

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

**Substantive Hearing  
20 – 23 September 2021 & 7- 9 March 2022**

Virtual Hearing

<b>Name of registrant:</b>	Maureen Hamilton
<b>NMC PIN:</b>	76E0014E
<b>Part(s) of the register:</b>	Registered Nurse Adult (1979)
<b>Area of registered address:</b>	West Sussex
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Philip Sayce (Chair, registrant member) Caroline Healy (Registrant member) Carolyn Tetlow (Lay member)
<b>Legal Assessor:</b>	Mark Sullivan
<b>Panel Secretary:</b>	Leigham Malcolm
<b>Nursing and Midwifery Council:</b>	Represented by Ms Leeann Mohamed (20 – 23 September 2021) & Ms Zahra Evans (7 March 2022), NMC Case Presenters
<b>Ms Hamilton:</b>	Not present and not represented in her absence
<b>Facts proved:</b>	1a, 1b, 2, 4, 5 & 6
<b>No case to answer:</b>	3a, 3b, & 3c
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-Off Order
<b>Interim order:</b>	Interim Suspension Order

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

The panel was informed at the start of this hearing that Ms Hamilton was not in attendance and that the Notice of Hearing letter had been sent to her registered email address on 19 July 2021.

The panel took into account that the Notice of Hearing provided details of the allegations as well as the date, time, and details for joining the virtual hearing. Amongst other things the Notice of Hearing included information about Ms Hamilton's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

The panel accepted the advice of the legal assessor.

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

## **Decision and reasons on proceeding in the absence of Ms Hamilton**

The panel next considered whether it should proceed in the absence of Ms Hamilton.

Ms Mohamed referred the panel to a series of emails, dated between April – September 2021, along with a record of a telephone call on 15 September 2021, all between Ms Hamilton and the NMC.

During the telephone call on 15 September 2021 Ms Hamilton stated that she had no intention of practising as a nurse in the future and would not be attending this substantive hearing. Ms Hamilton also agreed for the NMC to proceed with her case without her involvement.

The panel had regard to Rule 21 and took account of the submissions of Ms Mohamed who invited the panel to continue in Ms Hamilton's absence. The panel also accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

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

- No application for an adjournment has been made by Ms Hamilton;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A witness is scheduled to attend to give evidence;
- Not proceeding may inconvenience the witness, their employer and clients who need their professional services;
- Further delay may have an adverse effect on the ability of the witness accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

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

### **Details of charge**

*That you, a Registered Nurse:*

*1) On or before 29 November 2019:*

- a) Bought and / or lent Patient A DVDs*
- b) Allowed Patient A access to your subscribed services.*

*2) On or before 29 November 2019 discussed plans with Patient A for him to live with you.*

*3) On 24 November 2019:*

- a) Hugged Patient A whilst in his room;*
- b) Attempted to kiss Patient A, whilst in his room;*
- c) Kissed Patient A, whilst in his room.*

*4) On or before 29 November 2021, on one or more occasions, contacted Patient A by text message and / or email.*

*5) Your actions at one or more of charges 1 – 4 above breached professional boundaries.*

*6) Your actions at one or more of charges 1 – 4 were sexually motivated in that you sought to pursue a future sexual relationship.*

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

### **Decision and reasons on application to amend the charge**

The panel heard an application made by Ms Mohamed, on behalf of the NMC, to amend the wording of charges 1a and 4.

The proposed amendment was to correct a typo within charge 1a and to correct the date within charge 4, as follows:

1) *On or before 29 November 2019:*

a) *Bought and / or **lent** Patient A DVDs*

b) *...*

4) *On or before 29 November **2019**, on one or more occasions, contacted Patient A by text message and / or email.*

Ms Mohamed submitted that the proposed amendments would more accurately reflect the evidence.

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

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Ms Hamilton and no

injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments, as applied for to ensure accuracy.

