

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

**Substantive Meeting
Friday, 19 April 2024
Monday, 22 April 2024**

Virtual Meeting

Name of Registrant: **Robert Lang**

NMC PIN 67B0720E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – (December 1972)
Mental Health Nursing – (March 1970)

Relevant Location: Denbighshire

Type of case: Misconduct

Panel members: Anthony Mole (Chair, Lay member)
Sophie Kane (Registrant member)
Bill Matthews (Lay member)

Legal Assessor: Nigel Mitchell

Hearings Coordinator: Charis Benefo

Facts proved: Charges 1, 2, 3a, 3b and 3c

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 was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Lang's registered email address by secure email on 7 March 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation. It also advised Mr Lang that a panel of the Fitness to Practise Committee at a Notice of Referral Meeting on 15 January 2024 had decided to refer this matter to a substantive meeting. The Notice of Meeting indicated that the substantive meeting would be held virtually on or after 15 April 2024.

In the light of all of the information available, the panel was satisfied that Mr Lang 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 19 June 2013, used unnecessary force to manipulate Patient A's right knee when assisting him into a wheelchair.
- 2) In July 2012/2013, kicked Patient B multiple times to encourage them out of the nurse's office.
- 3) In or around October 2013 forcibly administered medication to Patient C in that you:
 - a) administered medication when they were attempting to physically resist having medication administered to them.
 - b) tilted the chair upon which Patient C was sitting to restrain them and/or make it more difficult for them to physically resist.
 - c) emptied the medication syringe you were attempting to administer into Patient

C's mouth whilst they were tilted back on the chair.

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

Background

On 10 July 2014, the Nursing and Midwifery Council (NMC) received a referral from Betsi Cadwaladr University Health Board (the Board) regarding Mr Lang's fitness to practise. Mr Lang had worked at the Board since 1983 and was employed as a Psychiatric Staff Nurse. The allegations relate to a period when Mr Lang was working on [PRIVATE] Ward (the Ward). The Ward was an acute ward that cared for patients with organic mental health issues. The Ward was closed on 20 December 2013 following a series of events that included:

- concerns about patient care and treatment,
- relationship difficulties between staff and the relatives of some patients,
- short staffing.

These and other issues were the subject of several reviews as well as police, protection of vulnerable adults (POVA) and other external investigations. One particular investigation commissioned by the Board considered a number of specific allegations against Mr Lang.

The regulatory concerns are that Mr Lang abused patients in his care which included, him using unnecessary force on Patient A, kicking Patient B on multiple occasions and forcibly administering medication to Patient C.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will

be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Bank Healthcare Support Worker on the Ward at the time of the allegations;
- Witness 2: Newly qualified nurse on the Ward at the time of the allegations;
- Witness 3: Patient A's wife; and
- Witness 4: The Director of Nursing for Mental Health at the Board (comments on the allegations regarding nursing standards).

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

The panel then considered each of the disputed charges and made the following findings.

Charge 1

That you, a registered nurse:

- 1) On 19 June 2013, used unnecessary force to manipulate Patient A's right knee when assisting him into a wheelchair.

This charge is found proved.

In reaching this decision, the panel took into account the record of Witness 3's police interview dated 30 December 2013, where she provided an account of the incident involving Mr Lang and Patient A. The record of interview stated:

