Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

Tuesday 18 – Friday 21 & Monday 24 – Wednesday 26 July 2023

Remitted Substantive Hearing

Monday 18 – Friday 22 & Monday 25 – Thursday 28 November 2024

Virtual Hearing

Name of registrant:	**Raymond Odigie**
NMC PIN:	14I1780E
Part(s) of the register:	Registered Nurse – Mental Health RNMH – February 2016
Relevant location:	London Borough of Newham
Type of case:	Misconduct
Panel members:	Darren Shenton (Chair, Lay member) Susan Field (Registrant member) Rachel Barber (Lay member) **Remitted Hearing (18 – 28 November 2024)** Simon Banton (Chair, Lay member) Louise Poley (Registrant member) Joanne Morgan (Lay member)
Legal Assessor:	Nigel Pascoe KC **Remitted Hearing (18 – 28 November 2024)** Michael Hosford-Tanner
Hearings Coordinator:	Sherica Dosunmu
Nursing and Midwifery Council:	Represented by Amy Hazlewood, Case Presenter **Remitted Hearing (18 – 28 November 2024)** Represented by Shoba Aziz, Case Presenter

Mr Odigie:	Present and represented by Sharmistha Michaels, instructed by the Royal College of Nursing (RCN)
Facts proved:	Charges 1a, 1b, 1c, 2b(i), 3a, 3b, 3c, 4a, 4b, 4c
Facts not proved:	Charges 2a, 2b(ii), 2c, 5a, 5b, 5c, 5d
Fitness to practise:	**Impaired**
Sanction:	**Caution order – 5 years**
Interim order:	**N/A**

Details of charge (as amended)

That you, a registered nurse on 29 July 2020:

1) In response to Patient A filming you and without lawful authority, clinical need or other reasonable excuse:
   a) lunged at Patient A. **[PROVED]**
   b) grabbed Patient A. **[PROVED]**
   c) wrestled with Patient A. **[PROVED]**

2) Your actions at charge 1a and/or b and/or c were intentional in that you intended:
   a) to assault Patient A. **[NOT PROVED]**
   b) by assaulting Patient A, to cause him to:
      i) stop filming. **[PROVED]**
      ii) drop his phone. **[NOT PROVED]**
   c) by assaulting Patient A, to gain access to his phone so that the video he had taken could be deleted. **[NOT PROVED]**

3) Created inaccurate records for Patient A in that you:
   a) recorded that he had become aggressive and threatened to '*smash the things in the office*'. **[PROVED]**

b) recorded that he had attempted to force his way into the staff room. **[PROVED]**

c) recorded that you had held him back from going into the office. **[PROVED]**

4) Your actions at charge 3a and/or b and/or c were dishonest in that:
   a) you knew you had initiated physical contact with Patient A. **[PROVED]**
   b) you knew you had no lawful authority, clinical need or reasonable excuse to physically interact with Patient A as you did. **[PROVED]**
   c) you were attempting to conceal from any subsequent reader what had happened between Patient A and yourself. **[PROVED]**

5) On 29 July 2020, mocked and/or taunted and/or intimidated Patient A in that you:
   a) stared and laughed at Patient A; **[NOT PROVED]**
   b) said to another patient "Watch out because I'm dangerous" or words to that effect and pointed and laughed at Patient A; **[NOT PROVED]**
   c) told Patient A that you were "going to call the Police on you" or words to that effect; **[NOT PROVED]**
   d) laughed and/or smirked whilst holding your shoulder and told Patient A that you needed to go to A&E or words to that effect. **[NOT PROVED]**

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Aziz, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of the stem of the charges to include the date '*29 July 2020'*.

Ms Aziz submitted that the proposed amendment would not change the nature of the charges against you but would provide clarification.

Ms Michaels, on your behalf, indicated that she did not oppose the application. She submitted that the proposed amendment relates to a minor change that would help clarify the allegations.

Original charge:

'That you, a registered nurse:'

Proposed charge:

'That you, a registered nurse on 29 July 2020:'

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment would clarify the case against you and would not change the nature of the charges. On this basis, the panel was satisfied that there would be no prejudice to you and no injustice caused to either party by the proposed amendments being allowed. It determined that it was therefore appropriate to make the amendment to ensure clarity and accuracy.

Special Measures for Patient A

On 20 November 2024, the panel heard an application made by Ms Aziz for special measures to be applied when Patient A gives evidence, pursuant to Rule 23. She proposed that for the entirety of Patient A's evidence the following special measures should be applied:

- You dial into the hearing by telephone when Patient A gives evidence, in order to remove your access to your camera so that you are unable to see Patient A and Patient A is unable to see you;

- The panel allow a 10-minute break every half an hour during Patient A's evidence;
- Patient A is not to be referred to by name during the hearing to maintain their anonymity.

Ms Aziz submitted that Patient A [PRIVATE] and will find certain parts of his evidence challenging. She submitted that it is in the interest of fairness that the above measures should be put in place to enable Patient A to give their best evidence.

Ms Michaels submitted that there were no objections to any measures that would facilitate Patient A to give their best evidence.

The panel accepted the advice of the legal assessor.

The panel granted this application on the basis that both parties were in agreement, and this would enable Patient A to give their best evidence.

Accordingly, you joined the hearing by telephone on 20 November 2024 during Patient A's evidence and Patient A was afforded regular breaks. Patient A was not referred to by name at any point during the hearing.

Redacted evidence

On 21 November 2024, before the start of Ms 2's evidence, the panel was informed that Ms Michaels made some redactions to Ms 2's witness statement, which formed part of a bundle of evidence provided on your behalf. The panel initially received this witness statement unredacted.

