Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 6 November 2023 – Thursday 9 November 2023

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant:	**Claire Terri McGregor**
NMC PIN	00Y0030E
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nursing – 9 April 2003
Relevant Location:	Hampshire County
Type of case:	Misconduct
Panel members:	Rachel Childs (Chair, lay member) John McGrath (Registrant member) Bryan Hume (Lay member)
Legal Assessor:	Monica Daley
Hearings Coordinator:	Yewande Oluwalana
Nursing and Midwifery Council:	Represented by Aoife Kennedy, Case Presenter
Mrs McGregor:	Present and represented by Counsel Philip Vollans
Facts proved by admission:	Charges 1, 2, 3, 4, 5, 6, 7, 8
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	**Conditions of practice order (12 months with a review)**
Interim order:	**Interim conditions of practice order (18 months)**

Details of charge

That you, a registered nurse whilst working at Enbridge House Care Home:

1) Between March 2020 and 2 July 2021, provided the treatment of disease, disorder or injury namely: **[PROVED BY ADMISSION]**

    a) Dressing wounds;
    b) Taking blood samples/performing blood tests;
    c) Providing injections and/or used a needle to administer medication.

2) Between March 2020 and 2 July 2021 in relation to the procedures and/or tasks in charge 1(a) to 1(c) failed to: **[PROVED BY ADMISSION]**

    a) Carry out the appropriate competence assessment;
    b) Ensure there was oversight by the district nursing team;
    c) Work within your level of competence.
    d) Inform the CQC that you were providing nursing care to one or more residents.

3) Between March 2020 and 2 July 2021, failed to keep clear and accurate records in respect of: **[PROVED BY ADMISSION]**

    a) Care planning including wound/ulcer care;
    b) Nutrition;
    c) Involvement by Health Care Professionals;
    d) Medication administration and management;
    e) Staff training.

4) On or around 2 July 2021 were not able to provide evidence of up to date training in relation to: **[PROVED BY ADMISSION]**

    a) Medication competency;
    b) Safeguarding;
    c) Nursing skills.

5) Between March 2020 and 2 July 2021 in relation to ulcers/wounds failed to: **[PROVED BY ADMISSION]**

a) Carry out adequate treatment of ulcers/wounds;

b) Escalate and/or make referrals to:
   i. A doctor;
   ii. Healthcare professional;
   iii. Social care professionals

6) Between March 2020 and 2 July 2021 in relation to the weight and/or weight loss of one or more residents in schedule 1 failed to: **[PROVED BY ADMISSION]**

   a) Identify action required;
   b) Take appropriate action to support nutritional needs;
   c) Take any or any adequate action in relation to a resident's MUST record.
   d) Escalate and/or make referrals to:
      i. A doctor;
      ii. Healthcare professional;
      iii. Social care professionals;
      iv. Dietician.

7) In or around May 2021 used a Buprenorphine patch on a resident which had been prescribed for another resident. **[PROVED BY ADMISSION]**

8) On or around 16 June 2021 failed to obtain a second signature before administering Buprenorphine to Resident M **[PROVED BY ADMISSION]**

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

Schedule 1

Resident A

Resident B
Resident C
Resident D
Resident E
Resident F
Resident G

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

On Tuesday 7 November 2023, Mr Vollans made an application that parts of this hearing be held in private on the basis that proper exploration of your case involves reference to your [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Kennedy on behalf of the Nursing and Midwifery Council (NMC) indicated that she supported the application.

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

The panel determined to go into private session in connection with your [PRIVATE] as and when such issues are raised in order to protect your privacy.

Decision and reasons on application to admit written statements

The panel heard a joint application made by Ms Kennedy and Mr Vollans under Rule 31 to allow written statements contained in the NMC witness bundle and within your own bundle into evidence.

Ms Kennedy invited the panel to admit Witnesses 2, 3, 4 and 5's written statements into evidence as the NMC were no longer requiring the witnesses to give live evidence as you admitted the charges. The written statements should still be considered during the panel's decision making.

Mr Vollans invited the panel to admit the written statements of Mr 1, Ms 2 and Ms 3 into evidence as supporting evidence for your case.

Both Ms Kennedy and Mr Vollans agreed that the statements should be considered by the panel when making its decision on misconduct and impairment.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is *'fair and relevant'*, a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave the application regarding Witnesses 2, 3, 4, 5 and Mr 1, Ms 2 and Ms 3's written statements serious consideration. The panel noted that Witnesses 2, 3, 4, 5 and Mr 1, Ms 2 and Ms 3's statements had been prepared in anticipation of being used in these proceedings and contained the paragraph, *'This statement … is true to the best of my information, knowledge and belief*' and signed by each person.

