

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

**Substantive Hearing
Monday 21 October 2024 – Monday 28 October 2024**

Virtual Hearing

Name of Registrant: Mr Patrick Richard Gribben

NMC PIN 87H0052S

Part(s) of the register: Nurses part of the register Sub part 1
RN3: Mental health nurse, level 1 (24 November 1990)

Relevant Location: Scotland

Type of case: Misconduct

Panel members: Gregory Hammond (Chair, Lay Member)
Sally Thomas (Registrant Member)
Oluremi Alabi (Lay Member)

Legal Assessor: Ruth Mann

Hearings Coordinator: Maya Khan

Nursing and Midwifery Council: Represented by Mohsin Malik, Case Presenter

Mr Gribben: Not present and not represented at the hearing

Facts proved: Charges 1a, 1b and 1c

Facts not proved: Not applicable

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Gribben was not in attendance and that the Notice of Hearing letter had been sent to Mr Gribben's registered email address by secure email on 19 September 2024.

Mr Malik, on behalf of the Nursing and Midwifery Council (NMC), referred the panel to the contact email address held by the NMC and which was evidenced by a screenshot in the service bundle. Mr Malik also referred the panel to the witness statement in the service bundle which confirmed that the Notice of Hearing had been sent to Mr Gribben's email address on 19 September 2024.

Mr Malik submitted that the Notice of Hearing has been served in good time and the NMC has complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery (Fitness to Practise) Rules 2004 Order of Council 2004 (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Gribben's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence. It also noted that the Notice of Hearing had been served before 28 days of the hearing.

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

Decision and reasons on proceeding in the absence of Mr Gribben

The panel next considered whether it should proceed in the absence of Mr Gribben. It had regard to Rule 21 and heard the submissions of Mr Malik who invited the panel to proceed with the hearing in the absence of Mr Gribben.

Mr Malik provided the panel with a 'Proceeding in Absence' (PIA) bundle, which included evidence of the several attempts made by the NMC to contact Mr Gribben by email and telephone in order to secure his attendance at this hearing. The PIA bundle included the following:

- Email from the NMC case officer dated 13 June 2024 informing Mr Gribben and his representative of the date of the hearing.
- Letter from the NMC case officer dated 13 June 2024 informing Mr Gribben and his representative of the date of the hearing.
- Email from the NMC dated 19 September 2024 informing Mr Gribben and his representative of the date of the hearing.
- Email from Mr Gribben's representative to his NMC case officer dated 16 October 2024 stating that Mr Gribben will not be attending the hearing for personal reasons but that written submissions would be produced on his behalf including character references and a reflective piece.
- Email from Mr Gribben's representative to his NMC case officer dated 18 October 2024 stating that: '*Mr Gribben is content for the hearing to proceed in his absence...*'

Mr Malik told the panel that all the relevant documentation for the hearing was sent to Mr Gribben on 4 March 2024. Furthermore, a hearsay bundle in respect of the non-attending Ms 1 and a witness statement from Mr 3 were sent on 18 October 2024. He told the panel that Mr Gribben's representative confirmed in an email dated 18 October 2024 that Mr Gribben had received and seen all the documentation relevant to the hearing.

Mr Malik submitted that Mr Gribben has voluntarily absented himself.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel decided to proceed in the absence of Mr Gribben. In reaching this decision, the panel considered the submissions of Mr Malik and accepted the advice of the legal

assessor. It had particular regard to the factors set out in the decision of *R v Jones and General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- There are two email responses from Mr Gribben's representative to his NMC case officer dated 16 and 18 October 2024 which stated respectively: *'I have spoken with Mr Gribben. He will not be attending the hearing...'* and *'Mr Gribben is content for the hearing to proceed in his absence.'*
- Mr Gribben's representative has produced written submissions on his behalf including character references and a reflective piece by Mr Gribben.
- No application for an adjournment has been made by Mr Gribben.
- There is no reason to suppose that adjourning would secure his attendance at some future date.
- There are two witnesses who are due to give live evidence in this case.
- Not proceeding may inconvenience the witnesses and their employer(s)
- The charges relate to events that occurred in 2021 and further delay may have an adverse effect on the ability of witnesses accurately to recall events.
- There is a strong public interest in the expeditious disposal of the case.

The panel took into consideration the disadvantages to Mr Gribben by proceeding in his absence such as: he will not be able to challenge the evidence relied upon by the NMC in person; nor will he be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies.

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

Details of charge

That you a registered nurse

1. On 8 June 2021 in relation to patient A:
 - a. Used force on one or more occasion to get them to the treatment room.
 - b. Forcefully attempted to administer medication to them.
 - c. Forcefully attempted to get them to drink water.

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

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

The panel of its own volition decided to hold parts of the hearing in private under Rule 19 of the Rules on the basis that there is reference to Mr Gribben's health in his written evidence which the panel has decided to quote in its written determination at the impairment stage.

The panel invited representations from Mr Malik who made no objections to the panel's concerns regarding references to Mr Gribben's health in the 'Registrant's Bundle'.

