

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

**Substantive Hearing
Monday, 4 December – Friday, 8 December 2023**

Virtual Hearing

Name of Registrant: Genelda Geonzon

NMC PIN 02C15960

Part(s) of the register: RN1: Adult nurse, level 1 (11 March 2002)

Relevant Location: Birmingham

Type of case: Misconduct

Panel members: Darren Shenton (Chair, lay member)
Dr Sally-Ann Underwood (Registrant member)
Shaun Donnellan (Lay member)

Legal Assessor: Paul Housego

Hearings Coordinator: Opeyemi Lawal

Nursing and Midwifery Council: Represented by Matthew Kewley, Case Presenter

Ms Geonzon: Present and represented by Arthur Lo

Facts proved by admission: Charges 1, 2a, 2b, 3a, 3b and 4

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Details of charge

That you, a registered nurse, between September 2021 and March 2022, in relation to patients known to you through clinical treatment:

1. Accessed the records of one or more of the patients listed in Schedule 1 without clinical justification in order to obtain their phone number.
2. In order to promote a non-prescribed and/or unlicensed product:
 - a. Contacted one or more of the patients listed in Schedule 2.
 - b. When contacting the patient(s) within the message(s) did not advise one or more of them of the importance of continuing with their prescribed medication.
3. On an unknown date in March 2022, during a clinical consultation:
 - a. Attempted to sell a non-prescribed and/or unlicensed product to Patient 18.
 - b. Asked Patient 18 for her Facebook profile name.
4. In relation to one or more of the charges above, your actions demonstrated a lack of integrity in that you were taking advantage of your role as a registered nurse in order to put your own personal interests above those of the patient(s).

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

Schedule 1

- Patient 3
- Patient 5
- Patients 9 – 12
- Patient 16

Schedule 2

- Patients 1 - 17

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

At the outset of the hearing, Mr Kewley made a request that parts of this case be held in private because there would be reference to [PRIVATE]. The application was made pursuant to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules).

Mr Lo supported the application.

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

The panel determined to go into private session as and when such issues are raised.

Background

The charges arose whilst you were employed as a registered nurse by the University Hospitals Birmingham NHS Foundation Trust (the QE hospital).

You joined the Trust in 2009 and was employed as a band 5 nurse. The relevant period is September 2021 to March 2022.

During this time you were working as a nurse within the Outpatients Unit at the QE hospital in Birmingham.

As part of your role with the Trust, you would see patients who attended the outpatient unit. Your duties were described as including co-ordinating clinics, assisting with

biopsies, removing drains, and looking after acutely ill patients. However, during the time period you also had another line of work outside of role with the Trust. [PRIVATE].

The product was not a drug or medication – it appears to be a supplement type product in the form of a powder that comes in a sachet which is mixed with water. The product is not licensed or approved as any sort of treatment in the UK. Claims are made on its website and by you that it has certain health benefits.

The NMC did not say that there was anything wrong in principle with having a secondary occupation. The NMC say, and you accept that, you crossed the boundary between your role as a nurse and your separate business interest in selling this product.

In your role you had personal contact with patients attending the outpatient unit at the QE hospital. [PRIVATE]. You suggested that the patients purchased the product directly from you.

Your actions came to the attention of the QE hospital when Patient 13 was referred to the QE hospital from his local hospital for specialist treatment. [PRIVATE]. The consultant oncologist was concerned about this and raised it with the team at the QE hospital on 14 March 2022, who launched an internal investigation. [PRIVATE].

The Trust investigation also identified that of the 17 patients who were contacted, you had accessed the hospital records of at least 7 of those patients to obtain their contact details. You used your encounters with these patients as a means of trying to sell your product. There was no evidence that any patient bought the product from you.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Lo who informed the panel that you made full admissions to charges 1, 2a, 2b, 3a, 3b and 4.

The panel therefore finds charges 1, 2a, 2b, 3a, 3b and 4 proved in their entirety, by way of your admissions.

Fitness to practise

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

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

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

Submissions on misconduct

Mr Kewley referred 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.*'

Mr Kewley 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.

Mr Kewley identified specific standards which he said were relevant to the question of whether your actions amounted to misconduct. He identified paragraphs; 4, 5, 5.1,6, 6.1, 20, 20.1, 20.2, 20.5, 20.6 and 21.5.

