

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

**Substantive Hearing  
Wednesday 4 – Thursday 12 January 2023**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Michael Francis Jose</b>
<b>NMC PIN</b>	19H0326O
<b>Part(s) of the register:</b>	Registered Nurse – Adult Nursing (August 2019)
<b>Relevant Locations:</b>	Royal Borough of Kensington and Chelsea, and London Borough of Croydon
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Tanveer Rakhim (Chair, lay member) Allwin Mercer (Registrant member) Caroline Taylor (Lay member)
<b>Legal Assessor:</b>	Angus Macpherson
<b>Hearings Coordinator:</b>	Alice Byron
<b>Nursing and Midwifery Council:</b>	Represented by Beverley Da Costa, Case Presenter
<b>Mr Jose</b>	Present and unrepresented (4 – 6 January 2023) Not present and unrepresented (9 – 12 January 2023)
<b>Facts proved by admission:</b>	Charges 2c and 4b
<b>Facts proved:</b>	Charges 1a, 2a, 2b, 4a, 4c, 4d in its entirety, 4e, 5, 6 and 7
<b>Facts not proved:</b>	Charges 1b and 3
<b>Fitness to practise:</b>	Impaired

**Sanction:**

**Striking-off order**

**Interim order:**

**Interim Suspension Order (18 months)**

## Details of charges (as amended)

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust (“the Trust”);

- 1) Between 19 May and 8 June 2020 whilst Patient A was an in-patient at the Royal Brompton Hospital;
  - a) Obtained Patient A’s ‘Instagram’ details. **[PROVED]**
  - b) Sent Patient A an ‘Instagram’ request/followed Patient A on ‘Instagram’. **[NOT PROVED]**
  
- 2) Between 9 June 2020 and 10 July 2020, after Patient A had been discharged from the Royal Brompton Hospital;
  - a) On one or more occasion sent Patient A messages via ‘Instagram’ without any clinical reason/justification. **[PROVED]**
  - b) On one or more occasion sent Patient A messages via ‘Instagram’ of a sexual/inappropriate nature. **[PROVED]**
  - c) Sent Patient A, a message on ‘Instagram’ with words to the effect of ‘Good Morning Pretty’. **[PROVED BY ADMISSION]**
  
- 3) On 2 July 2020 booked a room at Jury’s Inn Hotel Croydon for 11 July 2020 between 09:00 – 17:00 for Patient A and yourself. **[NOT PROVED]**
  
- 4) On 11 July 2020;
  - a) Travelled to Jury’s Inn Hotel Croydon with Patient A. **[PROVED]**
  - b) Entered a room at Jury’s Inn Hotel Croydon with Patient A. **[PROVED BY ADMISSION]**
  - c) Talked with Patient A about her sex life. **[PROVED]**
  - d) Engaged in sexual activity with Patient A, in that you;
    - i) Had your hand placed/placed your hand on Patient A’s Thigh/Leggings. **[PROVED]**

- ii) Had your hands placed/placed your hands under Patient A's leggings/underwear. **[PROVED]**
  - iii) Touched Patient A's genitalia. **[PROVED]**
  - iv) Digitally penetrated Patient A. **[PROVED]**
  - e) Instructed Patient A to lie to her parents about meeting with you on 11 July 2020. **[PROVED]**
- 5) Your actions in one or more of the above charges 1 a), 1 b), 2 a), 2 b), 2 c), 3), 4 a), 4 b), & 4 c) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A. **[PROVED]**
- 6) Your actions in one or more of the above charges 4 d) i), 4 d) ii), 4 d) iii), & 4 d) iv), were sexually motivated in that you sought sexual gratification from such contact. **[PROVED]**
- 7) Your actions in charge 4 e) lacked integrity, in that you sought to conceal that you had met Patient A without any clinical justification, from Patient A's family/parents. **[PROVED]**

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

#### **Decision and reasons on application to amend charges 4d)(ii), 4e), 5 and 6**

The panel heard an application made by Ms Da Costa, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charges 4d)(ii), 4(e), 5 and 6.

The proposed amendments were to amend typographical and grammatical errors in the charges so that they reflect the proper spelling and reading of the charges. It was

submitted by Ms Da Costa that the proposed amendments would result in no prejudice to you or the NMC, given that the evidence remains as it is.

### Proposed Amendments

“That you, a registered nurse whilst employed at Royal Brompton and Harefield NHS Foundation Trust (“the Trust”):

[...]

4) On 11 July 2020;

[...]

d) Engaged in sexual activity with Patient A, in that you;

[...]

ii) ~~Hand~~ **Had** your hands placed/placed your hands under Patient A’s leggings/underwear.

