

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

14 – 15 September 2020 & 10 – 12 February 2021

Substantive Hearing

Conducted partly at 2 Stratford Place, Montfichet Road, London, E20 1EJ and partly via virtual hearing

Name of registrant:	Mr Dean Robert Hall
NMC PIN:	07E2015E
Part of the register:	Mental Health Nurse (2008)
Area of registered address:	Essex
Type of case:	Misconduct
Panel members:	Bryan Hume (Chair, lay member) Jill Wells (lay member) Deborah Hall (registrant member)
Legal Assessor:	Peter Jennings
Panel Secretary:	Leigham Malcolm
Nursing and Midwifery Council:	Represented by Mr David Claydon, NMC Case Presenter
Mr Hall:	Not present and unrepresented
Facts proved:	2, 3a, b, c, d, e, g, h, l, j and k
Facts not proved:	1 and 3f
Fitness to practise:	Impaired
Sanction:	Striking-off Order
Interim order:	Interim Suspension Order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Hall was not in attendance and that the Notice of Hearing letter had been sent to his registered email address on 13 August 2020.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Hall's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Claydon, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Hall has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Hall

The panel next considered whether it should proceed in the absence of Mr Hall. It had regard to Rule 21 and heard the submissions of Mr Claydon who invited the panel to continue in Mr Hall's absence.

Mr Claydon informed the panel that on 28 February 2020 the Royal College of Nursing had communicated to the NMC that they were no longer representing Mr Hall. Further, the RCN had stated that Mr Hall would be disengaging from the process. Mr Claydon referred the panel to attempts by the NMC to contact Mr Hall on 4 and 10 September 2020 to

establish his intentions around attending today's hearing. All attempts to contact Mr Hall had been unsuccessful.

Mr Claydon submitted that in view of the information from the RCN, and Mr Hall's disengagement from the process, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

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

- No application for an adjournment has been made by Mr Hall;
- Mr Hall has disengaged with the NMC and has not responded to any of the communications recently sent to him about this hearing;
- Mr Hall has not provided the NMC with a telephone number at which he can be contacted;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- There is a public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Hall in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to him, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Hall's decisions to absent himself from the hearing and not to provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Hall. The panel will draw no adverse inference from Mr Hall's absence in its findings of fact.

Details of charge

That you, registered nurse employed by the North East London Foundation NHS Trust:

- 1) *On 15 February 2019 contrary to Patient A's care plan used a penile sheath*
- 2) *Did not seek consent from Patient A to change his clothes and the bed sheets*
- 3) *On or around 17 February 2019 had the following interaction with Patient A:*
 - a) *Told him to **'shut up'** on one or more occasions*
 - b) *Referred to him as a **'dirty old git'***
 - c) *Referred to his urinary incontinence with the following / or similar words to the effect of **'he's pissed so much there's a fucking puddle down here'**.*
 - d) *Told him **'you think this is bad, wait till you get to a mental health ward'***
 - e) *Told him to **'just remember to thank your son'***
 - f) *Referred to Patient A's son perceived attempts to obtain extra funding*
 - g) *Did not take account of and / or exacerbated Patient A's distressed state*
 - h) *You stated to colleague A, **'if they put a hidden camera in here we'd be in trouble wouldn't we?'***

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Claydon, on behalf of the NMC, to amend the stem of the charge as well as the wording of charges 2, 3f and 3h.

The proposed amendments were to correct typographical errors and, in respect of charge 2, add specificity. The proposed amendments were as follows:

That you, a registered nurse employed by the North East London Foundation NHS Trust:

- 1) ...
- 2) **On or around 17 February 2019 did not seek consent from Patient A to change his clothes and the bed sheets**
- 3) *On or around 17 February 2019 had the following interaction with Patient A:*
 - a) ...
 - b) ...
 - c) ...
 - d) ...
 - e) ...
 - f) *Referred to Patient A's son's perceived attempts to obtain extra funding*
 - g) ...
 - h) ~~You~~ *Stated to colleague A, 'If they put a hidden camera in here we'd be in trouble wouldn't we?'*

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

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Hall and no injustice would be caused to either party by the proposed amendment. It was therefore appropriate to allow the amendment, as applied for.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Claydon made a request that any parts of this case relating to Mr Hall's personal or health matters be held in private. The application was made pursuant to Rule 19 of the Rules.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined that any parts of the hearing which related to Mr Hall's personal or health matters would be held in private, as and when they arose. It was satisfied that this was justified by the need to protect Mr Hall's privacy and that this outweighed any prejudice to the general principle of public hearings.