'[Witness 3]: THEN IT WAS THE 19TH OF JUNE AND THE WARD TOOK A POVA OUT ABOUT THIS. AGAIN Patient A WAS SPENDING A LOT OF TIME IN BED, QUITE A LOT OF HOURS OF THE DAY IN BED AND HE WAS IN A LOT OF PAIN, HE WAS HAVING OROMORPH, WHICH IS A SHORT ACTING MORPHINE FOR BREAK THROUGH PAIN. AND I ASKED BOB TO HELP GET Patient A INTO THE WHEELCHAIR SO WE COULD HIM TO HIS BEDROOM FOR A NAP OR A REST OR WHATEVER AND WHEN Patient A WAS SEATED IN THE WHEELCHAIR IT WAS OBVIOUSLY PAINFUL BECAUSE HE CRIED OUT NO AND BOB LANG PROCEEDED TO TAKE HOLD Patient A RIGHT ANKLE AND HE PHYSICALLY FORCED MANIPULATED HIS RIGHT KNEE INTO A 90 DEGREE BEND CAUSING Patient A TO SCREAM IN PAIN AND I SAID IT WAS ABUSE AND THEY TOOK OUT A POVA. HE DIDN'T EXPLAIN TO Patient A PRIOR TO THE MOVE WHAT HE WAS DOING, I JUST THOUGHT HE CAUSED HIM UNNECESSARY PAIN. SO THEY TOOK A POVA OUT AND I'VE ONLY JUST HAD VERBAL FFEDBACK ON THAT, MANY MONTHS AFTER THIS INCIDENT AND I MUST OF JUST, IT WAS ABOUT POOR COMMUNICATION BETWEEN THE NURSE AND MYSELF SO THERE WE ARE

1497: So why did he grab hold of him to

[Witness 3]: ON THE WHEELCHAIR IF YOU DON'T PUT THE FEET ON THE FOOT RESTS THEN THEY, IF YOUR GOING FORWARD AND YOUR KINDA LIKE THAT, SO YOUR LIKELY TO, AND IF YOUR GOING BACKWARDS YOU'D BE PULLED BACKWARDS SO IDEALLY IT IS BETTER TO HAVE THEIR FEET ON THE FOOT RESTS, HAVING SAID THAT WITH A LITTLE BIT OF TIME, Patient A IF YOUR PATIENT AT THAT TIME, Patient A ACTUALLY WOULD DO THAT. BUT TO PHYSICALLY, I MEAN Patient A KNEE IS LIKE THAT, ITS HUGE, WARRANTS KNEE REPLACEMENTS AND DID SO MANY YEARS AGO BUT OBVIOUSLY THAT WASN'T A ROUTE TO GO DOWN, I JUST FELT IT WAS UNNECESSARY TO DO THAT '[sic].

The panel also took into account Witness 3's NMC written statement dated 7 December 2022, which stated:

'On [Record of Interview] I discuss an incident involving Bob Lang. On the 19th June 2013 I visited Patient A at the time Patient A had not been very well, physically. He looked tired and I asked if he could have a lie down in bed. Bob Lang then came over to put Patient A into a wheelchair to take him for a lie down. Patient A had Osteoarthritis grade four in both of his knees. As Bob Lang was getting him into the wheelchair he forcefully manipulated his right knee ferociously from it being outstretched to a 90 degree angle. Patient A yelled out in pain. Bob Lang had no discussion with Patient A about what he was going to do, there was no communication.

Bob Lang then got Patient A into bed and comfortable. I was so cross, once Patient A was settled in bed I went over to Bob Lang, and I do regret this, but I said to him something like "if you do that to Patient A again I will break your legs". I was severely reprimanded and threatened with no visits.'

The panel noted that Witness 3 was the only witness evidence to this incident involving Patient A.

The panel also had regard to the notes of Mr Lang's 'Draft Interview' in February 2014. It noted that the draft interview was a broad interview about various incidents and working practices within the Ward that Mr Lang was working on. The incident on 19 June 2013 was discussed with Mr Lang in the interview. It stated:

'[Mr Lang]: Fine. I mean the thing is that the incident has happened and there were no grounds for/it was a situation where she just asked me to help her husband to sit down in the chair. I was actually on the other side of the lounge/in the other lounge and she called me through the hatch and asked if I would give her hand because her words were "he needs to go back to his bedroom" so I said fine I'll come round then, so I went along and she had actually pushed the wheelchair in behind him right up against him, but he would not sit down.

