

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

**Substantive Hearing
Thursday 2 March – Monday 6 March 2023**

Virtual Hearing

Name of Registrant: Kathleen Martin

NMC PIN 74Y0603E

Part(s) of the register: Sub Part 2 RN2- October 2000

Relevant Location: Kent

Type of case: Misconduct

Panel members: Rachel Forster (Chair, Lay member)
Rosalyn Mloyi (Registrant member)
Linda Redford (Lay member)

Legal Assessor: Lee Davies

Hearings Coordinator: Taymika Brandy

Nursing and Midwifery Council: Represented by Katharine Muir, Case Presenter

Mrs Martin: Not present and unrepresented

Facts proved: Charges 1,2,3 and 4

Facts not proved: Charge 5

Fitness to practise: **Impaired**

Sanction: **Striking-off order**

Interim order: **Suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

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

Ms Muir, 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 Mrs Martin's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Mrs Martin

The panel next considered whether it should proceed in the absence of Mrs Martin. It had regard to Rule 21 and heard the submissions of Ms Muir who invited the panel to continue in the absence of Mrs Martin. She submitted that Mrs Martin had voluntarily absented herself and referred the panel to the relevant cases of *R. v Jones (No.2)* [2002] UKHL 5 and *General Medical Council v Adeogba; General Medical Council v Visvardis* [2016] EWCA Civ 162.

Ms Muir referred to the NMC guidance titled 'Proceeding with hearings when the nurse, midwife or nursing associate is absent' and invited the panel to consider the principles outlined in the guidance.

Ms Muir submitted that there are four witnesses that are due to attend this hearing and give evidence. She submitted that there has been little engagement from Mrs Martin and referred the panel to the following communication between Mrs Martin and the NMC. First an email dated 1 February 2022, in which a relative on her behalf states:

'Please do not extend anything [Mrs Martin] has informed you that she has retired and has no desire to return to nursing'.

Secondly, an email dated 21 October 2020 from Mrs Martin that states:

'I have retired and will not be logging in on this meeting please update your records.'

Ms Muir submitted that the whilst the NMC has made efforts to engage with Mrs Martin throughout these proceedings, Mrs Martin has not answered several letters, emails and telephone calls from the NMC. Ms Muir explained that the most recent attempt to contact Mrs Martin, in relation to this hearing, was a telephone call on 3 February 2023 which was unsuccessful.

Ms Muir submitted that it is very unlikely that an adjournment would secure Mrs Martin's attendance on some future occasion or would gain Mrs Martin's engagement with this hearing. She submitted that it is fair, appropriate and proportionate to proceed in the absence of Mrs Martin.

The panel accepted the advice of the legal assessor who referred to the cases of *Jones and Adeogba*; *Visvardis* and *R v Hayward* [2001] EWCA Crim. 168.

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

- No application for an adjournment has been made by Mrs Martin;
- Mrs Martin has informed the NMC that she has retired and has clearly outlined her position in respect of her engagement with these proceedings;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Martin in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her registered email address, she has provided no response to the NMC in respect of these allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her 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

Mrs Martin's decisions to absent herself from the hearing, waive her right to attend, and/or be represented, and to not provide evidence or make submissions her own behalf.

In these circumstances, the panel has decided that Mrs Martin has voluntarily absented herself and that it is fair to proceed in her absence. The panel will draw no adverse inference from Mrs Martin's absence in its findings of fact.

Details of charge (as amended):

That you a registered nurse, whilst working for the Bethany House Nursing Home:

1. On 30 July 2020 in relation to patient A:

a. Put your face close to patient A's face. **[PROVED]**

b. Told Patient A that he was an idiot and didn't deserve to be alive or words to that effect. **[PROVED]**

c. Told Patient A that if his behaviour continued he would have to move out and that you would tell his mum or words to that effect. **[PROVED]**

2. Your actions at any or all of charge 1 were intended to threaten /and or intimidate /and or insult Patient A. **[PROVED]**

3. On one or more occasion would not respond appropriately to Patient A regarding his requests for pudding and/or takeaway in that you would not provide an explanation for declining his requests. **[PROVED]**

4. On one or more occasions were verbally aggressive to Patient B. **[PROVED]**

5. Your actions at charge 4 were intended to threaten/ and or intimidate/and or insult Patient B. **[NOT PROVED]**

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

Background

Mrs Martin first entered the Register in September 1976. The charges arose whilst Mrs Martin was employed as a Registered Nurse at Bethany House Nursing Home ('the Home'), part of the Active Care Group ('the Group'). The Home provides care for a maximum of 15 adult residents, all of whom are physically disabled, and some have learning difficulties.

