

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

**Substantive Hearing  
Thursday 1 June – Friday 2 June 2023**

Virtual Hearing

**Name of Registrant:** Olufunke Olato-losi Alade

**NMC PIN** 04E0063O

**Part(s) of the register:** RN1: Adult nurse, level 1 (4 May 2004)

**Relevant Location:** Belfast

**Type of case:** Conviction

**Panel members:** Shaun Donnellan (Chair, Lay member)  
Richard Curtin (Registrant member)  
Birju Kotecha (Lay member)

**Legal Assessor:** Ben Stephenson

**Hearings Coordinator:** Anya Sharma

**Nursing and Midwifery Council:** Represented by Laura Holgate, Case Presenter

**Mrs Alade:** Present and represented by Krystal Peters,  
(Community Trade Union)

**Facts proved:** All

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

**Interim order:** **Interim suspension order (18 months)**

## **Details of charge**

That you, a registered nurse:

- 1) Were convicted at Belfast Magistrates Court, on 12 August 2022, of the offence of unlawfully assaulting Patient A, contrary to section 42 of the Offences Against the Persons Act

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

## **NMC Opening**

You were convicted on 12 August 2022 of the offence of unlawfully assaulting patient A, contrary to Section 42 of the Offences Against the Person Act 1861, and that your fitness to practise is impaired by reason of your conviction.

You were referred to the Nursing and Midwifery Council (NMC) on 19 October 2021 by Direct Healthcare Limited, which is an agency. At the relevant time, you were employed as a staff nurse at Forster Green Hospital, which is part of the Belfast Health and Social Care Trust. On 15 October 2021, on the Child and Adolescent Psychiatric Intensive Care Unit or the ICU, you inappropriately restrained Patient A and also physically assaulted them.

Patient A pulled off your headscarf and refused to return it to you. You then left and returned to the PICU with another member of staff and requested that a colleague use management of actual or potential aggression (MAPA) techniques to allow you to retrieve the headscarf. However, that staff member refused to do this, stating that it would be an inappropriate use of MAPA. When you asked Patient A to return the headscarf, Patient A ran to her bedroom, and you followed her.

A colleague followed and is said to have observed you pinning down Patient A on her bed with her knee, holding Patient A's shoulder while you attempted to retrieve the headscarf.

The colleague asked you to leave the area and said that they would retrieve the headscarf when the situation settled. It is alleged that you declined to leave the PICU area and that a member of staff attempted to redirect and de-escalate the situation.

You struck Patient A across the face. Patient A is then said to have spat on you, and you then struck Patient A across the face again. Following this, you were escorted from the area and later asked to leave the premises.

Ms Holgate referred the panel to the certificate of conviction which is certified as a correct record by an Officer of the Court. The document confirms that on 12 August 2022, you pleaded guilty to the offence of unlawfully assaulting patient A. You were sentenced on 23 September 2022, where you received a community service order for 40 hours and a probation order for one year. You have completed the Community service order but remain on probation until 22 September 2023.

Ms Holgate informed the panel that Rule 31(2) of the NMC Fitness to Practise Rules 2004, states that when a registrant has been convicted of a criminal offence, a copy of the certificate of conviction certified by a competent officer of a court in the United Kingdom shall be conclusive proof of this conviction and the findings of fact upon which the conviction is based shall be admissible as proof of those facts. Ms Holgate submitted that therefore, it is the NMC's case that the facts of this matter are proven on the basis of your conviction.

### **Decision and reasons on facts**

The charge concerns your conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the charge is proved in accordance with Rule 31(2)(a). The panel noted that you accepted the fact of your conviction.

The panel heard that your version of events differed considerably from those in the Police MG5 form (which is used to provide a resume of each case). You maintained that you pleaded guilty to the charge based on a different set of facts, in that you were spat on by Patient A, the spittle landed on your hand, and you wiped this off on Patient A.

The Panel noted Ms Holgate's submissions and saw correspondence from the Directing Officer and Prosecution Counsel in the case confirming that the prosecution outline of the case would have been read into the court record. Both agreed that the case would have proceeded on the full facts and prosecution counsel confirmed no objections were made by the defence at the sentencing stage. There was no record of the guilty plea being accepted on an amended set of facts.