### **Charges, as amended**

*That you, a Registered Nurse:*

1) *On or before 29 November 2019:*

*a) Bought and / or lent Patient A DVDs*

*b) Allowed Patient A access to your subscribed services.*

2) *On or before 29 November 2019 discussed plans with Patient A for him to live with you.*

3) *On 24 November 2019:*

*a) Hugged Patient A whilst in his room;*

*b) Attempted to kiss Patient A, whilst in his room;*

*c) Kissed Patient A, whilst in his room.*

4) *On or before 29 November 2019, on one or more occasions, contacted Patient A by text message and / or email.*

5) *Your actions at one or more of charges 1 – 4 above breached professional boundaries.*

6) *Your actions at one or more of charges 1 – 4 were sexually motivated in that you sought to pursue a future sexual relationship.*

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

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

Ms Mohamed made a request that any parts of Ms Hamilton's case which related to matters of her health be heard in private in accordance with Rule 19 of the Rules.

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

The panel decided to hear any matters relating to Ms Hamilton's health in private in accordance with Rule 19 of the Rules.

### **Decision and reasons on application to admit Witness 1's written statement into evidence**

The panel heard an application by Ms Mohamed under Rule 31 to allow the written statement of Witness 1 into evidence. Witness 1 is an NMC employee who produces a letter written by Ms Hamilton to the NMC setting out her version of events and attaching some text messages passing between her and Patient A.

In the preparation of this hearing, the NMC had indicated to Ms Hamilton that it was the NMC's intention for Witness 1 to provide live evidence to the panel. However, the NMC's current application was for that evidence to be admitted by reading Witness 1's written statement, although she was available to answer questions if required. Despite knowledge of the nature of the evidence to be given by Witness 1, Ms Hamilton had made the

decision not to attend this hearing. On this basis Ms Mohamed advanced the argument that there was no unfairness to Ms Hamilton in allowing Witness 1's written statement into evidence.

The panel gave the application in regard to Witness 1 careful consideration. The panel accepted the advice of the legal assessor who referred to the case of *Thomeycroft v NMC* [2014] EWHC 1565 (Admin). It noted that Witness 1's statement had been prepared in anticipation of it being used in these proceedings and contained the paragraph, '*This statement ... is true to the best of my information, knowledge and belief*' and was signed by her.

The panel considered whether Ms Hamilton would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 1 to that of a written statement.

The panel noted that the evidence of Witness 1 is to the effect that she received correspondence from Ms Hamilton containing text messages between herself and Patient A. The panel does not anticipate that it would have any questions for Witness 1 and Ms Hamilton is not in attendance, and therefore would not be in a position to cross-examine her. The evidence which Witness 1 exhibits is evidence which Ms Hamilton herself provided.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Witness 1.

### **Decision and reasons on application to admit hearsay evidence of Patient A**

The panel also heard an application made by Ms Mohamed under Rule 31 to admit the hearsay evidence of Patient A, the complainant in this case. The panel was informed that despite several attempts, the NMC had not been able to obtain a signed written statement



from Patient A. Ms Mohamed submitted that his evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations.

The panel accepted the advice of the legal assessor. The panel recognised that this was not the same situation as in *Thorneycroft v NMC* [2014] EWHC 1565 (Admin), in that in this case there is not even a witness statement from Patient A, simply a record of his interview with the manager of the nursing home, at which Ms Hamilton was not present. Not only is there no signed witness statement from Patient A, there is no confirmation nor any signed declaration by Patient A of the accuracy of the interview record. However, in determining whether to accede to the application the panel considered the various factors set out in *Thorneycroft v NMC* in assessing whether it would be fair to allow the NMC to rely on hearsay evidence as to what Patient A had said in relation to the allegations.

The panel noted that in relation to Charges 3 and 6, Patient A's account was the only evidence in support of the charges. Although Patient A's account of what happened in relation to Charges 2 and 4 was in some respects disputed by Ms Hamilton, there is other evidence to support those charges.

The Charges are very serious, in particular Charges 3 and 6. The panel therefore had particular regard to the evidence of Patient A and the need to ensure the balance of fairness.

No specific reason has been provided as to why Patient A has refused to cooperate with the NMC investigation by providing a statement. The panel noted that in August 2020 Patient A had said that he was concerned about possible repercussions within the nursing home if he gave evidence against Ms Hamilton. However, the panel noted that in May 2021, after he had left the nursing home, he had still refused to provide a witness statement, simply stating that he did not want to be reminded about the events and did not want to pursue the matter. He stated in an email dated 19 May 2021:

*“PLEASE UNDERSTAND I AM NOT TAKING PART IN THIS CASE ANY FURTHER. ANY FURTHER COMMUNICATION WITH THE NMC WILL BE DELETED WITHOUT READING.”*

The panel also noted that beyond an original written request for a witness statement it has seen no evidence that the NMC has made any further efforts to secure a statement from Patient A.

