

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

**Substantive Hearing
8 – 21 December 2023**

Virtual Hearing

Name of Registrant: Pius Igwe

NMC PIN 16G1859E

Part(s) of the register: Registered Nurse – Effective – Sub Part (1)
Adult – 1 October 2019

Relevant Location: Cornwall

Type of case: Misconduct

Panel members: David Evans (Chair, Lay member)
Terry Shipperley (Registrant member)
David Newsham (Lay member)

Legal Assessor: Andrew Granville-Stafford (8 December 2023)
Mark Sullivan (11 – 14 December 2023)
Cyrus Katrak (18 – 21 December 2023)

Hearings Coordinator: Dilay Bekteshi

Nursing and Midwifery Council: Represented by Maeve Thornton, Case
Presenter

Mr Igwe: Present and represented by Carl Buckley,
(instructed by Royal College of Nursing)

No case to answer: 1b), 1c) and 8)

Proved by way of admission: 2a)

Facts proved: 1a), 1d), 1e), 3), 4), 5), 6), 7), 9a), 9b), 9c), 10a),
10b), 10c), 10d), 10e) and 11)

Facts not proved:	2b) i), 2b) ii) and 2c)
Fitness to practise:	Currently impaired
Sanction:	Suspension order (6 months)
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse, whilst working at the Royal Cornwall Hospital NHS Trust ('the Trust'):

On or around the night shift of 18/19 October 2021;

1) Whilst speaking to a Patient A, used words to the effect;

a) *'You are disgusting human being.'*

b) *'You do not deserve care.'*

c) *'You do not deserve to be in the hospital.'*

d) *'You dirty filthy old lady making noise.'*

e) *'Filthy lady.'*

2) On one or more occasion, after attending an alarm for a Baxter pump as Patient A's cannula had occluded/become bent;

a) Turned off the alarm from the main switch.

b) Left Patient A without checking their;

i) Cannula.

ii) Baxter pump.

c) Did not reset the Baxter pump.

On or around the night shift of 2/3 November 2021;

3) Removed a call bell from an unknown patient in bed F2 who required personal care/ a bed pan.

4) Left the unknown patient in bed F2 with wet/soiled bedding.

5) Did not respond to the care needs of one or more of the patients in the middle bays allocated to you.

6) Sat at the nursing station for long periods of time.

7) Behaved in a confrontational manner towards Colleague Z.

8) Left the enhanced bay unattended whilst Colleague Y conducted personal care for a patient in the bay you had been allocated.

9) On one or more occasion when asked by colleagues about conducting personal care, used words to the effect;

a) *'I don't touch women.'*

b) *'Care rounds are not my job.'*

c) *'It's not my job.'*

10) Reacted angrily when asked by Colleague Y to assist cleaning a transfer patient who had soiled themselves, in that you;

a) Grabbed an excessive amount of wipes from the packet.

b) Cleaned the patient in an aggressive manner.

c) Continued to clean the patient harshly after they had complained to you about the pain/aggressive cleaning.

d) Used words to the effect '*Not my job to do this*'

e) Shouted at Colleague Y, words to the effect '*It is your job to clean the patient's bottom, not mine.*'

11) Responded to a female patient in bed E-4 requesting personal care for soiled bedding with words to the effect '*Wait until morning to a get a bed change.*'

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

Rule 19 application

Ms Thornton made an application under Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) for parts of the hearing to be held in private. [PRIVATE].

Mr Buckley, on your behalf, did not oppose the application.

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

Having heard that there will be reference to [PRIVATE], the panel determined to hold those parts of the hearing in private in order to protect her privacy.

Decision and reasons on application pursuant to Rule 23

Ms Thornton, on behalf of the NMC, made an application under Rule 23 of the Rules for Colleague Y to give evidence while you participate via audio only, without being able to see her. She referred the panel to the following parts of Rule 23:

23. (1) In proceedings before the Fitness to Practise Committee, the following may be treated as vulnerable witnesses

...

(f) any witness who complains of intimidation.

(2) After seeking the advice of the legal assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.

Ms Thornton explained that Colleague Y has requested special measures to support her during the process of giving evidence today. Specifically, she does not want to see you while giving evidence, as she is concerned about potential reprisals following the outcome of the hearing. These fears are based on her subjective beliefs and include concerns about encountering you on the wards, waiting in the car park, or being followed home.

To address this request, Ms Thornton proposed that you join the proceedings via telephone. This would effectively act as a screen, ensuring that Colleague Y does not have visual contact with you while giving her evidence.

Mr Buckley opposed the request for special measures made by Colleague Y, deeming them inappropriate and unwarranted. He submitted that there is no credible basis for the application and therefore it should be rejected, as it lacks a genuine reason.

Furthermore, Mr Buckley submitted that this application is “nothing short of a direct impingement on your character”. He submitted that there is no foundation to deem the

concerns raised as genuine, suggesting that the NMC's prejudgment is a concern. Mr Buckley submitted that there is no evidence to suggest that you have ever attempted to contact Colleague Y or behaved inappropriately towards her. He said that there is no indication of targeted behaviour, and hence no logical or credible basis for Colleague Y's alleged concerns. Mr Buckley said that you have the right to face your accuser, but that this application undermines that right.

Regarding the hearing being conducted remotely, Mr Buckley submitted that the stress of providing evidence has already been significantly diminished. He therefore submitted that the application should be denied.

[PRIVATE].

In response to panel questions about possible measures, such as turning your camera off during questioning of Colleague Y, Ms Thornton offered no objections, suggesting that it may alleviate the concerns expressed by Colleague Y.

Mr Buckley clarified his understanding of the application, stating that it was initially proposed for you to attend the hearing via phone, where you would be unable to see Colleague Y, and vice versa. However, if the application has changed to simply accommodating Colleague Y's preference of not seeing you, and the solution is for you to turn off your video and microphone, Mr Buckley does not oppose to this specific course of action.

The panel accepted the advice of the legal assessor, who referred it to Rule 23 of the Rules.

The panel had regard to the fact that Ms 1 reported feeling intimidated by you. In these circumstances, the panel gave consideration as to whether Ms 1 fell within Rule 23(1)(f) of the Rules.

The panel reviewed the correspondence exchanged between Colleague Y's support officer and the NMC on 7 November 2023 and 7 December 2023, as well as the submissions put forward by Ms Thornton and Mr Buckley. It noted Mr Buckley's submissions that the special measure lacks merit, as there is no evidence to suggest that Colleague Y has been victimised as a result of your actions. The panel had no evidence put forward by the NMC to support this claim. Therefore, the panel determined that the witness does not fall under the category of a vulnerable witness according to Rule 23(f), as it found no evidence of intimidation or any proper basis for Colleague Y's expressed concerns.

The panel considered the possibility of Colleague Y giving her evidence with her camera on, while your camera remained off in order to put her at ease. The panel would still be able to observe Colleague Y's demeanour and effectively cross-examine her. Taking these factors into account, the panel concluded that there would be no disadvantage or unfairness caused to you if Colleague Y were to give evidence while your camera and microphone were turned off.

The panel determined that it is reasonable to accommodate Colleague Y's preference of not seeing you if it would enable her to provide her best possible evidence. However, the panel found it unreasonable to expect you to participate solely through a phone connection, as this would hinder your ability to see the witness or any other involved parties.

Based on these considerations, the panel made the decision not to grant the application for special measures as originally made, but to accommodate Colleague Y to give her best evidence, it was agreed that you turning your camera off would be an appropriate compromise.

Panel's decision to amend the charges

The panel, on its own volition, made the decision to rectify the typographical errors found in charges 1) and charge 5) by amending them accordingly:

1) Whilst speaking to a Patient A, used words to the effect;

5) Did not ~~response~~ **respond** to the care needs of one or more of the patients in the middle bays allocated to you.

Ms Thornton and Mr Buckley conveyed no objections to the proposed amendments.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party. The revised charges now read as follows:

That you, a registered nurse, whilst working at the Royal Cornwall Hospital NHS Trust ('the Trust'):

On or around the night shift of 18/19 October 2021;

1) Whilst speaking to Patient A, used words to the effect;

a) *'You are disgusting human being.'*

b) *'You do not deserve care.'*

c) *'You do not deserve to be in the hospital.'*

d) *'You dirty filthy old lady making noise.'*

e) *'Filthy lady.'*

2) On one or more occasion, after attending an alarm for a Baxter pump as Patient A's cannula had occluded/become bent;

a) Turned off the alarm from the main switch.

b) Left Patient A without checking their;

i) Cannula.

ii) Baxter pump.

c) Did not reset the Baxter pump.

