Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ
9 - 16 May 2023

Virtual Hearing

30 October 2023 - 1 November 2023

18 – 20 December 2023

Name of registrant:	**Jacqueline Kaye-Robinson**
NMC PIN:	09H2593E
Part(s) of the register:	Registered Nurse – Sub Part 1 Learning Disabilities Nursing (Level 1) (September 2009)
Relevant Location:	Barnsley
Type of case:	Misconduct
Panel members:	Judith Webb (Chair, Lay member) Margaret Marshall (Registrant member) Caroline Friendship (Lay member)
Legal Assessor:	Attracta Wilson
Hearings Coordinator:	Tyrena Agyemang (May 2023) Christine Iraguha (October – November 2023) Catherine Acevedo (December 2023)
Nursing and Midwifery Council:	Represented by Anna Leathem, Case Presenter
Mrs Kaye-Robinson:	Present and unrepresented (9-11 & 15-16 May 2023) Not present and unrepresented (12 May 2023, 30 October 2023 - 1 November 2023 and 18 – 20 December 2023)
Facts proved by admission:	Charges 2a and 2b

Facts proved:	Charges 1 ai, aii, 1c, 3a, 3b, charge 4 in respect of charge 3b only
Facts not proved:	Charges 1b, 2c, charge 4 in respect of charge 3a only
Fitness to practise:	Impaired
Sanction:	Suspension order (12 months) with a review
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse,

1) On 20 April 2021, in relation to Patient A
   a) Acted contrary to their care plan in that you did not
      i) Attempt to de-escalate the situation
      ii) offer Promethazine or Lorazepam.
   b) Restrained them from behind
   c) Restrained them by allowing two staff members to hold them in a MAP~~P~~A hold when there was no clinical justification to do so

2) **On 20 April 2021, in relation to Patient A**, administered a Prometh~~i~~azine tablet inappropriately in that **you**:
   a) Administered the tablet when **Patient A was** ~~they were~~ under restraint
   b) Attempted to administer the tablet via a syringe
   ~~c) Pinched~~ **Held your hand over** Patient A's ~~nose~~ **mouth** to forcibly administer the **tablet** ~~medication~~

3) Failed to keep accurate records of the actions in charges 1 and 2 above in that:
   a) you did not record how long **Patient A was** ~~they were~~ restrained for **in the Patient notes**
   b) you did not record that you had administered medication whilst ~~the~~ ~~p~~**P**atient **A** was restrained and via a syringe

4) That your actions in charge 3 above were dishonest as they did not reflect what had happened

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Leathem, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charges, 1c, the stem of charge 2, 2a, 2c, 3a and 3b.

Ms Leathem told the panel in relation to charge 1c, that in the evidence of two witnesses, the acronym for Management of Actual or Potential Aggression should be spelt as MAPA and not MAPPA. She submitted that this a typographical error.

Ms Leathem submitted in relation the stem of charge 2 that the spelling of Promethazine, with the additional 'i' documented in the charge was also a typographical error, that the proposed amendment would correct. She told the panel that the amendments simply provide clarity and do not change the substance of the charge, but more accurately reflects the evidence.

Ms Leathem went on to address a further amendment to the stem of charge 2 and charge 2a, by inserting the date and reference to the actual patient, which she submitted was a tidying up exercise that also does not change the substance of the charge but adds more clarity. She further submitted that it is in the interests of justice and fairness, to insert the date and the Patient A reference.

Ms Leathem submitted that the amendments to charges 2c and 3a require more careful consideration as the changes do alter the substance of the charges. However, Ms Leathem also submitted that these amendments better reflect the evidence and the allegations to be addressed.

In relation to 2c, she told the panel that in the witness evidence before it there are references to you holding your hand over Patient A's mouth at a distance whilst not making any physical contact with him. She submitted that the application to amend the

charge has come as no surprise to you, as you had been made aware that amendments would be sought to better reflect the evidence.

Ms Leathem submitted that aside from the insertion of ‘Patient A’ into the charge, which adds more clarity, the original working of the charge was ambiguous and the additional wording better reflects the evidence from witnesses and from yourself. She submitted that whilst it does alter the substance of the charge, it provides more clarity and can be made without any injustice to you.

The amended charges are as follows:

That you, a registered nurse,

1) On 20 April 2021, in relation to Patient A
   a) Acted contrary to their care plan in that you did not
      i) Attempt to de-escalate the situation
      ii) offer Promethazine or Lorazepam.
   b) Restrained them from behind
   c) Restrained them by allowing two staff members to hold them in a MAPA hold when there was no clinical justification to do so

2) On 20 April 2021, in relation to Patient A, administered a Promethazine tablet inappropriately in that you:
   a) Administered the tablet when Patient A was under restraint
   b) Attempted to administer the tablet via a syringe
   c) Held your hand over Patient A’s mouth to forcibly administer the tablet

3) Failed to keep accurate records of the actions in charges 1 and 2 above in that:
   a) you did not record how long Patient A was restrained for in the Patient notes
   b) you did not record that you had administered medication whilst Patient A was restrained and via a syringe

4) That your actions in charge 3 above were dishonest as they did not reflect what had happened.

You did not object to the application for 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'.

The panel was of the view that such amendments, as applied for, were in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. It determined that the proposed amendments would not materially alter the substance of the charges but would provide clarity and better reflect the allegations to be addressed. The panel therefore decided to allow the application for all the proposed amendments to ensure clarity and accuracy.

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

During the hearing, Ms Leathem made a request on your behalf that this case be held partially in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', (the Rules).

Ms Leathem indicated that although she was making the application on your behalf, she also supported the application [PRIVATE].

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

[PRIVATE], the panel determined to hold such parts of the hearing in private to protect your right to privacy.

Application to adjourn the hearing on Friday 12 May 2023

The panel was informed at the start of the hearing that you would not be in attendance at the hearing today.

