

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

Substantive Meeting
Monday 19 June 2023

Virtual Meeting

Name of Registrant:	Mrs Penny Gail Colman
NMC PIN	84Y2940E
Part(s) of the register:	RN1: Adult nurse, level 1 (15 May 1987)
Relevant Location:	Carmarthenshire
Type of case:	Misconduct and Conviction
Panel members:	Phillip Sayce (Chair, Registrant member) David Boyd (Lay member) Helen Chrystal (Registrant member)
Legal Assessor:	Graeme Sampson
Hearings Coordinator:	Taymika Brandy
Consensual Panel Determination:	Accepted
Facts proved:	All
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 Meeting

The panel noted that the Notice of Meeting had been sent to Mrs Colman's registered email address by secure email on 11 May 2023. The Notice of Meeting was also sent to Mrs Colman's representative at the Royal College of Nursing (RCN) on 11 May 2023.

The panel accepted the advice of the legal assessor.

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

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

Details of charge

That you, a registered nurse:

1. On 4 April 2021:

a. Hit and/or slapped Resident A on one or more occasion.

b. Suggested to junior colleagues that Resident A:

i. Should not be allowed out of her room all day;

ii. Should not be given anything to eat or drink all day;

iii. Should not be given a shower that day;

c. Told colleagues that you had given Resident A tea and biscuits when you had not.

2. Your actions in charge 1 above were intended to harm and/or deprive Resident A.

3. In a statement provided to the NMC on 12 October 2021 incorrectly stated that you did not use excessive force or strike Resident A in any way.

4. Your actions in charge 3 above were dishonest in that you knew that you had struck Resident A.

5. In notes accompanying a Context Form dated 13 October 2021 incorrectly suggested that 2 carers had falsely accused you of hitting and/or slapping resident A.

6. Your actions in charge 5 above were dishonest in that you knew you had hit and/or slapped Resident A.

7. On 10 November 2021 were convicted at Aberystwyth Magistrates' Court of the offence of assault by beating Resident A on 4 April 2021, contrary to section 39 of the Criminal Justice Act 1988.

AND *in light of the above, your fitness to practise is impaired by reason of your misconduct in charges 1-6, and by reason of your conviction in charge in charge 7.*

Consensual Panel Determination

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

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

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

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Penny Gail Colman, PIN 84Y2940E ("the Parties") agree as follows:

1. Mrs Colman has requested for her case to be dealt with by way of a CPD meeting. She understands that if the panel determines that a lesser sanction should be imposed, the panel will adjourn the matter for this provisional agreement to be considered at a CPD hearing.

The charge

2. Mrs Colman admits the following charges:

That you, a registered nurse:

1. On 4 April 2021:

- a. Hit and/or slapped Resident A on one or more occasion.
- b. Suggested to junior colleagues that Resident A:
 - i. Should not be allowed out of her room all day;
 - ii. Should not be given anything to eat or drink all day;
 - iii. Should not be given a shower that day;
- c. Told colleagues that you had given Resident A tea and biscuits when you had not.

2. Your actions in charge 1 above were intended to harm and/or deprive Resident A.

3. In a statement provided to the NMC on 12 October 2021 incorrectly stated that you did not use excessive force or strike Resident A in any way.

4. Your actions in charge 3 above were dishonest in that you knew that you had struck Resident A.

5. In notes accompanying a Context Form dated 13 October 2021 incorrectly

suggested that 2 carers had falsely accused you of hitting and/or slapping resident A.

6. Your actions in charge 5 above were dishonest in that you knew you had hit and/or slapped Resident A.

7. On 10 November 2021 were convicted at Aberystwyth Magistrates' Court of the offence of assault by beating Resident A on 4 April 2021, contrary to section 39 of the Criminal Justice Act 1988.

AND in light of the above, your fitness to practise is impaired by reason of your misconduct in charges 1-6, and by reason of your conviction in charge in charge 7.

