

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

Substantive Meeting

Wednesday 19 July 2023

Virtual Meeting

Name of Registrant:	Trushna Tailor
NMC PIN	00E0357E
Part(s) of the register:	Registered Nurse – Adult Nursing (RNA September 2003)
Relevant Location:	Lancashire
Type of case:	Conviction
Panel members:	Debbie Hill (Chair, Lay member) Des McMorrow (Registrant member) John Penhale (Lay member)
Legal Assessor:	Alain Gogarty
Hearings Coordinator:	Monsur Ali
Facts proved:	Charge 1
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Miss Taylor's registered email address by secure email on 27 June 2023. By email dated 17 July 2023, Miss Taylor waived her rights in relation to the notice period.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Miss Taylor has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

'That you, a registered nurse;

1) On 9 November 2022 at Wigan Magistrates Court were convicted of the following offence;

a) On 17/02/2022 at Wigan had the care of Resident A, who lacked or whom you reasonably believed lacked mental capacity, ill treated or wilfully neglected her Contrary to section 44 of the Mental Capacity Act 2005.

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Miss Taylor.

The agreement, which was put before the panel, sets out Miss Taylor's full admissions to the facts alleged in the charge, that her actions led to a conviction, and that her fitness to practise is currently impaired by reason of that conviction. It is further stated in the agreement that an appropriate sanction in this case would be a striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Miss Trushna Taylor ("Miss Taylor"), PIN 00E0357E ("the Parties") agree as follows:

- 1. Miss Taylor is content for her case to be dealt with by way of a CPD meeting. Miss Taylor understands that if the panel wishes to make amendments to the provisional agreement that she does not agree with or determines that a more severe sanction should be imposed, the panel will adjourn the matter for this provisional agreement to be considered at a CPD hearing.'*

The charge

- 2. Miss Taylor admits the following charge:*

That you, a registered nurse;

1) *On 9 November 2022 at Wigan Magistrates Court were convicted of the following offence;*

a) *On 17/02/2022 at Wigan had the care of Resident A, who lacked or whom you reasonably believed lack metal capacity, ill treated or wilfully neglected her
Contrary to section 44 of the Mental Capacity Act 2005.*

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

The facts

3. Miss Taylor appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered Adult Nurse and has been on the NMC register since 14 November 2003. Miss Taylor was referred to the NMC on 22 February 2022 by the Registered Nurse Manager, St George's Nursing Home, Wigan ('the Home'). At the relevant times, Miss Taylor was working as a nurse at the Home.

4. The alleged facts are as follows:

5. On 17 February 2022, Miss Taylor physically assaulted a 93 year old resident (Resident A) who had advanced dementia, was unable to communicate properly, was confined to a wheelchair and required one to one care. Miss Taylor slapped Resident A repeatedly and forcefully restrained them. Miss Taylor's actions were captured on CCTV and reviewed later that same day by the Registered Nurse Manager. Miss Taylor was witnessed on CCTV to physically assault Resident A for 13 minutes.

6. CCTV of the incident consisted of three clips, approximately three minutes each. The first video showed Miss Taylor slap Resident A and roughly re-dress her. The second

video showed Miss Taylor slap Resident A twice and forcefully restrain her. The third video showed Miss Taylor slap Resident A approximately four times. Miss Taylor was seen on the video to look around to see whether she was being observed.

7. Several bruises were noted on Resident A's body afterwards. Although it could not be ascertained if these bruises were caused by Miss Taylor's actions, however Resident A suffered significant mental trauma and anxiety because of Miss Taylor's behaviour.

8. The police were called and after viewing the CCTV recording, Miss Taylor was arrested.

9. On 9 November 2022 at Wigan Magistrates' Court Miss Taylor entered a guilty plea and was convicted of the following offence:

- Carer ill-treat/wilfully neglect a person without capacity, contrary to the Mental Capacity Act 2005.*

10. On 8 December 2022 Miss Taylor's case was committed to the Crown Court for sentence. On 9 December 2022 at Bolton Crown Court, Miss Taylor was sentenced to 10 months imprisonment with immediate effect and was made subject of a barring order preventing Miss Taylor from working with children and/or vulnerable adults.