[...]

e) Instructed Patient A to lie to her parents about meeting with you on 11 July ~~2022~~ **2020**

5) Your actions in ~~an~~ **one** or more of the above charges 1 a), 1 b), 2 a), 2 b), 2 c), 3), 4 a), 4 b), & 4 c) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A.

6) Your actions in one or more of the above charges 4 d) i), 4 d) ii), 4 d) iii), & 4 d) iv), were sexually motivated in that you ~~sought~~ **sought** sexual gratification from such contact.

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

You agreed to the proposed charge amendments.

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 the proposed amendments were in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. It was therefore appropriate to allow the amendments to amend typographical and grammatical errors in the charges so that they reflect the proper spelling and reading of the charges

### **Decision and reasons on requirement for an application to admit hearsay evidence**

At the conclusion of the oral evidence of the NMC witnesses, the legal assessor said that he understood that Ms Da Costa would invite the panel to take into account the witness statement and exhibits of Witness 4, whose evidence it had been agreed to be read by both parties. The legal assessor raised concerns that Patient A's record of interview, dated 23 July 2020, is contained within such exhibits, and is a document that contains multiple hearsay. The legal assessor invited Ms Da Costa and the panel to consider whether an application to admit this document as hearsay evidence was required in the circumstances.

Ms Da Costa submitted that an application to admit Patient A's record of interview was not required, as all the evidence which the NMC was seeking to rely on was served on you in advance of this hearing. She said that you were given the opportunity to respond, and object to, any evidence which forms part of the NMC case, and you did not do so. Ms Da Costa told the panel that Witness 4 has not been warned to attend this hearing as his evidence was agreed and intended to be read.

You said that you do not have any legal experience and therefore were not sure what you were agreeing to. You submitted that, if there is an opportunity to remove evidence against you which is unfair it should be done. You confirmed that you thought an application to admit Patient A's record of interview as hearsay evidence should be made.

The panel accepted the advice of the legal assessor.

The panel bore in mind the overarching principle of fairness to parties in these regulatory proceedings. It had regard to Patient A's record of interview, which contains Patient A's responses to questions asked by Witness 4. It bore in mind that neither Patient A, nor Witness 4 who interviewed Patient A on 23 July 2020 were called to give evidence before the panel, therefore this interview contains hearsay evidence. The panel was mindful that you are not represented at this hearing, therefore concluded that, in the interests of fairness, an application to admit Patient A's interview record, dated 23 July 2020, as hearsay evidence is required.

### **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Da Costa under Rule 31 to allow into evidence Patient A's record of interview, dated 23 July 2023, which is exhibited by Witness 4. She invited the panel to consider the case of *Thorneycroft v NMC* [2014] EWHC 1565.

Ms Da Costa said that the panel should first consider whether Patient A's interview record is the sole and decisive evidence in respect of any or all of the charges brought against you. She said that this evidence is not sole and decisive and is supported by other evidence before the panel including your own account of events during your police interviews on 15 July 2020 and 10 August 2020 and the Instagram messages which are before the panel. Further, Ms Da Costa said that the panel have had the benefit of hearing the oral evidence of Witness 1 in which he explained how Patient A disclosed the nature of

your relationship, and how he made a record of this shortly after meeting with Patient A. Ms Da Costa said that Patient A's interview record is not sole or decisive on any of the charges and can be tested against this other evidence.

Secondly, Ms Da Costa submitted that Patient A's record of interview is not demonstrably unreliable. She said that it is corroborated and supported by other pieces of evidence, as outlined previously.

Finally, Ms Da Costa said that this hearsay evidence is capable of being tested by you, and the panel when it considers the case overall. She said that this evidence can be tested against the account which you provided in your police interviews on 15 July 2020 and 10 August 2020, and against the oral evidence when you present your case, as well as all of the other documentary and witness evidence before the panel.

In all the circumstances, Ms Da Costa submitted that adducing Patient A's interview record is fair and would not be prejudicial in any way.

You said that you are aware that Patient A's interview record is already before the panel in the bundle. You said that you would accept the knowledge of the panel as to whether this should be taken into account when making findings on facts.

The panel accepted the advice of the legal assessor.

The panel had regard to the *Thorneycroft* principles and concluded that this evidence is not sole and decisive in respect of any of the charges. It bore in mind that Patient A's record of interview is corroborated by other evidence, including the detailed records of your interviews with both the police and the Trust, alongside the evidence of three further witnesses in this matter. The panel noted that there were no allegations of fabrication of this evidence. It bore in mind that you had previously agreed to the inclusion of this hearsay evidence and have not actively resisted its inclusion at this hearing.