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 in the interests of any party or in the public interest.

The panel determined to hold parts of the hearing in private in order to protect Mr Gribben's privacy.

Background

Mr Gribben worked as a Band 5 nurse in the Acute Admission Assessment Ward of Woodland View, which is part of the NHS Ayrshire and Arran ('the Trust'). The alleged incident occurred on 8 June 2021 when Mr Gribben was the nurse in charge on the

night shift on the ward. He was referred to the NMC on 22 November 2021 by the Trust. Mr Gribben also self-referred to the NMC on 24 November 2021.

These referrals resulted in an investigation by the NMC which identified the following regulatory concerns:

- Used force on one or more occasion to get Patient A, a vulnerable adult patient who was detained under the Mental Health Act, to the treatment room.
- Forcefully attempted to administer medication to Patient A.
- Forcefully attempted to get Patient A to drink water.

Mr Gribben was subject to criminal proceedings which resulted in his receiving an absolute discharge.

Decision and reasons on application to admit the hearsay evidence

The panel heard an application made by Mr Malik, under Rule 31 of the Rules, to allow the written statement by Ms 1 to be admitted into evidence.

Mr Malik referred the panel to the relevant documents.

In relation to Ms 1's statement, Mr Malik submitted that Ms 1 was a direct eyewitness to the charges and her statement relates directly to the charges. He told the panel that the NMC contacted Ms 1 and tried to secure her attendance at the hearing. Ms 1 responded to the NMC on 14 October 2024 stating:

'I have given 5 statements regarding this case and feel that I did everything I could to protect the lady involved. I gave all the information I could to yourselves, the NHS and the Police.

This terrible incident caused me a great amount of stress and upset at the time and is still causing me to be anxious and upset with the ongoing investigation. I have a lot going on in my personal life at the present time, therefore, I apologise, but I cannot be present for the forth coming hearing.'

Mr Malik submitted that Ms 1 is based in Scotland and the NMC could not apply for a witness summon for her. He invited the panel to admit Ms 1's witness statement into evidence as it was both fair and relevant.

The panel 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 was referred to the guidance contained in *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and *El Karout v The Nursing and Midwifery Council* [2019] EWHC 28 (Admin).

The panel determined that it would be fair and relevant to admit the hearsay evidence of Ms 1's witness statement. It considered that Mr Gribben faces serious charges which could potentially result in the termination of his career as a registered nurse. However, this was outweighed by other factors. The panel decided that the NMC had made reasonable efforts to secure the attendance of Ms 1 and her reasons for not being able to attend were cogent. The panel considered that Ms 1 was a direct witness to the allegations and the hearsay evidence of Ms 1 was therefore relevant to the charge, but her evidence was not sole or decisive.

The panel further considered that Mr Gribben had been sent the witness statement of Ms 1 and he had not raised any objection to it. Mr Gribben was only served with a copy of the hearsay bundle on 18 October 2024. However, he had been aware that the NMC intended to rely on the evidence of Ms 1 because her NMC signed statement had been served in March 2024 as clarified by Mr Malik.

The panel determined that it had no evidence before it to suggest that Ms 1's evidence is fabricated or in any other way demonstrably unreliable. Ms 1 when asked about any incidents was clear in her statement that she would only provide information about what she saw for herself and not what she heard from others. Ms 1's evidence was also consistent with what she said during the Trust's investigation.

The panel concluded that it was fair to admit the hearsay evidence of Ms 1 and it will attach the appropriate weight to it.

Decision and reasons on application to admit Mr 3's witness statement

The panel heard an application made by Mr Malik, under Rule 31 of the Rules, to allow the witness statement of Mr 3 that was only served on 18 October 2024 to be admitted into evidence.

Mr Malik referred the panel to the relevant documents.

In relation to Mr 3's evidence, Mr Malik submitted that Mr 3's written statement in the exhibit bundle is the statement that was made as part of the police investigation. Mr Malik told the panel that Mr 3's police statement was sent to Mr Gribben in March 2024 and Mr Gribben has not raised any objections. However, Mr 3's NMC witness statement covering his exhibits was only sent to Mr Gribben on 18 October 2024. Mr Malik invited the panel to admit Mr 3's witness statement into evidence as it was both fair and relevant.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application.

The panel considered that it would be fair and relevant to admit Mr 3's witness statement. It considered that the witness statement only referred to the exhibits, including Mr 3's internal Trust interview record and his police statement, which were all in the original exhibit bundle sent to Mr Gribben. The witness statement that was sent late did not contain any new information.

The panel concluded that it was fair to admit the witness statement of Mr 3.

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, including Mr Gribben's responses, together with the submissions made by Mr Malik.

The panel has drawn no adverse inference from the non-attendance of Mr Gribben.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is of 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 oral evidence from the following witness called on behalf of the NMC:

- Ms 2: Senior Manager within Health and Community Care employed by the Trust

- Mr 3: Nursing Assistant employed by the Trust

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

That you a registered nurse

1. On 8 June 2021 in relation to Patient A:
 - a. Used force on one or more occasion to get them to the treatment room.

This charge is found proved.

