Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing
Wednesday 28 June 2023

Virtual Hearing

Name of Registrant:	Steven Boyd
NMC PIN	96J0650E
Part(s) of the register:	Registered Nurse – Sub-part 1 Mental Health Nursing – 9 November 1999
Relevant Location:	Cambridgeshire
Type of case:	Misconduct
Panel members:	Denford Chifamba (Chair, Registrant member) Anne Witherow (Registrant member) Jane McLeod (Lay member)
Legal Assessor:	Peter Jennings
Hearings Coordinator:	Zahra Khan
Nursing and Midwifery Council:	Represented by Leesha Whawell, Case Presenter
Mr Boyd:	Not present and not represented at the hearing
Consensual Panel Determination:	Accepted
Facts proved by admission:	Charge 1
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that that the Notice of Hearing had been sent to Mr Boyd's registered email address by secure email on 27 April 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and the fact that this hearing was to be conducted virtually.

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

Decision and reasons on proceeding in the absence of Mr Boyd

The panel next considered whether it should proceed in the absence of Mr Boyd. It had regard to Rule 21 and heard the submissions of Ms Whawell, on behalf of the Nursing and Midwifery Council (NMC) who invited the panel to continue in the absence of Mr Boyd.

Ms Whawell informed the panel that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Mr Boyd on 26 June 2023.

Ms Whawell stated that Mr Boyd is aware of the hearing and is content for it to proceed in his absence. She submitted that Mr Boyd has voluntarily absented himself.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "with

the utmost care and caution" as referred to in the case of *R.* v *Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Boyd. In reaching this decision, the panel has considered the submissions of Ms Whawell and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and has had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mr Boyd has engaged with the NMC and has signed a provisional CPD agreement which is before the panel today and which specifically states that Mr Boyd is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Boyd.

Details of charge

That you, a registered nurse:

1) Behaved in an aggressive and/or inappropriate manner towards patients and/or colleagues in that you;

a) On 13 October 2017, when Patient A tied a ligature around their neck;

i) Said to Patient A "it is fine you will just pass out and lose grip" or words to that effect.

ii) Said to Patient A “you want to die but you want to go home, that does not make sense, may be you need to rethink your options” or words to that effect.
iii) Failed to escalate promptly or at all the incident to a paramedic or on duty doctor.

b) On or before 17 January 2018 on one or more occasions spoke to Patient B in a sarcastic manner.

c) On 5 October 2018 forcefully pushed one or more books towards Colleague A hitting them on the arm.

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

Consensual Panel Determination

At the outset of this hearing, the panel was made aware that a provisional agreement of a CPD had been reached with regard to this case between the NMC and Mr Boyd.

The agreement, which was put before the panel, sets out Mr Boyd’s full admissions to the facts alleged in the charges and that his fitness to practise is currently impaired by reason of that misconduct. 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 Mr Steven Boyd PIN 96J0650E (Mr Boyd) agree as follows:

1. *Mr Boyd is aware of the CPD hearing. Mr Boyd does not intend on attending the hearing and is content for it to proceed in his absence. Mr Boyd will endeavour to be available by telephone should clarification on any point be required, or should the panel wish to make other amendments to the provisional agreement that are not agreed by Mr Boyd.*

2. *Mr Boyd understands that if the panel wishes to make amendments to the provisional agreement that he doesn't agree with, the panel will reject the CPD and a further substantive hearing will be scheduled.*

The charge

3. *Mr Boyd admits the following charges:*

   'That you, a registered nurse:

   1) Behaved in an aggressive and/or inappropriate manner towards patients and/or colleagues in that you;

   a) On 13 October 2017, when Patient A tied a ligature around their neck;

   i) Said to Patient A "it is fine you will just pass out and lose grip" or words to that effect.

   ii) Said to Patient A "you want to die but you want to go home, that does not make sense, may be you need to rethink your options" or words to that effect.

   iii) Failed to escalate promptly or at all the incident to a paramedic or on duty doctor.

   b) On or before 17 January 2018 on one or more occasions spoke to Patient B in a sarcastic manner.

   c) On 5 October 2018 forcefully pushed one or more books towards Colleague A hitting them on the arm.