In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the record of Patient A's interview dated 23 July 2020, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

### **Decision and reasons on proceeding in the absence of Mr Jose on 9 January 2023**

At the conclusion of your evidence on 6 January 2023, you advised the panel that you may not be available to attend the remaining dates of this hearing due to professional commitments. The panel and legal advisor advised you of the timetable for the remaining dates of this hearing, and that, as you have admitted two charges, the panel would go on to consider misconduct and impairment in any event. The panel advised that it would hear closing submissions on facts from 09:00 on 9 January 2023, and invited you to send in any written submissions that you may wish the panel to consider before this time.

You did not attend the hearing on 9 January 2023. The panel therefore considered whether it should proceed in your absence. It had regard to Rule 21 and heard the submissions of Ms Da Costa who invited the panel to continue in your absence. She invited the panel to consider an email which you sent to the hearings coordinator on 9 January 2023. She said attached to this email was a document containing your commentary on the facts and the body of the email stated:

*“Unfortunately, I won't be able to attend the hearings this week. I have attached some more evidence.”*

Ms Da Costa said that you indicated last week that you intended to work. She said that you have not made any application for this matter to be adjourned and, were the panel to adjourn, there is nothing to say that you would attend the hearing at a later occasion.

Ms Da Costa submitted that this hearing relates to allegations from June and July 2020 and involve a vulnerable patient. She said that you had full knowledge and awareness of the time estimate prior to this hearing and it would therefore be in the public interest to proceed in your absence.

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 your absence. In reaching this decision, the panel has considered the submissions of Ms Da Costa, your email of 9 January 2023, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William) (No.2) [2002]* 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:

- You have not made an application to adjourn this hearing;
- You have been informed of the procedure of this hearing and the outstanding considerations of the panel;
- You have been given every opportunity to attend and the panel have invited your written submissions in the circumstances where you may not attend;
- You have participated in this hearing so far and the panel has had the benefit of hearing your evidence under affirmation;
- You have had the opportunity to challenge the evidence which the NMC relies upon;
- The panel will be able to update you of its findings at every stage of the process which it may reach, and you will have the opportunity to provide written submissions;
- There is no reason to suppose that adjourning would secure your attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

The panel understands the reasons why you have chosen to voluntarily absent yourself from the hearing at this stage, however it concluded that the public interest in proceeding with this matter outweighs your own interests in this respect. The panel will inform you of its findings at the conclusion of each stage that it may reach.

## **Background**

The charges arose whilst you were employed as a registered nurse by the Royal Brompton and Harefield NHS Foundation Trust (the Trust), where you worked as a Band 5 Staff Nurse on Rose Ward (the Ward) at Royal Brompton Hospital (the Hospital). Patient A is your former patient, who was 17 years old at the relevant time.

Patient A was admitted as an inpatient on the Ward between 19 May 2020 and 8 June 2020. It is alleged that you obtained Patient A's details for the online photo sharing and messaging application 'Instagram' and subsequently accepting a request to 'follow' her.

It is further alleged that, following Patient A's discharge from the Hospital and between 9 June and 10 July 2020, you sent Patient A messages via Instagram, without any clinical reason or justification, and that one or more of these messages was of a sexual or inappropriate nature.

It is alleged that you booked a hotel room at Jury's Inn Croydon (the Hotel) for between 09:00 and 17:00 on 11 July 2020, for Patient A and yourself. And that, on 11 July 2020, you travelled to the Hotel and entered the room with Patient A. It is further alleged that, on this date, you engaged in sexual conversation and sexual activity with Patient A, as outlined in the charges.

You were arrested in relation to this incident and interviewed under caution on 17 July 2020 and 10 August 2020. The police took no further action in respect of this matter.

You were dismissed from your role at the Trust on 17 February 2021. Your contract was terminated on 16 March 2021.

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

At the outset of the hearing, you informed the panel that you made admissions to charges 2c) and 4b).

The panel therefore finds charges 2c) and 4b) proved, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Da Costa on behalf of the NMC, alongside your oral evidence and written submissions.

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

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

- Witness 1: Patient A's social worker at the time the charges arose;
- Witness 2: Business Support Manager and Trust Investigator tasked with

investigating the allegations  
regarding your conduct;

- Witness 3: Detective Constable employed by British Transport Police. Interviewing Officer at your police interview on 15 July 2020

The panel also had regard to the agreed witness statement and documentary evidence of the following witness on behalf of the NMC:

- Witness 4: Detective Sergeant employed by British Transport Police. Investigating Officer into the concerns regarding your conduct.

