

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

**Substantive Meeting
Tuesday 23 August 2022
Thursday 25 August 2022
Friday 26 August 2022**

Virtual Meeting

Name of registrant: **Megan Hackney**

NMC PIN: 15G1002E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing L1 – September 2015

Relevant Location: Hounslow

Type of case: Misconduct

Panel members: Sadia Zouq (Chair, lay member)
Georgina Witherow (Registrant member)
Robert Fish (Lay member)

Legal Assessor: Cyrus Katrak

Hearings Coordinator: Shela Begum

Facts proved: 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m(i),
1m(ii), 1m(iii), 1n, 1o, 1p, 1q, 1r, 1s and 2

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Miss Hackney was not in attendance and that the Notice of Meeting had been sent to Miss Hackney's registered email address by secure encrypted delivery on 13 July 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

In the light of all of the information available, the panel was satisfied that Miss Hackney has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a registered nurse:

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - a) Entered into a relationship with Patient A.
 - b) Looked Patient A up and down and winked at her.
 - c) Requested to be Patient A's named nurse.
 - d) Requested to be on Patient A's floor in order to be near her.
 - e) Shared grapes with Patient A, describing it as a 'grape date'.
 - f) Touched your foot against Patient A's leg under the table.
 - g) Told Patient A that you loved her.
 - h) Kissed Patient A on the lips.
 - i) Placed your foot near Patient A's bottom and lifted her top up.
 - j) Told Patient A you wanted to be her girlfriend.
 - k) Told Patient A you were saving money to buy a flat for you and Patient A.
 - l) Told Patient A you needed her bank details in order to set up home together.

- m) Sent text messages to Patient A including:
 - i. 'Can't wait till next birthday when we can be together celebrating. I love you and I am proud of you, you are my favourite person in the world xxxx'
 - ii. 'You are still the one for me'.
 - iii. 'Can't sleep. Thinking about how much I love you'.
 - n) Had frequent mobile telephone contact with Patient A without clinical justification.
 - o) Obtained Patient A's bank details without clinical reason.
 - p) Shared personal information about your family with Patient A.
 - q) Accepted gifts of perfume and jewellery from Patient A.
 - r) Informed Patient A that you had moved to [the House] in order that you could 'check up' on her.
 - s) Told Patient A you would kill yourself if she told anyone about the relationship.
2. Your actions in charges 1) a), b), c), d), e), f), g), h), i), j), k), l), m) i), ii) and iii) above were sexually motivated

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

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC and from information from Miss Hackney.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Service Lead, [the Group]

- Witness 2: Hospital Director and Registered Manager, [the Group]
- Witness 3: Patient A

Background

The charges arose whilst Miss Hackney was employed as a registered nurse by the Group. Miss Hackney was referred to the NMC by the Hospital Director whilst she was working as a charge nurse at [Location 1] and [Location 2] which are part of the Group.

The charges relate to concerns that arose between October 2018 and March 2019 whilst Miss Hackney was working as the named nurse for [a patient] 'Patient A'. It is alleged that Miss Hackney had a relationship with Patient A that breached professional boundaries.

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

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

Charge 1a

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - a) Entered into a relationship with Patient A.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Patient A and Witness 1.

The panel noted that Patient A's statement read:

“it was scary at first but I guess maybe it was because [Miss Hackney] was interested in me and I hadn’t had that before...

...When she came into work, she obviously knew what happened and started kicking off with the reception that I had to be moved back into the ward as she wanted to see me...

...She started to tell me how much she loved me. I didn’t know how to react and just stared at her...

... As I was putting the clothes in the washing machine, I turned and [Miss Hackney] just kissed me on my lips...

... Whilst I was bending down to get my stuff to pack, she started to put her foot up near my bum and then started moving it upwards lift my top from the back...

... [Miss Hackney] was quite sad when I was leaving, so I gave her the number for [Location 2] and told her to call me there and tell the staff to pretend to be my sister so she could speak with me...”

The panel further noted that Witness 1’s statement read:

“The registrant added that she just wanted it all to stop. She knew that Patient A had told someone on the ward about their relationship and she was scared of losing everything in particular her career, and knew that it was not something that she should have been engaging in.

The registrant said that she had wanted to end the relationship because she had found a new boyfriend but this was not an excuse for telling Patient A that she had taken tablets indicating that she was self-harming.”