Ms Aziz indicated that she requested for paragraphs 20, 21 and 22 of Ms 2's witness statement to be redacted as they referred to matters that did not form part of this case. She stated that there was agreement between both parties that the redacted version of Ms 2's witness statement should supersede the unredacted one previously sent.

The panel accepted the advice of the legal assessor.

The panel was provided with the redacted changes to Ms 2's witness statement. It was satisfied that the redactions agreed between both parties did not fundamentally change the nature of the case against you and would not cause any injustice or unfairness. The panel accepted the redactions made to Ms 2's witness statement and agreed it would disregard the information in the redacted sections when making its decisions on the facts in this case.

Background

The NMC received a self-referral on 18 January 2021. At the time of the referral, you were employed by East London NHS Foundation Trust (the Trust). You commenced employment with the Trust in 2015 as a Band 3 Social Therapist before you qualified as a nurse in 2016. In April 2016, you began working as a Band 5 Registered Mental Health Nurse at the Newham Centre for Mental Health (the Centre), part of the Trust. You were later promoted to a Band 6 Clinical Practice Nurse on Topaz ward (the Ward).

The Ward is a 17-bed in-patient adult ward in the Centre where patients between the ages of 18-63 are admitted due to concerns about their safety or the safety of the public.

At the time of the concerns raised, you were on secondment as acting 136 Coordinator for the 136 Suite. Patients admitted to the 136 Suite are detained by police under Section 136 of the Mental Health Act 1983 (the Mental Health Act). The 136 Suite is situated in a different part of the Centre to the Ward, however, your duties meant that you could attend any part of the Centre itself. As a 136 Coordinator your role was to work primarily on night shifts collaborating with the Senior Duty Nurse to ensure that patients detained under the Mental Health Act are admitted, assessed and discharged from 136 Suite safely and effectively.

On 29 July 2020, whilst on night shift, you and the Nurse in Charge of the Ward (Ms 2) were located in the staff room on the Ward. CCTV surveillance captured footage from outside of the office that night.

Patient A was a patient on the Ward at the time, [PRIVATE]. On this night shift, CCTV footage showed that Patient A approached the staff room where you and Ms 2 were located, knocked on the door and stood at the door for a while. Patient A then went away and returned back to the door with his mobile phone and appeared to use his phone to film through the door window. You later came to the office door opened it and an incident occurred.

It is alleged that once you opened the staff door you assaulted Patient A to cause him to stop filming and drop his phone. It is further alleged that you had done so with the intention to gain access to Patient A's phone so that the video he had taken could be deleted. During this incident it is alleged that you lunged at Patient A, grabbed him, wrestled with him and tried to take away his phone. Patient A's phone dropped to the ground, and Ms 2 picked it up and took it into the staff room. Several other staff members quickly attended, and you released Patient A.

The Ward Manager attended the Ward the following morning, and upon retrieving Patient A's phone found that there was no recording on the device.

Shortly after this incident, also on 29 July 2020, it is alleged that you mocked and/or taunted and/or intimidated Patient A by:

- Staring and laughing at him;
- Said to another patient '*watch out because I'm dangerous*', while pointing and laughing at Patient A;
- Told Patient A '*going to call the Police on you'*;
- Laughed and/or smirked whilst holding your shoulder and told Patient A that you needed to go to Accident and Emergency (A&E).

You recorded a report of the incident on the Trust's Electronic Patient Health Record System (RiO). In this RiO entry, made on 29 July 2020, it is alleged that you inaccurately recorded that at the start of the incident that Patient A had become aggressive, threatened to '*smash things in the office'*, attempted to force his way into the staff room, you had to hold him back from going into the staff room and at that stage his phone dropped.

The police were alerted to the incident on 29 July 2020 and the Trust commenced a preliminary investigation on 30 July 2020. You were temporarily deployed to a non-patient facing role on 3 August 2020, pending investigation, before you went on sick leave for an extended period of time. The Trust's investigation was later put on hold while the police completed its own investigation.

As part of the police investigation, you were charged with the assault of Patient A contrary to Section 39 of the Criminal Justice Act 1988. On 1 March 2021 you pleaded not guilty to that charge. On 4 June 2021, you were found guilty of the offence at the East London Magistrates' Court. You were discharged conditionally for 12 months and ordered to pay compensation of £750 and costs of £620 to the Crown Prosecution Service (CPS).

The Trust subsequently resumed its own investigation into the incident and the findings at your criminal court appearance.

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 Ms Aziz on behalf of the NMC and Ms Michaels on your behalf. The panel accepted the quote from *Ivey v Genting Casinos [2017] UKSC 67* included in Ms Michaels submissions as the governing law concerning dishonesty and also took account of the NMC guidance DMA-8.

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:

- Mr 1: Investigating Officer (Matron at the Centre), who conducted an internal investigation into the 29 July 2020 incident;

- Patient A: Patient at the Centre, involved in the 29 July 2020 incident.

The panel heard live evidence from the following witness called on your behalf:

- Ms 2: Nurse in Charge of the Ward at the Centre and present at the incident on 29 July 2020.

The panel also heard evidence from you under affirmation.

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

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

Charge 1

1) In response to Patient A filming you and without lawful authority, clinical need or other reasonable excuse:
   a) lunged at Patient A.
   b) grabbed Patient A.
   c) wrestled with Patient A.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account your evidence and Patient A's evidence. The panel also had regard to the visual and documentary evidence exhibited, which included in particular clear CCTV footage taken at the time of the incident, notes from the Trust's investigation interview with Patient A, Patient A's statement to the police, and details of your criminal court appearance.

The panel noted the following evidence from Patient A's NMC written statement:

> *'Raymond opens the door and starts to say that I can't film him, I take a step back as I am still recording this and narrating on my phone what is happening. Raymond then realises what I am doing and charges at me. I can see that Raymond is angry but then he lunges at me grabbing on to my arms and shoulders tightly and starts trying to wrestle the phone out of my hands.'*

The panel found that this was consistent with Patient A's oral evidence, the notes from his local interview with the Trust and his statement dated 1 August 2020 produced during the police criminal investigation. It was of the view that Patient A provided consistent detailed accounts of your actions taken to stop him from filming, which it regarded as cogent.

