Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 31 October 2022

Nursing and Midwifery Council
Virtual Hearing

Name of registrant:	**Carolyn Anne Johnson**
NMC PIN:	87F0008E
Part(s) of the register:	Nursing – Sub Part 1 Adult Nursing (Level 1) – December 1997 Nursing – Sub Part 2 Adult Nursing (Level 2) – December 1989
Relevant Location:	London
Type of case:	Misconduct
Panel members:	Phillip Sayce (Chair, Registrant member) Frances McGurgan (Lay member) Kim Bezzant (Registrant member)
Legal Assessor:	Juliet Gibbon
Hearings Coordinator:	Elena Nicolaou
Nursing and Midwifery Council:	Represented by Ben Edwards, Case Presenter
Mrs Johnson:	Not present and not represented at this hearing
Consensual Panel Determination:	Accepted
Facts proved:	Charge 1 (by way of admission)
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Suspension order (3 months) without a review**
Interim order:	**N/A**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Johnson was not in attendance and that the Notice of Hearing letter had been sent to her email address on 29 September 2022.

Further, the panel noted that the Notice of Hearing was also sent to Mrs Johnson's representative at the Royal College of Nursing (RCN) on 29 September 2022.

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

Mr Edwards, 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 Mrs Johnson 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 Mrs Johnson

The panel next considered whether it should proceed in the absence of Mrs Johnson. It had regard to Rule 21 and heard the submissions of Mr Edwards who invited the panel to continue in the absence of Mrs Johnson. He submitted that Mrs Johnson had voluntarily absented herself.

Mr Edwards informed the panel that a provisional Consensual Panel Determination (CPD) had been agreed between the parties and signed by Mrs Johnson on 26 October 2022 and by the NMC on 27 October 2022.

Mr Edwards also referred the panel to the documentation from Mrs Johnson's representative at the RCN which included numerous references, training certificates and a reflective piece from Mrs Johnson.

Mr Edwards referred the panel to the beginning of the CPD in which it states that *'Mrs Johnson is aware of the CPD hearing. Mrs Johnson does not intend on attending the hearing and is content for it to proceed in her and her representative's absence.'*

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "with the utmost care and caution" as referred to in the case of *R. v Jones (Anthony William) (No.2) [2002] UKHL 5.*

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

- Mrs Johnson has engaged with the NMC and has signed a provisional CPD agreement which is before the panel today;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

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

Details of charge

That you, a registered nurse,

1. On 24 June 2020, whilst attempting to de-escalate a situation with Patient A, you:
   a. assaulted Patient A by placing your hands around their neck

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

Consensual Panel Determination

At the outset of this hearing, Mr Edwards informed the panel that a provisional agreement of a CPD had been reached with regard to this case between the NMC and Mrs Johnson.

Mr Edwards referred the panel to the CPD document and outlined the background to the facts and the charges. He invited the panel to find charge 1 found proved by way of Mrs Johnson's admission.

Mr Edwards submitted that Mrs Johnson does admit that her actions amount to misconduct and that her fitness to practise is currently impaired. He referred the panel to the CPD and submitted that the proposed sanction is a three-month suspension order, without a review, as it has been agreed by all parties that Mrs Johnson's fitness to practice is currently impaired on public interest grounds only. He submitted that such an order is sufficient to mark the seriousness of the misconduct. He submitted that there is no suggestion that an interim order is required, and that the high bar has not been met on public interest grounds alone.

The agreement, which was put before the panel, sets out Mrs Johnson's full admissions to the facts alleged in the charge, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct on the grounds of public interest only. It is further stated in the agreement that an appropriate sanction in this case would be a suspension order for a period of three months, without a review.

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

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Mrs Carolyn Anne Johnson ("Mrs Johnson"), PIN 87F0008E ("the Parties") agree as follows:

1. *Mrs Johnson is aware of the CPD hearing. Mrs Johnson does not intend on attending the hearing and is content for it to proceed in her and her representative's absence.*

2. *Mrs Johnson's representative, the Royal College of Nursing, will endeavour to be available by telephone should any clarification on any point be required, or should the panel wish to make any amendment to the provisional agreement.*

3. *Mrs Johnson understands that if the panel wishes to make amendments to the provisional agreement that she doesn't agree with, the panel will reject the CPD and a further substantive hearing will be scheduled.*

The charge

4. *Mrs Johnson admits the following charges:*

That you, a registered nurse,

1. *On 24 June 2020, whilst attempting to de-escalate a situation with Patient A, you:*

a. assaulted Patient A by placing your hands around their neck

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

Background

5. Mrs Johnson appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse and has been a registered since 24 December 1989.