The panel had regard to the local investigation summary which took place at the [House] dated 22 March 2019. It stated:

“During the interview I produced the evidence to [Miss Hackney] which had concluded that she had told Patient A she ‘loved her’. [Miss Hackney] said she did tell Patient A this.

During the investigation interview [Miss Hackney] had advised that she wanted to end the relationship with Patient A, however she had stated she didn’t know how.”

The panel had regard to the investigation meeting minutes dated 21 March 2019 which was consistent with the investigation summary. However, the panel noted that Miss Hackney stated that she felt that Patient A “*was obsessed with her*”. The minutes state “*[Miss Hackney] had voiced her concerns to the nursing team that [Patient A] was attracted to her. [Miss Hackney] said that she felt her being [Patient A]’s named nurse would make things worse*”.

The panel had regard to the written statement of Witness 2 which stated:

“On 4 April 2019, I met with [Miss Hackney] to conduct the disciplinary hearing. [Miss Hackney] admitted having contact with but denied having any sexual contact with her.”

The panel determined that, based on the evidence before it, Miss Hackney’s relationship with Patient A went well beyond the therapeutic relationship between a registered nurse and patient. The panel further determined that based on the evidence before it, on the balance of probabilities, Miss Hackney did enter into a relationship with Patient A that breached professional boundaries.

Charge 1b

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - b) Looked Patient A up and down and winked at her.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Patient A.
The statement read:

“I met Megan at [Location 1] after 6 months of being there. I had just come out of the shower, fully dressed when I saw her for the first time, she was being shown around the place as she had just joined. I remember she looked me up and down, and then winked at me. there was another patient in there with me and she was like ‘that nurse just checked you out!’”

The panel noted that it only had Patient A’s account in relation to this charge and that there was no information from Miss Hackney in relation to this. The panel concluded that on the balance of probabilities Miss Hackney did look Patient A up and down and wink at her. The panel was satisfied that Patient A’s statement was able to provide a detailed account of what had occurred in relation to this charge. Further, the panel determined that Miss Hackney’s actions in charge 1b did breach professional boundaries.

Charge 1c

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - c) Requested to be Patient A’s named nurse.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Patient A.

It stated:

“Megan was working at [Location 1] as a mental health nurse but then later she asked if she could be my primary nurse. This was after a month of getting to know me; she had been spending time with me during her first month...”

The panel determined that based on the evidence before it, Miss Hackney did request to be Patient A's named nurse. It then went onto consider, whether this is a breach of professional boundaries.

The panel is of the understanding that typically nurses may request to be a named nurse for a patient if they have had a long-standing therapeutic relationship with the patient and the patient's health or recovery requires a complex level of care. The panel considered that Miss Hackney did not have a long-standing therapeutic relationship with Patient A as Patient A described only having known Miss Hackney for a month and further, having been relatively new to the employer.

The panel is of the view that on its own, requesting to be a patient's named nurse does not breach professional boundaries. However, the panel considered the context of this case, and the findings made and determined that in the context of the situation and on the balance of probabilities, Miss Hackney did breach professional boundaries. The panel concluded that there was not a clear medical reason that the request to be Patient A's named nurse was made.

Charge 1d, 1e and 1f

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - d) Requested to be on Patient A's floor in order to be near her.
 - e) Shared grapes with Patient A, describing it as a 'grape date'.
 - f) Touched your foot against Patient A's leg under the table.

These charges are found proved.

In reaching this decision, the panel took into account the written statement of Patient A.

The statement read:

“Megan used to do day shifts initially but after a while she changed to night shifts. She had even asked to be placed on my floor level so that she would always be with me...

...On one occasion, it was about 2 am, Megan and I were in the lounge and she asked me to go and sit next to her. I recall the agency staff were in the office and other two staff were on break. I went and sat next to her and she asked me to go to my bedroom and get some grapes which I had kept in there. I went into get them and when I brought them out, I broke one off from the bunch and threw it at her. She then started to chase me around the lounge playfully and then called it our ‘first grape date’. It was after that we became closer in the sense she would start playing footsie with me under the table during our 1:1’s; she would put her foot under the table whilst talking to me and then push it up my leg. It was scary at first but I guess maybe it was because she was interested in me...”

