

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

**Substantive Hearing  
Monday, 17 February 2025 – Friday 21, February 2025  
Monday, 24 February 2025 - Thursday, 27 February 2025**

Virtual Hearing

|                                       |   |
|---------------------------------------|---|
| <b>Name of Registrant:</b>            | Akinola Dauda   |
| <b>NMC PIN:</b>                       | 21L1646O  |
| <b>Part(s) of the register:</b>       | Nurses part of the register, sub part 1;<br>Registered mental health Nurse - RNMH<br>(22 December 2021)   |
| <b>Relevant Location:</b>             | Essex   |
| <b>Type of case:</b>                  | Misconduct  |
| <b>Panel members:</b>                 | Michelle McBreeze (Chair, Lay member)<br>Hannah Harvey (Registrant member)<br>Suzanna Jacoby (Lay member) |
| <b>Legal Assessor:</b>                | Mark Ruffell  |
| <b>Hearings Coordinator:</b>          | Amira Ahmed   |
| <b>Nursing and Midwifery Council:</b> | Represented by Stephen Page, Case Presenter   |
| <b>Mr Dauda:</b>                      | Present and represented by Dr Abbey Akinoshun   |
| <b>No case to answer:</b>             | 1b) and 1c)   |
| <b>Facts proved:</b>                  | 1a)   |
| <b>Fitness to practise:</b>           | Impaired  |
| <b>Sanction:</b>                      | <b>Striking off order</b>   |

**Interim order:**

**Interim suspension order (18 months)**

## **Details of charge (as amended)**

That you, a registered nurse:

1. On 10 March 2023:

- a) Slapped Patient A on the side of their face;
- b) Applied too much pressure to Patient A's hand during a physical restraint;
- c) Caused Patient A disproportionate and/or unnecessary pain during the physical restraint.

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 in private**

During the hearsay application it was mentioned to the panel that there would be body worn video (BWV) footage which shows Patient A, [PRIVATE]. Mr Page made a request that this part of the hearing be held in private to protect the identity of Patient A. The application was made pursuant to Rule 19 (3) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Akinoshun indicated that he supported the application.

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

The panel determined to view the BWV footage in private session to protect the identity of Patient A [PRIVATE].

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

The panel heard an application made by Mr Page to allow the hearsay testimony of Witness 1 into evidence. Despite numerous attempts, the NMC were unable to get Witness 1 to attend this hearing to give live evidence. Mr Page submitted that the NMC had attempted to contact Witness 1 by telephone and email and received the following from him on 14 February 2025 which stated:

*“Hi*

*Please I already gave my statement to the security supervisor at the hospital and I gave statements to one of your colleagues..which[sic] I said I don't want to come for any court hearings, now you a sending a court summons of an offence someone else commits 2 year ago. I will like you to use same statement I provided for your colleague and the same I gave to the security supervisor at the hospital. If I can remember he slapped the poor patient on the face while the patient was in our care at the [PRIVATE].*

*Pls [sic] I will like you not to disturb or threaten me with a court summon I haven't committed any crime and am not available to visit court hearings [PRIVATE].*

*Thanks”*

Mr Page submitted that the evidence of Witness 1 is highly relevant to all the charges and the NMC have obtained a witness summons from the High Court to ensure that he attends this hearing today. He also referred the panel to the NMC guidance DMA-6 which was last updated on 2 December 2024 in particular reference to the admissibility of evidence. He

further submitted that the evidence of Witness 1 was not the sole and decisive evidence as there is other evidence which the panel will consider by subsequent witnesses, although those are relatively short.

Mr Page submitted that the hearsay evidence of Witness 1 should be admitted as evidence in this hearing taking into account all the factors above.

Dr Akinoshun submitted that the witness statement of Witness 1 is relevant, but it is unfair to admit it as hearsay evidence. He submitted that this is because Witness 1 is the only eyewitness who wore the body camera and needs to be cross examined and then asked any relevant questions by the panel. The body camera footage was recorded in the dark for most parts and there needs to be clarification on it which Witness 1 would provide as he was wearing the body camera, and the alleged incident took place in the dark.

Dr Akinoshun submitted that Witness 1's evidence is the sole and decisive evidence for charges 1b) and 1c). He submitted that the allegations are not admitted by you and that you must not be denied the opportunity to challenge the evidence of Witness 1. In fact, charges 1b) and 1c) stem from the witness statement of Witness 1.

Dr Akinoshun explained the seriousness of the allegations and the impact they will have on you and your career as a nurse since the evidence of Witness 1 cannot be tested if he is not here to give live evidence. He submitted that from all the documentary evidence there is no evidence to suggest that there were efforts made to contact Witness 1 through his employer. He submitted that there also has been no evidence before this panel that Witness 1 is no longer working for the agency that he was at the time of the alleged incidents.