6. On 11 November 2020, the NMC received a referral from London North West University Healthcare NHS Trust ("the Trust") relating to Mrs Johnson's fitness to practise.

7. Mrs Johnson commenced employment at the Trust in 1993. At the time of the concerns raised in the referral, Mrs Johnson was working at Northwick Park Hospital ("the Hospital") as a Senior Sister in the Emergency Department ("the ED").

8. The ED is made up on the Clinical Decision Unit, Assessment 1, Assessment 2, the High Dependency Unit, and the Rapid Assessment Unit ("the Units"). The Units are all on one floor and divided into different sections. Resuscitation and Paediatrics are also part of ED but are behind a separate door.

9. On a day shift (07:30 – 20:00 hours) in the ED, there are 11 Health Care Assistants ("HCA") and 31 Nurses present. On a night shift (19:30 – 08:00 hours) there are 11 HCA'S and 30 Nurses present.

10. Nurses are allocated various roles in the ED. If a Nurse was assigned as the Nurse in Charge, they were in charge of all the Units. On 24 June 2020, Mrs Johnson was working a day shift and was the Nurse in Charge.

11. *Witness statements have been obtained from:*

    11.1 [Witness 1], Matron in the ED at the Hospital;
    11.2 [Witness 2], Senior Human Resources Advisor at the Hospital;
    11.3 [Witness 3] ("Colleague 1"), Senior Sister in the ED at the Hospital. On 24 June 2020, Colleague 1 was the Area Coordinator;
    11.4 [Witness 4], Matron in the ED at the Hospital;
    11.5 [Witness 5] ("Colleague 2"), HCA in ED at the Hospital; and
    11.6 [Witness 6] ("Colleague 3"), Security Guard at Warlite Security Ltd.

12. *On 20 September 2022, in their returned case management form, Mrs Johnson admitted to all of the charges and that her fitness to practise is impaired.*

Facts relating to the charges

13. *On 24 June 2020, Patient A was brought in by the police via an ambulance at approximately 11:57 hours with [PRIVATE] mental health concerns. On arrival Patient A was referred to the Mental Health Team ("MHT").*

14. *Whilst Patient A was waiting to be seen by the MHT, she had walked to the Rapid Assessment Unit and was standing behind the computer screens. When Patient A was told she cannot stand in that area, she started to swear and continued to go into the unit. Patient A eventually ended up in the waiting area where she continued to swear. Colleague 3 then arrived around ten minutes later. During this time, Patient A continued walking around the waiting area. Patient A was subsequently placed into a secure room designed for mental health patients, named A11, in Assessment 1. Patient A was assigned to Colleague 2 for one to one care and a security guard, Colleague 3 was also present.*

15. *Between 14:50 and 15:10, Patient A and Colleague 2 walked back to A11 after the patient had x-rays completed. Upon returning to A11, Patient A started to*

spray lavender all over her face. When Colleague 2 asked Patient A if she was ok, she [PRIVATE]. She them slammed the main door and started to shout.

16. *At 16:45 hours, the MHT reviewed Patient A and completed a [PRIVATE].*

17. *At around 19:20 hours, Patent A became agitated and left the secure room. Colleague 2 asked Patient A to calm down but they had already left the room. As they walked down the corridor, Patient A pushed Colleague 2.*

18. *On the way back towards A11, Patient A went into the toilet opposite the room. Patient A used the toilet, washed their hands and then started slamming the toilet door. Mrs Johnson came over and said 'stop slamming the door' then continued to go back to work whilst Colleague 1, Colleague 2 and Colleague 3 tried to get Patient A back into A11.*

19. *Patient A continued to refuse to go into the room and started to walk towards the Clinical Decision Unit. At this point, Patient A hit Colleague 3 in the face.*

20. *Mrs Johnson then came over to de-escalate the situation and said 'come on, you're not the worst person in here. Lets be nice'. Patient A then tried to hit Colleague 1 and Colleague 3 and began to clear her throat. At this point, Mrs Johnson said 'don't you dare spit'. Patient A then spat in Mrs Johnson's face and some of the spit went into her mouth. Mrs Johnson immediately reacted by placing both of her hands around Patient A's neck. Colleague 1 reacted to Mrs Johnson by grabbing her hand and pulling them off Patient A's neck before she got a tight grip. Colleague 2 and Colleague 3 then took Mrs Johnson away and got the patient back into the room. Patient A was examined and identified that there was no physical injury.*