The panel considered that it only had regard to Patient A’s account to charges 1d, 1e and 1f.

In relation to charge 1d, the panel considered that Patient A informs that Miss Hackney made a request to be on Patient A’s floor and that her interpretation of this request was that it was in order to allow Miss Hackney to be near Patient A. The panel determined that on the balance of probabilities, it is more likely than not, that Miss Hackney did request to be on Patient A’s floor in order to be near the patient. The panel could not be satisfied for an alternative reason for the request being made.

The panel next considered charge 1e, and it noted that Patient A was able to provide a detailed account of the ‘grape date’ including how it was initiated. The panel concluded that based on the evidence before it, it is more likely than not that Miss Hackney did share grapes with Patient A and described it a ‘grape date’.

In relation to charge 1f, the panel had regard to Patient A’s statement. The panel noted that Patient A describes Miss Hackney touching her leg under the table as ‘playing footsie’. The panel concluded that on the balance of probabilities, Miss Hackney did touch Patient A’s leg under the table. The panel further considered that Miss Hackney was described to

have touched Patient A's leg under the table during a 1:1 and so would not require any physical contact.

The panel is of the view that Mis Hackney's actions in charges 1d, 1e and 1f breached professional boundaries. The panel considered that her actions go beyond the realms of a therapeutic relationship and did not demonstrate appropriate professional nursing conduct.

Charge 1g

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - g) Told Patient A that you loved her.

This charge is found proved.

In reaching this decision had regard to Patient A's written statement which read:

'...[PRIVATE]. She started to tell me how much she loved me. I didn't know how to react and just stared at her...'

The panel considered that Patient A was able to provide a detailed account in relation to this charge. Further the panel noted that this was consistent with the statement of Witness 1 which states:

"The registrant stated that she was going through a really hard time in her personal life and had told Patient A that she loved her, but she never meant it in a relationship context."

The panel also had regard to the investigation summary notes dated 22 March 2022 which stated:

"During the interview I produced the evidence to Megan which had concluded that she told Patient A she 'loved her'. Megan stated she did tell Patient A this."

The panel concluded, based on the evidence before it, which included admissions made by Miss Hackney during the Group's local investigation, that she did tell Patient A that she loved her and further that this does breach professional boundaries.

Charge 1h

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - h) Kissed Patient A on the lips.

This charge is found proved.

In reaching this decision, the panel took into account Patient A's written statement which states:

"[PRIVATE]... Megan assisted me to the laundry room. As I was putting the clothes in the washing machine, I turned, and Megan just kissed me on my lips... That was the first and only time we had ever kissed"

The panel considered that Patient A provides a detailed account of what occurred when she described Miss Hackney to have kissed her. The panel noted that Witness 1's written statement informs the panel that Miss Hackney denies having kissed or any physical contact:

"The registrant disclosed that she had speaking with Patient A for a number of months and maintained that they had never been in a relationship, kissed not ever touched each other in a sexual way."

The panel had regard to the investigation meeting minutes dated 21 March 2019 which set out that Miss Hackney continued to deny the kiss ever having happened.

The panel considered that Patient A was able to provide a clear and detailed account of what had occurred. The panel considered the context of the case and it determined that on

the balance of probabilities, it is more likely than not that Miss Hackney did kiss Patient A on the lips. The panel further determined that this does breach professional boundaries.

Charge 1i

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - i) Placed your foot near Patient A's bottom and lifted her top up.

This charge is found proved.

In reaching this decision, the panel had regard to Patient A's statement which stated:

'... Whilst I was bending down to get my stuff to pack, she started to put her foot up near my bum and then started moving it upwards lift my top from the back...'

The panel considered that Patient A was able to clearly recall and record the incident during which this occurred. The panel concluded that it is more likely than not that this did occur and further it determined that Miss Hackney's actions in charge 1i did breach professional boundaries.

Charge 1j

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - j) Told Patient A you wanted to be her girlfriend.

This charge is found proved.

In reaching this decision, the panel took into account Patient A's statement which read:

"When I got to [Location 2], she called me and whilst speaking to me she asked me why I moved away from her when I was packing my stuff in the bedroom at [Location 1]... She then said that she wanted to be my girlfriend"

The panel noted that it only had regard to Patient A's account of this incident but considered that Patient A's account clearly sets out the details of the incident. The panel therefore concluded that Miss Hackney did tell Patient A that she wanted to be her girlfriend and further it determined that this breaches professional boundaries.