Additionally, the panel found that Patient A's account was corroborated by the CCTV footage of the incident on 29 July 2020. It noted that your conduct demonstrated in the CCTV footage can be seen as lunging at Patient A, grabbing him and wrestling with him.

Further, the panel considered that your actions as described by Patient A and depicted in the CCTV footage, were also consistent with the findings on your criminal court appearance on 4 June 2021. It noted that you were found guilty of assault of Patient A contrary to Section 39 of the Criminal Justice Act 1988, by way of grabbing, wrestling with him and beating him.

The panel had regard to your own account given in evidence, in which you admitted to assaulting Patient A in order to stop him from filming. It took into account your explanation that you acted in order to preserve the confidentiality of patient information that would be visible in that staff room as you were concerned that Patient A may have been live streaming. Notwithstanding your explanation, the panel regarded the force demonstrated in your actions towards Patient A as without lawful authority, clinical need or reasonable excuse.

The panel determined that there was consistent corroborative evidence, that you lunged, grabbed and wrestled Patient A without lawful authority, clinical need or reasonable excuse on 29 July 2020.

Accordingly, the panel found charge 1 proved in its entirety.

Charge 2a

2) Your actions at charge 1a and/or b and/or c were intentional in that you intended:
    a) to assault Patient A.

This charge is found NOT proved.

In reaching this decision, the panel took into account all the evidence adduced by the NMC and your evidence.

The panel noted that by your account, it was not your intention to assault Patient A. You explained that your actions resulted from your attempt to take Patient A's phone away, in order to stop him from filming confidential patient information visible in that staff room

at the time. It noted that you maintained this account during your local interview with the Trust and during the police investigation of the incident. It considered that your account was supported in part by the Trust's Mobile Phone/Tablet Policy, which confirms that by filming the staff room Patient A should have been invited to delete that footage. In this respect, the panel regarded your account as credible.

When considering the evidence adduced by the NMC, the panel found evidence which indicated that the primary objective of your actions towards Patient A was retrieval of his mobile phone. However, the panel found no evidence that it was your intention to assault Patient A when doing so.

In these circumstances the panel was not satisfied that the NMC discharged its burden of proof regarding your state of mind at the time. In the absence of further evidence, the panel found charge 2a not proved.

Charge 2b

2) Your actions at charge 1a and/or b and/or c were intentional in that you intended:

b) by assaulting Patient A, to cause him to:

i) stop filming.

ii) drop his phone.

In reaching its decision, the panel took into account your evidence and Patient A's evidence. The panel also had regard to the visual and documentary evidence exhibited, which included CCTV footage at the time of the incident, and notes from the Trust's investigation interviews with you and Patient A.

b) by assaulting Patient A, to cause him to:

i) stop filming.

This charge is found proved.

The panel bore in mind that in charge 2a it found no supporting evidence indicating that you intended to assault Patient A.

However, the panel also had regard to its reasoning for charge 1, in which it found consistent corroborative evidence that you assaulted Patient A. This assault by Patient A's account and your own account occurred in order to stop Patient A from filming.

The panel noted that in your written witness statement you explained that you initially attempted to deescalate the situation verbally and '*should have continued to do so'*. From the evidence provided the panel drew the inference that you made the choice to assault Patient A reactively. It determined that whilst you may not have intended to assault Patient A, the reckless nature of your response (lunging, grabbing and wrestling with him), which resulted in the assault, was done with the intent to stop Patient A from filming.

In these circumstances, the panel determined that you assaulted Patient A with the intention of stopping him from filming.

Accordingly, the panel found charge 2b(i) proved.

b) by assaulting Patient A, to cause him to:
ii) drop his phone.

This charge is found NOT proved.

The panel noted that the CCTV footage clearly depicted that your actions towards Patient A caused him to drop his phone. However, when considering the evidence adduced by the NMC, it found no evidence by any account that it was your intention to cause Patient A to do so.

In these circumstances, the panel determined that it had insufficient evidence to suggest you intended for Patient A to drop his phone when you assaulted him. In the absence of further evidence, the panel found charge 2b(ii) not proved.

Charge 2c

2) Your actions at charge 1a and/or b and/or c were intentional in that you intended:

c) by assaulting Patient A, to gain access to his phone so that the video he had taken could be deleted.

This charge is found NOT proved.

In reaching this decision, the panel took into account all the evidence adduced by the NMC, Ms 2's evidence and your evidence.

The panel noted that although the CCTV footage clearly depicted that your actions towards Patient A caused him to drop his phone, there was no evidence to suggest that there was intention or opportunity for you access the phone thereafter.

The CCTV footage showed that after Patient A's phone dropped, Ms 2 took the phone to the staff room. The panel noted that in evidence Ms 2 explained that she had not deleted anything from Patient A's phone when she retrieved it during the incident.

Aside from Patient A's account, the panel found no clear evidence that any video taken on Patient A's phone had been deleted and no evidence at all that you had done it. The panel did not consider that it could rely upon the statement made in the preliminary investigation as you were not given an opportunity to check it and there was evidence from another person interviewed that their interview was inaccurately recorded.

In these circumstances, the panel determined that it had insufficient evidence to suggest that when you assaulted Patient A, you intended to gain access to his phone so that the video he had taken could be deleted. In the absence of further evidence, the panel found charge 2c not proved.

Charge 3

3) Created inaccurate records for Patient A in that you:
   a) recorded that he had become aggressive and threatened to '*smash the things in the office*'.
   b) recorded that he had attempted to force his way into the staff room.
   c) recorded that you had held him back from going into the office.