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

The facts

1. *Mr Boyd appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse specialising in mental health and has been on the NMC register since 9 November 1999.*

2. *On 7 October 2016, the NMC received a referral from Norfolk and Suffolk NHS Foundation Trust (the Trust) about Mr Boyd's fitness to practise. Further details about this referral are contained within the Impairment and Sanction section of the provisional CPD agreement. Mr Boyd also completed a self-referral form for the NMC, dated 13 October 2016.*

3. *Between 26 January and 22 February 2017, while under the investigation by the NMC in relation to the above referral, Mr Boyd gained employment as Band 5 Nurse with Cambian Willows Hospital ("the Hospital"), of the Cambian Group which was an acute unit for young people in crisis some of whom were sectioned under the Mental Health Act. On 7 March 2019, the NMC received a further referral about Mr Boyd's fitness to practise from the Hospital. The Hospital raised concerns about Mr Boyd behaving in an aggressive and/or inappropriate manner towards patients and/or colleagues.*

4. *Mr Boyd accepted the regulatory concerns in his returned NMC Regulatory Concern Response Forms, dated 9 January and 9 August 2020.*

5. *In the Case Management Form dated 10 July 2022 (received on 10 August 2022) Mr Boyd accepts the facts alleged in the charges.*

The facts relating to Charge 1 a)

6. *On 13 October 2017, the Hospital received a complaint from Patient A. Patient A stated that on 13 October 2017 they had placed a ligature around their neck and when Mr Boyd tried to remove it they pushed him away. Mr Boyd said to them 'it is fine, you will just pass out and lose grip'.*

7. *Whilst carrying out observations on Patient A, Mr Boyd said to them 'you want to die but you want to go home, that does not make sense, maybe you need to rethink your options'. Patient A was upset and threatened to kill themself.*

8. *Mr Boyd failed to escalate the patient tying a ligature around their neck to a paramedic or duty doctor. Mr Boyd stated at local interview that he regretted not calling the doctor at the time and that on reflection he should have called a paramedic but that he was in shock.*

9. *Mr Boyd further states "I see my error and when I discovered that the young person may have been unconscious, I should have reported this to the doctor immediately when I learn of the reported unconsciousness, by not doing so I may have placed this young person in danger, although with regards to contacting the on call doctor when a physical health issue was raised the response was always, 'contact 111' and at that time if she was to leave the hospital I would have been concerned for her safety. I feel at the time my instinct restricted me from doing so, the staffing was two or three people short already with two members of staff already off the ward on escort and three other clients being on 1-1 observations. The hospital is isolated and at that time of night I saw no way of increasing staff levels. This young person was informal acutely psychotic and suicidal and within the first day of admission and not only that but a county level sprinter. I feel the extent of the risk of suicide and psychotic illness was missed by the medical team in their initial assessment of the client earlier that day, observations also showed the client was not demonstrating risk of physical problems. We physically did not have the staff to formally increase the level of observations and at the time felt that stepping outside policy and ensuring everybody in the unit was safe until morning was instinctually the only option. As well as documenting the event thoroughly I reported the situation to the senior nurse first*

thing in the morning and discussed this at length in supervision with the hospital manager. At the time, I acted with the intension of maintaining the safety of all the young people in my care, Ordinarily I would have escalated this situation and have done throughout my career but due to the unsupported nature of this private hospital and the growing lack of faith I had towards the professionalism and understanding of the medical team especially over telephone conversations, due to my experience of having several complaints against me investigated by the NMC by Colleague A. I took this risk to keep all under my care safe. In the morning it was noted that she had burst blood vessels in her eyes and was taken to A&E with a safe amount of staff, no further treatment was required. Following discussion with Emma Jay the hospital manager, after the event, she asked why I did not call a Paramedic. In July 2017 following finding an apparently unconscious young person in her bed space, I called a Paramedic, only to find she was faking symptoms. Following this I was ridiculed by both senior and junior staff for costing Cambian money and my lack of ability of the assessment of physical health I have since attended a course in December 2017 on Immediate Life Support and brought back what I had learnt to the Hospital."

The facts relating to Charge 1 b)

10. *On 17 January 2018, a complaint was made by the family of Patient B that Mr Boyd would speak to Patient B in a sarcastic manner and without respect. On the same date, Patient B raised that they did not like Mr Boyd because of the way he spoke to them, they said that the way he spoke to them was not in a nice way and they felt he was sarcastic when they asked for PRN medication.*

11. *Mr Boyd accepted during a supervision meeting on 26 January 2018, that he needed to work on his communication skills with young people but at the same time felt targeted because he will not give PRN before trying another alternative methods.*

The facts relating to Charge 1 c)

12. *On 5 October 2018, Mr Boyd was within the meeting room with Colleague A and MJ. During the meeting Mr Boyd forcefully pushed either 1 or 2 large books, possibly*

BNF, across the table towards Colleague A. Colleague A's arm was resting on the table and one of the books hit her on the arm. No injury was caused to Colleague A however it hurt her and she felt that Mr Boyd's actions were disrespectful and done in anger.