Mr Kewley provided written submissions, which in part stated;

'Charge 1

...

It is submitted that the issue of whether the patients consented¹ or not is a total red herring. The Trust [the QE hospital] policy is clear in stating that access to personal information is restricted and should only be accessed where there is a legitimate reason. [PRIVATE].

It is submitted that the Registrant's actions at charge one plainly amount to misconduct.

Charge 2 and 3

...

It is submitted that the Registrant's actions at charges two and three effectively amount to a misuse of the Registrant's position as a nurse at the Trust.

...

The NMC does not suggest that the product itself was dangerous. (see the comments of Consultant Surgeon at EB page 210). However, the Registrant's conduct potentially placed patients at risk in the sense that the Registrant took no steps to satisfy herself that it was clinically appropriate to recommend that patients take the product, by, for example, speaking with the clinician in charge of the patients' treatment plan. The Registrant also failed in any of her messages to

¹ Your oral evidence was that (save for patient 17) you only contacted patients who had agreed that you should follow up an oral conversation you had with them in the QE hospital.

emphasise the importance of patients continuing to take their prescribed treatment. This created a situation where a patient could have chosen to adopt the barley product in place of their prescribed treatment.

The panel's attention is also drawn to the written evidence of [Colleague 1] who states that she was concerned that the colleague 1 was promoting the product to 'vulnerable patients' who were acutely unwell. [Colleague 1] states that there was potential for psychological harm and she gives the example of Patient 13 who was said to be very anxious about how his personal details had been used to contact him (in circumstances where the Registrant has conceded in oral evidence that she did not have the consent of this patient).

Charge 4

The Code requires registrants to promote professionalism and trust and 'to be a model of integrity'. The Registrant took advantage of her role as a nurse by using her interactions with patients as an opportunity to advance her private business interests in selling the barley product to patients. Whilst the Registrant maintains that she was trying to help the patients, the Registrant would have profited financially from the patients had she managed to successfully conclude a sale – in these circumstances, the Registrant plainly failed to act with integrity. It is submitted that charge four amounts to misconduct.'

Mr Lo submitted that the facts are admitted and that the key issue here is whether the allegations are serious enough to warrant a finding of misconduct.

Mr Lo submitted in respect of charge 1, there was a clear breach of data protection principles of the policies of QE hospital and in relation to charges 2 and 3, accepted that you did use your position to promote the product and you would not have come into contact with the patients in Schedule 2, but not for your position. Mr Lo also accepted that you were insufficiently cautious as to your claims about the efficacy of the products, or to ensure that the patients continue with the prescribed course of treatment.

Mr Lo submitted in respect of charge 4 it is up to the professional judgement of the panel to evaluate your claims but stressed that you were clear that you were driven primarily by your sense of mission to assist patients with the possible financial gain being very much a secondary consideration.

Mr Lo accepted that you had crossed boundaries, but this had to be seen in the context of a culture of sales of cosmetics and jewellery between staff. He pointed out that in the disciplinary process it had been apparent that you had stumbled into error rather than doing so deliberately.

Mr Lo submitted that your mistakes are not at the top of the scale in terms of seriousness because there was no evidence of any real or significant risk to patient safety. He submitted that there is a low risk of repetition and drew attention to your full acceptance of what went wrong, apology and your repeated evidence that you had 'learned your lesson'.

Submissions on impairment

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

Mr Kewley provided written submissions which in part stated:

Insight

It is accepted that the Registrant has shown some very limited insight in the sense that she has made full admissions to the charges in addition to making concessions during the local Trust investigation. However, the NMC's submission is that the Registrant is currently a long distance away from showing anything near to full, meaningful and in-depth insight into her misconduct.

During her oral evidence the Registrant was unable to progress beyond stating the 'headlines' of accepting that her conduct was inappropriate. She was unable to deal in depth with the professional and ethical issues that arose from her misconduct. This may be attributable to the fact that the Registrant has not yet engaged in any form of in-depth reflection using a recognised reflective cycle such as the Gibbs reflective cycle. The Registrant's witness statement dated 30 November 2023 also lacks any real depth of analysis of the misconduct. The witness statement follows the same format of the Registrant's oral evidence in the sense that it repeats the main headlines i.e 'I have failed.../I have breached...' without any real analysis or reflection. In the circumstances, it is submitted that the Registrant's insight is limited.