Dr Akinoshun submitted that a witness summons was served upon Witness 1 on 10 February 2025, and he has not attended the hearing today which puts into question how reliable his written statement is. He submitted that the evidence of Witness 1 is very crucial to this case and the fact that his evidence could not be challenged is very unfair.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. He also referred the panel to relevant case law including *R. (Bonhoeffer) v GMC* 2011 EWHC 1585 and *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin).

The panel considered that the charges, if proved, could amount to a criminal offence and potentially could result in the most serious sanction. Accordingly, the panel considered, in the light of *Bonhoeffer* and *Thorneycroft*, that the right to cross-examine the witness should be given significant weight. The panel noted that the allegations were all denied, but no reason had been put forward to suggest that they were fabricated, and so the extent of the potential cross-examination was limited. The panel recognised that in relation charge 1(a), there were other witnesses who could be cross-examined. However, in relation to charges 1(b) and 1(c), this was the sole and decisive evidence, and there was no alternative means of challenging the evidence.

The panel considered that there has been no apparent good reason by Witness1 for not attending the hearing. [PRIVATE]. The panel also noted that the NMC have tried to contact Witness 1 multiple times and have also got a witness summons from the High Court, but he has still not attended the hearing today to give live evidence.

The panel in considering all of the factors, determined that it would be fair to admit the whole of Witness 1's written statement to the NMC and his local investigation statement made at the time of the allegations, except the following sentences:

*"I told the RMN to let go of her hand because the RMN was putting too much pressure on the hand and to help calm the situation."* (NMC witness statement)

*“I asked the registrant to let go of the patient’s hand because he was putting too much pressure on her hand and to calm the situation down.”* (Local investigation statement)

The panel determined that these statements are the sole and decisive evidence in relation to charges 1b) and 1c) and therefore it would be unfair for them to be admitted into evidence as part of Witness 1’s evidence.

### **Decision and reasons on application to amend the charge**

The panel heard an application made by Mr Page, to amend the wording of charge 1 c).

The proposed amendment was to change the wording in charge 1c to include the words ‘disproportionate and/or unnecessary’. It was submitted by Mr Page that the proposed amendment would provide clarity and more accurately reflect the evidence.

That you, a registered nurse:

1. On 10 March 2023:

c) Caused Patient A **disproportionate and/or unnecessary** pain during the physical restraint.

Dr Akinoshun did not object to this application on your behalf.

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

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel 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. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

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

Dr Akinoshun after the closing of the NMC's case on facts made an application under Rule 24(7) that there was no case to answer in relation to charges 1c) and 1b).

Dr Akinoshun submitted that there has been a failure to provide evidence in relation to these charges. He submitted that the panel has already decided to exclude certain parts of Witness 1's written statements which were sole and decisive evidence in relation to charge 1b) and 1c). He further submitted that there is no reasonable prospect that these charges will be found proven due to the lack of evidence provided by the NMC.

Dr Akinoshun submitted that he believed the NMC should have made an offer of no evidence in relation to charges 1b) and 1c) but he accepts that he cannot tell the NMC how they should present their case. He submitted that it is not in the public interest for the panel to pursue factual charges if there is insufficient evidence to prove them.

Dr Akinoshun submitted that the live evidence of Witness 4 today did not in any way support charges 1b) and 1c) despite the line of questioning of Mr. Page. He submitted that in view of all the issues highlighted he invited the panel to make a decision of no case to answer in relation to charges 1b) and 1c).

Mr Page submitted that the patient was very angry and very aggressive, you had been put on notice of this in the handover and that Patient A had already assaulted their carer earlier that day. Therefore, you should have been aware that Patient A could be aggressive.

Mr Page submitted that the panel should also bear in mind the evidence of Witness 2, where he described your demeanour. He submitted that Witness 2 had identified that your demeanour was angry, and that was one of the reasons why he invited you to leave the room and go for a break.



Mr Page submitted that the evidence of Witness 4 can be relied upon in relation to these charges particularly where he states that there would be a proportionate level of force used and indeed, applying that, you could be hurting the patient. He submitted that this goes to the question of what weight the panel should attach to the evidence of Witness 4. If indeed the panel are persuaded by his evidence in relation to these charges, then it can decide what weight should be attached to his evidence.

Mr Page submitted that taking into account the evidence by Witness 2 and 4, the application for no case to answer must fail in accordance with the test in *R v Galbraith* [1981] 1WLR 1039. He submitted that any issues relating to the evidence either in relation to strength or weaknesses, should be a matter for the panel to determine at the close of the full case.