This charge is found proved in its entirety.

In reaching this decision, the panel had regard to the visual and documentary evidence exhibited, which included CCTV footage at the time of the incident, and the review of your 29 July 2020 RiO entry in the Trust's preliminary investigation.

The panel noted that in the Trust's preliminary investigation dated 4 August 2020, there is a review of your RiO entry on 29 July 2020. The panel was satisfied with the authenticity of the entry as it is part of a verifiable Trust investigation record. It noted that the entry stated the following:

> *'Patient A became very aggressive which lead to staff being hurt (collar bone). At about 04:15 Staff was locking Bank shift and noticed Patient A was recording the process through the window. Staff politely and calmly asked Patient A to stop recording as there are peoples personal details in the office and on the health roster. Patient A was further advised that having access or recording other peoples personal data is a violation to their privacy. Patient A became aggressive stating he is going to smash the things in the office. At this time Patient A at this time was still unable to say exactly what he really wanted and kept recording. As staff attempted to take the phone, the phone dropped and Patient A was trying to force his way into the staff room.*
>
> *Staff attempted to hold Patient A back from going into the office, then pulled the alarm at the same time screaming for help. At this time staff had hurt his collar bone. After the incident Patient A started making threats to assault another patient this was verbally deescalated.'*

The panel found that your RiO entry for 29 July 2020 was inconsistent with the sequence of events that occurred in the CCTV footage, in which you are shown to be the initial aggressor. It found that in your RiO entry there was no mention of any of your actions associated with the assault of Patient A, but there are notable attempts to minimise your role in what had happened. The panel was satisfied that your RiO entry was not a reasonable or accurate account of the incident depicted in the CCTV footage. The panel found that there was a duty on you as a registered nurse to ensure that records were true and accurate account of the incident.

The panel considered you intended to record the sequence of events inaccurately; and has found that you did this deliberately.

The panel acknowledged that parts of your entry appeared correct, in that from the CCTV footage Patient A could be seen at some points as aggressive, attempting to get into the staff room and held back from going into the staff room, but that was only after his mobile phone had been taken from him. However, it was of the view that the way in which you recorded the sequence of events and by removing the details of your assault on Patient A, you inaccurately recorded the entry to give a false impression of what had occurred.

The panel concluded that your inaccurate RiO entry for Patient A was deliberate.

Accordingly, the panel found charges 3 proved in its entirety.

Charge 4

4) Your actions at charge 3a and/or b and/or c were dishonest in that:
   a) you knew you had initiated physical contact with Patient A.
   b) you knew you had no lawful authority, clinical need or reasonable excuse to physically interact with Patient A as you did.
   c) you were attempting to conceal from any subsequent reader what had happened between Patient A and yourself.

This charge is found proved.

When considering charge 4 the panel bore in mind its reasoning for charge 3, in which it found that you dishonestly recorded an inaccurate entry on RiO to give a false impression of what had occurred on 29 July 2020.

The panel noted that your actions towards Patient A, as depicted in the CCTV footage, during the incident were significant and resulted in a criminal conviction for assault.

The panel applied the legal test for dishonesty, referring to *Ivey v Genting* and considered that you knew you had physical contact with Patient A; knew you had no lawful authority, clinical need or reasonable excuse to physically interact with Patient A; and deliberately attempted to conceal from any subsequent reader what had happened between Patient A and yourself. The panel also took into account the NMC guidance on dishonesty at DMA-8.

The panel had regard to the fact that in your RiO entry you did not refer to your assault on Patient A in any capacity, such as force used with reasonable explanation. The panel regarded the absence of the assault in your entry as a deliberate attempt to downplay your agency in the events that occurred, and was therefore dishonest by the standards of ordinary decent people.

Accordingly, the panel found charges 4 proved in its entirety.

Charge 5

5) On 29 July 2020, mocked and/or taunted and/or intimidated Patient A in that you:
   a) stared and laughed at Patient A;
   b) said to another patient “Watch out because I’m dangerous” or words to that effect and pointed and laughed at Patient A;
   c) told Patient A that you were “going to call the Police on you” or words to that effect;

d) laughed and/or smirked whilst holding your shoulder and told Patient A that you needed to go to A&E or words to that effect.

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Patient A, Mr 1, Ms 2 and your evidence. The panel also had regard to the documentary evidence exhibited, which included notes from the Trust's investigation interviews with you and Patient A, Patient A's statement to the police and the Trust's preliminary investigation.

The panel noted that in the Trust's preliminary investigation dated 4 August 2020, it contained notes from an interview with Patient A which took place on 29 July 2020. The panel found that in Patient A's initial account of what happened there is no mention of acts amounting to mocking and/or taunting and/or intimidation by you, but only details of the assault that occurred during the incident which was considered the important matter by Patient A.

The panel noted that there was a gradual embellishment to Patient A's version of events first provided in his statement to the police on 1 August 2020.

The panel noted that after the police investigation had ended, Mr 1 conducted a further interview with Patient A on 21 July 2021, where he alleged that you laughed and smirked at him; said to another patient '*stay away from this guy he's dangerous'*, and smirked while holding your arm stating that you had to leave as you have been assaulted.

The panel found that the first full documentary record of any information relating to the mocking and/or taunting and/or intimidation of Patient A appears in Patient A's NMC witness statement, dated 30 September 2022. It determined that through the gradual addition of further details given by Patient A in each statement, Patient A's account of what occurred following the assault was inconsistent to what he reported on the day of the incident.

Further, the panel also noted that there were a number of other staff members who attended to the incident as captured in the CCTV footage, who were later interviewed during the Trust's investigation. It found that Patient A's account was not corroborated by any other witness evidence or CCTV footage, and the CCTV footage indicated that staff were acting to keep Patient A out of the staff room and away from you.

