

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

**Substantive Hearing
Monday 3 – Friday 7, Monday 10 – Friday 14,
& Monday 31 March 2025 – Friday 4 April 2025**

Virtual Hearing

Name of registrant:	Sharon Finlay
NMC PIN:	08F0040W
Part(s) of the register:	Registered Nurse Learning Disabilities Nursing (October 2008)
Relevant location:	Carmarthenshire
Type of case:	Misconduct
Panel members:	Darren Shenton (Chair, Lay member) Claire Martin (Registrant member) Jayanti Durai (Lay member)
Legal Assessor:	Barrie Searle (3 – 4 March 2025) Trevor Jones (5 – 31 March 2025 – 4 April 2025)
Hearings Coordinator:	Sherica Dosunmu
Nursing and Midwifery Council:	Represented by Uzma Khan, Case Presenter (3 – 14 March 2025) Represented by Michael Smalley, Case Presenter (31 March 2025 – 4 April 2025)
Miss Finlay:	Present and represented by Luke Garrett instructed by the Royal College of Nursing (RCN)
Facts proved:	All
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Conditions of practice order (2 years)

Interim order:

Interim conditions of practice order (18 months)

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

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

Mr Garrett, on your behalf, indicated that he supported the application. However, he invited the panel to consider whether it would be more appropriate to hold the entire hearing in private due to the difficult nature of anticipating when those private matters will be referenced.

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

Having heard that there may be reference to [PRIVATE], the panel determined to hold those parts of the hearing in private to protect the confidentiality of those matters. The panel concluded that it was not necessary to hold the entire hearing in private, as it would be possible to go into private as and when such issues are raised.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Khan to amend the wording of charge 2 and charge 3 as follows:

Original charges:

2. *On 20 April 2020 in relation to Person A:*

3. *Your actions at one or more of charges 1 and or 2 above caused or contributed to an environment of bullying in that your conduct was:*
 - a. *Unwanted;*
 - b. *Offensive, intimidating, malicious and/or insulting;*
 - c. ...

Proposed charges:

2. On 20 **August** ~~April~~ 2020 in relation to Person A:
3. *Your actions at one or more of charges 1 and or 2 above caused or contributed to an environment of bullying in that your conduct was:*
 - a. *Unwanted; **and/or***
 - b. *Offensive, **and/or** intimidating, **and/or** malicious and/or insulting; **and/or was***
 - c. ...

Ms Khan submitted that, in respect of the proposed amendment to charge 2, evidence contained in the bundle refers to 20 August 2020 as the correct date. She submitted that the current date in charge 2 was clearly due to an administrative error and the proposed amendment better reflects the evidence.

Ms Khan submitted that the proposed amendments sought for charge 3 do not fundamentally change the nature of the allegations against you, rather it would more properly encapsulate the alleged conduct.

Ms Khan referred to the provisions of Rule 28. She highlighted that Rule 28 allows for an application to be made to amend charges at any stage before the panel makes its findings on facts, provided it is in the interest of justice and does not cause unfairness.

Ms Khan submitted that the proposed amendments do not introduce new allegations, rather they clarify and particularise the existing allegations to ensure their accuracy. She submitted that therefore no unfairness or disadvantage would result from the application.

Ms Khan stated that the opposition may argue that this application constitutes an ambush. She submitted that such an assertion would be without merit as the proposed amendments arise directly from queries raised by the panel in response to the charges. She submitted that the proposed changes are neither unexpected, outside the reasonable contemplation, or entirely unforeseeable.

Ms Khan submitted that case law supports the approach that amendments can be made at this stage. She submitted that it is neither irregular nor unfair to refine the existing charges to more accurately reflect the allegations. She submitted that the proposed amendments are in the public interest to ensure that the hearing outcome reflect the true nature of the conduct alleged and aligns with the overall scope of the allegations.

Mr Garrett indicated that he had no issues with the proposed amendment to charge 2 and did not object to the application in relation to this charge.

However, Mr Garrett explained that he opposed the application to amend charges 3(a) and 3(b). He referred to the provisions of Rule 28 and submitted that the key factor to consider here is fairness. He submitted that the proposed amendments to charge 3 cannot be made without injustice to you.

Mr Garrett stated that charge 3 is set out in a conjunctive approach. He submitted that the proposed amendments would change this approach and these charges entirely. He submitted that it is a matter of principle that you ought to know the specific charges against you from the outset without uncertainty. He submitted that these proposed amendments are irregular and unjust, as it would fundamentally change the conjunctive nature of these charges.

Mr Garrett submitted that the application in relation to charge 3 is made far too late and does constitute an ambush. He stated that the NMC had ample opportunity to set out its position from the outset. He submitted that the proposed changes at this stage would cause prejudice and injustice to you.

Mr Garrett submitted that the proposed amendments to charge 3 would not be to better reflect the evidence, as the evidence is clear, rather it is the charge that is unclear. He submitted that if proposed changes were foreseeable this matter would have been dealt with at the outset to allow you to be fully aware of the charges against you. On this basis, he invited the panel to refuse the application in relation to charges 3(a) and 3(b).

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that overall, the amendments applied for, would not fundamentally change the nature of the charges and the amendments could be allowed without risk of injustice.

Charge 2

In relation to the proposed amendment to charge 2, the panel had regard to the evidence concerning Person A. It found that 20 August 2020 was the date referred to in the evidence for the allegations associated with Person A in charge 2. The panel concluded that the proposed amendment to this charge more accurately reflected the evidence presented.

Charge 3

In relation to charges 3(a) and 3(b), the panel determined that the proposed amendments would not materially change the nature of the charges. The panel also considered that the evidence relied on by the NMC was that already served on you without any addition. The panel was of the view the addition of the wording '*and/or*' to the charges clarified the case against you and further particularised these charges.

Conclusion

In these circumstances, the panel was of the view that such amendments were in the interest of justice. It was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed.