13. *Mr Boyd in the Regulatory Concerns Response form dated 9 August 2020 told the NMC that "following an awkward silence [he] got up and went to leave the meeting collecting medicine cards, diaries handover book and the BNF's [he] brought down for the doctors, [he] stood up and went to leave and as [he] was in motion realised that [he] still was carrying the BNF's [he] turned and threw them onto the table near the doctor and continued to exit the meeting at this point the top book slid off the pile of two and hit [Colleague A] on the arm. My intension was to act in speed and by doing so the book touched her arm."*

14. *In the same Regulatory Concerns Response form Mr Boyd further states:*

    "I recognise that carelessly tossing the two BNF's on the table as I was exiting a meeting feeling my emotions were unstable, due to hearing that another young person would be detained for a further two months under the mental health act even though the young person was agreeing to the treatment plan was abuse of the act. My intension was not to hit the doctor with the books and I regret allowing my emotions to cloud my judgement at the time, my intension was to draw attention to the books, which had recently been delivered and that I had brought copies up for the medical team. I did apologise at the time and had no idea towards the pain I had caused the doctor, in hindsight I should have placed them on the table instead of carelessly tossing them."

15. *Since Mr Boyd's dismissal from the Hospital on 5 February 2019 he has not practised nursing.*

Misconduct

16. *Mr Boyd admits that the conduct as particularised in the admitted charges amounts to misconduct.*

17. *The comments of **Lord Clyde in Roylance v General Medical Council [1999] UKPC 16** may provide some assistance when considering what could amount to misconduct:*

    "[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances."

18. *Further assistance may be found in the comments of **Jackson J in Calhaem v GMC [2007] EWHC 2606 (Admin)** and **Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin)**:*

    "[Misconduct] connotes a serious breach which indicates that the [nurse's] fitness to practise is impaired"

    and

    "The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners".

19. *The Parties agree that Mr Boyd's misconduct is serious and falls far short of what is expected of a registered nurse. Failing to treat to Patients A and B with dignity and compassion, and failure to escalate that Patient A had placed a ligature around their neck to a paramedic or duty doctor are particularly serious. Patients A and B were vulnerable and mentally unwell. This presents risk of harm to patients and undermines public trust and confidence in the profession.*

20. *The Parties further agree that Mr Boyd's failure to escalate Patient A promptly to a paramedic or duty doctor on 13 October 2017 after Patient A tied a ligature around*

their neck posed a risk of death to Patient A and a further deterioration in their mental health.

21. *The Parties also agree that Mr Boyd's aggressive behaviour of forcefully pushing books towards Colleague A hitting them on the arm amounts to a serious misconduct. This incident was Mr Boyd's reaction following his disagreement of proposed care plan for a patient. This inappropriate behaviour also undermines public trust and confidence in the nursing profession.*

22. *The Parties further agree that Mr Boyd's aggressive behaviour towards Colleague A which upset them could affect the dynamic of the clinical team which could potentially lead to risk of harm to patients.*

23. *The misconduct is a serious departure from expected standards and risks causing harm to the public and bringing the nursing profession into disrepute. Nurses occupy a position of privilege and trust in society and are expected at all times to be professional.*

24. *At the relevant time, Mr. Boyd was subject to the provisions of* ***The Code: Professional standards of practice and behaviour for nurses and midwives (2015)*** *(the Code). The Parties agree that the following provisions of the Code have been breached in this case:*

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion
1.2 make sure you deliver the fundamentals of care effectively
1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:
2.6 recognise when people are anxious or in distress and respond compassionately and politely

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.1 pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages
3.3 act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it
3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care

4 Act in the best interests of people at all times

8 Work co-operatively

To achieve this, you must:

8.6 share information to identify and reduce risk

15 Always offer help if an emergency arises in your practice setting or anywhere else

To achieve this, you must:

15.2 arrange, wherever possible, for emergency care to be accessed and provided promptly

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices
16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

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
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers
20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

24 Respond to any complaints made against you professionally

To achieve this, you must:

24.2 use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice

25 Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system

To achieve this, you must:

25.1 identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first

25. *Mr Boyd's behaviour towards Patients A and B and Colleague A was concerning. He made inappropriate and/or sarcastic comments to vulnerable mental health patients potentially causing these patients psychological harm. Mr Boyd put Patient A at risk of harm by failing to escalate the patient to the duty doctor or paramedics when the patient was in crisis having tied a ligature around their neck. In addition,*

Mr Boyd's aggressive behaviour towards Colleague A by pushing one or more books towards Colleague A hitting them on the arm put Colleague A at risk of both physical and psychological harm. Such behaviour towards colleagues has an adverse effect on dynamic of the clinical team which in turn has a risk of deterioration of quality of patient care.