Agreed facts

3. Mrs Colman appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered nurse and has been on the NMC register since 1 June 1999. Mrs Colman made a self-referral to the NMC on 11 October 2021.

4. On 4 April 2021, while working as a registered nurse at Allt-Y-Myndd Care Home ("the Home"), Mrs Colman struck Resident A, a 76 year old patient with a diagnosis of dementia. During Mrs Colman's shift, two carers, Carer 1 and Carer 2, were getting Resident A out of bed. They witnessed Mrs Colman entering Resident A's room, with a pot of medication. Carer 1 saw her raise her right hand in the air, at the height of her head, and with an open palm hit Resident A on their right arm. Carer 2 was standing behind the door, so could not see, but heard the registrant shout "don't hit me" followed by a slap and Resident A shout "ow" and "cry". Both carers described the contact made with Resident A as sounding like a thud noise.

5. While Resident A was crying Mrs Colman left the room and said to Carer 1 "[they're] *not coming out all day*". She then told other staff members that Resident A had hit and bitten her, and advised that "[Resident A] *isn't having anything to eat or drink all*

day”.

6. Mrs Colman subsequently told staff members, who were checking Resident A’s shower/bath charts, that “if [Resident A] *thinks* [they are] *having a shower today* [they] *can forget about it*”.

7. Further, later that morning Mrs Colman informed staff members that she had given Resident A tea and biscuits when she had not.

8. On 4 April 2021, the Home contacted the police to report the incident. Following the incident, Mrs Colman was suspended from work.

9. On 12 August 2021, Mrs Colman attended the local police station, for voluntary interview in the presence of her solicitor. During the interview, Mrs Colman denied assaulting Resident A, stating that she would not have been able to raise her hand above head level as she has impingement injuries to both shoulders. Mrs Colman provided an account that, prior to entering the room, Resident A had been verbally abusive to her and hit her. This part of Mrs Colman’s account is supported by witnesses. Mrs Colman stated that she left the room to do a drug round and when she re-entered Resident A’s room, Resident A “smacked” her across the head, dislodging her glasses and causing her to go off balance. Mrs Colman said in her police interview that she believed she may have banged Resident A’s arm at this point. Mrs Colman said that Resident A then tried to hit her with her left fist, at which point Mrs Colman held both of the resident’s hands in her lap. At this point Resident A cried out.

10. Mrs Colman denied telling carers not to feed or bathe Resident A, or to leave her in her room all day as a form of punishment, stating instead that she advised the carers to leave Resident A in her room until after breakfast as she was agitated, but to check on her after breakfast.

11. On 1 October 2021, Mrs Colman was charged with an offence of assault by beating. Mrs Colman’s representative wrote to the NMC on 19 October 2021 indicating that

Mrs Colman denies the allegation and would be entering a plea of 'not guilty' at Court on 10 November 2021.

12. In a written statement sent to the NMC on 12 October 2021 when she made her self-referral to the NMC, Mrs Colman denied the allegations, stating:

“... I approached [Resident A] in a calm manner, speaking calmly and quietly to her. I stood next to her chair, between the bed and the right hand side of the chair, whilst speaking with her, she hit me around the side of the head dislodging my glasses and causing a momentary loss of balance (due to unexpectedness of the attack), this caused me to knock into the side of her chair causing, causing me to knock her arm. As I was getting myself together I further noticed that her left hand was in the form of a fist and that she was aiming this at me, I moved quickly to the front of her and took both her hands and held them in her lap, using minimal force, (I did not have the opportunity to move away from her without her further hitting me, hence I held her hands) at this point [Resident A] shouted out – this resident is known to shout and call out, when in an agitated state she does not like to be touched. I stepped back immediately releasing both her hands and removing myself from further harm. I then advised both carers ([Carer 1 and Carer 2]) to leave the room, along with myself and to give [Resident A] some alone time to settle. The whole incident took less than 5 minutes. At all times I was explaining to [Resident A] my actions and always speaking in a calm and measured manner. At no time did I use excessive force or strike her in anyway.”