The panel determined that it was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Details of charge (as amended)

That you, a registered nurse:

1. Between 20 September 2020 and 27 October 2020 made unprofessional and inappropriate comments:
 - a. Said that Colleague C, your line manager, was a *“lazy bastard who doesn’t know what the fuck she is doing”* and *“she’s telling us what to do and hasn’t got a fucking clue herself”*, or words to that effect. **[PROVED]**
 - b. Referred to Colleague C as *“fucking clueless”*, or words to that effect. **[PROVED]**
 - c. You agreed with Colleague I who said Colleague C was *“fucking clueless”* and that Colleague D was *“a fucking waste of space”*, or words to that effect. **[PROVED]**
 - d. You said, *“Colleague C doesn’t do the things she’s supposed to do and blames us”*, and *“Colleague D is an arsehole”*, or words to that effect. **[PROVED]**
 - e. Described Colleague E as a *“fucking useless arsehole”* and *“a useless prick”*, or words to that effect. **[PROVED]**
 - f. Said *“Colleague E totally fucking ignored me”* *“he made me feel like I didn’t know what I was talking about”*, *“so I told him he could fuck off and I won’t be doing anymore ward visits end of, fuck him”*, or words to that effect. **[PROVED]**
 - g. Described Colleague F as being *“lazy”* or words to that effect and said Colleague F is only working from home because it suits her, and that Colleague F bullies Colleague G, or words to that effect. **[PROVED]**
 - h. When speaking to Person E, used the term *“gunt”*, explaining to Person E *“it’s where your gut meets your cunt”* or words to that effect. **[PROVED]**
2. On 20 August 2020 in relation to Person A:

- a. Said Person A was “*fat and lazy*” and, “*I know you like pizzas*” or words to that effect. **[PROVED]**
 - b. Poked Person A in the stomach. **[PROVED]**
 - c. Said “*don’t forget I can section you*”, or words to that effect. **[PROVED]**
3. Your actions at one or more of charges 1 and or 2 above caused or contributed to an environment of bullying in that your conduct was:
- a. Unwanted; and/or **[PROVED]**
 - b. Offensive, and/or intimidating, and/or malicious and/or insulting; and/or was **[PROVED]**
 - c. Intended to undermine, humiliate or cause harm to others. **[PROVED]**

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

Background

The NMC received a referral on 9 September 2021 from Hywel Dda University Health Board (the Health Board), in relation to your fitness to practise. At the time of the concerns raised in the referral you were employed as a community nurse in the [PRIVATE][the Community Team], part of the Health Board. You were also a practice supervisor in [the Community Team], responsible for supervising student nurses.

The [Community Team] supports adults with a wide range of learning disabilities and also helps those with significant physical or mental health difficulties. The [Community Team] generally visits clients in supported living, residential units and in their own homes.

On 20 August 2020, you visited Person A at their home address. Two support workers (Person F and Person G) were present during your visit. During this visit it is alleged that you said Person A was ‘*fat and lazy*’, poked Person A in the stomach with your finger and said ‘*I know you like pizzas*’. It is also alleged that towards the end of your visit, as you were about to leave, you said to Person A ‘*don’t forget I can section you*’,

which resulted in Person A requiring emotional support from the support workers after your visit.

Further, the referral alleges that between September 2020 to October 2020 you made several unprofessional and inappropriate comments in the presence of a student nurse (Colleague A), predominately about other colleagues.

From 21 September 2020 until 26 October 2020, Colleague A, a student nurse [PRIVATE], undertook a placement with [the Community Team]. In October 2020, Colleague A raised a complaint about the conduct of some nurses within [the Community Team], some of these allegations related specifically to you. Colleague A raised that whilst she was on her placement:

- You had a negative attitude towards other members of staff.
- You used derogatory language when speaking about other members of staff, such as the following;
 - said your line manager (Colleague C) was a *'lazy bastard who doesn't know what the fuck she is doing'* and *'she's telling us what to do and hasn't got a fucking clue herself'*;
 - described Colleague C as *'fucking clueless'*, and agreed with Colleague I who also said Colleague C was *'fucking clueless'*;
 - said Colleague C *'doesn't do the things she's supposed to do and blames us'*;
 - said Colleague D *'is an arsehole'* and *'a fucking waste of space'*;
 - described a Consultant Psychiatrist colleague (Colleague E) as *'fucking useless arsehole'* and *'a useless prick'*;
 - said *'Colleague E totally fucking ignored me' 'he made me feel like I didn't know what I was talking about', 'so I told him he could fuck off and I won't be doing anymore ward visits end of, fuck him'*;
 - described an Occupational Therapist colleague (Colleague F) as *'lazy'* and said she is only working from home because it suits her;
 - said Colleague F bullies the Occupational Therapy technician (Colleague G);

- when speaking to a social worker (Person E), used the term '*gunt*', explaining to Person E '*it's where your gut meets your cunt*'.

The Health Board commenced an investigation into the concerns raised, but no substantive action was taken as you left your employment with the Health Board in July 2021.

You are currently employed as a community nurse in [the Community Team] for another Health Board in Wales.

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 Khan on behalf of the NMC and by Mr Garrett on your behalf.

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

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

- Colleague A: Student Nurse who undertook placement at the relevant time in [the Community Team];
- Colleague B: Service Manager for [the Community Team];
- Colleague C: Team Manager for [the Community Team];

- Person F: Support Worker at Consensus, Camarthen;
- Person G: Support Worker at Consensus, Camarthen;

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

- Colleague K: Locum Consultant in Epilepsy and Learning Disability at the Health Board;
- Colleague E: Consultant Psychiatrist in [the Community Team] at the relevant time;
- Person E: Social Worker in [the Community Team].

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.

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

Charge 1(a) – (d)

1. Between 20 September 2020 and 27 October 2020 made unprofessional and inappropriate comments:
 - a. Said that Colleague C, your line manager, was a “*lazy bastard who doesn’t know what the fuck she is doing*” and “*she’s telling us what to do and hasn’t got a fucking clue herself*”, or words to that effect.

- b. Referred to Colleague C as “*fucking clueless*”, or words to that effect.
- c. You agreed with Colleague I who said Colleague C was “*fucking clueless*” and that Colleague D was “*a fucking waste of space*”, or words to that effect.
- d. You said, “*Colleague C doesn’t do the things she’s supposed to do and blames us*”, and “*Colleague D is an arsehole*”, or words to that effect.

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Colleague A and your evidence. The panel had regard to the documentary evidence exhibited, which included a complaint letter written by Colleague A at the time of her placement.

The panel noted that all of the matters charged from 1(a) – (d), arise from a complaint made by Colleague A in October 2020. In this complaint, Colleague A sets out the comments she heard in relation to Colleague C and Colleague D, she stated the following:

‘Sharon has stated that Colleague C is a lazy bastard, and doesn’t know what the fuck she is doing “she’s telling us what to do, and hasn’t got a fucking clue herself”.

Colleague I the stated that Colleague C was “Fucking clueless” and that Colleague D was “a fucking waste of space” Sharon agreed with her by saying that Colleague C doesn’t do the things she supposed to do, and blames us, and Colleague D’s an arsehole”.

The panel found the contents of this contemporaneous evidence consistent with the account set out by Colleague A in her witness statement and her oral evidence. It was of the view that Colleague A provided a very detailed account, with supportive evidence, which it regarded as cogent and compelling.