The panel considered whether you would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witnesses 2, 3, 4 and 5 to that of their written statements. It also considered whether the NMC would be disadvantaged by not hearing live evidence from your own witnesses Mr 1, Ms 2 and Ms 3, whose statements you wished to rely upon as evidence. The panel bore in mind that you have accepted the factual basis of the charges and have not contested any of the evidence or the witnesses that the NMC intended to call. In respect of your own statements the panel consider these are not objected to by the NMC and are relevant and it would be fair to admit these statements into evidence.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statements of Witnesses 2, 3, 4, 5 and Mr 1, Ms 2 and Ms 3, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

On 4 October 2021, NMC received a referral raising concerns from the Care Quality Commission (CQC), identified during the inspection of Enbridge House Care Home ('the Home'). You were employed at the Home as a Care Manager.

The CQC carried out inspections on 2, 6 and 20 July 2021 and determined that the service at the Home was 'inadequate'. It is alleged that you made a number of clinical errors from March 2020 to July 2021, including the inappropriate treatment of pressure ulcers, failing to identify significant weight loss, providing nursing treatment when the Home was not registered to do so, and failing to keep accurate and appropriate records.

Further, it is alleged you failed to make the appropriate referrals to external healthcare professionals in relation to various failings at the Home, which was the duty of the Care Manager.

The CQC confirmed the Home was not registered to provide nursing care and you were not employed at the Home in a nursing role.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Vollans, who informed the panel that you made full admissions to charges 1, 2, 3, 4, 5, 6, 7, 8 in their entirety.

Ms Kennedy submitted that a comprehensive discussion had been had with Mr Vollans. Charges 1 to 8 had been admitted in their entirety and an agreed statement of facts was provided to the panel.

In accordance with Rule 24(5), the Chair announced that the facts of charges 1, 2, 3, 4, 5, 6, 7, and 8 were proved in their entirety by way of your admissions.

Fitness to practise

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

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

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

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

- Mrs 1: Adult social care inspector, who carried out inspections at the Home on 2, 6, 20 July 2021.

The panel also heard evidence from you under affirmation.

Submissions on misconduct

The panel were provided with written submissions by Ms Kennedy and Mr Vollans regarding 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 Kennedy invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Ms Kennedy in her written submissions identified the specific, relevant standards where your actions amounted to misconduct. She stated that you had breached the following Codes: 1.2, 1.4, 2.1, 3.1, 3.3, 3.4, 6.2, 8, 8.1,8.2, 8.3, 8.4, 8.5, 8.6, 10, 10.1, 10.2, 10.3, 10.4, 10.5, 13, 13.1, 13.2, 16, 16.1, 16.2, 16.3, 17, 17.1, 17.2, 19, 19.1, 19.2, 19.3, 19.4, 20, 20.1, 20.3, 25, 25.1 and 25.2.

Ms Kennedy submitted:

> *'The Panel should of course apply its own judgement to the relevant parts of the Code.*
>
> *The misconduct in this case relates to serious and wide-ranging issues within the Home when Mrs McGregor was Care Manager, including failure to escalate concerns to the relevant healthcare professionals and failure to keep clear and accurate records. Further, Mrs McGregor failed to work within her role and levels of competence in that she carried out nursing tasks when she was not permitted to do so, and when she had not undertaken the relevant assessments and training to allow her to do so. This led to serious concerns, in particular in relation to wound and ulcer care and significant weight loss in residents.*

The role of nurses is to protect and care for those vulnerable and in need of care. It is submitted that Mrs McGregor's conduct clearly failed that duty. It fell far short of what is expected of a registered nurse and is sufficiently serious to constitute misconduct.'

Mr Vollans in his written submissions stated:

'*The Registrant has candidly accepted the opinions held, and concerns raised by third parties, and as such accepts that the conduct fell short of that which would be proper in the circumstances. As such it is accepted that misconduct is accepted in the circumstances in that there was unacceptable standard of professional performance at the time.'*

Submissions on impairment

Ms Kennedy in her written submissions 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), *Cohen v GMC* [2008] EWHC 581, *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin), *General Optical Council v Clarke* [2018] EWCA Civ 1463.