21. *Once Patient A was back in A11, Mrs Johnson returned to her desk and called the police. She then booked an appointment at the Hospital. After such an incident occurs, this is standard procedure to prevent the spread of infections.*

22. *The police arrived at around 19:45 hours.*

23. *A disciplinary investigation resulted in Mrs Johnson's dismissal in November 2020.*

Misconduct

24. *Mrs Johnson admits that the conduct as particularised in the admitted charges amounts to misconduct.*

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

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

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

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

and

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

27. *The Parties agree that Mrs Johnson's misconduct is serious and falls far short of what is expected of a registered nurse. A deliberate assault of a patient,*

even in the face of provocation is particularly serious. Patient A was [PRIVATE]. This undermines public trust and confidence in the profession.

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

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

1.1 treat people with kindness, respect and compassion

20 Uphold the reputation of your profession at all times
To achieve this, you must:
20.1 keep to and uphold the standards and values set out in the Code
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

30. *It is acknowledged that not every breach of the Code will result in a finding of misconduct. However, Mrs Johnson accepts that the failings set out above are a serious departure from the professional standards and behaviour expected of a registered nurse. Mrs Johnson acknowledges that her conduct presented a risk of harm to Patient A.*

Impairment

31. *The Parties agree that Mrs Johnson's fitness to practise is currently impaired by reason of her misconduct.*

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

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

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

    i. 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
    ii. has in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or
    iii. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [nursing] profession; and/or
    iv. …"

34. *The Parties agree that limbs i, ii and iii as identified in the above case, are engaged. Dealing with each limb in turn:*

Public Protection

Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm

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

36. *The Order states:*

"The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-

a) to protect, promote and maintain the health, safety and well-being of the public;
b) to promote and maintain public confidence in the professions regulated under this Order; and
c) to promote and maintain proper professional standards and conduct for members of those professions."

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

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

38. *Mrs Johnson's actions had the potential to cause both physical harm and emotional distress to Patient A. Patient A may have felt confused and shocked when Mrs Johnson placed their hands on her neck and could have retaliated*

further. Whilst there is no evidence that Patient A experienced any harm by Mrs Johnson's actions, the potential for direct physical harm was present.

Public Interest

Has in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute

39. *Registered professionals occupy a position of trust in society. The public, quite rightly, expects nurses to provide safe and effective care, and conduct themselves in ways that promotes trust and confidence. It is agreed that Mrs Johnson's conduct has brought the profession into disrepute and that she has breached the trust placed in her. A fully informed member of the public would be concerned by Mrs Johnson's actions.*

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

Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [nursing] profession

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

    a) *Prioritise people;*
    b) *Practise effectively;*
    c) *Preserve safety and*
    d) *Promote professionalism and trust*

42. The Parties have set out above, how, by identifying the relevant sections of the Code, Mrs Johnson has breached fundamental tenets of the profession. These sections of the Code define, in particular, the responsibility to promote professionalism and trust.

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

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case."

Remediation, reflection, training, insight, remorse

*44. NMC guidance adopts the approach of **Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)** by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

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

46. As part of the local investigation into the incidents, Mrs Johnson demonstrated remorse for her actions and described what she would do in similar circumstances in the future.

47. Mrs Johnson has provided a reflective statement to the NMC where she

provides context about how the Covid-19 pandemic impacted upon her actions at the time, which goes to mitigation, she states:

The incident in question took place at the height of the initial Covid outbreak where movements were restricted within the department to prevent the spread of infection; little was known about how Covid was best treated or how serious it was; people were being mis-diagnosed with Covid and patient levels were extreme; there was no vaccination programme yet; some hospital staff were inpatients in ITU; and the situation was [PRIVATE].

A few minutes later, there was a commotion coming from outside the secure room. From my viewpoint at the nurses' station. I could see the patient flailing her arms and it appeared that she was hitting one of the nurses. I immediately went over to assist and take the attention onto myself in order to protect the nurse involved. I started telling the patient that hitting staff was unacceptable but as I was speaking to her, she spat in my mouth.