The panel took account of the submissions made and accepted the advice of the legal assessor. He referred the panel to relevant case law including the case of *R v Galbraith* [1981] 1WLR 1039 in relation to no case to answer applications. He also referred the panel to Rule 24(7), which states:

**‘24.—** (7) *Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council’s case, and –*

- (i) either upon the application of the registrant,*
- or*
- (ii) of its own volition,*

*the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.’*

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

The panel was of the view that in relation to charge 1b), there was no evidence before it that there was too much pressure applied to Patient A's hands during a physical restraint. It took into account the evidence of Witness 4 in relation to this charge and noted that although he tried to assist the panel, he was not physically there in the room during the restraint. The panel determined that there isn't sufficient evidence in relation to this charge, and in accordance with the test in Galbraith there is no case to answer regarding this charge.

In relation to charge 1c) the panel noted that there was also no evidence provided by the NMC in relation to this charge. It noted that Witness 4 spoke about there being potentially some pain generally from using physical restraint techniques, but he was not there to see the restraint take place. The panel also took into account the BWV footage but as it was dark it was unclear what was happening in relation to the restraint.

The panel considered that Witness 2 in his live evidence did not speak in relation to this allegation and had said it was 'hard to comment on' and therefore the panel had no clarity from him on this charge. Witness 2 also stated in his witness statement:

*“Before Mr Dauda slapped the patient, I witnessed him controlling the patient by holding her hands down for prolonged periods. He was very gentle with her until that moment when he snapped and slapped her.”*

The panel also noted that the other direct witness in relation to this charge did not attend the hearing. It therefore determined that there was no case to answer in relation to charge 1c) due to the insufficient evidence provided by the NMC on this charge.

In conclusion, the panel determined that there is no case to answer in relation to both charges 1b) and 1c).

## **Background**

The charges arose whilst you were employed by [PRIVATE] as a registered Mental Health Nurse and were working at [PRIVATE] on 10 March 2023. It is alleged that you slapped Patient A on the side of their face who at the time was a [PRIVATE] patient in your care.

This allegedly took place whilst Witness 2 and you were trying to physically restrain Patient A who had been aggressive during the night shift and had then spat on you.

## **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Page on behalf of the NMC and by Dr Akinoshun on your behalf.

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

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

- Witness 2: Mental Health Nurse at the Trust at the time of the event.
- Witness 4: [PRIVATE] CEO & Clinical Lead at the time of the events.

The panel also heard evidence from you under affirmation.

The panel also took into consideration the written statements of Witness 1 and 3.

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

The panel then considered the remaining charge and made the following findings.

### **Charge 1**

1. On 10 March 2023:

a) Slapped Patient A on the side of their face;

### **This charge is found proved.**

In reaching this decision, the panel watched the BWV footage and heard that Patient A was in discomfort during the restraint although it noted that the footage was dark for most parts. The panel noted that in the BWV footage, there is a noise which it finds likely to be Patient A spitting at you and then another noise which it determined was consistent with being a slap.

The panel heard in the BWV footage someone say:

*“don’t do that ok?”*

It then heard Patient A respond:

*“Or what, you’ll slap me again.”*

*“Or what, you’ll slap me round the face again”*

The panel took into account the witness statement of Witness 1 who stated:

*“...Whilst we were using control techniques to prevent her from hurting herself, I was at the foot of the bed and the other two nurses were on either side of the bed. This is when the patient spat on the registrant’s face, the registrant responded by slapping the patient on the side of her face. The patient became very angry and was shouting.”*

The panel also noted Witness 2’s oral evidence which was consistent with his written statement which stated:

*“...It got to the point where we had to restrain her, we put her on the bed Mr Dauda and I, were holding each side of her hands, and the security guard was holding her legs at the end of the bed. Whilst restraining the patient she raised her head and spat at Mr Dauda, immediately on impulse he responded with a slap to the patients face.”*

Witness 2, in his oral evidence, demonstrated to the panel with his hands how you had slapped Patient A and described the level of force that you used. The panel noted the corroboration of both eyewitnesses in their written statements and noted that neither of them had met you before the shift in which the allegation took place on. The panel did take into consideration that Witness 1’s evidence was hearsay and could not be tested in cross-examination.