Additionally, the panel found that Colleague A’s account was further supported by your response in your written statement, in which you stated the following:

'I do not have a specific recollection of saying these words, but I accept that it is likely that I said them, or words similar to them, as I got frustrated with my line manager [Colleague C], and the Clinical Lead [Colleague D] at the time for the reasons explained above.'

The panel determined that Colleague A's evidence regarding the comments you made about Colleague C and Colleague D was clear, consistent and credible. It considered that in your statement you accepted that you likely used the comments referred to in charges 1(a) – (d) due to *'frustration'*. In these circumstances the panel concluded that, on the balance of probabilities you made the comments referred to in charges 1(a) – (d) or used word to that effect, during Colleague A's placement between 20 September 2020 and 27 October 2020.

Accordingly, the panel found charges 1(a), 1(b), 1(c), and 1(d) proved.

Charge 1(e) – (f)

1. Between 20 September 2020 and 27 October 2020 made unprofessional and inappropriate comments:
 - e. Described Colleague E as a *"fucking useless arsehole"* and *"a useless prick"*, or words to that effect.
 - f. Said *"Colleague E totally fucking ignored me"* *"he made me feel like I didn't know what I was talking about"*, *"so I told him he could fuck off and I won't be doing anymore ward visits end of, fuck him"*, or words to that effect.

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Colleague A, Colleague E and your evidence. The panel had regard to the documentary evidence exhibited, which included a complaint letter written by Colleague A at the time of her placement.

The panel noted that the matters charged from 1(e) – (f), arise from the complaint made by Colleague A in October 2020. In this complaint, Colleague A sets out the comments she heard in relation to Colleague E, she stated the following:

‘... I have been witness to Sharon stating that Colleague E was a “fucking useless arsehole” and a “useless prick”. This was regarding a ward visit where Sharon told me that “Colleague E totally fucking ignored me” and “that there was no point in me visiting if he wasn’t going to listen to what I had to say”, “ he made me feel like I didn’t know what I was talking about”, “so I told him he could fuck off and I won’t be doing anymore ward visits end of, fuck him”.’

The panel found the contents of this contemporaneous evidence consistent with the account set out by Colleague A in her witness statement and her oral evidence. In particular it noted that in oral evidence, Colleague A explained specifically the circumstance of the ward round where your comments arose. It also noted that Colleague A’s descriptive account of the circumstances of the ward round at the time was corroborated by Colleague E’s description. The panel regarded Colleague A’s detailed account as cogent and compelling.

The panel noted your response in your written statement, in which you stated the following:

‘I do not recall saying what is at (e) about ... (Colleague E). I do not use the word ‘prick.

I do recall the incident described at (f). I did not say it to him, but it was about him. I do not recall the exact words, but do not deny that I say something along these lines. I remember this as it happened following a particularly tricky (virtual) MDT ward round. I was frustrated after the ward round and remember venting about [Colleague E] as I felt he was dismissive of my views during the ward round. I would add that [Colleague E] knew that I found the ward round difficult, and we spoke about it afterwards. I was open and honest with [Colleague E] and told him why I was frustrated after the meeting. We talked it through and moved

on from it. We continued to work together without issues and continue to work together. We have an open and supportive relationship, allowing us both to voice professional disagreements without impacting our personal or professional relationship.'

The panel considered that in your statement you accepted that you likely made the comments referred to in charge 1(f), but not the wording used in charge 1(e). You accepted the use of the language in charge 1(f) to express your '*frustration*' with Colleague E (albeit you do not recall exact words), and the panel heard your explanation of the broader context at the time. Taking account of all of the evidence and challenges thereto the panel did not find Colleague A's evidence in respect of 1(f) inconsistent or unreliable.

The panel determined that Colleague A's evidence regarding the comments you made about Colleague E was clear, consistent and credible. It had regard to your explanation and challenge to the use of the word '*prick*'. However, the panel determined that your explanation does not negate the cogency of Colleague A's evidence. In these circumstances the panel concluded that, on the balance of probabilities, it is more likely than not, that you used words to the effect of the comments referred to in charges 1(e) – (f), during Colleague A's placement between 20 September 2020 and 27 October 2020.

Accordingly, the panel found charges 1(e) and 1(f) proved.

Charge 1(g)

1. Between 20 September 2020 and 27 October 2020 made unprofessional and inappropriate comments:
 - g. Described Colleague F as being "*lazy*" or words to that effect and said Colleague F is only working from home because it suits her, and that Colleague F bullies Colleague G, or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A and your evidence. The panel had regard to the documentary evidence exhibited, which included a complaint letter written by Colleague A at the time of her placement.

The panel noted that in the complaint made by Colleague A in October 2020, Colleague A sets out that she heard the following comments in relation to Colleague F and Colleague G:

‘Sharon said that Colleague F who I believe is an Occupational Therapist – is lazy and is only working from home because it suites her and that she bullies Colleague the Occupational therapist technician.’

The panel found the contents of this contemporaneous evidence consistent with the account set out by Colleague A in her witness statement and her oral evidence. It was of the view that Colleague A provided a very detailed account, with supportive evidence, which it regarded as cogent and compelling.

Additionally, the panel found that Colleague A’s account was further supported by your response in your written statement, in which you stated the following:

‘I do not recall saying these exact words, but I could have said something like this. As there are no dates and no context has been provided to the concerns, it is difficult to be exact about what happened and when it happened. I do recall that Colleague G ... raised concerns about bullying. To the best of my recollection, [Colleague G] told me, and others, about feeling bullied and the student may have been present when she raised it.’

The panel noted that you conceded you may have made the comments in charge 1(g). Additionally, the panel took into account that in your oral evidence you described an underlying tension between people who worked from home and those who physically attended the workplace, which regularly created some difficulties and frustration.

Taking account of all of the evidence and challenges thereto the panel did not find Colleague A's evidence in respect of 1(g) inconsistent or unreliable.

The panel determined that Colleague A's evidence regarding the comments you made about Colleague F and Colleague G was clear, consistent and credible. It had regard to your explanation of the circumstances at the time. However, the panel determined that your explanation does not negate the cogency of Colleague A's evidence. In these circumstances the panel concluded that, on the balance of probabilities you made the comments referred to in charge 1(g) or used word to that effect, during Colleague A's placement between 20 September 2020 and 27 October 2020.

Accordingly, the panel found charges 1(g) proved.

Charge 1(h)

1. Between 20 September 2020 and 27 October 2020 made unprofessional and inappropriate comments:
 - h. When speaking to Person E, used the term "*gunt*", explaining to Person E "*it's where your gut meets your cunt*" or words to that effect.