The panel considered that Mr 3's oral and written evidence was broadly consistent. Mr 3 told the panel that he was a Nursing Assistant on shift on 8 June 2021. His responsibilities included assisting staff nurses and patients within the ward, and he said he had worked with Mr Gribben regularly before. The panel considered Mr 3's

responses during the 'NHS Scotland Workforce Policies Investigation Process Investigation Meeting...' conducted by Ms 2 on 30 June 2021, in which he stated:

'I heard Pat saying – right, come on Patient A, he didn't give her a chance, was in a rage and started pulling at her left arm. We encourage patients with a gentle help along, hand under the patients elbow but this was not a gentle come along. Patient A never got a chance and the next thing Patient A was on the ground. Pat had pulled her so aggressively that Patient A was thrown to the ground. When Patient A went down it pulled him slightly down but he didn't fall to the ground and when he got back up she came with him. She has been twisted round and landed on her buttocks, she screamed out. I was at the side of the nursing station and went to help Patient A along with [Ms 1].'

'...I went over to assist and [Ms 1] and I were speechless. We just looked at each other. Pat pulled Patient A to her feet. He had never let her go even when he went down slightly with her. He had an arm around her back and arm pit dragged Patient A into the Treatment Room which is just off the lounge.'

'...When we went into the Treatment Room I couldn't look [Ms 1] in the eye I felt so embarrassed that a staff member had behaved in this way. Patient A feet stick to the ground, and he never gave her the time, he forced her to walk to the Treatment Room – through pushing and pulling her and not speaking any encouragement to her. Patient A's facial expression was empty but she continued to scream (aaaargh). He never communicated what he was doing. We encourage everyone to go into the Treatment Room for their medication.'

The panel considered Mr 3's police statement dated 14 November 2021 which stated:

'Patrick walked up to Patient A and said aggressively something to the effect of, "Come on – it's time to take your medication" Patient A was afforded no time to react and immediately Patrick grabbed Patient A who was side on to Patrick. He grabbed Patient A by one arm very tightly and used his other arm to turn her in the direction of the Clean Utility Room - which is the room used to administer medication. He pulled Patient A so hard she fell to the ground. Patrick kept his

grip on and ended up almost on top of her. Patient A let out a scream which I found very upsetting and uncalled for.

My colleague [Ms 1] attempted to assist back to her feet but was unable to as Patrick was continuing to grab and to pull her up from the ground by himself. Once Patient A was back on her feet, Patrick marched her to the treatment room - approximately 10-20 feet away.'

The panel considered Ms 1's hearsay evidence. It attached less weight to it because it had not been tested by cross-examination but found that it corroborates Mr 3's oral and written evidence. Ms 1 stated:

'I then took Patient A by the hand and led her over to the nurses station where I had been standing to keep an eye on other patients, whilst we were both standing at the front edge of the station holding hands and facing each other, Mr Gribben walked up behind Patient A, grabbed her left arm with force and yanked it, causing her to spin around.

At this point, Patient A was shouting "no, no" and as she was being spun round and dragged, she fell on the floor and Mr Gribben proceeded to fall on top of her. I am not sure if his full body weight had impacted her body, but I did notice that Patient A did not bang her head on the floor.

I was so shocked as it happened so quickly and I immediately attempted to help Patient A up off the floor. She looked absolutely terrified...

As we approached the treatment door, Mr Gribben turned and grabbed Patient A by her wrist and pulled her into the treatment room. He was very agitated and pulled her with force.'

The panel noted that Mr Gribben did not deny the alleged incident in both his internal interview or his reflective piece. Mr Gribben's responses during the '*NHS Scotland Workforce Policies Investigation Process Investigation Meeting...*' conducted by Ms 2 on 29 September 2021 stated:

'I wouldn't recognise myself. I am shocked that, that could possibly be me and I could do this to someone. Hostile/aggressive – made me, want to be sick. Going by that, really shocked me...'

'[Question]: Can you recall some of your interaction with Patient A?

Answer: How she was moved between the sitting room and the Prep room – cant remember...'

The panel considered Mr Gribben's reflective piece in which he stated:

'I have very little recollection of that night, [PRIVATE] I am doing my reflective piece on what I learned from the investigation process and the statements from the staff who were on duty with me. Ongoing through the process I was deeply disturbed by the account of events and I did not recognise myself or the descriptions of my practice. I am profoundly sorry for the distress that this event caused not only to my colleagues but most importantly to my patient.'

Having regard to the evidence, the panel found that Mr Gribben had forcefully grabbed Patient A to the extent that both he and Patient A fell to the ground, and then he forced Patient A into the Treatment Room. The panel was therefore satisfied that Charge 1a is proved on the balance of probabilities.

Charge 1b

1. On 8 June 2021 in relation to Patient A:
 - b. Forcefully attempted to administer medication to them.

This charge is found proved.