The NMC received a referral from the Group on 30 September 2020. As a result of whistleblowing allegations to The Care Quality Commission ('CQC') on 5 August 2020, the Operations Manager of the Home conducted an investigation into several matters, one of which was an allegation of bullying and psychological abuse by Mrs Martin towards two residents. The charges relate to these allegations in respect of Patient A and Patient B.

Mrs Martin has not responded to the NMC's regulatory concerns; however, Mrs Martin did respond to some of the concerns raised during the local investigation in an interview on 11 August 2020.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Muir, on behalf of the NMC, to amend the wording of charge 1c. which states:

'c. Told Patient A that if his behaviour continued he would have to move out and that she would tell his mum or words to that effect'

Ms Muir proposed the following amendment:

'c. Told Patient A that if his behaviour continued he would have to move out and that ~~she~~ you would tell his mum or words to that effect'

Ms Muir submitted that this amendment, as applied for, was to correct a typographical error in the charge and that it did not change its substantive nature.

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

The panel was satisfied that there would be no prejudice to Mrs Martin and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment of the typographical error to ensure clarity and consistency with the other charges.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Muir pursuant to Rule 31 (1) to allow parts of Witness 2's written statement and Exhibited document (Appendix 4). Ms Muir submitted that paragraph 16 in Witness 2's witness statement relates to the matters contained in Appendix 4, namely, investigation interview notes conducted with Mrs Martin during the local investigation. Ms Muir submitted that the interview notes contain some of Mrs Martin's responses to the allegations in respect of Patient A. Ms Muir invited the panel to consider the relevant principles as set out in the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and submitted that in view of fairness to Mrs Martin, the notes do contain evidence that is favourable to her and that the notes are the only record of her response to the allegations.

Ms Muir submitted that it is not the sole and decisive evidence in respect of charge 1c as it merely supports primary evidence given by other witnesses, particularly, Witness 1.

Ms Muir invited the panel to admit paragraph 16 of Witness 2's witness statement and Appendix 4 as hearsay for the reasons set out above.

The panel heard and accepted the advice of the legal assessor which included reference to Rule 31 which provides that, subject only to the requirements of relevance and fairness, a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor also referred to relevant principles as set out in the case of *Thorneycroft*, notably, the principles outlined in paragraph 56 when considering this application.

The panel then took the relevant factors as set out in *Thorneycroft* in turn.

The panel did not consider the identified part of Witness 2's witness statement and Appendix 4 to be sole and decisive evidence as there is other evidence provided by the NMC in respect of charge 1c. The panel also noted that the investigation notes were taken relatively close to the incident. The panel also considered that the investigation notes are the only records before it that give some indication as to Mrs Martin's position in relation to these allegations.

In all the circumstances, the panel came to the view that it would be fair and relevant to admit the hearsay into evidence and the panel would give this evidence what it deemed appropriate weight once all the evidence had been heard and evaluated.

Decision and reasons on facts

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 Muir on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mrs Martin.

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:

- Patient A: A Resident at the Home.

- Witness 1: Previously a Senior Carer at the Home at the time the allegations arose.

- Witness 2: Operations Manager at the Home at the time the allegations arose.

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 in this case.

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

Charge 1a

1. On 30 July 2020 in relation to patient A

a. Put your face close to patient A's face.

This charge is found proved.

In reaching this decision, the panel took into account Patient A's and Witness 1's evidence.

The panel took into account Patient A's witness statement that states:

'I didn't get help and there was an argument. Katie stuck her face right into my face.'

The panel noted in that in Witness 1's witness statement she states that:

'I saw Katie return to the dining room and approach. She pushed her face right up into Patient A's face and said something to him. I don't know what it was she said to him.'

The panel considered that Witness 1 was able to clarify where she was in the Home at the time of this incident in her oral evidence and that she had explained that she was in close proximity of Mrs Martin and Patient A. The panel was of the view that Witness 1's oral evidence had been consistent with her written evidence and with her local statement taken a week after the incident in which she states:

'Katie angrily confronted Patient A pushing her face close to Patient A's face. Katie whispered something that I did not hear.'

The panel noted that Witness 2 also asked Mrs Martin about this incident during the local investigation meeting in which he states:

'you responded by going to him and speaking very close to his face.'

