Donadio*.

### **Decision and reasons on sanction**

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating feature:

- Whilst the misconduct did not involve residents, such misconduct in a clinical environment had the potential to indirectly put residents at risk of harm.

The panel also took into account the following mitigating features:

- You provided evidence of good insight and understanding of your misconduct and your attempts to address it.
- You made early admissions.
- You made apologies very close to the time of the incidents themselves and demonstrated genuine remorse in your oral evidence.
- You made efforts to put things right and prevent it from happening again.
- Prior to the incidents, you had a good working relationship with your colleagues.
- You have continued to work within a healthcare setting as a senior carer and provided evidence of maintaining your CPD and knowledge.
- [PRIVATE].
- In relation to Kernow House, there were significant issues with staffing levels at the time of the concerns and specifically in relation to the incident on 16 December

2021. The panel saw evidence that after you were sent home, there was no nurse on the unit that night.

- In relation to Beech Lawn, you were working under interim conditions of practice [PRIVATE].
- In relation to charge 6, you were open and honest with your employer about your interim conditions of practice and the breach occurred as a result of your manager putting direct pressure on you to work.
- You provided positive testimonials from colleagues and employers.
- You provided evidence of your CPD.

The panel considered Mr Hoskins' submission that you had demonstrated a pattern of misconduct over a period of time. It acknowledged that there had been three incidents involving similar behaviour over a period of 15 months. It also noted that you admitted that your conduct was unprofessional and intimidating, and that your behaviour in one incident had been found to be aggressive. However, the panel took into account the context from which each incident arose. Each incident involved [PRIVATE] and different individuals. Furthermore, the panel noted that it had found aggressive behaviour only in relation to charges 2a and 2b, and when considered individually, it had only found misconduct in relation to charges 2a and 2b (and charge 6 which did not relate to this alleged pattern of behaviour). The panel did not, therefore, conclude that you had demonstrated a pattern of misconduct over a period of time.

The panel then addressed Mr Hoskins' submissions in respect of your breach of the interim conditions of practice order. It took into account the NMC guidance on considering sanctions for serious cases (SAN-2), as well as the case of *GMC v Donadio* in relation to the serious nature of deliberate breaches of interim orders. The panel had particular regard to the following paragraphs in the case law:

*'62. I return to the statutory framework and remind myself that what the IOT did in the exercise of its powers under section 41A(1)(b) of the 1983 Act was to make Dr Donadio's registration conditional on his compliance with the requirements*

*imposed. That puts the question of his status in relation to the register, and his licence, immediately in issue in the event of non-compliance, as the IOT letter to him at the time made clear. The IOT moreover had exercised its power on the basis that it was necessary to impose the conditions it did for the protection of the public and to maintain confidence in the profession. This was not just any regulatory breach, therefore. It was a breach of an order imposed directly on Dr Donadio, after regulatory and legal process examining the specifics of his case, placing detailed restrictions on his registration. He was not entitled to practise as a consultant at all. But he did. Patients were entitled to be seen, diagnosed and treated by him only under direct supervision. That did not happen. The necessary preconditions for the protection of the public and for public confidence in the profession were not fulfilled.*

*63. It was a breach which was knowing and deliberate. Dr Donadio then went on to deny that he knew about the IOT determination, and to demonstrate a lack of candour and to resist engagement with the regulatory authorities when challenged. Irrespective of the dishonesty of the denial, the lack of submission to a regulatory process he was already personally subject to in a detailed manner adds to the gravity of the breach of the order itself. The failure to demonstrate insight into breach, and to acknowledge the entitlement of the public to see a consultant radiologist entitled to practise as such when they needed to, is a further aggravation.*

*64. These facts, as found by the MPT, raised a prima facie case of considerable gravity, going to the issues of public wellbeing, public confidence and the maintenance of professional standards. Moreover, the particular conditions imposed by the IOT on Dr Donadio included transparency conditions. They expressly required him, by way of anti-avoidance, to declare the conditions imposed on him to those with a proper professional interest in knowing about them. Non-disclosure was itself, therefore, not only a species of dishonesty but a further breach of the explicit requirements of the IOT order.'*



The panel considered that there were considerable differences between your case and that of Dr Donadio. It specifically noted that you had informed your employer (Witness 4) of the interim conditions of practice order. However, it was Witness 4 who told you that she had been unable to find any other nurses to cover the shift, and asked you to work knowing that you were under interim conditions of practice. The panel reminded itself of Witness 4's witness statement evidence that:

*'Mr Craw reminded me that their ICoPO would not allow them to work the night shift of 29 October 2022 unsupervised. I told Mr Craw that I would try and cover the night shift. However, the duty rota for the week of 24 October 2022 was already difficult to cover and required many amendments, prior to my awareness of Mr Craw's ICoPO, due to short staffing levels. I only had 48 hours to change the rota, with many staff on leave and no one else available to cover. Even in normal circumstances, it is difficult to find cover for a weekend shift on short notice... I emailed the NMC and Mr Craw's Union Representative, [Ms 1], to notify them that I was not able to find any cover for the night shift of 29 October 2022, and that due to this I had to authorise Mr Craw to work the night shift. I received a response from [Ms 1] asking me if there had been any concerns raised when Mr Craw worked during the night shift of 29 October 2022, and I emailed them back to confirm that no concerns had been raised. I did not receive a response from the NMC.'*