Remediation

The Registrant has been subject to an interim suspension order since 15 November 2022. The only relevance of the interim order at this stage is that it explains why the Registrant has been unable to strengthen her practice in a nursing role/setting. However, there are many steps that a practitioner can take even whilst subject to an interim order to strengthen their practice.

The Registrant accepted in her oral evidence that she has not completed any training relating to data protection/confidentiality since she was referred to the NMC in October 2022. The Registrant was unable to identify any specific wider reading that she has completed since her referral to the NMC. The Registrant also accepted that she has not completed any other training in relation to the other issues raised by the allegations.

It is submitted that the Registrant has plainly not engaged in any form of remediation following her referral to the NMC with the limited exception, according to the Registrant's oral evidence, of having re-read the NMC Code of Conduct.

Public protection

It is submitted that the concerns in this case may fall into the category of concerns which are 'more difficult to put right'. The Registrant has effectively misused her position as a nurse for financial gain.

It is submitted that the absence of any meaningful insight combined with the lack of remedial steps demonstrates that the Registrant has not strengthened her practice. As such, it is submitted that the risk of repetition remains high.

Any future occurrence of the facts found proved by admission would place patients at an unwarranted risk of harm. It is submitted that the Registrant's fitness to practice is currently impaired on public protection grounds.

Public interest

It is submitted that the public is entitled to expect that nurses on the NMC register will conduct themselves in accordance with the professional standards to be expected of registered nurses. The Registrant has misused her position as a nurse and has failed to act with integrity in the sense that she has placed her own personal interests above those of the patients. This is clearly conduct which is capable of undermining public trust and confidence in the nursing profession. It is submitted that the Registrant's fitness to practise is also impaired on a public interest grounds.'

Mr Kewley also referred the panel to the NMC's guidance to panels, at FtP3.

Mr Lo submitted that an informed member of the public would probably form the same opinion as Dr 1, in which he details in his witness statement;

'Generally speaking, if a medical professional is desperately enthusiastic about helping a patient and thought this could be done through a herbal product, leading them to approach a patient directly I would regard this as a well-intentioned error of judgement. They should have discussed this with their line manager before approaching a patient. They should not have called a patient without discussing this with seniors prior.'

Mr Lo submitted that your intention was not to take advantage of patients, but to a significant extent to assist them. You had obtained patient's data, without considering the potential adverse effects and failed to warn patients to continue with their treatments. However, he submitted that it is clear that you have learned your lesson about privacy.

Mr Lo submitted that whilst you have made mistakes, they were not so serious or bad intentioned as to bring the profession into really serious disrepute and an informed member of the public having knowledge of the whole relevant factual context [PRIVATE] would be inclined to forgive you. In relation to insight, he submitted that you have gained a good understanding about the effect on public confidence in the profession of your conduct.

Mr Lo further submitted that there was no evidence of actual patient harm, and that you were not dishonest.

Mr Lo submitted that your fitness to practise is not currently impaired.

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). The legal assessor referred the panel to the case of *Wingate & Anor v The Solicitors Regulation Authority* [2018] EWCA Civ 366 relevant to the finding of lack of integrity.

Decision and reasons on misconduct

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

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

‘1.1 treat people with ... compassion

4 Act in the best interests of people at all times (the preamble to this section requires nurses to ‘put the interests of people using or needing nursing services first’)

5 Respect people’s right to privacy and confidentiality

5.1 Respect a person’s right to privacy in all aspects of their care

6 Always practise in line with the best available evidence

6.1 make sure that any information or advice given is evidence-based, including information relating to using any health and care products or services

20 Uphold the reputation of your profession at all times (the preamble to this section requires nurses to ‘be a model of integrity’)

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

20.2 act with ... integrity at all times

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

Charge 1

The panel took account of all the evidence before it, which included electronic evidence of you accessing patient records. You also accept in your witness statement and oral evidence that you accessed the records of the patients specified in schedule 1 of the charge and that you had no clinical justification for doing so. In your oral evidence you said that when you were engaged with them the patients had agreed that you could follow up your oral discussion with them.