In reaching this decision, the panel took into account the evidence of Colleague A, Person E and your evidence. The panel had regard to the documentary evidence exhibited, which included a complaint letter written by Colleague A at the time of her placement.

The panel noted that in the complaint made by Colleague A in October 2020, Colleague A sets out that she heard you say the following comments when speaking to Person E:

'Sharon mentioned the word 'gunt' to Person E who quizzed Sharon about the word, Sharon explained that "it's where your gut meets your cunt" and was laughing – the atmosphere in the office was quite awkward at that point.'

The panel found the contents of this contemporaneous evidence consistent with the account set out by Colleague A in her witness statement and her oral evidence. It was of the view that Colleague A provided a detailed account, with supportive evidence, which it regarded as cogent and compelling.

Additionally, the panel found that Colleague A's account was further supported by your response in your written statement, in which you stated the following:

[Person E] and I were having a private, informal, discussion. I recall using this word and explaining it to [Person E], as she had not heard it before. The conversation was friendly. I do remember [Colleague A] being in the room. I recall [Colleague A] saying something along the lines of, 'I have not heard that word in a long time'. I accept that it is not a professional word, and, in hindsight, I should not have used it in a professional setting.'

The panel determined that Colleague A's evidence regarding the comments you made when speaking to Person E was clear, consistent and credible. It considered that in your statement you accepted that you did use the wording in charge 1(h) and conceded that it should not have been used in a professional setting. Person E in their evidence did not recall this incident. However, the panel concluded that there was consistent corroborative evidence you made the comments referred to in charge 1(h), during Colleague A's placement between 20 September 2020 and 27 October 2020.

Accordingly, the panel found charges 1(h) proved.

Charge 1 Conclusion

Having found charges 1(a) – (h) proved, in respect of the various comments you have made about and to others in the presence of Colleague A, the panel went on to decide whether the comments made were unprofessional and inappropriate.

The panel took into account that you have provided the following explanation:

'I have read the NMC papers, and I know that part of the concerns is about my language. I accept that I used bad language and that, on occasions, I criticised colleagues. I did this in the nurses' office. I never did this in front of patients. I made comments to my colleagues, and to people who I thought were friends. I did not make the comments to the people to whom I was referring. I was venting, which I use as a means to let off steam and manage stress. After I have vented, I am able to continue working with others despite professional disagreements.

I honestly believed I was in a safe space and was venting my frustration at a difficult interaction, or after a clash in opinion, or if we were being told we could not carry out specific nursing duties, or if we were being given extra tasks in an already stretched service, or if we were having difficulties working through a process. They could have been made in an empty room. They would often be in conversations with colleagues, who felt the same frustrations.

I never thought that what I was saying would upset someone. If I had known that I would not have made the comments.

I accept that I should not have used curse words when talking about colleagues in a professional setting. I accept that I should have assessed who was in the room before venting frustrations. I did not think [Colleague A] found it offensive, nor did she ever tell me this. I do, however, understand she was a student at the time, and I should have taken this into consideration before speaking.'

The panel recognised that working in a healthcare setting at the time of the Covid pandemic was a particularly challenging and stressful time. However, the panel was not in agreement that your actions found proved in charge 1 occurred in a 'safe space' as described by you. It considered that the comments made in charges 1(a) – 1(h) were made in your place of work, whilst you were under the obligation as a registered nurse to maintain professionalism. It also had regard to the fact that this occurred in the presence of a student nurse and on one occasion a social worker.

The panel found that your comments in charges 1(a) – 1(h) included personal attacks on others with offensive language. In all circumstances, the panel determined that there was no justification for such comments to be made in the workplace and it concluded that you made various unprofessional and inappropriate comments between 20 September 2020 and 27 October 2020.

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

Charge 2

2. On 20 August 2020 in relation to Person A:
 - a. Said Person A was “*fat and lazy*” and, “*I know you like pizzas*” or words to that effect.
 - b. Poked Person A in the stomach.
 - c. Said “*don’t forget I can section you*”, or words to that effect.

These charges are found proved.

In reaching this decision, the panel took into account the evidence of Person F, Person G, and your evidence. The panel had regard to the documentary evidence exhibited, which included a report of your visit to Person A, dated 20 August 2020.

The panel noted Person F and Person G were both present at the time of your visit to Person A. It noted that Person F and Person G produced a report of the visit on 20 August 2020, setting out the following:

‘We then moved on to Person A’s diet, and the usual advise given regarding diet. She said that Person A was fat and lazy, and said I know you like pizza and poked her belly...

[...]

Sharon was making her way to the top of the stairs, and said something “Don’t forget I can section you” laughingly to Person A, And went.’

The panel found that Person F and Person G accounts of what happened during your visit to Person A were consistent and corroborative. The panel was of the view that Person F and Person G provided detailed accounts of your conduct during Person A's visit, which had a distressing impact on Person A. It regarded the contemporaneous report produced by both colleagues at the time as credible.

The panel noted that you have accepted that your conduct in charge 2(b) and 2(c). However, you have stated the following in relation to charge 2(a):

'I recall making the comment about pizzas. I remember that she made a comment about liking pizzas and I responded something along the lines of 'I know you do'.

I did not call Person A fat. I would not say to a patient that they were fat. We did discuss her weight. [PRIVATE], and her weight had increased considerably in the time before this incident. I accept that I would have advised her about being more active. This may have been interpreted as lazy, but I did not use that word. It is part of my role to discuss diet, weight, and exercise with my patients.'

The panel recognised that in her written NMC statement on 10 December 2021, Person G edited the word '*fat*' from the phrase '*fat and lazy*' which she stated you had said. She provided a handwritten explanatory note in the statement which said, '*I don't remember her saying fat – she implied fat by poking her in the stomach*'. The panel noted that the date of the NMC statement was some 16 months after the event with Person A. The contemporaneous note which included the words '*fat and lazy*' was made on the day on the visit to Person A on 20 August 2020. In response to questions, Person G in her evidence said at the time of making the NMC statement there were considerable external pressures in her personal life and that she would rely on the accuracy of the notes that she made immediately after the visit to Person A.

The panel determined that Person F and Person G's evidence regarding the comments you made about Person A were consistent and credible when the panel has regard to

the wording of the charge which includes '*...or words to that effect*'. It had regard to your explanation that the comments were made as a joke, albeit you have disputed ever calling Person A '*fat*'. However, the panel determined that your explanation does not negate the cogency of Person F and Person G's evidence and their report. In these circumstances the panel concluded that, on the balance of probabilities you used words to the effect of the comments made in charges 2(a) – (c), on 20 August 2020.

Accordingly, the panel found charges 2(a), 2(b) and 2(c) proved.