The panel considered that Mr 3's oral and written evidence was consistent.

The panel considered Mr 3's responses during the '*NHS Scotland Workforce Policies Investigation Process Investigation Meeting...*' conducted by Ms 2 on 30 June 2021 which stated:

'Q: Were her meds already made up or did Pat have to go and make them up?

A: He had to go to the medicine cabinet however they were probably made up and ready to give. He physically pushed the medication (3 or 4) tablets through her closed lips with his thumb, the tablets were coming back out again and again onto her top and he kept forcing them back into her mouth. She was distressed and at the same time making screaming noises – she didn't know what was happening...

Q: Did she swallow her medication?

A: I can't confirm if she was swallowed it or not. Pat did not speak to Patient A at all whilst he was doing this. He forced her, [Ms 1] and I were offering words of encouragement. After the event Pat stepped away and we opened the door and left.'

The panel considered Mr 3's police statement dated 14 November 2021 which stated:

'...It can be a challenge sometimes to issue Patient A her medication but, with good communication skills, she is able to take the medication without issue.

There were several tablets that Patient A was required to take. Patrick gave no opportunity to encourage Patient A to take her medication. Patient A was resisting taking the medication so Patrick pushed each tablet into Patient A's mouth aggressively with his thumb to bypass the pursed lips of Patient A. Patient A was continuing to remain tight lipped so Patrick used a water cup to try to get Patient A to swallow the tablets. However, the water was dribbling down Patient A's front. Patient A was thereafter escorted into the lounge area - and the incident was over.

Throughout the incident both myself and [Ms 1] were looking at each other with facial expressions showing concern for how Patrick was dealing with the incident. Shortly thereafter, myself and [Ms 1] had a short conversation - both airing our concern that Patrick's assaultive behaviour...'

The panel took account Mr 3's oral evidence when he said the approach taken to encourage Patient A to take medication was available and contained within Patient A's care plan. This was widely known by staff.

The panel considered Ms 1's hearsay evidence. It attached less weight to it because it was not tested by cross-examination but found that it corroborates Mr 3's oral and written evidence. Ms 1 stated:

'Mr Gribben then walked up to Patient A and rammed tablets into her mouth, pushing them against her teeth and she was strongly resisting this and the tablets fell out of her mouth. Mr Gribben shouted "fuck" when they fell out of her mouth.

Mr Gribben proceed to pick them up and pushed them back into Patient A's mouth using his thumb.'

The panel considered Mr Gribben's responses during the *'NHS Scotland Workforce Policies Investigation Process Investigation Meeting...'* conducted by Ms 2 on 29 September 2021 which stated:

'...I do remember getting medication (Clozapine into her mouth, maybe I was too heavy [handed], probably thinking if she missed her medication would need to titrate, so better she got it.'

'...How many tablets she was given – can't remember

'...How many tablets got into her mouth – can't remember'

Having regard to the evidence, the panel was satisfied that on 8 June 2021 Mr Gribben forcefully attempted to administer medication to Patient A. The panel determined that the force was unnecessary and unjustified. Accordingly, the panel found Charge 1b proved on the balance of probabilities.

Charge 1c

1. On 8 June 2021 in relation to Patient A:

c. forcefully attempted to get them to drink water.

This charge is found proved.

The panel considered Mr 3's responses during the '*NHS Scotland Workforce Policies Investigation Process Investigation Meeting...*' conducted by Ms 2 on 30 June 2021 which stated:

'A: ...She was distressed and at the same time making screaming noises – she didn't know what was happening. Water was being forced into her mouth with a clear plastic cup. She was still tight lipped and as he was forcing the water in it was running down her...'

The panel considered Mr 3's police statement dated 14 November 2021 which stated:

'...Patrick used a water cup to try to get Patient A to swallow the tablets. However, the water was dribbling down front. Patient A was thereafter escorted into the lounge area - and the incident was over.

Throughout the incident both myself and [Ms 1] were looking at each other with facial expressions showing concern for how Patrick was dealing with the incident. Shortly thereafter, myself and [Ms 1] had a short conversation - both airing our concern that Patrick's assaultive behaviour...'

Mr 3 said in his oral evidence that Mr Gribben forced Patient A to drink water and she was resisting it.

The panel noted this evidence was not corroborated by Ms 1's hearsay evidence, which does not mention Mr Gribben's use of the water cup. However, the panel considered that Mr 3's oral and written evidence was broadly consistent overall and other aspects of his account had been corroborated.

Having regard to the evidence, the panel was satisfied that on 8 June 2021 Mr Gribben forcefully attempted to get Patient A to drink water. Accordingly, the panel found Charge 1c proved on the balance of probabilities.

Fitness to practise

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

The panel, in reaching its decision, has recognised its statutory duty to uphold professional ethics, 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, Mr Gribben's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

Mr Malik invited the panel to take the view that the facts found proved amount to misconduct. He invited the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives and nursing associates' 2015, updated 2018 (the Code) in making its decision.