The panel considered that Patient A and Witness 1 were eyewitnesses to the incident and that both had provided clear and consistent evidence in regard to this.

Taking into account all of the above, the panel found this charge proved on a balance of probabilities.

Charge 1b

1. On 30 July 2020 in relation to patient A

b. Told Patient A that he was an idiot and didn't deserve to be alive or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account Patient A's and Witness 1's evidence.

The panel noted that Patient A's witness statement states:

'She said I was an idiot and didn't deserve to be alive

[...]

It made me feel small, insignificant, wouldn't be missed.'

The panel considered that during Patient A's oral evidence he was not consistent with the exact phrase which he uses in his witness statement. However, the panel bore in mind the wording of this charge and was of the view that Patient A's words in his oral evidence about what Mrs Martin had said amounted to the same meaning and that these words were inappropriate. The panel also considered that Patient A had been clear on the impact Mrs Martin's words had had on him at the time of the incident and that in his oral evidence he explained that her words made him feel *"two inches high"*.

The panel was of the view that Witness 1's witness statement also supported these feelings experienced by Patient A and she confirmed that his subsequent demeanour showed that he felt that way:

'I was concerned and could see that Patient A felt vulnerable and belittled.'

Taking into account all of the above, the panel found this charge proved on a balance of probabilities.

Charge 1c

1. On 30 July 2020 in relation to patient A

c. Told Patient A that if his behaviour continued he would have to move out and that you would tell his mum or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1, Witness 2 and the documentation exhibited by Witness 2.

The panel noted that in Witness 1's witness statement she states:

'Katie said 'if your behaviour continues, you will have to move out of here and I will tell your mum'. Katie was trying to scold Patient A like a child.'

The panel also noted in the local investigation meeting notes Mrs Martin states:

'I had threatened to tell his mum about his swearing [...] but have never actually told his mum anything. I find his swearing and abuse very upsetting and deny telling

him that I would get him moved, [Colleague 1] has also said she will tell his mum in the past. I record his abuse to me on the care plan'

The panel considered that Mrs Martin had made a partial admission to the words in this charge during the local investigation interview. She accepted that she had threatened to report Patient A to his mother however, she denied telling him that he would have to move out.

The panel also noted Witness 2's witness statement in which he states:

'Patient A told me that because of what Katie said to him on 30 July 2020, he had been afraid of his mum knowing about what had happened.

[...]

Although it is not documented in the minutes of my meeting with him, he told me that he had spent days worrying about his mum being told.'

The panel also considered that Witness 2 had expanded on this in his oral evidence and explained that Patient A had continued to ask members of staff at the Home if he would be evicted weeks after the incident.

The panel was of the view that Witness 1 had provided clear and cogent evidence in respect of this incident and that this was corroborated with the evidence of Witness 2. The panel accepted that Mrs Martin had made partial admissions to the words in this charge. However, with regards to the charge that Mrs Martin had also told Patient A that he would need to move out, or words to that effect, the panel preferred the evidence of Witness 1.

Taking into account all of the above, the panel found this charge proved on a balance of probabilities.

Charge 2

2. Your actions at any or all of charge 1 were intended to threaten /and or intimidate /and or insult Patient A.

This charge is found proved.

In reaching this decision, the panel took into account the evidence as outlined in charge 1c and Patient A's oral evidence.

The panel noted that in the local investigation meeting notes Mrs Martin states that:

'I had threatened to tell his mum about his swearing [...] but have never actually told his mum anything.'

The panel noted that Witness 2's witness statement states:

'She acknowledged that she had 'threatened' to tell Patient A's mum about his swearing (page two of Exhibit GM/2 Appendix 4) but said she had not done it.'

The panel also noted that in Patient A's oral evidence he gave compelling evidence regarding how upset and angry Mrs Martin's actions had made him feel. The panel noted that Witness 1's witness statement states:

'I was concerned and could see that Patient A felt vulnerable and belittled.'

The panel also noted that Witness 1 was consistent in her evidence, notably, that Mrs Martin had long standing issues with Patient A's behaviour, particularly his swearing.

The panel had regard to its previous findings in respect of charged 1a-1c and was of the view that a reasonable inference could be drawn from the evidence adduced in respect of

these charges. The panel noted Mrs Martin's admissions to having threatened to tell Patient A's mum about the swearing and found that it was more likely than not, that Mrs Martin did intend to threaten/and or intimidate Patient A in an attempt to manage his behaviour, particularly his swearing. She had stated in the local investigation that:

'Patient A laughs at me and I do not like the swearing' and 'I find his swearing and abuse very upsetting'.