He had been stood up from 11.30 and this was about 2.30 and he had actually been stood up all that time. You could not get him to sit down without persuasion - you could coax him and he'd be back up again in a few seconds, but she decided that he needed to go back to his room. I went round and she said "he won't sit down for me Bob, he won't sit down for me" so we did the usual thing it's just a hand in front of him and a hand behind him and just eased him down and he sat down and as per Health & Safety I put the foot rests round to lift his feet on and as I went to lift his right leg, he jumped as he's got chronic arthritis and obviously his right knee was uncomfortable, he'd been stood up for 3 hours and I got the cold stare from [Witness 3] so truth in truth she just said he can't have those up so I said well it makes it difficult because we've got you know/so I ended up having to take him through backwards in the wheelchair to his room with [Witness 3] and a female visitor, but it turned out she was a female professional called [Ms 1].

[Investigator]: Who is she?

*[Mr Lang]: [Ms 1] is an advisor to relatives with regards the needs in dementia care and she had come to talk to [Witness 3] that day so she was actually the witness who saw that there was nothing untoward and we took him back to his room and there was nothing and then everything was OK, we got him onto his bed with no problems and then just said if there is anything [Witness 3] just call me and she said thank you Bob. I went on my break and when I came back about 4.15/4.20 and was told that her words on leaving were If I ever see Bob trying to put Patient A foot on that footrest again I shall break his legs and I didn't know at the time but apparently she went on to say and if I see anybody else moving his legs, I shall kill them and that was told to me after the interviews, but the thing is I said oh she was joking and said no she wasn't, she wasn't she was absolutely furious and I took it to [Ms 2].
The Matron.'*

The panel considered that Witness 3 had given an interview to police in December 2013, and was very clear at this time about the level of force used by Mr Lang to put her husband, Patient A, into the wheelchair. It noted Witness 3's evidence that, by her own admission, she was so concerned that she reacted by making threats towards Mr Lang.

The panel noted that Witness 3 had made a complaint and further contacted the police, which in the panel's view, showed that she was clearly concerned by Mr Lang's actions towards Patient A.

The panel considered that Mr Lang had acknowledged the incident and the fact that Patient A reacted to being put into the wheelchair, although he denied using the level of force described by Witness 3.

The panel accepted the evidence from Witness 3 and on the balance of probabilities concluded that charge 1 is found proved.

Charge 2

That you, a registered nurse:

- 2) In July 2012/2013, kicked Patient B multiple times to encourage them out of the nurse's office.

This charge is found proved.

In reaching this decision, the panel took into account Witness 2's NMC written statement dated 15 December 2022 which stated:

'The NMC asked me about an incident I discussed from [Record of Interview]. It was July time, I think it was 2012 as I remember I was newly qualified at the time however it could have been 2013. I think it was during the morning handover as Bob Lang was giving the handover and he would mainly do night shifts. I remember we were in the Nurses Office, I was sat on the top of the counter. A patient called Patient B was quite unwell and he was crawling around on the floor with only a pad on, which was not dignified in itself. He crawled into the office and Bob was doing the handover. I saw Bob use the side of his foot to kick him out of the office. Bob said something like "get out" as he kicked Patient B.

The way I would describe it, it was like you would kick a box or an object to move

it, you would keep tapping/kicking it until it went to where you wanted it too. It was hard enough for Patient B to have felt he was being kicked. He kicked him a few times.'

Witness 2's evidence was that they '*found the incident traumatic*' and they were '*newly qualified and ... did not go into nursing for that.*'

The panel also took into account the record of Witness 2's police interview on 1 April 2015 which stated:

'States saw a staff nurse kick a patient out of the office... was the patient. ... was the member of staff. States in June 2013 at 6pm on a handover... was coming on duty. States that... was really unwell and would crawl around on the floor. He crawled into the office. ... asked... to leave, but... would not understand as he had severe dementia, so... kicked him out of the office. States that... a Health Care was there and possible a...

Conversation to how he was kicked out of the office. States... used the side of his foot and was gently kicking him out of the office. ... was standing. States was wearing a pair of black working shoes. States was not kicking him hard, more of a shuffle, but with his foot, the side of his foot

Asked if she meant pushing him out with his foot states no it was more of a kick

Asked what... reaction was to this states he wouldn't have realised what was happening. States reported it to... the ward manager. States reported it the following morning. States that what should have happened was that the ward manager should have spoken to him. States she never got any feedback as to what had happened.'

