

Fitness to Practise Committee
Substantive Hearing
2 – 10 December 2019
&
2 – 4 November 2020
Nursing and Midwifery Council
Regus, Forsyth House, Cromac Square, Belfast, BT2 8LA

Name of Registrant Nurse: David Gerald Robinson

NMC PIN: 11I0159N

Part of the register: Sub part 1—RNMH:Mental health nurse
(9 September 2011)

Area of Registered Address: Belfast

Type of Case: Misconduct

Panel Members: John Vellacott (Chair, Lay member)
Kim Bezzant (Registrant member)
David Boyd (Lay member)

Legal Assessor: Attracta Wilson

Panel Secretary: Aoife Kennedy

Registrant: Present and not represented

Nursing and Midwifery Council: Represented by Michael Bellis (2 – 10
December 2019) & Christopher Scott (2 – 6
November 2020), on behalf of the NMC
Regulatory Legal Team.

Facts proved by admission: 1(b), 1(c)(iii), 1(d), 1(f)(i), 1(f)(iii), 2(b), 2(c),
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No case to answer: 5, 6, 7, 8

Facts proved: 1(a), 1(c)(i), 1(c)(ii), 1(e), 1(f)(ii), 2(a), 3

Facts not proved: None

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Detail of charges

That you, a registered nurse, whilst employed on Rathlin Ward at the Belfast Health and Social Care Trust;

1) Between October 2015 and June 2016 whilst Person A was admitted to Rathlin Ward, you breached professional boundaries, in that you:

- a) On one or more occasions asked Person A for a hug;
- b) On one or more occasions hugged Person A;
- c) Around October and November 2015:
 - i) asked Person A, how old they were when they first had sex;
 - ii) asked Person A, what their favourite sexual position was;
 - iii) talked to Person A about your previous and/or current relationships;
- d) In December 2015 gave Christmas presents to Person A;
- e) Obtained Person A's mobile telephone number;
- f) On one or more occasions between March 2016 & May 2016 whilst not working on the ward, you:
 - i) sent Person A text messages on her mobile telephone;
 - ii) sent Person A text messages of a sexual/inappropriate nature;
 - iii) called Person A on her mobile telephone.

That you a registered nurse, between June 2016 and September 2016 after Patient A had been discharged from Rathlin Ward:

2) Engaged in a personal relationship with Person A, in that you:

- a) sent Person A a text message, stating that you had purchased her a vibrator;
- b) on one or more occasions, met Person A without any clinical purpose;
- c) on one or more occasions, attended Person A's private residence;

3) Your actions at all or any of charges 1 and 2 above were sexually motivated in that you intended to pursue a future sexual relationship with Person A

4) On one or more occasions, engaged in sexual activity with Person A.

That you a registered nurse, before 4 May 2016 whilst working on Beechcroft Unit;

5) Made inappropriate comments to Person B, in that you:

- a) asked Person B to star in a film you were making;
- b) told Person B that she was “pretty”;
- c) told Person B that you wanted her to wear a bikini and run through the forest;
- d) told Person B that you would like to buy her a t-shirt/vest top;

6) Your actions at charge 5 above were sexually motivated in that you intended to pursue a future sexual relationship with Person B

7) Touched Person B’s hair

8) Your action at charge 7 above was sexually motivated in that you sought sexual gratification from such contact

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

Decision and reasons on application pursuant to Rule 31(1) of the Nursing and Midwifery (Fitness to Practice) Rules 2004 (the Rules):

The panel heard an application made by Mr Bellis under Rule 31 of the Rules to admit the witness statement of Person B as hearsay evidence.

Mr Bellis referred to Rule 31 and submitted that it would be relevant and fair to admit this as hearsay evidence in this case. He referred the panel to the cases of *NMC v Ogbonna* [2010] EWCA Civ 1216, *Thorneycroft v NMC* [2014] EWHC 1565 Admin, *El Karout v NMC*, [2019] EWHC 28 (Admin). He told the panel that Person B was the sole and decisive witness to charges 5 to 8, and therefore her evidence is relevant. Mr Bellis told the panel that the reason Person B has not attended is because she has been admitted as an in-patient to a psychiatric care ward, and has been clinically assessed as currently unfit to give evidence. In reliance on an email from her treating clinicians, he said that it is unknown how long she will be in psychiatric care. Mr Bellis told the panel that Person B's witness statement is corroborated by a local statement from a contemporaneous interview, and that there are two witnesses scheduled to attend this hearing who were present at that interview. The panel will be able to test the evidence of these witnesses as to Person B's demeanour and credibility.

You opposed the application. You submitted that charges 5 to 8 are denied, the evidence of Person B is contested and that it would be unfair to you not to be able to test her evidence in cross-examination. You referred the panel to the NMC guidance on the point and addressed them on the case law relied upon by Mr Bellis. You said that the evidence which the NMC seek to rely on is unreliable. You pointed to contradictions between the incident report and the witness statement and the fact that you were not on duty at the relevant time. You pointed out that the incident report was compiled a week after the event and does not contain details included in the witness statement. You pointed out that you will not be able to explore these inconsistencies in the absence of Person B. You questioned the motivation and character of Person B and pointed out that, if her evidence was admitted, you would be unable to test it which would put you at an unfair disadvantage.

The panel accepted the advice of the legal assessor. She advised the panel relative to the admissibility of hearsay evidence and indicated that she would advise relative to the weight to be given to hearsay evidence in due course should a decision be made that it should be admitted.

She reminded the panel in considering admissibility, of the need to balance your right to a fair hearing to include your right to challenge and test the evidence against you with the statutory responsibilities of the NMC. She endorsed the case law referred to by Mr Bellis and reminded the panel that the more serious the charges, the more onerous the burden to ensure fairness. She reminded the panel to consider the potentially grave implications for you should the hearsay evidence be admitted and in its balancing exercise to consider alternative options to include an adjournment.

The panel bore in mind that the test it must consider in accordance with Rule 31, is whether the evidence is relevant and fair. It considered the evidence of Person B to be relevant as it relates directly to charges 5 to 8.