The Panel noted that there was a dispute of facts but determined that its role was not to undertake a new fact-finding exercise or go behind the conviction. In accordance with Rule 31(2)(b), and your admission to the charge, the Panel considered it proper to proceed on the basis of the facts in the MG5 Police outline, which were, in essence, that you slapped Patient A twice after the Patient had obtained your headscarf.

### **Fitness to practise**

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mrs Alade's fitness to practise is currently impaired by reason of Mrs Alade's conviction. 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.

## Submissions on impairment

Ms Holgate addressed the panel on the issue of impairment and reminded the panel 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) Grant* [2011] EWHC 927 (Admin).

Ms Holgate submitted that having found the charge proved, the next matter that the panel must consider is whether your fitness to practise is currently impaired by reason of that conviction.

Ms Holgate referred the panel to the case of *Grant* and referred it to the appropriate test given by Dame Janet Smith in her fifth Shipman report as referred to by Mrs Justice Cox in the case of *Grant*.

Ms Holgate set out that in regard to the three limbs of the test set out in *Grant* which are engaged, the NMC submits the following: With regards to the first limb, you have physically assaulted Patient A, causing her physical and quite likely emotional harm. Ms Holgate submitted that this previous harm or risk of harm has not been appropriately addressed and therefore it could not be said that any risk of future harm is remote. In relation to the second limb, Ms Holgate submitted that you have undoubtedly brought the profession into disrepute. She submitted that the panel may wish to consider how an informed member of the public would view this charge compared to what they expected the conduct of a registered nursing professional to be.

Ms Holgate submitted that your actions were a serious departure from the standards expected. She submitted that professionals occupy a position of privilege and trust in the society and are expected at all times to be professional. Patients and families must be able to trust registered professionals with their lives and the lives of their loved ones. Ms

Holgate submitted that nurses must make sure that their conduct at all times justifies the public's trust in their profession. Ms Holgate submitted that your behaviour in assaulting patient A, an extremely vulnerable patient, strikes at the very heart of that trust and confidence, and it is likely to have brought the nursing profession into serious disrepute.

Turning to the third limb, Ms Holgate submitted that NMC Guidance offers assistance in determining the fundamental tenets of the profession. These can be identified by looking at the main themes of the Code of Conduct at namely, prioritising people, practising effectively, preserving safety and promoting professionalism and trust.

Ms Holgate set out the standards of the NMC Code which you have breached on the basis of the charge being found proved.

Ms Holgate submitted that while not all breaches of the Code result in a finding of impairment, when the breach involves a breach of a fundamental tenet of the profession, a finding of impairment is required to mark the profound unacceptability of the behaviour and to reaffirm proper standards of behaviour.

Ms Holgate then addressed the panel in regard to insight, remediation and the risk of repetition. She submitted that the issue of current impairment is prospective, although it is appropriate to have regard to past actions when considering the question of future risk. Ms Holgate submitted that the panel are likely to be assisted by the questions posed in the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, namely, is the conduct easily remediable, had it in fact been remedied, and finally is it highly unlikely to be repeated in the future.

Ms Holgate submitted that assaulting the patient is a type of behaviour which cannot be easily remediated due to its extremely serious nature. Notwithstanding that this was an isolated event, it is the NMC's view that it is extremely serious, involving a young, vulnerable patient in your care and is directly related to your clinical practise, supported by a conviction.

Ms Holgate submitted that this conduct raises fundamental questions about your attitude and your suitability to be in the role of a nurse. She submitted that if the panel do find that this conduct is remediable, then the NMC would say that it has not been adequately remedied in this case.

Ms Holgate submitted that insight is an important concept when considering impairment. She submitted that you have very limited insight into the impact of your actions on the patient, the patient's family, your colleagues, and the wider nursing profession. It is the NMC's view therefore it cannot be said that you have fully remediated.