Taking into account all of the above, the panel found this charge proved on a balance of probabilities.

Charge 3

3. On one or more occasion would not respond appropriately to Patient A regarding his requests for pudding and/or takeaway in that you would not provide an explanation for declining his requests.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1 and Witness 2.

The panel noted that in Witness 1's witness statement she states:

'Patient A is diabetic and we sometimes have to manage when he gets a pudding when his sugar levels are high. This can be frustrating for Patient A who can sometimes still demand a pudding even when his sugar levels are high, but if you take the time to explain and reason with him then he accepts that he needs to wait or have an alternative low sugar dessert. Katie will not explain to Patient A why he is not getting his pudding. Katie just says 'no pudding for you today' to. The same

thing happens with takeaways. Patient A sometime[sic] likes a takeaway and Katie will just say no without explaining things to him.'

The panel also had regard to Patient A's care plan and noted that the communication plan states that communicating, reassurance and giving Patient A time to calm down will de-escalate incidents. It also states that *'Patient A will express his concerns but needs staff to listen to these'*. The panel was of the view that Patient A's care plan, that the panel heard was available to all staff, provides clear guidance on how staff should manage aspects of Patient A's care. The panel heard Witness 1 expand in her oral evidence about how staff should manage Patient A in these circumstances. This was consistent with her witness statement and the methods outlined in Patient A's care plan.

The panel also noted that Witness 1 was able to provide a clear account of Mrs Martin's behaviour and that she had spoken about how this was a long-standing issue. In Witness 1's witness statement she states:

'Katie just wanted to get the job done as quick and easily as possible.

[...]

When he is challenging then communication with him is crucial, you can reason with him if he knows why things are being done. Speaking and explaining things to him generally makes him respond better.'

The panel was of the view that Witness 1 had provided cogent evidence in respect of this charge. Accordingly, the panel found that Mrs Martin had responded inappropriately and that she did not provide an explanation to Patient A for declining his requests for pudding/and or takeaways.

Taking into account all of the above, the panel found this charge proved on a balance of probabilities.

Charge 4

4. On one or more occasions were verbally aggressive to Patient B

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's and Witness 2's evidence.

The panel took into account Witness 1's witness statement in which she states:

'I personally noticed the issues between Patient B and Katie a few months after Patient B's admission into the Home. When Patient B is aggressive, most staff understand that it is not directional but due to his brain injury. My understanding from her behaviour was that from Katie's point of view, she wanted to gain control over Patient B. This was not the way to deal with him; you need to make Patient B feel empowered.

I observed that Katie would avoid doing anything to do with Patient B.

[...]

Katie was also verbally aggressive with Patient B. Having taken place so long ago, I am unable to provide a lot of detail about the times when this happened, for example dates or what exactly was said but it was an ongoing problem. In summary, I observed Katie raising her voice when speaking with Patient B and her tone would change to an aggressive one. [...]. She would be short when interacting with Patient B e.g., speak in a clipped tone.'

The panel also noted Witness 2's witness statement that states:

'During our interview Katie mentioned that she also found Patient B difficult to deal with. I therefore reviewed his records and found documentary evidence within that Katie could be 'blunt' in how she communicated with Patient B (Exhibit GM/2 Appendix 6).

[...]

'I was aware that the previous owners had not acted promptly to resolve staff complaints; there had been a culture of things being swept under the rug.'

The panel noted that in Witness 1's oral evidence she said that she could not remember exactly what Mrs Martin had said to Patient B on one or more occasions. However, she could remember hearing Mrs Martin speaking to Patient B in a raised voice which concerned her. The panel considered the passage of time since the incidents, the evidence in relation to Mrs Martin's long standing issues Patient B and the panel accepted the evidence of Witness 1.

Taking into account all of the above, the panel found this charge proved on a balance of probabilities.

Charge 5

5. Your actions at charge 4 were intended to threaten/ and or intimidate/and or insult Patient B

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Witness 1, Witness 2 and the wording of the charge.