The panel then considered whether it was fair to admit Person B's statement as hearsay evidence. It considered the submissions of Mr Bellis and your submissions. It noted that Person B has been clinically assessed as unfit to give evidence, and that it is not known when, if at all, she will be fit to do so either by attending in person or by video link. The panel therefore considered that an adjournment would be unlikely to ensure the attendance of Person B and would be contrary to the public interest in investigating these charges in a timely manner. It noted that Person B's witness statement is corroborated by a local statement which was made contemporaneously in a face to face interview. Two NMC witnesses scheduled to attend this hearing were present at that interview and the panel considered that it would be able to test the evidence of these two witnesses as to Person B's demeanour and credibility during the interview so as to be fair to you.

The panel considered that the allegations against you are serious in that they relate to sexual motivation and sexual misconduct against a vulnerable person. It took into

account the disadvantage to you in not being able to cross examine Person B and test her evidence in the context that charges 5 to 8 are at the most serious end of the scale. However, it considered that any disadvantage to you was outweighed by the public interest in having charges 5 to 8 against you investigated.

The panel took into account the fact that you are not legally represented but considered their ability as a panel to guard against any disadvantage to you in their own questioning of the witnesses whilst being careful not to act as your advocate and to maintain a balanced approach.

The panel is therefore of the view that it would be fair in the circumstances to admit Person B's witness statement as hearsay evidence. This decision to admit Person B's hearsay evidence is no indication of what weight if any will be attached to it. That will be considered in due course at the close of the NMC case in the context of any no case to answer submissions or in the alternative at fact finding stage.

Background

You were employed as a registered nurse on Rathlin ward (“the Ward”) at the Belfast Health and Social Care Trust (“the Trust”) from 2014 to 2016. It is alleged that, whilst employed at the Trust, you breached professional boundaries with Person A, a patient on the Ward, in that you made inappropriate contact of a sexual nature with her, both physically and by telephone.

It is alleged that, when Person A was discharged from the Ward, between June and September 2016 you engaged in a personal relationship with her in that you sent her text messages of a sexual nature, attended her private residence without any clinical purpose, and engaged in sexual activity with Person A. The allegation is that your actions were sexually motivated in that you intended to pursue a future sexual relationship with Person A.

It is alleged that, whilst you were working on Beechcroft Unit before 4 May 2016, you made a number of inappropriate comments to Person B which were sexually motivated, in that: you asked her to star in a film you were making; you told her she was ‘pretty’; you told her that you wanted her to wear a bikini and run through the forest; and you told her that you would like to buy her a t-shirt/vest top. It is further alleged that you touched Person B’s hair for the purpose of sexual gratification.

Submissions of no case to answer on facts:

At the conclusion of the NMC's case the panel considered an application from you that there is no case to answer in respect of charges 5 to 8.

The application was made under Rule 24 (7) of the Rules. This rule states:

- 24 (7) *Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and –*
- (i) either upon the application of the registrant, or*
 - (ii) of its own volition,*
- the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.*

The panel heard first from Mr Bellis so as to assist you on how to format your submissions, on behalf of the NMC. He referred it to the principles set out in the criminal case of *R v Galbraith* [1991] 1 W.L.R 1039. He also referred the panel to the test articulated by Lord Lane, Lord Chief Justice, in the case of *Galbraith* as follows:

“(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses' reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried

by the jury...There will of course as always in this branch of the law be borderline cases. They can safely be left to the discretion of the judge.”

Mr Bellis reminded the panel that the burden of proof lies with the NMC. He reminded the panel of the evidence it had in relation to charges 5 to 8, namely: Person B’s contemporaneous Significant Event Interview dated 4 May 2016; Person B’s NMC witness statement dated 19 March 2019; and Ms 4’s witness statement dated 3 September 2019. Mr Bellis drew the panel’s attention to the evidence from Ms 4 that Person B had a history of making serious allegations that were untrue against members of staff, including one allegation of rape. He also informed the panel that Patient B had in the past suffered from intrusive thoughts and hallucinations which may not be wholly accurate. He submitted that the panel should consider what weight it can give to the evidence in relation to charges 5 to 8, and that, if the weight that can be given is so reduced as to undermine it, the panel should consider a finding of no case to answer in relation to those charges.

You submitted that the oral evidence of Ms 4 that Person B had made serious untrue allegations against other staff members undermined the evidence of Person B, and you pointed to some contradictions in her evidence. You submitted that the evidence in relation to charges 5 to 8 was unsatisfactory, and that there is no case for you to answer in relation to these charges. You also submitted that the allegations in this case were initially reported by a third party who had previously attacked you, and who you submitted harboured a grudge against you.

Panel determination on applications on no case to answer on facts

The panel took account of the submissions made. It also accepted the advice of the legal assessor who endorsed Mr Bellis’ reference to the test in Galbraith.

In reaching its decision, the panel was solely considering whether the evidence presented relative to charges 5 to 8 was sufficient within the meaning of Galbraith to establish that you had a case to answer relative to those charges.

The panel considered oral evidence from Ms 4, and considered all of the documentary evidence before it. It noted that there is no direct evidence relative to the events giving rise to charges 5 to 8, in that the evidence of Person B is hearsay. It also considered the submissions made by both parties.

Charges 5 and 7:

The panel first considered charges 5 and 7 together.

The panel considered the two limbs of the Galbraith test and concluded that there was some evidence in relation to these charges. However, the panel noted that the initial report of the alleged incident involving Person B was made by a third party to a member of staff at the unit. You had earlier submitted that this third party had harboured a grudge against you. Person B did not give oral evidence, and handwritten notes made by her or staff at the time were not available to the panel. The evidence relative to Person B came from the contemporaneous Significant Event Interview dated 4 May 2016 (the original notes of which were not available to the panel), and Person B's NMC witness statement dated 19 March 2019. The panel considered that both statements were vague, and that there were inconsistencies between the two, with Person B's NMC witness statement containing details which were not in the contemporaneous Serious Event Interview. By way of example, charges 5b, 5c, and 7 were not mentioned at all in the contemporaneous interview record. Further, the panel noted the oral evidence of Ms 4, that Person B had previously made untrue allegations of a similar nature about other members of staff.