Ms Holgate submitted that what is striking about your written response to the NMC is that you seek to apportion the blame to the patient for your behaviour. You mention that the patient continued to be hostile and aggressive. Ms Holgate submitted that this does not address the concerns identified and that much more needs to be done to satisfy a panel that you have demonstrated sufficient remediation.

Dealing with the final question of whether the conduct is highly unlikely to be repeated, Ms Holgate submitted that it is the NMC's view that that the risk of repetition is high. She submitted that challenging, hostile, and antagonistic behaviour is often exhibited by those with mental health problems, and so it is not implausible to think that you may be placed in a similar situation again.

Ms Holgate submitted that the fact that you are disputing the facts upon which you were convicted demonstrates a lack of insight, and that you are not fully accepting of what you did. This increases the overall risk of repetition of the same type of offending behaviour if you were allowed to continue to practise as a nurse.

Ms Holgate submitted that the panel may consider that there are contextual elements of how, when and where the conduct leading to the conviction occurred, which have a

bearing on impairment. It is the NMC's submission that there are no contextual factors which could go even some way to explaining or excusing such behaviour.

The incident took place in a clinical setting where you were trained to expect antagonistic and very challenging behaviour from patients. Ms Holgate set out that Patient A was 17 years old and detained in a psychiatric unit, and so it is reasonable to assume that she was extremely vulnerable. And as such, you should have been exercising the utmost care and caution in your nursing practise. It is the NMC's view that you did the complete opposite.

Ms Holgate submitted that taking into account all the circumstances, your fitness to practise is impaired on the grounds of public protection. Ms Holgate also invited the panel to find your fitness to practise impaired on public interest grounds.

Ms Peters submitted that you accept that the fact of your conviction calls into question your ability to adhere to the NMC Code of Conduct. In particular, you understand that you had duties to treat patients with kindness, respect and compassion and making sure that you deliver the fundamentals of care, effectively respecting and upholding people's human rights, and acting without delay if you believe there is a risk to patient safety and to take measures to reduce as far as possible the likelihood of mistakes.

Ms Peters submitted that the panel are likely to find the questions outlined by Dame Janet Smith and the fifth Shipman report would assist in reaching its decision on impairment.

Ms Peters submitted that you accept that at the time the panel may well have found you impaired when you wiped the spit onto Patient A's face and that action would have likely brought the nursing profession into disrepute and impacted public confidence in the nursing profession. She submitted that the circumstances of this case are however important and that it may be that an informed member of the public would think otherwise.



Ms Peters submitted that you regret your actions towards Patient A. She submitted that the panel should consider current impairment.

Ms Peters submitted that with regards to current and future risk, the panel will likely find assistance in the three limbs referred to in the case of *Cohen*. Namely, is the conduct easily remediable? Has it in fact been remedied? And is it highly unlikely to be repeated? As to the risk of repetition, Ms Peters submitted that the panel will have to decide whether having heard the submissions today, it is likely that you would act in the same way in the future.

Ms Peters submitted that you accept that on the face of it, the conduct may not be easily remediable, but looking at the position presented in this case, the panel will have to consider the fact that you were in very difficult circumstances. You had been attacked by Patient A on more than one occasion. It was of most importance and concern to you the risk to Patient A and how she would use the scarf. The scarf was long, and it is your position that Patient A could have possibly used this as a ligature causing potentially fatal harm to herself.

Ms Peters submitted that there appears to be reasonable prospects of remediation. You have maintained your position throughout these proceedings. You have admitted when your practise fell below the standards expected of you, albeit there has been a dispute in what was accepted. The panel have evidence that you understood what you did was wrong, and a further explanation has been presented to the panel today of how you would act differently in the future.

Despite the registrant admitting to the charge, the panel have heard that you only admitted to wiping the spit on Patient A's face, and this was your reasonable understanding throughout the proceedings. And that position has not changed today. You have not sought to conceal your conduct, nor have you sought to change what you have accepted.

The panel have had sight of the registrant's reflective statement, which details your recollection of the incident. The panel have also heard that you wear a headscarf at all times due to your religion. Ms Peters submitted that the panel will see from your reflective statement and the bundle that after Patient A removed your headscarf, you did make attempts to recover it yourself and that was based on the risk to Patient A.