The panel considered your evidence that at the time, you believed you were doing what was best for the residents at Beech Lawn and you were worried that there would be no nursing care for them if you did not work. The panel considered that you misguidedly thought you were doing the right thing. In oral evidence you indicated that you understand it was wrong to breach your interim conditions of practice order and that it was not your responsibility to accept Witness 4's request as had you refused, the home would have had to find alternative arrangements. The panel accepted your oral evidence and written reflection that you would not behave in the same way if faced with a similar request in the future. In the circumstances, whilst the panel recognised that any breach of an interim

order is a serious matter, it did not accept Mr Hoskins' submissions that the case of *GMC v Donadio* reflected the issues in this case.

In deciding which sanction to impose, 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.

The panel 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 your 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 your 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, and identified the following factors in your case:

- *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;*
- *[PRIVATE];*
- *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 was satisfied that there was no evidence of harmful deep-seated personality or attitudinal problems in your case due to the contextual background to the three incidents. It considered that there were identifiable areas of your practice in need of assessment and retraining, specifically communication with colleagues and [PRIVATE]. There was no evidence of general incompetence, on the contrary, the evidence before the panel was that you were an excellent, compassionate and caring nurse and that your former colleagues would happily work with you again. The panel was satisfied that you had demonstrated potential and willingness to respond positively to retraining. [PRIVATE].

The panel found that patients will not be put in danger either directly or indirectly as a result of conditions of practice. It determined that conditions will protect patients during the period they are in force as [PRIVATE]. Further, it concluded that 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 concerns highlighted in this case.

The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

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 bore in mind that you have been subject to an interim suspension order since December 2022. It noted its earlier finding on impairment, which related to the fact that you have not been able to practise and [PRIVATE]. In light of this and notwithstanding its decision that a conditions of practice order is the appropriate sanction in this case, the

panel determined that a further period of suspension from nursing practice would be of little benefit in your case and disproportionate.

The panel reminded itself that a period of suspension is often imposed to mark the public interest in a case and to send to the public and the profession a clear message about the standards of practice required of a registered nurse. It noted that a panel could impose such an order for a maximum period of 12 months. Given that you have been suspended for nearly two years, the panel was of the view that this would already have served to satisfy any such public interest requirement and any extension would only delay the opportunity for you to return to safe practice and demonstrate that you have remedied your misconduct.

The panel also carefully considered the submissions of Mr Hoskins in relation to the striking-off order that the NMC was seeking in this case. However, the panel considered that to impose a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with you remaining on the register.

Having regard to the matters it has identified, the panel has 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 limit your nursing practice to one substantive employer.
2. You must not be the nurse in charge of any shift, ward or unit.
3. You must have a mentor, supervisor or their nominated deputy who must be a registered nurse and must be available for informal contact as required.
4. You must work with your mentor or supervisor to develop a Personal Development Plan (PDP) to address the following areas of concern:
  - Communication and working with colleagues
  - [PRIVATE].
5. You must meet with your mentor, supervisor or their nominated deputy every month to discuss the standard of your performance, your progress towards achieving the aims set out in your PDP and any other concerns which have arisen.
6. You must forward to the NMC a copy of your PDP within 28 days of starting employment.
7. You must send your case officer a report from your mentor, supervisor or their nominated deputy in advance of any review of this order. This report must comment on the standard of your performance, your progress towards achieving the aims set out in your PDP and any other concerns which have arisen.
8. You must keep us 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.
9. You must keep us 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.
10. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
  - b) Any employers you apply to for work (at the time of application).
  - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
11. 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.
12. 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. The panel concluded that such a period would be adequate to provide you with the opportunity to secure employment and demonstrate improved communication skills and [PRIVATE] whilst working in the capacity of a registered nurse.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or allow it to lapse upon expiry, it may extend the order, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your continued engagement and attendance at the substantive order review hearing.
- An updated written reflective account addressing how you have been managing communicating with colleagues and [PRIVATE] whilst working in a nursing environment.
- An action plan for your future development.
- References and testimonials from paid and unpaid work.

This will be confirmed to you 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 your own interests until the conditions of practice sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Hoskins. He invited the panel to make an interim conditions of practice order that mirrors the substantive conditions of practice order for a period of 18 months to cover any appeal period until the substantive conditions of practice order takes effect. He submitted that such an order is necessary for the protection of the public and is otherwise in the public interest

Ms Collins indicated that there was no objection to an interim conditions of practise order being made in the same terms as the substantive order.

### **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 ensure that you cannot practise unrestricted before the substantive conditions of practice order takes effect. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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 you are sent the decision of this hearing in writing.

That concludes this determination.