The case coordinator responsible for this case received the following email from you which stated:

> *'Dear sir or Madam,*
>
> *I have sent an email to. Sylvia Opoku*
>
> *Informing her I am unable to attend the video link hearing this morning Friday 12 May 2023 at 10.00 a.m. due to unforeseen foreseen [sic] circumstances..*
>
> *I have received an automated reply she out of the office u till [sic] Monday May 15 2023.*
>
> *Would you please Inform the panel for today and give apologies for any inconvenience convenience this may cause.*
>
> *Please inform them I will hope to resume the hearing via video link on Monday 15 May 2023.'*

The NMC sought clarification as to the reasons for your absence. You sent a further email stating:

> '*Dear Lale,*
>
> *My spouse has recently been hospitalised with a bleed . He is insulin dependent and He has Post traumatic disorder (PTSD) from his time spent in the air force.*

He is quite unwell, this morning.

I can make arrangements for Monday 15 May 2023 and Tuesday 16 May 2023 for him to have a family member with him. I will be able to have a private hearing then with no distractions.'

The panel invited submissions from Ms Leathem on adjourning the hearing, in light of your absence.

Ms Leathem did not object to an adjournment and submitted that the panel has a discretionary power to adjourn hearings. She stated that considering the reasons for your absence, it is likely that an adjournment would secure her attendance later in the hearing. She reminded the panel that you had been participating in the hearing and given the stage the hearing had reached; it may be disadvantaged if the hearing were to proceed in your absence. Further, Ms Leathem, stated that an adjournment would assist the NMC in trying to secure the attendance of Witness 3.

The panel accepted advice from the legal assessor.

The panel took into account Ms Leathem's submissions and the legal advice when making its decision on the application. It noted that the reason for your non -attendance was genuine, and that any adjournment would be for a short time and would not cause unwarranted delay. Further it considered that an adjournment would allow the NMC time to contact Witness 3, who had not been responding to any correspondence in relation to the hearing.

The panel also considered that you had been present to date and actively engaging with the hearing. She stated she would be able to re-join the hearing on Monday.

The panel decided to adjourn the hearing.

Decision and reasons on application to admit written statement of Witness 3 as hearsay evidence

The panel heard an application made by Ms Leathem under Rule 31 to allow the written statement of Witness 3 into evidence. Witness 3 was not present at this hearing and, whilst the NMC had made numerous and reasonable efforts to ensure her attendance, Witness 3 had not been receptive and is not in attendance today.

Ms Leathem asked the panel to allow the hearsay evidence of Witness 3 into evidence and stated that despite numerous attempts, the NMC had not been able to secure their attendance. Ms Leathem submitted that the evidence of Witness 3 is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations.

Ms Leathem told the panel that Witness 3 had provided the NMC with a witness statement. She submitted that the test for the panel is whether the evidence of Witness 3 is relevant and if so, whether it would be fair to admit it as hearsay evidence.

Ms Leathem submitted Witness 3's evidence is relevant and supports charges 1 and 2. She told the panel the Witness 3 was directly involved in the incident outlined in the charges. She submitted that the CCTV footage identifies Witness 3 and the NMC have made significant efforts to contact her. Initially Witness 3 stated that she was having childcare issues, and time was therefore allowed for her to make the necessary arrangements.

Ms Leathem submitted that adjourning the hearing would not result in Witness 3's attendance, as there is no recent information before the panel as to why she has not attended the hearing. She told the panel that Witness 3 is not a registered nurse and therefore has no duty to engage with the NMC.
Ms Leathem referred the panel to the following case law; *Ogbonna v Nursing and Midwifery Council* [2010] EWHC 272 (Admin), *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) and *El-Karout v NMC* [2019] EWHC 28 (Admin). She submitted that the panel does have a witness statement from Witness 3, which is signed and dated.

Ms Leathem addressed the panel on whether Witness 3's evidence is the sole and decisive evidence and submitted that it is not, as the panel has heard from two other witnesses who have given evidence on the same issues. She acknowledged that Witness 3 gave evidence stating that you forced the medication into the patient's mouth and Witness 1 states that you had her hand over the patient's mouth without touching him. Ms Leathem submitted that for this reason, Witness 3's evidence is not sole or decisive.

Ms Leathem referred the panel to the CCTV footage and stated that it does show you holding up your hand to Patient A. Further the panel is aware that you have made some admissions to the charges in that you admit that you administered a tablet when Patient A was under restraint and that you attempted to administer the tablet via a syringe.

Ms Leathem invited the panel to consider whether the evidence can be properly challenged in the absence of Witness 3. She submitted that Witness 3's non-attendance will impact you but that if the application is not allowed, the NMC is denied a key witness in this case. By admitting the evidence of Witness 3 as hearsay, Ms Leathem submitted it will naturally hold less weight. She therefore invited the panel to admit the evidence and to determine the appropriate weight thereafter.

During the course of the hearing Ms Leathem had informed the panel that Witness 3 had been in touch with the NMC and had updated them as to her circumstances. Witness 3 explained that her daughter had been unwell and so she had been unable to secure alternative childcare for today or tomorrow.

Ms Leathem submitted that in these circumstances it is unlikely that an adjournment will secure Witness 3's attendance. She therefore invited the panel to admit Witness 3's evidence as hearsay.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included Rule 31 provides that, so far as it

is ‘fair and relevant’, a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application in regard to Witness 3 serious consideration. The panel noted that Witness 3’s statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, ‘This statement … is true to the best of my information, knowledge and belief’ and is signed by them. Further you have been provided with that statement.

The panel considered whether you would be disadvantaged by the change in the NMC’s position of moving from reliance upon the live testimony of Witness 3 to that of allowing her witness statement to be taken into evidence as hearsay. The panel considered that you have clearly set out, the aspects of Witness 3’s evidence, you would like to challenge and that without the attendance of the witness, you would be denied the opportunity to test that evidence.

The panel noted that elements of Witness 3’s evidence is supported in other evidence before it and therefore it is not sole and decisive.

The panel acknowledged the efforts the NMC have gone to try and secure the attendance of Witness 3 and that they have been unsuccessful.

The panel was of the view that the relevant limb of the admissibility test has been met. The panel therefore moved to consider fairness.

The panel also took into consideration that fairness means fairness to the NMC and to you. It noted that all reasonable efforts were made by the NMC to secure the attendance of Witness 3, and that adjourning the proceeding would be unlikely to secure their attendance at a later date. Further, there is a public interest in the issues underpinning the charges being explored fully, and that if the application is refused, the NMC would be

deprived of the evidence of a witness who was present at the material time despite making all reasonable efforts to secure the attendance of that witness.