My next thought was, 'Why is her neck in my hands?' I started to let go while the HCA pushed me away from the patient. I pushed back at the HCA with the intention of telling the patient that spitting was not acceptable either. I then registered what I had done and tried to push past the HCA in order to contact the police to report the incident …

Before Covid, the Emergency Department was already a stressful place to work, but as the rate of Covid soared, our department was at the forefront of identifying Covid in undiagnosed patients who required emergency care. There was a constant queue of ambulances waiting to offload into rooms either Covid or non- Covid side of the department and there were Covid patients being assessed in the non-Covid side, [PRIVATE].

[PRIVATE].

48. *Mrs Johnson demonstrates remorse and insight for her actions, she states:*

"Although [PRIVATE] that my colleague had been hurt, I initially involved myself in the situation in a controlled manner, whilst showing displeasure about the patient's actions. It was my responsibility as Nurse-in-Charge to de-escalate the situation. Following the spitting, [PRIVATE]. This shock increased as I realised I had put my hands around someone's neck. I felt disbelief that I had done it as this was so out of character for me …

As the shock died down, the enormity of my actions hit home. It was at this point that I felt [PRIVATE]. I was also aware that as the leader of the team I had not been the role model I have always strived to be and felt that not only had I let them down, but still feel [PRIVATE] when I come face to face with ex-colleagues.

Looking back and reflecting on the incident I am highly relieved that the patient wasn't injured by my actions and I continue to feel [PRIVATE] that the incident occurred…

I have also come to realise that I should have put more trust in the staff involved rather than stepping in and intervening (even though at the time, I felt it was the right thing to do). I also realise that by trying to distract the patient from other staff, I invaded the patient's space and this could have been perceived as an aggressive act.

On reflection, I should have consulted the staff already involved, more accurately assessed the levels of risk to other patients and staff, kept a more respectful distance from the patient and contacted the Psychiatric Liaison nurse for help.

I am fully aware that my actions fell short of the expectations placed upon me as a nurse, as well as a team leader, and although it was an instinctive 'Fight or

Flight' response, I deeply regret the harm it has caused to the patient, my colleagues, department and nursing profession as a whole.

Having spent many hours reflecting on the incident, I have come to terms with my actions. I continue to be deeply remorseful for acting out of character and for the impact it had on the patient, my colleagues, the nursing profession and on my family. I believe that the incident happened [PRIVATE] but regardless of this, I acknowledge this was a breach of the NMC code to care for all patients with dignity and respect and that I failed to demonstrate best practice on this occasion. I should have ensured Safeguarding of vulnerable adults was at the forefront of my mind."

49. *The NMC have been provided with a number of testimonials from Mrs Johnson's friends and colleagues, including [Colleague 4], who is an HCA at Hollybush Nursing Home alongside Mrs Johnson. [Colleague 4] states "In situations where immediate assistance is required for a resident, Miss Johnson rises to the occasion and solves problems just as quickly as they develop…".*

50. *The NMC also received a testimonial from Registered Nurse [Colleague 5], who worked with Mrs Johnson at the Hospital. [Colleague 5] states:*

    "I am aware of the NMC allegations towards Ms Johnson and quite surprise as this is out of character for her to commit such. During the 16 years that we were working together, I have not heard any incident of situation similar to this where she got involved and had issues with."

51. *The NMC has received a positive employment reference from the Operations Director of Holly Bush Nursing Home, indicating that Mrs Johnson was "completely honest and transparent from day 1 and during her 1st stage interview…". The reference states that "Mrs Johnson completes tasks to an outstanding standard" and that "[Mrs Johnson] is a natural when it comes to caring for other people". The reference is appended to this agreement in the*

registrant's bundle at ***Appendix 1.***

52. *Following the incident, Mrs Johnson has stated that she has completed several training courses including "Conflict Resolution". However, the NMC have not been provided with corroborating evidence of this such as a training certificate.*

53. *The Parties agree that Mrs Johnson has demonstrated significant insight and has taken appropriate steps to strengthen her practice. There is commendable evidence from her current employer of exemplary behaviour working with patients with challenging mental health and emotional needs. As such, it is submitted that the risk of repetition is negligible.*

Public interest impairment

54. *A finding of impairment is necessary on public interest grounds.*

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

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

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

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

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

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

58. *The Parties agree that Mrs Johnson's fitness to practise is impaired on public interest grounds.*

Sanction

59. *In accordance with the Order, the overarching objective of the NMC is the protection of the public, which includes the public interest.*