Ms Kennedy also referenced relevant NMC Guidance on Insight and strengthened practice (Ref: FTP-13); *'Can the concern be addressed?'* (Ref: FTP-13a); *'Has the concern been addressed?'* (Ref: FTP-13b); *and 'Is it highly unlikely that the conduct will be repeated?'* (Ref: FTP-13c).

Ms Kennedy referred the panel to Dame Janet Smith's test in the 5th Shipman Report (as endorsed in *Grant)* in which she submitted that the first three limbs of the test are engaged in this case.

Ms Kennedy submitted:

> *'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*
> *The failures in this case clearly put residents at the Home at unwarranted risk of harm. These were vulnerable elderly residents who placed their trust in the Home, and Mrs McGregor as the Care Manager, to provide adequate care and support.*
>
> *Has in the past brought and/or is liable in the future to bring the medical profession into disrepute*
> *The Registrant's conduct brought the nursing profession into disrepute. The public has a right to expect that nurses will provide appropriate and competent care, and escalate concerns where required to keep patients safe. The Registrant's conduct clearly had the potential to undermine public confidence in the nursing profession and by failing to do so, the Registrant brought the profession into disrepute.*
>
> *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession*
> *The Registrant breached fundamental tenets of the profession. The provisions of the Code constitute fundamental tenets of the profession and the Registrant's actions have clearly breached the same. The public would rightly consider that as a registered nurse, providing safe and effective care to members of the public, particularly vulnerable adults, are basic tenets of the profession.'*

Ms Kennedy identified that the misconduct is such that it can be easily remedied but questioned whether you had remedied the concerns raised. She submitted:

> '*Mrs McGregor has been candid in her acceptance of the concerns raised by the CQC, and what went wrong regarding her role and responsibilities. She has outlined what changes the Home has put in place to address the*

concerns regarding care. She has reflected on how this impacted patients, and what the Home would do differently if faced with a similar situation.

Mrs McGregor's oral evidence was that she has completed some training since the 2021 inspection, but this was limited to her non-nursing role. She has not completed training to carry out nursing tasks. She confirmed that, other than the nursing tasks completed between March 2020 – July 2021, she has not provided any care which requires her nursing registration since 2014. She candidly accepted that, due to the length of time since practising, and given the concerns during the period she did carry out nursing duties, she would not feel competent to carry out clinical nursing tasks unsupervised without further training.

[Mrs 1] *in her oral evidence, when asked by the panel whether there was any reason why the Registrant, a registered nurse with previous experience, should not have been providing nursing tasks, stated (my record of evidence):*

"Had the outcome been good and residents had received good care, it would have been more of a communication issue and would not have been so serious. However, because residents were deteriorating, in particular from a pressure ulcer perspective, this demonstrated a lack of competence in that not only were residents deteriorating, but the Registrant did not highlight that externally."

It is submitted that there are serious clinical concerns, in particular relating to wound and ulcer care, which had not been remedied.

<u>Is the misconduct highly unlikely to the repeated?</u>
In relation to the risk of repetition, key considerations are the Registrant's insight and whether any remediation is sufficient. As above, Mrs McGregor has engaged with the NMC and demonstrated insight. However, due to not having practised as a nurse for significant period of time, has been unable to remediate all of the concerns.

Mrs McGregor accepted in her evidence that, as things currently stand, she could in theory leave the Home next week and work in a nursing capacity. Given the lack of remediation in relation to nursing specific skills, there is a risk of repetition. This poses a risk of serious, unwarranted, patient harm and damage to the reputation of the profession.

Ms Kennedy in her submissions identified that '*as it stands, Mrs McGregor revalidated in 2022 and is free to secure employment as a nurse if she so wishes'*. In light of the risks identified, Ms Kennedy submitted that your fitness to practise is impaired on public protection grounds. She further submitted that a finding of impairment is required on the grounds of public interest as your '*conduct fell far below the standards expected of a registered nurse and has damaged the reputation of the profession'*.

Mr Vollans referenced the following cases in his written submissions: *Cohen, Clarke, Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council* [2011] EWHC 927 (Admin)*; Farah v Nursing and Midwifery Council* [2014] EWHC 1655 (Admin).