Ms Peters submitted that the NMC has not provided evidence that Patient A did not pose a risk to herself. There have been no evidence of care plans or patient records provided, so the panel should consider that this was a nurse familiar with the patient including the accompanying risks. You were doing your utmost to ensure that the patient didn't harm herself in anyway.

Ms Peters submitted that you do accept that when you wiped the spit on Patient A's face, you did so out of frustration. Ms Peters submitted that you understand that your actions did fall short of what was expected of you. You accept that you did not go about this issue in the way as you have done in the past, where you had previously found yourself in difficult situations being attacked by Patient A in the past, you had remained calm and professional. There has been no similar allegations raised in that regard and you have been practising for several years. You were in difficult circumstances, but your reaction was not out of malice. You have since attempted to change the way in which you respond in these circumstances and your conduct can be dealt with potentially by training and monitoring supervision, given that your past conduct is not indicative of a future attitude.

Ms Peters submitted that in support of that, you have undertaken several training courses, which include anger management and conflict resolution. You have undertaken this training to look at the problems that existed on the night of the incident. Your frustration and the conflict that you were having with the patient. You have also undertaken further MAPA training to address any other concerns that were raised, and other training to ensure that you keep up to speed with your nursing skills. You have provided the panel with the training certificates in support of that.

Ms Peters submitted that unfortunately, you have not worked since October 2021. At the time, you were not aware that you would be able to work as a healthcare assistant. Hence there was some delay, and when you did find out that you were able to at least work as a healthcare assistant, you found it difficult to secure any employment despite numerous applications.

Ms Peters submitted that the panel may consider that you have shown insight and that you do not have a background of similar concerns, and there is no repeat of the behaviour that allows a panel to draw the conclusion that conduct is likely to be repeated in the future. Ms Peters submitted that considering your current fitness to practise, a further period of safe practise where you can encounter these situations would show that you have fully remediated and the fact that you understand these difficulties.

Ms Peters submitted that you are a nurse who has accepted wrongdoing, has accepted responsibility and accountability, and the panel can consider that you will change your practise in the future.

You understand that as a nurse, you may well be in a clinical setting where you are going to face the same or similar circumstances again in the future, and in the future you would ensure that you remove yourself from the circumstances, remove yourself from the patient and requests assistance and raise any concerns to safety if those exist.

You have gone further to consider that if a patient still does not cooperate with other members of staff, you would allow a patient to settle and make further attempts to deescalate to ensure that these matters don't happen again, to ensure that a patient feels safe in your care and to ensure that there would be no frustration on her behalf.

Ms Peters submitted that for all the reasons stipulated, while your actions were serious at the time, given the time that has passed and the steps that you have taken to change, the panel can be confident that you are no longer impaired, and you would still fulfil your

responsibility to protect the public, maintain public confidence in the profession and the NMC, and to uphold proper professional standards.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*\_(No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the conviction, Mrs Alade's fitness to practise is currently impaired.

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

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

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

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

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

- 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 found that the patient was caused physical and emotional harm by you. The panel was of the view that your conduct had clearly breached the fundamental tenets of the nursing profession and also brought its reputation into disrepute. The panel accepted the submissions of the NMC and agreed the conduct amounted to serious breaches of the NMC Code of Conduct, particularly:

*1 Treat people as individuals and uphold their dignity*

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

*1.5 respect and uphold people's human rights*

*4 Act in the best interests of people at all times*

*To achieve this, you must:*

*4.3 keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process*

*14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place*

*To achieve this, you must:*

*14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm*

*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*

*20.4 keep to the laws of the country in which you are practising*

*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*

The panel considered that the concerns are very serious and are difficult to remediate. The panel recognised that you have co-operated with the regulatory process and have expressed regret, stating in your reflective statement that you were *'utterly ashamed of [your] conduct.'* You have highlighted that you understood various obligations under the NMC Code of Conduct, that you would have acted differently and that you would never repeat such conduct again.