The panel balanced fairness to you against fairness to the NMC. It took into account that the evidence of Witness 3 is not sole or decisive evidence. There is evidence before the panel from other witnesses including Witness 1 who was also present at the material time and there is CCTV footage of the incident.

In these circumstances, the panel came to the view that any disadvantage to you in allowing the evidence to be admitted as hearsay, would be mitigated by the fact that Witness 3's evidence is not sole or decisive on any issue. There is other evidence including CCTV footage before the panel, and live evidence given by Witness 1 on the same points have been tested under cross examination.

The panel recognised that it is considering admissibility at this stage and that the weight to be attached to Witness 3's evidence comes at a later stage. However, in the event of a conflict of evidence less weight will be attached to hearsay evidence because it is second hand and for that reason second best.

Decision and reasons on facts

At the outset of the hearing, you told the panel that you made admissions to charges 2a and 2b.

The panel therefore finds charges 2a and 2b proved, by way of your 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 Leathem. It took into account that although you had been provided with the written submissions in advance of the hearing, you would not have had the opportunity to respond of Ms Leathem's submissions in person or to make submissions yourself.

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

- Witness 1: Therapy Coordinator at Pindar House, Rehabilitation Unit

- Witness 2: Clinical Manager at Pindar House, Rehabilitation Unit.

The panel also heard evidence from you under affirmation.

Background

You were referred to the NMC on 8 June 2021 by Cygnet Health Care (Cygnet). Your referral arises from your work as a Senior Staff Nurse at Pindar House. Pindar House is a neuropsychiatric rehabilitation unit for men affected by acquired brain injuries. Patient A

had a brain injury and impaired communication skills. You were referred to the NMC in relation to the following allegations:

- On the night shift of 20 April 2021, you held a patient's nose and forcefully administered oral medication to him via a syringe.
- You did this on three occasions as you kept going back to fill the syringe up with water to administer.
- You failed to de-escalate appropriately, and used physical restraint that was not justified or proportionate.
- You failed to document the incident appropriately.

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

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

Resuming hearing 30 October 2023

Decision and reasons on service of Notice of resuming Hearing

Ms Leathem informed the panel that the Notice of Hearing has been sent to you by email on 7 August 2023 and by post on 21 August 2023. However, you were not present and numerous calls had been made and emails sent to you in the morning, but you had not responded. She said the hearing went part heard in May 2023 and the panel had heard all the evidence and the NMC's written submissions were provided to you two weeks ago and a character reference was provided by you in response. Given the stage of the hearing, Ms Leathem invited the panel to proceed.

Ms Leathem submitted that it had complied with the requirements of Rule 32 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of the Hearing provided details of the time, date and that the hearing was to be held virtually, including instructions on how to join. The panel noted that this is a resumed hearing, and the Notice of Hearing is in compliance with Rule 32(2) which is the applicable rule.

In the light of all of the information available, the panel was satisfied that you had been served with the Notice of Hearing in accordance with the requirements of Rule 32 of the Rules.

Decision and reasons on proceeding in your absence

The panel next considered whether it should proceed in your absence. It had regard to Rule 21 and heard the submissions of Ms Leathem who invited the panel to continue in

your absence. She submitted that all reasonable efforts have been made to contact you and whilst you attended the previous hearing, there has been no communication from you this morning despite the different avenues used to make contact to include emails, telephone calls and text message.

Ms Leathem stated that no information has been received from you this morning and invited the panel to exercise its discretion and proceed. She referred to the cases of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and *R v Jones* (Anthony William) (No.2) [2002] UKHL 5. Ms Leathem submitted that although there will be some disadvantage to you in not attending today, you had been present at the previous hearing and gave evidence. Ms Leathem reminded the panel that this case went part heard in May 2023 and had been hanging over you for some time. It is therefore also in your interest that the matter proceeds today.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *Jones.*

The panel has decided to proceed in your absence. In reaching this decision, the panel has considered the submissions of Ms Leathem, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones* and *Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by you;
- You had recently engaged with the NMC in anticipation of this hearing in that you provided a character reference on 22 October 2023;
- All evidence had already been given in this case. The panel is now convened for the purposes of hearing legal submissions and receiving legal advice prior to retiring for the purposes of fact finding.

- You were unrepresented during the hearing in May, and prior to adjourning, time was taken by the Case Presenter and the Legal Assessor to explain the procedures going forward to you. You have therefore been made aware of the purpose of today's hearing.
- You have been provided with the legal assessor's draft advice and the NMC's written submissions, and so have had an opportunity to comment;
- There is no reason to suppose that adjourning would secure your attendance at some future date, given the difficulties in contacting you today;
- The charges relate to events that occurred in 2021;
- The panel was mindful that sometime had lapsed since the hearing adjourned – May 2023; and
- There is a strong public interest in the expeditious disposal of the case. It is also in your interest to avoid further delay.

There is some disadvantage to you in proceeding in your absence, in that you will not have an opportunity to respond to the NMC submissions in person or to provide your own submissions. However, the panel was mindful that you were present during the evidence, cross examined the witnesses, and gave your own evidence under affirmation. The panel also noted that any disadvantage to you will be mitigated by the panel who will explore and resolve any inconsistencies in the evidence which it identifies when deliberating on the facts. Furthermore, the limited disadvantage is the consequence of your decision to absent yourself from the hearing, waive your right to attend, or be represented, or make submissions on your own behalf.

In these circumstances, the panel has decided that it is fair to proceed in your absence. The panel will draw no adverse inference from your absence in its findings of fact.

It was noted that whilst the panel was sitting in camera, you responded to your case officer and apologised for not replying to the emails and stated that you were happy for the matter to proceed in your absence.

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

Charge 1ai

1) On 20 April 2021, in relation to Patient A
   a) Acted contrary to their care plan in that you did not
      i) Attempt to de-escalate the situation

This charge is found proved.

In reaching this decision, the panel took into account Patient A's care plan which includes 'My Positive Behaviour Support Plan', CCTV footage, your evidence and Witness 1's evidence.

In its consideration of whether you acted contrary to the care plan, the panel had regard to the working strategy in Patient A's care plan. The working strategy was that if Patient A '*displays behaviour such as physical aggression in terms of kicking, hitting and spitting towards staff and peers. Staff are to attempt to deescalate the situation and offer PRN Promethazine or Lorazepam tablet*.'