Mr Vollans submitted that the Home has subsequently been reviewed by the CQC in an independent assessment and the concerns raised have been confirmed to have improved. He submitted the concerns arose during a period of *'a global pandemic, and where due to the safeguarding and care shown, Covid remained outside and separate from the home. Services were stretched to a capacity...'*

Mr Vollans stated that you remain a qualified nurse and have complied with all mandatory training in accordance with your professional obligations. However, if you were to return to a nursing role you will need to undertake some training in line with what is required before commencing the role. He further submitted that there have been no further complaints about your conduct and *'clear evidence of improved practice'.*

Mr Vollans submitted the following:

‘*The Registrant has continued to develop an understanding of the core competencies, professional development and personal reflection. In developing the training records, ensuring procedures are in place and developing the practices otherwise used by others at the care home the Registrant demonstrated incite with the engagement with the NMC proceedings.*

As a consequence of the investigations and steps which have been taken to alleviate the concerns of the CQC, the Hampshire County Council, and all further external practitioners, it is submitted that the Registrant has demonstrated a proper compliance with the recommendations provided, and that sufficient training, insight and engagement with medical professionals are such that there is no longer a concern of risk to the public in the passage of time.

Where concerns are such that impairment could otherwise be found, it is submitted that as a consequence of the positive remedial steps, and the significant passage of time, that no further action can be taken in this case.’

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

The panel considered all the charges individually and whether your actions amounted to misconduct. The panel determined the following:

- Charge 1a - the panel determined that your actions amounted to misconduct, in that there was no clear direction or agreement provided by the District nursing team for you to undertake wound care for residents. By your actions, some residents’ wounds became worse which caused harm. The panel also

noted that the Home was not registered with the CQC to undertake nursing care.

- Charges 1b and 1c - the panel determined that these actions did not amount to misconduct. The panel took into account the exceptional circumstances at the time, as there was a global pandemic. It had sight of documentation from the District Nursing Team effectively delegating these tasks to you to undertake. The panel was made aware during your oral evidence that the registered managers of the Home, took the decision to protect the residents by limiting the amount of people coming into the Home to reduce infections. The panel also had documentation that showed you were trained to take blood samples and from witness statements provided would be in a position to give injections.

- Charges 2a-c - The panel determined that your actions did amount to misconduct. It was of the view that you did not ensure sufficient oversight from the District Nursing Team in regard to the wounds/ulcer care of residents. The panel also determined that you did not carry out the relevant competency assessment for undertaking wound dressing and were therefore working outside your scope of your nursing abilities.

- Charge 2d - The panel determined that your actions did not amount to misconduct. The panel took into account Mrs 1's evidence where she stated that the registered managers are responsible to CQC and they should have informed them. The onus was not on you as you are not one of the registered managers.

- Charge 3 – The panel determined that your actions did amount to misconduct. It was of the view that you had failed in your duty to keep accurate documentation. This meant that it was difficult for you to monitor residents' progress and for other professionals to review the care provided to the residents, even with the circumstances of the pandemic.

- Charge 4 – The panel determined that your actions did not amount to misconduct. The panel noted at the time the training documentation was not

provided, but the panel have had sight of the relevant training documentation. It was of the view that given the circumstances at the time i.e. the CQC inspection, [PRIVATE], this caused you to be disorganised. You were unable to provide the documents at the time, and it was not a case of it not being completed.

- Charges 5 and 6 – The panel determined that your actions in both charges amounted to misconduct. The panel determined that you had failed in carrying out adequate treatment of ulcers/wounds, the failure to identify the adequate needs in addressing weight loss of residents and then not escalating the issues to the relevant healthcare professionals.

- Charge 7 – The panel determined that your actions did not amount to misconduct. It took into account your oral evidence, that all necessary attempts were made to acquire the resident's medication during the pandemic, but this was to no avail. The panel noted that another resident had been prescribed the same medication, however at the time this incident occurred, they were not in need of this medication. Following a discussion with management of the Home, the medication was used for the resident whose medication could not be obtained. The panel therefore determined that your actions were done to prevent harm to the resident whose medication was not available at the time it was needed.

- Charge 8 – The panel determined that your actions did not amount to misconduct. This was an isolated incident which has not been repeated. The panel was of the view that on its own, it did not amount to misconduct.