The panel considered the wider context and that you were facing very challenging behaviours including the removal of a headscarf which you wore on the basis of your religious beliefs. However, this did not detract from the seriousness of the assault and the importance of respecting the bodily integrity of vulnerable patients. Those working in a mental health environment are trained to expect such signs of aggression or resistance and, at a minimum, expected to safely manage patients without recourse to assault.

Further, the Panel found that your degree of insight is limited because it did not extend to the nature and consequences of the facts underlying the conviction. Your reflective statement largely contained a denial of the slaps taking place, or merely offered detail about the wider circumstances surrounding your relationship and interaction with Patient A, as well as the lack of support offered by your colleagues.

The panel considered the references in your reflective statement about the impact of your conduct on Patient A as well as your colleagues and the standing of the nursing profession to be brief and cursory.

The panel noted the remarks of a probation officer who stated that you were *'engaging well with the Victim Awareness intervention evidencing her knowledge of the impact of her offence and empathy with the victim'*.

The panel had sight of eleven testimonials, it was noted however they were of limited reliance, some being historic in nature, some about your general character and faith and only one that spoke to your ability to manage and de-escalate aggressive situations.

The panel also had sight of a range of training certificates, but a number of these were not relevant to the regulatory concern. For instance, some of the certificates attested to clinical practice, management, and wider health and safety practice. Other training certificates were more relevant e.g., on anger management and conflict resolution.

Taking everything into account, the panel considered that the degree of insight and remediation to be insufficient especially in light of the seriousness of the conduct. Accordingly, the panel considered a risk of repetition remained and it found impairment on the basis of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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, in this case, a finding of impairment on public interest grounds was also required. It considered that an informed member of the public knowing the full context and circumstances of this case would be shocked if you were to continue to practise without restriction.

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 that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel accepted the advice of the legal assessor.



## **Submissions on sanction**

Ms Holgate stated that whilst sanction is a matter for the panel's independent professional judgement, it is the NMC's submission that the appropriate and proportionate sanction in this case is that of a striking off order. Ms Holgate referred the panel to the NMC SG in Serious Cases for it to consider when reaching its decision.

Ms Holgate set out the aggravating features of the case. She submitted that it is the NMC's view that there are no mitigating factors in this case which could lessen the overall seriousness of the offence in question.

Ms Holgate submitted that the panel would consider whether this matter could be dealt with by way of taking no further action, but it is the NMC's view that this case is too serious to be addressed by this option. It is the NMC's main concern that if no action were to be taken, there would be a lack of protection afforded to patients and would send the wrong message to both the public and fellow registered professionals.

Ms Holgate submitted that these are very serious matters requiring a robust sanction.

In considering whether a caution order would be appropriate, Ms Holgate submitted that the panel would have to evaluate any insight shown by you. Ms Holgate submitted that there is no evidence of developed insight in this case. She further submitted that the conduct found proved is too serious to be dealt with by a caution order.

In regard to a conditions of practice order, Ms Holgate directed the panel to the NMC SG, in particular a list of examples where conditions of practice may be appropriate.

The first factor listed says that conditions may be appropriate where there is no evidence of harmful deep-seated personality or attitudinal problems. Ms Holgate submitted that your behaviour is clearly indicative of attitudinal issues. The second factor listed states that conditions may be appropriate where there are identifiable areas of the nurse's practise in need of assessment and or retraining.

Ms Holgate submitted that the panel are aware that there are no clinical concerns with regard to your nursing practise. It is therefore the NMC's view that there are no conditions that could be formulated to adequately address and mitigate the risks identified whilst protecting the public and upholding professional standards. The conduct identified in this case is not something that can be addressed through retraining and placing conditions on your practise will not adequately address the seriousness of this case.

Ms Holgate submitted that the NMC SG suggests that a suspension order may be appropriate where there are no underlying attitudinal concerns, the registrant has insight and does not pose a significant risk of repeating the behaviour.

Ms Holgate submitted that the conduct which resulted in the conviction is indicative of a deep-seated attitudinal concern for the reasons outlined when the panel were addressed in regard to a conditions of practice order. She submitted that it is the NMC's view that you have incomplete insight into the wider implications of your actions, particularly on Patient A's family and the wider nursing profession, and that your insight does not extend to the nature and consequence of the facts underlying the conviction.