The panel noted that Patient A was a vulnerable patient but also noted that he had been referred to by the nursing home manager as having full capacity. In addition, he had indicated that he had further evidence against Ms Hamilton which he intended to provide to the NMC, although he has not done so. In emails and notes of phone calls seen by the panel, it appears that Patient A is fully aware of the proceedings but has now made the decision not to engage further with the NMC, for reasons which are not clear to the panel.

In all the circumstances, the panel has concluded that it would be unfair to permit the NMC to rely on the hearsay evidence of what Patient A had said and that the panel will limit its consideration of the evidence to that evidence which is not based on Patient A’s reported account.

In the circumstances, the panel determined not to allow the application.

### **Decision and reasons on application to amend the charge**

The panel heard a second application by Ms Mohamed to amend the wording of charges 3a and 3c. The proposed amendments were to add an alternative element to each charge, as follows:

3) *On 24 November 2019:*

- a) *Hugged Patient A whilst in his room **or allowed him to hug you;***
- b) ...
- c) *Kissed Patient A, whilst in his room **or allowed him to kiss you.***

Ms Mohamed submitted that the proposed amendments would more accurately reflect the evidence in view of the panel's decision to exclude the hearsay evidence of Patient A.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel bore in mind its objectives and overarching principles, which included the protection of the public and the overarching principle of fairness to both parties. It also had regard to the requirements of Rule 28, namely that it may make an amendment unless doing so would cause injustice.

The panel bore in mind that the NMC was aware prior to the start of this hearing that Patient A had not provided a written statement and nor was he willing to attend and give evidence. The panel has already ruled that it would be unfair to Ms Hamilton to admit the hearsay evidence of Patient A's reported account of what occurred on 29 November 2019. The amendments sought are in response to that ruling.

The original charges identified Ms Hamilton as the perpetrator of allegedly inappropriate conduct towards Patient A and were based entirely on his reported account. The proposed amendments are significantly and materially different in that they allege that Ms Hamilton allowed Patient A to behave towards her in an inappropriate manner, rather than instigating the behaviour herself.

It is said by the NMC that the amended charges would accord more closely with the evidence. The NMC always had both versions of events but decided to draft the original charges based solely on Patient A's account.

Whilst Ms Hamilton has not attended the hearing it is possible that she may have responded differently if these charges as amended had been put to her at the outset.

It is the panel's view that what is meant by 'allowed' in this context is unclear and it is cognisant that any charge must be clear and unambiguous.

In all the circumstances it concluded that it would cause injustice to allow these amendments.

The panel has had regard to its obligation to ensure that cases are presented in such a way that the charges reflect the underlying seriousness of the allegations against Ms Hamilton. It considers that there are other serious charges in this case, which if found proved, would enable it to deal appropriately with the matter, having regard to the obligations of public protection and the public interest in the upholding of professional standards and maintaining confidence in the regulatory process.

For these reasons the panel determined not to allow the amendments to the charges.

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

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case before it (excluding the hearsay evidence of Patient A) together with the submissions made by Ms Mohamed on behalf of the NMC. It heard oral evidence from Witness 2, the Registered Manager at Bay Trees Nursing Home.

The panel has drawn no adverse inference from the non-attendance of Ms Hamilton.

The NMC received a referral on 3 December 2019 from the Registered Manager of Bay Trees Nursing Home (the Home) where Ms Hamilton had worked as a registered nurse since 2015.

The referral set out that in November 2019 allegations were raised at the Home that Ms Hamilton was in an unprofessional and personal relationship with Patient A, as set out in the charges.

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.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

### **Charge 1a**

*1) On or before 29 November 2019:*

*a) Bought and / or lent Patient A DVDs*

**This charge is found proved.**

In reaching this decision, the panel took into account a letter written by Ms Hamilton on 23 December 2019. The letter stated:

*“I in particular have tried to be kind and selfless towards him helping him and sharing what I have (dvds, music App etc) ... The music App I use on many of my devices and as we liked the same kind of music, he was appreciative to have some music to listen to...”*

In view of Ms Hamilton’s clear written admission to providing Patient A with DVDs, the panel found Charge 1a proved.

