

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

**Substantive Hearing  
Tuesday 30 May 2023 – Friday 2 June 2023  
Monday 5 June 2023**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Donald Riziva</b>
<b>NMC PIN</b>	0710509E
<b>Part(s) of the register:</b>	Registered Nurse – RNMH Mental Health Nursing – February 2008
<b>Relevant Location:</b>	Knowsley
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Paul O'Connor (Chair, lay member) Patience McNay (Registrant member) Alex Forsyth (Lay member)
<b>Legal Assessor:</b>	Juliet Gibbon
<b>Hearings Coordinator:</b>	Shela Begum
<b>Nursing and Midwifery Council:</b>	Represented by Tom Lambert, Case Presenter
<b>Mr Riziva:</b>	Not present and unrepresented
<b>Facts proved:</b>	Charges 1, 2, 3, and 5
<b>Facts not proved:</b>	Charges 4, 6, 7, 8, and 9
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off Order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Riziva was not in attendance and that the Notice of Hearing letter had been sent to Mr Riziva's registered email address by secure email on 26 April 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mr Riziva's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

## **Decision and reasons on proceeding in the absence of Mr Riziva**

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

Mr Lambert referred the panel to the documentation which showed several emails from Mr Riziva. In an email dated 26 April 2023, Mr Riziva stated:

*“I feel I have done my part working as a Mental Health nurse. It has been complete 3 years out of the profession and reflecting on circumstances around my suspension, I feel I am safer both physically and mentally and thus excuse myself.*

*It will be beneficial for both parties to get the case closed completely. Receiving letters or emails regarding this issue is causing me some unnecessary trauma and after effects.”*

In a further email dated 27 April 2023, in response to an email from his case officer, Mr Riziva stated:

*“I am sure I have made it very clear that i no longer want to continue working as a nurse. Would you please present my letter as its states to the panel on my behalf. I do not wish to utilize the careline as per your suggestion, I am done with Nursing.”*

Mr Lambert submitted that Mr Riziva has chosen not to engage and that there is no likelihood that postponing this hearing would result in Mr Riziva’s willingness to engage. He submitted that it is not unfair to proceed in Mr Riziva’s absence and that he has voluntarily absented himself. He therefore invited the panel to proceed with this hearing in the absence of Mr Riziva.

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 Mr Riziva. In reaching this decision, the panel has considered the submissions of Mr Lambert, the representations from Mr

Riziva, 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 Mr Riziva;
- Mr Riziva has indicated that he is aware of this hearing taking place and informed his case office that he is 'excusing himself' from these proceedings;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Two witnesses have been warned to attend this hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Riziva in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered email address, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Riziva's decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

### **Details of charge**

'That you a registered Nurse, during a night shift on 18-19 November 2019:

1. Failed to use any or adequate correct de-escalation techniques when Patient A presented challenging behaviour
2. When Patient A moved away from you, ran after them
3. Threw one or more punches at Patient A
4. Kicked out at Patient A
5. Caused a cut to the lip of Patient A.
6. Failed to call a doctor when Patient A received a cut to the lip
7. Failed to report incident to a senior member of staff
8. Failed to document the incident and/or injury at one or more of charges 1-6 above in Patient A's patient notes and/or an incident form
9. Your failures at 7 and/or 8 above demonstrated a lack of candour in that you should have reported, and/or documented the incident and/or injury

And, in light of the above, your fitness to practise is impaired by reason of your Misconduct'

### **Background**

The charges arose whilst Mr Riziva was employed as a registered mental health nurse via an agency at Elysium Healthcare at Victoria Gardens Hospital (the Hospital).

The allegations in this case relate to an incident during a night shift on 18 November 2019 on Dovecot ward between Mr Riziva and Patient A. At the time of the incident, Patient A was a vulnerable 16-year-old patient with complex mental health needs which included violent tendencies and required three-to-one nursing. Mr Riziva is reported to have been familiar with Patient A as he had cared for the patient previous to the shift on 18 November 2019. At the time of the incident, Patient A was the only patient on Dovecot ward.

Patient A began to present challenging behaviour towards the staff which included banging on the window of the staff office. It is alleged that when Mr Riziva intervened, Patient A head butted and threw punches at him.

It is alleged that Mr Riziva failed to use any or adequate correct de-escalation techniques when Patient A presented challenging behaviour. It is further alleged that he had ran after Patient A, threw punches and kicked out at Patient A. During the altercation, it is alleged that Mr Riziva caused a cut to the lip of Patient A and failed to call a doctor after noticing the cut. Mr Riziva is alleged to have failed to report or document the incident.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Lambert on behalf of the NMC. It also took into account the CCTV footage of the incident which was played for the panel during the hearing.