.

On or around the night shift of 2/3 November 2021;

3) Removed a call bell from an unknown patient in bed F2 who required personal care/ a bed pan.

4) Left the unknown patient in bed F2 with wet/soiled bedding.

5) Did not respond to the care needs of one or more of the patients in the middle bays allocated to you.

6) Sat at the nursing station for long periods of time.

7) Behaved in a confrontational manner towards Colleague Z.

8) Left the enhanced bay unattended whilst Colleague Y conducted

personal care for a patient in the bay you had been allocated.

9) On one or more occasion when asked by colleagues about conducting personal care, used words to the effect;

a) *'I don't touch women.'*

b) *'Care rounds are not my job.'*

c) *'It's not my job.'*

10) Reacted angrily when asked by Colleague Y to assist cleaning a transfer patient who had soiled themselves, in that you;

a) Grabbed an excessive amount of wipes from the packet.

b) Cleaned the patient in an aggressive manner.

c) Continued to clean the patient harshly after they had complained to you about the pain/aggressive cleaning.

d) Used words to the effect *'Not my job to do this'*

e) Shouted at Colleague Y, words to the effect *'It is your job to clean the patient's bottom, not mine.'*

11) Responded to a female patient in bed E-4 requesting personal care for soiled bedding with words to the effect *'Wait until morning to a get a bed change.'*

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

The panel heard live evidence from the following witnesses called on behalf of the NMC:

Colleague Z: Registered Band 5 Nurse at Royal Cornwall Hospital NHS Trust (the Trust)

Colleague Y: Health Care Assistant (HCA) at the Trust

Ms 1: Ward Manager at the Trust

Ms 2: Registered Nurse at the Trust

Ms 3: Registered Nurse at the Trust

Patient A: Patient at the Trust at the time

Decision and reasons on application of no case to answer

The panel considered an application from Mr Buckley, on your behalf that there is no case to answer in respect of charges 1a), 1b), 1c), 2b) i), 2b) ii), 2c), 3), 4), 5), 6), 8) 9b), 10a), 10b), 10c), 10e) and 11). This application was made under Rule 24 (7) of the Rules. He referred the panel to the test set out in the case of *R v Galbraith* [1981] 2 All ER 1060. The first limb of the test is if there is no evidence to find a charge proved, the charge would fall. The second limb of the test is if there is some evidence, but it is tenuous because of weakness and vagueness, a panel properly directed could not find the charge proved.

Mr Buckley submitted that the panel has heard witness evidence accepting that you were characterised as speaking with a 'thick' or 'heavy' accent, and thereafter, a tacit acceptance at least, of words and actions being misinterpreted or misunderstood. He submitted that it is essential that this is kept in mind, particularly with the knowledge that the patients in question: were elderly, were in some cases, at best, hard of hearing and

were in a number of cases, suffering from dementia. Mr Buckley submitted that there are question marks over whether the accounts given are an accurate reflection of what was said.

Charges 1a), 1b) and 1c)

Mr Buckley submitted that having regard to the evidence, Patient A, in neither her witness statement, nor her oral evidence before the panel alleges that she had been referred to as a 'disgusting human being', or that 'you do not deserve care', or that 'you do not deserve to be in the hospital'. Her evidence in her witness statement, and in her oral evidence, is that you referred to her as a 'dirty filthy old lady' and/or a 'filthy lady'.

Ms 1 in her witness statement states that she was told by a staff member, and therefore not Patient A that the words 'disgusting' and 'did not deserve care' were used. Further, Ms 1's exhibit refers to the words 'disgusting human being', however, in cross examination, Ms 1 confirmed that that exhibit is not something that she wrote, it is something that another individual wrote. The panel has heard no information as to who this individual is, nor has that individual provided a statement.

Mr Buckley submitted that there is no evidence to support the allegation and that the matter should proceed no further. In the alternative, if it is that the panel is of the opinion that there is some evidence to support the allegation, the second limb of *Galbraith* ought to be applied.

Mr Buckley submitted that a properly directed panel could not make such a finding noting that: the only available evidence is entirely hearsay; in part, it is not known where that evidence has come from and it has not been subject to any form of scrutiny or challenge; and Patient A, the alleged victim of the behaviour cited, does not mention that these words were used.

Mr Buckley therefore submitted that there is no case to answer in respect of these allegations.

Charges 2b)i), 2b)ii) and 2c)

Mr Buckley submitted that these allegations again refer to Patient A, however, he submitted that the panel has heard no evidence in respect of the same, other than the statement of Ms 1 in her witness statement, which is entirely hearsay, it referring to that which she maintains she was told by a 'staff member'. No details have been provided as to who that staff member is, nor is there any evidence from any staff member that would support the allegation. Further, there is no evidence to establish that Patient A's treatment involved the use of a 'Baxter Pump'. In response to a question from the legal assessor, Mr Buckley submitted that your admission to charge 2a) does not amount to an acceptance that Patient A's cannula was occluded or that the alarm which you admit switching off was associated with a Baxter pump.

Mr Buckley submitted that the NMC has failed to demonstrate that there is a case to answer at the most fundamental level. He submitted that there is no evidence to support the allegation and thus the matter should proceed no further. In the alternative, if it is that the panel is of the opinion that there is some evidence to support the allegation, the second limb of *Galbraith* ought to be applied.

Charge 3)

Mr Buckley submitted that charge 3) involves an allegation of the removal of a call bell from an unknown patient in bed F2. He submitted that it is important to note that the ward is accepted as being full, and further, that staffing levels were below what they should be. He said that witnesses accepted that the above would inevitably lead to an increase in pressure, and further, that certain tasks may not be done as quickly as they would ordinarily like.

Mr Buckley said that the NMC relies on the evidence of Colleague Z and Colleague Y. He submitted that Colleague Z can only provide hearsay evidence, she did not see anything and merely reports what others have said to her. Colleague Y during cross-examination accepted that as much as the bell was moved, it was not necessarily done so with any intention.

Mr Buckley therefore submitted that the second limb of *Galbraith* applies, in that there is some evidence adduced, however, given the concession in cross-examination, the panel could not find, even where the evidence is taken at its highest, that the allegation has been satisfied to the required standard of proof.

Charge 4)

Mr Buckley submitted that at best, the evidence demonstrates that the patient in bed F2 was wet/soiled and therefore required attention. He submitted that there is no evidence as to; when that bedding became wet; whether you were aware; and whether you intentionally left the patient.

Mr Buckley submitted in respect of these allegations there is no evidence to support the allegation and thus the matter should proceed no further. In the alternative, if it is that the panel is of the opinion that there is some evidence to support the allegation, the second limb of *Galbraith* ought to be applied.

Charge 5

Mr Buckley submitted that charge 5) is hopelessly broad and ambiguous. There is wholly insufficient particularisation of the charges, to the extent that you cannot be clear as to what you were being asked to answer, and in the same vein, the panel cannot be certain precisely what it is that they are being asked to find. Further, there is no direct evidence from any of the 'patients. He therefore submitted that there has not been any evidence adduced of what care needs you failed to attend to.

Charge 6

Mr Buckley submitted that it is accepted that some direct evidence has been adduced that alleges you were sat at the computer for periods of time. However, he submitted that the evidence has not been adduced that would demonstrate that: this was a justifiable concern for the purposes of this fitness to practice hearing; exactly how long you are alleged to have been sat at the computer; what you were doing at the computer and whether you were undertaking legitimate tasks; and whether whatever period was spent at the computer had a negative impact on either patients or other members of staff.

Further, he submitted that no witness, or member of staff seemingly challenged you, asked you to leave the computer or undertake any other task, or at least no evidence has been heard on this point.

Mr Buckley submitted that there is no evidence to support the allegation and thus the matter should proceed no further. In the alternative, if it is that the panel is of the opinion that there is some evidence to support the allegation, the second limb of *Galbraith* ought to be applied.