The panel noted that by your own account no further engagement took place between you and Patient A as you left the Ward shortly after the incident. The panel accepted that you wished to leave the Ward promptly as your presence would be likely, in the circumstances, to agitate Patient A further. The panel accepted there would have been little opportunity for much conversation as you left the Ward via a route that avoided meeting Patient A.

In the absence of clear, consistent evidence, the panel determined that there was insufficient evidence to conclude that, on the balance of probabilities, the incidents occurred as alleged in charge 5a – d.

The panel finds charge 5 not proved in its entirety.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted, and the ability to be a safe, kind and professional nurse.

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.

Evidence

Before submissions on misconduct and impairment, the panel heard live evidence from you under affirmation.

Submissions on misconduct

Ms Aziz referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311, which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'* She also referred to the case of *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin) and *Nandi v GMC* [2004] All ER (D) 25, in respect of sufficient seriousness.

Ms Aziz invited the panel to take the view that the facts found proved amount to misconduct. She noted the panel had regard to the terms of '*The Code: Professional standards of practice and behaviour for nurses and midwives 2015*' (the Code) in making its decision. She identified the specific, relevant standards where your actions amounted to misconduct.

Ms Aziz submitted that you physically assaulted Patient A who was vulnerable, in a clinical setting while having responsibility to care for him. She submitted that it is the role of a registered nurse to ensure patients are kept from harm, but you assaulted Patient A as proven in charge 1. She also referred to your actions found proved in charges 2b(i), 3 and 4. She submitted that the facts found proved in charges 1 - 4 amounts to serious misconduct as defined in *Nandi v GMC*. She submitted that your actions clearly call into question the safety and security of patients, which would have an overall impact on the public's trust in the profession.

Ms Michaels submitted that your conduct arose from a single, very regrettable incident. She submitted that whilst you have not made any formal admissions at the outset of this hearing, you have always admitted that you assaulted Patient A. She submitted that the assault on Patient A was not intentional, and you have on numerous occasions expressed remorse for what happened. She submitted that you have expressed to the panel and in various written reflections over the past four years your desire to apologise to Patient A.

Ms Michaels stated that the charges relating to your RiO entry were not raised at the previous fitness to practise hearing. She submitted that, as a result you have not had the opportunity in the past three years to deal with this specific matter or to make admissions to it. However, she submitted that you have in your evidence explained your understanding of the importance of accurate record keeping and expressed sincere remorse in relation to this.

Ms Michaels submitted you were subject to criminal proceedings, was found guilty of common assault, and received a conditional discharge. She submitted that after being found guilty of assault in June 2021, there has been no repetition of this behaviour since the incident in July 2020.

Ms Michaels submitted that you are well aware that your actions fell significantly short of the standards expected of registered nurse, and you have made clear in your evidence and written reflections that you know you should have acted differently.

Submissions on impairment

Ms Aziz 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. It also included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2008] EWHC 581 (Admin).

Ms Aziz submitted that the first three limbs of the test set out by Dame Janet Smith in the fifth Shipman report and adopted in *Grant* were engaged in this case:

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 profession into disrepute;*
c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
d) *[…]*

Ms Aziz submitted that your misconduct caused Patient A physical and emotional harm. She submitted that your conduct strikes at the heart of the trust and confidence that patients and the public place in the nursing profession.

Ms Aziz submitted that through your actions, you have demonstrated a lack of regard for professional boundaries. She acknowledged that you have provided a number of written reflections and showed some remorse for the impact of your actions. However, she submitted that you have not yet demonstrated sufficient insight. She submitted that in your reflections you still appear to be minimising the assault, and you also pleaded not guilty in the criminal proceedings. She submitted that there is a consequent risk of repetition.

Ms Aziz submitted that in light of the above, if your fitness to practise was not found to be impaired this would bring the profession into disrepute. She submitted that assaulting an extremely vulnerable patient impacts the trust and confidence that the public places in the nursing profession.

Ms Aziz submitted that the behaviour you demonstrated towards Patient A cannot be easily remedied due to the extreme seriousness involved and you have not adequately remedied this. She submitted that this therefore raises fundamental questions about your attitude and suitability to the role of a nurse.

Ms Aziz submitted that a finding of current impairment is essential to protect the public and is in the public interest.

Ms Michaels invited the panel to consider that the misconduct in this case was an isolated incident, and you have not been involved in any previous incidents or dishonesty in the past. She stated that there has been no repetition of this misconduct, despite the fact that you have worked as a nurse for at least one year after the event and you have gone on to work in the healthcare sector in other roles voluntarily and paid.

Ms Michaels highlighted that you made a self-referral in this matter. She also referred to the case of *Cohen v GMC* and submitted that the panel should consider whether your misconduct in the past currently impairs your practice. She submitted that the events relate to a momentary lapse in judgement and is not reflective of deep-seated attitudinal problems.

Ms Michaels submitted that the panel may consider that all four limbs of the test adopted in *Grant* are applicable in this case. However, she submitted that the dishonesty found proved relates to a single entry on RiO and you have never been accused of other dishonest entries in the past.

Ms Michaels submitted that you have faced criminal court proceedings in relation to this matter, received a 12-month conditional discharge and you have not committed any offences within that period. She submitted that you have also faced two fitness to practise proceedings and multiple interim order hearings. She stated that you have been working under and compliant with interim conditions since 15 February 2021. She submitted that she was not seeking to underplay the impact of your actions on Patient A but would like it taken into consideration the consequences you have already faced.