The panel has drawn no adverse inference from the non-attendance of Mr Riziva.

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: Senior Charge Nurse, NHS Highland  
Former Lead Nurse, Elysium  
Healthcare at the time of the incident
- Witness 2: Ward Manager, Victoria Gardens –  
Elysium healthcare

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 the NMC as well as the CCTV footage of the incident.

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

### **Charge 1**

That you a registered Nurse, during a night shift on 18-19 November 2019:

1. Failed to use any or adequate correct de-escalation techniques when Patient A presented challenging behaviour

### **This charge is found proved.**

In reaching this decision, the panel took into account Mr Riziva's response to the incident, the CCTV footage, and Elysium's 'Safe and Therapeutic Management of Violence and Aggression' Policy (the Policy) and Mr Riziva's agency profile.

The panel had regard to the email from Mr Riziva dated 1 October 2020 in which he stated:

*“...It is true the incident happened on the date, and unfortunately this could have been avoidable, and or far reduced and or handled differently.”*

The email goes onto state:

*“The recommended trainings that we get, (Management of Violence and Aggression, does not cover or assist in dealing with a patient holding a weapon!*

*[...]*

*With the circumstances at hand at the time, after having been head butted, stabbed on the eye, I felt my life was in extreme danger, as the events happened in a flush of a second I acted in the heat of the moment trying to free myself from the situation.”*

The panel considered that Mr Riziva’s response suggested that Patient A had used a pen as a weapon during the incident. The panel considered that Mr Riziva may have responded under pressure or fear. The panel found that Mr Riziva’s provided a plausible account of the incident which included photographic evidence of an injury he sustained. Given the evidence in Patient A’s clinical notes in the entry dated 19 November 2019 at 07:15, the panel found it more likely than not that Patient A had a pen during the incident and was using it as a weapon.

Further, the panel had regard to the Policy which states:

*“If violence occurs despite de-escalation, and physical intervention is required this will be a consistent and prescribed form which treats patients and staff’s safety as paramount, and lasts for the shortest possible time compatible with staff and patients health and safety.”*

It noted that Mr Riziva's agency profile showed training undertaken by him in Advanced MAPA/GSA on 17 July 2019, 18 July 2029 and 19 July 2019. The panel also considered that Mr Riziva was familiar with Patient A and therefore would have been aware of the types of behaviours that were possible with the patient.

The panel viewed the CCTV footage. It noted that the footage did not provide any audio of what was being said at the time by any of the individuals present during the incident. However, based on the visual evidence provided by the CCTV footage, the panel found that Mr Riziva did not appear to be using any or adequate de-escalation techniques.

The panel therefore concluded that on the balance of probabilities, it is more likely than not, that Mr Riziva failed to use any or adequate correct de-escalation techniques when Patient A presented challenging behaviour.

### **Charges 2 and 3**

That you a registered Nurse, during a night shift on 18-19 November 2019:

2. When Patient A moved away from you, ran after them
3. Threw one or more punches at Patient A

### **These charges are found proved.**

In reaching this decision, the panel took into account the live and documentary evidence of Witness 1.

The panel had regard to the written statement of Witness 1 in which she states:

*“Patient A leans into the office and stands in the office doorway. The registrant stands up moves towards the door to talk to Patient A while remaining in the doorway. Patient A has paper in his hand. I’m unsure if he has a pen in his hand. The registrant puts his arm across the doorway, he puts his hand on Patient A as to*

*guide him out of the door. At that point Patient A head butts the registrant. the registrant moves forward as though to punch/push Patient A away. Patient A then punches the registrant.*

*The registrant runs towards Patient A who still has his hands up in fighting mode the registrant [...] has his hands positioned to punch Patient A. the registrant throws two round house punches at Patient A*

*[...] the registrant gives 3 more punches to Patient A”.*

Witness 1 explained during her live evidence that when viewing the CCTV at the time closer to the incident, she was able to view it at several angles and therefore had increased visibility of the incident. The panel found Witness 1's evidence based on her viewing of the CCTV footage to be plausible.