Charge 8

Mr Buckley submitted that no evidence has been adduced in support of charge 8) other than that found in the statement of witness Colleague Z, which is wholly hearsay, in that the witness did not see the event, she has been told by another member of staff. That member of staff has not been disclosed, nor has that member of staff provided a statement to confirm this allegation.

In applying the second limb of *Galbraith* therefore, as much as it may be deemed that some evidence has been adduced, he submitted that this evidence, taken at its highest,

given that it is wholly hearsay, cannot lead to the panel deeming the allegation to have been proved to the required standard.

Charge 9b)

Mr Buckley submitted that the only evidence to substantiate this allegation is contained within exhibit LP/1 and NJ/1. There is no evidence within the actual witness statements, and no evidence given orally. Accordingly, and applying the second limb of *Galbraith* as much as it may be deemed that some evidence has been adduced, he submitted that this evidence, taken at its highest, given that it is wholly hearsay, cannot lead to the panel deeming the allegation to have been proved to the required standard.

Charges 10a), 10b) and 10c)

Mr Buckley submitted that it is accepted that direct evidence has been given in relation to the allegation, namely that of the witness Colleague Y, however, he submitted that that evidence has now been undermined to such an extent that in applying the second limb of *Galbraith*, this evidence, taken at its highest, given that it is wholly hearsay, cannot lead to the panel deeming the allegation to have been proved to the required standard.

Mr Buckley said that Colleague Y accepts that the patient in question had undergone a major hip operation, and therefore the following was entirely possible: that the patient was already in pain; and that any action, having regard to the physical condition would have caused, or caused more, pain. Further, in suggesting that the actions of you were 'forceful', Colleague Y went on to note that that which needed to be cleaned and removed from the patient was "*hard to get off*", as it had "*dried into her*".

Mr Buckley submitted that these two comments do not appear in the initially statements provided, however, he submitted that this information does undermine the suggestion that there was no need to use force, as the witness readily accepts that some force was required.

In respect of the allegation of an “*excessive amount of wipes from the packet*”, Mr Buckley submitted that it is difficult to ascertain as to why this is deemed to be of concern to the NMC and therefore an issue that ought to trouble the panel at a fitness to practice hearing. However, insofar as it does fall to be considered the following points are submitted: excessive has not been quantified; it is at least suggested that the patient required significant cleaning and therefore it is wholly plausible that more wipes than usual would be required; and the witness fails to explain why the number of wipes used was excessive, particularly with the background that it was “*hard to get off*” as it had “*dried into her*”.

Mr Buckley therefore submitted that there is no case to answer.

Charge 10e)

Mr Buckley submitted that in a similar vein to allegation 9b) the only evidence to support the allegation is contained within the exhibits, namely the exhibit NJ/1. He submitted that there is no evidence within the actual witness statements, and no evidence given orally. Accordingly, and applying the second limb of *Galbraith* as much as it may be deemed that some evidence has been adduced, he submitted that this evidence, taken at its highest, given that it is wholly hearsay, cannot lead to the panel deeming the allegation to have been proved to the required standard.

Charge 11

Mr Buckley submitted that the evidence in respect of this allegation is contained within the statement of Colleague Y. The only fact that direct evidence can establish, is that the patient’s bed was wet and therefore required changing. He submitted that there is no evidence from the patient herself, and the allegation that you told her to wait until morning is only an account of what the witness was told and not what the witness actually heard. He submitted that the following points are submitted to be of relevance: there is no evidence of when the patient became ‘wet’ and therefore how long the patient was wet;

and there is no evidence to suggest that you were not going to change the patient's bedding.

Accordingly, and applying the second limb of *Galbraith* as much as it may be deemed that some evidence has been adduced, he submitted that this evidence, taken at its highest, given that it is wholly hearsay, cannot lead to the panel deeming the allegation to have been proved to the required standard. Mr Buckley further submitted that the panel should consider whether even if the facts were found proved, any reasonable panel could find that your fitness to practise is impaired.

Ms Thornton submitted that the panel should first deliberate on the issues at hand, applying the *Galbraith* test as the applicable test. However, the NMC asserts that there is evidence supporting the charges, and it should be assessed by the panel. She submitted that the panel should evaluate the witnesses' credibility and other relevant factors. It is possible that there are facts to substantiate the charges.

Regarding the specific dates related to the allegations, Ms Thornton acknowledged that there is no dispute about you being on duty during those shifts, as well as the fact that you were the only male nurse.

Regarding charge 1), Ms Thornton submitted that the panel can deliberate on the language used. Patient A provided clear and credible evidence about what occurred on the night in question when her alarm went off. The following morning, she was attended to by another nurse, Ms 2. She said that the panel can assess the facts presented.

Ms Thornton submitted the same applies to charge 2). There is a witness statement and oral evidence, along with surrounding circumstances during the nursing shift on the night in question.

In relation to charge 4), which involves leaving a patient soiled and unattended, there is evidence to support it. Colleague Y provided evidence, and the panel will assess this evidence along with any additional evidence presented when you give evidence.

Regarding charge 9), Ms Thornton said that Colleague Y clearly heard you say that you do not touch women. They were both dealing with a task at hand, initially involving a patient who arrived by ambulance. There seems to have been a debate about the delegation of the task. Colleague Y testified to this and confirmed that you had interactions with the patient. These are all matters for the panel to consider in their fact-finding deliberations.

Ms Thornton submitted the same applies to charge 10). There is clear evidence of interaction with the patient when they arrived, and at that moment, both you and Colleague Y were executing your duty of care towards the patient.

Regarding the remaining charges raised by Mr Buckley, Ms Thornton stated that she leaves it to the panel's discretion.

The panel accepted the advice of the legal assessor, who referred the panel to Rule 24(7) of the Rules, and the case of *Galbraith*.

Rule 24(7) of the Rules states:

24 (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –

(i) either upon the application of the registrant ...

the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

In approaching the application and considering the submissions made, the panel has followed the guidance provided in *Galbraith*. In relation to each charge, it has considered whether there is any evidence in support of the charge. If not, it has dismissed the charge. If it is satisfied that there is some evidence in support of a charge, it has considered the nature of that evidence and only if it is satisfied that the evidence is so tenuous or weak that it could not reasonably find the charge proved on that evidence has it dismissed the charge at this time. Where the charge relies entirely on hearsay evidence it has considered carefully the quality of that evidence and recognised that, in general terms, direct evidence is to be preferred over hearsay evidence but that it is open to it to find a charge proved on the basis of hearsay evidence alone if appropriate. At this stage it has not evaluated in detail the weight it will give to any hearsay evidence; it will do so at the facts stage if it finds a case to answer. At this stage, unless there is other evidence to show that any such evidence that it is considering is unreliable, it has accepted it at face value for the purposes of determining whether there is a case to answer.

Charges 1a), 1b) and 1c)

Concerning charge 1a), the panel noted that the incident occurred on 18/19 October 2023. Although Ms 1 did not work the same shift, the witness statement indicated that a patient in bed C5 reported that the nurse *"wasn't very nice and called me a disgusting human being."*

The panel also noted the evidence of Ms 2, who took over from you after the night shift. According to her witness statement, two vulnerable patients, one being Patient A, expressed distress due to alleged derogatory remarks made by you whereby Patient A said that you called her a "disgusting human being" and neglected her needs, leaving her too terrified to use the call bell.

Patient A also provided direct evidence regarding the events of that night.

In relation to charge 1b), the only evidence comes from Ms 1, who stated in her witness statement that staff members informed her about an incident involving you and a patient. However, the witness statement does not specify the patient's identity, making the evidence inherently weak.

Regarding charge 1c), the panel also noted Ms 1's evidence, which did not mention the patient's identity and was based on hearsay. Ms 1 did not hear about the incident directly from the patient.

Based on the available evidence, the panel decided that there is only a case to answer for charge 1a). Charges 1b) and 1c) do not have sufficient evidence to proceed.

For charges 2b) i) and 2b) ii):

The panel acknowledged your admission to charge 2a), which involved turning off the alarm from the main switch on a Baxter pump, as established at the beginning of the hearing.

The panel also heard direct evidence from Patient A that you left her without checking her cannula and *"the equipment"*. Patient A's witness statement and oral evidence were considered by the panel.