The panel also heard evidence from you under affirmation.

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

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

### **Charge 1a)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust (“the Trust”);

- 1) Between 19 May and 8 June 2020 whilst Patient A was an in-patient at the Royal Brompton Hospital;

a) Obtained Patient A's 'Instagram' details.

[...]

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 15 July 2020, in which you said:

*“Witness 3: Did you communicate only [with Patient A] face to face or did you communicate in other ways and by that I mean did you swap phone numbers, did you swap social media details, add each other on social media that kind of thing*

*You: Ok, well I only talked to her face to face so I think it only, it only happened when she was showing me her Instagram account...*

**Witness 3: OK.**

*You: ... and showing me some of her pictures I think I saw, I saw some there like this, what do you call this like a header saying what good, something like what good living if you're gonna die anyway something like that so yeah I saw her Instagram I said yeah that's cute [...]"*

The panel had regard to your written response to this charge. You said:

*“Deny. I was on my annual leave and she added me on Instagram. I just blindly browsed these request to “Follow Back”. Possible that I was busy playing my PS4 game. I usually filter or unfollow people after. I recognized Patient A name.”*

The panel bore in mind that you accepted, during your oral evidence, that you saw Patient A's Instagram page as she showed you a photograph of a cat, which you subsequently recognised. The panel noted that you could clearly describe the image you saw. It found this account to be consistent with the responses which you gave in your record of police interview on 15 July 2020.

The panel bore in mind the legal assessor's advice on the definition of the word "*obtain*" in this context, which can include you being given, or seeking, Patient A's Instagram details on the relevant dates, whether passively or actively. The panel was aware of the layout of the Instagram application, it bore in mind that a user's Instagram username is located at the top of the screen when looking at an overview of their profile, and both above and below any individual post which they may share. Accordingly, in light of your acceptance that you viewed photographs on Patient A's Instagram account in the course of her inpatient admission to the Ward, between 19 May and 8 June 2020, the panel was satisfied that, on the balance of probabilities, you passively obtained Patient A's Instagram details.

The panel therefore finds this charge proved.

### **Charge 1b)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust ("the Trust");

- 1) Between 19 May and 8 June 2020 whilst Patient A was an in-patient at the Royal Brompton Hospital;  
[...]
- b) Sent Patient A an 'Instagram' request/followed Patient A on 'Instagram'.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to Patient A's interview notes, dated 23 July 2020, in which she said:

***“Officer 1: [...] You’ve obviously then maintained contact after you’ve been discharged, so how did that come about?”***

***Patient A: He requested to follow me on Instagram.***

***Officer 1: Ok, is then when, is this the day before you were discharged?***

***Patient A: Yeah***

***Officer 1: Ok, can you describe a little more the conversation like how that came, came up when he asked that?***

***Patient A: I’m not sure***

*[...]*

***Officer 1: No, that’s fine ok so you remember then he’s asked to follow you on Instagram, had you like previously spoken about Instagram together?***

***Patient A: No***

***Officer 1: No, so he just kind of out of the blue asked you, asked to follow you?***

***Patient A: He requested to... He didn’t tell me that he was gonna send a request.***



**Officer 1:** *Ok, do you know when he did that?*

**Patient A:** *When I was still in hospital.”*

The panel had regard to your responses to this charge. It noted that, in your investigation interview with Witness 2 on 6 January 2021, you said:

*“Yeah. I think it was on Instagram after she got discharged. I’m not sure but I think she followed me then I followed her then that’s it, and we started communicating but that’s just friendly communication.”*

The panel had regard to all the evidence before it. It was satisfied that you had, at some point, followed or requested to follow Patient A on Instagram. However, the panel concluded that Patient A’s interview notes contained no elaboration as to specific dates and times at which it was alleged that you followed her on Instagram. It noted that this evidence was multiple hearsay, therefore the panel concluded that it could place little reliance on this evidence in respect of charge 1b).

The panel therefore concluded that, although it is accepted that you followed or requested to follow Patient A on Instagram, it could not be satisfied that, on the balance of probabilities, you did so between 19 May and 8 June 2020 whilst Patient A was an in-patient at the Royal Brompton Hospital.

The panel therefore found this charge not proved.

### **Charge 2a)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust (“the Trust”);

- 2) Between 9 June 2020 and 10 July 2020, after Patient A had been discharged from the Royal Brompton Hospital;
  - a) On one or more occasion sent Patient A messages via 'Instagram' without any clinical reason/justification.  
[...]