The panel noted that there was a significant gap between the alleged incident and Person B's disclosure. You did not work at Beechcroft after March 2016, and the incident was reported in May 2016. The panel considered that this gap in the timeline added to the weakness of the evidence.

The panel was also informed that all patients were either supervised on a one-to-one or two-to-one ratio and, when the alleged incidents detailed in charges 5 and 7

occurred, there would have been at least one other member of staff present and it would have been likely that they would have been witnessed and reported by a member of staff.

The panel considered the significant inconsistencies between Person B's contemporaneous interview on 4 May 2016, and her NMC witness statement dated 19 March 2019, the absence of direct evidence, Person B's history of untrue allegations, and doubts cast over the motivation of the third party by whom the allegations were initially made. Further, in considering the oral evidence of Ms 4, the evidence in relation to charges 5 and 7 had been so undermined as to be unsatisfactory, contradictory and transparently unreliable. Therefore, the panel has determined that there is no case to answer in relation to charges 5 and 7.

Charges 6 and 8:

The panel then went on to consider charges 6 and 8, which related to your sexual motivation for charges 5 and 7, together. It considered that these charges relate to your alleged actions in charges 5 and 7 and that, as it found there was no case to answer in relation to charges 5 and 7, it follows that there was no case to answer in relation to charges 6 and 8.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence in this case together with the submissions made by Mr Bellis, on behalf of the NMC, and by you.

The panel accepted the advice of the legal assessor.

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 the facts will be proved if the panel is satisfied that it was more likely than not that the incidents occurred as alleged.

The panel heard oral evidence from five witnesses tendered on behalf of the NMC as follows:

- Person A, in-patient at Rathlin Ward, Knockbracken Healthcare;
- Ms 1, Detective Constable in the Rape Crime Unit (RCU), employed by the Police Service for Northern Ireland (PSNI);
- Ms 2, Specialist Practitioner in the Eating Disorders Service, employed by the Belfast Trust;
- Mr 3, Charge Nurse in Rathlin Ward, employed by the Belfast Trust;
- Ms 4, Band 6 Deputy Nurse on Beechcroft Ward, employed by the Belfast Trust.

The panel considered that Person A's evidence was clear and consistent about what she felt the nature of her relationship with you was, how it developed and how it made her feel. She was cross examined extensively by Special Counsel and overall was consistent in her account. The panel noted that there were some minor inconsistencies with Person A's police statement, but took into account the passage of time, and considered that they did not affect the fundamental nature of her evidence. The panel placed little weight on the absence of a police prosecution following their investigation because the standard of proof required for a criminal

prosecution is different to the standard to be applied in this case. The panel carefully considered Person A's demeanour and found her to be straightforward throughout her evidence. She spoke clearly and did not seek to evade questions or embellish her account.

The panel gave careful consideration to texts sent by Person A to include "*I have what I want*" and threats to report you to [Ms 2]. The panel concluded that Person A had realised how inappropriate this relationship was and now felt able to report it. Notwithstanding the nature of Person A's texts, the panel was satisfied that Person A's evidence, relative to events more generally, was consistent with an inappropriate relationship breaching professional boundaries and that Person A was within her right to report this. The panel considered that, although Person A at times engaged in the relationship, this does not excuse your inappropriate behaviour in failing to respect professional boundaries. The panel noted that you had access to Person A's medical history and were aware of her vulnerabilities. This put you in a position of power in the relationship, which you abused.

The panel considered Ms 1 to be a credible and reliable witness. She was professional and did her best to assist the panel. She conceded when she did not know the answer to a question.

The panel considered Ms 2 was helpful, but that her evidence was limited in detail and her memory had been affected by the passage of time.

The panel considered that Mr 3 was a credible and reliable witness. He was clear about the standards and culture on Rathlin Ward at the time of events, and what was acceptable regarding professional boundaries, both on the ward and following the discharge of Person A. The panel noted your allegations that Mr 3 had consistently lied throughout his evidence. The panel following careful consideration do not accept this. Mr 3 impressed the panel with his knowledge and understanding of professional boundaries and the panel found his evidence to be straightforward and compelling.

The panel considered that Ms 4 was a credible and reliable witness. She was able to provide detail where required, and conceded when she could not remember details.

You gave oral evidence. The panel assessed and evaluated your direct evidence and your evidence under cross examination. The panel noted that you read from a prepared statement in your direct evidence but did not draw an adverse inference from this because you are not legally represented. The panel considered that your evidence in relation to Person A was, at times, contradictory in that you said you did not blame her, and later went on to blame her for lying to the police and instigating contact with you. You said that you did not ask her for a hug and later admitted that "*of course I did*". Your evidence in relation to the ring was unconvincing. You were evasive in your reply as to a ring being considered to be a romantic gesture. The panel considered that you downplayed the significance of the ring. You agreed that you gave Person A the ring because you cared for her. The panel found your description of why you gave the ring to Person A in her bedroom to be evasive and were not persuaded by your reasoning. You sought to justify inappropriate discussions with Person A on therapeutic grounds. Mr 3 was clear in his evidence that such discussions were inappropriate and transgressed professional boundaries. For reasons given above the panel prefer the evidence of Mr 3. You spent a long time trying to discredit Person A, and on the distinction between a sexual and loving relationship. You told the panel that you loved Person A, and that your relationship with her was loving first, and that sex was not your motivation. The panel was not persuaded by your reasoning in this regard. It determined that there was a sexual element to your conversations with Person A from the outset when she was a patient under your care. The panel determined that your evidence overall suggested little respect for professional boundaries. You asked Person A to delay reporting your behaviour to the Trust until you found alternative work. The panel concluded that, on the balance of probabilities, you recognised that your behaviour was inappropriate, breached professional boundaries to the extent that your job was in jeopardy.

At the outset of the hearing you admitted charges 1b, 1c(iii), 1d, 1f(i), 1f(iii), 2b, 2c, 4. The panel therefore found these charges proved by way of admission.