26. *In addition, Mr Boyd was subject to NMC investigation into similar misconduct in the past. This raises the seriousness of Mr Boyd's misconduct.*

27. *It is acknowledged that not every breach of the Code will result in a finding of misconduct. However, Mr Boyd accepts that the failings set out above are a serious departure from the professional standards and behaviour expected of a registered nurse. Mr Boyd acknowledges that his conduct presented a risk of harm to Patients A and B and Colleague A.*

Impairment

28. *The Parties agree that Mr Boyd's fitness to practise is currently impaired by reason of his misconduct.*

29. *Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. It is therefore imperative that nurses make sure that their conduct at all times justifies both their patients' and the public's trust in them and in their profession.*

30. *The NMC's guidance (DMA-1) explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The guidance invites the panel to ask, can the nurse, midwife or nursing associate practise kindly, safely and professionally? This involves a consideration of both the nature of the concern and the public interest.*

31. *In addressing impairment, the Parties have considered the factors* ***outlined by Dame Janet Smith in the Fifth Shipman Report and approved by Cox J in the case of CHRE v Grant & NMC [2011] EWHC 927 (Admin)*** *("Grant"). A summary is set out in the case at paragraph 76 in the following terms:*

"Do our findings of fact in respect of the [nurse's] misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his / her fitness to practise is impaired in the sense that she / 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 [nursing] 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 [nursing] profession; and / or*
d. *has in the past acted dishonestly and / or is liable to act dishonestly in the future."*

32. *The panel should also consider the comments of Cox J in Grant at paragraph 101:*

"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."

33. *The Parties agree that a., b. and c. in the above case, are engaged. Dealing with each limb in turn:*

Public Protection

"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"

34. *In accordance with **Article 3(4) of the Nursing and Midwifery Order 2001** (the Order) the overarching objective of the NMC is the protection of the public.*

35. *The Order states:*

> *The pursuit by the Council of its overarching 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.*

36. *The case of Grant makes it clear that the public protection must be considered paramount and Cox J stated at para 71:*

> *"It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations … namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession".*

37. *Mr Boyd's actions placed patients at unwarranted risk of harm when he made inappropriate sarcastic comments to vulnerable young mental health Patients A and B. This behaviour put both patients at the risk of emotional harm. Mr Boyd's failure*

to escalate to the duty doctor or paramedic a fragile patient, Patient A, who had ligatured themselves around their neck also put Patient A at the risk of physical harm. Further, Mr Boyd's aggressive behaviour towards Colleague A resulted in the colleague suffering psychological and potentially physical harm. This presents a pattern of misconduct which puts patients and colleagues at unwarranted risk of harm in a health care setting.

38. *Further, Mr Boyd was being investigated following the previous NMC referral raising similar concerns having potential to cause unwarranted risk of harm. The similar concerns included using an inappropriate de-escalation technique with patients in that he invited patients to vote as to whether they wished one patient to assault another patient, on various dates displaying inappropriate and/or aggressive attitude towards patients and colleagues which included shouting and swearing at a colleague and stating to a patient "Are you dead". In relation to that referral the panel of the Fitness to Practise Committee found that Mr Boyd's fitness to practise was impaired by reason of his misconduct.*

39. *In the Regulatory Concerns Response form dated 9 August 2020 Mr Boyd has reflected: "I gave no thought to the anxiety that they [the patients] may have been experiencing at the time… I see my error and when I discovered that the young person [Patient A] may have been unconscious, I should have reported this to the doctor immediately when I learnt of the reported unconsciousness, by not doing so I may have placed this young person in danger". Mr Boyd's actions had the potential to cause both physical harm and emotional distress to Patient A.*

40. *As stated above Mr Boyd's speaking to Patient B in a sarcastic manner on one or more occasions placed this very vulnerable mental health patient at unwanted risk of emotional harm. This could also result in Patient B not engaging with the necessary clinical treatment due to their lack of trust in Mr Boyd, and his colleagues, as health care professionals.*

41. *Furthermore, when Mr Boyd forcefully pushed the book/s towards Colleague A he caused physical harm to her. This incident also placed the patients at unwarranted risk of harm due to the potential of such behaviour to cause disruption of cohesion of the clinical team by Mr Boyd's aggressive behaviour towards another member of staff.*