Mr Malik identified the specific, relevant standards he submitted Mr Gribben's actions breached.

Mr Malik submitted that the charges found proved relate to Mr Gribben's clinical practice involving a vulnerable adult. He submitted that safeguarding and protecting people from harm, abuse and neglect is an integral part of providing safe and effective care to patients and goes to the heart of what nurses, midwives and nursing associates are

required to do. He submitted that the failure to do so or intentionally cause a person harm will always be treated very seriously due to the high risk of harm if the nurse's behaviour is not put right.

Mr Malik submitted that the panel heard from witnesses stating that Patient A was screaming loudly and scared after being dragged and forced into the Treatment Room by Mr Gribben using unnecessary and unjustified force. He submitted that Mr Gribben's actions were an assault to Patient A and a serious departure from the Code.

Mr Malik submitted that Mr Gribben's actions could bring the profession into disrepute and impact the trust and confidence in the nursing profession.

Mr Malik submitted that the charges proved amount to serious misconduct as Mr Gribben's actions were serious and fell far below what is expected of a nurse.

Submissions on impairment

Mr Malik submitted that the panel would need to consider if Mr Gribben's fitness to practise is impaired as of today's date. He referred the panel to the NMC Guidance on Impairment especially the question:

'Can the nurse practice kindly, safely and professionally?'

Mr Malik submitted that in considering impairment, the panel should consider the test formulated by Dame Janet Smith in the Fifth Shipman Report, quoted in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*. He submitted that limbs a, b and c of the Grant test are engaged in this case when looking at past conduct.

Mr Malik further referred the panel to the test on impairment set out in the case of *Cohen v GMC [2008] EWHC 581 (Admin)*.

Mr Malik referred the panel to the NMC Guidance FTP-13. Mr Malik referred the panel to Mr Gribben's reflective piece in which he states that he has very little recollection of the incidents on 8 June 2021 and apologised for his behaviour.

Mr Malik submitted that the type of behaviour contained within these charges is hard to remediate because Mr Gribben's behaviour raises fundamental concerns about his

behaviour and attitude. He further submitted that Mr Gribben's behaviour demonstrates a serious breach of trust and abuse of authority. He therefore concluded that Mr Gribben's conduct is difficult to remediate.

With regard to whether the concern has been remediated, Mr Malik submitted that although Mr Gribben apologises in his reflective piece, he does not indicate why he behaved the way he did, nor has he taken any step to address the concerns. In the absence of this information from Mr Gribben, Mr Malik submitted there is a risk of repetition.

Mr Malik submitted that the panel should find Mr Gribben's fitness to practise impaired on grounds of public protection because there is a risk of repetition of his behaviour contained within charges 1a, 1b and 1c which had placed Patient A at unwarranted risk of harm. This has breached the fundamental tenets of the nursing profession to prioritise people and promote professionalism.

Mr Malik also invited the panel to find Mr Gribben's fitness to practise impaired on grounds of public interest in order to uphold proper professional standards and conduct and maintain public confidence in the profession. He submitted that Mr Gribben's conduct damaged the reputation of the nursing profession and would undermine public confidence in the profession.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments including: *Roylance v General Medical Council (No 2) [2000] 1 A.C. 311*, *Grant [2011] EWHC 927 (Admin)*, *Cohen v General Medical Council [2008] EWHC 581 (Admin)* and *Meadows v GMC [2007] EWCA Civ 1390* and relevant NMC guidance which included Impairment DMA -1 last updated 27.2.24, FTP2a last updated 27.2.24, FTP-3 last updated 27.2.24, FTP15 last updated 14.4.21, FTP15a, b and c and FTP 3a, b and c.

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 found that Mr Gribben's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Gribben's actions amounted to a breach of the Code, specifically the following:

Prioritise people

You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved, and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.

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

2.1 work in partnership with people to make sure you deliver care effectively

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

4 Act in the best interests of people at all times

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the

professions from patients, people receiving care, other health and care professionals and the public

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

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

With respect to charge 1a, the panel considered Mr Gribben's conduct to be unacceptable and that it fell short of the standard of care expected from a registered nurse. The panel noted that Patient A was a vulnerable adult who was dependent on Mr Gribben and others for her care. It considered Mr 3's written evidence which stated:

'It can be a challenge sometimes to issue Patient A her medication but with good communication skills, she is able to take the medication without issue.'

In Mr 3's oral evidence he confirmed that Patient A just needed more time and reassurance when taking her medication.

The panel considered that Mr Gribben's conduct in using force on more than one occasion was extremely serious and unprofessional. It further noted that Mr Gribben's actions in using force to get Patient A to the Treatment Room was likely to have caused emotional and psychological distress as Patient A was scared and screamed. Accordingly, the panel found Mr Gribben's actions in charge 1a to amount to misconduct.

In relation to charges 1b and 1c, the panel considered that Mr Gribben was an experienced mental health nurse and his actions in forcing medication into Patient A's mouth and forcing her to drink water were unnecessary, dismissive of her care needs

and unkind. The panel decided that it would be seen as deplorable by other members of the profession and members of the public. Accordingly, the panel determined that Mr Gribben's actions in charges 1b and 1c amounted to misconduct.