The panel considered the remaining charges against you and made the following findings:

1) Between October 2015 and June 2016 whilst Person A was admitted on Rathlin Ward, you breached professional boundaries, in that you:

a) On one or more occasion asked Person A for a hug;

The panel took into account your evidence, and the evidence of Person A and Mr 3.

You admitted that you and Person A did hug, but that you did not initiate it on the relevant dates. However the panel considered it significant that you admitted asking for a hug as the relationship developed. Your evidence was “*of course I did*”. The panel also took into account your evidence that hugging patients can be therapeutic and is appropriate in many situations. You referred in particular to hugging Person A in her bedroom following an incident at mealtime in the dining room when she was upset. You told the panel that, at the time of the events, you were depressed and did not have any friends. You said that Person A was the only person you could talk to, **[PRIVATE]**, and that you were looking for someone to have a conversation with.

The panel took into account Person A’s written and oral evidence. In her NMC witness statement she stated:

“[F]rom around October 2015 David used to ask me for a hug. He would tell me he was feeling low and wanted a hug. This would happen in my bedroom and no-one else was around. We hugged a couple of times but he would ask me every few days for a hug. I did not ask him for a hug when I was on the ward.”

Having carefully considered the evidence, the panel determine that you did ask Person A for a hug on one or more occasions. The panel conclude that this is consistent with your admissions of asking for a hug as the relationship developed and of your attitude to hugging more generally. Further for reasons given above the panel prefer the evidence of Person A to your evidence on the point.

The panel took into account Mr 3's evidence that hugging a patient would in almost all circumstances be a breach of professional boundaries. **[PRIVATE]**.

The panel noted Mr 3's evidence and considered that this did amount to a breach of professional boundaries.

The panel therefore found charge 1a **PROVED**.

c) Around October & November 2015:

i) Asked Person A, how old they were when they first had sex;

ii) Asked Person A, what their favourite sexual position was;

The panel took into account Person A's evidence:

“David started to ask me about how old I was when I first had sex and then asked what my favourite sexual position was. I said to David that I did not want to answer this as it was my business.”

Your evidence was that it is very important to talk to patients about sex as it is therapeutic. Later in your evidence you denied asking Person A about her sexual history and preferences. The panel considered that your evidence was contradictory, and questioning in relation to sexual matters was consistent with your conduct more generally.

The panel preferred the evidence of Person A for reasons already given and conclude that, on the balance of probabilities you did ask her how old she was when she first had sex and what her favourite sexual position was.

The panel considered Mr 3's evidence that it would never be appropriate for a registrant to initiate a conversation with a patient about their sexual history or preferences. Mr 3 articulated the dangers of doing so and told the panel that if someone made a disclosure of such nature it would be incumbent on the registrant

to disclose it to their manager so that it could be signposted to a specialist service to provide appropriate support.

The panel considered that was not appropriate for you to ask Person A about her sexual history and preferences and that, in doing so, you breached professional boundaries.

The panel therefore found charge 1(c)(i) and 1(c)(ii) **PROVED**.

iii) Talked to Person A about your previous and/or current relationships;

You admitted that you talked to Person A about previous relationships, but not that it breached professional boundaries or was sexually motivated.

The panel considered charge 1(c)(iii) in the context of the other charges, and decided that it breached professional boundaries. The panel found no compelling evidence that discussions relative to your previous relationships had any legitimate or therapeutic value. There was no clinical record of such discussions as one would have expected if they took place for legitimate reasons. In all the circumstances, the panel concluded on the balance of probabilities that your discussions did breach professional boundaries. Further, in the absence of any clinical explanation or record, and having considered your behaviour more generally towards Person A, the panel concluded that your behaviour was, on the balance of probabilities, sexually motivated.

The panel therefore found charge 1(c)(iii) **PROVED**

e) Obtained Person A's mobile telephone number;

You admit that you had Person A's telephone number, but that she asked you for your number. The panel considered that it was irrelevant who gave the number and who received it. There is no evidence that you reported the request, or the fact that

you had her number, as would have been expected in a clinical setting, particularly given the vulnerability of Person A.

You acknowledged in your evidence that it was not appropriate for you to have Person A's number. The panel also took into account Mr 3's evidence that a registrant should not obtain a patient's number for any reason other than of an urgent clinical nature.

The panel considered that it was a breach of professional boundaries for you to obtain Person A's telephone number.

The panel therefore found charge 1(e) **PROVED**

f) On one or more occasions between March 2016 & May 2016 whilst not working on the ward, you:

ii) Sent Person A text messages of a sexual/inappropriate nature;

The panel took into account Person A's evidence, in particular:

“When he stopped coming to the ward he would send me a lot more texts. I would say around 10 to 15 per day. Some of the messages were sexual. I can't remember that much about them or when I received them but I do remember that he texted me a lot asking if I felt horny. By the word horny I took this to mean that he was asking if I was feeling sexually aroused. I told him that this was inappropriate. He said to me that as he was not a nurse at the hospital anymore it didn't matter as much.”

Person A's oral evidence was consistent with her witness statement.

The panel considered your evidence and had sight of some of the text messages sent by you to Person A. The panel considered the nature and content of those text messages and concluded that, on the balance of probabilities, you did send

inappropriate and sexual messages to Person A. The panel took into account the evidence of Mr 3 and considered that this breached professional boundaries.

The panel therefore found charge 1(f)(ii) **PROVED**

That you a registered nurse, between June 2016 and September 2016 after Patient A had been discharged from Rathlin Ward:

2) Engaged in a personal relationship with Person A, in that you:

a) Sent Person A a text message, stating that you had purchased her a vibrator;

You admitted in your oral evidence that you sent Person A text messages stating that you had purchased her a vibrator. The panel had sight of these text messages. The panel considered that these text messages were clearly of a sexual nature and inappropriate, and breached professional boundaries.