42. *Mr Boyd admits in his most recent response to charges: "I recognise that at the time of the raised concerns, I was not functioning as a professional and lacked insight towards this."*

Public Interest

"Has in the past brought and/or is liable in the future to bring the medical profession into disrepute"

43. *Registered professionals occupy a position of trust in society to be responsible for the care of residents or patients. This directly constitutes a breach of the trust placed in Mr Boyd as a registered professional.*

44. *The Parties agree that such behaviour not only brought Mr Boyd's reputation into disrepute, but also that of the wider profession. This in turn undermined the public's confidence in the profession as a whole.*

    "Has in the past breached and / or is liable in the future to breach one of the fundamental tenets of the medical profession"

45. *The Code divides its guidance for nurses in to four categories which can be considered as representative of the fundamental principles of nursing care. These are:*

    a) *Prioritise people;*

    b) *Practise effectively;*

    c) *Preserve safety and*

d) Promote professionalism and trust

46. The Parties have set out above, how, by identifying the relevant sections of the Code, Mr Boyd has breached fundamental tenets of the profession. These sections of the Code define, in particular, prioritising people, practising effectively and preserving safety and the responsibility to promote professionalism and trust.

Remediation, reflection, training, insight, remorse

47. NMC guidance adopts the approach of ***Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)*** *by asking the questions :*

- *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.*

48. The Parties have also considered the NMC's guidance FTP-13 entitled ***"Insight and strengthened practice"*** *which states: "Evidence of the nurse, midwife or nursing associate's insight and any steps they have taken to strengthen their practise will usually be central to deciding whether their fitness to practise is currently impaired".*

*49. The NMC's Guidance FTP-3b entitled "***Serious concerns which could result in harm to patients if not put right***" states:*

"We will need to assess how likely the nurse, midwife or nursing associate is to repeat similar conduct or failings in the future, and if they do, if it is likely that patients would come to harm, and in what way…

We wouldn't usually need to take regulatory action for isolated incidents of these failings unless the incident suggests that there may be an attitudinal issue such as displaying discriminatory views and behaviours. This may indicate a deep-seated problem even if there is only one reported incident. A pattern of incidents is usually more likely to show risk to patients or service users, requiring us to act."

50. Even though Mr Boyd has shown some insight there is a pattern of behaviour and repetition of similar behaviour in both the present case and the previous referral. The incidents are not isolated and the repeated and similar nature of the misconduct demonstrates an attitudinal issue and indicates the presences of a harmful deep-seated personality problem. These attitudinal concerns are considered more difficult to put right.

51. The Parties agree that while the conduct in relation to the clinical error of failing to escalate is remediable, the other misconduct relating to aggressive and inappropriate behaviour towards patients and colleagues is more difficult to remediate.

52. Further, Parties agree that the Panel should have regard to the previous findings in relation to Mr Boyd's fitness to practise, which is relevant to current impairment and risk of repetition. Mr Boyd was made subject to a Conditions of Practice Order by a Panel on 1 March 2019 in relation to the referral received by the NMC on 7 October 2016 for a period of 12 months. His order was reviewed on 22 February 2020 when the order was extended for a further 12 months and again on 22 February 2021 when the COPO was again extended for a further 12 months. The order was reviewed on 21 February 2022 where the order was replaced with a suspension order for a period of six months.

53. At the most recent review of this suspension order on 23 August 2022 the Panel found Mr Boyd to be currently impaired and extended the suspension order for 12 months for following reasons:

"At this hearing the panel noted that you have begun to reengage with this regulatory process and in doing so you have demonstrated some limited insight. The panel noted that you have recognised some of your failings, and when questioned during the course of this hearing about the incidents in relation the charges you were able to reflect on the impact it had on your colleagues and patients at the time. The panel considered your reflective account and personal statement and was of the view that whilst both documents do demonstrate a

positive step in your reengagement, both documents reflect your insight on your own personality and how it may have contributed to the failings at the time".

"In its consideration of whether you have taken steps to strengthen your practice, the panel considered that you have clearly identified that you are not ready to return back to nursing and that you will require a period of two years before you explore this option. The panel also considered that in your oral evidence you stated that you are not ready to work in a pressurised working environment where stressful circumstances may arise. The panel noted that in your reflective account and personal statement, you have not addressed the area of concerns identified at the original substantive hearing. The panel further noted that it did not have any testimonials of references, however it did acknowledge that you explained the reasons for this. The panel took account of your remorse in relation to your failings and that you accept that your actions had an impact on those around you.