The panel carefully considered the content of the messages that you sent to the patients and the concerns raised by patient 13 that he considered his data to have been hacked. You conceded during panel questions that you had not actually sought the consent of all of the patients that you contacted before doing so.

The panel did not find your evidence that you had always sought consent to be plausible or credible. There was no contemporaneous evidence of such consent. Even had such consent been given this did not make accessing the records permissible. Doing so was a clear breach of the QE hospital policies. Those policies were based on GDPR obligations and good practice.

The panel considered the data protection policy of the QE hospital which contained the Caldicott principles in full and in particular paragraph 4.11 with regards to accessing information (4.11.1 and 4.11.2).

It gave careful consideration to the content of the notes of the disciplinary interview and hearing in which you were represented by a trade union representative. The panel noted [PRIVATE] whilst the panel recognised that your recorded information governance training was not fully up to date, you accepted that you had undertaken general IT governance training over a number of years.

The panel carefully considered Mr Lo's submission, based on your responses in the disciplinary process when this was raised with you, that you had fallen into error rather than deliberately breached professional standards in accessing patient records and contacting them to try to sell the product to them. The panel did not accept that this was likely. Your long experience and training over many years with clear policies in place at

QE hospital (where you had worked for a long time) coupled with the panel's findings as to your motivation for your actions mean that the panel do not accept that this was a mistake rather than a deliberate action.

The panel did not accept Mr Lo's submission about Dr 1's witness statement. This is because that paragraph has to be read in the light of the preceding paragraph of Dr 1's witness statement which read:

'If there was a high cost attached to the herbal treatment, this could have caused financial harm and could be considered exploitative. If the Product was being promoted for financial gain, I would be very concerned. This because Patient 13 was acutely unwell and vulnerable.'

In contacting the patients to promote and sell the product for your own financial gain the panel determined that this was not a clinically justified purpose. You also failed to inform the treating clinicians of the product you were promoting. The panel considered accessing patient records to try to sell them something without clinical justification to be a serious falling short of professional standards. [PRIVATE]. The panel did not accept that your primary purpose was to try to help the patients you contacted. The panel accepted that you have a genuine belief in the beneficial effect of the product you were trying to sell to the patients but determined that your primary motivation was financial gain. Your persistence in contacting patients over extended periods of time was a clear indication that you were driven primarily by a wish to sell your product.

Charge 2

You stated that you made no therapeutic claims to the patients, however, in your messages to various patients you made claims that [PRIVATE].

The panel noted in addition to the literature within your messages you also provided reassurance to the efficacy of the product which included phrases such as;

'[PRIVATE]'.

[PRIVATE]. You did not have any prescription responsibilities for these patients, so the promotion of these products was non-prescribed. You were not a nurse prescriber. You did not seek the approval of the treating clinician to the promotion (or sale) of the product to patients.

You stated that there was a culture within the workplace that members of staff selling items such as Avon products and jewellery. The panel recognised that this was a practise that may have occurred in the workplace, but you accepted that no one sought to sell products to patients and this activity only took place in the staff room between work colleagues. The panel found your explanation that selling to patients was an accidental crossing of boundaries because sale to colleagues was not objectionable to lack credibility. [PRIVATE]. You must have known that this was an impermissible crossing of professional boundaries. This was a breach of a fundamental tenet of the profession.

The panel noted the number of messages that you sent to individual patients, the length of time over which you sent messages and how you appeared to pursue them over days and weeks when you did not receive any response. You sent a huge number of marketing images to patients (well over 60 were attached to most text messages and on one occasion there were over 100 images sent in a single message).

[PRIVATE].

The panel noted within those messages nothing advising the patients of the importance of continuing their prescribed medication. The panel did not find credible your evidence that you had told them this when speaking with them.

In your oral evidence, you confirmed that you never spoke to the treating clinician before you contacted these patients, to see whether there were any contrary indications that would have caused issues for the patients or whether there was anything the treating clinician could have observed in terms of that particular patient.

In addition, there was no evidence provided to demonstrate that you had taken note of each patient's individual circumstances and complete medical history. The panel determined that this was just an opportunity to exploit any patient that had come before you on that ward, which makes it a serious falling short of the required standards.