13. In a statement accompanying an NMC Context Form dated 13 October 2021, Mrs Colman stated:

“7. The staffing levels that day were a poor mix – on the nursing floor I had x1 senior carer who was working with an agency nurse who had not been to the home before. X1 carer who had only been caring for approx. 1 month and had no hands on manual handling training. Once carer on the floor was known to be difficult as she didn't like taking direction and due to this had taken a dislike to myself.

8. [...] the 2 carers reported that I had hit a resident – something that I deny and continue to fight.

9. Having reflected on the incident I do not feel that I dealt with the incident in a poor manner and do not feel that I would have dealt with the situation differently – the whole incident lasted less than 2 minutes from initial assault by the resident to me requesting we leave her to settle.

15. Generally all staff get on well but there was animosity between x1 carer working on the floor and myself, as described before, she does not like taking direction. She was one that reported me along with the carer who had been doing the job for 1 months.”

14. On 10 November 2021, Mrs Colman entered a guilty plea and was convicted of assault by beating. On 18 November 2021, she was sentenced at Aberystwyth Magistrates’ Court to 125 hours of unpaid work and ordered to pay £100.00 in compensation.

15. On 19 January 2022, Mrs Colman’s representative advised the NMC that Mrs Colman had ceased employment as of November 2021 and was complying with her community unpaid work order. Attached to this letter was an updated reflective piece from Mrs Colman stating:

“...Upon approaching the resident and standing to the right hand side of her, she further assaulted me. I reacted to this by hitting the resident on her hand, and then holding her hands down in her lap.

I accept that my actions were inappropriate and take full responsibility for them. I was in a position of trust and should not have done it. I have caused upset to the resident and both the carers who witnessed my behaviour. The outcome of this mistake and lack of judgement has caused me to lose my position at the home, a job I enjoyed and to probably lose the career that I had built over the previous 37 years.

... At the time of the incident I was feeling tired and stressed, several matters had arisen since the start of the shift and by the time I entered the resident's room I was feeling more pressure than normal. When she struck me it was just the last straw and I just responded by hitting her back, which I can say is completely out of character for me. I am not a violent person and have never hit anyone before.

Once the incident had taken place, I was horrified by my actions and apologised to the resident immediately. This did not take away the shame and embarrassment that I felt when I turned from the resident to observe the faces of the carers who had witnessed my appalling behaviour.

For the rest of the time that I was working that morning I continued to feel ashamed of the way I had acted and worked quietly by myself with little interaction with any other staff members due to my feelings of guilt.

When I was asked to speak with the manager, a couple of hours later, I knew immediately what she wanted to see me about but was still extremely upset when she told me that I was to be suspended and that I had to leave the home immediately. I felt such shame that I had put her in this position and that my other colleagues were looking at me as I left.

... I was tired and stressed the morning of the incident and felt fed up. I accept that I lost my composure with the resident when she hit me, which was wrong and unacceptable.

My behaviour on this morning had an effect on the resident, she should not have suffered for my loss of composure/control – she is vulnerable and I was there to protect her not harm her. My colleagues should not have had to witness this behaviour from a person who was in charge. I felt extreme shame for the position that I placed my manager.

I am mortified that I actually carried out this act; I am not this type of person, and

for bringing the nursing profession into disrepute.

I know that I have probably destroyed my career and my good name. I am extremely depressed that it has come to this. However there is no excuse for my actions and I feel that I no longer deserve to be a registered nurse.

... I accept full responsibility and am fully accountable for my actions on the morning of 04.04.21. I accept that carrying out this act I have broken the NMC code of professional conduct, I accept whatever punishment the NMC will give me following their investigation into my actions. However I do not feel I am worthy of continuing to hold a registration so I am considering letting this lapse upon my next renewal.

I wish to apologise to the NMC, the resident and her family, to my colleagues, my manager for my poor behaviour.