Charge 3

The panel noted that in charges 1 and 2 you are alleged to have caused or contributed to an environment of bullying. In relation to each of these charges, the panel first considered whether the underlying conduct was proved. It then went on to consider whether that conduct caused or contributed to an environment of bullying.

Charge 3(a)

3. Your actions at one or more of charges 1 and or 2 above caused or contributed to an environment of bullying in that your conduct was:
 - a. Unwanted; and/or

This charge is found proved.

The panel considered that majority of your comments found proved (charges 1(a) – (g), but not charge 1(h)) involved personal attacks on other members of staff, who had they been aware, would not have welcomed the comments you made about them. Further, it noted that your comments included offensive language (in all charges 1(a) – (h)), which had a negative impact on Colleague A as a student nurse. Colleague A raised a contemporaneous written complaint about your conduct. In these circumstances the panel determined that your actions in charge 1 were unwanted.

In relation to charge 2, the panel took into account the report produced by Person F and Person G on 20 August 2020. It noted that in this report, Person F and Person G explained that Person A required emotional support due to the comments you made during the visit. The panel determined that Person A's response was a clear indication that your actions at charge 2 were unwanted.

Accordingly, the panel found charge 3(a) proved.

Charge 3(b)

3. Your actions at one or more of charges 1 and or 2 above caused or contributed to an environment of bullying in that your conduct was:
 - b. Offensive, and/or intimidating, and/or malicious and/or insulting; and/or was

This charge is found proved.

Offensive:

When deciding whether your actions were offensive in charge 1, the panel considered the language you used in each charge. It bore in mind its previous findings, that all the comments you made in charge 1(a) – (h) were unprofessional and inappropriate. It noted that Colleague A found it necessary to raise a complaint about the comments you made, and majority of your remarks would have had a negative impact on those who the comments were about. The panel determined that your comments in charge 1 were offensive.

In relation to charge 2, the panel again took into account the report produced by Person F and Person G on 20 August 2020. It noted that Person A required emotional support due to the comments you made during the visit. The panel determined that Person A's response was a clear indication that your actions at charge 2 were offensive.

Intimidation:

When considering whether your actions in charges 1 and 2 were intimidating, the panel took into account that all your comments in these charges were said either in the presence of a student nurse (charge 1) or vulnerable Person A (charge 2). It took into account that you were in a position of power when you mentioned negative comments about and to others in the presence of those in a subordinate position to you. This resulted in a complaint from the student nurse and a report being made about the impact of your actions on Person A by two support workers and a complaint from Person A herself. The panel determined that your actions in charges 1(a) – (g) and 2 were intimidating. In relation to charge 1(h), whilst already determining that they were offensive, there was no evidence that support the allegation that these comments in the circumstances charged were intimidating.

Malicious:

The panel considered that your comments about others in charge 1 were not said directly to any of your colleagues that the comments were made about. Your explanation was that you were ‘venting’ your frustrations in a ‘safe space’, and accepted either use of the language and phrases in the allegations or that it was likely that you had done so. It was only on one occasion, in charge 1(h), the comment you made as a joke was explained directly to a colleague in a conversation you described as ‘friendly’, and Colleague A described you as ‘laughing’. The panel having determined that the comments that you made were unprofessional and inappropriate considered that they were deliberate, personal and within the earshot of others. Therefore, the panel was of the view that your actions in charge 1(a) – (g) were conducted maliciously, but not in respect of 1(h).

In relation to charge 2, the panel had regard to your explanation of the context of your actions in this charge. In your written statement you explained that you ‘*recognise that the humour was misplaced... recognise that this could be taken the wrong way, and was by Person A.*’ It also noted that both Person F and Person G said in their live evidence that it was clear that you did not intend to offend or harm Person A and that your interactions with her were ‘jokey’. The panel was not of the view that your actions in charge 2 were conducted with malicious intent.

Insulting:

When deciding whether your actions were insulting in charges 1 and 2, the panel considered the impact this had on others. It took into account that your comments in charge 1 resulted in a complaint from Colleague A about your conduct. It also took into account that your actions in charge 2 resulted in a report being made about the impact of your actions on Person A by Person F and Person G and that Person A made complaint about you herself. The panel determined in all of the circumstances your actions in charges 1 and 2 were insulting.

As the panel found your actions in charges 1 and 2 were, offensive, intimidating, and insulting, therefore it found charge 3(b) proved.

Charge 3(c)

3. Your actions at one or more of charges 1 and or 2 above caused or contributed to an environment of bullying in that your conduct was:
 - c. Intended to undermine, humiliate or cause harm to others.

This charge is found proved in respect of charge 1 and not proved in respect of charge 2.

The panel considered that the offensive nature of your comments about your colleagues in charge 1, would undermine, humiliate and cause reputational harm to them in terms of what you have said. It took into account that your comments about others in charge 1 were not said directly to any of your colleagues that the comments were made about. However, the panel bore in mind that it did find that you had done so maliciously. The panel concluded that your actions at charges 1(a) – (g) were personal, unwanted, offensive, intimidating, malicious and insulting, and that charge 1(h) was unwanted, offensive and insulting and all were said and within the earshot of others. It determined that your deliberate actions were such that you intended to undermine, humiliate or cause harm to others.

The panel considered that the offensive nature of your comments about Person A in charge 2, would undermine, humiliate and cause emotional harm to them. However, the panel bore in mind that it did not find that you had done so maliciously. The panel concluded that it found no evidence that your intention was to undermine, humiliate or cause harm to Person A.

Accordingly, the panel found charge 3(c) proved.

Charge 3 Conclusion

Having found that your actions in charges 1 and 2 were, unwanted, offensive, intimidating, and insulting, the panel went on to decide whether this caused or contributed to an environment of bullying.

The NMC defines bullying as (Reference: FTP-3):

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

The panel regarded your conduct in charge 1 as having a negative impact on the culture at your workplace. It found that your actions in charge 1 did contribute to an environment of bullying as this created a difficult workspace for Colleague A and Colleague C.

The panel heard evidence of a toxic work environment within the [the Community] prior to you joining the Health Board in 2018. With relation to the dates of these charges, the panel considered that you did not cause an environment of bullying, however, it was clear that your actions contributed to the same. The evidence before the panel was not of sufficient standard for it to determine that you caused a bullying environment. As such, that aspect of the charge was not made out.

The panel considered the evidence of Person F and Person G who described your interactions with Person A on 20 August 2020 as being over friendly and 'jokey'. It heard evidence from Person E in respect of the effective use of humour when dealing with patients, including Person A with complex medical issues. It considered your evidence and your reaction to being informed of the impact of your interaction with Person A. In all of the circumstances, the panel considered your interaction with Person A to be a misplaced attempt at humour in dealing with a patient you have known for some time and it did not cause or contribute to a bullying environment in respect of your interactions with Person A.