### **Charge 1b**

*b) Allowed Patient A access to your subscribed services.*

**This charge is found proved.**

Again, the panel took into account the letter written by Ms Hamilton on 23 December 2019. It also took account of the notes of the local interview on 2 December 2019 in which it is recorded that Ms Hamilton admits to providing Patient A with ‘*access to some of her subscribed services*’.

Given Ms Hamilton’s admission to providing Patient A access to some of her subscribed services, including her music App, the panel found Charge 1b proved.

### **Charge 2**

*2) On or before 29 November 2019 discussed plans with Patient A for him to live with you.*

**This charge is found proved.**

In reaching this decision, the panel took into account a letter written by Ms Hamilton on 23 December 2019 in which she stated:

*“...After I had been advised to be off sick by my GP [Patient A] started texting me every day, to begin with he wanted to send me his daughters flight number as she was going on holiday but after a short while he was becoming overly ‘friendly’ in his messages saying how much he liked me and then started suggesting he moved with me next year when I moved to Gloucestershire.”*

In addition, the panel also took account of the notes of the local interview on 2 December 2019 in which it is recorded that Ms Hamilton stated that conversations had taken place between her and Patient A around him *‘moving away with her’*.

Further, Witness 2, in both her oral evidence and her written statement, stated that Ms Hamilton talked freely about the personal relationship between herself and Patient A and their plans to move in together:

*“The registrant admitted that they had conversations in which it was discussed about Patient A moving to Gloucestershire with the registrant”*

In view of all of the evidence before it in support of Charge 2, the panel found it proved.

### **Charge 3a**

3) *On 24 November 2019:*

a) *Hugged Patient A whilst in his room;*

**No case to answer**

The only evidence in relation Charge 3a before the panel was a statement made by Ms Hamilton on 16 December 2019, in which she stated that Patient A made advances towards her, and that she was the recipient, not the instigator, of his advances. The panel interpreted this Charge as alleging that Ms Hamilton was the instigator, not the recipient, of the hug(s). In the absence of any evidence to support Charge 3a, that Ms Hamilton was the instigator and hugged patient A whilst in his room, the panel determined that Ms Hamilton had no case to answer in respect of it.

### **Charge 3b**

*b) Attempted to kiss Patient A, whilst in his room;*

### **No case to answer**

Again, the only evidence in relation Charge 3b before the panel was a statement made by Ms Hamilton on 16 December 2019, in which she stated that Patient A made advances towards her, and that she was the recipient of his attempt to kiss her. Again, the panel interpreted this Charge as alleging that Ms Hamilton was the instigator, not the recipient, of the attempted kiss. In the absence of any evidence to support Charge 3b, that Ms Hamilton attempted to kiss Patient A whilst in his room, the panel determined that Ms Hamilton had no case to answer in respect of it.

### **Charge 3c**

*c) Kissed Patient A, whilst in his room.*

### **No case to answer**

In relation to Charge 3c, again, the panel interpreted this Charge as alleging that Ms Hamilton was the instigator, not the recipient, of the kiss.



In the absence of any evidence to support Charge 3c the panel determined that Ms Hamilton had no case to answer in respect of it.

#### **Charge 4**

*4) On or before 29 November 2019, on one or more occasions, contacted Patient A by text message and / or email.*

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

In reaching this decision, the panel took into account the witness statement and oral evidence of Witness 2 along with a series of images of text messages adduced by the NMC via Witness 1's statement which had been sent to the NMC by Ms Hamilton.

Whilst there was some confusion as to whether the images were of text messages, WhatsApp Messages or emails, there was no doubt that the images were of messages displayed on a mobile phone. Witness 2 explained that Patient A had shown her the messages on his phone at the meeting on 29 November 2019. She also said in evidence that the messages that she saw on the phone identified the sender as "Maureen" and were contemporaneous with the raising of the complaint by Patient A. In the circumstances the panel is satisfied that the messages seen by Witness 2 had in fact been sent by Ms Hamilton to Patient A. In addition the messages provided to the NMC by Ms Hamilton herself indicate inappropriate between her and Patient A by text message on Sunday 17 November.