Charge 1k and 1l

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - k) Told Patient A you were saving money to buy a flat for you and Patient A.
 - l) Told Patient A you needed her bank details in order to set up home together.

These charges are found proved.

The panel had regard to Patient A's written statement which stated:

"Megan also started to say that she was saving some money to buy a flat for the two of us. She told me that she was putting away £2000 a month from her salary for the place but I needed to get the pots and pans for it so I would have to transfer her some money or just pay for them..."

I did share my card/account details with her for these reasons but I don't think she withdrew anything."

The panel considered that Patient A provides clear details about the conversation during which she describes Miss Hackney to have told her that she was saving money to buy a flat for the both of them and requesting Patient A's bank details. The panel determined that based on the evidence before it, it is more likely than not that charge 1k and 1l are found proved. The panel further determined that Miss Hackney's actions in these charges do breach professional boundaries.

Charge 1m

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - a) Sent text messages to Patient A including:
 - i. 'Can't wait till next birthday when we can be together celebrating. I love you and I am proud of you, you are my favourite person in the world xxxx'
 - ii. 'You are still the one for me'.
 - iii. 'Can't sleep. Thinking about how much I love you'.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Patient A, and the documents evidencing the text messages exchanged between Patient A and Miss Hackney.

The panel had regard to a message that was sent from Miss Hackney to Patient A on 11 October 2018 at 10:40pm which stated:

"Happy birthday princess I know its and hour early but I'm going... wake up to a message. Can't wait till next birthday when we can be together celebrating. I love you and I am proud of you, you are my favourite person in the world xxxx"

The panel also had regard to a text message that was sent on 26 November 2018 at 23:06 which stated: *"You are still the one for me"*.

The panel had regard to the third message as set out in Charge 1)a)iii. The text read *"I Can't sleep. Thinking about how much I love you"*.

The panel noted that this text was dated 7 December 2019 which falls outside the period as set out in charge 1. The panel considered that the documents which evidence the text messages were not direct screen captures but were a copy and paste of them and the dates were entered in. The panel had regard to texts exchanged on 11 October 2018, 26 November 2018, 1 December 2018, 3 December 2018, 7 December 2019, 25 December 2018, 18 March 2019 and a further two dates. The panel considered that on the balance of

probabilities, as the evidence of the text messages were set out in chronological order, the messages as set out in Charge 1a)iii were more than likely than not to have been sent on 7 December 2018.

The panel had regard to the investigation summary which stated:

“Megan had confirmed that this had been her number and that she had sent the text messages but denied she was in a relationship with Patient A.”

The panel find these charges proved and further it determined that they do breach professional boundaries.

Charge 1n

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - n) Had frequent mobile telephone contact with Patient A without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Patient A, Witness 1 and the

The panel noted that Patient A’s statement states:

“Whilst I was at [Location 2] I got a mobile phone for myself and gave Megan my number. She would call me about 5/6 times a day... [she] was being very careful and didn’t give me her number till.... She was comfortable to share it and felt that she could trust me.

... She continued to call me like 6/7 times a day to see how I was and chat.”

The panel had regard to Witness 1’s statement which read:

“I asked the registrant to confirm her previous number which she did... These were the same contact details of those that had been in contact with Patient A.

The registrant admitted that Patient A had given her number to the registrant...”

The panel also had regard to the investigation meeting summary notes which stated:

“[Miss Hackney] replied that when [Patient A] had left to go to [Location 2] she had given [Miss Hackney] the ward number and she had telephoned to check that [Patient A] was okay.”

The panel concluded that Miss Hackney more than likely did have frequent mobile telephone contact with Patient A and further, based on the evidence of Patient A’s statement, that there was not a clinical justification for these phone calls taking place. The panel therefore concluded that Miss Hackney’s actions in this charge breaches professional boundaries.

Charge 1o

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - o) Obtained Patient A’s bank details without clinical reason.

This charge is found proved.

The panel had regard to Patient A’s statement which stated:

“I did share my card/account details with her for these reasons but I don’t think she withdrew anything.