The panel considered that whilst Witness 2's police interview was given some two or three years after the incident, they gave a very clear account of the incident involving Patient B and Mr Lang's behaviour. The panel noted that Witness 2 had reported the incident to the Ward Manager the following day as they were concerned that that should not have happened on the Ward.

The panel took account of the notes from Mr Lang's '*Draft Interview*' in February 2014, which related to the circumstances of his employment on the Ward. The panel noted that there was no reference to this particular incident within the draft interview notes, however Mr Lang had said that it was a difficult ward and that staff were under pressure.

The panel concluded that based on the evidence before it, Witness 2 had found this incident '*traumatic*', had reported it to the Ward Manager and had given a clear account in their police interview with regard to the incident. The panel therefore accepted Witness 2's evidence and, on the balance of probabilities, found charge 2 proved.

Charge 3

That you, a registered nurse:

- 3) In or around October 2013 forcibly administered medication to Patient C in that you:
 - a) administered medication when they were attempting to physically resist having medication administered to them.
 - b) tilted the chair upon which Patient C was sitting to restrain them and/or make it more difficult for them to physically resist.
 - c) emptied the medication syringe you were attempting to administer into Patient C's mouth whilst they were tilted back on the chair.

This charge is found proved.

In reaching this decision, the panel considered each of the sub-charges 3a, 3b and 3c individually, however it noted that they related to one incident involving Patient C and were all witnessed by Witness 1.

The panel took into account that Witness 1 was the only witness in relation to charge 3 in its entirety. It noted her NMC written statement dated 31 October 2022, as well as her police witness statement dated 17 March 2015 and the notes of her interview from the '*[PRIVATE] Investigation*' dated 19 July 2017, in which she provided a detailed contemporaneous account of the incident. The panel considered that all three of Witness 1's statements were consistent and provided significant detail about the incident in or

around October 2013. Witness 1 had also provided evidence that this was the only incident of that nature that she recalled and that it stood out to her.

The panel took account of the notes from Mr Lang's 'Draft Interview' in February 2014, which related to the circumstances of his employment on the Ward. The panel noted that there was no reference to this particular incident within the draft interview notes, however Mr Lang had said that it was a difficult ward and that staff were under pressure.

Charge 3a

In relation to charge 3a, the panel noted Witness 1's NMC written statement dated 31 October 2022 which stated:

'This incident really stands out to me and it affected me quite a lot. The patient involved was called Patient C, she was a very, very thin lady with short grey hair about 5ft tall. She was very anxious, she would walk around the Ward and grab hold of your arm and sometimes dig her nails in. I do not recall why she was on the Ward, it was probably due to her enduring mental illness, the care home she came from could not manage her acute anxiety.

...

I went over to Patient C and explained it was time for her medications, she linked my arm and seemed calm and settled and was not acting out. We went into the clinic room and Robert was in there at the medications trolley drawing up some medication. Due to now being a qualified nurse I can say he appeared to be drawing up a 5ml syringe with a blue liquid that could have been lorazepam. It did look like there was a lot of different things mashed up in the syringe.

I sat Patient C on a chair, it was a cushioned seat. Patient C started to say no and became agitated like she did not want the medication. Quite quickly Robert put his hand on the back of the chair and pushed it back. Behind the chair was the old fashioned examination bed. The two front legs of the chair were lifted off the ground and. The chair was then balancing on its back two legs resting against the examination bed. Patient C slid to the back of the seat, she was so little she was

almost horizontal. At the time I did not realise this was bad practice and I wish I would have intervened. I was concerned.

Robert put the syringe in Patient C mouth and she was saying she did not want it but the way she was sitting she could not get out of the chair or stop him. She was coughing and spluttering, I was horrified, Robert carried on and when he was finished he let go of the chair and all four legs were back on the ground and he then asked me to take Patient C back to the lounge area.'