The original panel determined that you are liable to repeat matters of the kind found proved. Today's panel has received no evidence of the steps you have taken to further strengthen your practice, such as evidence of training courses you have undertaken, reading or further reflection on the charges found proved. The panel considered that you have not sufficiently identified and reflected on the impact of your actions on patients and your colleagues at the time. The panel further noted that you it has been sometime since you have worked in a clinical setting, namely February 2019, and as a result you have not been able to demonstrate an ability to practise safely. In light of this, the panel has determined that there remains a risk of repetition. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.

54. *Mr Boyd has provided no evidence of strengthened practice or any evidence of attending training courses.*

55. *The Parties agree that while Mr Boyd has shown some insight and remorse as set out in his response forms, his insight is limited and requires further development.*

56. *At local level, Mr Boyd reflected that he needed to work on his communication skills.*

57. *Mr Boyd in the Regulatory Response Form dated states "I struggled with maintaining unit boundaries and differentiating naughtiness from mental illness which made me a target for team splitting with the young people, although I can identify that it was my own actions that caused this. As time progressed through training and support, I learnt about the ABC approach and debriefing to manage the less desirable behaviours in young people. I was sent on an emotional resilience course, which aided me a great deal with self-awareness and I also attended an Autism awareness cause in June 2018 which gave me awareness towards the breakdown in the therapeutic relationship with the young person in February 2018." The Panel should note that despite the training he received in 2018, the further incident with Patient B occurred in October 2018.*

58. *While Mr Boyd recognises in the returned CMF that "at the time I was not functioning as a professional and lacked insight towards this. I feel I have gained insight into what lead to the deterioration in my practice and I am thankful for three years away from the healthcare sector…. I also recognise my cognition was warped with an element of narcissism, affecting my decision making and perception on reality, I recognise how being in such a position of power and responsibility has impacted me over the years as a nurse. I have some insight towards the role of cognitive dissonance upon my perceptions and subsequent behaviours. This insight has been reenforced by recognising this schema in others, in such positions of power, from my role as an operative, on the factory floor. Having recognised this*

within myself I'm fearful of the potential damage I may have cause those under my care and colleagues around me. I would also suggest that my lack of insight towards the chronic stress and fatigue I was under, which predated the investigation, was impacting my practice. I failed to recognise this and take appropriate action. In doing so I placed vulnerable people at risk through my inappropriate behaviour. I want to return to nursing. I had a long career, gained many skills and I feel, helped lots of people. This time away from nursing has helped me recalibrate, as I feel 20 years of being mental health nurse did somewhat altered my personality. To return successfully I would need monitoring of the above-mentioned personality traits.

59. *The Parties have considered the NMC's guidance FTP-3a entitled* ***"Serious concerns which are more difficult to put right"*** *which states: "A small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening. In cases like this, we will be keen to hear from the nurse, midwife or nursing associate if they have reflected on the concerns and taken opportunities to show insight into what happened."*

60. *Parties agree that the concerns here are attitudinal which are more difficult to remediate.*

61. *Parties agree that Mr Boyd has developed insight however his insight is not fully developed and he lacks insight into the wider impact on the public and the profession. While he acknowledges his behaviour towards Colleague A was wrong and has apologised and shown remorse. He lacks insight into the impact on colleagues or how the behaviour displayed towards Colleague A could have an impact on patient care and the team dynamic.*

62. *The Parties also agree that the concerns in this case have not been remedied and as such it cannot be said that is highly unlikely that the conduct will be repeated.*

Public protection impairment

63. For the reasons referred to above, the Parties agree that a finding of impairment on public protection grounds is necessary.

Public interest impairment

64. A finding of impairment is also necessary on public interest grounds.

65. In ***CHRE v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin****) Cox J commented as follows:*

"71. It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations… namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession …

74. 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.

75. I regard that as an important consideration in cases involving fitness to practise proceedings before the NMC where, unlike such proceedings before the General Medical Council, there is no power under the rules to issue a warning, if the committee finds that fitness to practise is not impaired. As Ms McDonald observes, such a finding amounts to a complete acquittal, because there is no mechanism to mark cases where findings of misconduct have been made, even where that misconduct is serious and has persisted over a substantial period of time. In such circumstances the relevant panel should scrutinise the case with particular care before determining the issue of impairment."