The panel had regard to the CCTV footage which showed, albeit a restricted view, what had occurred during the incident. The panel recognised that Witness 1 had seen the CCTV footage very soon after the incident and was able to view it from several angles and therefore was able to discern rather more detail than the panel was able to discern. The panel concluded that, although it had a limited view of the CCTV footage of the incident, it could clearly see that Mr Riziva did run after Patient A and did throw one or more punches at Patient A. The panel therefore found these charges proved.

#### **Charge 4**

That you a registered Nurse, during a night shift on 18-19 November 2019:

4. Kicked out at Patient A

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the CCTV footage as well as the evidence of Witness 1.

Based on the visual evidence from the CCTV footage, the panel could not verify that Mr Riziva had 'kicked out' at Patient A. The panel could not see Mr Riziva's raise his leg or kick it out toward Patient A.

It considered the written statement of Witness 1 which states:

*“the registrant lifts his left foot to kick the patient”*

The panel took into account the written the statement of Witness 1 and noted that it states that Mr Riziva lifted his leg to kick the patient but not that he actually kicked out at the patient. Further, based on the CCTV footage, the panel could not establish that Mr Riziva did kick out at the patient and therefore it finds that, on the balance of probabilities, Mr Riziva did not kick out at Patient A. It therefore found this charge not proved.

### **Charge 5**

That you a registered Nurse, during a night shift on 18-19 November 2019:

5. Caused a cut to the lip of Patient A.

### **This charge is found proved.**

In reaching this decision, the panel took into account the initial incident report by Mr Riziva of what transpired which was attached to his email dated 1 October 2020. He states:

*“While trying to de-escalate from the situation, Patient A was continuously throwing punches and within the commotion I attempted to block myself by moving arms quickly to protect my face I accidentally caught him on the mouth consequently, this caused more aggression from the patient in the form of punches being thrown.*

*Patient sustained a small cut on his lip. I also sustained a cut to my finger during the commotion.”*

The panel found that Mr Riziva’s account of the incident confirms that he did, albeit accidentally, cause a cut to the lip of Patient A.

The panel had regard to the entry dated 19 November 2019 at 07:15 from Patient A’s clinical notes which stated:

*“[Patient A appears to have sustained a small cut to his top lip during the incident when [Mr Riziva] attempted to block a punch that was thrown by [Patient A].”*

Further, the panel noted that both Witness 1 and Witness 2 gave evidence that Patient A reported to them the following day that he sustained a cut to the lip as a result of the altercation between him and Mr Riziva.

The panel therefore concluded, that on the balance of probabilities, it is more likely than not that Mr Riziva did cause a cut to the lip of Patient A.

### **Charge 6**

That you a registered Nurse, during a night shift on 18-19 November 2019:

6. Failed to call a doctor when Patient A received a cut to the lip

**This charge is found NOT proved.**

In reaching this decision, the panel took into account the oral evidence from Witnesses 1 and 2 that, based on their assessment that the cut to the lip was relatively minor, Mr Riziva would not have been required to call a doctor.

The panel found, given there was not a duty on Mr Riziva to call a doctor after Patient A sustained a cut to the lip, that there was not a failure on his part.

### **Charges 7 and 8**

That you a registered Nurse, during a night shift on 18-19 November 2019:

7. Failed to report incident to a senior member of staff
8. Failed to document the incident and/or injury at one or more of charges 1-6 above in Patient A's patient notes and/or an incident form

### **These charges are found NOT proved.**

The panel had regard to the Patient A's clinical notes. It had regard to an entry from 19 November 2019 at 07:15 made by another staff nurse which stated:

*"1<sup>st</sup> incident occurred at approximately 23:00hrs-Assulted S/N D.R – headbutted and threw punches towards his face, stabbed above left eye with a pen, alarm raised staff responded and [Patient A] was placed in restrained, [Patient A] appears to have sustained a small cut to his top lip during the incident when S/N D.R attempted to block a punch that was thrown y [Patient A]- Accepted PRN Promethazine following incident, [Patient A] Punched his T.V following incident, smashed the screen, T.V removed from his room-Refer to incident reports"*

The panel noted that this entry identifies that a senior member of staff had been informed and had information relating to the incident which had occurred. It also noted from the clinical notes that Mr Riziva had left duty at approximately 03:30am on 19 November 2019.

In relation to the failure to document the incident and/or injury, the panel noted that the entries on Patient A's clinical notes provide a summary of the incident between Patient A and Mr Riziva. It therefore concluded that, on this basis, this would be an appropriate way

of documenting the incident and/or injury. The panel had not been provided with the incident reports referred to by Witness 2 in his oral evidence.