The panel noted that the BWV footage becomes clearer at 1 minute 39 seconds and Witness 1 and 2 speak to each other with Patient A in the room. The panel heard Witness 1 say:

*“that’s not professional at all...the job is not meant for him.”*

He then goes on to say:

*“He is behave like he’s treating one of his daughters” [sic]*

The panel considered your oral evidence in which you explained that you pushed Patient A’s face away from you when she spat at you. The panel noted that this was the first time you raised this point, and you had not given this explanation at your police interview in 2023. The panel found your answers at this hearing to be inconsistent with your police interview.

The panel had regard to your good character when you gave evidence and that no previous allegations have been made against you.

The panel found that your explanation did not explain the sounds and words that were recorded on the BWV footage. Those present in the room accused you at the time and immediately afterwards of acting unprofessionally. Had you merely pushed Patient A’s head away having been spat at, then you would not have been accused of behaving unprofessionally. Your account did not explain why it was that Patient A, and others had made the accusation that you had slapped Patient A.

The panel determined that, based on the balance of probabilities, you slapped Patient A on the side of their face on 10 March 2023. It therefore found this charge proved.

### **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. The NMC guidance DMA-1 sets out the question that will help decide whether a professional's fitness to practise is impaired which is:

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

In reaching its decision, the panel 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**

In coming to its decision, the panel had 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 Page invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) in making its decision.

Mr Page identified the specific, relevant standards where your actions amounted to misconduct. He submitted that your conduct at charge 1 a) falls into the category which

constitutes serious professional misconduct because the conduct exhibited caused physical harm [PRIVATE].

Mr Page submitted that caring for patients is a basic fundamental tenant of a nurse's duties, and in slapping Patient A, you were in breach of the Code.

Dr Akinoshun submitted that in this case, charge 1a) is found proved by the panel but that having found this fact proved does not in itself make your fitness to practise impaired automatically without giving consideration to other relevant factors presented.

Dr Akinoshun submitted that the panel have heard direct evidence from you saying that you have never been accused of similar allegations or had any disciplinary matters throughout your nursing career until when the current allegation was made against you.

Dr Akinoshun submitted that the incident was an isolated case in your nursing career. He submitted that the fact found proved by the panel does constitute misconduct but does not constitute impairment.

### **Submissions on impairment**

Mr Page moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Page submitted there is no evidence that you have strengthened your practice. He submitted that there is no and/or limited insight shown by you and therefore, there continues to be a risk of harm to members of the public.



Mr Page submitted that given the seriousness of the breaches of professional standards, for the health and wellbeing of members of the public, public confidence in the profession would be undermined if a finding of impairment was not made. He submitted that your fitness to practise is currently impaired on the grounds of public protection and in the wider public interest to uphold proper professional standards and maintain confidence in the profession and its regulator.

Dr Akinoshun submitted that you acknowledged in your reflective statement why things should be done differently in future. He submitted that you have also undergone various training in order to remediate the failings identified in the charge. He explained that the evidence of this could be found in the various certificates submitted to the panel including training person-centred care and managing challenging behaviours.

Dr Akinoshun submitted that you have demonstrated that you are a safe practitioner as you have never repeated similar conduct. He submitted that you have taken on board the findings of the panel and the incident has made you become more aware of your responsibilities as a nurse and the need for effective de-escalation techniques and proper communication with patients and colleagues.

Dr Akinoshun submitted that you do not pose future risks to the public as your safe practice has been further tested at your current place of work, where you have been working with patients with challenging behaviour. He submitted that you have remained a safe practitioner up until the present as evidenced by your employer's reference letter dated 13 February 2025.

The panel accepted the advice of the legal assessor.

### **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:

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

**8.5** work with colleagues to preserve the safety of those receiving care

**19** *Be aware of and reduce as far as possible, any potential for harm associated with your practice.*

**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 ... cause them upset or distress'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that as charge 1a) has been found proved which involved you slapping a [PRIVATE] patient [PRIVATE], it does constitute serious misconduct.

The panel found that your actions did fall seriously short of the conduct and standards expected of a registered 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.

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 ensure 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 was of the view that your misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to actual physical harm serious.

The panel acknowledged that you denied slapping Patient A. However, the panel found that your insight into your conduct and behaviour when dealing with similar challenging situations has not been fully demonstrated at this hearing. The panel cannot be satisfied that, if faced with a similar situation, you would not lose your temper and react in a similar way.

The panel was satisfied that the misconduct was a one-off isolated incident and is capable of being addressed. Therefore, the panel carefully considered whether there was evidence before it in determining whether or not you have taken steps to strengthen your practice.