The panel took into account its findings in relation to charge 4 and considered that Mrs Martin's behaviour towards patient B was inappropriate. However, the panel bore in mind the wording of the charge is specifically about Mrs Martin's intent. The panel considered that there was no evidence provided by the NMC or arising from Witness 1's oral evidence that would prove that Mrs Martin intended to threaten/ and or intimidate/and or insult Patient B. The panel accepted that the behaviour could have been perceived this way by Patient B at the time of the incidents. However, it noted that Witness 1 stated in her witness statement that:

'I would say that Patient B was not affected in the short- or long-term by his interactions with Katie. He does not have the level of awareness to understand what is happening. He also does not retain information for long – as soon as the moment is over, he has forgotten it.'

In the absence of any further evidence to support this charge, the panel could not be satisfied on the balance of probabilities that Ms Martin's actions in charge 4 were intended to threaten/ and or intimidate/and or insult Patient B.

Accordingly, this charge is not found proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Martin'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, Mrs Martin's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

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 Muir invited the panel to take the view that the facts found proved amount to misconduct and were in breach of The Code: Professional standards of practice and behaviour for nurses and midwives (2018) ("the Code"). She then directed the panel to specific paragraphs and standards and identified where, in the NMC's view, Mrs Martin's actions amounted to a breach of those standards.

Ms Muir submitted that Mrs Martin's actions in charges 1-4 fall short of what would be expected of a registered nurse and breached the identified parts of the Code. Ms Muir submitted that the charges found proved all involved occasions of aggressive and inappropriate behaviour towards vulnerable patients.

Ms Muir referred the panel to the care plans of Patients A and B and submitted that, in relation to patient A, the care plan provided guidance on eating and drinking, communication. In relation to communicating with Patient A, the care plan contained guidance on how to manage the use of inappropriate language. She submitted that in the

care plans of both Patients A and B, a person-centred approach was advised together with the need to maintain dignity.

In relation to Patient B, Ms Muir explained that the guidance on communication contained within the care plan states that staff should approach him with a kind and gentle manner. She submitted that all patients' care plans were available to all staff. Ms Muir invited the panel to take into account both Patient A and B's care plans when considering misconduct.

Ms Muir submitted that Witness 1 and 2 both gave evidence regarding the importance of adhering to the patient's care plans and that the guidance contained within the plans should not be ignored. She submitted that Witness 1 told the panel that Mrs Martin did not follow the care plans.

Ms Muir submitted that Mrs Martin's actions were serious and individually and collectively fall seriously short of the expected conduct of a registered nurse and amount to misconduct.

Ms Muir then 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. She submitted that limbs a, b and c of Dame Janet Smith's test, as set out in the Fifth Report from Shipman were engaged by Mrs Martin's past actions.

Ms Muir referred the panel to the case of *Cohen v GMC* [2007] EWHC 581 (Admin) and submitted that the conduct in this case is not easily remediable. She submitted that Mrs Martin has had limited engagement with the NMC, has not demonstrated any remediation or insight and that during the local investigation Mrs Martin denied the allegations.

Ms Muir submitted that Witness 2 gave evidence in respect of Mrs Martin not understanding what she had done during the local investigation and that she had simply explained she did not like the swearing and did not accept that there was anything she could have done differently.

Ms Muir then invited the panel to consider whether Mrs Martin was likely to repeat these actions in the future and consider any steps taken to remediate the concerns and whether Mrs Martin's fitness to practise is currently impaired. She submitted that, in light of her lack of remediation, Mrs Martin is liable in the future to repeat the behaviour and bring the nursing profession into disrepute.

Ms Muir submitted that abuse and aggression are difficult to remediate and referred to the NMC guidance titled 'Can the concern be addressed?'. She submitted that, violence, neglect or abuse of patients is identified in this guidance as concerns that may not be possible to address. She further submitted that Mrs Martin's actions do fall short of violence neglect and abuse of patients, however the conduct found proved has been identified as aggressive and inappropriate, which caused distress to at least one of the patients in this case.

Ms Muir explained to the panel that Mrs Martin has informed the NMC of her retirement. She submitted that she has not demonstrated remediation in a clinical setting or evidenced steps she has taken to strengthen her practice or address these concerns.

Ms Muir submitted that in this case, Mrs Martin has shown little or no insight as to how her actions affected the patients and the reputation of the profession. She submitted that the charges relate to the same kind of conduct in respect of two patients. She submitted that the NMC considers that Mrs Martin's behaviour represents an emerging pattern of discriminatory behaviour towards two patients and that Mrs Martin's actions raise concerns about her values, attitudes and behaviour.