During your oral evidence you stated that you told the patients to continue with their medications but there is no evidence of that within the messages.

The panel determined that there was a real serious falling short of the nursing standards and your actions amounted to misconduct.

Charge 3

[PRIVATE].

[PRIVATE]. You admit using your phone in the clinic to search for patient 18 on Facebook, confirm her details and then add her as a 'friend', for the sole purpose of promoting and attempting to [PRIVATE].

Such was the concern of your colleague that she challenged you in the workplace regarding your practice and the crossing of professional boundaries.

There was no legitimate medical purpose for your actions. You accepted that you had not notified or sought advice from the treating clinician before promoting your product.

The panel considered this to be exploitation of a patient suffering a number of very serious illnesses which members of the public would find shocking. Your conduct was entirely self-serving, and the patient must have been influenced by the fact that you, a professional nurse, treating her in a hospital medical setting, added a veneer of legitimacy to the benefits of your product, when scientifically, there were none.

The panel determined that there was a real serious falling short of the nursing standards and your actions amounted to misconduct.

Charge 4

The panel took into account the case of *Wingate & Anor v The Solicitors Regulation Authority [2018] EWCA Civ 366*.

If you had not been undertaking your role as a registered nurse you would not have engaged with these patients. It was entirely because of your professional status in the performance of your professional duties that made it possible for you to try to sell your product to them.

The panel noted that when asked, you described integrity as 'doing the right thing, decisions, actions and behaviours should be honest morally and ethical.'

The panel decided that all of charges 1, 2 and 3 demonstrated a lack of integrity. You failed to adhere to the moral and ethical standards of the profession. You tried to take advantage of very vulnerable patients by breaching your obligations to respect patient confidentiality in order to try to sell them an unlicensed non prescribed product for your own financial gain.

You also stated that your primary purpose to promoting the barley product was to help patients and you described this as your 'mission'. However, during the course of questioning it became apparent and obvious that your primary purpose was financial gain. [PRIVATE].

The lack of integrity is the more serious because you bombarded patients with messages and marketing material with no regard to the treatment they were undergoing. [PRIVATE]. There was no credible evidence to support your assertions. You made no reference to the importance of continuing their medical treatment and did this without the knowledge of the treating clinician. Had you been genuinely trying to help patients you would not have searched for their contact details and messaged them in breach of professional obligations. [PRIVATE].

[PRIVATE]. You have undertaken mandatory training and are aware of the principles of the NMC Code.

The panel found that your actions fell seriously short of the conduct and standards expected of a nurse and were professional misconduct.

Decision and reasons on impairment

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

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 to care for them. Their relatives expect the same. 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 patients were put at potential risk of harm as a result of your misconduct. That no harm eventuated is not to the point. Your misconduct had breached fundamental tenets of the nursing profession and brought its reputation into disrepute.

The panel considered whether the conduct was remediable, was remedied and whether there was a risk of repetition.

The panel decided that the conduct was capable of remediation, but not easily. It decided that it had not been remediated.

The panel considered whether you demonstrated insight. The panel noted that you made admissions to all the charges and wrote a reflective piece expressing your remorse. You told the panel that you would not repeat your actions and you have learned your lessons. However, you failed to demonstrate a detailed understanding of how your actions put patients at a risk of harm, or how your actions impacted negatively on the reputation of the nursing profession or how you would handle the situation differently in the future. You said that you were remorseful and apologetic, but you had undertaken no positive step to strengthen your practice. Your reflective piece was not

developed in any significant way. It was primarily focussed on the effect of this on you, such that you would not do it again. You told the panel that you had not undertaken any training courses to demonstrate a more detailed understanding or to evidence any remediation. The testimonials provided to the panel did not speak to aspects of your integrity that led to these admitted charges and so the panel attached little weight to them. In light of all of the above the panel concluded that you demonstrated little understanding of the effect of your conduct on patients, your colleagues or on the reputation of the profession.

The panel is of the view that there is a risk of repetition. [PRIVATE]. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required. This was an egregious course of conduct over an extended period of time involving multiple highly vulnerable patients and in breach of fundamental tenets of the profession. This is a case where the public interest means that your past actions require a finding of current impairment.