The panel took into account your relevant training certificates from courses including a Prevention Management of Violence and Aggression refresher. However, the panel did not hear any in depth insight into how you put this training into practice. It also considered your reflective statement, although it noted that it was not written for this hearing specifically but for earlier proceedings regarding this case. The panel also noted that the reflection did not detail how you have managed similar situations since the incident in question and how you would manage your feelings, triggers and reactions in the future. The panel also considered your positive testimonial from your current workplace in which you are a support worker for vulnerable elderly patients. It further noted that the testimonial did not state the occupation of the author and whether they were in fact your line manager or colleague.

The panel is of the view that there is a risk of repetition based on your lack of insight, and it also noted that you have not fully reflected on how your actions affected Patient A, your colleagues at the time and the public. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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 determined that a finding of impairment on public interest grounds is required because 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 striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence 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 Page referred the panel to the SG specifically SAN-1. He informed the panel that the NMC sanction bid is that of a striking-off order. He submitted that given the seriousness of the misconduct a striking off order is required on both public protection and public interest grounds.

Mr Page submitted that the slapping of a [PRIVATE] must, clearly, raise fundamental questions about your professionalism, public confidence in the profession and the protection of patients and the wider public interest. He submitted such conduct cannot be compatible with continuing to be on the NMC register.

Mr Page submitted public confidence in the professions cannot be maintained if a strike off order is not imposed.

Dr Akinoshun submitted that you have provided a reflective statement where you have reassured this panel by saying:

*“Having thought deeply about the incident, I will continue to put in practice my desire to abide by the code through identifying risks in time and conducting myself*

*transparently and in conformity with expected standards. I have undertaken [sic] training on a number of areas including management of violence and aggression as well as coping mechanisms.”*

Dr Akinoshun submitted that you have now accepted the panel’s findings on fact. He submitted that you have acknowledged that there is still much to be done to demonstrate full insight following the panel’s determination at the impairment stage. He further submitted you have been using the knowledge acquired in the training you have undertaken to strengthen your practice at your current place of work in order to avoid further repetition of similar behaviour to the one found proved by the panel.

Dr Akinoshun submitted some personal circumstances [PRIVATE]. He submitted that according to the SG and the factors to consider when looking at a suspension order it could be the most appropriate sanction for the panel to consider.

Dr Akinoshun submitted that you would be assisted, if the panel, in making a suspension order, explain clearly what expectations it has, or what actions you could take that would help a future panel reviewing the order before it expires.

The panel accepted the advice of the legal assessor.

### **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 aggravating features including your limited insight into your failings and the physical assault of [PRIVATE] a patient in your care.

The panel also took into account that this was a one-off isolated incident.

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, the public protection and public interest 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 seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charge found proved in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public, nor would it address the wider public interest concerns.

The panel then went on to consider whether a suspension order would be an appropriate sanction and looked at the SG. The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted



that the serious breach of the fundamental tenets of the profession evidenced by your actions could be fundamentally incompatible with you remaining on the register.

The panel took into account the NMC guidance on seriousness FTP-3, last updated on 27 February 2024, when looking at whether to impose a suspension order. The guidance which states:

*“The Code says that nurses, midwives and nursing associates must ‘take all reasonable steps to protect people who are vulnerable or at risk of harm, neglect or abuse.’ Protecting people from harm, abuse and neglect goes to the heart of what nurses, midwives and nursing associates do.*

*Failure to do so, or intentionally causing a person harm, will always be treated very seriously due to the high risk of harm to those receiving care, if the behaviour is not put right.*

...

*Such behaviour also has the potential to seriously undermine the public’s trust and confidence in the professions we regulate.”*

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

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*

- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel determined that there is some evidence of attitudinal or personality problems due to the unclear reasons given by you for what took place. The panel noted that during your oral evidence you explained that you pushed Patient A's face away to deter her from spitting in your direction again, but this was not mentioned as an explanation during the police interview in June 2023, which the panel found to be inconsistent and concerning.

The panel considered that you faced a prolonged situation with a challenging patient and that it must have been unpleasant to be spat on. However, the panel concluded that you lost your temper and slapped Patient A. It found that, in so doing, your actions were egregious. Such challenging situations are a common feature in the environment that mental health nurses work in, and you should never have acted in this manner. It also noted your lack of insight during this hearing and the fact that you did not provide an updated reflective statement on how your actions impacted Patient A, your colleagues and the public. The panel was not provided with any meaningful evidence about how you would manage your feelings and reactions if faced with a patient in the future who spat on you or provoked you in another way.

The panel determined that your action was a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should

conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you 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 your own interests until the striking-off 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 Page. He submitted that an interim suspension order for a period of 18 months would be appropriate given the circumstances of the case and to cover the 28-day appeal period.

Dr Akinoshun did not object to this.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

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

That concludes this determination.