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 15 July 2020, in which you said:

*“You: [...] After that yeah we, I send her like a picture of a cat, sometimes I say like good morning to her and just say like just catch up and it was all about movies anyway yeah.*

*Witness 3: Ok and how did you send her that picture, was it on Instagram?*

*You: It was on Instagram yeah.*

*Witness 3: Ok*

*You: So I didn't see, I didn't see anything bad about it yeah, yeah I send her this and she replies back and that's it.”*

The panel had regard to your written response to this charge. You said:

*“Deny. With a little background that she is noncompliant. I only applied therapeutic communication and urged her to comply with her meds/physio upon reading some of her initial messages.”*

The panel noted your oral evidence, in response to Ms Da Costa's questioning as to whether you were required to support Patient A, or any other patients, when she left the Hospital, you confirmed that this was not your role or duty.

The panel did not accept your account in respect of this charge. It concluded that you knew that it was not your responsibility to clinically support Patient A following her discharge from the Hospital, as you would have been aware, as a registered nurse, that she would have had a dedicated team to provide such support.

Even if, which the panel does not accept, your goal was to provide clinical support to Patient A, the panel concluded that the messages which you described sending, about cats and movies, were not clinical in nature and were in no way related to Patient A's health. Additionally, the panel bore in mind that clinical interactions must be undertaken in the appropriate way, properly recorded and through the correct channels. The panel determined that Instagram messages cannot be considered an appropriate method of contacting patients. The panel therefore concluded that, on the balance of probabilities, between 9 June 2020 and 10 July 2020, after Patient A had been discharged from the Royal Brompton Hospital, on one or more occasions you sent Patient A messages via Instagram without any clinical reason/justification.

The panel therefore found this charge proved.

### **Charge 2b)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust ("the Trust");

- 2) Between 9 June 2020 and 10 July 2020, after Patient A had been discharged from the Royal Brompton Hospital;

[...]

- b) On one or more occasion sent Patient A messages via 'Instagram' of a sexual/inappropriate nature.

[...]

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 10 August 2020, in which you said:

*"You: Coz when the conversations started becoming sexual because we were sexting there so we were like having some made up fantasies, made up dates and when we're gonna meet up and this and that*

[...]

***Witness 4:** Ok, fine and you've just talked about sexting you just said there...*

***You:** Yeah, yeah sexting happened*

***Witness 4:** Right, when did that start?*

***You:** I don't know exactly when but it started during that conversation when she's just suddenly blurted out that she really misses having a relationship or missed having sex... yeah .. it was, there were a lot, like a lot of vulgar stuff there that she opened up so I just went along, I just went along with that sexting, that's it so yeah that's how it happened.*

***Witness 4:** So when you met her then you'd been sexting or texting each other sexual messages before that date yeah, so you...*

**You:** *Oh yeah, yeah, before, yeah”*

The panel also had regard to Patient A’s interview notes, dated 23 July 2020, in which she said:

**“Officer 1:** *No, and your sort of relationship with him just through this whole time, I appreciate you first met in the hospital and you know it started off which just messaging on Instagram, Has there been anything else that made you think he wanted a sexual relationship with you?*

**Patient A:** *He did mention a few times like sexual stuff that he wanted to do to me but I didn’t actually think he would actually do it.*

*[...]*

**Officer 1:** *Was this something on Instagram or?*

**Patient A:** *Yeah.*

**Officer 1:** *Ok and what sexual stuff was he talking about?*

**Patient A:** *I can’t remember.*

**Officer 1:** *Was this sort of like for want of a better term, do you understand the term of like sexting?*

**Patient A:** *Yeah*

**Officer 1:** *Yeah so can you explain what that means?*

**Patient A:** *Just sending sexual messages.*

[...]

**Officer 1:** *And so do you remember roughly when he started, first started, sending those sorts of messages to you?*

**Patient A:** *I think it was like a week or 2 after we started messaging.”*

The panel bore in mind your written response to this charge. You said:

*“Deny. As evidenced in [Witness 1’s] report, the goal was for her to be compliant and it did happen. Along the way, it was her that suddenly sent me a message about having sex. That’s one of the instances where I called her “crazy girl”.”*

The panel took into account your oral evidence. It found your accounts to be unclear and inconsistent as to whether you sent and/or responded to Patient A on Instagram with messages which are sexual and/or inappropriate in nature. The panel noted that you accepted in your oral evidence that you called Patient A “gorgeous”, and admitted that you sent Patient A an Instagram message asking words to the effect of “*what she wanted to do to you*”. The panel did not accept your explanations that you thought Patient A was “pranking” you, or that you were trying to help Patient A comply with her medications by allowing her to vent her urges. Accordingly the panel concluded that, on the balance of probabilities, responding in such conversations in any way, and by failing to disengage with Patient A constituted sending messages of an inappropriate nature.