The panel noted that whilst the charges relate to one single incident, there was a sequence of events involving Mr Gribben grabbing and pushing Patient A, forcing the medication into her mouth and then forcing the water into her mouth causing emotional distress.

Consequently, having considered all the charges individually and as a whole, the panel determined that Mr Gribben's actions in charges 1a, 1b and 1c did fall significantly short of the conduct and standards expected of a nurse and amounted to serious professional misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 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. 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...'

The panel found that limb (a) was engaged. Mr Gribben put a vulnerable patient at risk of unwarranted harm by using force on one or more occasions to get Patient A into the Treatment Room which could have led to serious harm and injury.

The panel found limb (b) was engaged. The sequence of events involving Mr Gribben grabbing Patient A, pushing Patient A, forcing the medication into Patient A's mouth and then forcing the water into Patient A's mouth causing emotional distress brought the profession into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find these charges extremely serious.

The panel also found limb (c) to be engaged. Mr Gribben's actions had breached fundamental tenets of the nursing profession.

With regard to contextual factors, the panel considered Mr Gribben's personal context in his reflective piece. Mr Gribben stated:

[PRIVATE]...ensuring more support and supervision was in place could have avoided this incident entirely.'

[PRIVATE] However, although it had no reason to doubt Mr Gribben's explanation, it did not consider it to be a reasonable excuse for his actions.

In respect of risk of repetition, the panel noted the written submissions provided by Mr Gribben's representative. The submissions highlighted that Mr Gribben no longer intended to remain in practice. However, the reflective piece by Mr Gribben indicated that he continues to work in a healthcare setting. The panel was not therefore clear on Mr Gribben's intentions.

With regard to future risk, the panel considered the comments of Silber J in *Cohen v General Medical Council [2008] EWHC 581 (Admin)* namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.

The panel determined that Mr Gribben's actions in ill-treating Patient A in the ways found proved would only be attitudinal in nature. As such, the bar for remediation is high and this is a serious concern which is more difficult to put right.

The panel had sight of Mr Gribben's reflective piece in which he demonstrated some acceptance of the charges and apologised. He stated:

[PRIVATE] I am doing my reflective piece on what I learned from the investigation process and the statements from the staff who were on duty with me. Ongoing through the process I was deeply disturbed by the account of events and I did not recognise myself or the descriptions of my practice. I am profoundly sorry for the distress that this event caused not only to my colleagues but most importantly to my patient.'

In determining sufficiency of insight, the panel acknowledged the character references provided on behalf of Mr Gribben attesting to his good character and safe and effective practice on other occasions. The panel had regard to the NMC suggested guidance FTP-15b which provided information about references and testimonials. In assessing the weight to attach to the character references, the panel found that although they were recent and two appeared to be from registered nurses, none were from Mr Gribben's managers, none appeared to acknowledge the charges faced by Mr Gribben and there was little reference to his attitude towards patients.

The panel took the view that, in his reflective statement, it appeared Mr Gribben demonstrated some insight retrospectively as he [PRIVATE] and apologised for his actions. The panel took account of the fact that Mr Gribben had not produced any evidence for the panel today demonstrating strengthened practice and his reflective piece did not show an understanding of the harm he could have caused to Patient A. Further, the panel found that Mr Gribben has not demonstrated an understanding of how his misconduct impacted on his colleagues and the reputation of the nursing profession.

The panel determined that, in light of these circumstances, the high bar for addressing Mr Gribben's attitudinal concerns has not been met, nor has the panel seen any evidence of strengthened practice. It therefore concluded that there is a risk of repetition. Accordingly, the panel decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because a fully informed member of the public would be concerned if allegations of this nature, which are serious, were not to result in an impairment.

In addition, the panel concluded that public confidence in the profession would be damaged if a finding of impairment were not made in this case and therefore also finds Mr Gribben's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Gribben's name off the register. The effect of this order is that the NMC register will show that Mr Gribben has been struck-off.

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

Submissions on sanction

Mr Malik submitted that it is the NMC's position that a striking off order should be imposed given the findings of the panel that Mr Gribben's fitness to practice is currently impaired.

Mr Malik went on to outline what the NMC considered to be the aggravating and mitigating features of the case.

Mr Malik submitted that Patient A was a vulnerable adult, and Mr Gribben's misconduct amounted to one of a serious nature at the higher end of the spectrum.

Mr Malik submitted that Mr Gribben has not produced any evidence demonstrating that he has strengthened his practice. Mr Malik added that Mr Gribben's reflective piece did not show an understanding of the harm he had caused to Patient A which raises concerns about attitudinal issues. Mr Malik therefore submitted that, in the absence of sufficient evidence of insight and the difficulty of remediating the concerns in this case, there is a risk of repetition and real risk of harm to patients and the public in the future.