Ms Holgate submitted that the panel cannot be satisfied that you have sufficient insight so as not to pose a risk of repeating this behaviour in future if faced with a similar situation. It is for these reasons that a suspension order is not appropriate.

Ms Holgate submitted a striking off order is the only appropriate sanction in this case. She submitted that the panel should consider if your conduct was a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with remaining on the register.

Ms Holgate submitted that the findings in this particular case demonstrate that your actions are serious and cannot be tolerated. To allow you to continue practising would undermine public confidence in the profession and the NMC as regulatory body. Ms Holgate submitted that nothing short of a striking off order would be sufficient in this case.

Ms Peters referred the panel to the NMC SG and submitted that when considering sanction, the panel should work through the available sanctions in ascending order of severity until it finds the sanction that is considered sufficient.

Ms Peters referred the panel to the mitigating features in this case. She submitted that this may include your previous unblemished career. You have no history of any previous concerns raised against you particularly of this nature. There has been no evidence of repetition since the incident.

Ms Peters informed the panel that at the time of the incident, you were a registered general nurse. You were not a registered mental health nurse, and you assisted on the ward due to short staffing issues at the request of your agency. A mental health nurse would have had more advanced training than you. You had been attacked by Patient A at least five times before and hospitalised on at least two incidents. Ms Peters submitted that there is evidence of similar concerns, and this was an isolated incident, so this is not indicative of future conduct. At the time of the incident, you had asked for assistance, but your colleagues did not provide any.

Ms Peters submitted that you have admitted your conduct, although there was some dispute. You have always tried to ensure that you have been as open as you could be. You have apologised for your conduct and have shown genuine remorse.

You have undertaken independent training, including MAPA training, anger management and conflict resolution training in order to target the areas of concern and put your conduct right. You are committed to obtaining further training and counselling where necessary to target any issues around your attitude.

You have tried to demonstrate the principles of good practice by keeping up to date with your nursing skills not only supported by the training documents, but the nursing journals that you have reviewed.

Ms Peters submitted that the panel have found limited insight into misconduct, albeit it was not sufficient. You have cooperated with the NMC proceedings and criminal proceedings, and following your conviction, you have been engaging well with the Victim Awareness intervention evidencing your knowledge of the impact of your offence and empathy for the victim. You have completed your community service and there has been no repetition.

The panel have also had sight of character references. You were in general thought to be empathetic and a gentle nurse. You are described as hard working, diligent, reliable, compassionate, and readily available.

You accept that you have not been able to secure further employment, and this has caused you a lot of financial hardship. You understand that putting patients or members of the public at a real risk of suffering and harm is serious, but the panel should also consider the extent of mitigation in this case.

Ms Peters submitted that you accept that no further action or a caution order may not be appropriate in the circumstances. If the panel are of the view that this is not appropriate, it should then consider a conditions of practice order. Prior to this hearing, you were subject to an interim conditions of practice order, and the panel at the time were fully informed of the court proceedings and subsequent conviction and considered an interim conditions of practice order to be workable, measure and proportionate. Ms Peters provided the panel with examples of appropriate conditions which could be put in place.

Ms Peters informed the panel that you are aware that your probation does not conclude until September 2023, and given the severity of your conduct, the panel may decide that a conditions of practice order may not be appropriate.

Ms Peters submitted that the panel may wish to consider the imposition of a suspension order. Any conviction of common assault is serious, and you accept and understand this. However, this was a single incident of serious professional misconduct and came after a long and unblemished career.

Ms Peters informed the panel that while the criminal courts may seek to punish offenders, the NMC Guidance stipulates that the purpose of the Fitness to Practise Committee is to achieve the overarching objective of public protection. While the sentence passed by the Criminal Court might not determine the panel's judgement, the panel should make its own decision and consider the mitigation in this case.

While the panel may not feel that you have shown sufficient insight, it is submitted that perhaps a period of medium to long suspension would allow you to properly reflect upon the conduct, particularly around the importance of respecting the bodily integrity of vulnerable patients, as highlighted in the panel's determination on impairment.