The panel went on to consider whether you sent Patient A messages of a sexual nature. The panel had regard to your admissions to “sexting” in the police interview, which was conducted a few weeks after the messages were shared between you and Patient A.

The panel had regard to the Cambridge Dictionary definition of “sexting” as:

*“the activity of sending text messages that are about sex or intended to sexually excite someone”*

The panel concluded that you admitted in your second police interview to sexting and speaking about sexual fantasies with Patient A via Instagram, after her discharge from the Hospital. You also accepted, in your oral evidence, and your acceptance that you asked Patient A “*what she wanted to do to you*”. The panel found that that you were an active participant in sending sexual text messages by responding to and continuing to engage with Patient A, even if it was not you who initially instigated such communication. The panel therefore concluded that, on the balance of probabilities, between 9 June 2020 and 10 July 2020, after Patient A had been discharged from the Royal Brompton Hospital, on one or more occasion sent Patient A messages via ‘Instagram’ of a sexual/inappropriate nature.

The panel therefore found this charge proved.

### **Charge 3)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust (“the Trust”);

- 3) On 2 July 2020 booked a room at Jury’s Inn Hotel Croydon for 11 July 2020 between 09:00 – 17:00 for Patient A and yourself.

**This charge is found NOT proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. Patient A’s interview notes, dated 23 July 2020, in which she indicated that she was not aware of the hotel booking until she met with you on 11 July 2020:

**“Officer 1:** [...] Describe the kind of conversations you and him have been having about you know your plans for that day?

**Patient A:** He didn't really say where we were going

**Officer 1:** Ok

**Patient A:** I think he just thought that I knew where we were going, what we were doing

**Officer 1:** Ok

**Patient A:** But I wasn't sure.

**Officer 1:** Ok, did you even know that you were going to East Croydon

**Patient A:** No”

The panel bore in mind your written response to this charge. You said:

*“Deny. The hotel was just for me since I was on a night shift. Never intended for her to be with me.”*

The panel found that your oral evidence was consistent with your written response, in that you repeatedly told the panel that you had booked a hotel to allow you to get some rest before your night shift, should you require it. You said that the hotel reservation was not a fixed booking, and it was open to you to cancel this, should you have decided that you would have prepared to return home to rest.



The panel had regard to booking confirmation for the Hotel, dated 11 July 2020, and the payment receipt for the Hotel, dated 17 July 2020. It noted that the Hotel booking reservation was made in your sole name, and reserved for one adult. Accordingly, the panel determined that, on the balance of probabilities, the NMC has not adduced sufficient evidence to establish that, on 2 July 2020, you booked a room at Jury's Inn Hotel Croydon for 11 July 2020 between 09:00 and 17:00 for Patient A and yourself.

The panel therefore found this charge not proved.

#### **Charge 4a)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust ("the Trust");

- 4) On 11 July 2020;
  - a) Travelled to Jury's Inn Hotel Croydon with Patient A.  
[...]

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 15 July 2020, in which, after you explained to Witness 3 how you travelled by train from Tunbridge Wells to East Croydon with Patient A you said:

*"You: Oh since she was complaining a lot of... being tired so basically I said ok there's a nearby hotel [...]"*

[...]

**Witness 3:** [...] You've gone to a hotel with [Patient A]

**You:** Yes

**Witness 3:** *What hotel was this?*

**You:** *Just Jury's Inn.*

**Witness 3:** *Jury's Inn?*

**You:** *Yeah*"

The panel had regard to your responses in relation to this charge in your second police interview, on 10 August 2020, which it found to be consistent with your first interview. When asked about the same matter, you said:

**"Witness 4:** *You agreed to go to meet up with [Patient A] in Person.*

**You:** *Uhhh*

**Witness 4:** *... In July and go sightseeing. You met [Patient A] at Tunbridge Wells station in Kent and then you've travelled together on a train from Tunbridge Wells to London Bridge before getting a further train onto East Croydon yeah?*

**You:** *Yeah*

**Witness 4:** *You then said that you walked around Croydon before going to the Jury's Inn Hotel. You said that you were at the hotel for about 5 to 10 minutes before staff asked you to leave...*

**You:** *Uhhh*"

The panel bore in mind your written response to this charge. You said:

*“Agree. This happened when she was constantly telling me that she wanted to rest. I suppose she got tired because of the walking up the platform in Croydon and when we took the stairs.”*

The panel noted that, in the course of your oral evidence, you provided a detailed chronology of events on 11 July 2020, and described for the panel how you decided to travel to the Hotel with Patient A when she reported to you that she was tired. You provided the panel with an in-depth description of the route which you and Patient A took to travel to the Hotel from East Croydon train station. Accordingly, the panel was satisfied that, on the basis of your admissions both in police interviews and during your oral evidence at this hearing, that, on 11 July 2020, you travelled to Jury’s Inn Hotel Croydon with Patient A.