60. *Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that a 3 month suspension order without a review before expiry is the most appropriate and proportionate sanction.*

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

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

    a) *Patient A was [PRIVATE].*
    b) *Conduct displayed which could put patients at the risk of suffering harm*

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

    a) *One off incident/isolated incident*
    b) *Showed remorse for her actions at a local level*
    c) *Long standing career with no previous concerns raised*
    d) *Mrs Johnson has demonstrated insight and reflected on her actions*
    e) *Undertaken relevant training*
    f) *There has been no repeat of the misconduct and has been working since the incident with no concerns in a similar environment*
    g) *The risk of repetition in this case is negligible.*

64. *Considering each sanction in turn starting with the least restrictive:*

65. ***Taking no action or a caution order*** *- The NMC's guidance (SAN-3a and SAN-2b) states that it will be rare to take no action where there is a finding of current impairment and this is not one of those rare cases. The seriousness of the misconduct means that taking no action would not be appropriate. A caution order would also not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.*

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

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

67. *Whilst conditions could be formulated which would whilst in force protect the public, it is submitted that a conditions of practice order would not reflect the seriousness of the misconduct in this case or maintain public confidence.*

68. ***Suspension Order*** *– This sanction would reflect the seriousness of the misconduct and send a message to the professions, that such behaviour is*

wholly unacceptable for a registered nurse. According to the NMC guidance (SAN-d), a suspension order would be most appropriate were the misconduct is not fundamentally incompatible with continuing registration. The overarching objective of public protection would be satisfied by a short suspension order, and it would be in the public interest to impose a suspension order. Mrs Johnson has had a longstanding unblemished career at the Trust since 1993 with no previous concerns and there is no evidence of a repeat of misconduct since the incident. Furthermore, there is limited evidence of a risk of repetition. As such, the parties agree that a short, temporary removal from the register is sufficient to mark the seriousness of the misconduct and meet the wider public interest. Having regard to the low risk of repetition, insight, remediation, and further safe practice, it is submitted a review before expiry would serve no useful purpose in this case.

69. *The Parties agree that a 3 month suspension order which prevents Mrs Johnson from working in a career for which she is suitably qualified and stops her working at her current role, is a severe sanction which cannot be lightly imposed. A 3 month suspension order is sufficiently serious to mark the misconduct. This sanction also strikes a proportionate balance in meeting the wider public interest considerations and the interests and needs of the employer and Mrs Johnson's patients, who should not be deprived of an experienced and highly skilled nurse for longer than is strictly necessary.*

70. ***Striking-Off Order** - This sanction is likely to be appropriate when the alleged misconduct is fundamentally incompatible with being a registered professional.*

71. *Whilst the misconduct may have raised fundamental questions about Mrs Johnson's professionalism and behaviour, Mrs Johnson has taken steps to address those questions by seeking to develop her insight and making early admissions, fully engaging with her employers and the NMC, and by expressing remorse in her attached reflection.*

72. *Mrs Johnson's positive clinical record and support from her employer, highlights*

the public interest in keeping a clinically skilled nurse on the register. A short suspension order is required to address the damage done to confidence in the profession, as such it is submitted that a striking-off order would be disproportionate in the circumstances.

Interim order

73. An interim order is not required in this case. The high bar is not met for an interim order to be imposed on public interest grounds alone.

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

Here ends the provisional CPD agreement between the NMC and Mrs Johnson. The provisional CPD agreement was signed by Mrs Johnson on 26 October 2022, and by the NMC on 27 October 2022.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. Mr Edwards referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mrs Johnson. Further, the

panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mrs Johnson admitted the facts of the charge. Accordingly, the panel was satisfied that the charge is found proved by way of Mrs Johnson's admission, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

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

In respect of misconduct, the panel determined that Mrs Johnson's actions in assaulting a patient did amount to misconduct. The panel considered that Mrs Johnson's actions were unacceptable, and that her behaviour fell far short of what is expected of a registered nurse. It concluded that her actions brought the profession into disrepute and did not uphold fundamental tenets of the nursing profession.

In this respect, the panel endorsed paragraphs 24 to 30 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Mrs Johnson's fitness to practise is currently impaired by reason of misconduct. The panel determined that Mrs Johnson's fitness to practise is currently impaired on public interest grounds alone, as set out within the CPD. Mrs Johnson's actions breached elements of the Code as well as fundamental tenets of the profession.