The only time Megan accessed my account, I think, [PRIVATE]... as I had given her my card details to buy them for me...”

The panel had regard to the investigation meeting summary notes which stated:

“The receipt I showed Megan.. [PRIVATE].. stated she paid approx. £30/ £40 for. Megan had stated that she in fact bought some items for Patient A...

...During her interview I had asked why she would have bank details that had belonged to a patient. Megan had advised me that Patient A had asked her to write them down in case the Patient had forgotten them.”

The panel determined that Patient A’s account of this charge is consistent with the findings contained within the investigation meeting summary. The panel therefore concluded that Miss Hackney did obtain Patient A’s bank details and the panel was not satisfied that there was any clinical justification for this. The panel considered that there are no circumstances where it would be appropriate for a nurse to obtain their patients bank details.

The panel further determined that Miss Hackney’s actions in this charge breach professional boundaries.

Charge 1p

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - p) Shared personal information about your family with Patient A.

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Witness 1.

The statement explains that Miss Hackney informed Witness 1 that she built a rapport with Patient A after finding out that they had similar familial circumstances. The statement informs the panel that Miss Hackney stated: *“Patient A was just somebody that she could talk to”* and that she had become close to Patient A due to having gone through similar difficulties.

The panel therefore concluded that this charge is found proved. The panel determined that it is more likely than not that Miss Hackney did share personal information about her family with Patient A and that this breaches professional boundaries.

Charge 1q

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - q) Accepted gifts of perfume and jewellery from Patient A.

This charge is found proved.

The panel considered that Patient A's statement stated:

"I had bought her a... [PRIVATE] Perfume [PRIVATE] and a [PRIVATE] Ring"

The panel noted that Patient A's details of this incident is the only account of this that it has before it. The panel determined that there is nothing disputing that Patient A bought perfume and jewellery for Miss Hackney and that Miss Hackney accepted these as gifts.

The panel therefore determined that it is more likely than not that Miss Hackney did accept gifts of perfume and jewellery from Patient A and further that this breaches professional boundaries.

Charge 1r

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - r) Informed Patient A that you had moved to [the House] in order that you could 'check up' on her.

This charge is found proved.

In reaching this decision, the panel took into account Patient A's statement which states:

“Not long before I had left [Location 1], Megan told me she had moved to work at [the House]... so that she could check up on me. I asked why she needed to check up on me and how she was doing this to which she said that she could tell how I was doing via the notes she had access to on the system.”

The panel considered that Patient A was able to provide a detailed account of this charge. The panel concluded that on the balance of probabilities, it is more likely than not that Miss Hackney did inform Patient A that she had moved to [the House] in order to ‘check up’ on Patient A. The panel determined that this does breach professional boundaries.

Charge 1s

1. Between October 2018 and March 2019, breached professional boundaries in that you:
 - s) Told Patient A you would kill yourself if she told anyone about the relationship.

This charge is found proved.

In reaching this decision, the panel took into account the statement of Witness 1 and Patient A.

Witness 1’s written statement states:

“I asked the registrant, as a registered nurse, why she had texted Patient A in the early hours and told her that she had taken some tablets. The registrant responded that she wanted to be left alone by Patient A as she was in a relationship with someone else and that she just wanted it all to go away.”

The panel had regard to the investigation meeting minutes which was consistent with Witness 1’s statement. The panel noted that during the meeting Miss Hackney was addressed on this and she responded *“I’m not right”*.

Patient A's statement stated:

"Other times she would screw with my head is when she used to say if I ever told anyone about our relationship she would kill herself. [PRIVATE]."

The panel determined that this charge is found proved. The panel noted that the documentary evidence is consistent with the statement of Witness 1 and patient 1. The panel therefore concluded that on the balance of probabilities, it is more likely than not that you did tell Patient A that you would kill yourself if she told anyone about the relationship. The panel determined that this breaches professional boundaries.

Charge 2

2. Your actions in charges 1) a), b), c), d), e), f), g), h), i), j), k), l), m) i), ii) and iii) above were sexually motivated

This charge is found proved.

In reaching this decision, the panel took into account the documentary evidence before it.