Ms Micheals submitted that you are currently not impaired. She submitted that it is clear you have shown extensive remorse from the outset and significantly reflected on your actions over the past four years. She submitted that you have produced several

reflective pieces and have been continuously reflecting throughout this time. She submitted that you have also demonstrated focused remediation and understand where your training was lacking at the time, which included safeguarding. She referred the panel to the training certificates of further training you have undertaken to address this. She stated that you have practised since with no issues and have multiple testimonials that attest to this.

Ms Michaels submitted that given your subsequent practice as a nurse, voluntary work you have undertaken, your attempts to upskill yourself and your reflection, there is no risk of repetition. She submitted that in these circumstances there is no risk to the public. Additionally, she submitted that given the stringent criminal and regulatory process you have already faced, public confidence in the profession would not be harmed and a finding on public interest ground alone was not required in this case.

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

Decision and reasons on misconduct

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

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

> ***'1 Treat people as individuals and uphold their dignity***
> *1.1 treat people with kindness, respect and compassion*
> *1.2 make sure you deliver the fundamentals of care effectively*
> *1.5 respect and uphold people's human rights*
>
> ***2 Listen to people and respond to their preferences and concerns***

2.6 recognise when people are anxious or in distress and respond compassionately and politely

10 Keep clear and accurate records relevant to your practice
10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

20 Uphold the reputation of your profession at all times
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 impairment. In assessing whether the charges amounted to misconduct, the panel considered each charge individually and cumulatively as well as the circumstances of the case as a whole.

The panel noted that in charges 1 and 2b(i), you assaulted Patient A in order to stop him from filming with his phone. It considered that you did so by recklessly lunging at Patient A, grabbing him and wrestling with him. It had regard to its earlier findings that your actions took place without intent specifically to assault Patient A. However, it found that by using such force on a patient without lawful authority, clinical need or reasonable explanation, you demonstrated failings in fundamental aspects of nursing to ensure patient safety. The panel determined that your actions in these charges individually amounted to misconduct.

In respect of charge 3, the panel noted that you deliberately recorded an inaccurate RiO entry about the incident that took place with Patient A on 29 July 2020. It found your actions in charge 3 compounded by your dishonesty found proved in charge 4. The panel considered that it is incumbent on nurses to uphold the professional duty of

candour, to act with openness and honesty when things go wrong. It found that by dishonestly making an inaccurate RiO entry to create a false impression of the incident to minimise what happened, you demonstrated an unacceptably low standard of professional practice. The panel determined that your actions in charges 3 and 4 individually amounted to misconduct.

The panel was of the view that acting with care and keeping patients safe from harm are integral to the standards expected of a registered nurse. It determined that your actions would be seen as deplorable by fellow practitioners and damaging the trust that the public places in the profession.

The panel therefore concluded that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted 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.

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

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

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of*

the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

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

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

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that all four limbs in the above test were engaged in the past. Taking into account all of the evidence adduced in this matter, the panel found that Patient A was put at risk and caused physical harm as a result of your misconduct. The panel determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied

that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Having considered the limbs of *Grant* in relation to the past, the panel went on to consider the current and future position. In considering the future, the panel had regard to the factors set out in *Cohen* and was satisfied that the misconduct in this case was capable of being addressed.

The panel next went on to consider the matter of insight. It took into account your oral evidence, written statement and written reflections in response to the regulatory concerns. The panel found that you have demonstrated significant insight and remorse. It noted that you have acknowledged what you did wrong, identified the negative impact on of your actions on Patient A, Patient A's family and the reputation of the nursing profession, and explained how you what you would do differently in the future. The panel was satisfied that your insight and remorse have fully addressed the concerns about your practice.

The panel was of the view that the misconduct in this case evidenced behaviour that is more difficult to put right, concerning a reckless assault and dishonesty. It took into account the positive testimonials from your colleagues and steps taken by you to strengthen your practice, which included the completion of a number of online and face to face training courses relevant to the concerns raised in this case and voluntary work in healthcare. The panel noted that you have worked as a nurse for at least one year since your self-referral, and in a healthcare setting thereafter, there has been no repetition of the concerns raised in this matter. The panel was satisfied that you have successfully taken adequate steps to strengthen your practice.

The panel was of the view that your initial awareness of what you have done wrong and your expressions of genuine remorse, alongside the background that the misconduct related to an isolated episode, indicated that you did not have deep seated attitudinal issues. It considered that the incidents occurred four years ago, which has given you time to reflect fully on these matters and strengthen your practice. Given the evidence of your sincere remorse, developed insight, positive testimonials from registered nurses,

training that you have undertaken and the evidence regarding your subsequent high standard of nursing and other work in healthcare, the panel was satisfied that the risk of repetition in this case is very low. The panel therefore determined that a finding of impairment is not necessary on the grounds of public protection.

However, the panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. It also had regard to the fact that this hearing was *de novo*, meaning that the panel was required to make a fresh decision and taking account of all steps to date to strengthen your practice.

The panel considered that the misconduct in this case is of a very serious nature, which involves an incident that resulted in the assault of a patient and included a dishonest attempt to conceal your agency in what happened. That demonstrated that your practice was impaired at the time of the serious incident in July 2020. It concluded that public confidence in the profession and the NMC as its regulator would be undermined if a finding of impairment were not made in this case. The panel therefore found your fitness to practise impaired on the grounds of public interest.

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

Sanction

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

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

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Aziz informed the panel that the NMC was seeking the imposition of a striking-off order. She referred to the SG on proportionality and some of the legal principles outlined in her submissions on impairment relating to seriousness.

Ms Aziz outlined the following aggravating features she identified in this case:

- Abuse of position of trust;
- Lack of insight into failings;
- Conduct that has put patients at risk of harm.

Ms Aziz submitted that the least restrictive sanctions, making no order or a caution, would not be appropriate in this case given the seriousness of the misconduct.

Ms Aziz submitted that a conditions of practice order would also not be appropriate. She submitted that there are no conditions that could be formulated to uphold public professional standards and adequately address the associated risks in this matter.