Accordingly, the panel determined that there is a case to answer for charges 2b) i) and 2b) ii).

Regarding charge 2c):

The panel heard direct evidence from Patient A, who stated during her oral evidence that you did not reset the pump and that another nurse had to come later to rectify the situation, which occurred during the night shift in question.

Thus, the panel determined that there is a case to answer for charge 2c).

For charge 3):

The panel noted that this incident took place on 2/3 November 2021. The witness statement of Colleague Y, which states: *“In another incident a lady in F bay was blind and hard of hearing and when I went to see her she was distressed and said she had been asking to use a bedpan for over an hour and when Pius had gone into her bay he took the call bell from her hand and moved it to a place on the wall where she couldn’t reach it.”*

The panel recognised that this hearsay evidence from Colleague Y was based on what the patient had told her. However, the patient's call bell was found out of her hand, and given her blindness and deafness, the evidence was that she would always keep it in her possession.

Therefore, the panel determined that there is a case to answer for charge 3).

Regarding charge 4):

The panel noted that this charge involves the same patient as charge 3). Colleague Z and Colleague Y, as well as the written statements, stated that the patient, an elderly blind and deaf lady, was wet and needed assistance.

Colleague Z's witness statement stated that she found the patient in a distressed state and said that she had been asking to use the bedpan for over an hour. Colleague Z assisted in changing the patient. She also had to reassure the patient because she was distressed.

The panel considered Colleague Y's oral evidence, in which she corroborated that the patient was left in that state and was distressed. Both Colleague Y and Colleague Z stated that they went to change the patient.

The panel therefore determined that there is a case to answer for charge 4).

For charge 5):

The panel reviewed the evidence presented by both Colleague Z and Colleague Y.

Colleague Y's witness statement states that you did not attend to any of the patients' personal care needs throughout the shift. Similarly, Colleague Z reported Colleague Y's concerns about your attitude towards patients and the lack of personal care provided, as observed during the night shift.

Therefore, the panel determined that there is a case to answer for charge 5).

Regarding charge 6):

The panel noted the evidence provided by Colleague Z, who stated in her witness statement that she frequently observed you sitting at the computer at the nurses' station for extended periods.

The panel noted that Colleague Y also mentioned your extended periods at the nurses' station during her oral evidence. Both accounts, as eyewitnesses, are mutually supportive.

Consequently, the panel determined that there is a case to answer for charge 6).

For charge 8):

The panel recognised that the evidence indicates that the colleague referred to in this charge is not Colleague Y, as she did not work in the enhanced bay during the relevant period, as established by Colleague Z. Therefore, the charge is not valid.

As a result, the panel determined that there is no case to answer for charge 8).

Regarding charge 9b):

The panel heard oral evidence from Colleague Y in which she confirmed that she had heard what she had recorded in her local statement dated 4 November 2021 which included hearing you say, *“care rounds are not my job”*.

The panel therefore determined that there is a case to answer for charge 9b).

For charges 10a), 10b), 10c), and 10e):

Regarding charges 10a), 10b), and 10c), the panel noted the evidence provided by Colleague Y in her witness statement, oral evidence, and local statement dated 4 November 2021 which addresses directly the matters charged.

Regarding charge 10e), the panel noted the local statement dated 4 November 2021 and Colleague Y’s oral evidence that she had heard what was recorded in the local statement, namely *“it is your job to clean the patient’s bottom, not mine”*.

Therefore, the panel determined that there is a case to answer for charges 10a), 10b), 10c), and 10e).

For charge 11):

The panel noted the evidence presented by Colleague Y in her witness statement, which described an incident involving a female patient in E bay. This patient reported that a *“horrible man”* responded to her request for a change of bedding by saying she would have to wait until morning.

Based on this evidence, the panel determined that there is a case to answer for charge 11).

Background

The NMC received the referral on 17 November 2021 from the Clinical Matron at the Royal Cornwall Hospital NHS Trust (the Trust). Their concerns raised related to your treatment of patients whilst undertaking night shifts at the Trust as an agency nurse.

It is alleged that on the night shift of 18/19 October 2021, Patient A's IV line kept beeping. You went into Patient A's bay and turned off the alarm rather than resetting the pump and ensuring the cannula was not bent. You also allegedly called Patient A a 'disgusting human being' and a 'dirty filthy old lady making noise'.

On 19 October 2021, a patient informed the Ward Manager that you had been turning off call bells and not coming back. It is alleged that you were sitting at the nurses' station for long periods of time.

On or around the night shift of 2/3 November 2021, you were assigned to work at St Michael's Hospital. You were working on the surgical and orthopaedic ward which was split into bays. You were informed that you would be working on the two middle bays each consisting of four beds and all female patients.

An ambulance crew arrived with a female patient who had been transferred from another hospital on that night shift. The patient needed to be cleaned as they had faeces around their bottom area and up their back. The patient required two staff members to assist them (double-handed patient) and Colleague Y asked you to assist her in cleaning the patient. However, it is alleged that you appeared angry and grabbed an excessive amount of wipes and started to clean the patient in an aggressive manner. The patient complained that it was hurting them, but you allegedly ignored the patient and continued cleaning aggressively. It was further alleged that you said it was not your job and left. A female patient in Bay E was later found upset and crying, informing Colleague Y that they had called the bell and someone described as a "*horrible man*" [you] came in. The patient

complained about being wet, and you allegedly responded that they would have to wait until morning to get a bed change. The patient was cold and shaking.

It is also alleged that you ignored a patient in Bay F who was blind and hearing impaired despite the patient requesting a bedpan for over an hour. You had entered the bay and allegedly taken the call bell from the patient and moved it onto a wall where the patient could not access it.

Additionally, it is alleged that you made comments suggesting that you did not touch women when it came to personal care.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Buckley, on your behalf, who informed the panel that you made an admission to charge 2a).

The panel therefore finds charge 2a) proved in its entirety, by way of your own admission.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Thornton on behalf of the NMC and by Mr Buckley, on your behalf.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor including the approach to be taken to hearsay evidence.

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

Charge 1a)

On or around the night shift of 18/19 October 2021;

1) Whilst speaking to Patient A, used words to the effect;

a) *'You are disgusting human being.'*

This charge is found proved.

The panel considered the evidence presented, including the witness statement and oral evidence of Ms 2. Ms 2 provided an account of what Patient A had reported to her when she began her daytime shift the following morning. Patient A told Ms 2 that you had called her a *"disgusting human being"* when she used the call bell. Furthermore, Ms 2 said that Patient A, who was usually joyful was noticeably upset and said she was afraid to use the call bell during the night due to the unpleasant encounter.

Ms 1 also provided a witness statement with similar evidence, recounting Patient A's claim that she was called a *"disgusting human being"* by you. Although both accounts are considered hearsay, the panel noted that Patient A reported the incident to both Ms 2 and Ms 1 the following morning and the accounts were consistent.

You explained that potential misunderstandings could have arisen due to your thick accent. The panel recognised the challenges in understanding you at times during your evidence and that your evidence was somewhat confusing and inconsistent. However, the panel found it unlikely that the words alleged in the charge would have been misconstrued solely due to your accent.

Although all of the evidence is considered hearsay, the panel, based on the balance of probabilities, concluded that it is more likely than not that you did use words to the effect of calling Patient A a "*disgusting human being*" or words to the effect, during your conversation with her. It therefore found charge 1a) proved.

Charge 1d) and 1e)

On or around the night shift of 18/19 October 2021;

1) Whilst speaking to Patient A, used words to the effect;

d) '*You dirty filthy old lady making noise.*'

e) '*Filthy lady.*'

This charge is found proved.

You gave similar evidence as in the above charge in that you said, "*perhaps there was an accent barrier and this patient misinterpreted and misjudged my words*". Further, you described Patient A as an old lady who was deaf and confused, and in your written response to this charge described her as "*an elderly woman who at the same time also suffers from dementia*".

The panel found Patient A to be consistent and coherent even when challenged during cross examination, showing no signs of confusion, or difficulties in hearing or understanding the questions.

The panel considered the oral and written evidence of Patient A's where she expressed the impact the incident had on her and conveyed that she will never forget those hurtful words. She firmly asserted that she could not have misunderstood and your words were cruel and hurtful.