The panel determined that there was sufficient evidence before it to find Charge 4 proved

#### **Charge 5**

5) *Your actions at one or more of charges 1 – 4 above breached professional boundaries.*

**This charge is found proved.**

In reaching this decision, the panel took account of all of the evidence before it, in particular the messages sent by Ms Hamilton to Patient A.

One of the messages from Ms Hamilton to Patient A set out within Witness 2's written statement says as follows:

*"I cannot believe I woke up to this, I don't know what to say please don't delete me or my number or memories and pretend nothing has ever happened, I am shaking with shock, I love you unconditionally for the beautiful person that you are that will never change, I am still prepared to take on your past whatever the future brings, I still love you. This is what I can offer you and if this is not enough then I will understand, I don't want you to feel pressured into doing this, I cannot believe that a life together is not what you want, I am truly heart broken. I won't give up on you that easily."*

*"You could at least acknowledge what I said, I literally lost my job because of you and I was prepared to go and work somewhere else to make life better and easier. Please don't ignore me you cannot switch feeling we have between us that easily"*

The panel was of the view that the act of lending of DVD's to a patient, when looked at in isolation, would not normally be considered a breach of professional boundaries. Similarly, allowing a patient to access one's subscription services may be considered poor judgement, but may not on its own amount to a breach of professional boundaries. However, when viewed in the context of Charges 2 and 4, the panel determined that Charges 1a and 1b do amount to a breach of professional boundaries.

The panel determined that in respect of Charge 2, discussions of a future where Ms Hamilton would be living together with Patient A is a clear breach of professional boundaries.

The panel also considered that although there may be instances where contacting a patient for professional reasons by text or email may be appropriate, the messages before the panel, in the context of the relationship between Ms Hamilton and Patient A, were not sent for professional reasons. They were not appropriate and did amount to a breach of professional boundaries.

The panel determined that the behaviour resulting in Charges 1, 2 and 4, was inappropriate and that collectively these Charges amounted to a breach of professional boundaries.

### **Charge 6**

*6) Your actions at one or more of charges 1 – 4 were sexually motivated in that you sought to pursue a future sexual relationship.*

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

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

Witness 2 under affirmation confirmed that Ms Hamilton had stated to her that she '*fancied*' Patient A.

The panel considered the content of the messages from Ms Hamilton to Patient A to be indicative of an emotionally involved and romantic relationship. The messages illustrated Ms Hamilton's feelings towards Patient A and discussed possibilities for the future, such as Ms Hamilton and Patient A living together.

The panel took into account the notes of the local interview on 2 December 2019 in which it is recorded that Ms Hamilton '*considered that she would be his carer*'. However, the panel was of the view that the messages and evidence from Witness 2 all suggest that Ms Hamilton did not intend to live with Patient A solely in the role of carer. In view of Ms Hamilton's admitted attraction to Patient A, her discussions about living with Patient A, along with her confessions of love, and her distress when the relationship was ended by Patient A, the panel determined that her motivation was to pursue a sexual relationship.

The panel concluded from the evidence before it, on the balance of probabilities, Ms Hamilton's motivation was to pursue a sexual relationship. It therefore found Charge 6 proved.

**The hearing went part-heard on 23 September 2021 due to lack of time and resumed on 7 March 2022.**

### **Decision and reasons on service of notice of the resumed hearing**

The panel was informed at the start of this hearing that Ms Hamilton was not in attendance and that the Notice of Hearing letter had been sent to her registered email address on 27 January 2022.

The panel took into account that the Notice of Hearing provided details of the allegations as well as the date, time, and details for joining the virtual hearing. Amongst other things the Notice of Hearing included information about Ms Hamilton's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Hamilton has been served with the notice of the resumed hearing in accordance with the requirements of Rules 11 and 34.

### **Decision and reasons on proceeding in the absence of Ms Hamilton**

The panel next considered whether it should proceed in the absence of Ms Hamilton.

The panel had regard to Rule 21 and took account of the submissions of Ms Evans who invited the panel to continue in Ms Hamilton's absence. The panel also accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

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

- Upon inquiry the NMC confirmed that there had been no communication in response to the Notice of Hearing from Ms Hamilton, and there has been no communication since the hearing went part-heard in September 2021;
- No application for an adjournment has been made by Ms Hamilton;
- There is no reason to suppose that adjourning would secure her attendance at some future date;

- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Ms Hamilton.