66. *Having regard to the serious nature of the misconduct, and the principles referred to above, a finding of impairment is necessary on public interest grounds. As recognised above, an important consideration is that a finding of no impairment would lead to no record of these regulatory charges and the conduct being marked, which would be contrary to the public interest.*

67. *The public would be concerned about the serious failings in this case. The concerns are of such a serious nature that the need to protect the wider public interest calls for a finding of impairment to uphold the standards of the profession, maintain confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession and the NMC would be undermined.*

68. *The Parties agree that Mr Boyd's fitness to practise is impaired on public protection and public interest grounds.*

Sanction

69. *In accordance with the Order, the overarching objective of the NMC is the protection of the public.*

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

71. *In reaching this agreement, the Parties considered the* ***NMC's Sanctions Guidance ("SG")****, bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be punitive but to protect the public and satisfy public interest. The panel should take into account the principle of proportionality and it is agreed between the parties that the proposed sanction is a proportionate one that balances the risk to public protection and the public interest with Mr Boyd's interests.*

72. The aggravating features of this case have been identified as follows:

a) Serious failings which could have resulted in significant harm.

b) Previous referral with similar concerns which resulted in the imposition of a substantive order.

c) Inappropriate and aggressive behaviour towards patients and colleagues, has the potential to seriously damage public confidence.

d) Limited insight.

73. The mitigating features of this case have been identified as follows:

a) Mr Boyd expressed some regret and remorse for his actions in his responses to the regulatory concerns.

b) Admissions to the regulatory concerns and charges.

*74. **Taking no action or a caution order**- The NMC's guidance (SAN-3a and SAN-2b) states that it will be rare to take no action where there is a finding or current impairment and this is not one of those rare cases. The seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession. Neither outcome would address the risk Mr Boyd poses to the public.*

*75. **Conditions of Practice Order** – The NMC's guidance (SAN-3c) states that a conditions of practice order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*

- *no evidence of harmful deep-seated personality or attitudinal problems*
- *identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining*
- *no evidence of general incompetence*
- *potential and willingness to respond positively to retraining*
- *the nurse, midwife or nursing associate has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision*
- *patients will not be put in danger either directly or indirectly as a result of the conditions*
- *the conditions will protect patients during the period they are in force*
- *conditions can be created that can be monitored and assessed.*

76. *As set out above, Mr Boyd was previously subject to a Conditions of Practice Order ("COPO") by a Panel on 1 March 2019 in relation to the referral received by the NMC on 7 October 2016 for a period of 12 months. He remained subject to the COPO until 21 February 2022 following further extensions. While subject to the COPO, Mr Boyd did not gain employment as a nurse and therefore did not engage with the COPO. Mr Boyd is currently subject to a substantive suspension order until 2 October 2023.*

77. *The Parties agree that the misconduct and the concerns behind the misconduct are indicative of harmful, deep-seated personality or attitudinal concerns. This is not a case that relates solely to concerns regarding Mr Boyd's clinical practice. There are serious attitudinal and behavioural concerns in this case. Whilst the clinical concerns could potentially be addressed by a conditions of practice order, the inappropriate and aggressive behaviour towards Colleague A, Patient A and Patient B cannot be addressed by conditions. There are no workable conditions that can adequately address that type of behaviour. Further, these concerns occurred when Mr Boyd was already being investigated by the NMC which demonstrates a lack of*

insight into the role of being a nurse and upholding confidence in the profession. Conditions cannot address this attitudinal concern. Further, since Mr Boyd does not intend to return to nursing imminently, a conditions of practice order is not workable.

78. *Therefore, the Parties agree that a conditions of practice order is not appropriate, proportionate or workable and would not adequately protect the public or satisfy the public interest.*

79. ***Suspension Order** – The Parties agree that this sanction would not reflect the seriousness of Mr Boyd's misconduct particularly, given the fact that these incidents occurred when similar concerns had already been raised with the NMC. The concerns in the other referral have not yet been remedied and Mr Boyd's fitness to practise has been found continuingly impaired. The conduct displayed in this case demonstrates a harmful deep-seated personality and attitudinal issue towards both patients and colleagues which has been repeated over a period of time. A suspension order would not send a message to the professions that such behaviour is wholly unacceptable for a registered nurse. A suspension order would not address the public interest in the particular circumstances of this case. According to the NMC guidance (SAN-d), a suspension order would be most appropriate were the misconduct is not fundamentally incompatible with continuing registration. Mr Boyd's conduct is fundamentally incompatible with continuing registration.*

80. *The overarching objective of public protection would not be satisfied by a suspension order and would not be in the public interest. Mr Boyd has not practised nursing since he was dismissed from his last nursing role over four years ago.*

81. *Furthermore, there is evidence of a risk of repetition. As set out above, Mr Boyd has not practised as a nurse for over four years, he has not strengthened his practice and it has been found to be continuingly impaired. As such, the Parties agree that a temporary removal from the register is insufficient to mark the seriousness of the misconduct and to meet the wider public interest. Having regard to the high risk of*

repetition, limited insight, lack of remediation and further safe practice, a suspension order is not appropriate in this case.