Panel's decision and reasons on admission of evidence

Prior to the panel announcing its decision on the facts of Mr Hall's case, Mr Claydon applied to admit in evidence a reflective statement, apparently written by Mr Hall, which had come to light. Mr Claydon explained that the document was on the NMC's system as

at April 2019 and appeared to have been provided for the purposes of an interim order hearing. The statement had not been adduced into evidence earlier in the hearing.

It was undated and unsigned but it addressed the incident on 17 February 2019.

The panel accepted the advice of the legal assessor.

The panel bore in mind the principles of fairness and relevance, and took into account all of the circumstances, including the submissions from Mr Claydon, on behalf of the NMC. Given that the statement, appearing to have been written by Mr Hall, directly addressed the events of 15 - 17 February 2019, and therefore related to charges 1, 2 and 3, the panel considered it to be highly relevant to any decision it may make on the facts of Mr Hall's case. The panel considered that, in spite of the late stage of the application, it was fair to admit the statement into evidence; indeed in the panel's view it could be unfair to Mr Hall not to do so.

The panel decided to accept the statement into evidence.

Panel's decision and reasons on adjourning the hearing part-heard

On 15 September 2020, after listening to the audio recording during the course of the hearing, and again during its deliberations, the panel considered that the charges may not fully reflect the seriousness of Mr Hall's conduct disclosed by the evidence before it. In particular, the panel was able to hear certain words which the transcript had quoted as inaudible. The panel invited submissions from Mr Claydon in relation to whether the allegation should be amended to include three further matters which are heard on the audio recording. Mr Claydon indicated that the NMC would prepare draft amendments to the charges reflecting those matters.

The panel therefore decided to adjourn the hearing, so that the NMC could prepare the draft amended charges and serve them on Mr Hall and provide him with an opportunity to respond to them.

The hearing resumed on 10 February 2021

The panel was informed that Mr Hall was not in attendance and that he had been notified of the resuming hearing via email on 7 January 2021.

The panel took into account that the notification provided details of the amended charges, the date and time of the virtual hearing and, amongst other things, information about Mr Hall's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Claydon submitted that the NMC had therefore effectively informed Mr Hall of the resuming hearing.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Hall has been notified and informed of the resuming hearing

Decision and reasons on proceeding in the absence of Mr Hall

The panel next considered whether it should proceed in the absence of Mr Hall.

Mr Claydon informed the panel that since the hearing went part-heard in September 2020, the NMC had received no communication from Mr Hall and all attempts to contact Mr Hall had been unsuccessful.

Mr Claydon submitted that there was no reason to believe that an adjournment would secure his attendance on some future occasion and invited the panel to proceed in his absence.

The panel noted that its direction to the NMC to send notice of the resuming hearing to Mr Hall by post as well as by email had not been carried out, as envisaged. However, in the NMC's defence, in the interim period documents which had been sent by post to Mr Hall had included information about the date of the resuming hearing.

The panel has decided to proceed in the absence of Mr Hall. In reaching this decision, the panel has considered the submissions of Mr Claydon and the advice of the legal assessor. It noted that:

- Mr Hall has been notified of the resuming hearing and no application for an adjournment has been made;
- Mr Hall did not participate in the hearing in September 2020;
- Mr Hall's previous representative had notified the NMC that Mr Hall was disengaging with the NMC;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- There is a public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Hall.

Decision and reasons on application to amend the charge

Mr Claydon provided the panel with amended charges which included three further matters which were heard by the panel on the audio evidence.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules. After modifying the suggested wording of the new Charge 3c the panel amended the charges to include the three additional charges which it considered an appropriate reflection of Mr Hall's conduct as disclosed by the audio evidence it heard.