The panel therefore found this charge proved.

#### **Charge 4c)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust (“the Trust”);

4) On 11 July 2020;

[...]

c) Talked with Patient A about her sex life.

[...]

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 10 August 2020, in which you said:

*“You: But before going inside the train she was already talking about, again some naughty things but I didn’t really mind it coz I’m already used to it, that’s why after...”*

**Witness 4:** *So what naughty things was she saying to you?*

*You: Well again... well first we were waiting for the train so she was talking about... she was talking about her ex-boyfriend then again it would’ve been nice like if something happened like, something happened coz she really misses like having sex and all so again I didn’t mind coz I’m already used to her having this kind of urges that she just blurts out about it*

*[...]*

**Witness 3:** *Ok so you’ve had a discussion at Croydon then regarding her sex life*

*You: Not just... very briefly it was more of love life first but...*

**Witness 3:** *Ok*

*You: ... yeah but when the train arrived that’s... so I think that was where it came back all like...*

**Witness 3:** *Ok.*

*You: ... coz it was more of the fantasy in the hotel maybe that triggered her like having privacy together with a male but I'm just assuming that's her thinking because otherwise I wouldn't particularly think that she'd open up all of a sudden"*

The panel bore in mind your written response to this charge. You said:

*"Deny, when we entered the room. She immediately went to bed to sleep while I checked out the bathroom/toilet then proceeded to sit on a chair and look for some Dominos pizza nearby. There was a knock on the door after a few minutes. It was front desk asking for my identification"*

The panel recognised that your written response to this charge is limited to the conversations which you had with Patient inside the Hotel room, and not any other conversations which you may have had with Patient A on 11 July 2020. The panel had regard to your responses to questions in the course of your oral evidence. You said that when Patient A spoke to you about her sex life and became flirty, you called her a "naughty girl". The panel concluded that such a response was insufficient to effectively terminate such inappropriate conversations, and therefore found that, on the balance of probabilities, on 11 July 2020, you talked with Patient A about her sex life.

The panel therefore found this charge proved.

#### **Charge 4d)(i)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust ("the Trust");

4) On 11 July 2020;

[...]

d) Engaged in sexual activity with Patient A, in that you;

- i) Had your hand placed/placed your hand on Patient A's Thigh/Leggings.

**[PROVED]**

[...]

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to the Trust Investigation. The panel took into account the witness statement of Witness 2, dated 27 April 2022, which set out:

*“Michael Jose said that during a train journey on this particular day, the patient grabbed his hand and pulled it inside her leggings. He told us that he put his hand on top of the leggings.”*

The panel found the evidence of Witness 2 to be clear and credible in respect of this charge. It noted that Witness 2's evidence is further supported by your responses to Witness 3 during your police interview on 15 July 2020, in which you said when asked about your train journey back from East Croydon on 11 July 2020:

*“**Witness 3:** And did anything go on between you and [Patient A] sexually on that journey?*

*[...]*

***You:** I think it was the one, Croydon going to Purley*

***Witness 3:** Ok*

***You:** It was just like at the most it was just like, anyway just being, holding like this and pressing it anyway... so I didn't think that it mattered to me...*

***Witness 3:** Ok*

*You: ... so I didn't really mind it so there wasn't really like more talking there but yeah that was the time when during that time when she was kind of like touching my arms and I kind of pressed her on her... on her breasts on my shoulders so I was surprised that she was like holding my hands, then (inaudible) yeah well put it inside her panties so that was it yeah."*

The panel had regard to Patient A's account of this incident during her interview on 23 July 2020. She said:

*"But he put his hand on my thigh and he slowly went up... and then he put his hand under my leggings"*

The panel noted that you deny this charge. It noted that you did not specifically address this charge in your oral evidence, nor were you asked about it. However, the panel bore in mind the context of the events which led up to, and followed, this alleged incident, including your admission to holding Patient A's hand and allowing Patient A to lean closely on to you. In the circumstances, the panel found that, on the balance of probabilities, on 11 July 2020 you engaged in sexual activity in that you had your hand placed on Patient A's thigh/ leggings.

The panel therefore found this charge proved.

#### **Charge 4d)(ii)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust ("the Trust");

4) On 11 July 2020;

[...]