Ms Peters submitted that this was an isolated incident in an otherwise unblemished career spanning 42 years. She submitted that this is not conduct which is incompatible with continued registration. Ms Peters informed the panel that you are now near the end of your nursing career and that you are due for retirement.

Ms Peters submitted that the conviction itself does not mean that a committee has no choice but to remove the nurse from the register permanently. She submitted that considering some degree of insight, it is recognised by you that it was limited and not sufficient. You are ashamed and very remorseful of your conduct. You were in difficult circumstances at the time of the incident, and in light of your otherwise unblemished career, a striking off order would be disproportionate in the circumstances.

You seek to convey the circumstances that you have found yourself in, but in no way attempt to deflect responsibility for your conduct. You recognise that as a nurse, she should know that you are likely to encounter signs of aggression, particularly working in a mental health setting. You are committed to further retraining to safely manage patients in these circumstances. Ms Peters submitted that the appropriate sanction at the most would be a period of suspension for a medium to long duration in these circumstances, to mark the severity and considering the mitigation in terms of your reflection, your understanding and your remorse.

## 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 NMC 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:

- Serious assault involving an extremely vulnerable 17-year-old patient detained in a psychiatric unit
- You had experience and could expect high levels of disruption and challenging behaviour from patients
- Abuse of a position of trust between the nurse and patient relationship
- Lack of insight into failings and into the impact of your behaviour on the patient, the patient's family and the wider nursing profession.
- Patient A was caused real harm as a result of your actions

The panel were unable to identify any mitigating features based on the information put before it.

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 conduct 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 and put in place successfully, given the nature of the conduct in this case. The panel took into account the attitudinal concerns which have been identified in this case in relation to your behaviour towards Patient A. It was of the view that your conduct identified in this case was not something that can be addressed through retraining because the conduct was not related to clinical skills or practice.

The panel was informed that a panel of the Investigating Committee had placed an interim conditions of practice order on your nursing practice prior to this hearing. You have not practised as a nurse since the incident some 18 months ago. There is no evidence before the panel that you have strengthened your practise or have demonstrated that you would not repeat the conduct again. Furthermore, the panel took into account that you continue to be subject to probation until 22 September 2023. The panel considered the principle in the case of *CRHP V GDC and Fleishman [2005] EWHC 87* that a registrant currently subject to a sentence of the Criminal Court should not return to practice before the sentence had been completed.

The panel concluded that there is no information before it to support that the placing of conditions on your case would protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

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

The panel was of the view that whilst this was a single instance of misconduct, this incident was of a serious nature against a vulnerable minor. The panel carefully considered whether your actions were indicative of a harmful deep-seated personality or attitudinal problem and concluded that your behaviour exhibited harmful attitudinal traits as colleagues present tried to stop you from engaging with Patient A and you failed to heed the advice of your colleagues to stand down.

The panel noted there was no evidence of repetition of similar behaviour but gave this little weight given that you have not been in employment since the incident. The panel considered that there was a risk of repetition not least that it found the degree and quality of your insight to be limited.

The panel was of the view that the conduct, as highlighted by the facts found proved in this case, 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 nursing profession is fundamentally incompatible with you remaining on the register.



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 were of the view that the public are entitled to expect nurses to refrain from assaulting any patient, let alone vulnerable minors, and otherwise respect the bodily integrity of those in their care. The public expect nursing professionals to exercise care, control and restraint in the management of all patients including those displaying highly challenging behaviours.

The panel was of the view that the findings in this particular case demonstrate that your actions were so serious that 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 herself, 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.

### **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 Ms Holgate. She submitted that the given the panel's decision of strike-off, an 18-month interim suspension order would be appropriate to cover the 28-day appeal period and would be necessary for the protection of the public and is otherwise in the public interest.

The panel also took into account the submissions of Ms Peters. She submitted that in light of the findings of the panel today, it may wish to consider that you were previously subject to an interim conditions of practice order which included workable, appropriate and proportionate conditions.

### **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 to cover the 28-day appeal period.

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.

This will be confirmed to you in writing.