The panel was of the view that your actions in Charges 1a, 2a-c, 3, 5 and 6 did fall significantly short of the standards expected of a registered nurse. The panel determined that your actions amounted to a breach of the Code. Specifically: 1.2, 1.4, 2.1, 3.1, 3.3, 3.4, 8.1,8.2, 8.3, 8.5, 8.6, 10.1, 10.2, 10.3, 10.4,13.1, 13.2,13.3,16.1, 20.1 and 20.3.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions in Charges 1a, 2a-c, 3, 5 and 6 fell well below the conduct and standards of what is expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence*

in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

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

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

d) *…*

The panel finds that residents were put at risk, and some were caused physical harm as a result of your misconduct when it came to treatment of wounds/ulcers and the management of significant weight loss of residents in your care. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether your misconduct was remediable and whether it had been remediated. The panel then considered the factors set out in the case of *Cohen v GMC*.

Regarding insight, the panel considered that you have demonstrated some insight into your failings and noted the improvements you had made in the Home as a Care Manager to address the concerns of the CQC. The panel had sight of reflective diaries which you have used to look back at cases you have been involved in, identifying what you could do differently and how to improve. The panel also considered your genuine remorse and admission of your failings during the period of the pandemic. It accepts that this was an exceptional set of circumstances which impacted your practice.

However, the panel was of the view that your insight into your failings lacked sufficient depth. It considered that you had addressed the CQC concerns and had evidence of this fact, but there was limited evidence that you had addressed the clinical concerns. Your reflective diaries lacked focus on the identified clinical concerns. The panel considered your witness statement provided some insight into the failings that led to the charges, but it did not address how your actions put residents at risk of harm and the potential impact on relatives, your colleagues and public confidence in the profession. There was insufficient detail in your explanation of what you would have done differently if faced with similar circumstances in the future. While you were able to give more detail in your oral evidence, the panel still considered your insight to be developing.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account that you have completed your mandatory Continuing Professional Development (CPD) training for working in the Home and provided evidence of this. There was no documentary evidence before the panel that you have addressed the clinical concerns regarding wound care and tissue viability and during your oral evidence, you said you would need more training in tissue viability if you returned to a nursing role. The panel was cognisant that your current role as a Care Manager does not require you to use your nursing skills and you have not worked as a nurse for some time. The panel was told of the courses you have completed, but you have not had the opportunity as yet to demonstrate how you

would apply the learning to your practice. There was no external validation of your reflective diary or supporting reference from another registered nurse that would have given the panel assurance that you had addressed the clinical concerns.

The panel determined that your current role is not a nursing role and as such it carries a low risk of patient harm. However, the panel was of the view that there is a risk of harm and a risk of repetition as you have not sufficiently demonstrated that you have strengthened your practise. It was of the view that if you were to work in a nursing role you have not demonstrated that you would be able to practise *'safely or effectively'.* The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because a fully informed member of the public would be seriously concerned if a registered nurse facing these charges was allowed to work unrestricted.

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 your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of twelve months with a review. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

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

Submissions on sanction

Ms Kennedy informed the panel that in the Notice of Hearing, dated 6 September 2023, the NMC had advised you that it would seek the imposition of a conditions of practice for a period of twelve months with a review if the panel found your fitness to practise currently impaired.

Ms Kennedy submitted that the following aggravating factors applied to your case:

- A pattern of misconduct over a lengthy period.
- Conduct that put patients at risk of suffering harm.

Ms Kennedy submitted that there were mitigating factors that applied to your case:

- There is evidence of insight and understanding of the problem, including your early admission of the facts and attempts to address these concerns insofar as possible in your current role.
- The misconduct occurred during the pandemic when there was immense pressure on healthcare professionals.

Ms Kennedy informed the panel that it must consider each available sanction in ascending order starting with the least severe.

Ms Kennedy submitted that no action would not be appropriate in this case given the seriousness of the conduct and risk of repetition identified by the panel at the

impairment stage. A caution order would also not be appropriate as it will not protect the public and not address the public interest concerns.

Ms Kennedy further submitted that the panel found that the concerns were remediable and that conditions of practice would be an appropriate sanction. She referred the panel to the SG and identified the relevant sections that applied to your case. Ms Kennedy submitted that you have demonstrated a willingness to respond positively to retraining. Ms Kennedy suggested that conditions could be formulated that addressed your nursing training in wound care and required direct supervision by a senior nurse in wound care until you are signed off as competent. Ms Kennedy submitted that a conditions of practice order would be appropriate, workable and measurable in these circumstances.

Ms Kennedy submitted that a suspension order would be wholly disproportionate in this case, given your engagement and insight. It would not serve any useful purpose in facilitating you back to safe practice. Ultimately, Ms Kennedy said that it is the panel's decision what sanction should be imposed.