In addressing the available sanctions, Mr Malik submitted that taking no further action or a caution order would not be sufficient or proportionate given the seriousness of Mr Gribben's misconduct. He further submitted that a conditions of practice order was relevant to address clinical practices, but in this case, it would not be practical or workable as it would be impossible to formulate conditions to address the attitudinal concerns in this case.

Mr Malik submitted that a suspension order would not address the seriousness in this case due to Mr Gribben's actions showing deep seated attitudinal issues and his insight is also very limited. Mr Malik submitted that a temporary removal would not sufficiently protect patients nor maintain public confidence in the nursing profession.

Mr Malik submitted that Mr Gribben's misconduct was so serious that only a striking-off order was the appropriate sanction. He submitted that the misconduct was such that it would be incompatible for Mr Gribben to remain on the register. Mr Malik referred the panel to the NMC Guidance on striking off orders (SAN-3e). He submitted that the charges found proved raise fundamental questions about Mr Gribben's professionalism and that public confidence in the nursing profession would not be maintained if Mr Gribben was not removed from the register. Therefore, a striking-off order is the only sanction which will be sufficient to protect patients, members of the public and maintain professional standards.

In conclusion, Mr Malik invited the panel to impose a striking-off order.

The panel took account of the written submissions produced by Mr Gribben's representative which stated:

'It is respectfully submitted that no further action is required in this case. The panel have made a finding in fact, misconduct and impairment, this will be published to the NMC website marking the panels disapproval and that the behaviour of the Registrant was unacceptable and should not happen again.

This publication of the decision fulfils the public interest as it allows the public to see the panel have made a determination in this case and upholds the public's confidence in the NMC. The public are protected by the fact that this was an

isolated incident in a career that started in TBC. Mr Gribben, although not in attendance at this hearing, has engaged throughout a protracted NMC investigation to the best of his ability. Mr Gribben has provided a reflection, and had attended interim order hearings throughout. Indeed, a previous panel had deemed Mr Gribben able to practise with conditions in place in July. Mr Gribben worked with Aaron house without issue from April to September 2024, [PRIVATE].

The worker has practised without issue, on and off, since the allegations. Mr Gribben in between suspension has had periods of employment in a registered roll and has had no further concerns.

If the panel are not minded to the above, it is respectfully submitted that a warning on the Registrant's registration for a period of 6 months is sufficient. This ensures that the standards of the NMC are upheld by formally marking the behaviour as unacceptable. This fulfils the public interest and the public protection. A warning would be on Mr Gribben's registration fulfilling the public interest and alerting future employers that a finding has been made.

Alternatively, the panel may consider conditions on the workers registration suitable. The Registrant can continue his employment, and illustrate to the panel that he is fit and able to practise unrestricted in a safe environment. The conditions would provide a cushion between non practise and return to practise and give the NMC and panel that Mr Gribben will only return to full, unrestricted practise when deemed safe by the discharge of these conditions.

Then panel may deem a suspension as the only available sanction. We would propose that a suspension is in place for 12 months. This illustrates the panels judgement in facts, is published to the NMC website and so fulfils the public interest. The public are sufficiently protected that a review will take place at the end of this suspension prior to allowing Mr Gribben back to practise, where conditions may be proposed.

It is respectfully submitted that any sanction more serious than a suspension order is disproportionate in this matter. Any reasonable member of the public

when faced with the facts of this matter and Mr Gribben's candour, would feel adequately protected and confident in the regulator by these proposed sanctions.

A suspension, or erasure, from the register goes well beyond what is appropriate in this case. Mr Gribben has an extensive period of continued practise and a lengthy career with no prior issues.'

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mr Gribben's fitness to practise is 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 the decision on sanction is a matter for the panel independently exercising its own judgement. It noted 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 identified the following aggravating factors:

- As the only registered nurse on the shift, Mr Gribben abused his position of trust and authority
- Patient A was a vulnerable adult
- Mr Gribben's deliberate actions placed Patient A at risk of physical harm
- Mr Gribben's actions are likely to have caused actual harm to Patient A in terms of psychological and emotional distress
- Mr Gribben has limited insight into his actions including their impact on Patient A, his colleagues, the nursing profession and the wider public
- The panel do not have any evidence of Mr Gribben strengthening his practice

The panel identified the following mitigating factors:

- Mr Gribben produced a reflective piece in which he apologised for his actions
- Mr Gribben produced four character references; it appeared that two were from registered nurses

[PRIVATE]

In relation to context, the panel noted that Mr Gribben was the only qualified registered nurse on duty working with Mr 3 and two bank nursing assistants. The panel however found that any pressure that the shortage of registrant staff may have put on Mr Gribben was not enough to justify his behaviour.

The panel had regard to the NMC Guidance on *Considering sanctions for serious cases* (SAN-2), in particular the section on *Abuse or neglect of children or vulnerable people*. The panel considered the definition of vulnerable people in the footnote of the Guidance which states:

'An adult is defined as vulnerable where they have care and support needs and, as a result of this, are unable to take care of themselves or protect themselves from abuse or neglect.'