The panel concluded that Miss Hackney's actions in charges 1b, 1e, 1f, 1g, 1h, 1i, 1j, 1m(i) 1m(ii), and 1m(iii) were sexually motivated in that in all the circumstances these actions were motivated by sexual gratification or a desire for a future relationship. The panel determined that there was no plausible or alternative explanation provided. The panel considered that a reasonable member of the public, fully informed of the facts and context of this case, would arrive at the same conclusion.

In relation to charges 1a, 1c, 1d, 1k, 1l, the panel considered that the relationship took place over several months and Miss Hackney's actions during this period towards Patient A were inappropriate and went well beyond the patient and nurse relationship. The panel determined that there was no plausible or alternative explanation provided. Taking into account all of the other circumstances in this case the panel concluded that Miss Hackney's actions in respect of these charges were sexually motivated for sexual

gratification or desire for a future relationship and that a reasonable member of the public, fully informed of the facts and context of this case, would arrive at the same conclusion.

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 Miss Hackney's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

Representations on misconduct and impairment

The NMC 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.

The NMC identified the specific, relevant standards where Miss Hackney's actions amounted to misconduct. The NMC states:

"16. The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:

[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances’.

As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively ‘[Misconduct] connotes a serious breach which indicates that the doctor’s (nurse’s) fitness to practise is impaired’.

And

‘The adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner’.

17. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council’s Code of Conduct.

18. We have taken account of the case of Professional Standards Authority v HCPC & Wood [2019] EWHC 2819 (Admin) in which it was said – ‘A person who gives a false or misleading account of actions and events when first confronted with allegations of wrongdoing is highly likely to be a person who does not understand the importance of his professional responsibilities. It is more than a matter of honesty and integrity. A lack of candour might, depending on the circumstances, call into the question the fitness of the individual to hold a position of trust and responsibility’.

19. We consider the following provision(s) of the Code have been breached in this case;

20. At all relevant times, the Registrant was subject to the provisions of The Code:

Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code') which includes the following:

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

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

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

21 Uphold your position as a registered nurse, midwife or nursing associate

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

21. We consider the misconduct serious because the Registrant breached professional boundaries with Patient A who is a highly vulnerable patient."

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Miss Hackney's fitness to practise impaired. In relation to impairment The NMC states:

"Impairment

22. *We consider the following questions from the case of Grant can be answered in the affirmative both in respect of past conduct and future risk:*

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

2. *has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*

3. *has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future*

4. *has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

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23. *We consider the Registrant has displayed some insight.*

24. *We take this view because following the Registrant submitted a reflective piece and undertook further training relevant to professional boundaries.*

25. *We consider the Registrant has undertaken the following training on 19 April 2019 in respect of the issues of concern:*

a) *Professional boundaries in health and social care level 2- continuing professional development online course*

26. *[PRIVATE].*

27. *We consider there is a continuing risk to the public due to the Registrant's lack of full insight and having not had the opportunity to demonstrate strengthened practice through work in a relevant area.*

28. *It is submitted that a finding of impairment is necessary on public protection grounds.*

29. *We consider there is also a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior[sic]. The Registrant's conduct engages the public interest because the Registrant's inappropriate relationship with a vulnerable patient is serious and bring the nursing profession into disrepute. The public rightly expect nurses to*

demonstrate the skills and knowledge fundamental to a nursing practice, ensuring that those standards are upheld and adhered to. A finding of impairment is thus also essential to maintain public confidence in the profession.”

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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.’

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 Miss Hackney’s actions did fall significantly short of the standards expected of a registered nurse, and that Miss Hackney’s actions amounted to a breach of the Code. Specifically:

20 Uphold the reputation of your profession at all times

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

20.2 act with honesty and integrity at all times, [...]

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

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

21 Uphold your position as a registered nurse, midwife or nursing associate

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

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 Miss Hackney's actions as set out in the charges breached professional boundaries and fundamental tenets of nursing. The panel is of the view that her actions are deplorable and demonstrate a serious departure from the standards expected of a registered nurse. The panel noted that the charges found proved relate to Miss Hackney's conduct towards a vulnerable [PRIVATE] patient whom she was the named nurse for. The panel considered that in all the circumstances, there was the potential for a serious risk of harm to the patient.