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.

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.

Submissions on misconduct

Mr Smalley 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.*'

Mr Smalley invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to the terms of '*The Code: Professional standards of practice and behaviour for nurses and midwives 2015*' (the Code) in making its decision. In particular, he submitted that on the basis of the charges found proved you have breached the following sections of the Code, 1, 1.1, 1.2, 2, 2.1, 2.3, 2.6, 3, 3.4, 7, 7.1, 8, 8.2, 9, 9.1, 9.3, 9.4, 20, 20.1, 20.2, 20.3, 20.8. He identified the specific, relevant standards where he submitted your actions amounted to misconduct.

Mr Garrett submitted that breaches of the Code do not automatically result in a finding of misconduct.

Mr Garrett referred to the panel's earlier findings at facts stage. He highlighted that in relation to charge 3(b), the panel did not find your actions intimidating or malicious in respect of charge 1(h). It also found that you did not act maliciously in respect of charge 2. In relation to charge 3(c), he highlighted that the panel found that your actions in charge 1(h) and 2 were not done with the intention to undermine, humiliate or cause harm to others.

Further, in relation to the stem of charge 3, which refers to causing or contributing to a bullying environment, Mr Garrett highlighted that the panel did not find your actions in charge 2 proved in relation to this matter.

Submissions on impairment

Mr Smalley 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. He referred 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 General Medical Council* [2008] EWHC 581 (Admin).

Mr Smalley 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) ...*

Mr Smalley submitted that in respect of limb 'a', you placed Person A at risk of harm/harmed Person A through the comments you made to her. In relation to limbs 'b' and 'c', he submitted that your actions found proven in the charges have breached fundamental tenets of the profession, which in turn brought the profession into disrepute.

Mr Smalley referred to the NMC guidance '*How we determine seriousness*', in particular, the section in relation to '*Discrimination, bullying, harassment and victimisation*' (Reference: FTP-3). He outlined that the guidance states that concerns relating to bullying are taken very seriously by the NMC, as it can have a serious effect on workplace culture, and the safety of people receiving care.

Mr Smalley referred to the case of *Cohen* when addressing whether the concerns in this case have been remedied. He submitted that issues of bullying will be more difficult to remediate by virtue of its nature. He highlighted that the panel has not heard evidence from you at this stage and therefore have not had the opportunity to ask you questions on the matter of impairment. He stated that taking into account all the evidence, including your oral evidence given at facts stage, it is submitted that you have not remedied the concerns identified in the charges and therefore there is a likelihood of repetition in the future.

Mr Smalley went on to address the wider public interest. He submitted that bullying in the workplace is unacceptable in any circumstance. He submitted that a finding of current impairment is necessary in the public interest to uphold professional standards and to mark your behaviour as unacceptable for a registered nurse.

Mr Garrett highlighted that you have provided several documents for this stage of the proceedings, which includes your own witness statement, the witness statement of other colleagues (Colleague K, Colleague E and Person E), written testimonials, evidence of further training and your reflection. He invited the panel to consider your oral evidence and the oral evidence of your witnesses given at facts stage also in relation to this stage.

Mr Garrett submitted that it is important to consider the way you have dealt with the concerns raised. He stated that not only have you have accepted the allegations at an early stage when it was raised by your employer, you have also set out your acceptance in your written witness statement, save for some discrete nuances. He submitted that you have been open, honest and engaged with not just your employer at the time, but also fully with the regulatory investigation. He submitted that you have acknowledged the failings on your part.

Further, Mr Garrett submitted that context is also important for this particular stage and referred the panel to the NMC's guidance '*Taking account of context*' (Reference: FTP-12). He submitted that the concerns in this case arose during a period of significant

pressure, which was during the Covid-19 pandemic and involved lack of management support at the time.

Mr Garrett submitted that it has since been a significant and substantial period of time since the incidents, and you have remained in clinical practice unrestricted since then. He submitted that considering the significant period of time that you have been practising unrestricted, without issues, there is no likelihood of repetition of the concerns raised. He submitted that when answering the question whether you can practise kindly, safely and professionally, clearly you have been doing so. He highlighted a number of positive testimonials, which he submitted evidenced your ability to practise kindly, safely and professionally. He submitted that these testimonials cover a wide spectrum of time and in the years that has followed since the allegations raised, you have not had any further formal complaints raised since.

Mr Garrett referred to the testimonial of the Clinical Lead Nurse at the Health Board where you are now employed. In this testimonial, it is highlighted that there were some informal concerns in 2023 about your misplaced humour. However, Mr Garrett submitted that there are no ongoing or formal concerns raised, and this represents a mere '*bump*' in your journey.

Mr Garrett submitted that you have demonstrated real insight into your actions found proved and have also provided a reflection. He stated that you have engaged with learning and highlighted a number of relevant courses you have completed in relation to the concerns raised. He submitted that on this basis, these matters are capable of remediation as you have shown acceptance from the outset and development in your journey with no issues in the five years since. He submitted that in light of this, a finding of impairment is not necessary in the public interest.

Mr Garrett submitted that in respect of limb 'a' of the test set out in *Grant*, it was found that your actions in charge 2 was not intended to undermine, humiliate or cause harm to Person A, neither did it create or contribute to a bullying environment.

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

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

8 Work co-operatively

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

8.2 maintain effective communication with colleagues

9 Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues

9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times

9.4 support students' and colleagues' learning to help them develop their professional competence and confidence

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

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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have

20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered the charges individually and cumulatively as well as the circumstances of the case as a whole.

The panel noted that in relation to charge 1 you made various unprofessional and inappropriate comments about or to your colleagues. It took into account contextual factors relevant at the time, in particular, the pressures you faced working in the healthcare setting during the time of the Covid-19 pandemic. However, the panel considered that your comments were made in your place of work, while you were under the obligation as a registered nurse to maintain professionalism. It had regard to evidence which indicated that your deliberate and repeated inappropriate comments negatively impacted Colleague A, Colleague B and Colleague C. This was made in the presence of Colleague A, who was a student nurse at the time. In these circumstances, the panel determined that you demonstrated an unacceptably low standard of professional practice and your actions in charge 1 amounted to misconduct.

In relation to charge 2, the panel noted that you poked Person A in the stomach and you made comments, which impacted negatively on Person A. The impact of your actions in charge 2 was to such a harmful effect that Person A required emotional support

afterwards and made an immediate complaint to her social worker about your behaviour. The panel was of the view that as an experienced nurse, trained in the area of dealing with vulnerable adults, you demonstrated failings in fundamental aspects of nursing to ensure patient wellbeing. It determined that your actions in charge 2 amounted to misconduct.