Charges, as amended:

That you, a registered nurse employed by the North East London Foundation NHS Trust:

- 1) *On 15 February 2019 contrary to Patient A's care plan used a penile sheath*
- 2) *On or around 17 February 2019 did not seek consent from Patient A to change his clothes and the bed sheets*
- 3) *On or around 17 February 2019 had the following interaction with Patient A:*
 - a) *Said the following words, or words to the effect of: **'What do you want? A punch up the bracket?'***
 - b) *Told him to **'shut up'** on one or more occasions*
 - c) *In response to Patient A's request for the presence of another member of staff, referred to the other member of staff joining him in bed*
 - d) *Referred to him as a **'dirty old git'***
 - e) *Referred to his urinary incontinence with the following / or similar words to the effect of **'he's pissed so much there's a fucking puddle down here'**.*
 - f) *Told him **'you think this is bad, wait till you get to a mental health ward'***
 - g) *Told him to **'just remember to thank your son'***
 - h) *Referred to Patient A's son's perceived attempts to obtain extra funding*
 - i) *Did not take account of and / or exacerbated Patient A's distressed state*
 - j) *Said words to the effect of **'Let's put your shroud on'***

k) *Stated to colleague A, 'If they put a hidden camera in here we'd be in trouble wouldn't we?'*

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

Decision and reasons on facts

In reaching its decisions on the disputed facts the panel took into account all of the evidence in this case which included two witness statements, documentary and audio evidence, together with the submissions made by Mr Claydon on behalf of the NMC and the reflective statement provided by Mr Hall. It has drawn no adverse inference from the non-attendance of Mr Hall.

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 context to the charges against Mr Hall is that the NMC received a referral from North East London Foundation Trust ("The Trust"). The referral set out how on the morning of the 17th February 2019, whilst Mr Hall was assisting Patient A, he behaved in an unprofessional, abusive and uncompassionate manner towards the patient.

The main evidence in support of the allegation is an audio recording from a device which Patient A's son placed in his room. Patient A's son placed the 24h recording device on his father's bedside table after Patient A twice mentioned that some staff were not nice. When Patient A's son recovered the device and heard the recording, he spoke to a Safeguarding Representative at the Trust about what had happened. The Trust took immediate action, suspending Mr Hall from clinical duties.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

Charge 1

1) On 15 February 2019 contrary to Patient A's care plan used a penile sheath

In reaching its decision, the panel had regard to all of the evidence before it. It took account of Mr Hall's statement during the Trust's local investigation, during which he stated:

"...the penile sheath worked, it kept him dry, he was able to sleep which was better for him and we could then also monitor his urine and it could be recorded"

It also took into account Mr Hall's reflective statement in which he stated:

"On the night of the 15th I decided to use the penile sheath to evaluate and assess if this helped the patient".

From the sequence of the events described in the statement 'the 15th' clearly refers to 15 February 2019.

The panel considered that during the investigation and in the reflective statement Mr Hall acknowledged that a penile sheath was used for Patient A. However, there was no evidence of Patient A's care plan before the panel. In the absence of a care plan for Patient A, the panel could not be satisfied that Mr Hall used a penile sheath contrary to Patient A's care plan on 15 February 2019.

The panel therefore found this charge not proved.

This charge is found NOT proved.

Charge 2

2) ***On or around 17 February 2019 did not seek consent from Patient A to change his clothes and the bed sheets***

In reaching its decision, the panel heard the audio evidence adduced by the NMC and took account of the audio transcript and the other evidence.

The panel noted that it is alleged that the events in charges 2 and 3 took place on 17 February 2019. The witness statement of the investigator refers to that date; the reference number of the audio file also has that date, though it is unclear whether the reference is generated automatically or was added later. Mr Hall's reflective statement is headed 'Reflection on incident on night of 17 February 2019, Mayfield Ward' and his account of events of the night in question refers to the night of the 16 and to Sunday, 17 February.

It was Patient A's son who made the recording and his witness statement gives the date as *17 March 2019*.

The panel is satisfied, on the balance of probabilities, that the correct date is 17 February 2019.

The panel considered there was nothing within the transcripts nor anything audible within the evidence to suggest that Patient A's consent was sought to having his clothes and bed sheets changed. The panel therefore found this charge proved.

This charge is found proved.

Charge 3a

3) *On or around 17 February 2019 had the following interaction with Patient A:*

- a) *Said the following words, or words to the effect of: **'What do you want? A punch up the bracket?'***

In reaching its decision, the panel heard the audio evidence adduced by the NMC and took account of the audio transcripts. The panel heard clear audio evidence of Mr Hall saying to Patient A *'What do you want? A punch up the bracket?'*. On the basis of the audio evidence the panel found this charge proved.