The panel therefore found charge 2(a) **PROVED**

3) Your actions at all or any of charges 1 and 2 above were sexually motivated in that you intended to pursue a future sexual relationship with Person A

You admitted charges 1b, 1d, 1f(i), 2b but did not accept they were sexually motivated. The panel therefore took into account these charges in considering charge 3.

In relation to charges 1(a), 1(b), and 1(c), the panel considered that you hugging Person A, and asking her details about her sexual preferences and history was sexually motivated. This was in the early stages of your caring role with Person A in the hospital setting. The panel considered that it was clear from your actions of hugging, confiding in her, and asking questions about her sexual history, that you had a sexual interest in Person A. The panel considered that there was no clinical reason for your actions and did not accept that your actions had any therapeutic value. It took into account the overall context of the charges, and that your actions

ultimately led to you having sexual relations with Person A. The panel therefore decided on the balance of probabilities that your actions in charges 1(a), 1(b), and 1(c) were sexually motivated.

In relation to charge 1(d), you admitted making a customised ring for Person A out of a coin, and that you spent some time personalising the object. You also told the panel that you gave Christmas presents to patients under your care at Christmas time to mark the season and that in many cases, your present was the only present a patient would be likely to receive. The panel determined that the gift given to Person A was personalised and given to her privately. You admitted that you cared for her. The panel took into account Mr 3's evidence that, if giving a gift to a patient, it should never be personalised. In your evidence you focused on the monetary value of the gift, and were evasive when questioned as to the romantic significance. The panel took into account the context of you having pursued Person A, and considered that you giving her a personalised gift and in particular a ring was, on the balance of probabilities sexually motivated as, taken in context, it appeared to be part of your preparation for developing a sexual relationship with Person A.

In relation charge 1(e) and 1(f) you admitted having Person A's telephone number and sending her text messages, but not that they were sexually motivated. The panel considered that there was no clinical reason for you to have Person A's telephone number and send her text messages. The panel considered that your motivation was to create an environment in which you could develop a sexual relationship with Person A. You obtaining Person A's number, sending her inappropriate messages, and calling her mobile, formed part of what ultimately resulted in your sexual relations with Person A. The panel therefore considered that your actions in charges 1(e) and 1(f) were on the balance of probabilities sexually motivated.

In relation to charge 2(a) the panel took into account the text messages you sent to Person A, which related to you having purchased her a vibrator, and decided that the messages were clearly sexually motivated.

You admitted charge 2(b) that you met Person A without any clinical purpose, but denied that it was sexually motivated. The panel considered that you had clearly breached professional boundaries. The panel took into account Person A's evidence that you met her nine times, with sexual activity on six of those occasions. You did not deny this. The panel considered that your actions in charge 2(b) were sexually motivated.

The panel therefore found charge 3 **PROVED**

Submissions and decision on application under Rule 22(5)

At the commencement of your hearing resuming on 2 November 2020, and before findings of fact were handed down, you made submissions in relation to two points which you submitted amounted to procedural unfairness.

The first point related to the evidence of Ms 4. During your cross examination of Ms 4, she confirmed that Person B had made previous complaints against members of staff, including an allegation of rape. This was contrary to Ms 4's witness statement, which stated that Person B had not made previous complaints against other members of staff. You submitted that this undermines the NMC's case as, given the error in Ms 4's witness statement, you contend that the NMC investigators interfered with evidence in relation to Person B.

The second point related to what you said amounted to a failure by the NMC and the police to disclose a number of text messages between you and Person A. You said that there were three pages of relevant documents missing from the text messages initially provided at this hearing. You said that the evidence against you was badly presented and incomplete.

You submitted that in light of these two points, it is clear that the NMC and the police have failed in their investigations, have failed in their duty to disclose all relevant documentation, and have failed to present a fair case against you. You submitted that the panel therefore cannot be confident that there was no other critical evidence missing.

When asked by the legal assessor if you have any new evidence to put before the panel, you said that you had recorded a telephone conversation with Person A, during which she made reference to a text message that she sent to you stating that the orgasms you gave to her were amazing. You submitted that this confirms that Person A lied to the police during its investigation and perverted the course of justice. You submitted that the evidence clearly indicates that Person A was dishonest and that the NMC has failed to take that into account.

Mr Scott, on behalf of the NMC, submitted that, although you did not expressly articulate it in legal terms, your submissions amounted to an application to stay these proceedings because there were such egregious concerns in relation to fair process that the hearing should not proceed.

Mr Scott referred the panel to Rule 22(5) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Rules”), which states:

22(5) The Committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents

He further referred the panel to the NMC guidance on abuse of process.

Mr Scott acknowledged the anxiety felt by you during these proceedings. However, he submitted that there was no real basis behind your complaints.

In relation to your first point regarding Ms 4’s evidence in relation to Person B, Mr Scott drew the panel’s attention to witness statement of Mr 5 which sets out the NMC’s process for taking evidence from witnesses. He referred the panel to the transcripts of this hearing on 5 December 2019 when the explanation of how NMC witness statements were taken was a live issue, and when you decided not to take any further action. Mr Scott reminded the panel that Ms 4 signed and dated her witness statement and confirmed the truth of its content. Further, when asked by Mr Bellis at the commencement of her evidence if she could confirm the content of her statement, she did so.

Mr Scott submitted that your cross examination of Ms 4 was entirely proper, and revealed that Person B had made previous complaints against members of staff. The result of this was a finding of no case to answer on all charges to which she spoke. Mr Scott submitted that this adequately addressed the issue, and demonstrates the robustness and fairness of the hearing process.

Mr Scott submitted that it is very serious to suggest that the NMC intentionally sought to interfere with evidence in order to do damage to you. He submitted that the suggestion is made without any foundation or evidence.

In relation to your second point regarding failure to disclose text messages, Mr Scott submitted that the NMC has a duty to disclose any evidence that would assist or weaken its case. However, it has no duty to seek out evidence on your behalf. He reminded the panel that the text messages in question were not disclosed to the NMC by the police. The NMC is not responsible for the police's disclosure. The NMC was informed that the police had disclosed all relevant text messages and, when raised during this hearing, the NMC requested further information from Ms 1. Ms 1 answered questions about documents disclosed, and then did disclose further text messages after further investigation.