Further, the panel considered that Witness 2, during his evidence, informed the panel that a meeting had taken place the following morning with senior members of management where documentation detailing the incident and/or injury had been provided. The panel noted that it did not have that documentation.

Therefore, based on the evidence before it, the panel has concluded that it could not be satisfied that Mr Riziva failed to report the incident to a senior member of staff and failed to document the incident and/or injury at one or more of charges 1-6 above in Patient A's patient notes and/or an incident form.

### **Charge 9**

That you a registered Nurse, during a night shift on 18-19 November 2019:

9. Your failures at 7 and/or 8 above demonstrated a lack of candour in that you should have reported, and/or documented the incident and/or injury

**This charge is found NOT proved.**

The panel determined that charge 9 falls away given that it has found both charges 7 and 8 not proved.

### **Fitness to practise**

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

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

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

### **Submissions on misconduct**

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

Mr Lambert invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code).

Mr Lambert identified the specific, relevant standards where Mr Riziva's actions amounted to misconduct. He submitted that Mr Riziva's course of conduct throughout the incident amounts to misconduct. He submitted that Mr Riziva's throwing multiple punches at the patient and causing a cut to the lip and the physical aggression and violence falls far short of the conduct expected of a registered nurse and demonstrates a breach of the Code. He submitted that Mr Riziva's actions did not demonstrate treating the patient with respect and compassion and did not demonstrate delivering the fundamentals of care effectively.

Mr Lambert submitted that Mr Riziva's conduct did not respect and uphold a person's human rights and instead demonstrated a failure of a duty to of care that Mr Riziva had towards that patient. He submitted that Mr Riziva's first failure to provide any or adequate de-escalation techniques led to the failures at charges 2, 3 and 5.

Mr Lambert referred the panel to the documents outlining de-escalation techniques which set out the methods and techniques that should be used to negotiate to resolve the situation in a non-confrontational manner. This included the use of emotional regulation and self-management techniques to control verbal and non-verbal expressions of anxiety or frustration.

Mr Lambert reminded the panel of the evidence it has heard that Mr Riziva's body posture, and body language was incorrect, and given his knowledge of Patient A, he ought to have known that this was likely to be seen as a sign of disrespect and likely to flare up Patient A's behaviour rather than to de-escalate it.

Mr Lambert acknowledged the stressful impact of the situation that arose during the incident, but he submitted that the de-escalation training is designed to prepare staff for such situations. He submitted that having failed initially to de-escalate, it was not inevitable that Mr Riziva ran after the patient, threw multiple punches at the patient, or caused a cut lip to the patient. However, he submitted that whilst it was not inevitable, this is what occurred and the NMC submit that this occurred as a result of Mr Riziva's misconduct and that his actions escalated the situation to a point where physical restraint was required. He submitted that Mr Riziva failed to follow the guidelines and policies.

Mr Lambert submitted that there was a disproportionate escalation of violence rather than a restrictive intervention in line with the guidelines, and, that a vulnerable 16-year-old should have been able to trust the staff members looking after him, and that they would fulfil their duty of care given they were in a position of responsibility. Mr Lambert submitted that the behaviours of Mr Riziva during the incident cannot be anything short of misconduct.

## Submissions on impairment

Mr Lambert 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).

Mr Lambert submitted that the law of impairment is defined as the suitability to remain on the register without restrictions to a registrant's practising rights. He referred the panel to the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. 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.'*

He also referred to paragraph 76, where 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) *....'*

Mr Lambert submitted that limbs a and b are engaged in this case. He invited the panel to consider whether the conduct that led to the charges is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

Mr Lambert submitted that not only did Mr Riziva pose a risk to Patient A, but he caused harm to Patient A. He submitted that there is no evidence before the panel to suggest that Mr Riziva has remedied his failures or undergone any training to address the failures. He submitted that despite being trained in the relevant areas, Mr Riziva failed to use any or adequate de-escalation techniques when dealing with a vulnerable patient presenting challenging behaviour. Mr Lambert invited the panel to consider how Mr Riziva would respond to future vulnerable patients who may present challenging behaviour given that the failures occurred after Mr Riziva had received the relevant training.

Mr Lambert submitted that there is no evidence that can reassure the panel that the conduct is not at risk of being repeated. He referred to Mr Riziva's email dated 27 April 2023, in which he stated:

*"I am sure I have made it very clear that i no longer want to continue working as a nurse."*

Mr Lambert told the panel that Mr Riziva's name remains on the register and that there has been no application for removal from the register and therefore submitted that, the panel should consider proceeding on the basis of how best to protect the public.