The panel determined that Patient A falls within this definition. It found that Mr Gribben's misconduct amounted to an abuse of a vulnerable adult and such behaviour can have a particularly severe impact on public confidence in the profession, a professional's ability to uphold the standards and values set out in the Code, and the safety of those who use their services. The panel found that Mr Gribben's conduct posed a direct risk of harm to Patient A, a vulnerable adult under his care.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. It had found that Mr Gribben poses a risk of harm, had breached fundamental tenets of the nursing profession and his misconduct would undermine the public's confidence in the nursing profession if he were allowed to practise without restriction. The panel therefore determined that it would neither protect the public nor be 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 Mr Gribben's practice would not be appropriate in the circumstances. The SG (SAN-3b) states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the*

panel wishes to mark that the behaviour was unacceptable and must not happen again.'

The panel considered that Mr Gribben's misconduct was at the higher end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that a caution order would not be appropriate in the circumstances. Neither would it protect the public nor would it be in the public interest.

The panel next considered whether placing conditions of practice on Mr Gribben's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel took into account the SG (SAN-3c), in particular: *'Conditions may be appropriate when some or all of the following factors are apparent:*

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

The panel was of the view that the misconduct identified in this case could not be addressed through conditions and was extremely difficult to remediate. The panel had identified deep-seated attitudinal concerns in this case. It determined that, given the seriousness of the concerns, the deep-seated attitudinal concerns and Mr Gribben's lack of insight into the severity and impact of his actions on Patient A, his colleagues, the nursing profession and the wider public, there were no relevant, proportionate, workable and measurable conditions that could be formulated. Accordingly, a conditions of practice order would not address the risk of repetition, and this poses a risk of harm to patients' safety. Consequently, the panel decided that a conditions of practice order would not be sufficient or proportionate.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG (SAN-3d) states that suspension order may be appropriate where *'where the misconduct isn't fundamentally incompatible with the nurse, midwife or nursing associate continuing to be a registered professional, and our overarching objective may be satisfied by a less severe outcome than permanent removal from the register'*.

The panel had regard to this consideration first in view of the serious nature of the misconduct.

SAN-3d sets out some factors which could indicate where a suspension order is appropriate as follows:

- *'A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *.....;*
- *.....'*

Whilst there were factors on the non-exhaustive checklist that could be applicable to Mr Gribben's case, the panel bore in mind the important question of fundamental incompatibility and the overarching objective. The panel noted that although this was a single incident, there was a sequence of events causing Patient A harm. It found that Mr Gribben failed to demonstrate sufficient insight into the severity and impact of his actions on Patient A, colleagues, the nursing profession and the wider public. The panel noted that there was no evidence before it to indicate that Mr Gribben had taken sufficient steps to remediate his misconduct. It also found that Mr Gribben's misconduct was likely to have caused actual harm to Patient A in terms of psychological and emotional distress and he placed her at risk of physical harm. Mr Gribben's actions are suggestive of deep-seated attitudinal concerns which heightens the significant risk of repetition.

Therefore, the panel was not satisfied that a period of suspension would be a sufficient, appropriate or proportionate sanction and would neither protect the public nor satisfy the public interest consideration in this case. The panel found that Mr Gribben's actions were fundamentally incompatible with his remaining on the register.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG (SAN-3e):

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

The panel was of the view that all of the criteria as set out above are met in this case.

The panel considered Mr Gribben's misconduct and the risk of physical harm and the actual harm to Patient A, who was a vulnerable adult under his care, in terms of emotional and psychological distress, to be inherently unprofessional and unkind. Mr Gribben should have shown kindness and provided compassionate care to Patient A. The panel concluded that Mr Gribben had failed to practise kindly, safely and professionally as a registered nurse.

In considering sanction, the panel noted that, until these incidents, it appeared that Mr Gribben had an otherwise unblemished professional record. Notwithstanding this, the panel concluded that the serious breach of fundamental tenets of the profession, evidenced by Mr Gribben's actions, is fundamentally incompatible with his remaining on the register. To allow Mr Gribben to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

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

This will be confirmed to Mr Gribben in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Malik. He submitted that, given the serious nature of the concerns and that the panel has determined that a striking-off order is appropriate and proportionate, an interim suspension order for a period of 18 months is necessary in order to protect the public and also in the public interest, to cover the 28-day appeal period before the substantive order becomes effective. He submitted that an interim conditions of practice order would not be appropriate and proportionate in this case given the findings of the panel on misconduct, impairment and sanction.

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

Decision and reasons on interim order

The panel had regard to the NMC Guidance, 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. It was therefore satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. It found that there were no relevant, proportionate, workable and measurable conditions that could be formulated.

The panel therefore imposed an interim suspension order for a period of 18 months in order to protect the public and uphold the public interest, during any potential appeal period. It was of the view that the length of the order is necessary to cover any possible delays during the appeal process. The panel determined that not to impose an interim suspension order would be inconsistent with its earlier decisions.

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

That concludes this determination.