In relation to your submissions about further evidence to show that Person A made comments in relation to orgasms, Mr Scott submitted that it is unclear as to how this evidence would assist you or is relevant to the outstanding charges. The regulatory concern in the outstanding charges relates to professional boundaries, and the evidence you propose to submit does not appear to be relevant to this concern.

Mr Scott submitted that the panel had the benefit of hearing evidence of Patient A, and she was cross examined. This allowed the panel to assess her evidence and reliability. He submitted that it is not for the panel to examine conduct of the police during their criminal investigation. He submitted that there is therefore no need to call any further witnesses about what they disclosed and when.

Mr Scott submitted that, in light of the above, there has been no demonstrable impropriety in bringing this case against you.

The panel accepted the advice of the legal assessor, who referred to the case of *Haikel v General Medical Council* [2002] UKPC 37.

In relation to your first point, the panel noted that the evidence of Ms 4 relates to charges that have now fallen away. The panel understood your submissions to be that, because you were consumed by the charges relating to Person B, you could not focus on the charges in relation to Person A and did not have adequate time to prepare your case. The panel considered that any request for extra time was afforded to you by the panel, including an entire afternoon on day 6 of the hearing for you to prepare. You had not previously indicated that you needed additional time, or that you had been unable to prepare yourself for the hearing.

The panel has no evidence beyond your submission that the NMC interfered with the evidence of Ms 4, or any other evidence. It noted that Ms 4 signed her witness statement and confirmed the truth of its contents under oath. She submitted to cross examination and, ultimately, a finding of no case to answer in relation to the charges to which she spoke was made.

In relation to your second point, the panel considered that it is not for the NMC to direct the police. The police disclosed what they considered to be relevant. The panel accommodated further disclosure insofar as possible and considered that the matter of the text messages was fully explored. The panel took into account your submissions that there is additional material missing. However, it has heard evidence from Ms 1 in relation to the matter, and cannot direct police disclosure. The panel noted that, when questioned, you were unable to say what charge/s the text messages would go to. It was unclear as to what exactly you say is missing from the evidence, or how it would undermine the case against you. The panel was satisfied that the evidence it has heard throughout the course of this hearing is adequate to enable it to make a fair decision.

The panel did not consider that your proposed new evidence was relevant to any of the outstanding charges.

The panel considered your submissions in the context of an abuse of process application. It noted that the bar for finding abuse of process was a high one. It could

not identify any unfairness or impropriety in the NMC processes and determined to continue the proceedings.

Fitness to practise

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

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

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

Submissions on misconduct and impairment

Mr Scott, on behalf of the NMC, invited the panel to take the view that the facts found proved amount to misconduct. He referred the panel to parts of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) which he submitted had been breached. He submitted that the Code makes clear that a nurse should put the interests of patients first.

Mr Scott referred the panel in particular to the evidence of Mr 3, your line manager and a registered nurse, who set out what would have been proper behaviour for a nurse in your position in the circumstances of this case, and what went beyond that and breached professional boundaries. Mr Scott reminded the panel that you came into contact with Person A when she was admitted to Rathlin Ward because she was an unwell patient in need of nursing care. He submitted that each charge found proved breached the Code and was sufficiently serious to amount to misconduct. He

submitted that your actions in breaching professional boundaries fell seriously short of the standards that were expected of you and amounted to serious misconduct.

Mr Scott moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2007] EWHC 581 (Admin). Mr Scott submitted that limbs a, b and c in the test of Grant are engaged in this matter.

Mr Scott submitted that you have breached fundamental tenets of the profession and have brought the profession into disrepute. Further, your conduct fell far below the standards expected of a registered nurse and has damaged the reputation of the profession.

Mr Scott submitted that the panel must take into account evidence of any insight, remorse, and risk of repetition, and that current impairment is a matter for the panel's professional judgment.

Mr Scott submitted that you have not shown full insight into your conduct. He noted that you made frank admissions to the most serious charges against you at the outset of these proceedings, and you have given evidence at length. He submitted that, while those admissions demonstrate some insight, your insight is very limited. You spent a long time during these proceedings trying to discredit Person A, and have sought to discredit the evidence of Mr 3 throughout. When you reflected on the effects of your relationship between you and Person A, you focused on the negative impact it has had on you. He referred the panel to the transcripts of your evidence on 10 December 2019 in which you stated:

“You have given me an opportunity that somebody else can recognise that Person A is a liar, because my life has been destroyed by what she has done.”

Person A was admitted to Rathlin Ward for mental health problems and the physical effect that had borne on her. You were in a position of trust. In your evidence you spoke of how you viewed Person A as **[PRIVATE]** somebody who you could talk to about your problems. Mr Scott submitted that this demonstrates your lack of insight into the relationship you should have had with Person A, which was that you were providing care to a vulnerable patient.

Mr Scott submitted that there is a risk of repetition. He referred the panel to the transcripts of your evidence dated 10 December 2019 in which you said:

“I love Person A and notice the term I said, “Love”, not loved. If Person A phoned me right now, I would leave if she wanted me to.”

Mr Scott did remind the panel that your evidence was given almost one year ago, and that it must consider current, not past, impairment. He submitted that in light of your lack of insight or remediation there is a risk of repetition. Mr Scott submitted that your fitness to practise is currently impaired, and likely to remain impaired in the future.

Mr Scott invited the panel to make a finding of impairment on public protection grounds.

Given the nature and seriousness of your conduct, he also submitted that a finding of current impairment is required to declare and uphold proper professional standards and protect the reputation of the nursing profession.

You submitted that the majority of Mr Scott’s submissions were correct, except for the nature of your actions towards Person A and the honesty of Mr 3. You said that you agree that you have breached the code of conduct in the parts set out by Mr

Scott. You said that your attempt to discredit Person A was important to you to discredit her for accusing you of rape and being a sexual predator. You apologised and recognised that you are sometimes unable to express yourself. **[PRIVATE]**. You said that it was a funny coincidence that Person A and that staff nurse were friends, when they both made complaints against you.