I have worked as a nurse for the last 37 years, inclusive of my training, and have never wanted to do anything else with my life. Prior to this incident, I would have classified myself as a trustworthy and dedicated professional, a good listener with excellent interpersonal skills who was able to build good rapport with patients, their families and colleagues. At all times acting in a professional, polite and courteous manner towards others.

I made a mistake and can only apologise and accept the consequences of my actions.”

Misconduct/Impairment

16. Charges 1 to 5 allege that Mrs Colman’s fitness to practise is impaired by reasons of misconduct. Charge 6 alleged that Mrs Colman’s fitness to practise is impaired by reason of a conviction.

Misconduct in relation to charges 1 – 5

17. The misconduct in this case relates to Mrs Colman physically assaulting a resident and acting in ways which were intended to harm Resident A. Mrs Colman also provided false statements regarding the incident with Resident A and by doing so she acted dishonestly. Mrs Colman's failings are serious and fall significantly short of what would be expected of a registered nurse in the circumstances.

18. The following paragraphs of the 2015 NMC Code of Conduct have been breached:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

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

19. It is accepted that not every breach of the Code will result in a finding of misconduct however, Mrs Colman's failings are a serious departure from the professional standards and behaviour expected of a registered nurse.

20. Mrs Colman's actions are sufficiently serious so as to amount to misconduct. The areas of concern identified relate to basic nursing skill requirements. The failings involve a serious departure from expected standards and directly harmed a resident. These failings are likely to cause risk to patients in the future if they are not addressed. Honesty and integrity are integral to nursing and will always be serious. The most serious kind of dishonesty is when a nurse deliberately breached the professional duty of candour to be open and honest when things go wrong in someone's care (NMC guidance ref SAN-2). The charges against Mrs Colman amount to a misuse of her power in relation to a vulnerable elderly resident.

Conviction in relation to charge 6

21. Rule 31 (2) of the Rules states:

- (2) Where a registrant has been convicted of a criminal offence –*
- a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
 - b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*

22. In accordance with Rule 31(2), the next stage in relation to charge 6 is to consider whether, on the basis of the fact found proved, Mrs Colman's fitness to practise is currently impaired.

Impairment

23. Mrs Colman's fitness to practise is currently impaired by reason of her misconduct and conviction.

24. In relation to impairment, the general approach to what might lead to a finding of impairment was provided by Dame Janet Smith in her Fifth Shipman Report. A summary is set out in the case of *CHRE v NMC & Grant* [2011] EWHC 927 at paragraph 76 in the following terms:

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

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

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.”

In this case, limbs a, b, c and d are engaged.

Limb a

25. Mrs Colman’s actions caused physical harm to Resident A and her actions resulted in a conviction. Mrs Colman failed to treat the resident with kindness, respect and care. Further, by telling her junior colleagues to not allow Resident A out of their room all day, to not give them anything to eat or drink all day and to not be given a shower, she placed the resident at unwarranted risk of harm.

Limb b

26. The seriousness of Mrs Colman's conduct which resulted in her conviction cannot be overstated. The public would be appalled to know that a nurse physically assaulted and mistreated a resident in their care. She then dishonestly suggested that Carer 1 and Carer 2 had falsely accused her of hitting Resident A, when she knew she had hit the resident. Such conduct causes serious damage to the reputation of the nursing profession.

27. Further, Mrs Colman's conduct has resulted in a conviction and resulted in her being sentenced, which determines by its nature that she is culpable for the harm caused. The registrant's conduct took place whilst at her place of work. The registrant denied the allegations throughout her police interview and in her initial communications with the NMC. However, she entered a guilty plea and was convicted in the Magistrates Court on 10 November 2021.

28. Nurses must always act lawfully and abide by the laws of the country. By failing to do so, Mrs Colman has brought the reputation of the professions into disrepute.

Limb c

29. Nurses are expected to act with honesty, integrity and trustworthiness at all times. Conduct in contravention of that expectation breaches that fundamental tenet of the profession. Mrs Colman's conduct which resulted in her conviction caused harm to a resident and completely lacked integrity and trustworthiness and amounted to a significant breach of fundamental tenets of the profession.