The panel acknowledged the compelling nature of Patient A's witness account. The panel therefore found charges 1d) and 1e) proved on the balance of probabilities.

Charge 2b) and 2c)

2) On one or more occasion, after attending an alarm for a Baxter pump as Patient A's cannula had occluded/become bent;

b) Left Patient A without checking their;

i) Cannula.

ii) Baxter pump.

c) Did not reset the Baxter pump.

This charge is found NOT proved.

You gave a description of the actions you took with regards to the cannula and the Baxter pump.

The panel considered Patient A's oral evidence, in which she said that you turned off the alarm and did not check or reset the cannula, requiring another nurse to address the issue during the night. According to Patient A, she had to lie on her right side because she believed one of the drips in her arm had become dislodged and the alarm in her cubicle went off, which you subsequently turned off.

The panel acknowledged the potential uncertainty regarding Patient A's knowledge of the precise actions required to check the cannula, Baxter pump, or reset the pump and checks could have been made while Patient A was asleep. Furthermore, the panel was not satisfied that Patient A possessed a clear understanding of the technical aspects involved in equipment checks.

Considering the absence of corroborating evidence from another nurse on shift, the panel determined that the NMC have not provided sufficient evidence to find this charge proved on the balance of probabilities. The panel therefore found this charge not proved.

Charge 3)

On or around the night shift of 2/3 November 2021;

3) Removed a call bell from an unknown patient in bed F2 who required personal care/ a bed pan.

This charge is found proved.

The panel considered the witness statement, oral evidence and local statement of Colleague Y, who said that the patient in F2 was blind and deaf and appeared distressed when she attended to her. According to Colleague Y, the patient claimed you had entered her bay, taken her call bell from her hand, and relocated it to a position out of her reach. During oral evidence, Colleague Y clarified that the call bell was placed on the locker behind the patient, rendering it inaccessible, and not on the wall as in her NMC witness statement.

Additionally, the panel considered Colleague Y's local statement dated 4 November 2021, which stated, *"he removed her call bell away from her and put it back on her locker knowing that this patient is blind and deaf."*

The panel further took into account the oral evidence, the local statement and witness statement of Colleague Z, who confirmed that the patient was blind and deaf and relied on the call bell for comfort and that she would have needed it to be left in her hand in order to request for personal care or a bedpan. This evidence aligned with and supported the account provided by Colleague Y.

While you admitted to moving the call bell onto the bedside cabinet, you disputed the assertion that the patient was completely blind, claiming that she was partially sighted and could perceive shadows and you asserted that therefore she would be able to find the bell.

The panel recognised the absence of direct evidence but acknowledged Colleague Y's evidence that the call bell was not in the patient's hand and had been placed nearby, though not necessarily within reach. Colleague Y acknowledged that when cross examined that moving the bell may have been an error by you and not done out of spite. Consequently, having weighed the evidence of both hearsay and direct evidence, the panel found this charge proved on the balance of probabilities.

Charge 4)

On or around the night shift of 2/3 November 2021;

4) Left the unknown patient in bed F2 with wet/soiled bedding.

This charge is found proved.

You said that "the patient in bed F2 was not left unattended to, I only excused myself to liaise with my HCA and get the material needed to clean her up, the care plan states that she was double handed, on getting back with the materials, I found my hca by the bedside waiting for me, we then went ahead and attended to the patient. [sic]"

The panel considered the evidence provided by Colleague Y, who stated in her local statement dated 4 November 2021, that the patient [bed F2] told her that she had rung her bell for a bedpan and was told by you that she would have to wait until morning. Colleague Y continues in her statement to say that when she attended to this patient "*apologised to the patient because she was very distressed*" and assisted her "*on to the toilet*". Neither her witness statement nor her local statement mentioned anything about a wet/soiled bed as set out in the charge.

However, Colleague Z, in her local statement dated 4 November 2021, said that you told the patient to wait until morning to have her bed changed and took her call bell away. The panel noted that Colleague Z in her local statement said that *“you answered three call bells and left patients in wet beds and told them to wait until morning. All three of these patients were alert and orientated and distressed by this. One of the patient’s was hard of hearing and blind he told her to wait until morning to have her bed changed and took the call bell away”* The panel was of the view that the patient referred to by Colleague Z is the patient in bed F2 because she was deaf and blind and had the call bell removed.

The panel noted that the absence of evidence from Colleague Y about wet and soiled bedding, but it was satisfied that the evidence of Colleague Z is sufficient to find this charge proved on the balance of probabilities.

Charge 5)

On or around the night shift of 2/3 November 2021;

5) Did not respond to the care needs of one or more of the patients in the middle bays allocated to you.

This charge is found proved.

You said that the middle bays were not allocated to you. Nonetheless you attended all the bays, but you prioritised your fourteen patients. You said you were busy, but you did attend to the patients.

The panel considered the witness statement provided by Colleague Z, which states, *“During my shift, I never witnessed Pius assisting a patient with toileting. I did see Pius entering and exiting the bays, but his presence was brief. He did not spend significant time*

inside the bays, thereby making it unlikely for him to provide assistance due to the limited duration." During oral evidence, Colleague Z further explained how the allocation was structured on the night in question, and that you were responsible for two middle bays (E and F), each containing four patients.

The panel also considered the witness statement of Colleague Y, who stated, *"I did not witness Pius attending to any of the patients' personal care needs throughout the shift."*

The panel acknowledged the absence of direct evidence from patients indicating that you failed to attend to their needs. However, given the consistent evidence of Colleague Z and Colleague Y, it was satisfied that you did have responsibility for the middle bays and did not respond to the care needs of one or more of the patients in those middle bays.

Based on these considerations, the panel determined that the charge is found proved on the balance of probabilities.

Charge 6)

On or around the night shift of 2/3 November 2021;

6) Sat at the nursing station for long periods of time.

This charge is found proved.

The panel considered the witness statement of Colleague Y, which states, *"I observed that Pius did not actively engage in tasks during the shift. I noticed him sitting at the computer at the nurses' station for extended periods."*

Furthermore, the panel took into account the evidence provided by Colleague Z during the hearing. Colleague Z stated that you remained seated at the desk for the majority of the shift, highlighting that the desk is positioned in close proximity to the bays and you were therefore in line of sight.

In response to these observations, you explained that you were using the computer to complete necessary paperwork. You emphasised in your oral evidence the exceptionally busy nature of the night shift (19:00 – 07:00), making it impossible for you to sit for extended periods. However, the panel noted the inconsistency in your written evidence that by 01:30 most or all of the patients were asleep, you only had to attend to the occasional call bell.

The panel found Colleague Y's evidence to be clear, concise, and consistent with the account provided by Colleague Z.

As a result, the panel concluded that this charge is substantiated based on Colleague Y's and Colleague Z's accounts, which indicated that you were observed spending long periods on the computer. The panel therefore found charge 6) proved on the balance of probabilities.

Charge 7)

On or around the night shift of 2/3 November 2021;

7) Behaved in a confrontational manner towards Colleague Z.

This charge is found proved.

The panel took into consideration the witness statement provided by Colleague Z, in which she said that you accused her of taking a pot of cream that she had not taken. She found your confrontational behaviour towards her to be unnecessary and excessive.

During her oral evidence, Colleague Z reiterated that your demeanour was unfriendly, highlighting your use of a harsh tone and unwelcoming body language. The panel acknowledged the consistency of her statements and considered her explanation for perceiving your actions as confrontational.

In your oral evidence, you stated that you have no recollection of the incident described. You emphasised that your professional ethics as a nurse require you to maintain kindness, caution, and respect towards both patients and colleagues at all times.

The panel made an observation, noting that your behaviour could not be solely attributed to your heritage. It also observed moments during the hearing where you spoke with a raised voice, were very animated, threw a document over your shoulder during your evidence and at one point walked out during your evidence without explanation.

The panel therefore concluded that, based on the balance of probabilities, it is more likely than not that you behaved in a confrontational manner towards Colleague Z.

Charge 9)

On or around the night shift of 2/3 November 2021;

9) On one or more occasion when asked by colleagues about conducting personal care, used words to the effect;

a) *'I don't touch women.'*

b) *'Care rounds are not my job.'*

c) *'It's not my job.'*

This charge is found proved in its entirety.