Ms Muir submitted that Mrs Martin's actions are serious and that a finding of current impairment is required in order to maintain public confidence in the profession and the NMC and to uphold proper professional standards. She submitted that a finding of current impairment is necessary to declare and uphold proper standards and that Mrs Martin's fitness to practise is currently impaired, on the grounds of public protection and otherwise in the public interest.

The panel accepted the advice of the legal assessor which included reference to the cases of: *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *Roylance* and *Cohen*.

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, in reaching its decision, had regard to the protection of the public and the wider public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Mrs Martin's actions amounted to a breach of the Code. The panel considered that the following sections of the Code had been breached in this case:

'1 Treat people as individuals and uphold their dignity

To achieve this you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

1.3 avoid making assumptions and recognise diversity and individual choice

[...]

1.5 respect and uphold people's human rights

2 Listen to people and respond to their preferences and concerns

To achieve this you must:

[...]

2.2 recognise and respect the contribution that people can make to their own health and wellbeing

2.3 encourage and empower people to share in decisions about their treatment and care

[...]

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

[...]

4 Act in the best interests of people at all times

To achieve this, you must:

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

[...]

4.3 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

[...]

7 Communicate clearly

To achieve this, you must:

7.1 use terms that people in your care, colleagues and the public can understand

7.2 take reasonable steps to meet people's language and communication needs, providing, wherever possible, assistance to those who need help to communicate their own or other people's needs

[...]

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 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.

20.6 stay objective and have clear professional boundaries at all times with people in your care

[...]

20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It went on to consider whether Mrs Martin's actions, both individually and collectively, amounted to misconduct.

In determining whether Mrs Martin's actions in charges 1-4 amounted to misconduct, the panel considered its earlier findings that Mrs Martin's behaviour towards Patients A and B was inappropriate and aggressive. The panel considered that both Patients A and B were vulnerable patients and although no physical harm was caused to either patient by Mrs Martin's actions, Patient A and the other witnesses in this case gave evidence in respect of him feeling, vulnerable, threatened and humiliated. The panel was of the view that both patients had clear and comprehensive care plans that gave guidance on aspects of their care, notably, communication and eating and drinking. The panel considered that the care plans were available to all staff and that Mrs Martin had not adhered to or considered the importance of these care plans with regard to her treatment of both Patients A and B whilst under her care. The panel noted that communicating effectively and appropriately with patients is a fundamental and basic tenet of the nursing profession and that the importance of communication for these specific patients was even more significant. The panel considered that Mrs Martin had failed to communicate appropriately, had on several occasions adopted a verbally aggressive manner and on one occasion she had threatened a patient.

The panel had regard to the NMC guidance entitled 'How to determine seriousness' which states:

'Bullying and victimisation

Bullying can be described as unwanted behaviour from a person or a group of people that is either offensive, intimidating, malicious or insulting. It can be an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone.'

The panel noted the context of Mrs Martin's working environment when it was under a different ownership and Witness 1 gave evidence in respect of this, namely that complaints were not dealt with effectively and that '*there had been a culture of things being swept under the rug*'. The panel also heard evidence that there were long standing issues between Mrs Martin and both patients and did not like working with them. The panel was of the view that Mrs Martin allowed her personal feelings about swearing and inappropriate use of language to cloud her professionalism and that her response to the challenging behaviours in respect Patient A and B did amount to bullying and humiliation.

The panel was of the view that Mrs Martin's actions in the charges found proved were serious and fell far below the professional standards expected of a registered nurse and would be regarded as deplorable by her fellow colleagues and members of the public. The panel therefore determined that Mrs Martin's actions collectively and individually breached the Code and were sufficiently serious to amount to misconduct.

Decision and reasons on impairment

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

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) in reaching its decision. In paragraph 74, she said:

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

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

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

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

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d)...

The panel determined that limbs a, b and c are engaged in this case. The panel finds that Mrs Martin's inappropriate and aggressive behaviour towards Patients A and B, who are both vulnerable patients, placed them at a potential unwarranted risk of harm. The panel determined that Mrs Martin's misconduct had breached the fundamental tenets of the nursing profession and that her actions brought the reputation of the profession into disrepute. The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether Mrs Martin's misconduct was remediable and whether it had been remediated.

The panel then considered the factors set out in the case of *Cohen*. It determined that the behaviour concerned was not an isolated incident but had continued on more than one occasion with two patients. It had also been referred to as a '*long standing issue*' by Witness 1. The panel determined there to be an emerging pattern of behaviour relating to attitudinal issues. As a result, the panel concluded that Mrs Martin's misconduct may be difficult to remediate.