You told the panel that your relationship with Patient A was highly unprofessional and harmful to her. However, it was never targeted and it was never intended to cause damage. You said that Person A was the only person that showed any interest in you **[PRIVATE]**. You said that you do not want to excuse your actions. You care too much about Person A. You said that it will not happen again. You have learnt that you hurt Person A and damaged her trust in professionals. You recognise that she thinks you targeted her and preyed on her when she was vulnerable.

You said that the most sexual conversation you had with Person A was on 10 June when she asked you in a text message when the last time you kissed someone was. You emphasised that you did not respond to that text. You said that the claim that you asked Person A sexual questions was ridiculous, but that you recognise that your contact with her was unprofessional.

You said that Mr 3 was a liar and that he lied under oath about Christmas presents and about not speaking to patients in their bedrooms. **[PRIVATE]**. You said that if you had better management you would have felt able to report your contact with Person A.

You told the panel that at the moment you would never have a personal relationship with a woman again, let alone have a relationship with a female patient. You said that you have dated other people who have used mental health services (but who were never under your care) in the past, and that you did not judge them for being a service user.

You recognised the damage that you did to the nursing profession, and that you overstepped professional boundaries. You said that, when it looks like a nurse has

abused their position of power to take advantage of an individual, it obviously affects the whole profession. People have to trust nurses, and if they cannot trust them, then a therapeutic relationship cannot be built up, and therapeutic care cannot be provided.

The panel accepted the advice of the legal assessor who referred it to the NMC Guidance and to Roylance v GMC (No.2) [2000] 1 AC 311, and the Grant case.

Decision and reasons on misconduct

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

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

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

2 Listen to people and respond to their preferences and concerns

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

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

To achieve this, you must:

3.3 act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it

3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care

4 Act in the best interests of people at all times

5 Respect people's right to privacy and confidentiality

As a nurse or midwife, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.

To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care

8 Work co-operatively

To achieve this, you must:

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

8.6 share information to identify and reduce risk

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event

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

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

13.2 make a timely referral to another practitioner when any action, care or treatment is required

13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards, taking prompt action to tackle the causes of concern if you can

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

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

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 you were in a position of trust and that Person A was a vulnerable patient under your care.

The panel was of the view that your actions breached fundamental tenets of the nursing profession. You abused your position of trust to pursue a relationship with a vulnerable patient. Person A was admitted to Rathlin Ward as a place of safety and was under your care at a time when she was vulnerable and in need of professional support. The panel considered that your actions breached professional boundaries over a prolonged period of time, and fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be professional 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 considered the test set out in the case of *Grant*. It considered that limbs a, b, and c were engaged and made the following findings: You did act in a way which fell significantly short of the expected standard of a nurse. You abused your position of trust and subjected Person A to unwarranted harm. The panel was satisfied that your actions brought the nursing profession into disrepute.

The panel also found that you had breached fundamental tenets of the nursing profession by breaching professional boundaries. The panel took into account that the issue under consideration is current impairment, and it paid particular regard to your submissions on impairment.

Regarding insight, the panel had regard to the fact that you made admissions to the most serious facts at the outset of these proceedings. **[PRIVATE]**. The panel noted that you now demonstrate remorse for your actions and recognised the damage you did to Patient A. You said it would never happen again, and acknowledged the damage you have done to the reputation of the nursing profession. However, the panel noted that you continued to attempt to discredit Mr 3, to attribute your behaviour to a lack of trust in senior management, and continued to deny sexual motivation in your relationship with Person A. You also appeared to continue to make suggestions that there was some collusion between Person A and a staff nurse who made a complaint about you because they were friends on Facebook, and that this collusion led to the charges against you. The panel considered that these proceedings were never about the conduct of Person A and Person B, but about your responsibility as a registered nurse. The panel found that you provided no real understanding as to why you acted the way that you did, what you have learnt from your actions and these proceedings, and what you would do differently if faced with a similar situation in future. Whilst the panel accepted that you did not intend to

harm Person A, it considered that you put your own emotional needs before your professional responsibilities and you continued to attribute blame for your behaviour to others. You sought to explain your behaviour by reference to your lack of support network of family and friends, and your feelings of loneliness and sadness at the relevant time.

In respect of remediation, the panel had no evidence that you have remedied your misconduct. You have not undertaken relevant training courses or demonstrated that you have a strategy in place to prevent similar situations arising in the future. The panel considered that your misconduct was serious and harmed Person A, your colleagues, and the nursing profession.

In light of its finding that your insight is limited, the panel was of the view that you had not fully recognised or remedied your misconduct. The panel accepted that these proceedings may have acted as a salutary lesson. However, in light of the fact that your insight into your misconduct is at an early stage, and that the misconduct is difficult to remediate, there remains a risk of repetition. The panel therefore determined 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 also required. Your misconduct was deliberate and prolonged, and carried out whilst in a position of trust. The panel considered that you have not provided a satisfactory understanding for your actions, and was not satisfied that you would not repeat them. You have called into question the reputation of the nursing profession and caused doubt as to whether nurses can be trusted. 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.

Submissions on sanction

Mr Scott set out the NMC's position with regard to the aggravating and mitigating features in this case. He informed the panel that you have been on an interim suspension order since October 2016. He submitted that the panel may wish to take that into account in its consideration of public interest and in that you have been unable to secure employment as a registered nurse during that period. However, he submitted that where a concern relates to public protection preceding interim orders will be less likely to be of relevance.

Mr Scott reminded the panel that Person A was a vulnerable patient, suffering from both mental and physical health problems. She was admitted to Rathlin Ward to be cared for. Mr Scott referred to the panel's findings that you took advantage of your position of trust to further your own interests by embarking on a relationship with Person A. He submitted that your misconduct was deliberate and prolonged, and was carried out whilst in a position of trust. Your actions subjected Person A to unwarranted harm. Mr Scott further referred to the panel's finding that there was a risk of repetition of your misconduct.