Ms Aziz highlighted that the next available sanction would be a suspension order. However, she submitted that given the serious departure from professional standards, this case is too serious to deal with by way of a suspension. She submitted that your insight demonstrated is not sufficient to promote and maintain public confidence in the nursing profession.

Ms Aziz submitted that your conduct raises fundamental questions about your professionalism, and public confidence would not be maintained if you were not

removed from the NMC register. She highlighted that Patient A explained in evidence that he has lost trust in the profession and suffered emotional harm over the years. She submitted that your misconduct is very serious, and you were found guilty of in criminal proceedings for the assault of a vulnerable patient. She submitted that a striking-off order is the only appropriate sanction in the circumstances of this case and your actions are wholly incompatible with remaining on the register.

Ms Micheals reminded the panel that when considering sanctions the purpose is not to be punitive, although it is noted that a sanction imposed may have a punitive effect. She also referred to the SG guidance on the principal of proportionality and a number of relevant legal judgments.

Ms Michaels referred to the panel's findings on impairment, in which it is found that impairment is only required on public interest grounds and not for public protection. She invited the panel to consider the least restrictive sanction sufficient to meet the NMC's overarching objective.

Ms Michaels submitted that the permanent removal sought by the NMC is not warranted and would be disproportionate in the particular circumstances of this case, in light of the evidence and the panel's own findings.

Ms Michaels identified as the following mitigating features of this case:

- You have accepted what you have done wrong;
- You demonstrated an understanding of what you should have done differently;
- You have identified the negative impact of your actions on Patient A, his family and the nursing profession;
- You have demonstrated significant insight and remorse;
- You have carried out focused remediation;
- The matter relates to a one-off incident, which took place in 2020 and has not been repeated since; and
- You worked as a nurse prior to the incident with no previous regulatory or disciplinary matters.

Ms Michaels stated that it has been four years since the incident with Patient A, and since then you have worked under supervision as a registered nurse for one year and also undertaken voluntary work in healthcare. She submitted that there have been no concerns raised about you. She referred to the positive testimonials regarding your behaviour in the workplace as a nurse, and stated that the same standard has been evidenced in your voluntary work.

Ms Michaels referred to the SG on '*Cases involving dishonesty'*, and highlighted the following section:

'Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents outside professional practice'*

Ms Michaels submitted that whilst the fourth bullet point was not applicable in this case, the others were applicable, indicating that the dishonesty in this case is generally less serious. She stated that the dishonesty in this matter relates to a single RiO entry.

Ms Michaels submitted that she would not invite the panel to take no action. She highlighted that the panel's findings that you are currently impaired on public interest grounds only. She submitted that in these circumstances a lengthy caution order would be appropriate to mark the misconduct as unacceptable.

Ms Michaels submitted that if the panel take the view that a caution order would not be appropriate to mark the misconduct, she will invite it to consider a conditions of practice order. She submitted that a conditions of practice order would be a sufficient, proportionate and appropriate response given that you have worked and complied with conditions since February 2021.

Ms Michaels stated that if the panel determined that conditions of practice are not suitable and did go on to consider suspension or striking off, it is submitted that the misconduct is not fundamentally incompatible with your role as a nurse, such that it requires permanent removal from the NMC Register. She submitted that the following is applicable to this case:

- A single incident of misconduct;
- Low risk of repetition;
- No evidence of deep-seated attitudinal problems;
- Evidence of insight, strengthened practice and positive testimonials; and
- Evidence regarding your subsequent high standards of nursing and other work in healthcare.

Ms Michaels submitted that a striking-off order would not be proportionate in this case, taking into account all of the mitigation and information before the panel. She submitted that public confidence could be maintained if you were not struck off from the register. She submitted if the panel were persuaded to impose a suspension order, a short period would be sufficient and appropriate to mark the seriousness of this misconduct.

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 features:

- Aggressive conduct that put patients at risk of harm; and
- Abuse of a position of trust as a Band 6 registered nurse.

The panel also took into account the following mitigating features:

- Misconduct relates to a reckless isolated incident;
- Dishonesty was not premeditated, and involved a single RiO entry made in haste which minimised your role;
- Evidence of significant insight and genuine remorse toward Patient A and his family;
- Evidence demonstrating a good understanding of what went wrong and how you would manage similar situations differently;
- Sufficient efforts made to keep up to date with nursing practice, such as relevant training and volunteer work in healthcare;
- Evidence of strengthened practise, including a number of positive testimonials from registered nurses about your high standard of nursing and other work in healthcare; and
- No repetition in the four years since the incident.

The panel considered that the mitigating features greatly outweighed the aggravating features.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the misconduct. The panel decided that it would be neither proportionate nor in the public interest to take no further action as this would not mark the unacceptable nature of the misconduct in this case.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel noted that at the initial stages of the Trust's investigation and subsequent criminal proceedings you have admitted that you assaulted Patient A, without intent. The panel found that the nature of the assault was reckless, but occurred in a

spontaneous isolated incident, when you acted without the intent to specifically assault Patient A but rather to stop him from filming on the Ward. It noted that you made a self-referral in 2021 and have engaged and fully complied with the NMC since.

In regard to your dishonest conduct, the panel noted that the dishonesty related to a single RiO entry shortly after the incident, which minimised your role, but was made in haste. It was made in haste because you had been advised by the Ward Manager to leave the Ward urgently in order to deescalate the situation. The record did at least highlight that there had been an incident involving a physical intervention against Patient A. The panel accepted that not all dishonesty is equally serious. It had regard to the SG on '*seriousness*' and '*cases involving dishonesty*'. It noted that the SG states the following:

'Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents outside professional practice'*

The panel acknowledged that your dishonesty did not occur outside of your professional practice. However, it took the view that your dishonesty related to a one-off incident, was spontaneous, and had no direct personal gain considering you admitted to the Trust that you assaulted Patient A. In these circumstances, it determined that the dishonesty could be addressed.