The panel next considered your actions in charges 1 and 2 in conjunction with charge 3. It noted that the nature of your communication and behaviour in charges 1 and 2, were found to be unwanted, offensive and insulting. It also noted that some aspects of your conduct in charges 1 and 2 were also found to be intimidating and malicious. Significantly, the panel had regard to the fact that your actions in charge 1 contributed to an environment of bullying, which created a difficult workspace for your colleagues. The panel was of the view that in no circumstance should any contribution to bullying be regarded as inconsequential or excusable. It determined that your conduct found proved in charges 1, 2 and 3 would be considered deplorable by fellow practitioners and damaging the trust that the public places in the profession.

The panel 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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

The panel determined that the first three limbs in the above test were engaged in this case.

Taking into account all of the evidence adduced in this matter, the panel found that Person A and colleagues were put at risk/caused emotional 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.

Having considered the limbs of *Grant* in relation to the past, the panel went on to consider the current and future position. It noted the NMC guidance (Reference: FTP-3) that:

'the NMC takes concerns around bullying very seriously... it can have a serious effect on workplace culture, and therefore the safety of people receiving care, if it is not dealt with.

[...]

To be satisfied that conduct of this nature has been addressed, we'd expect to see comprehensive insight, remorse and strengthened practice from an early stage, which addresses the specific concerns that have been raised...'

In considering the future, the panel had regard to the factors set out in *Cohen* and was satisfied that the misconduct in this case, despite being serious, 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 reflection in response to the regulatory concerns. The panel found that you have demonstrated some insight and remorse, in that you were able to accept what you have done wrong and explained what you would do differently in the future. However, the panel found that you have not yet fully reflected on how your behaviour contributed to an environment of bullying. It also found that you have not yet demonstrated a full understanding of how your actions have impacted negatively on your colleagues and the reputation of the nursing profession. The panel determined that you have not yet developed sufficient insight into the matters found proved.

The panel considered whether you have taken sufficient steps to strengthen your practice.

It took into account the positive testimonials from your colleagues, and a number of training courses you have completed relevant to the concerns raised in this case. It also noted that you have worked as a nurse for five years since the referral and there has been no repetition of the incidents raised nor any formal complaints or disciplinary proceedings.

The panel considered the testimonial evidence of your current employer and the university liaison officer. Both spoke in positive terms with regards to your commitment to nursing. Indeed, your current employer concluded her reference as follows:

'...Sharon is a reliable member of the team, she is punctual and is rarely absent from work. She can be helpful to newer members of the team in their induction, similarly to student nurses. She is a good team player and looks out for others.'

However, the panel was concerned that this detailed testimonial from your current employer identified areas of concern prior to February 2023 with your *'interactional behaviour'*, including with student nurses. Additionally, the use of *'inappropriate sexual comments'* towards the end of 2022/beginning of 2023 in reference to the team lead and one of the social workers. It considered this demonstrated that despite working in a different environment you had not sufficiently reflected and addressed your behaviour.

The panel considered in detail the evidence you presented with regard to insight and strengthening practice. It noted that the focus of your evidence related to the impact the events within [the Community Team] had on you as an individual and provided limited evidence of how your conduct had affected your colleagues or the reputation of the wider nursing profession.

In considering whether you have taken sufficient steps to allay any concerns about your conduct in the future, the panel referred to the NMC guidance *'Insight and strengthened practice'* (Reference: FTP-15a-c). It noted:

'It is important to carefully assess whether the insight shown by the nurse, midwife or nursing associate is enough to address the specific concerns that arise from their past conduct, rather than simply identifying whether 'any' or 'some' evidence of insight is present.'

When considering the NMC guidance, on the basis of the limited insight you have demonstrated, the panel was of the view that there remains a risk of repetition of the misconduct. The panel noted that your actions set out in the charges found proved demonstrated repeated and deliberate inappropriate and unprofessional comments, which has negatively impacted Person A and your colleagues, and contributed to an environment of bullying. It was of the view that such behaviour, if repeated, could affect the wellbeing of other vulnerable patients as well as your colleagues' performance in their nursing duties. The panel bore in mind the NMC's guidance, which states that fitness to practise relates to managing risks not only to patients but other members of the public. Therefore, the panel determined that a finding of current impairment on public protection grounds is necessary.

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.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds 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.

Sanction

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

In reaching this decision, the panel 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

Mr Smalley referred to the SG on proportionality and submitted that in this case the NMC will be seeking the imposition of a striking-off order.

Mr Smalley outlined the following aggravating features he identified in this case:

- Abuse of position of trust and authority – in respect of Colleague A, a student nurse.
- Conduct that has caused patient harm – Person A.
- Behaviour was not isolated and occurred over a period of time.
- Behaviour that contributed to an environment of bullying.

Mr Smalley referred to the following section of the NMC guidance '*Discrimination, bullying, harassment and victimisation*' (Reference: FTP-3):

'The NMC takes concerns about bullying, harassment, discrimination and victimisation very seriously. Although bullying is not included as a prohibited behaviour under the Equality Act, it can have a serious effect on workplace culture, and therefore the safety of people receiving care, if it is not dealt with.'

Mr Smalley also outlined the following mitigating features he identified in this case:

- Limited insight.
- Incident involving patient harm was isolated.
- Otherwise, good clinical practice.

Mr Smalley invited the panel to start its consideration with the least restrictive sanction and then consider escalation until it arrives at a sanction with the most appropriate outcome.

Mr Smalley submitted that making no order or imposing a caution order would not be proportionate to protect the public given the seriousness of this case and would not adequately protect the public or address the public interest.

Mr Smalley submitted that a conditions of practice or suspension order would not be appropriate or proportionate. He stated that given the seriousness of the concerns raised neither would adequately protect the public or satisfy the public interest.

Mr Smalley submitted that a striking-off order is the only appropriate sanction in the circumstances of this case. He referred the panel to its findings on insufficient insight.

Mr Garrett also referred to the SG on proportionality. He invited the panel to consider the least restrictive sanction sufficient to meet the NMC's overarching objective.

Mr Garrett addressed the aggravating features identified by Mr Smalley. He submitted that when considering these matters, it is important for the panel to have regard to context and the full evidential picture. He submitted that these matters occurred over five years ago, you have accepted the main allegations and the panel's findings, and you have demonstrated a desire to remediate and to continue on the remediation journey.