It had regard to 'My Positive Behaviour Support Plan' incorporated in the care plan which provided examples of the type of behaviour '*My red behaviours'* and the response '*reactive strategies'* that are appropriate in the circumstances of this case. In the same document, it is recorded that MAPA physical intervention is only to be used when all other strategies have been ineffective, or the risk of harm is too high. The panel considered the CCTV footage and notwithstanding the lack of audio, it observed that there was no apparent physical attempt to move Patient A away or use the distraction techniques as set out in Patient A's care plan. The panel further took the view that there was no observable conversation with Patient A, nor any apparent attempt to guide and support him to another area of the ward. The panel could not see any preventative strategy or reactive strategies

being used preceding physical restraint by you as required in line with the working strategy of the care plan for example a MAPA hold was used before PRN medication.

The panel took into account your evidence to the effect that verbal de-escalation was used to no avail. However, in your oral evidence you accepted that you did not direct Patient A to another area to calm him as indicated in 'My Positive Behaviour Support Plan' because it was nighttime.

The panel considered your oral evidence and Witness 1's witness statement, both acknowledge that Patient A could be very aggressive, both verbally and physically, and needed a lot of care and support. In view of this, the panel was of the view that you should have known Patient A's care plan and the required steps to care and support him.

The panel balanced the evidence of the NMC and your evidence and on balance preferred the evidence of the NMC. The evidence of the NMC was supported by the CCTV footage, and you did accept that you did not redirect Patient A to another room in accordance with his care plan, which was a de-escalation strategy. Therefore, the panel decided on the balance of probabilities that it was more likely than not that you did not attempt to de-escalate the situation and therefore acted contrary to Patient A's care plan.

The panel found this charge proved.

Charge 1aii

1) On 20 April 2021, in relation to Patient A
   a) Acted contrary to their care plan in that you did not
      ii) offer Promethazine or Lorazepam.

This charge is found proved.

In reaching this decision, the panel took into account Patient A's care plan, the CCTV footage, Witness 1's oral evidence and local statement and your evidence.

As a first step, the panel considered Patient A's care plan and determined that you were under the duty to offer Promethazine or Lorazepam to Patient A before administering it to him.

The panel took the word 'offer' to mean affording Patient A an opportunity to 'accept' or 'reject' Promethazine or Lorazepam. Witness 1 in her local statement did not mention any medication being offered to Patient A. She stated *'JKR then got off him so she could get some meds for him and I took over'. … 'She came out of the clinic with a syringe with clear fluid in it, he said 'No I am not having them', so she put it in his mouth'*

Witness 1 also stated '*At this stage, Patient A was shouting, swearing, becoming physically aggressive and trying to get us off him. I then took over from Jackie so she could get his medication but when Jackie returned with his medication, he was very unhappy.'*

In your oral evidence you referred to offering Promethazine or Lorazepam but provided no further detail as to how this was offered to Patient A. The panel balanced your evidence against the evidence of the NMC. Your evidence of offering Promethazine or Lorazepam to Patient A prior to its administration was lacking in detail. The NMC's evidence was supported by CCTV footage which appeared consistent with the evidence of Witness 1 and the hearsay evidence of Witness 3. For example, the panel on viewing the CCTV noted that it showed Patient A in hold, and you are seen to be administering the medication via syringe. The panel having considered all the evidence have determined on the balance of probabilities that you did not offer Promethazine or Lorazepam to Patient A in accordance with his Care Plan. The panel therefore found this charge proved.

b) Restrained them from behind

This charge is found NOT proved.

In reaching this decision, the panel took into account the CCTV footage and your oral evidence. From viewing the CCTV, the panel observed that you were seen trying to get out of the door with Patient A standing in the doorway. There was nothing from the footage to show that Patient A was restrained from behind, in fact Witness 1 in her witness statement and local statement stated that Patient A was in a low MAPA hold, which is supported by the CCTV footage. In your oral evidence you denied restraining Patient A from behind. You said that you went round the back of Patient A in the doorway to get to his lefthand side. The panel also noted that the two witnesses who were directly involved in this incident did not give evidence that Patient A was restrained from behind.

In view of the evidence before it, and on the balance of probabilities, the panel was not satisfied that you restrained Patient A from behind.

The panel therefore found this charge not proved.

c) Restrained them by allowing two staff members to hold them in a MAPA hold when there was no clinical justification to do so

This charge is found proved.

In reaching this decision, the panel took into account the CCTV footage, Patient A's care plan including 'My Positive Behaviour Support Plan', Witness 1's local statement and your evidence.

The panel noted the CCTV footage, notwithstanding the lack of audio, showing Patient A moving up and down the corridor and later standing in the doorway. Patient A is later seen being held in the corridor by two staff members, but the panel having carefully reviewed the CCTV footage was of the view that he was standing and not resisting.

The panel reminded itself of Patient A's care plan which shows the '*red behaviours'* that warrant a more restrictive strategy.

Witness 1 in her local statement states that '*Patient A was pacing around, he was being verbally aggressive, not physically aggressive. He was just having a go verbally. He was telling us that we were all slack and needed sacking, he thought he was back at work, like he normally does. He wasn't too harsh*.' The panel considered Witness 1's evidence against the CCTV footage. The panel was of the view that the CCTV footage is consistent with Witness 1's account of Patient A not being physically aggressive. The panel considered this also to be consistent with Witness 1's description of Patient A not being 'too harsh'.

In light of the above, the panel determined that on the balance of probabilities, Patient A was not exhibiting physically aggressive behaviour such that warranted the use of the MAPA hold. The panel took note of the care plan including the 'My Positive Behaviour Support Plan' which states MAPA physical intervention is only to be used when all other strategies have been ineffective, or a risk of harm is too high. It therefore concluded that there was no clinical justification for you, as the registered nurse in charge, to allow two staff members to restrain Patient A in a MAPA hold. It therefore found charge 1c proved.

Charge 2c

2) On 20 April 2021, in relation to Patient A, administered a Promethazine tablet inappropriately in that you:
   c) Held your hand over Patient A's mouth to forcibly administer the tablet

This charge is found NOT proved.