11. On 17 April 2023 the NMC received Miss Taylor's case management form admitting the charge and accepting that her fitness to practice is impaired.

Facts relating to charge of Conviction

12. Bolton Crown Court produced a certificate of conviction which provides conclusive proof of the conviction set out in the NMC charge.

Impairment

13. *The NMC's Guidance at DMA-1 provides that whilst the term impairment is not defined by the legislation, the body of legal cases determines that the question is whether the registrant can practise kindly, safely and professionally. The parties agree that Miss Taylor's fitness to practise is currently impaired by reason of her conviction.*

14. *Miss Taylor assaulted a vulnerable, elderly resident. The conviction reflects deep-seated attitudinal issues. As such the attitudinal issues put those in Miss Taylor's care at risk of such actions in the future.*

15. *At the relevant time, Miss Taylor was subject to the provisions of **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** ("the Code"). It is submitted, that the following parts of the Code are engaged in this case:*

"Prioritise People

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

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect, and compassion"

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 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

20.4 keep to the laws of the country in which you are practicing

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

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

16. So far as prioritising people in Miss Taylor's care is concerned, the Code requires concern for the care and safety of other people and that they should be treated with kindness and respect. The parties agree that Miss Taylor's actions demonstrate a deep-seated attitudinal concern which undermines the care and safety of others whilst not showing kindness or respect. In assaulting Resident A, Miss Taylor clearly failed to treat Resident A with kindness, respect, and compassion.

17. The parties also consider that Miss Taylor's actions and conviction fails to uphold Paragraph 20 of the Code bringing the profession into disrepute. The parties have considered the factors outlined by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) .Grant [2011] EWHC 927 (Admin) by Cox J;

(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 professions 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 professions; and/or

(d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future?

18. Limbs a, b and c are engaged in this case.

Limb A

19. Miss Taylor's offending behaviour took place in a clinical setting and Resident A, a patient in her care, was deliberately caused harm. Miss Taylor provided a prepared statement that indicated Resident A was extremely demanding, vocal and in need of constant assistance. Miss Taylor initially stated that she did not view her actions as being abusive and denied assaulting Resident A. In the Pre-Sentence Report Miss Taylor blamed Resident A for her actions and described Resident A as vocal and difficult to deal with. In the sentencing remarks the Judge found that Miss Taylor attempted to minimise the impact of her behaviour. There is a risk of repetition of this conduct and harm to those whom Miss Taylor cares for.

20. The conduct also undermines the public trust placed in nurses with the result that patients are less likely to be willing to access the care of a nurse who has been convicted of such an offence placing them at risk of harm in not seeking medical attention.

Limb B

21. The seriousness of Miss Taylor's conduct which resulted in her conviction cannot be overstated.

22. Nurses are placed in a position of trust. Conduct which includes assaulting vulnerable resident/patients and places them at risk of harm undermines that trust and so brings the profession into disrepute

23. Nurses are required to act in accordance with the laws of the country and a breach of the Code by this conviction and sentence also brings the profession into disrepute.

Limb C

24. Nurses are expected to act with integrity and promote trust. Assaulting a vulnerable resident shows a lack of integrity and does not promote trust in the profession.

25. The Parties have set out above the relevant sections of the Code they agree have been breached in this case. As such the Parties agree that Miss Taylor has breached fundamental tenets of the profession.

Remediation, reflection, training, insight, remorse

26. The parties also considered the case of Cohen v General Medical Council (2008) EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;

- *Whether the conduct that led to the charge(s) is easily remediable .*
- *Whether it has been remedied.*
- *Whether it is highly unlikely to be repeated.*

27. The Guidance at FTP-3a identifies the most serious category as concerns which are difficult to put right. This category includes deliberately causing harm to patients Miss Taylor's conduct and resulting conviction, therefore, cannot be said to be easily remediable as Miss Taylor's conduct demonstrates a deep-seated attitudinal concern. Such concerns are unlikely to be addressed through training or supervision.