This charge is found proved.

Charge 3b

- b) *Told him to **'shut up'** on one or more occasions*

In reaching its decision, the panel heard the audio evidence adduced by the NMC and took account of the audio transcripts.

The panel, having heard the audio recording, was of the view that the entire conversation, although it involves matters said by Mr Hall and the health care assistant to each other, as well as statements addressed to Patient A himself, took place as a continuing conversation in Patient A's immediate presence. In the panel's judgement, all of the conversation was part of an interaction with Patient A.

The panel considered it to be clear from the audio evidence, that during a dialogue with Patient A, Mr Hall responded to requests with *'shut up'* and on other occasions Mr Hall told Patient A to *'shut up'* in response to his distressed cries.

The panel took account of the information within the interview notes. Mr Hall stated in his investigation interview that Patient A was hard of hearing and that the remarks were muttered and he did not intend them to be heard. However, in the panel's judgment it remains the fact that Mr Hall told Patient A to shut up on a number of occasions. Based on the evidence before it the panel found this charge proved.

This charge is found proved.

Charge 3c

c) In response to Patient A's request for the presence of another member of staff, referred to the other member of staff joining him in bed

In reaching its decision, the panel heard the audio evidence adduced by the NMC and took account of the audio transcripts. During the audio recording the panel heard Patient A asking for another member of staff, and in response, the panel heard Mr Hall stating:

"Well I'll ask her but I don't think she'll get in there with you."

In response to Patient A asking again, Mr Hall said:

"Yeah, I know she'll probably warm you up nicely."

On the basis of the audio evidence the panel found this charge proved.

This charge is found proved.

Charge 3d

d) Referred to him as a 'dirty old git'

In reaching its decision, the panel had particular regard to Mr Hall's statement during the Trust's local investigation, during which he stated:

"The dirty old git comment was with him waving his penis around; we or I would usually hold a bottle and he would hold his penis and wee into the bottle. I admit the comment was wrong and inappropriate."

It was also clear to the panel, from the audio recording, that Mr Hall was referring to Patient A when he used the term '*dirty old git*'. Based on the evidence before it the panel found this charge proved.

This charge is found proved.

Charge 3e

e) *Referred to his urinary incontinence with the following / or similar words to the effect of '**he's pissed so much there's a fucking puddle down here**'.*

Again, in reaching its decision, the panel considered Mr Hall's statement during the Trust's local investigation, during which he stated, apparently in relation to this remark:

"I accept what you say about the swearing, it wasn't directed to the patient, I have discussed this with the police. It was more of a shock to the amount of urine that was everywhere, which I also trod in."

In the panel's view charge 3e does not allege that the comment was 'directed to' Patient A. From the audio recording it was clear to the panel that Patient A was present and involved in the general exchanges of dialogue when Mr Hall said '*he's pissed so much*

there's a fucking puddle down here'. Based on the evidence before it the panel found this charge proved.

This charge is found proved.

Charge 3f

- f) *Told him 'you think this is bad, wait till you get to a mental health ward'*

In respect of this charge, the panel paid close attention to the audio recording. It considered that whilst the statement *'you think this is bad, wait till you get to a mental health ward'* is clearly audible, it could not be determined whether the statement was addressed to Patient A or Mr Hall's colleague, the health care assistant. As the panel could not be sufficiently satisfied that the statement was addressed to Patient A, it found this charge not proved.

This charge is found NOT proved.

Charge 3g

- g) *Told him to 'just remember to thank your son'*

In reaching its decision, the panel had regard to all of the evidence before it. It heard the audio evidence adduced by the NMC and took account of the audio transcript.

The panel considered it to be clear from the audio evidence that during the dialogue with Patient A, Mr Hall said *'just remember to thank your son'*. Based on the evidence before it the panel found this charge proved.

This charge is found proved.

Charge 3h

h) Referred to Patient A's son's perceived attempts to obtain extra funding

The panel had particular regard to the audio evidence and the transcript. From the evidence available it was clear to the panel that Mr Hall said, to Patient A:

"He's got your best will at heart, trying to get you extra funding"

In the context of the proceeding dialogue, the panel is satisfied that 'He' was a reference to Patient A's son. Factually, these words were stated. Therefore, based on the evidence before it the panel found this charge proved.

This charge is found proved.