Limb d

30. Mrs Colman acted dishonestly in that she provided false accounts regarding the incident involving Resident A. Nurses are placed in position of trust, to care for and protect the people in their care. Such conduct undermines that trust and undermines public confidence in the nursing profession.

31. The parties also considered the case of *Cohen v General Medical Council* [2008]

EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;

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

32. Mrs Colman was convicted of the offence of assault by beating Resident A. Further, she breached the professional duty of candour to be open and honest when things go wrong, which is difficult to put right (NMC guidance FTP-3a) and suggests an attitudinal issue.

Remorse, reflection, training, insight, remediation

33. Mrs Colman's representatives provided written submissions dated 7 March 2022 in response to the regulatory concerns. These were put before the Case Examiners and stated as follows:

"The registrant does not seek to go behind her conviction which she acknowledges is serious and for which she wishes to apologise to the regulator.

The registrant would wish to take this opportunity to explain her change in position following her initial denial of assault. In her own words she advises:

I know this sounds stupid, but my pleas of Not guilty and that I hadn't assaulted the resident were due to a lack of understanding/ignorance on my part of the full meaning of assault. It became apparent when my solicitor told me that it actually meant was that you only had to touch someone without their consent and/or raise a hand in a threatening manner, making someone feel threatened. Hence upon reflection I had actually assaulted the resident, although this was not intentional or with any intended malice."

34. Mrs Colman accepts the charges in their entirety and admits that her fitness to practise is impaired. She provided a reflective piece on 19 January 2022 taking responsibility for her actions, and demonstrating remorse. Mrs Colman has not demonstrated insight into the admitted charge that she told colleagues not to let

Resident A out of their room, have any food or drink or be showered. She has not commented on her motivation or intent, or what she would do differently in future. Mrs Colman provided an appraisal form from her previous employer dated 29 January 2020; an undated thank-you card from someone only identified as 'Raymond'; and a positive testimonial dated 17 November 2021 from her neighbour. 35. Mrs Colman has not provided any evidence of remediation or steps taken to address the concerns raised. She has indicated that she does not wish to return to nursing. Further, as set out above, the issues raised are serious concerns which are more difficult to put right. There is insufficient information to suggest that Mrs Colman no longer presents a risk of repeating the offending conduct. Therefore, there is a high risk of repetition of the conduct in this case.

Impairment on the grounds of public protection.

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

37. Mrs Colman's offending behaviour amounts to physical abuse towards a patient and abuse of trust. Such conduct places patients in her care at significant risk of unwarranted harm. In the absence of any evidence to suggest the risk to the public has been addressed and reduced the risk must be said to remain such that a finding of impairment on public protection grounds is required.

Impairment on the grounds of public interest

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

39. In *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

"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.”

40. Mrs Colman's conduct and dishonest actions are extremely serious and can cause severe damage to public confidence in the nursing and midwifery professions. The subject matter of the conduct is sufficient to engage the public interest alone.

41. The conduct has also resulted in a criminal conviction. Whilst not all criminal convictions would undermine confidence in nurses and midwives, criminal offending certainly can do so and it does so here, given the nature of the conviction which caused direct harm to a vulnerable resident under Mrs Colman's care.

42. This case involves dishonesty and a conviction for an offence of violence. The NMC is tasked with maintaining trust in the profession of nursing and declaring and upholding proper professional standards of conduct. Public confidence in the profession and the NMC as the regulator, would be seriously undermined if a finding of impairment were not made.

43. Mrs Colman's fitness to practice is impaired on the grounds of both public protection and public interest.

Sanction

44. The appropriate and proportionate sanction in this case is that of a striking-off order.

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

- Mrs Colman received a criminal conviction for physically assaulting an elderly patient with dementia under her care.
- The offence raises significant public protection and public interest concerns as the criminal offending was directly linked to Mrs Colman's nursing practice. Mrs Colman abused her position of trust.
- Mrs Colman has demonstrated a lack of sufficient insight into her failings and

conduct.