In your written and verbal evidence, you denied all of these charges 9a), 9b) and 9c). You explained that you had worked as a HCA before working as a nurse and have dealt with female patients on numerous occasions. Mr Buckley, on your behalf, said it would be

illogical that for you to have said these things on this shift and had not been found to have said it on any other shift that you have worked either in this Trust or others.

Regarding charge 9a), the panel considered the witness statement provided by Colleague Y, which states: *"During the shift Pius made comments to me on several occasions stating "I don't touch women" During her oral evidence, Colleague Y confirmed that you indeed made the statement, "I do not touch women." The panel noted her clarity in recalling your words.*

Additionally, the panel took into account the local statement authored by Colleague Y on 4 November 2021, which states: *"I was then doing the morning observations on the patients when the male nurse approached me and said d3 needs changing I replied I have two lady's that wanted the toilet and that he will have to do it as I am busy at the minute, he said no I asked why his reply was I don't touch women I said what do you mean, and he then said again I don't not touch women I said we all have a duty of care and he just walked away. [sic]"*

Additionally, the panel considered the local statement of Colleague Z, which states: *"When asked why he wasn't assisting patients to the toilet or changing them, he stated that he doesn't touch women."* The panel noted that there was no mention of this in Colleague Z's witness statement, but that she acknowledged that if you had approached her at the beginning of the shift and provided a rationale for not assisting female patients, she may have been able to accommodate that.

Notwithstanding the omission in Colleague Z's witness statement regarding specific words spoken by you, the panel found that both the evidence provided by Colleague Z and Colleague Y corroborated each other. As a result, the panel determined that charge 9a) is found proved on the balance of probabilities.

Moving on to charge 9b), the panel relied solely on the local statements of Colleague Y and Colleague Z. It noted Colleague Y's statement dated 4 November 2021, which states: *After this whilst setting the patients, I asked the nurse if he had done any care rounds on*

the patients, he had settled, and his response was that's not my job." Colleague Y reaffirmed this during her oral evidence.

Furthermore, Colleague Z's local statement dated 4 November 2021, states: "*He stated that care rounds weren't his job.*"

The panel determined that there was corroborating evidence, leading it to conclude that it is more likely than not that you used words to the effect of "care rounds are not my job." It therefore found charge 9b) proved on the balance of probabilities.

Regarding charge 9c), the panel considered the witness statement provided by Colleague Y, which states: "*Pius then moved into the next bay to see a patient and said he was doing observations. I asked Pius if he had undertaken the rest of the care rounds before moving onto observations and Pius responded by saying "it is not my job". I asked him again if we can complete care rounds first and again he responded "it is not my job".*" The panel found that this statement also aligned with Colleague Y's local statement dated 4 November 2021.

Therefore, the panel determined that it is more likely than not that you used words to the effect of "it's not my job" when asked by colleagues about conducting personal care. It therefore found charge 9c) proved on the balance of probabilities.

Charge 10)

On or around the night shift of 2/3 November 2021;

10) Reacted angrily when asked by Colleague Y to assist cleaning a transfer patient who had soiled themselves, in that you;

a) Grabbed an excessive amount of wipes from the packet.

- b) Cleaned the patient in an aggressive manner.

- c) Continued to clean the patient harshly after they had complained to you about the pain/aggressive cleaning.

- d) Used words to the effect '*Not my job to do this*'

- e) Shouted at Colleague Y, words to the effect '*It is your job to clean the patient's bottom, not mine.*'

This charge is found proved in its entirety.

You denied that you had used an excessive amount of wipes and that you used a sufficient number of wipes to complete the job. You denied cleaning the patient in an aggressive manner because in your oral evidence you stated that the faeces were wet and easy to clean off. You stated that the patient had recently undergone hip surgery and that the patient was complaining of pain anyway. You also denied using the words "*not my job to do this*" nor "*it is your job to clean the patient's bottom, not mine*".

With regard to charge 10a), the panel considered the statement from Colleague Y, dated 4 November 2023, which states, "*I asked the nurse to help change her as the pad and wet wipes were on the table next to him...*" In Colleague Y's witness statement, she further explained, "*I had wipes ready on the other side to where I was standing and I asked Pius if he could assist with making the patient comfortable. Pius was angry when I asked him to assist and grabbed an excessive amount of wipes from the packet*".

The panel took into account Colleague Y's fourteen years of experience as a HCA and her assessment of what an excessive amount of wipes would be. Based on this information, the panel found that on the balance of probabilities, charge 10a) is proved.

Regarding charges 10b) and 10c), the panel considered Colleague Y's witness statement, which states that you cleaned the patient in an aggressive manner. The panel found Colleague Y's account to be credible and confirmed in her oral evidence. As a result, the panel determined that charge 10b) is found proved on the balance of probabilities.

For charge 10c), the panel considered Colleague Y's statement that you were wiping the patient forcefully, causing her pain, despite her complaints. During the oral evidence, Colleague Y acknowledged the possibility of physical contact causing discomfort but insisted that your actions were excessively forceful. The panel noted Colleague Y's evidence, highlighting your anger, excessive use of wipes, and aggressive cleaning. It therefore found charge 10c) proved on the balance of probabilities.

Turning to charge 10d), the panel took into account Colleague Y's local statement, NMC witness statement and her oral evidence. Colleague Y's witness statement states that you said, *"it is not my job to do this"* and left the room. Colleague Y reiterated this incident during her oral evidence confirming your words as quoted in the charge.

In respect of charge 10e), the panel took into account Colleague Y's local statement and oral evidence. Colleague Y's local statement states that you shouted, *"it is your job to clean the patient's bottom, not mine."* Colleague Y reiterated this incident during her oral evidence confirming your words as quoted in the charge.

Based on the evidence presented, the panel found charges 10d) and 10e) proved on the balance of probabilities.

Charge 11)

On or around the night shift of 2/3 November 2021;

11) Responded to a female patient in bed E-4 requesting personal care for soiled bedding with words to the effect *'Wait until morning to a get a bed change.'*

This charge is found proved.

The panel considered the witness statement of Colleague Y, which states: *“After I had my first break I continued with my care rounds and found a female patient in E bay upset and crying. I asked her what was wrong and she said “I called the bell and a horrible man came in” the patient told Pius she was wet and he responded saying she would have to “wait until morning to get a bed change”. The patient was cold and shaking as her bed sheet was completely wet. A nurse on duty, [Colleague Z], helped me change the patient and make her comfortable.”* The panel also considered Colleague Y's local statement dated 4 November 2021.

In your evidence, you said that you distinctly recall securing your drug trolley and responding to the call bell of a female patient in the middle bay who stated that she was wet and needed to be changed. You requested her to hold on momentarily while you went to fetch a HCA to help with the change. However, the patient pressed the buzzer again as soon as you left, and the HCA promptly attended to her. Upon your return, you found the HCA questioning the patient, so you joined in, drawing the curtains, and together you changed the patient's pad. You said that at no point did you ask the patient to 'wait until morning to get a bed change,' as alleged by Colleague Y.

Although Colleague Z did not specifically identify the patient in bed E-4 as requiring personal care, in her local statement, she indicated that *“[you] answered three call bells and left the patients in wet beds and told them to wait until the morning”*. The panel found it reasonable to infer this related to the patient in bed E-4, given the other related evidence.

The panel did not directly hear evidence from the patient in question. However, Colleague Y informed the panel that when she attended to the patient, she observed the patient's distress and wet condition. The panel considered that the local statement was compiled

shortly after the events occurred. Therefore, the panel found that the evidence of Colleague Y and Colleague Z was sufficient to find it more likely than not that you responded to the request of the female patient in bed E-4, who sought personal care for soiled bedding, with words to the effect of "*wait until morning to get a bed change.*" It therefore found charge 11) proved on the balance of probabilities.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your 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 professional judgement.

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

Submissions on misconduct and impairment

Ms Thornton made reference 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.*'

Ms Thornton submitted that your actions as a registered nurse significantly failed to meet the expected standards. She referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' and highlighted specific, relevant standards where your actions amounted to misconduct.

Ms Thornton addressed the issue of impairment, emphasising the importance of protecting the public and maintaining public confidence in the nursing profession and the NMC as a regulatory body. She referred to the case of '*Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)*'.