The panel had regard to the statement of Witness 2 which stated:

"She was doing this to a vulnerable patient who was [PRIVATE]. I appreciated what her representative was saying but whether she is a nurse or a charge nurse she still had a code of conduct to follow. It was against the policy and the NMC code of Conduct, which includes being aware of professional boundaries and trust. I remember she didn't say much about this – was more the union rep who was replying about her private life being unstable.

Megan was familiar with the policies within the Home in particular to breaching professional boundaries which is at exhibit VG/05 it is all one during their induction, besides it is protocol as a professional. It is the golden saying throughout university/professional training and even within [the Group]. You just do not get involved with patients even if you feel under pressure/threatened or manipulated."

The panel found that Miss Hackney's actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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/their fitness to practise is impaired in the sense that S/He/They:

- 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 Patient A was put at risk of emotional harm as a result of Miss Hackney's misconduct. The panel considered that Patient A was a particularly vulnerable [PRIVATE] patient who, at the time, was receiving medical treatment under the care of Miss Hackney. The panel considered the real risk of serious harm that this placed the patient in. Miss Hackney's misconduct had breached the fundamental tenets of the nursing profession and has brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Hackney did not demonstrate sufficient insight into her misconduct and the potential negative implications of her actions on the patient in her care. Further, the panel noted that in the local investigation, Miss Hackney had denied a number of the actions as set out in the charges and when confronted with evidence, subsequently made admissions. The panel had regard to the documentation which suggests that Miss Hackney accepted her conduct was wrong, however there was no indication she understood the consequences of her actions. The panel is not satisfied that Miss Hackney has demonstrated an understanding of how her actions placed Patient A at an unwarranted risk of harm or an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel did not have any information before it from Miss Hackney to address how she would handle situations differently in the future.

The panel carefully considered the evidence before it in determining whether or not Miss Hackney has taken steps to strengthen her practice. The panel took into account that the actions are attitudinal in nature and can be more difficult to remediate or more specifically demonstrate steps of remediation. The panel noted that in the NMC's statement of case, that Miss Hackney undertook training in relation to professional boundaries on 19 April 2019 to address the concerns. In the absence of Miss Hackney's engagement with these proceedings, the panel was unable to assess the depth and extent of this training or how Miss Hackney would apply it to her nursing practice.

The panel is of the view that there is a risk of repetition of similar conduct based on Miss Hackney's lack of insight into the misconduct and the lack of evidence of remediation. The panel therefore concluded that a finding of impairment is necessary on the grounds of public protection.

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

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

Having regard to all of the above, the panel was satisfied that Miss Hackney's fitness to practise is currently impaired on public protection and public interest grounds.

Sanction

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

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

Representations on sanction

The panel noted that in the Notice of Meeting, dated 13 July 2022, the NMC had advised Miss Hackney that it would seek the imposition of a striking off order if it found Miss Hackney's fitness to practise currently impaired.

The NMC states:

“Sanction

30. We consider the following sanction is proportionate:

Striking off order.

31. With regard to our sanctions guidance the following aspects have led us to this conclusion:

32. In light of the public protection issues in this case we consider imposing a suspension order would be insufficient to protect the public.

33. It is submitted that there is potential for serious patient harm and the Registrant's conduct is incompatible with continued registration.”

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Potential financial impropriety;
- Abuse of a position of trust;
- Premeditated conduct which took place over a several months;
- Lack of insight;
- Lack of remorse; and
- Conduct which put a vulnerable patient at risk of suffering emotional harm.

The panel could not be satisfied that there were any mitigating features in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view its findings on misconduct and impairment. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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

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

The panel then went on to consider a suspension order. It considered the factors listed in the SG which state when a suspension order may be an appropriate sanction. The panel had already concluded that the misconduct represented a very serious departure from the standards expected of a registered nurse, it was not a single instance of misconduct but multiple instances over a period of time. The misconduct is attitudinal and deep seated and, in the absence of insight and remediation, there was a significant risk of repetition of the misconduct. The panel concluded that in Miss Hackney's case, a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

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

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

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

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

The panel also considered that the striking off order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public

and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Miss Hackney in writing.

Interim order

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

Representations on interim order

The panel took account of the representations made by the NMC. The NMC states:

"Interim Order Consideration

34. If a finding is made that the Registrant's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.

35. If a finding is made that the Registrant's fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible with continued Registrant we consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest."

Decision and reasons on interim order

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

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

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

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

That concludes this determination.