Mr Garrett outlined the following mitigating features he identified in this case:

- You accepted the alleged behaviours from the outset of the Health Board's investigation, and save for discrete matters, have done so throughout these proceedings.
- There have been great efforts made towards insight and reflection.
- Misconduct that is capable of being addressed, according to the panel's findings on impairment.
- No other regulatory issues raised in relation to your practice.
- Evidence of good clinical practice. Oral evidence of Colleague K, Colleague E and Person E speaks to this, as well as the recent testimonial from your current line manager.

Mr Garrett submitted that it is evident you remain committed to your nursing practice, and although you are not at the final stage of remediation, you have begun the process.

Mr Garrett submitted that a conditions of practice order would be proportionate to protect the public and satisfy public interest. He submitted that this is a case where you have acknowledged your failings, demonstrated a distinct period of no repetition and demonstrated a desire to continue on the remediation journey. He invited the panel to consider conditions such as:

- Restricting you to work with one substantive employer.
- A requirement for you to formulate a PDP addressing the matters of concern specifically.
- The need for further and ongoing focused training.
- Reports from line manager.

Mr Garrett submitted that such conditions would be appropriate to manage the associated risks identified in this case, when considering the steps you have already taken.

Mr Garrett referred to a further testimonial from the Clinical Lead Nurse at the Health Board where you are currently employed. He submitted that the testimonial highlight's

the significant role you currently play in your team and the devastating effect that would result from any order which does not permit you to practice.

Mr Garrett submitted that a suspension or a striking off order would not only have a devastating impact on you professionally, but also personally. He submitted that to restrict you from practice would negatively impact [PRIVATE] and would also not enable you to continue on your remediation journey.

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:

- Position of authority and leadership - in relation to Colleague A, student nurse.
- Misconduct over a period of time, albeit within the span of four weeks.
- Person A was caused emotional harm.

The panel also took into account the following mitigating features:

- Early admissions to conduct at local level and throughout proceedings, notwithstanding contextual disputes.
- Evidence of significant insight, remorse, and a commitment to engage with remediation journey.
- Misconduct occurred over five years ago – have worked in unrestricted practice since, no evidence of repetition the incidents raised in the referral.

- Evidence including recent testimonials of valuable clinical practice, support to colleagues and a commitment to nursing.
- Incidents occurred during Covid-19 pandemic with associated staffing pressures and workplace stress.
- Personal mitigation at the time – [PRIVATE].

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

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *...;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*

- *The conditions will protect patients during the period they are in force;
and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. It had regard to its previous findings that your actions contributed to an environment of bullying, which is serious and difficult to remediate. However, the panel considered that your misconduct took place over five years ago and you have since demonstrated a commitment to engage with and address these concerns. It noted that, although you have not yet completed your journey to address all the specific concerns raised with your practice, you have demonstrated significant insight, reflection and engagement with relevant training to address these matters.

Further, you have been working as a nurse for over five years unrestricted since the incidents, with no repetition or any formal complaints. The panel noted the testimonial provided by your Clinical Lead Nurse at your current employment, which attests to your valuable contributions to your team and continued assistance with student nurses, whom you continue to have allocated to you to assist in their development. This was supported by further testimonials from colleagues aware of these proceedings, and one from a parent of two patients to whom you provide care. They all spoke of your nursing support, knowledge and dedication to nursing. The panel was impressed by the breadth of the testimonial evidence and your commitment to your career as a nurse.

In light of this, the panel found no evidence of ongoing harmful deep-seated personality or attitudinal concerns. It found that there are identifiable areas of your practice now in further need of development, specifically your communication and interactions with colleagues and an understanding of how the misconduct findings made against you and your actions affected colleagues and undermined public confidence in the nursing profession.

The panel noted that you have already embarked on a journey to address these failings, through reflection and relevant training. It found no evidence of general incompetence

or any issues with any other areas of your professional practice. Further, the panel was reassured by your insight and reflection so far that you have the ability to respond positively to retraining. The panel was therefore of the view that patients will not be put in danger either directly or indirectly as a result of the conditions in this case. In these circumstances, the panel determined that practical and workable conditions can be created to adequately address the seriousness of this case whilst protecting the public.

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 conduct involving any contribution to bullying could be met by way of a conditions of practice order. However, the panel took into account that you have since reflected on your actions, taken appropriate remedial steps to address these concerns, and demonstrated a continued willingness to continue on your journey to strengthening your practice.

The panel concluded that a conditions of practice order would give you the opportunity to demonstrate that you are capable of kind, safe and effective practice. It was also of the view that to allow a competent nurse to continue to practice, with appropriate safeguards in place, would be in the wider public interest. Whilst the panel noted the testimonial of your employer which outlined the impact on patient care should you be removed from practice. In reaching its decision on sanction, the panel placed no weight upon this information and concerned itself with the overarching objective and the important principle of proportionality generally. Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel considered whether it would be proportionate to impose a more restrictive sanction. However, the panel was of the view that the purpose of these proceedings was not to punish but to take a forward-looking approach and to impose a suspension order or a striking-off order not be a reasonable response in the unique circumstances of your case. It was satisfied by your demonstration of insight and steps taken to strengthen your practice 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 and further remediation. Taking account of all the information before it and of the mitigation in this case, the panel concluded a suspension order, or a striking-off order would be disproportionate.

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

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

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

1. You must limit your nursing practice to one substantive employer, which must not be an agency.
2. You must have regular documented supervisory meetings with your line manager, supervisor or mentor.
3. You must keep a personal development plan (PDP) under review and signed by your line manager, supervisor or mentor. The PDP will:
 - a) Detail objective evidence of reflecting on and developing your interaction and communication style with others.
 - b) Include 360 feedback from colleagues.

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

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

6. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any employers you apply to for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - d) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.

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

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

Taking account all of the issues in your case and the principle of proportionality, the period of this order is for two years.

Before the order expires, a panel will hold a review hearing to see how you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Up to date report from your line manager outlining progress made in relation to your personal development plan and contributions to nursing;
- Further written reflection demonstrating your understanding and insight in relation to the impact of your actions and the misconduct findings made against you on your colleagues and the reputation of the wider nursing profession;
- Evidence of further relevant training;
- Continued engagement with regulatory proceedings.

Interim order

As the conditions of practice order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is

necessary for the protection of the public, is otherwise in the public interest or in your own interest until the conditions of practice sanction takes effect.

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

Submissions on interim order

The panel took account of the submissions made by Mr Smalley, on behalf of the NMC. He submitted that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest. He invited the panel to impose an interim conditions of practice order for a period of 18 months.

Mr Garrett indicated that you do not object to this application.

Decision and reasons on interim order

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

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months to allow for any possible appeal period.

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

That concludes this determination.

This will be confirmed to you in writing.