In reaching this decision, the panel took into account all of the documentary evidence before it as well as the CCTV, your oral evidence and Witness 1's witness statement.

In its consideration of the CCTV footage, the panel observed you trying to put the syringe into Patient A's mouth. You had raised your hand and this was consistent with what Witness 1 had stated in her witness statement that '*Jackie went to give Patient A his medication via a syringe but did not like this, so tried to spit the medication back out onto her. Jackie tried to cover the spit from landing on her by raising her hand. had thought Jackie was trying to poison him, so that's why he had reacted in a bad way*.'

Witness 1 in her local statement, made the day after the incident stated '*She came out of the clinic with a syringe with clear fluid in it, he said 'No I am not having them', so she put it in his mouth and he went to spit it so she held her hand over his mouth*.' This was inconsistent with the later witness statement that Witness 1 had given to the NMC when she said '*… tried to cover the spit from landing on her by raising her hand'.*

The panel having considered the evidence as a whole and in particular having carefully reviewed the CCTV footage is satisfied that Witness 1's account in her witness statement is consistent with your evidence and with the CCTV. For that reason, the panel preferred Witness 1's evidence in her witness statement over the evidence she gave in her local statement notwithstanding the fact that her local statement was completed the day after the incident. The panel was therefore satisfied on the balance of probabilities, that you did not hold your hand over Patient A's mouth for the purpose of forcibly administering the tablet. It found charge 2c not proved.

Charge 3a

3) Failed to keep accurate records of the actions in charges 1 and 2 above in that:
   a) you did not record how long Patient A was restrained for in the Patient notes

This charge is found proved.

In your oral evidence you accepted that your notes were not comprehensive, you had not written the duration of the restraint in Patient A's notes, although, you had entered the incident but not the restraint time, in the incident management system.

The panel had sight of the incident form on 20 April 2021 and noted the 'Description of Incident' box did not include this incident or the length of time Patient A had been restrained.

Furthermore, the panel considered the entry you made in Patient A's notes at 06:22 which stated '*Low level hold implemented by … JKR and …... … increased to a medium hold into a high hold as Patient A was physically threatening JKR while trying to administer PRN spitting and verbally abusing*.' The panel determined that this is a contemporaneous record which clearly omitted the detail of length of time Patient A was restrained.

The panel noted that you as a registered nurse had a duty to maintain accurate records as part of your professional practice and should have kept a record of how long Patient A was restrained. The panel therefore on the balance of probabilities find this charge proved.

Charge 3b

3) Failed to keep accurate records of the actions in charges 1 and 2 above in that:
    b) you did not record that you had administered medication whilst Patient A was restrained and via a syringe

This charge is found proved.

In reaching this decision, the panel considered your oral evidence. The panel noted that you had accepted that you had administered medication via a syringe whilst Patient A was restrained, this is consistent with the CCTV footage. In your oral evidence you said that you were under a great deal of pressure [PRIVATE] at the time of the incident and your omission must have been an oversight.

Furthermore, the panel considered Patient A's care note made at 06:22. The panel observed that, whilst there was a record of you administering medication to Patient A

whilst he was under restraint, there was no record of you administering that medication via syringe. It further noted that there was no record in the incident form that medication was administered via syringe. The panel therefore determined that you did not record that you administered medication via syringe in Patient A's records. The panel therefore finds this charge found.

Charge 4

4) That your actions in charge 3 above were dishonest as they did not reflect what had happened

This charge is found NOT proved in respect to charge 3a

In reaching this decision the panel had borne in the mind the NMC guidance (Reference DMA-7) regarding dishonesty. The panel also considered the test for dishonesty as outlined in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockford* [2017] UKSC.

As a first step the panel took into account its finding that charge 3)a) was proved. It noted that you did record that Patient A was restrained during the incident in both the incident report and the patient notes. However, you accept, and it is clear from those documents that you did not record the length of time that Patient A was restrained for.

The panel was satisfied that as the registered nurse, you had a duty to create an accurate record of the incident to include the length of time during which Patient A was restrained. This was particularly required in respect of the patient notes for the purposes of facilitating and informing Patient A's ongoing care and treatment.
In your oral evidence you accepted that you should have recorded the duration of the restraint in both documents and your evidence was that failure to do so was an oversight on your part.

The panel considered the totality of the evidence against the objective standards of ordinary decent people and took into account a reference provided by Ms 1 regarding your good character in which you are described as honest and trustworthy.

Having done so, the panel determined on the balance of probabilities that your failure to record the length of time during which Patient A was restrained was an oversight on your part, rather than any attempt to mislead or deceive. The panel noted that Patient A had a significant history of challenging behaviour, restraint was a feature of last resort in his care plan, and in completing both the patient notes and the incident report you gave an otherwise detailed account of the restraint used including a description of the MAPA hold deployed. The panel also took into account that there was nothing to be gained by you from your failure to record the length of time Patient A was restrained for.

The panel finds, on the balance of probabilities, you were not dishonest by the standards of ordinary decent people in not recording how long Patient A was restrained for, and that the more likely explanation is that your failure was due to an oversight.
The panel find charge 4, in so far as it relates to charge 3) a not proved.

This charge is found proved in respect to charge 3b

The panel adopted the approach as that adopted in charge 3a above.

As a first step the panel took into account its finding that charge 3b) was found proved. It noted that you did not record that medication was administered to Patient A via a syringe in either the incident report or the patient notes, although you did record that the medication was administered to Patient A whilst he was under restraint.

The panel noted the following extract from the record created by you in both the patient notes and the incident report is as follows: '...*Low level hold implemented by NIC JKR and … and … increased to a medium hold into a high hold as [Patient A] was physically threatening NIC JKR while trying to administer PRN spitting and verbally abusing.'* The

panel noted that the administration of medication whilst a patient is restrained, is sometimes required as an intervention of last resort. However, in such circumstances the panel is satisfied that the proper procedure is that the medication is administered intra muscularly (IM).

The panel having considered Patient A's care plan, is satisfied that administration of medication orally to Patient A whilst he was under restraint via syringe was contrary to his care plan. The panel noted evidence that the medication was to be administered orally, and if refused was to be administered by way of IM injection. It was never envisaged that it would be administered orally via syringe and was not suitable for administration in this way. Further, administration of medication via syringe whilst Patient A was under restraint created a risk of choking.