The panel accepted Witness 1's evidence as it was detailed and consistent throughout the various accounts she made. It therefore found charge 3a proved on the balance of probabilities.

Charge 3b

In relation to charge 3b, the panel noted Witness 1's NMC written statement dated 31 October 2022 which stated:

'I sat Patient C on a chair, it was a cushioned seat. Patient C started to say no and became agitated like she did not want the medication. Quite quickly Robert put his hand on the back of the chair and pushed it back. Behind the chair was the old fashioned examination bed. The two front legs of the chair were lifted off the ground and. The chair was then balancing on its back two legs resting against the examination bed. Patient C slid to the back of the seat, she was so little she was almost horizontal. At the time I did not realise this was bad practice and I wish I would have intervened. I was concerned.

Robert put the syringe in Patient C mouth and she was saying she did not want it but the way she was sitting she could not get out of the chair or stop him. She was coughing and spluttering, I was horrified, Robert carried on and when he was finished he let go of the chair and all four legs were back on the ground and he then asked me to take Patient C back to the lounge area.'

The panel accepted Witness 1's evidence as it was detailed and consistent throughout the various accounts she made. It therefore found charge 3b proved on the balance of probabilities.

Charge 3c

In relation to charge 3c, the panel noted Witness 1's NMC written statement dated 31 October 2022 which stated:

'Robert put the syringe in Patient C mouth and she was saying she did not want it but the way she was sitting she could not get out of the chair or stop him. She was coughing and spluttering, I was horrified, Robert carried on and when he was finished he let go of the chair and all four legs were back on the ground and he then asked me to take Patient C back to the lounge area.

...

My view is that Robert pushed the medications down her throat and the way she was coughing and spluttering they probably did not go where they were supposed to.'

The panel accepted Witness 1's evidence as it was detailed and consistent throughout the various accounts she made. It therefore found charge 3c proved on the balance of probabilities.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Lang's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no

burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Lang's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The panel had regard to the following written submissions on misconduct contained within the NMC's Statement of Case:

'6. The comments of Lord Clyde in Roylance v General Medical Council [1999]

UKPC 16 may provide some assistance when seeking to define 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 rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

7. As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606

(Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317

(Admin), respectively

'[Misconduct] connotes a serious breach which indicates that the doctor's (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 practitioner'.

8. *Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.*

9. *We consider the following provision(s) 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*

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

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*

10. *We consider the misconduct serious because the actions of Mr Lang fall significantly short of what would be expected of a registered nurse. The areas of concern identified relate to basic nursing skills and practice, a failure to provide safe and effective care to patients in his case and the physical abuse of patients.'*

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC, in its written Statement of Case, invited the panel to consider the following in respect of impairment:

'11. The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:

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

12. If the answer to this question is yes, then the likelihood is that the professional’s fitness to practise is not impaired.

13. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC’s guidance on impairment.

14. When determining whether the Registrant’s fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

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

15. It is the submission of the NMC that limbs a, b and c can be answered in the affirmative in this case. Dealing with each one in turn;

(a) This is a case which involves the physical abuse and ill-treatment of patients. The NMC submits that Mr Lang’s conduct has occurred in the past and is liable to occur in the future putting patients at significant risk of unwarranted harm. Mr Lang’s action caused actual physical harm to patients and compromised patient safety.

(b) The misconduct in this case has the potential to cause damage both now and, in the future, where a registrant fails to treat patients with the utmost care and respect. Registered professionals occupy a position of trust and must therefore act with integrity and promote a high standard of care at all times. Mr Lang's failure to do so has brought the profession into disrepute and is likely to bring the profession into disrepute in the future.

(c) Mr Lang's failings have also breached fundamental tenets of the profession. Nurses are expected to act with kindness and compassion, and provide a high standard of care at all times. They are expected to treat people with dignity, keep people safe and to uphold the reputation of the profession. They also occupy a position of trust both as a nurse and employee. Mr Lang's misconduct completely contradicts those fundamental tenets of nursing.

16. Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. 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:

- (i) whether the concern is easily remediable,*
- (ii) whether it has in fact been remedied and*
- (iii) whether it is highly unlikely to be repeated.*

17. We consider the registrant has displayed no insight. Mr Lang disputes all of the concerns that have been raised against him. There's no evidence that he's attempted to reflect on the issues, show insight or take any steps to address them.

18. Although the concerns relate to events that have occurred over 10 years ago, the misconduct in this case fall seriously short of the standards the public expect of professionals caring for them and represent a serious departure from the standards expected of registered nurses. The abuse of vulnerable patients is an extremely serious matter and the misconduct raises serious concerns about Mr Lang's attitude towards people in his care.

19. We note the registrant has not worked as a registered nurse for almost 10 years and has not provided any evidence of any training or learning undertaken since these incidents. Although the concerns relate to events that have occurred over 10 years ago, the misconduct in this case fall seriously short of the standards the public expect of professionals caring for them and represent a serious departure from the standards expected of registered nurses.

20. Mr Lang last practised as a registered nurse in 2014 and advised the NMC that he's [PRIVATE] and has no intention of seeking employment in the health sector or anywhere else.

21. In any event, we consider that there is a continuing risk to the public due to Mr Lang's lack of insight and failure to undertake any meaningful reflection or demonstrate steps taken to remedy the concerns in this case.

22. There is a significant risk of harm to the public were Mr Lang allowed to practise without restriction. Therefore, a finding of impairment is required for the protection of the public.

Public interest

24. 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."

23. Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper

professional standards and conduct and/ or to maintain public confidence in the profession.

24. In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.

25. However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.

26. Mr Lang's conduct engages the public interest as the public would be shocked to hear of a nurse physically abusing and mistreating patients in the way Mr Lang has. Public confidence would be extremely damaged if a finding of impairment were not made. The misconduct in this case is unacceptable and would severely undermine the reputation and trust the public have in nurses and in the profession. We therefore consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour.'

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 AC 311, *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin) and *Grant and CHRE v NMC*.

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v GMC (No. 2)* which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

In its written Statement of Case, the NMC had invited the panel to take the view that the facts found proved amount to misconduct. The panel was directed to the 2015 Code. However, the panel instead had regard to the terms of 'The Code: Standards of conduct, performance and ethics for nurses and midwives 2008' (the 2008 Code) in making its decision, as this was the Code that was valid at the time of the incidents.

The panel was of the view that Mr Lang's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Lang's actions amounted to a breach of the 2008 Code. Specifically:

'Make the care of people your first concern, treating them as individuals and respecting their dignity

Treat people as individuals

- 1 *You must treat people as individuals and respect their dignity.*
- 3 *You must treat people kindly and considerately.*
- 4 *You must act as an advocate for those in your care, helping them to access relevant health and social care, information and support*

Collaborate with those in your care

- 8 *You must listen to the people in your care and respond to their concerns and preferences.*

Ensure you gain consent

- 13 *You must ensure that you gain consent before you begin any treatment or care*
- 14 *You must respect and support people's rights to accept or decline treatment and care.*
- 16 *You must be aware of the legislation regarding mental capacity, ensuring that people who lack capacity remain at the centre of decision making and are fully safeguarded.*

Provide a high standard of practice and care at all times

Use the best available evidence

35 *You must deliver care based on the best available evidence or best practice.*

Be open and honest, act with integrity and uphold the reputation of your profession

Uphold the reputation of your profession

61 *You must uphold the reputation of your profession at all times.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel noted that Mr Lang had used unnecessary force on Patient A, kicked Patient B multiple times, and forcibly administered medication to Patient C. It considered that this pattern of conduct, which took place on three separate occasions towards vulnerable patients, related to basic nursing skills and practice and amounted to the physical abuse of these patients. The panel determined that by acting in the manner outlined at charges 1, 2 and 3, Mr Lang failed to provide safe and effective care to patients on each occasion.