The panel also bore in mind Mr Vollans' submissions in that he accepted that a sanction would need to be imposed following the finding of impairment. He submitted that conditions of practice would be the most appropriate order.

Mr Vollans submitted that you are engaging with the NMC process and would be willing to comply with conditions, if required to do so in a nursing role. Mr Vollans suggested to the panel not to impose a conditions of practice order for three years. He said that this case has been ongoing since 2021 and you provided submissions in 2022 with your admission to the facts. Mr Vollans said that your practice should not be restricted for longer than is necessary.

Mr Vollans submitted that the concerns raised about your wound care in the Home have been addressed and this was verified by the CQC in February 2022, where it confirmed this. Mr Vollans stated that if the panel are mindful to impose conditions, that it should consider your current role as a Care Manager and the support that would be available to you, when the panel formulate conditions.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- A pattern of misconduct over a period of time
- Conduct which put residents at risk of suffering harm.

The panel also took into account the following mitigating features:

- Early admissions to the CQC and the NMC
- Evidence of insight and understanding of the failings
- Genuine and heartfelt remorse about the circumstances and the impact on residents
- A global pandemic – COVID-19 – this was a period of time that no one had ever experienced, and health and social care services were greatly affected.

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 your practice would not be appropriate in the circumstances. The

SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

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

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice.

The panel had regard to the fact that these incidents happened during a period where a global pandemic was occurring, and that, other than these incidents, you have had an unblemished career of twenty years as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because there was no deep-seated attitudinal problem. The panel found that you are a caring nurse who was able to demonstrate effective practice. The panel further noted that the failings identified are remediable. The panel found that you showed genuine remorse about your actions and that you had developed a degree of insight into your failings.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel has worked hard to make these conditions workable, given the restrictions on nursing care that you are able to provide in your current employment at the Home. It recognises that you will need to take a creative approach to work with the wider multi-disciplinary team to comply with these conditions.

The panel determined that the following conditions are appropriate and proportionate in this case:

> *'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'*

1. You must work with your line manager, and clinical supervisor to create a personal development plan (PDP). Your PDP must address the concerns about identifying and managing weight loss, and effective care planning.

2. You must send your NMC case officer a copy of your PDP fourteen days before any review hearing. This report must show your progress towards achieving the aims set out in your PDP.

3. You will identify and receive clinical supervision from a registered nurse. You must send a report from your supervisor to your NMC case officer fourteen days in advance of a hearing/meeting. The report must outline developments in the following areas:

    a) Managing weight loss
    b) Effective care planning
    c) Wound care/tissue viability

4. You will send your NMC case officer fourteen days before any review hearing, evidence that you have successfully completed wound care/ tissue liability practical skills and have been signed off by a registered nurse Band 6 or equivalent as competent.

5. You must keep the NMC informed about anywhere you are working by:
    a) Telling your NMC case officer within seven days of accepting or leaving any employment.
    b) Giving your NMC case officer your employer's contact details.

6. You must keep the NMC informed about anywhere you are studying by:
    a) Telling your NMC case officer within seven days of accepting any course of study.

b) Giving your NMC case officer the name and contact details of the organisation offering that course of study.

7. You must immediately give a copy of these conditions to:
   a) Any organisation or person you work for.
   b) Any agency you apply to or are registered with for work.
   c) Any employers you apply to for work (at the time of application).
   d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

8. You must tell your NMC case officer, within seven days of your becoming aware of:
   a) Any clinical incident you are involved in.
   b) Any investigation started against you.
   c) Any disciplinary proceedings taken against you.

9. You must allow your NMC case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
   a) Any current or future employer.
   b) Any educational establishment.
   c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for twelve months with a review.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing, the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at a review hearing
- References and/or testimonials from registered nurses you have worked with.

This will be confirmed to you in writing.

Interim order

As the conditions of practice 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 your own interests until the conditions of practice 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 Ms Kennedy. She submitted that the NMC is seeking the imposition of an interim conditions of practice order for a period of 18 months to cover any appeal period until the substantive conditions of practice order takes effect.

Ms Kennedy submitted that given the decision of the panel an interim conditions of practice order is necessary on the grounds of public protection and is also otherwise in the wider public interest.

The panel also took into account the submissions of Mr Vollans who submitted that there were no objections to the application by Ms Kennedy.

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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim conditions of practice order for a period of 18 months in order to protect the public and the wider public interest to cover the 28-day appeal period and the duration of any appeal should you decide to appeal against the panel's decision.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.