### **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 Ms Hamilton'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, Ms Hamilton's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct and impairment**

Ms Evans provided the panel with written submissions. She invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to specific sections of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) which the NMC considered Ms Hamilton to have breached.

Ms Evans submitted that Ms Hamilton's failure to maintain professional boundaries and her consequent breaches of the Code amounted to misconduct.

Ms Evans moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. She referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Evans highlighted to the panel that Ms Hamilton had provided a response within her correspondence with the NMC to the effect that it was Patient A who had used incidents when she was kind and selfless as an example that she was "grooming" him. Ms Hamilton also stated that Patient A had made the allegations to protect himself and his actions were inappropriate and unacceptable as staff had noticed his behaviour. Ms Hamilton also raised that Patient A's behaviour was unacceptable towards herself. No response to the charges were received from Ms Hamilton. Without an explanation as to why Ms Hamilton acted as she did it may be that the panel have no choice but to find that there is or may be such a risk that this behavior will continue.

### **Decision and reasons on misconduct**

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

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 Ms Hamilton's actions did

fall significantly short of the standards expected of a registered nurse. It considered Ms Hamilton's actions amounted to a breach of the following sections of the Code:

***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*

***20.10*** *use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times*

The panel considered that Charges 1a and 1b, taken in isolation, may not be sufficient to amount to misconduct. The panel was in no doubt that the behaviour found proved in Charges 2, 4, 5 & 6 individually amounted to misconduct. The panel was satisfied that all of the matters found proved, collectively represented serious departures from the standards expected of a registered nurse and therefore amounted to misconduct.

The panel considered that Patient A's vulnerability was such that Ms Hamilton's misconduct may have put his future relationships with, and his ability to receive treatment from, medical professionals at risk. In the circumstances the panel found that Ms



Hamilton's actions did fall 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, Ms Hamilton's fitness to practise is currently impaired.

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

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

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

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

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*

*determination show that his/her fitness to practise is impaired in the sense that s/he:*

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...*

The panel finds that Patient A was exposed to a risk of harm as a result of Ms Hamilton's misconduct. The course of conduct found proved abused the position of trust that Ms Hamilton held and amounted to a breach of professional boundaries. The development of an inappropriate relationship with a vulnerable patient can have significant implications for the patient's well-being. Ms Hamilton's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that limbs a, b & c of the Grant test above are engaged in Ms Hamilton's case.

There was no information before the panel to suggest that Ms Hamilton acknowledged the seriousness of her actions or the potential impact upon Patient A. Witness 2, in her oral evidence, referred to the fact that when she raised the issue of Ms Hamilton's relationship with Patient A with her, Ms Hamilton was dismissive and continued to contact Patient A, despite having been specifically asked not to. In addition, during the management meeting held on 2 December 2019, and within the communication from Ms Hamilton to the NMC on 23 December 2019 she sought to blame Patient A for the development of the relationship and demonstrated no insight or remorse for her actions. In the absence of any information to suggest otherwise, and in the absence of any insight into why her conduct

was wrong, the panel determined that there remains a risk that the behaviour will be repeated. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

In addition, 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 Ms Hamilton's fitness to practise impaired on the grounds of public interest.

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

### **Submissions on sanction**

Ms Evans submitted that the appropriate sanction in Ms Hamilton's case is that of a strike-off. She outlined several aggravating and mitigating factors.

Ms Evans referred to the NMC's Sanctions Guidance (SG) and submitted that Ms Hamilton's misconduct breached the level of trust and professionalism expected of a registered nurse and in the circumstances of this case only a striking-off order would protect the public and address the public interest. She submitted that there were no conditions which would address the risk to the public in this case.

Ms Evans submitted that a suspension order would not be sufficient to address the public protection and public interest concerns arising in this case. It was not an isolated or single

incident, but had taken place over a period of time. The misconduct may indicate a personality or attitudinal problem and in the absence of insight, remorse or remediation there was a risk of repetition. For these reasons she submitted that a suspension order would not be sufficient.