Charge 3i

i) Did not take account of and / or exacerbated Patient A's distressed state

The panel took account of the audio evidence. It considered that whilst Mr Hall undertook practical tasks to take account of Patient A's physical needs, such as closing the window and changing Patient A's clothing, he failed to take account of Patient A's emotional distress. The panel considered Mr Hall did little to calm or reassure Patient A. Having listened carefully to the recording the panel was also of the view that Mr Hall's manner exacerbated Patient A's emotional distress. For this reason, the panel found charge 3g proved.

This charge is found proved.

Charge 3j

j) *Said words to the effect of **'Let's put your shroud on'***

In reaching its decision, the panel heard the audio evidence adduced by the NMC and took account of the audio transcripts. The panel heard clear audio evidence of Mr Hall saying to Patient A *'Let's put your shroud on'*. On the basis of the audio evidence the panel found this charge proved.

This charge is found proved.

Charge 3k

k) *Stated to colleague A, **'If they put a hidden camera in here we'd be in trouble wouldn't we?'***

Again, the panel had particular regard to the transcript and the audio evidence. From the evidence available it was clear to the panel that Mr Hall stated, to Colleague A, *'If they put a hidden camera in here we'd be in trouble wouldn't we?'* The panel noted that, factually, these words were stated. Therefore, based on the evidence before it the panel found this charge proved.

This charge is found proved.

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 Hall'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 suitability to remain on the register unrestricted.

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 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 Hall's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 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.*'

Mr Claydon submitted that the facts found proved amounted to serious misconduct which must not occur again. He told the panel that Mr Hall's actions were extremely serious, for which there was no excuse. Mr Claydon also submitted that this was a 'never event', meaning that this is an incident which should never have occurred in any circumstances.

Mr Claydon highlighted the following factors:

- Mr Hall's actions were a gross dereliction of his nursing duties, occurring in the presence of a junior colleague;
- Mr Hall was aware that his actions were wrong at the time, given his comment at Charge 3k;
- The evidence only came to light due to the intervention of a family member;
- Patient A was very vulnerable.

Mr Claydon referred to Mr Hall's reflective piece where he sought to blame others and described some stressors in his life. He submitted that these could not be seen as an excuse for Mr Hall's behaviour.

In view of the above, Mr Claydon invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (the Code) and identified the specific, relevant standards where Mr Hall's actions amounted to misconduct.

Submissions on impairment

Mr Claydon moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Claydon highlighted to the panel that Patient A was caused emotional harm as a result of Mr Hall's actions. He submitted that there was little evidence before the panel that Mr Hall has any insight into the impact of his actions, instead he deflects blame onto his colleagues. Further, he submitted that his actions would be very difficult to remediate and there was no evidence of any attempt at remediation. He submitted that there was nothing to suggest that he would not act in a similar way in future, giving rise to a risk of repetition. Given the risk present, Mr Claydon invited the panel to find Mr Hall's fitness to practise currently impaired on the grounds of public protection.

Mr Claydon submitted that the gravity of the misconduct in this case is liable to bring the nursing profession into disrepute. Therefore, a finding of impairment is also necessary on the grounds of public interest.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mr Hall's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the following provisions of the Code:

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

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

2.4 respect the level to which people receiving care want to be involved in decisions about their own health, wellbeing and care

2.5 respect, support and document a person's right to accept or refuse care and treatment

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

To achieve this, you must:

3.1 pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages

3.4 act as an advocate for the vulnerable...

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel reached the view that the facts found proved were serious and amounted to misconduct.

Patient A was a vulnerable adult for whom Mr Hall had a duty to advocate. Not only did Mr Hall fail to advocate for Patient A, but in ridiculing him, in the presence of a junior colleague, Mr Hall was disrespectful and demonstrated unacceptable behaviour. The panel considered that Mr Hall's statements, clearly audible on the recording, were indicative of a very concerning attitude towards Patient A and his family. For these reasons, the panel found that Mr Hall's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

'Do our findings of fact in respect of the [doctor's] misconduct... 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) ...

The panel finds that Patient A was caused emotional harm as a result of Mr Hall's misconduct. Further, the panel finds that Mr Hall's misconduct did breach fundamental tenets of the nursing profession, including maintaining dignity, treating patients with respect and advocating for vulnerable individuals, and brought the reputation into disrepute.