Mr Lambert submitted that Mr Riziva's actions have damaged the reputation of the profession and he submitted that this could happen again in the future if a finding of impairment is not made. He submitted that the public would be concerned if nurses were allowed to fall so far short of the Code and not follow relevant training. Further, if nurses fail to follow the policies and the guidelines this could lead to serious consequences involving vulnerable patients.

On that basis, Mr Lambert submitted that it is necessary to make a finding of impairment on Mr Riziva's nursing practice in order to protect patients and the public and to uphold proper standards in order to maintain public confidence in the profession.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (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 was of the view that Mr Riziva's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Riziva's actions amounted to a breach of the Code. Specifically:

***'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**

*2.6 recognise when people are anxious or in distress*

*and respond compassionately and politely*

**7 Communicate clearly**

*7.3 use a range of verbal and non-verbal communication methods, and consider cultural sensitivities, to better understand and respond to people's personal and health needs*

**17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection**

*17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*

*17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people*

**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, treating people fairly and without discrimination, bullying or harassment*

*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'*

The panel found there had been breaches of all of the above sections of the Code in respect of charge 1. In respect of charges 2, 3 and 5, there had been breaches of sections 1 and 20 of the Code.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel found that Mr Riziva's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel noted that Mr Riziva's lack of de-escalation showed that he did not take any steps to protect a very vulnerable patient who was in his care and instead his conduct aggravated the situation and placed that patient at a risk of harm. Further, it found that Mr Riziva's failure to use any or adequate de-escalation techniques, running after the patient, throwing punches and causing a cut to the lip of Patient A's lip demonstrated a serious breach of the code. The panel found that Mr Riziva's actions did not demonstrate integrity and did not ensure that the vulnerabilities of Patient A were protected.

The panel therefore concluded that Mr Riziva's actions as set out in charges 1, 2, 3 and 5 demonstrate serious breaches of the Code, fall far below the standards and behaviours that would be expected of a registered nurse and amount to misconduct.

### **Decision and reasons on impairment**

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional 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. To justify that trust, nurses must 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. It noted what is set out in paragraph 74.

It had regard to Dame Janet Smith's "test" referred to by Mrs Justice Cox in paragraph 76 and the panel found that limbs a, b and c applied in this case.

The panel found that Patient A was put at risk as a result of Mr Riziva's actions and it noted that, given the vulnerabilities of Patient A, there was also the potential for emotional harm as a result of Mr Riziva's misconduct. Further, the panel concluded that the misconduct in this case has brought the reputation of the profession into disrepute.

The panel had regard to Mr Riziva's email dated 1 October 2020 in which he stated:

*"I regrettably need to apologise to the incident of 18/11/2019 [...]  
It is true the incident happened on the date, and unfortunately this could have  
been avoidable, and or far reduced and or handled differently. [...]"*

The panel also had regard to Mr Riziva's emails dated 26 April 2023 and 27 April 2023 in which indicated his desire not to return to nursing practice, although it noted the NMC's position that no application from Mr Riziva for removal from the register has been received.

The panel noted that beyond these emails, it did not have anything further from Mr Riziva in response to the charges.

The panel considered that regarding insight, although Mr Riziva has expressed that he is sorry for what had occurred, he has not demonstrated an understanding of how his actions put the patient at a risk of harm, why what he did was wrong and how this impacted negatively on the reputation of the nursing profession. He has not explained how he would handle the situation differently in the future and the impact that his actions had on the safety of patients and the potential impact on his colleagues.

The panel was satisfied that the misconduct, in this case, is capable of being remediated. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Riziva has taken steps to strengthen his practice. The panel did not have evidence of any training that Mr Riziva has taken since the incident to address the areas of concern, or any steps he has taken to ensure that a repeat of his failures would be prevented. The panel did not have evidence of any reflections from Mr Riziva showing how he would act differently in the future. The panel is therefore of the view that there is a risk of repetition of the failures. The panel, therefore, decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required. 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 Mr Riziva's fitness to practise impaired on the grounds of public interest.

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

## **Sanction**

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

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

### **Submissions on sanction**

The panel had regard to the Notice of Hearing, dated 26 April 2023, in which the NMC had advised Mr Riziva that it would seek the imposition of a striking off order if it found Mr Riziva's fitness to practise currently impaired.

Mr Lambert referred the panel to the Sanctions Guidance which sets out that the primary function of any sanction is to address public safety from the perspective of the risk that the registrant concerned may pose to those who use or need his or her services.