- Mrs Colman's conduct caused pain and distress to Resident A.
- Dishonesty; both at the time of events and in her initial responses to the NMC's Investigation.

46. The mitigating features in this case are:

- Mrs Colman has made full admissions to the charges
- She has expressed remorse for her actions

47. To take no further action would not be appropriate in this case where there are identified concerns in relation to both public protection and public interest.

48. To impose a caution order would not be appropriate. A caution order imposes no restrictions on a registrant's practice and, therefore, would do nothing to protect the public from the risk of harm identified in this case. Further, the nature and seriousness of the conviction and dishonesty are such that a more severe sanction is required in order for the public interest to be addressed.

49. To impose a conditions of practice order would not be appropriate. As there are no suitable conditions that can be imposed that would properly address the risks present in this case. The concerns relate to deep-seated attitudinal problems which cannot be addressed by supervision or training. Given the risk of repetition identified, patients would be put at risk of harm if the registrant were allowed to practise under conditions. Furthermore, given the nature and seriousness of the concern, a conditions of practice order would fail to address the very significant public interest in this case.

50. To impose a suspension order would not be appropriate. Given the lack of insight demonstrated in this case and the high risk of repetition of the conduct, a temporary removal from the register would not be sufficient to protect the public. Given the nature and seriousness of the conviction and dishonesty, a suspension order would fail to address the significant public interest in this case. The conduct in this case is

fundamentally incompatible with ongoing registration and gravely undermines patients' and the public's trust and confidence in nurses and midwives.

51. Mrs Colman's dishonest behaviour and conviction demonstrates a fundamental breach of the public's trust in nurses and raises fundamental questions about her professionalism. Public confidence in the nursing and midwifery professions can only be maintained if she is permanently removed from the register. Mrs Colman's offending behaviour is fundamentally incompatible with her remaining on the register and members of the public would be dismayed if a registered nurse with such a serious conviction were to be allowed to remain on the register.

52. The only appropriate and proportionate sanction is, therefore, a striking-off order because it is the only sanction that will adequately protect the public and address the public interest considerations in this case.

53. Mrs Colman self-referred to the NMC. Therefore, no comments have been sought from an outside organisation.

Interim order

54. An interim order is required in this case. The interim order is necessary for the protection of the public and is otherwise in the public interest for the reasons given above. The interim order should be imposed for a period of 18 months to restrict practice in the event that Mrs Colman seeks to appeal against the panel's decision, in which case the strike-off would not come into effect until the conclusion of any such appeal. The interim order should take the form of an interim suspension order.'

Here ends the provisional CPD agreement between the NMC and Mrs Colman. The provisional CPD agreement was signed by Mrs Colman on 2 May 2023 and by the NMC on 4 May 2023.

Decision and reasons on the CPD

The panel decided to accept the CPD agreement.

The panel accepted the advice of the legal assessor.

The panel had regard to the NMC's Sanctions Guidance ("SG"). The panel noted that it could accept, amend or reject the provisional CPD agreement reached between the NMC and Mrs Colman. Further, the panel should consider whether the provisional 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 Mrs Colman admitted the facts of the charges. Accordingly, the panel was satisfied that the charges 1-6 are found proved by way of Mrs Colman's admissions as set out in the signed provisional CPD agreement before the panel.

In respect of Mrs Colman's conviction (charge 7), the panel had regard to Mrs Colman's Certificate of Conviction dated 5 January 2022. In the circumstances, the panel finds that this fact is found proved in accordance with Rule 31 (2) and (3).

Decision and reasons on misconduct and impairment

The panel noted that Mrs Colman accepts that her fitness to practise is currently impaired by reason of her misconduct and conviction. Whilst acknowledging the agreement between the NMC and Mrs Colman, the panel has exercised its own independent judgement.