The evidence before the panel indicated that Mr Hall had only very limited insight into his misconduct. The panel does not accept his explanation in his reflective piece for his behaviour. Further, there was no evidence at all of any efforts on Mr Hall's behalf to undertake remediation. The panel could therefore not be satisfied that Mr Hall would act any differently in future. Mr Hall failed to treat Patient A with dignity and respect. The spirit and tone of Mr Hall's comments were offensive and derogatory in nature and the panel determined that there remains a risk of him repeating this in future.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are not only to protect, promote and maintain the health, safety, and well-being of the public and patients, but also 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case, given the serious nature of the charges found proved, and therefore also finds Mr Hall's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

Submissions on sanction

In respect of sanction, Mr Claydon submitted that the severity and nature of Mr Hall's misconduct meant that to take no action, or to impose a caution order, would be inappropriate. Neither course of action would do anything to protect the public or address the public interest in this case.

Mr Claydon stated that misconduct was also too serious to warrant the imposition of a conditions of practice order. He highlighted the attitudinal issues identified by the panel, and submitted that this was something that could not be addressed through conditions of practice or retraining.

Mr Claydon submitted that Mr Hall's misconduct raises questions about his professionalism and his suitability to remain on the NMC register. He said that a suspension order would not be appropriate because of Mr Hall's lack of insight. Mr Claydon submitted that the most appropriate order in this case was a striking-off order and he invited the panel to remove Mr Hall's name from the NMC register.

Decision and reasons on sanction

Having found Mr Hall's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. In reaching its decision the panel took account of the effect of any sanction on Mr Hall. 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 panel took into account the following aggravating features:

- Patient A was very vulnerable;
- The likelihood of emotional harm to Patient A;
- Mr Hall was aware from the outset that his actions were wrong, as indicated by his remarks stated within Charge 3k;
- The incident occurred in the presence of a junior colleague.

The panel could find no mitigating factors in this case; however, it acknowledged that there have been no previous regulatory findings against Mr Hall.

The panel bore in mind Mr Hall's account in his reflective statement, provided for an interim order hearing in 2019, that he was tired and frustrated that a penile sheath was no longer part of Patient A's plan of care. It also bore in mind the personal and workplace circumstances on which Mr Hall relies in that statement. As the panel has already remarked in its decision on impairment, it did not regard these factors as an acceptable explanation for his misconduct.

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

It then considered the imposition of a caution order but again determined that, due to the nature and seriousness of the misconduct, and the public protection issues identified, an order that does not restrict Mr Hall'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 Hall's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate. 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 Hall's registration would be a sufficient and appropriate response. The panel was of the view that Mr Hall's misconduct was indicative of an attitudinal issue. The panel determined that there are no practical or workable conditions that could be formulated to address the attitudinal issue identified, especially given that Mr Hall disengaged with the NMC in 2019.

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:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel has identified evidence of harmful deep-seated attitudinal problems and a lack of sufficient insight, both of which increases the risk of the behaviour being repeated. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in considering a striking-off order, the panel has borne in mind that Mr Hall has no previous adverse regulatory findings and that, while his behaviour involved a series of improper actions, they were part of a single incident. Despite those factors the panel has reached the conclusion that Mr Hall's misconduct indicates an attitude to his patient and to the patient's family which is incompatible with the responsibilities of the profession of nursing.

The panel took note of the following paragraphs of the SG:

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

Mr Hall's actions were extremely unprofessional and a significant departure from the standards expected of a registered nurse. As the panel has already stated, in the panel's view there was a significant risk of repetition. In the panel's judgment Mr Hall's conduct is fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Hall's actions were sufficiently serious that to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. It would also fail to protect patients and the public.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is a striking-off order. In the panel's judgment, nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to protect the public, to maintain public confidence in the profession, and to declare to the public and to the profession the standards of conduct and behaviour required of a registered nurse.

This will be confirmed to Mr Hall in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, or the conclusion of any appeal, 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 Hall's own interest.

The panel took account of the submissions made by Mr Claydon and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. In reaching the decision to impose an interim order it bore in mind the effect of the interim order on Mr Hall. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive 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 imposes an interim suspension order for a period of 18 months to allow for any potential appeal period. The panel was satisfied that this order, and for this period, was appropriate and proportionate in the circumstances.

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

That concludes this determination.