You gave evidence that you should not have used this method of administration and could give no reasonable explanation for doing so. You accepted that it was not something you had previously done in your 14 years of nursing. However, you also stated that your failure to record the method of administration was an oversight.

The panel was satisfied that as a registered nurse, you had a duty to create an accurate record of the method of administration of medication to Patient A i.e., via syringe.

The panel considered the totality of the evidence and considered that you as an experienced nurse would have been aware that the administration of medication orally via syringe to a Patient under restraint created a choking risk.

In all the circumstances the panel considers it highly unlikely that you would have omitted to record this vital information due to an oversight. It took into account that you agreed under cross-examination that this was a memorable incident, that you had never used this method of administration before, and that you made no attempt to correct either record, despite giving evidence of having reflected and realised your error at the time. The panel therefore considered that it is more likely than not, that you deliberately sought to conceal

your behaviour by failing to record what had happened, given the repercussions for you should your conduct come to light.

Applying the standards of ordinary decent people, the panel is satisfied on the balance of probabilities that you acted dishonestly in failure to record that medication was administered to Patient A via a syringe while he was under restraint.

The panel find charge 4, in so far as it relates to charge 3) b proved.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Kaye-Robinson was not in attendance and that the notice of the resuming hearing dates had been sent to Mrs Kaye-Robinson's registered email address by secure email on 17 August 2023 and to her registered address by recorded delivery and by first class post on 21 August 2023.

Ms Leathem, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 32(3) and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the date, time, and that the resuming hearing was to be held virtually.

In the light of all of the information available, the panel was satisfied that Mrs Kaye-Robinson has been served with the Notice of Hearing in accordance with the requirements of Rules 32(3) and 34.

Decision and reasons on proceeding in the absence of Mrs Kaye-Robinson

The panel next considered whether it should proceed in the absence of Mrs Kaye-Robinson. It had regard to Rule 21 and heard the submissions of Ms Leathem who invited the panel to continue in the absence of Mrs Kaye-Robinson. She submitted that Mrs Kaye-Robinson had voluntarily absented herself.

Ms Leathem referred the panel to the email correspondence from Mrs Kaye-Robinson dated 17 December 2023 which indicated that she would not be attending the hearing [PRIVATE]. She further stated:

> *"I have engaged throughout the proceedings since April 2021. I have reflected and shown remorse Evidence and character references have been provided as requested by the Nursing Midwifery Council(NMC)… I no longer feel there is anything further I can add. I am 2 years from retirement [PRIVATE]. I wish to have closure as soon as possible".*

The panel accepted the advice of the legal assessor.

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

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

- No application for an adjournment has been made by Mrs Kaye-Robinson;

- Mrs Kaye-Robinson has confirmed that she will not attend the hearing, and has invited the panel to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The charges relate to events that occurred in 2021;
- There is a strong public interest in the expeditious disposal of the case;
- It is in Mrs Kaye-Robinson's own interests to proceed in her absence given that she has advised the panel in writing of her desire for closure in this case.

There is some disadvantage to Mrs Kaye-Robinson in proceeding in her absence. Although Mrs Kaye-Robinson has been provided with the evidence upon which the NMC relies at this misconduct and impairment stage, she will not have the opportunity to comment in person. Mrs Kaye-Robinson has provided reflective pieces and a reference but she will not have the opportunity to give evidence particularly as it relates to impairment. The panel noted that Mrs Kaye-Robinson has attended this hearing between 9 – 16 May 2023, and whilst not attending in person on 30 October – 1 November 2023 or at this hearing, she has given evidence and has submitted documents for the purposes of this stage of the proceedings.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Kaye-Robinson. The panel will draw no adverse inference from Mrs Kaye-Robinson's absence at this misconduct and impairment stage.

Fitness to practise

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

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Ms Leathem invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified the specific, relevant standards where the NMC say Mrs Kaye-Robinson's actions amounted to misconduct.

Ms Leathem submitted that Charges 1(a)(i) and (ii), 1(c) and 2(a) and (b) relate to the inappropriate care provided to a vulnerable patient, including both method of medication administration, restraint, and acting contrary to his care plan. She submitted that Mrs Kaye-Robinson failed to ensure the safety of Patient A and her conduct put him at risk of serious harm. Furthermore, Mrs Kaye-Robinson's conduct impacted her colleagues who were required to hold Patient A in a MAPA hold when there was no clinical justification to do so.

Ms Leathem submitted that record keeping is a fundamental aspect of nursing and the failings amount to a serious departure from the Code. She submitted that the lack of an accurate record therefore had the potential to cause significant harm to Patient A as other staff accessing the notes would not have necessarily been aware of the incident.

Ms Leathem submitted that conduct which is dishonest is sufficiently serious and demonstrates a serious departure from the standards that are expected of a nurse. Dishonest actions bring the integrity of the nurse into question and bring the profession into disrepute.

Ms Leathem submitted that Mrs Kaye-Robinson's actions outlined in the charges found proved are a serious departure from the standards expected of a registered nurse.

Submissions on impairment

Ms Leathem moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) *and R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin).

Ms Leathem submitted that Mrs Kaye-Robinson's conduct had the potential to compromise patient safety and cause harm. Mrs Kaye-Robinson's actions have brought the profession into disrepute and breached at least one of the fundamental tenets of the nursing profession. She submitted that a finding of impairment is required to mark the profound unacceptability of the behaviour, emphasise the importance of the fundamental tenets breached, and to reaffirm proper standards or behaviour.

Ms Leathem referred the panel to the NMC guidance ‘Can the concern be addressed’. She submitted the panel may consider that concerns involving dishonesty are more difficult to address.

Ms Leathem referred the panel to a number of reflective statements provided by Mrs Kaye-Robinson. She submitted that it is a matter for the panel as to whether the insight shown by Ms Kaye-Robinson fully and sufficiently addresses the concerns. She submitted that whilst Mrs Kaye-Robinson expresses remorse for the incident, no evidence of strengthened practice has been provided. Mrs Kaye-Robinson references having completed CPD but there is no evidence of what courses have been completed and how they might be relevant to addressing the concerns identified in her practice.