In respect of misconduct, (charges 1- 6), the panel determined that Mrs Colman's failings amounted to misconduct. In this respect, the panel endorsed paragraphs 17 to 20 of the provisional CPD agreement. The panel also agreed with the specified

breaches of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (“the Code”), namely, paragraphs 1-1.2 and 20-20.5.

The panel then considered whether Mrs Colman’s fitness to practise is currently impaired by reason of her misconduct and conviction. The panel determined that Mrs Colman’s fitness to practise is currently impaired. In doing so, the panel endorsed paragraphs 20-43 of the provisional CPD agreement.

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 be honest and open and 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for

panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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

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

The panel had regard to the test as set out in *Grant* and agreed that Mrs Colman's conviction and misconduct does engage limbs *a, b, c* and *d* of the test for the reasons outlined in paragraphs 25-30 of the provisional CPD agreement.

The panel then considered the factors set out in the case of *Cohen*. It considered the three questions posed by Silber J in *Cohen v GMC* [2008] EWHC 581 (Admin):

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

The panel agreed that the nature of Mrs Colman's conduct was difficult to remediate, for the reasons given in paragraph 32 of the provisional CPD agreement.

The panel considered the submissions provided on Mrs Colman's behalf dated 7 March 2022, in response to the regulatory concerns and determined that she has taken responsibility for her actions and demonstrated remorse, however she has not provided any evidence of remediation or steps taken to address the concerns raised. The panel therefore agreed that there is a high risk of repetition in this case.

Accordingly, it determined that a finding of current impairment was required on public protection grounds, for the reasons given in paragraphs 36 and 37 of the provisional CPD agreement.

The panel also endorsed paragraphs 39 – 43 of the provisional CPD agreement and agreed that a finding of current impairment was also required on public interest grounds, for the reasons set out in these paragraphs.

Decision and reasons on sanction

Having found Mrs Colman'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 agreed with the aggravating and mitigating factors set out in paragraphs 44 and 45 of the provisional CPD agreement.

The panel then turned to the question of whether the sanction proposed in the provisional CPD agreement is proportionate and appropriate. In so doing it considered each available sanction in turn, starting with the least restrictive sanction and moving upwards.

The panel first considered whether to take no action. It agreed with paragraph 47 that to take no action in this case would not be appropriate, given the identified risk to the public should Mrs Colman be allowed to practise unrestricted.

The panel also agreed with paragraph 48 that to impose a caution order, which imposes no restriction on Mrs Colman's practice, would also be inappropriate for the same reasons as taking no further action.

The panel then considered a conditions of practice order. It agreed with paragraph 49 that there were no practical or workable conditions which could be formulated to protect the public and satisfy the public interest, given the deep-seated attitudinal problems identified in this case.

The panel next moved on to consider a suspension order. It agreed that this order would not be appropriate, for the reasons given in paragraphs 50 and 51. It was of the view that Mrs Colman's conviction and dishonesty is fundamentally incompatible with her remaining on the register. A period of temporary suspension would therefore be insufficient to protect the public and insufficient to maintain public confidence in the nursing and midwifery professions and the NMC as a regulator.

The panel agreed with paragraph 51 that Mrs Colman's offending and dishonest behaviour is a fundamental breach of the trust that the public places in registered nurses and midwives. The panel considered that the public, and fellow registered professionals, would be shocked if an individual with such a serious conviction was not permanently removed from the NMC register. The panel therefore endorsed paragraph 52, that the only sanction that was sufficient to protect the public and satisfy the public interest in this case was a striking-off order.

Interim order

The panel accepted the advice of the legal assessor.

The panel also endorsed paragraph 54 of the provisional CPD agreement, that an interim suspension order was necessary to protect the public and was otherwise in the public interest. The panel therefore decided to impose an 18-month interim suspension order, for the reasons set out in paragraph 54 of the provisional CPD agreement.

This decision will be confirmed to Mrs Colman in writing.

That concludes this determination.