82. ***Striking-off Order*** *– The Parties agree that this is most appropriate and proportionate sanction. The Parties have considered the NMC Guidance SAN-3e entitled "**Striking-off Order"** which states:*

"This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

- ***Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?***
- ***Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate 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 should refer to our guidance on seriousness, which highlights a number of factors indicating which kinds of concern it may not be possible for the nurse, midwife or nursing associate to address or put right, and which will most seriously affect their trustworthiness as a registered nurse, midwife or nursing associate."

83. *The Parties agree that for the reasons stated above Mr Boyd's misconduct is fundamentally incompatible with being a registered professional, that the concerns about Mr Boyd's practice do raise fundamental questions about his professionalism*

and that public confidence in nurses, midwives and nursing associates cannot be maintained if Mr Boyd continues to remain on the register.

84. *The Parties further agree that given the serious nature of misconduct, harm caused to very vulnerable patients and a colleague, the fact of repetition of the same concerns which had already been raised with the NMC and the finding of continuing impairment of Mr Boyd's fitness to practise a lesser sanction would not adequately protect the public and address the public interest. Parties agree that a striking-off order is the only sanction which will be sufficient to protect patients, members of the public, and maintain professional standards.*

Interim order

85. *An interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest for the reasons given above. The interim order should be for a period of 18 months in the event panel's decision is appealed. The interim order should take the form of an interim suspension order.*

The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

The provisional CPD agreement was signed by Mr Boyd on 26 June 2023 and the NMC on 27 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 they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Boyd. 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 Mr Boyd admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Mr Boyd's admissions as set out in the signed provisional CPD agreement.

Decision and reasons on misconduct

In respect of misconduct, the panel determined that Mr Boyd's failings amount to misconduct. In this respect, the panel endorsed paragraphs 16 to 25 of the provisional CPD agreement. The panel also agreed with the breaches of 'The Code: Professional Standards of Practice and Behaviour for Nurses and Midwives' [2015], specified in paragraph 24 of the CPD. In the panel's judgement, the matters found proved fell seriously below the standards to be expected of a registered nurse.

Decision and reasons on impairment

The panel then went on to consider whether Mr Boyd's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Boyd, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel determined that Mr Boyd's fitness to practise is impaired by way of his misconduct, on public protection and public interest grounds. The panel considered that

Mr Boyd's conduct presented a risk to the public and that there remains a risk of repetition. The panel was of the view that a reasonable and well-informed member of the public would be concerned if a nurse who had committed such misconduct were permitted to practise unrestricted.

The panel endorsed paragraphs 28 to 66 and 68 of the provisional CPD agreement regarding Mr Boyd's impaired fitness to practise in respect of his misconduct.

The panel therefore determined that Mr Boyd's fitness to practise is currently impaired.

Decision and reasons on sanction

Having found Mr Boyd'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:

- Serious failings which could have resulted in significant harm.
- Previous referral with similar concerns which resulted in the imposition of a substantive order.
- Inappropriate and aggressive behaviour towards patients and colleagues, has the potential to seriously damage public confidence.
- Limited insight.

The panel also took into account the following mitigating features:

- Mr Boyd expressed some regret and remorse for his actions in his responses to the regulatory concerns.
- Admissions to the regulatory concerns and charges.

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 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 Mr Boyd'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 Mr Boyd's 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 Mr Boyd's registration would be a sufficient and appropriate response. The panel concluded that the placing of conditions on Mr Boyd's registration would not adequately address the seriousness of this case and would not protect the public. The panel is also of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining.

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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that there is also evidence acknowledged by Mr Boyd of harmful deep-seated personality or attitudinal problems. It further noted that there is a pattern of unacceptable behaviour towards patients and colleagues and in the panel's judgement, there is a risk of repetition. The panel was of the view that the serious breach of the fundamental tenets of the profession evidenced by Mr Boyd's actions is fundamentally incompatible with Mr Boyd 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?*

Mr Boyd's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Boyd's actions

were so serious that to allow him 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 agreed with paragraph 83 of 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 Mr Boyd's 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 declare to the public and the profession the standards of behaviour required of a registered nurse.

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 Mr Boyd's own interest. 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 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 agreed with paragraph 86 of the CPD that an interim order is necessary. In the panel's view, 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 time that, in the event that the panel's decision is appealed by Mr Boyd, may be needed before an appeal is heard. The panel was satisfied that this period is proportionate.

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

That concludes this determination.