Ms Leathem submitted that Mrs Kaye-Robinson has also not worked as a nurse since the time of the incident and so there is no period of safe and effective practice to consider. As a result of having not worked as a nurse since the incident, there is no positive evidence to suggest that Mrs Kaye-Robinson’s reflection on the matter has led to changes being embedded into her practice.

Ms Leathem also referred the panel to the character reference provided by Mrs Kaye-Robinson.

Ms Leathem asked the panel to consider the context of the conduct involved in the concern including personal factors put forward by Mrs Kaye-Robinson and her working environment and culture. She submitted that Mrs Kaye-Robinson’s evidence was that she was under a great deal of pressure [PRIVATE] at the time of the incident as well as having previously been assaulted by a patient at work.

Ms Leathem submitted that, on the basis of the seriousness of the incident alongside the lack of practical remediation, there is a risk of repetition of harm being caused to vulnerable patients. She also referred the panel to a previous finding of impairment regarding Mrs Kate-Robinson’s practice which led to a 12 month conditions of practice

order being imposed which was revoked on 30 November 2018. The concerns in that case related to multiple medication errors, namely stating that medication had been administered when it had not and signing patients' MAR charts to this effect. In the 2017 case, the insight, reflection and submission provided by Mrs Kaye-Robinson in terms of [PRIVATE] impacted her actions are somewhat similar to the current matter.

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

Decision and reasons on misconduct

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

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

Charges 1(a)(i), 1(a)(ii), 1(c), 2(a), 2(b)

'***1 Treat people as individuals and uphold their dignity…***

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people's human rights'.

'2 Listen to people and respond to their preferences and concerns…

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

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

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

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

'4 Act in the best interests of people at all times…

***4.1** balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment*

***4.2** make sure that you get properly informed consent and document it before carrying out any action*

4.3 keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process…'

'14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place…

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident happened which had the potential for harm

14.3 explain fully and promptly what has happened, including the likely effects, and apologise to the person affected and, where appropriate, their advocate, family or carers

14.3 document all these events formally and taken further action (escalate) if appropriate so they can be dealt with quickly.'

'19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice…

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place.'

'20 Uphold the reputation of your profession at all times…

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 3(a) and 3(b)

'10 Keep clear and accurate records relevant to your practice…

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.'

Charge 4 (regarding charge 3(b) only)

'20 Uphold the reputation of your profession at all times

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

20.2 act with honesty and integrity at all times…'

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

In relation to charges 1(a)(i) and (ii), 1(c) and 2(a) and (b) the panel considered that Mrs Kaye-Robinson failed to ensure the safety of Patient A and her conduct put him at risk of serious harm. It noted that Patient A was administered Promethazine orally by a syringe whilst under restraint and showing visible signs of resistance, this put Patient A at risk of choking which was something Mrs Kaye-Robinson should have been aware of as an experienced nurse and it not being a method outlined in Patient A's care plan. The panel considered that by administering medication whilst Patient A was restrained in the corridor, Mrs Kaye-Robinson failed to treat him with dignity and respect. Further, the panel considered that Mrs Kaye-Robinson's conduct impacted on her healthcare assistant colleagues who, prior to any attempts by Mrs Kaye-Robinson, as a registered nurse, to deescalate the situation, were required to hold Patient A in a MAPA hold when there was no clinical justification to do so.

In relation to the concerns involving Mrs Kaye-Robinson's record keeping, the panel considered that accurate record keeping is a fundamental aspect of nursing and the failings amount to a serious departure from the Code. It considered that a record of both the length of time the patient was restrained and the method of medication administration whilst under restraint was particularly important in terms of facilitating and informing Patient A's ongoing care and treatment. The panel was of the view that the lack of an accurate record had the potential to cause significant harm to Patient A as other staff accessing the notes would not have necessarily been aware of the length of hold and that medication had been administered via syringe whilst Patient A was being restrained and therefore the Patient A's future care plan could have been compromised.

The panel considered that Mrs Kaye-Robinson deliberately sought to conceal her behaviour by not recording that she had administered medication to Patient A via a syringe whilst they were restrained and showing visible signs of resistance. As an experienced nurse in this field of practice she would have been aware that the actions she

took to administer the medication to Patient A were unacceptable. Therefore, in behaving as she did, Mrs Kaye-Robinson's actions were a serious departure from the standards expected of a nurse. The panel was of the view that dishonest actions bring the integrity of the nurse into question and bring the profession into disrepute.

Having considered all of the charges both individually and cumulatively, the panel found that Mrs Kaye-Robinson's acts and omissions fell 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, Mrs Kay-Robinson's fitness to practise is currently impaired.

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

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

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

In this regard the panel considered the 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) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that limbs a, b, c and d were engaged in the test set out in *Grant*. The panel found that Mrs Kaye-Robinson's conduct put Patient A at risk of serious harm. Her actions brought the profession into disrepute and breached fundamental tenets of the nursing profession. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel took into account Mrs Kaye-Robinson's numerous reflective statements from November 2021, May 2022 and October 2023. The panel noted that there has been limited development of Mrs Kaye-Robinson's insight since her first reflective statement dated November 2021. It noted that Mrs Kaye-Robinson has not sufficiently demonstrated an understanding of how her actions put Patient A at risk of harm and compromised his dignity, nor has she demonstrated a full understanding of why what she did was wrong and how this impacted negatively on her colleagues and the reputation of the nursing profession. The panel noted that Mrs Kaye-Robinson has apologised and expressed remorse for her misconduct. However, it noted that the main focus of her reflection has been on how these proceedings have affected her personally. [PRIVATE].

The panel was satisfied that the misconduct in this case could be capable of being addressed although it acknowledged that dishonesty is a concern which is more difficult to put right. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Kaye-Robinson has taken steps to strengthen her practice. The panel had no evidence before it of strengthened practice such as completion of any relevant training courses. It noted that Mrs Kaye-Robinson has not worked as a nurse since the incident and so there is no evidence of a period of safe and effective practice. The panel also took account of the character reference provided by Mrs Kaye-Robinson. It was concerned that the author of this reference may not have been aware of the full context in which they were being asked to write it, because no mention of the concerns under investigation is made.