Mr Lambert reminded the panel that it must also give appropriate weight to the wider public interest, which includes the deterrent effect to other registrants.

Mr Lambert submitted that a striking off order is a sanction of last resort for serious, deliberate or reckless acts involving abuse of trust, such as sexual abuse, dishonesty or persistent failure. He further submitted that a striking off order should be used where there is no other way to protect the public and in cases where there is a lack of insight, continuing problems that or denial, an inability or unwillingness to resolve matters will suggest that a lower sanction may not be appropriate.

Mr Lambert submitted that Mr Riziva's actions during the incident between 18 – 19 November 2019 were fundamentally incompatible with remaining on the register. He submitted that whilst Mr Riziva was working as a registered mental health nurse with a duty of care for a highly vulnerable 16-year-old, he abused the position of trust that he was in, and he abused the position of responsibility and confidence that the patient was entitled to have in place.

Mr Lambert submitted that Mr Riziva had engaged in unprofessional, violent conduct which betrayed his duty of care and betrayed the trust of the patient. He submitted that his failure to de-escalate Patient A's challenging behaviour was followed by an assault which caused injury to this highly vulnerable teenager. He submitted that this in itself is alarming and worthy of a severe sanction.

Mr Lambert acknowledged that Mr Riziva had undertaken relevant training previous to the incident occurring and therefore questioned how any further training would avoid a reoccurrence of any such conduct in the future. He referred the panel to the email from Mr Riziva dated 1 October 2020 and he submitted that Mr Riziva's apology and acknowledgement that he should have handled the situation differently is the extent of remorse or evidence of learning that the panel has before it. Further, he stated that Mr Riziva sought to justify his behaviour in that email, and he blamed the patient, despite being familiar with the patient and knowing the behaviours that the patient could often engage in.

Mr Lambert submitted that the attempt to justify his behaviours is an aggravating feature as it demonstrates a lack of remorse and a lack of self-awareness.

Mr Lambert referred to Mr Riziva's emails indicating he does not wish to return to nursing and submitted that there is a reluctance on Mr Riziva's part to engage in nursing or reflect and improve his behaviours and actions.

Mr Lambert submitted that the panel should impose a sanction that would protect the public from further risk and would also be in the public interest by means of deterrent, by means of reputation of the profession and by means of public confidence. He submitted that a conditions of practice order could not fulfil this role as Mr Riziva is not practising as a nurse so there is no opportunity for him to demonstrate rehabilitation or improvement.

Further, he submitted that a suspension is not appropriate because Mr Riziva does not intend to return to nursing at any time, and so a striking off order in the NMC's position remains the only possible appropriate and proportionate sanction.

### **Decision and reasons on sanction**

Having found Mr Riziva'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:

- Conduct which caused Patient A, a vulnerable 16-year-old patient, emotional and physical harm;
- Abuse of a position of trust and responsibility;
- Lack of full insight into failings including the negative impact of his actions on patients, colleagues and the reputation of the profession; and
- Reluctance to reflect and improve on his behaviours.

The panel also took into account the following mitigating features:

- Conduct occurred during a single incident which occurred over a short period of time;
- Mr Riziva apologised for the incident and recognised he could have handled the situation differently;
- Patient A presented challenging behaviours. He had refused to take his medication and there had been two subsequent incidents involving different staff members following the incident with Mr Riziva; and

- Although Mr Riziva was practising as a nurse and should have known how to handle such situations and been aware of the strong likelihood of Patient A posing a risk, he believed he was acting in self-defence.

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

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

The panel next considered whether placing conditions of practice on Mr Riziva's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining alone. Furthermore, the panel concluded that the placing of conditions on Mr Riziva's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel noted that although this was a single incident, which started as a result of the vulnerable patients conduct, Mr Riziva has not engaged fully with the NMC and has not attended the hearing to give evidence to the panel. In such circumstances the panel cannot be satisfied that Mr Riziva has demonstrated full insight into his actions and it cannot be satisfied that he does not continue to pose a significant risk of repeating his behaviour.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Mr Riziva's actions is incompatible with Mr Riziva remaining on the register.

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

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

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

Mr Riziva's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Riziva's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Riziva's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Riziva in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Riziva's own interests until the striking-off sanction 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 Mr Lambert. He invited the panel to impose an interim order for a period of 18 months for the same reasons as the substantive order.

### **Decision and reasons on interim order**

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

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

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

That concludes this determination.