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

Sanction

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

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

Submissions on sanction

Mr Kewley for the NMC had advised you that it would seek the imposition of either a 12-month suspension order or a strike-off order if it found your fitness to practise currently impaired.

The panel also bore in mind Mr Kewley's submissions in which he detailed both aggravating and mitigating factors.

Mr Lo submitted that a 12-month suspension order is appropriate in the circumstances.

Mr Lo detailed the mitigating factors in your case which were:

- you made no attempt to conceal your conduct;
- you made early admissions;
- you showed remorse and insight and;
- [PRIVATE].

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of position – exploited vulnerable patients for financial gain

- Put patients at potential risk of harm
- Persistent contact over an extended period of time
- Volume of sales material sent
- Little evidence of remediation / remorse which was self-centred rather than showing any understanding of the effect on patients, colleagues and the reputation of the profession
- Breach of privacy and GDPR policy for personal gain

The panel also took into account the following mitigating features:

- Made admissions at the start of the investigation
- Expressed apologies
- Demonstrated limited insight by way of a reflective piece where you demonstrated how your actions had an impact
- [PRIVATE].

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the 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 your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the

charges in this case. The misconduct identified in this case was not something that can be addressed through retraining, as the panel acknowledged that it is not your nursing capability that is in question. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public or the public interest.

The panel carefully considered whether to impose a period of suspension. The NMC's guidance (SAN-3d) provides a non-exhaustive checklist to consider. The relevant parts are:

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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour

The panel did not consider this to be a one-off instance as it involved multiple patients contacted multiple times over an extended period.

There was evidence of an attitudinal problem because there was a sustained multiple breach of a fundamental tenet of the profession.

There was no evidence of repetition, but this did not assist as you were dismissed soon after your conduct was discovered and have been subject to an interim suspension order since.

The panel considers that there is a risk of repeating behaviour because you have only limited insight and because you remain committed to the product.

[PRIVATE].

For these reasons the panel decided that a suspension order was not the appropriate sanction in your case.

The panel next carefully considered the NMC's guidance about striking off orders (SAN-3e).

The panel noted that there were key considerations to be borne in mind. The guidance is:

This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

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

The panel decided that the answer to each of those questions clearly indicated that a striking-off order was the only appropriate sanction in your case.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction because the circumstances did not meet the criteria for suspension and did meet the criteria for a striking off order. The panel decided that this was the only sanction which would be sufficient to protect patients, members of the public and maintain professional standards.

The panel took note of the NMC guidance concerns based on public confidence or professional standards (FtP-3c) which says that

'Sometimes we may need to take regulatory action against a nurse, midwife or nursing associate because of our objectives to promote and maintain professional standards and the public's trust and confidence in nurses, midwives and nursing associates.'

And;

'A need to take action because the public may not feel able to trust nurses, midwives or nursing associates generally is a high threshold. It suggests that members of the public might take risks with their own health and wellbeing by avoiding treatment or care from nurses, midwives or nursing associates. Concerns that someone may have displayed discriminatory views and behaviours can have a particularly negative impact on public confidence, which may lead to members of the public avoiding using health and care services.'

'We may need to take restrictive regulatory action against nurses, midwives or nursing associates whose conduct has had this kind of impact on the public's trust in their profession, who haven't made any attempt to reflect on it, show insight, and haven't taken any steps to put it right. This may mean they can't stay on the register.'

The panel considered that this applied to your case. [PRIVATE].

And: Serious concerns which are more difficult to put right (FtP-3a), which refers (inter alia) to

'exploiting patients or abusing the position of a registered nurse, midwife or nursing associate for financial or personal gain'

The panel carefully considered the fact that your clinical competence has not been called into question. The panel also gave careful consideration to the testimonials you provided. However, your actions were such significant departures from the standards

expected of a registered nurse, especially regarding integrity and ethics, that they are fundamentally incompatible with you remaining on the register. The panel considered that your misconduct was so serious that to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel considered that this 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 standards of behaviour required of a registered nurse.

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 your own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

Mr Kewley submitted that an interim suspension order is appropriate to cover the appeal period, on the grounds of public protection and public interest for the period of 18 months.

Mr Lo submitted that an interim order of suspension was not necessary in this case as you are not currently working as a nurse.

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.

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

That concludes this determination.