Ms Thornton invited the panel to determine that your fitness to practise is impaired as a result of your misconduct. She submitted that you had failed to provide proper care and dignity to patients, neglected their personal needs and caused physical distress. Additionally, she submitted that you spoke to patients inappropriately and deliberately denied their care requests, putting them at risk of psychological distress.

Furthermore, Ms Thornton submitted that your behaviour exhibited deep-seated attitudinal issues, posing a risk of repetition. She expressed concerns about the neglect and inappropriate language towards vulnerable elderly patients, citing these as significant concerns for public safety.

Ms Thornton went onto address public interest. She submitted that given the seriousness of the allegations, it is important to maintain confidence in the nursing profession and uphold proper standards of conduct and behaviour.

The panel received documents from you which includes numerous testimonials, certificates, your response to the allegations, and reflections.

Mr Buckley reminded the panel that the panel must ask itself whether your current fitness to practise is impaired. He emphasised that the aim of the process is not to punish past events but to assess your ability to practise appropriately moving forward.

Mr Buckley acknowledged that the fact you denied the charges, which were ultimately found to be proved, does not automatically imply impairment. He invited the panel to take a holistic approach beyond just the proven facts of the allegations. He also highlighted that these events occurred approximately two years ago without any subsequent complaints being raised.

Furthermore, Mr Buckley submitted that even during your suspension under an interim order, you worked as a HCA in accordance with the order. Following the lifting of the suspension after approximately twelve months, you then resumed work as a nurse under interim conditions of practice order. During this period, you received numerous glowing testimonials, which Mr Buckley presented as evidence in support of you.

Mr Buckley contended that your reflections truly demonstrate an understanding of how such behaviour can impact patients and how improvements can be made. He acknowledged that you have, to some extent, set aside your initial denial and actively engaged with the process, adopting an objective stance. This process has facilitated your growth and development as a nurse.

In respect of the Code, Mr Buckley accepted that your actions breached it and fell short of expected standards. However, he disputed the notion that these actions indicate a deep-seated attitudinal problem or a significant risk of repetition. He submitted that the evidence before the panel does not support these claims or suggest a high risk of recurrence.

Mr Buckley further submitted that the allegations relate to two separate shifts over a one-month period. Since then, you have worked a significant number of shifts without any repetition of the allegations or the emergence of new ones.

Whilst acknowledging the public interest in this case, Mr Buckley stressed the need for the panel to carefully balance this interest with the facts as they were then and as they are now.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Meadows v GMC* [2007] EWCA Civ 1390, *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *Roylance v The General Medical Council* [2000] 1 AC 311, *Ahmedsowida v GMC* [2021] EWHC 3466 (Admin), *Schodlok v. GMC* [2015] EWCA Civ 769, *Towuaghanste v General Medical Council*, *CHRE v NMC*, *Paula Grant* [2011] EWHC 927, *Cohen v GMC* [2008] EWHC 581 (Admin) and *Nicholas-Pillai v GMC* [2009] EWHC 1048 Admin.

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

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

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

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

2.6 recognise when people are anxious or in distress and respond compassionately and politely

8 Work cooperatively

To achieve this, you must:

8.5 work with colleagues to preserve the safety of those receiving care

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

Charges 1a), 1d), 1e):

The panel noted that these charges all revolve around the use of derogatory language directed at Patient A. The panel determined such language is unacceptable from a registered nurse, recognising that insulting or belittling a patient can cause emotional distress and psychological harm. Patient A reported in her evidence that she was distressed and cried after the incident. Patients rely on healthcare providers for support and care, and derogatory remarks can impact their well-being and trust in the healthcare system. The panel therefore found that your actions in charges 1a), 1d) and 1e) did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charge 2a):

The panel determined that the act of turning off the alarm in itself does not amount to misconduct. Your explanation that it would have needlessly disturbed the patients was taken into consideration. No other information was brought forth to suggest that serious or unmet care needs resulted. Therefore, the panel concluded that charge 2a) does not constitute misconduct.

Charge 3):

The panel recognised that nurses have a duty to provide appropriate care, accommodating individual needs. In this instance, it noted that the patient in question was blind and deaf, and the call bell served as a crucial tool for requesting assistance. However, the panel also acknowledged evidence from Colleague Y that your actions in charge 3) may not have been malicious or intentional, but rather an inadvertent mistake. Considering these factors, the panel determined that charge 3) does not amount to serious misconduct.

Charge 4):

The panel noted the seriousness of leaving a patient in wet and soiled bedding, which can lead to health complications like skin damage, increased infection risk, and discomfort as well as compromising patient dignity. Neglecting a patient's cleanliness needs represents a failure to provide appropriate care, and it can impact on their well-being. The panel therefore found that your actions in charge 4) did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charge 5):

The panel noted that failing to respond to the assigned middle bays compromised the safety and well-being of the patients. This failure could result in patient harm, delayed

treatment, or deterioration of their condition. The panel therefore found that your actions in charge 5) did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charge 6):

The panel determined that sitting at the nursing station for extended periods, does not in itself amount to serious misconduct on its own. Furthermore, no evidence was presented regarding the nature of your activities on the computer. Consequently, the panel determined that this charge does not amount to misconduct.

Charge 7):

The panel noted the importance of effective teamwork and collaboration among healthcare professionals to provide safe and quality patient care. Acting confrontationally towards a colleague can deeply affect the work environment. It also noted that nurses are expected to adhere to the Code which emphasise respect and professionalism in the workplace, which is essential for maintaining a positive and supportive working environment. The panel therefore found that your actions in charge 7) did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charges 9a), 9b), 9c):

The panel noted a clear pattern of conduct in these charges. As a nurse you have an obligation to provide care and meet patient needs, the panel considered your refusal to do so by making statements such as "I do not touch women" or stating that care rounds were not within your responsibilities was behaviour fundamentally contrary to the core principles and responsibilities of the nursing profession. The panel therefore found that your actions in charges 9a), 9b) and 9c) did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charge 10a):

The panel determined that this charge, which pertains to the excessive use of wipes, does not amount to misconduct. Though excessive use of wipes may not be best practice, the panel determined that it did not reach the threshold of serious misconduct.

Charges 10b) and 10c):

The panel acknowledged your explanation but found it inconsistent with a reasonable, respectful and compassionate approach to cleaning a patient. It noted that nurses have a duty to treat patients with dignity, respect, and sensitivity. The approach taken posed a risk of harm to the patient. The panel therefore found that your actions in charges 9a), 9b) and 9c) did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charges 10d) and 10e):

The panel found that charge 10d) and 10e) constituted serious misconduct for the same reasons outlined in charge 9). The panel determined that it demonstrated a pattern of selectively choosing which tasks you wanted to perform. Such behaviour can compromise patient safety and well-being by resulting in inadequate or incomplete care. The panel therefore found that your actions in charges 10d) and 10e) did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charge 11):

For the same reasons as for charge 4), the panel determined that your actions in charge 11) 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, your 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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

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

The panel considered that limbs a), b) and c) of Dame Janet Smith's test as set out in the Fifth Shipman Report were engaged by your past actions. The panel found that your use of inappropriate language towards Patient A, your aggressive cleaning of the patient referred to in charge 10) even after the patient complained about the pain you were causing, as well as your failure to cooperate with Colleague Y in providing proper care, put patients at risk of physical and emotional harm. The panel also considered that members of the public would not expect a registered nurse to behave in such a manner. The panel therefore considered that your actions brought the profession into disrepute and also breached fundamental tenets of the profession.

The panel went on to consider whether you are liable in the future to place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession. In doing so, the panel assessed your levels of insight, remorse and remediation.

The panel had regard to the test set out in the case of *Cohen*. The panel determined that your conduct could be remediable. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account your evidence including testimonials and certificates.

The panel had sight of the training certificates you submitted and noted that the training appeared to have been largely conducted in short bursts of time. It also noted that some of the certificates contained reflective questions related to applying your learning to your role and documenting it for formal Continuing Professional Development (CPD) purposes which you had not been completed. Furthermore, the panel have not heard any evidence of your application of learning in your practice.