The panel considered that Mrs Johnson has shown remorse, reflection and insight into her actions and she cooperated with the local investigation, as well as the NMC's proceedings. It took into account the training she has undertaken, the reflective piece she provided and the numerous positive testimonials from past and present colleagues, highlighting her kindness and compassion as a nurse.

The panel considered that, within Mrs Johnson's reflective piece, she did not sufficiently address the possible impact on the patient involved. However, it is clear from other evidence provided, such as the positive testimonials, that this was a one-off incident and was out of character for Mrs Johnson, who has had an otherwise 33-year unblemished career as a nurse. It also took into account the reference from her current employer, that highlights her person-centred approach to her nursing practice and her skill in managing people who exhibit challenging behaviours. Mrs Johnson also showed remorse during the local investigation that took place and in her reflective piece. The panel therefore concluded that Mrs Johnson had suitably reflected on her actions.

The panel decided that Mrs Johnson has shown considerable insight and has taken substantial steps to strengthen her practice and, taking this into account, the panel determined that her fitness to practise is not impaired on public protection grounds.

This was serious misconduct however, and the panel was satisfied that Mrs Johnson's fitness to practise is currently impaired on public interest grounds.

In this respect the panel endorsed paragraphs 31 to 58 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mrs Johnson'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:

- *‘Patient A was [PRIVATE]*
- *Conduct displayed which could put patients at the risk of suffering harm’*

The panel also took into account the following mitigating features:

- *‘One off incident/isolated incident*
- *Showed remorse for her actions at a local level*
- *Long standing career with no previous concerns raised*
- *Mrs Johnson has demonstrated insight and reflected on her actions*
- *Undertaken relevant training*
- *There has been no repeat of the misconduct and has been working since the incident with no concerns in a similar environment*
- *The risk of repetition in this case is negligible.’*
- [PRIVATE].

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.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict Mrs Johnson’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 Mrs Johnson's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 Mrs Johnson's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that, as set out within the CPD, conditions of practice could not be formulated as there are no ongoing public protection issues identified.

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

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

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel was initially concerned that Mrs Johnson had not sufficiently addressed the possible impact on the patient in question within her reflective piece. However as highlighted previously, it is clear from other evidence provided that Mrs Johnson is a kind and compassionate nurse, that she has had an otherwise unblemished career, that this was an isolated incident and that numerous positive references have been provided from past and present colleagues. Mrs Johnson had also provided information regarding her particular circumstances surrounding the incident, which was during the COVID-19 pandemic.

The panel considered the reference provided from the Operations Director at Holly Bush Nursing Home, which stated:

> *'…her compassion, professionalism and positive attitude approach to her work ethic has really contributed to our organisation already… [Mrs Johnson] has already made positive impressions with all our relatives and families of our residents and look forward to meeting her when she is on shift… [Mrs Johnson] has been observed to diffuse certain situations with service users by using negotiating strategies and positive language…'*

The panel considered that past colleagues of Mrs Johnsons have highlighted her kindness, compassion and supportive nature as a nurse and colleague, as well as this being an isolated incident that has not happened before. The panel also considered Mrs Johnson's comprehensive reflective piece in which she expressed her remorse and explained the circumstances surrounding the incident, and [PRIVATE]. It took into account that there has been no repetition since the incident occurred and that Mrs Johnson appears to be working well in her current employment.

The panel considered that it would be in the public interest to keep an experienced and well-regarded nurse in practice in order to provide valuable nursing services.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Johnson's case to impose a striking-off order.

Balancing all of these factors the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Johnson. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of three months (without a review) was appropriate in this case to mark the seriousness of the misconduct and maintain public confidence in the profession.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the suspension order having found Mrs Johnson's fitness to practise currently impaired on the grounds of public interest alone. The panel was satisfied that the suspension order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the suspension order will declare and uphold proper professional standards.

Accordingly, the current suspension order will expire, without review, following the three-month duration of the order.

Decision and reasons on interim order

As the suspension 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 Mrs Johnson's own interest until the suspension sanction takes effect.

The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is not necessary in this case, and had not met the high bar required for an interim order to be imposed on public interest grounds alone, as set out within the CPD.

If no appeal is made, then the substantive suspension order will come into effect 28 days after Mrs Johnson is sent the decision of this hearing in writing.

This will be confirmed to Mrs Johnson in writing.

That concludes this determination.