Ms Evans submitted that Patient A had been put at real risk of harm, and that Ms Hamilton had put her own priorities before those of the patient. There was a risk that Ms Hamilton would repeat the misconduct which could put other patients at risk of harm. The fact that the misconduct was sexually motivated exacerbates its seriousness. She submitted that a striking off order is therefore the only sanction which would protect the public and address the public interest.

In answers to questions from the legal assessor and the panel, Ms Evans confirmed that Ms Hamilton had no previous disciplinary findings against her, and that she had first registered as a nurse in 1979. She confirmed that Ms Hamilton had been subject to an interim conditions of practice order but had not engaged with the NMC and that order had been changed to an interim suspension order in June 2021.

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

Having found Ms Hamilton's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel took account of the submissions made by Ms Evans and it accepted the advice of the legal assessor. 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 identified the following aggravating features:

- Ms Hamilton’s misconduct was an abuse of a position of trust;
- The misconduct occurred over a period of time;
- Patient A is classed as a vulnerable adult. The panel considered that Patient A’s vulnerability was such that Ms Hamilton’s misconduct may have put his future relationships with, and his ability to receive treatment from, medical professionals at risk;
- Ms Hamilton took no responsibility for her actions and sought to lay blame on Patient A;
- Ms Hamilton’s actions put her colleagues in a difficult position;
- Witness 2 described in her evidence that Ms Hamilton had told her that she “fancied” Patient A and that she had raised her concerns directly with Ms Hamilton, who had nevertheless continued to contact Patient A, after being asked not to do so;
- Ms Hamilton has not acknowledged the seriousness of her actions or the potential impact on Patient A.

The panel also identified the following mitigating features:

- Although Patient A may have suffered from emotional stress after the allegations were raised no long lasting harm was caused as a result of Ms Hamilton’s misconduct;
- Witness 2 described Ms Hamilton as a brilliant nurse with regard to her clinical ability;
- Correspondence from the Managing Director at the Home dated 9 January 2020 detailed that Ms Hamilton had a long service at the Home and her work record had been without question. They also detailed that she is a very good nurse, is reliable and has been much relied upon in the past.

The panel also noted that Ms Hamilton has had a long career as a nurse and no incidents of a similar nature, or any other concerns, have been raised with the NMC.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case as well as the risk to the public 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 risks identified to the public, an order that does not restrict Ms Hamilton'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 Ms Hamilton's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Hamilton's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel bore in mind that Ms Hamilton had previously been subject to an interim conditions of practice order, with which she had failed to engage. Therefore, the panel could not be assured that she would be willing or able to comply with a substantive conditions of practice order.

The panel concluded that the placing of conditions on Ms Hamilton's registration would not adequately address the seriousness of this case and would not protect the public

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

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

The panel has found a lack of insight or remorse, and a consequent risk of repetition. It has found that the misconduct may reflect an attitudinal problem, and that the misconduct took place over a period of time.

The conduct, as highlighted by the facts found proved, were a significant departure from the standards expected of a registered nurse. 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?*

Ms Hamilton's actions were significant departures from the standards expected of a registered nurse, and were a serious breach of the fundamental tenets of the profession. Her actions were fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Hamilton's actions, which were sexually motivated, were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel noted the testimonials describing Ms Hamilton's qualities as a nurse. However, Ms Hamilton has not been present at this hearing and has not provided any information to demonstrate that she has developed any insight or remorse into her misconduct. Nor has she demonstrated to the panel in writing or in person, that she has developed any understanding of the requirement for her, as a professional nurse, to take the lead in the maintenance of proper relationship boundaries with patients. In addition, the panel has had no information to indicate that Ms Hamilton has done anything at all to remediate her misconduct. Taking account of the SG, the panel could not be satisfied that anything less than a striking-off order would keep the public protected and address the public interest in Ms Hamilton's case.

Balancing all of these factors and having regard to the effect of Ms Hamilton'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 a striking off order would be sufficient in this case.

The panel considered that a 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 Ms Hamilton in writing.

### **Decision and reasons on 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 Ms Hamilton's own interest until the striking-off sanction takes effect.

The panel took account of the submissions made by Ms Evans and it accepted the advice of the legal assessor.

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 allow for any potential appeal period.

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

That concludes this determination.