28. Miss Taylor has only recently started engaging in the NMC process and has not provided any evidence of remediation or developed insight. There is nothing to suggest that she no longer presents a risk of repeating the offending conduct. Therefore, there is a high risk of repetition of the conduct in this case.

Public protection impairment

29. A finding of impairment is necessary on public protection grounds.

30. Miss Taylor's offending behaviour amounts to an abuse of a vulnerable adult. Such conduct is serious and likely to be repeated. Miss Taylor has been barred from working with children and vulnerable individuals. In the absence of any evidence to suggest the risk to the public has been addressed and reduced, the risk must be said to remain such that a finding of impairment on public protection grounds is required.

Public interest impairment

31. A finding of impairment is necessary on public interest grounds.

32. In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 101 Cox J commented that:

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case".

Miss Taylor's conduct is extremely serious and involves behaviour which amounts to an abuse of a vulnerable adult. Such conduct is capable of seriously damaging public

confidence in the nursing and midwifery professions. The subject matter of the conduct is sufficient to engage the public interest alone .

33. The conduct has also resulted in a criminal conviction and immediate custodial sentence as well. Whilst not all criminal convictions would necessarily undermine confidence in nurses and midwives , the criminal ill-treatment of a patient certainly does so.

34. Given the nature of the conduct resulting in a conviction for an assault offence, public confidence in the profession and the NMC as the regulator, would be seriously undermined if a finding of impairment was not made.

35. The parties agree that Miss Taylor's fitness to practise is impaired on public protection and public interest grounds.

Sanction

36. Article 3(4A) of The Nursing and Midwifery Order 2001 states:-

"The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives-

- (a) to protect, promote and maintain the health, safety and well-being of the public;*
- (b) to promote and maintain public confidence in the professions regulated under this Order; and*
- (c) to promote and maintain proper professional standards and conduct for members of those professions*

37. Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that the appropriate sanction in this case is that of a striking-off order.

38. The aggravating features of the case are as follows (this list is non-exhaustive):

- Physical abuse against a vulnerable resident.
- Abuse of a position of trust.
- A prolonged incident.
- Elements of shifting blame onto the victim.
- A lack of remorse, remediation and insight.
- Barred from working with vulnerable adults and children in the future.
- Immediate custodial sentence of 10 months.
- A lack of engagement with the NMC their regulator (until only recently).

39. There are no mitigating features in this case.

40. Seriousness - The Guidance at FTP-3a provides the various categories of seriousness and identifies the most serious category as concerns which are difficult to put right. This category includes criminal offending relating to deliberately causing harm to patients. Miss Taylor's conduct and conviction falls into the most serious category of concern.

41. To take no further action would not be appropriate. It is rare to take no further action where a finding of impairment has been made. In this case the conduct underlying the conviction is of a serious nature. On 18 August 2022 at an Interim Order review hearing Miss Taylor repeatedly denied being intentionally abusive towards Resident A even when faced with the CCTV evidence. Miss Taylor indicated that she didn't understand why she did what she did, she was aware it was the wrong thing to do, but she did not realise at the time she was acting in such a way. She blamed her actions on the stress of work and

of being on a busy shift. Following her arrest Miss Taylor blamed her actions on Resident A. In her Pre-Sentence Report she also blamed Resident A and described Resident A as being vocal and difficult. No insight has been shown, thereby presenting both a continued risk to the public and undermining the public's trust. Some other form of sanction is therefore required.

42. To impose a caution order would not be appropriate. A caution order imposes no restrictions on a registrant's practice and, therefore, would not protect the public from the risk of harm identified in this case. Further, the nature and seriousness of the conviction are such that a more severe sanction is required in order for the public interest to be addressed. In accordance with the Guidance at SAN-3b a caution order is made for cases at the lower end of the spectrum of impairment. This case is at the higher end of the spectrum of impairment and so a caution order would not be adequate.