The panel noted that the witnesses described Mr Lang's conduct as acting '*ferociously*', causing a patient to yell out in pain and being so concerned as to contact the police. Another witness described his kicking of Patient B being '*traumatic*', and a witness who saw his conduct in respect of Patient C was '*horrified*'. In addition, it noted that these witnesses had been or are now NMC registrants.

The panel also noted Witness 4's NMC written statement, in which he provided comments in response to the allegations about Mr Lang's conduct and the standards expected. Witness 4 outlined the standards of care required by Mr Lang and made reference to the Board's policies in relation to '*Covert Administration of Medicines Clinical Protocol*' and '*Restraint Guidelines*'.

The panel determined that Mr Lang's conduct at charges 1, 2 and 3 had been and would be regarded as deplorable by a fellow practitioner.

Having considered all the charges individually, the panel found that Mr Lang's actions did fall seriously short of the conduct and standards expected of a nurse and therefore amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Lang's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

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

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

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper

professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

The panel determined that limbs a), b) and c) are engaged.

The panel found that patients were put at risk and were caused harm as a result of Mr Lang's misconduct. Mr Lang's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered that it had seen no evidence of insight from Mr Lang. The panel noted that during the Board's investigatory process into various incidents and working practices within the Ward, Mr Lang had a 'draft interview' where he acknowledged the incident outlined in charge 1 and Patient A's reaction, but denied using the level of force

described by Witness 3. The panel had no evidence before it of Mr Lang's response or insight into the incidents at charges 2 and 3.

The panel took into account that Mr Lang is [PRIVATE], has expressed no intention of returning to nursing, and does not wish to further engage with the NMC. It noted that Mr Lang had emailed the NMC on 23 January 2023 to indicate that he was not interested in engaging with the proceedings.

There was therefore no evidence before the panel that Mr Lang acknowledged that his actions consisted of departures from expected practice. The panel saw no evidence of reflection by Mr Lang into the impact of his conduct. It was not provided with a reflective piece demonstrating his understanding of why what he did was wrong, how his actions put patients at risk of harm and how they impacted negatively on the reputation of the nursing profession. The panel had no evidence before it of how Mr Lang would manage the situation differently in the future.

The panel was satisfied that the misconduct in this case is capable of being addressed. The panel was mindful that Mr Lang's misconduct consisted of a pattern of similar aggressive and abusive behaviour towards vulnerable patients. The panel had not seen evidence or information from Mr Lang to suggest that he has since taken steps to strengthen his practice or address the concerns around providing safe and effective care to patients. Consequently, having regard to Mr Lang's failure to develop insight, the panel concluded that the regulatory concerns in this case had not been remediated.

On the basis of the information before it, the panel was therefore not satisfied that Mr Lang can practise kindly, safely and professionally.

As such, the panel concluded that Mr Lang's misconduct was likely to be repeated in the future. It therefore found that there is a risk of repetition and that a finding of current impairment of fitness to practise is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public

confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required. This is because a well-informed member of the public would be concerned to learn that Mr Lang used unnecessary force on a patient, kicked a patient multiple times, and forcibly administered medication to a patient.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also found Mr Lang's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Lang's fitness to practise is currently impaired.

Sanction

The panel considered this case very carefully and decided to make a striking-off order. It directs the registrar to strike Mr Lang off the register. The effect of this order is that the NMC register will show that Mr Lang has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel noted that in the NMC's Statement of Case attached to the Notice of Meeting, dated 7 March 2024, the NMC had advised Mr Lang that it would seek the imposition of a 12-month suspension order with a review if it found Mr Lang's fitness to practise currently impaired.

In its written submissions, the NMC stated:

'27. We consider the following sanction is proportionate:

Suspension order for 12 months with a review.

28. Taking no further action or imposing a caution order would be inappropriate as they would not reflect the seriousness of the misconduct and would not be sufficient to protect the public. Further, public confidence in the professions and professional standards would not be maintained by the imposition of a caution order or taking no further action.