Mr Scott referred the panel to the NMC's Sanctions Guidance ("SG") on cases involving sexual misconduct, and the guidance produced by the Professional Standards Authority referred to within that document.

Mr Scott invited the panel to impose a striking-off order in light of the seriousness of your misconduct and the risk of repetition identified.

You gave oral evidence. You said that you have been honest since the beginning of these proceedings and have told the truth at all times. You said that, being realistic, a striking off order is the only reasonable sanction the panel can impose.

You do disagree with some of the comments in the panel's decision, but you do agree that it was inappropriate to have a relationship with Person A. You cannot pretend that anything other than a striking off order would be appropriate. However,

you said that the panel may wish to take into account the four year interim suspension order that has been in place on your practice.

You explained to the panel your personal circumstances throughout the last four years and how they have impacted on your decisions and actions. You said that the idea that you would repeat your misconduct is bizarre beyond belief. You have heard that you did not reflect enough during this process, and acknowledge this as a failing. However, you said that this was not intentional or arrogant, it is just not a skill that you are brilliant at.

You said that, even if you were kept on the register, you doubt you would ever work as a nurse again. You would be too concerned that another false complaint would be made against you, as with the allegations made against you by Person B. You said that all of these events resulted from the allegations that Person B made against you, because if you had not been under the stress caused by those allegations, your choices would have been different. You did not seek to excuse your actions and apologised for your conduct during these proceedings **[PRIVATE]**.

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:

- Person A was a vulnerable patient

- You used confidential information obtained in the course of her treatment, namely her telephone number, to your advantage
- You abused your position of trust
- You deliberately cultivated an empathetic relationship with Person A over a period of time
- Your actions were prolonged over a period of time, whilst Person A was an in-patient and after she was discharged

The panel also took into account the following mitigating features:

- You made early admissions to the most serious charges
- You were going through difficult personal circumstances **[PRIVATE]** at the time of events
- You have demonstrated some developing insight
- You apologised for your behaviour and the impact it had on the nursing profession

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. 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 *‘there’s no risk to the public or to patients requiring the nurse or midwife’s practice to be restricted, meaning the case is at the lower end of the spectrum of impaired fitness to practise.’* The panel considered that your misconduct did present a risk to patients, and was not at the lower end of the spectrum. It therefore determined that a caution order would be inappropriate. 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 of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not related to clinical practice and as such is not something that can be addressed through retraining. The panel took into account the SG, which states that a conditions of practice order may be appropriate where:

- *identifiable areas of the nurse or midwife's practice in need of assessment and/or 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*
- *conditions can be created that can be monitored and assessed.*

The panel considered how it might deal by way of conditions with the risks it has identified. It identified a risk of repetition and what appears to be an attitudinal issue which involved a repeated pattern of behaviour that you have not been able to fully acknowledge. The panel decided that it was not able to formulate conditions that would be realistic, workable, sufficient and proportionate to protect the public and maintain confidence in the profession and the regulator.

The panel then went on to consider whether a suspension order would be an appropriate sanction and took into account the SG which stated that a suspension order may be appropriate in cases of:

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of repetition of behaviour since the incident
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The panel was not satisfied that these factors apply to you, and considered that your actions were a significant departure from the standards expected of a registered

nurse. The panel found that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with a suspension order in this case. Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following from 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 had regard to the SG and found that the following features indicating seriousness were engaged in this case:

- Abuse of position of trust;
- Harm caused to patients;
- Relationships with patients in breach of guidance on clear sexual boundaries.

Accordingly, the panel concluded that your misconduct was extremely serious, and the panel was not satisfied that it would not be repeated. The panel considered that you lack a fundamental understanding of the significance and importance of professional boundaries, and lack a real awareness of the harm caused to Person A and your colleagues by your actions.

The panel was of the view that your actions were so deplorable that to allow you to continue to practise would undermine public confidence in the profession and in the NMC as a regulatory body. The panel considered that the public would be extremely concerned to know that a registrant who had breached professional boundaries in such a serious way was entitled to practise as a registered nurse in any capacity.

The panel concluded that your actions are fundamentally incompatible with remaining on the register.

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

Application to reopen sanction

Upon being provided with the panel's determination on sanction, but prior to reading it, you made an application to reopen the case on the grounds that you wished to present further documentation. **[PRIVATE]**. Due to technical issues neither the records nor the report were received by the NMC. However, it is accepted that you did send them over night.

You said that, if you had received support from your employer around the time of the events in question, you would have been better equipped to deal with **[PRIVATE]** the false investigation brought against you by the Trust.

[PRIVATE]. You had poor judgment due to your poor upbringing, and your actions were not deliberate or intentional.

[PRIVATE].

Mr Scott submitted that the panel heard final submissions yesterday and retired to make its decision, **[PRIVATE]**. Mr Scott submitted that it is a matter for the panel to assess whether it wishes to reopen sanction. **[PRIVATE]**. Mr Scott submitted that, while the report may help to illustrate information already received by the panel, it does not do anything to affect the NMC's submissions in relation to sanction.

The panel accepted the advice of the legal assessor, which included reference to the case of *TZ v GMC [2015] EWHC 1001 (Admin)*.

The panel took into account the documents provided by you and determined that it had already accepted your oral evidence in relation to your **[PRIVATE]** personal circumstances in considering sanction.

In doing so it had identified the fact that you were suffering from health problems at the time of the events as a mitigating feature.

[PRIVATE]. Having done so it determined that it introduced no new evidence but did support the evidence of your difficult personal circumstances which you had already given and which was also taken into account in considering mitigation.

The panel having carefully considered the documents, your submissions and those of Mr Scott found no reason to change its decision that you should be struck off the Nursing Register.

Determination on interim order

The panel considered the submissions made by Mr Scott that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. He submitted that an interim suspension order for a period of 18 months would be appropriate in the circumstances.

You told the panel that you will be appealing its decision on a number of grounds. You said that the panel has ignored evidence and failed to recognise the dishonesty of witnesses, namely the lies of Person A, Mr 3 and the police. Regarding the application for an interim order you said that you understood it and did not have any issues with it.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.