Whilst the panel acknowledged your progress in strengthening your practice and the absence of concerns raised regarding your practice in the two years since the matters relating to the charges arose. The panel noted that the testimonials provided were primarily received from HCA's with only one testimonial from a home manager. Additionally, the panel noted the lack of up-to-date reflections since December 2022 and insufficient evidence from senior nurses that adequately evaluate your current practice.

The panel took into account your reflections on all of the charges and found that whilst there was some insight, it was not yet fully developed.

The panel also considered your response in relation to charge 1) concerning Patient A. It noted that your reflection solely addressed your communication skills with no insight shown into the inappropriate actions that caused distress to Patient A. Your response indicated improvements in communication skills, but the panel found that the misconduct identified in the charges was not as a result of your communication skills but in the words you used nor did your reflections provide reassurance to the panel about your comprehension of the impact of your misconduct.

The panel found your responses to all of the charges largely lacked insight regarding the effect of your misconduct on the patients, colleagues, the reputation of the nursing profession and the public.

In light of the above, the panel considered that you are liable to breach all three limbs of the *Grant* test in the future. The panel therefore found a finding of impairment on the grounds of public protection was necessary.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel noted that some of the charges are so serious that even if you had addressed them, a finding of impairment would still be required in the public interest. It recognised that the public would have concerns regarding the use of such language, particularly when it comes from a nurse who is always expected to be caring and respectful towards patients. The panel therefore did consider that public confidence in professional standards and the nursing profession would be undermined if no finding of current impairment were made on public interest grounds.

Having regard to all of the above, the panel determined that your fitness to practise is currently impaired on the grounds of public protection and public interest.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months. The effect of this order is that the NMC register will show that your registration has been suspended.

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.

Submissions on sanction

Ms Thornton invited the panel to impose a striking off order following the panel's finding of impairment. She submitted that its finding indicates a risk of recurrence, mainly stemming from your lack of insight, although some level of insight has been acknowledged.

Additionally, Ms Thornton submitted that neither a suspension order nor a conditions of practice order would adequately protect the public against the ongoing risk. While the misconduct is not directly related to clinical practice like medication administration, it is linked to your overall care for patients, making it challenging to establish workable conditions in this regard.

Mr Buckley submitted that a striking off order would be far too draconian and disproportionate in this case, stating that it is neither necessary nor justified. He submitted that the consequences of a successful striking off application would be grave.

Regarding the timeline, Mr Buckley pointed out that the incidents in question are now two years old. He said that you were initially suspended for twelve months during the disciplinary process, during which time you complied with the suspension order by working as a HCA. Throughout this period, there were no reports of repeated behaviour or new complaints. After the twelve-month suspension period, it was lifted and changed to an interim conditions of practice order, allowing you to return to work as a nurse while adhering to the specified conditions. During this time, there were no instances of repetition.

Mr Buckley also highlighted that there have been no previous or subsequent regulatory findings against you. He acknowledged that you have demonstrated a degree of insight and a genuine attempt to reflect upon your actions and their potential consequences.

In terms of alternative sanctions, Mr Buckley agreed that taking no further action or imposing a caution order would not sufficiently address the public interest in this matter. He also submitted that a caution order would not be appropriate on the basis that your

insight and reflections are not developed enough. Instead, he suggested that a conditions of practice order would adequately protect the public, with the conditions imposed aiming to address any concerns.

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

Decision and reasons on sanction

Having found your 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:

- Although you displayed some insight into some of the charges, the panel found none in respect of the charges of the use of abusive language towards Patient A and your aggressive wiping of a patient.
- A pattern of misconduct over a period of time. Although it occurred on only two occasions there were similarities in behaviour observed during both those shifts.
- Conduct that placed vulnerable and elderly patients at risk of emotional harm, including Patient A, from whom the panel heard direct evidence, and was distressed by the incident. Notably, one of the patients affected was blind and hearing-impaired.

The panel also took into account the following mitigating features:

- Since the incidents, you have shown efforts to complete general training (including some relating to the charges) and have engaged in some level of reflection, even if it has not specifically addressed all the concerns raised.
- Testimonials since the events attesting to your kind and caring character were provided.
- Some level of insight into the less serious aspects of your misconduct has been demonstrated.
- You have exhibited some remorse regarding your misconduct.
- No concerns have been raised regarding your behaviour working as a HCA for a year and as a nurse thereafter since the incidents occurred.

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 not protect the public nor satisfy the public interest in this case to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your 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 your 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 your 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*
- ...

The panel acknowledged that at the time of the incidents, you displayed attitudinal issues of concern, inappropriate attitude and a lack of care towards vulnerable patients on the two shifts in question. However, the panel also took into consideration the significant number of testimonials of your work since these events, which highlight your kindness and ability to provide appropriate care. While the panel would have preferred to see more professional testimonials, these testimonials suggest that you are capable of delivering care in an appropriate manner. As a result, the panel determined that although your behaviour involved attitudinal aspects, the panel did not consider these to be deep-seated, having only occurred during two separate shifts, nor were they incapable of remediation.

In the evaluation of possible conditions that could effectively protect patients, colleagues, and meet the public interest, the panel took into account the fact that some of the misconduct is related to your attitude towards patients and colleagues. The panel also noted that you have not yet developed insight into the more serious aspects of your misconduct. The panel determined that areas of concern have the potential to be addressed through re-training and the implementation of substantial levels of supervision and monitoring. However, the panel considered the extent of the conditions required to ensure protection of the public as a result of the attitudinal concerns would be unworkable and essentially be tantamount to a suspension. Additionally, a significant concern to the panel was the presence of attitudinal issues and the severity of the misconduct. The panel

did not consider that a conditions of practise order would adequately satisfy the public interest in light of the charges found proved.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 had regard to the NMC guidance on “*Serious concerns which are more difficult to put right*” (FtP-3a, dated 1 July 2022).

The panel was satisfied that in this case, your misconduct was remediable and was not fundamentally incompatible with remaining on the register. The panel carefully considered the gravity of the concerns brought forward and determined that a suspension from the register with a review is the appropriate course of action. Although the incident occurred on two shifts out of many worked over your nursing career, when looking at the overall context, the panel found that the inappropriate language used towards a vulnerable patient, in conjunction with the act of leaving a blind a deaf patient in wet/soiled bedding and expecting patients to wait for bed changes, were serious departures from what would be expected of a nurse. The panel's utmost priority is to ensure the public is suitably protected and was of the view that you should address the outstanding concerns before being allowed back into the nursing profession.

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 of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, a striking-off order would be unduly punitive in your case.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the need for public protection and is otherwise in the public interest.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and also 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 six months was appropriate in this case to mark the seriousness of the misconduct and the public interest. This timeframe also allows you an opportunity to fully reflect on your misconduct, take action and provide evidence of your commitment to address your failures. During this suspension period, you should actively work towards implementing the suggested improvements and demonstrate your dedication to rectifying your actions.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Any relevant up to date testimonials (if possible, from a registered nurse) and/or feedback from employer(s) that specifically address improvements in addressing issues to do with your attitude towards patients and your professionalism.

- A reflective piece:
 - exploring the language expected of a professional nurse when interacting with patients and colleagues.
 - reflecting on what you have learned from these past experiences and outlining specific actions or approaches you would employ in the future.
 - reflecting on the impact of your conduct on patients, colleagues and the reputation of the profession.

- Relevant training addressing the concerns raised by the charges.

Interim order

As the suspension order cannot take effect until the end of the twenty eight 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 your own interests until the suspension sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Thornton. She submitted that an interim suspension order should be imposed for a period of eighteen months to cover the twenty eight day appeal period and the subsequent period should an appeal be lodged. She submitted that this is necessary for the same reasons as given by the panel regarding the substantive order.

Mr Buckley submitted that he cannot usefully oppose the application but drew the panel's attention to the previous interim conditions of practice order and invited the panel to give this appropriate consideration.

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

Decision and reasons on interim order

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

The panel concluded that the only proportionate interim order would be that of an interim suspension order, as to do otherwise would be inconsistent with its earlier findings.

Should you decide to lodge an appeal, given the uncertainty in relation to how long any appeal may take to conclude, the panel decided that this interim suspension order shall be for a period of eighteen months.

Therefore, the panel determined to impose an eighteen-month interim suspension order on your registration.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order twenty eight days after you are sent the decision of this hearing in writing.

That concludes this determination.

This will be confirmed to you in writing.