29. A conditions of practice order would not be appropriate as this is not a case which relates solely to clinical concerns that could be addressed with conditions. Although there are clinical failings in this case which further training could address, the underlying attitudinal concerns cannot be addressed by a conditions of practice order. There are no conditions which can adequately address Mr Lang's behaviour and blatant disregard for patient safety. It would therefore not be appropriate or proportionate in these circumstances to impose conditions as they would not adequately protect or satisfy the public interest in this case.

30. The seriousness of the misconduct requires a temporary removal from the register. Whilst this case does involve physical abuse of patients there is no evidence of any real malice. It appears that the cruelty stems from a lazy and absent-minded mentality rather than a malicious one. A suspension order for the maximum period of 12 months would be an appropriate and proportionate sanction in this case.

31. With regard to our sanctions guidance the following aspects have led us to this conclusion:

- No evidence of harmful deep-seated personality of attitudinal problems*
- No evidence of repetition of behaviour since the incident*
- The seriousness of the case requires temporary removal from the register*

32. A 12-month suspension order with a review would be sufficient to protect the public and maintain public confidence in the professions. It would also provide Mr Lang the

opportunity to reflect and undertake meaningful reflection and provide any steps taken by him to a future reviewing panel. Temporary removal from the register is required to uphold nursing standards and maintain confidence in the profession. A striking-off order would be disproportionate as there is a lesser sanction that can adequately protect the public and satisfy the public interest.'

Decision and reasons on sanction

Having found Mr Lang'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:

- Mr Lang abused a position of trust.
- There was a pattern of misconduct which was of a callous and unprofessional nature.
- Highly vulnerable patients were affected by Mr Lang's misconduct.
- Mr Lang's conduct caused harm to these vulnerable patients and the witnesses.
- Mr Lang demonstrated a complete lack of respect towards the vulnerable patients.
- Mr Lang has not shown remorse, insight or reflection into his actions.

The panel also took into account the following mitigating features:

- There was some evidence indicating a highly pressurised working environment on the Ward.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Lang'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 Lang'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 Lang's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved and Mr Lang's lack of engagement. There was no information before the panel to suggest that Mr Lang would be willing to engage with conditions of practice. The panel therefore considered that any conditions of practice order would not be workable, nor serve any useful purpose. Furthermore, the panel concluded that the placing of conditions on Mr Lang's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered that this was not a single instance of misconduct. It noted that Mr Lang's misconduct involved three separate patients on three separate instances where he

demonstrated a similar lack of care and compassion in relation to their treatment. The panel found that there was evidence of a deep-seated attitudinal problem. It considered that whilst there was no evidence of repetition since the incidents, Mr Lang has not been practising. The panel was not satisfied that Mr Lang has insight nor that he 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 the serious breach of the fundamental tenets of the profession evidenced by Mr Lang's actions is fundamentally incompatible with Mr Lang remaining on the register.

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

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel determined that, in light of the repeated nature of Mr Lang's callous treatment of patients and his lack of insight, remorse and remediation, the regulatory concerns raised fundamental questions about Mr Lang's professionalism.

Mr Lang'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 Lang's actions were serious and 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 determined 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 Lang'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.

In making this decision, the panel carefully considered the NMC's written representations in relation to the sanction that the NMC was seeking in this case. The panel did not accept the NMC's submission that Mr Lang's cruelty appeared to stem from a '*lazy and absent-minded mentality rather than a malicious one*'. It considered that Mr Lang's misconduct towards Patients A, B and C was callous, cruel and unprofessional, and demonstrated his complete lack of care towards these vulnerable patients and their dignity, indicating a harmful deep-seated attitudinal problem.

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

This will be confirmed to Mr Lang in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Lang's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took into account the NMC's written representations on interim order, which stated:

'33. If a finding is made that the registrant's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.

34. If a finding is made that the registrant's fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible with continued registrant we consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest.'

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to ensure that Mr Lang cannot practise unrestricted before the substantive striking-off order takes effect. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.