43. To impose a conditions of practice order would not be appropriate in any event. The Guidance at SAN 3C identifies that protection of patients underlies such a sanction and would be suitable in the following instances:

- where there is no evidence of harmful deep-seated personality or attitudinal problems,*
- where conditions can be created that can be monitored and assessed.*

44. In this case there is evidence of deep-seated personality or attitudinal problems and it is unlikely that suitable conditions for monitoring and assessing can be imposed.

45. To impose a suspension order would not be appropriate. As a general rule a registrant should not be permitted to start practising again until they have completed a sentence for a serious criminal offence as set out in the case of (Council for the Regulation of Health Care Professionals v [1] General Dental Council and [2] Fleischmann

[2005] EWHC 87 [QB]). The period of sentence in this case (3 years) would exceed the period for which a suspension order can be imposed.

46. The Guidance (SAN-3d) provides that a suspension order may be suitable where the nurse has insight and does not pose a significant risk of repeating the behaviour. Given the lack of insight demonstrated in this case and the high risk of repetition of the conduct, a temporary removal from the register would not be sufficient to protect the public. Furthermore, the conduct in this case is fundamentally incompatible with ongoing registration and gravely undermines patients' and the public's trust and confidence in nurses and midwives. Given the nature and seriousness of the conviction, a suspension order would fail to address the very significant public interest in this case.

47. NMC guidance FTP-3 makes clear that some concerns are so serious that it may be less easy for a nurse to put right the conduct. These include deliberately causing harm to patients. The guidance SAN-3e also makes it clear that a striking off order is likely to be appropriate when a nurse has done something fundamentally incompatible with remaining on the register. The parties agree that deliberately causing harm to a patient, resulting in a criminal conviction and custodial sentence, is a clear example of such conduct.

48. Miss Taylor's conviction demonstrates a fundamental breach of the public's trust in nurses and raises fundamental questions about her professionalism. Public confidence in the nursing and midwifery professions can only be maintained if Miss

Taylor is permanently removed from the register. Miss Taylor's behaviour is fundamentally incompatible with her remaining on the register and members of the public would be dismayed if a registered nurse with such a serious conviction were to be allowed to remain on the register.

49. The only appropriate and proportionate sanction is, therefore, that of a striking-off order. A striking-off order is the only sanction that will adequately protect the public and address the public interest in this case.'

Here ends the provisional CPD agreement between the NMC and Miss Taylor. The provisional CPD agreement was signed by Miss Taylor on 14 June 2023 and the NMC on 16 June 2023.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that it could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Miss Taylor. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Miss Taylor admitted the facts of the charge. The panel accepted that the certificate of conviction produced by Bolton Crown Court as conclusive evidence of that conviction. Accordingly, the panel was satisfied that the charge is found proved.

Decision and reasons on impairment

The panel then went on to consider whether Miss Taylor's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Taylor, the

panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of the conviction the panel determined that Miss Taylor's fitness to practise is impaired on the ground of public protection and is also otherwise in the wider public interest.

In this respect, the panel endorsed paragraphs 13 to 15 of the provisional CPD agreement in respect of conviction.

Decision and reasons on sanction

Having found Miss Taylor's 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:

- Physical abuse against a vulnerable resident.
- Abuse of a position of trust.
- A prolonged incident.
- Elements of shifting blame onto the victim.
- A lack of remorse, remediation and insight.
- Barred from working with vulnerable adults and children in the future.
- Immediate custodial sentence of 10 months.
- A lack of engagement with the NMC their regulator (until only recently).

There are no mitigating features in this case.

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 Miss Taylor's 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 Miss Taylor's conviction 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 Miss Taylor's 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 in this case. The conviction identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Taylor's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel considered the guidance set out by SG detailing which factors make suspension orders appropriate. However, the panel determined that a substantive suspension would not be appropriate in this case as a result of Miss Taylor's conviction.

The panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in considering 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?*

Miss Taylor's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this case were serious and to allow her 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 of the material contained in the written agreement, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order.

Having regard to the matters it identified, in particular the effect of Miss Taylor's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of a striking off order would be sufficient in this case.

Decision and reasons on interim order

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 is in Miss Taylor's own interests. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interests. 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 agreed with the CPD 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 on public protection and wider public interest grounds.

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

That concludes this determination.