The panel went on to consider whether Mrs Martin remained liable to act in a way that would put patients at risk of harm, would bring the profession into disrepute and breach the fundamental tenets of the profession in the future. In doing so, the panel considered whether there was any evidence of insight and remediation.

Regarding insight, the panel carefully considered the documentation contained within Mrs Martin's response bundle and found that there was nothing within the bundle that indicated any evidence of insight or remediation. Instead, during the local investigation conducted by Witness 2, Mrs Martin stated that she had done nothing wrong thus evidencing a complete lack of insight. She had also simply resigned with immediate effect then later informed the NMC that she had retired.

The panel noted that during the local investigation meeting, Mrs Martin denied all the allegations, albeit she agreed she had threatened to speak to Patient A's mother. She has not engaged with these proceedings or responded to the regulatory concerns therefore the

panel has not been able to ascertain her current level of insight. In the absence of any steps to strengthen her practice or provide evidence of remediation, the panel considered that Mrs Martin had not remediated her actions and had demonstrated no insight into her misconduct and had not considered the impact of her behaviour on patients, colleagues and the reputation on the profession.

The panel considered that Mrs Martin's misconduct in respect of Patients A and B had continued over a sustained period of time and that Witness 1 had explained that this was a longstanding issue. These were not isolated incidents. In all the circumstances, the panel considered that there is a risk of repetition and that should Mrs Martin return to practice, she remained liable to act in a way which could place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession.

The panel noted that Mrs Martin has been a registered nurse since 1976 and that she had been working with vulnerable service users at the Home for a long period of time. The panel also considered as a registered nurse and senior member of staff, she was a role model for junior staff in the Home, setting an example of how to behave.

Having regard to these conclusions about Mrs Martin's actions, the panel considered that members of the public would be shocked to learn of a senior registered nurse behaving in such a way towards vulnerable patients in her care. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

Sanction

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

Ms Muir submitted that the appropriate and proportionate sanction is a striking off order. She outlined the aggravating and mitigating factors in this case and referred the panel to the SG. Ms Muir informed the panel that Mrs Martin currently has an interim conditions of practice order imposed on her registration, which was confirmed and continued on 9 December 2022. Ms Muir submitted that Mrs Martin had not attended any hearing prior to this substantive hearing and that she had not worked as a registered nurse since 2020.

Ms Muir invited the panel to consider the sanctions in ascending order, and to have regard to the public protection and public interest issues in deciding on the most appropriate and proportionate sanction. She submitted that taking no action would not address the public protection and public interest issues, and that a caution order would not be appropriate, as this case did not involve misconduct at the lower end of the spectrum of impaired fitness to practise.

Ms Muir submitted that the misconduct in this case had been identified as not easily remediable due to the attitudinal issues identified, thus, it would be difficult to formulate conditions to address these concerns. She submitted that there has been very little engagement from Mrs Martin, the last communication having been received from Mrs Martin by the NMC in January 2021 and that she had previously requested a Voluntary

Removal form. Ms Muir submitted that therefore a conditions of practice order would not be appropriate or sufficient to maintain public confidence in the profession.

Ms Muir submitted that a suspension order would not be appropriate as Mrs Martin has not engaged with the process and has not provided any evidence of insight, remorse, reflection, or remediation. She submitted that there has been a risk of repetition identified and that a suspension order is not sufficient to maintain public confidence in the profession.

Ms Muir submitted that a striking-off order would be the proportionate sanction in this case, in light of the seriousness of the behaviour found proved and the real risk of harm to patients. She submitted that this was not an isolated incident and that Mrs Martin's behaviour was in respect of two patients, demonstrating an emerging pattern of behaviour.

Mrs Muir submitted that Mrs Martin has not remediated her actions and that her behaviour amounted to bullying and intimidation. She submitted that significant emotional harm was caused to one of the patients and that Ms Martin's aggressive behaviour was towards two vulnerable patients.

Ms Muir submitted that the SG with regards to striking-off orders, states that this sanction is likely to be appropriate when what the *'nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional.'* She invited the panel to take this into consideration.

Ms Muir submitted that public confidence in nurses, midwives and nursing associates would not be maintained if Mrs Martin is not removed from the register. She submitted that a striking-off order is the only sanction which will be sufficient to maintain professional standards.