The panel was referred to the previous finding of impairment regarding Mrs Kaye-Robinson's practice where a conditions of practice order was imposed for 12 months. It noted that when the order was revoked in November 2018, Mrs Kaye-Robinson had indicated that that she had coping strategies in place to recognise the [PRIVATE] impact on her practice to ensure concerns do not arise again. The panel noted that despite Mrs Kaye-Robinson's reference to these strategies at that time, further concerns about her practice have been raised.

The panel is therefore of the view that there is a risk of repetition based on Mrs Kaye-Robinson's limited insight and the lack of evidence that she has addressed the concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Kaye-Robinson's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Kaye-Robinson's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to impose a suspension order for a period of 12 months with a review. The effect of this order is that the NMC register will show that Mrs Kaye-Robinson's 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. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Leathem informed the panel that in the original Notice of Hearing, dated 5 April 2023, the NMC had advised Mrs Kaye-Robinson that it would seek the imposition of a suspension order for 9 months if it found her fitness to practise currently impaired. In light of the panel's finding the NMC invited the panel to impose a suspension order for a period between 9 -12 months with a review to reflect the severity of the concerns and to address the public protection and public interest concerns.

Ms Leathem outlined to the panel what the NMC consider to be the aggravating and mitigating features of the case. She then referred the panel to the sanctions available to it in ascending order. Ms Leathem submitted that to either take no further action or impose a caution order would not be sufficient to address the public protection considerations of the case. She submitted that Mrs Kaye-Robinson's misconduct was not at the lower end of the spectrum of seriousness.

In terms of imposing a conditions of practice order, Ms Leathem submitted that conditions would not address the dishonesty highlighted and would not be workable given the limited insight demonstrated by Mrs Kaye-Robinson and no expressed willingness to engage in retraining. She submitted that a conditions of practice order would not mark the seriousness of Mrs Kaye-Robinson's misconduct towards a vulnerable patient.

Ms Leathem submitted that a suspension order with a review is the appropriate and proportionate sanction in the circumstances. She submitted that this was an isolated incident concerning one patient and there is no evidence of deep-seated attitudinal problems. She submitted that there is no evidence of repetition of the behaviour since the

events giving rise to the charges, but Mrs Kaye-Robinson has not provided evidence of developed insight or evidence that she has addressed the concerns. Ms Leathem also submitted that a suspension order would provide Mrs Kaye-Robinson with time to demonstrate that she was no longer a risk. She submitted that a suspension order would address the public protection and public interest considerations.

Finally, Ms Leathem submitted that the panel could impose a striking-off order if it considered that a suspension order was not the appropriate and proportionate order.

Decision and reasons on sanction

Having found Mrs Kaye-Robinson's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mrs Kaye-Robinson has demonstrated limited insight into her misconduct and there is no evidence of strengthened practice.
- There have been previous regulatory findings against Mrs Kaye-Robinson which related to medicines management and where [PRIVATE] had impacted her actions.
- Mrs Kaye-Robinsons misconduct put a vulnerable patient at risk of serious harm.
- Mrs Kaye-Robinson is an experienced nurse and would have been aware of the importance of adhering to Patient A's care plan.
- In not adhering to Patient A's care plan, Mrs Kaye-Robinson demonstrated a lack of respect for Patient A's right to refuse oral medication, and in administering medication via syringe and whilst Patient A was under restraint in a public corridor,

she failed to treat the patient with dignity and respect. Further, Mrs Kaye-Robinson abused her position of trust in behaving as she did.

- Mrs Kaye-Robinson deliberately sought to conceal her behaviour by not recording that she had administered medication to Patient A via a syringe whilst they were restrained and showing visible signs of resistance. As an experienced nurse in this field of practice she would have been aware that the actions she took to administer the medication to Patient A were unacceptable.

The panel also took into account the following mitigating features:

- Mrs Kaye-Robinson has referred the panel to personal mitigation [PRIVATE].
- Mrs Kaye-Robinson has expressed remorse in her reflections on her misconduct.

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 neither protect the public nor be in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection concerns identified, an order that does not restrict Mrs Kaye-Robinson's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Kaye-Robinson's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the concerns identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Kaye-Robinson's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel is of the view whilst there may be practical or workable conditions that could be formulated to address the clinical concerns of this case, there are no conditions that could be formulated to address Mrs Kaye-Robinson's lack of respect for Patient A or her dishonesty both of which are a serious departure from the core values of nursing. The misconduct identified in this regard is not something that can be addressed through retraining. Further, the panel concluded that the placing of conditions on Mrs Kaye-Robinson's registration would not adequately address the seriousness of this case, mark the public interest, neither would it adequately protect the public.

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 considered that although Mrs Kaye-Robinson has expressed remorse, she has demonstrated limited insight into her misconduct. While Mrs Kaye-Robinson has not repeated the behaviour the panel acknowledged that she has not had the opportunity to demonstrate safe practice as she has not worked in healthcare since the incident. It noted that Mrs Kaye-Robinson's misconduct was a single instance involving one patient and there was no evidence of harmful deep-seated personality issues. However, the panel noted that Mrs Kaye-Robinson has difficulties managing [PRIVATE] which the panel determined has compromised her safe practice. The panel was satisfied that in this case, the misconduct was not necessarily fundamentally incompatible with remaining on the register.

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

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

The panel noted the hardship such an order will inevitably cause Mrs Kaye-Robinson. However, this is outweighed by the public protection and public interest considerations in this case.

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

The panel determined that a suspension order for a period of 12 months with a review was appropriate in this case to mark the seriousness of the misconduct.

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:

- Evidence of reflection on the impact of Mrs Kaye-Robinson's actions regarding:
    - Patient safety.
    - Appropriate actions for patient consent, especially when patients choose to refuse medication.

    - Maintaining patient dignity.
    - Adhering to patient care plans.
    - The importance of accurate and detailed records and their impact on patient care.
- Evidence of [PRIVATE] strategies to minimise the impact on your practice.
- Evidence of professional development and completion of relevant training courses.

This decision will be confirmed to Mrs Kaye-Robinson in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Leathem. She submitted that an interim order is necessary for the protection of the public and is otherwise in the wider public interest. She invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to cover the appeal period.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after Mrs Kaye-Robinson is sent the decision of this hearing in writing.

That concludes this determination.