When taking into account your multiple written reflections and oral evidence, the panel found that you have expressed genuine remorse for the incident. It noted that have also shown significant insight into your misconduct. Additionally, it found that you have made sufficient efforts to keep up to date with good practice, through relevant training and volunteer work in healthcare. It had regard to significant evidence of strengthened practice, which include a number of positive testimonials from registered nurses about the subsequent high standard of your nursing and other work in healthcare. Having balanced your actions against mitigation, the panel was of the view that the misconduct

in the circumstances of this case in this case was at the lower end of the spectrum of impaired fitness to practise and was not fundamentally incompatible with remaining on the NMC Register.

The panel considered that the public interest did require your conduct to be marked to send a clear message to the nursing profession that your actions fell far below the standards expected of a registered nurse. It acknowledged that it would be rare that misconduct that included assault on a patient and dishonesty could be met by way of a caution order. However, the panel took into account that you have extensively reflected on your actions and taken appropriate steps to strengthen your practice. Additionally, you have since worked as a nurse for a year and in other roles in healthcare for over four years with no repetition or other concerns raised.

The panel considered whether it would be proportionate to impose a more restrictive sanction than a caution order and looked at a conditions of practice order. It considered whether placing a conditions of practice order on your registration would be a sufficient and appropriate response. It was mindful that any conditions imposed must be proportionate, measurable and workable. The panel was of the view that a conditions of practice order would not be an appropriate or measurable response as there are no clinical concerns in this case and no outstanding issues around patient safety. The panel did not consider that conditions would be appropriate in this case.

Given that a conditions of practice order was not appropriate, the panel considered whether a suspension order was appropriate. It noted its findings at the impairment stage that there are no public protection concerns and the risk of repetition was very low. It was satisfied by your demonstration of insight and strengthened practice to the point that it was now of the view that it would not be in the public interest to prevent an otherwise competent registered nurse from continuing practice.

If the panel were to make a suspension order, it concluded that it would be appropriate and proportionate to take account of the maximum period of one year and the fact that you were suspended for over six months under the substantive order made in July 2023. The panel recognizes that there are elements in the SG which point the panel to

giving serious consideration to making a suspension order, notably the seriousness of the misconduct, although the panel has accepted that it was a one-off occurrence and where no deep-seated attitudinal issues have been found, nor any repetition over the following four years and the panel has found you have gained insight into the effect of your actions on the patient, his family, and on the profession, and there is no significant risk of repeating behaviour.

The panel also considered whether a striking-off order would be applicable in this case, and it had regard to submissions of Ms Aziz in relation to the striking-off order the NMC was seeking. However, taking account of all the information before it and of the mitigation found by the panel, the panel concluded that this would be disproportionate.

The panel has considered that the misconduct was serious, involving a reckless (but not specifically intentional) assault of a patient and dishonestly minimising your agency in the incident. The panel has accepted that the assault, though serious misconduct, was a one-off occurrence and that the record which dishonestly minimised your role was made by you very swiftly before leaving the Ward, as you had been advised to do by the Ward Manager as part of de-escalating the situation, was also a one-off occurrence. In those circumstances, the panel has concluded that your misconduct is not fundamentally incompatible with you continuing on the register, and that a striking off order would be disproportionate, where the panel has found:

- It was a one-off occurrence;
- No evidence of deep-seated attitudinal issues;
- No repetition over the following four years;
- The panel has found you have gained insight into the effect of your actions on the patient and his family, and on the profession; and
- There is no significant risk of repeating behaviour.

The panel has concluded that an informed and reasonable member of the public would not disagree with that assessment, namely that a striking off order would be disproportionate. The panel has found that your fitness to practise is impaired on public interest grounds, as being a finding necessary to maintain confidence of the public in

the profession and in the NMC as its regulator. The panel also bore in mind the benefit to the public of retaining the services of a valued and caring nurse and concluded that this would not be in the public interest.

The panel has decided that a caution order would sufficiently serve the public interest elements of this case. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined to impose a caution order for a period of five years. It was satisfied that this would be the appropriate and proportionate response to the misconduct identified in this case. The panel determined that a caution order for the period of five years would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

The panel has considered your misconduct to have been serious and would wish this marked on the NMC register. It has concluded that the best way to do that, is by making a caution order for the maximum period of five years. For that whole period any employer or any prospective employer will be on notice that your fitness to practise had been found to be impaired and will be able to see that you are subject to a caution order and to ascertain the reasons for that caution order, and to be informed of your serious misconduct.

The panel recognises that a suspension order is conventionally considered to be a more severe sanction than a caution order. The panel is aware that a suspension order with a review was made by the previous panel on 26 July 2023, and that you remained suspended under that order for over six months, until a re-hearing was ordered under the High Court consent order made on 13 February 2024, which quashed that suspension order. This panel is exercising its own independent judgement and is not influenced by the decisions of that previous panel. This panel is not in any way critical of the decision of the previous panel. It noted that the previous panel provided for a review, whereas this panel has assessed that 16 months later, you have fully strengthened your practice, with further training and whilst working as a support worker

in a healthcare setting, including in dementia care, and this has been supported by strong testimonials from registered nurses.

The panel has noted that you have taken steps to keep your skills up to date and that you have the ability now to practice as a safe, kind and professional nurse. The panel has assessed that there is only a very low risk of repetition of your misconduct and has found that your practice is no longer impaired on public protection grounds. If this panel were to have made a suspension order it would have concluded that there would be no need for a review, as it would serve no purpose.

At the end of the five-year period the note on your entry in the NMC Register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.