Ms Muir submitted that an interim order is necessary to protect the public and is otherwise in the public interest to cover the 28-day appeal period and the conclusion of any appeal

lodged. She invited the panel to impose an interim order that is appropriate in view of the sanction it imposes.

Decision and reasons on sanction and interim order

Having found Mrs Martin'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 NMC's published guidance on sanctions. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel considered the following to be aggravating factors in this case:

- Lack of insight, Mrs Martin has failed to recognise the potential impact on Patients A and B, colleagues and the wider profession;
- No evidence of remediation;
- Risk of repetition and risk of further patient harm;
- The misconduct in this case relates to aggression towards vulnerable patients with disabilities and one occasion of threatening behaviour towards one such patient;
- Discriminatory behaviour towards patients with disabilities;
- A pattern of behaviour over time.

The panel did not identify any mitigating factors in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in light of its finding of current impairment. 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 in light of the identified risk of harm to patients it considered that an order that does not restrict Mrs Martin's practice

would also be inappropriate 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 has found that Mrs Martin's misconduct was not at the lower end of the spectrum of impaired fitness to practise and concluded that a caution order would be insufficient to mark the seriousness of these charges. 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 Martin's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel was of the view that there are no practical or workable conditions that could be formulated that would address the attitudinal issues and the nature of the misconduct identified in this case. Furthermore, the panel considered that a conditions of practice order would not mark the seriousness of Mrs Martin's misconduct and there was no evidence before it to suggest Mrs Martin would be willing to comply with conditions. The panel concluded that placing a conditions of practice order on Mrs Martin'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 and considered the SG. The panel considered that there was evidence of long-standing attitudinal problems and that there was no evidence before it to demonstrate that Mrs Martin had any insight into her misconduct. The panel considered that Mrs Martin did pose a risk of repeating the behaviour.

The panel took into account the seriousness of Mrs Martin's misconduct in this case which it considered to be at the higher end of the spectrum of seriousness. The panel noted the absence of any evidence of insight and the pattern of Mrs Martin's behaviour towards vulnerable patients that had caused emotional harm to one of them. It also noted Mrs Martin's lack of engagement with these proceedings and her communication with the NMC which states that she has retired and does not wish to return to practice. The panel did not

consider that a period of suspension would be sufficient to protect patients and public confidence in nurses and to maintain professional standards.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breaches of the fundamental tenets of the profession evidenced by Mrs Martin's actions are fundamentally incompatible with Mrs Martin remaining on the register.

The panel considered that Mrs Martin's behaviour did raise fundamental questions about her professionalism. Given the lack of evidence of insight and remediation and the risk of repetition identified, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction in this case.

Finally, when considering 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?*

The panel also had regard to the NMC guidance entitled 'Considering sanctions for serious cases' which states:

'Cases relating to discrimination

We may need to take restrictive regulatory action against nurses, midwives or nursing associates who've been found to display discriminatory views and behaviours and haven't demonstrated comprehensive insight, remorse and strengthened practice, which addresses the concerns from an early stage.

If a nurse, midwife or nursing associate denies the problem or fails to engage with the FtP process, it's more likely that a significant sanction, such as removal from the register, will be necessary to maintain public trust and confidence.'

The panel determined that Mrs Martin's actions were significant departures from the standards expected of a registered nurse and that she had shown bullying and abusive behaviour towards vulnerable patients with disabilities. The panel found that this behaviour is fundamentally incompatible with her remaining on the register. The panel was of the view that, in light of its finding of serious misconduct, to allow Mrs Martin to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all these factors and taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mrs Martin's actions on vulnerable patients in her care, her colleagues and the wider profession, the panel has concluded that nothing short of a striking-off order would be sufficient in this case.

The panel determined that this order was necessary to maintain 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.

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 is in Mrs Martin's own interests until the striking-off sanction takes effect.

Having regard to the findings in this case, the panel did consider that an interim order is necessary to protect the public and is otherwise in the public interest. Having regard to the seriousness of the facts found proved, which amounted to misconduct, and the reasoning

for its decision to impose a striking-off order, the panel considered that to not impose an interim order would be incompatible with its previous findings.

The panel therefore determined to impose an interim suspension order. The period of this order is for 18 months to allow for the possibility of an appeal being made and for this to be determined.

If no appeal is made, then the interim order will be replaced by striking-off order 28 days after Mrs Martin has been sent the decision of this hearing in writing.

That concludes this determination.

This will be confirmed to Mrs Martin in writing.