- d) Engaged in sexual activity with Patient A, in that you;  
[...]
- ii) Had your hands placed/placed your hands under Patient A's  
leggings/underwear.  
[...]

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 15 July 2020, in which you said:

*“You: [...] She grabbed my hand and put it inside her panties so ok I took it off, of course it was really tempting, I didn’t really immediately took it out coz I mean wow I mean this has happened so she was, she was pressing my hand on to her genitalia bit then maybe after like 5,6 seconds I took it out, I said still naughty [...]*

[...]

**Witness 3:** *Ok, so are you saying that she took hold of your hand and she placed your hand inside her underwear?*

**You:** *Yeah that’s how.. that’s how my recollection as yeah.”*

The panel bore in mind your written response to this charge. You said:

*“Deny, it was Patient A who instigated it.”*

The panel had regard to all the evidence before it, it noted that you deny this charge. However, on the basis of all the evidence before it, including your oral evidence in which



you explained to the panel in great detail how Patient A placed your hands inside her underwear, the panel was satisfied that, on the balance of probabilities, on 11 July 2020 you engaged in sexual activity with Patient A in that you had your hand placed under Patient A's leggings and underwear.

#### **Charge 4d)(iii) and 4d)(iv)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust ("the Trust");

4) On 11 July 2020;

[...]

d) Engaged in sexual activity with Patient A, in that you;

[...]

iii) Touched Patient A's genitalia.

iv) Digitally penetrated Patient A.

[...]

#### **These charges are found proved.**

The panel noted that both charges 4d)(iii) and 4d)(iv) stem from the same incident. The panel therefore considered these charges together. In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 15 July 2020, in which you said:

***“Witness 3:** Ok, ok, did she say anything to you when she took hold of your hand and placed it inside her underwear?*

***You:** No, she was saying nothing, she was just feeling it anyway.*

**Witness 3:** *What did she, what did she do with your hand when your hand was against her?*

**You:** *Ok, well when it was there she, she was just pressing it so I would assume that it was more of the clitoris, so it was more on her hand just pressing it, just pressing like this hand, this finger of mine so yeah that was just how it was so at first I was shocked so I mean I didn't actually remove it right away and it was really tempting but after that then it stopped and that's it.*

*[...]*

**Witness 3:** *Did you insert any part of your fingers into her vagina?*

**You:** *Erm maybe since it was being pressed maybe it was up until here maybe so I really couldn't tell but that was the only thing that I remember about that day*

**Witness 3:** *You say you couldn't tell...*

**You:** *Yeah well but I...*

*[...]*

**Witness 3:** *You must know whether you did or didn't*

**You:** *Yeah.*

**Witness 3:** *So did you place your finger inside her vagina?*

*You: Not, not because I wanted to, it was because of the... my hand was taken cause there was a guide there to like to insert it so it think that the furthest that... well the parts that was grazed was the clitoris then went to the vagina then only this one came in because of the pressure also because of the pressure also because of the hole but then after that I went back and pull it out and said "hey naughty girl".*

You denied these charges. In your oral evidence you explained in detail, and visually demonstrated for the panel which parts of your hand touched Patient A's genitalia when she guided your hand inside her underwear. You explained that the tip of your middle finger penetrated Patient A's vagina, and the side of your finger grazed her clitoris. You explained how you felt Patient A's "pubic parts" and felt the tip of your finger enter her vagina. You said that you removed your hand after approximately five seconds, and called Patient A a "naughty girl". You told the panel that you did not digitally penetrate Patient A as it was only the tip of your finger, and not your full finger, which entered Patient A's vagina.

The panel noted that you deny this charge. However, on the basis of all the evidence before it, including your oral evidence in which you explained to the panel in great detail how Patient A placed your hands inside her underwear, the panel was satisfied that, on the balance of probabilities, on 11 July 2020 you engaged in sexual activity with Patient A in that you touched Patient A's genitalia and digitally penetrated Patient A. The panel did not accept your defence in respect of charge 4d)(iv) and took the view that you digitally penetrated Patient A with the tip of your finger.

The panel therefore found this charge proved.

#### **Charge 4e)**

That you, a registered nurse, whilst employed at Royal Brompton and Harefield NHS Foundation Trust ("the Trust");

4) On 11 July 2020;

[...]

e) Instructed Patient A to lie to her parents about meeting with you on 11 July 2020.

**This charge is found proved.**

In reaching this decision, the panel took into account all of the documentary evidence before it. It had particular regard to your responses to questioning under police interview on 15 July 2020, in which you said:

**“Witness 3:** *Have you spoken to [Patient A] at all since the incident?*

**You:** *Yeah coz she mentioned to me that I mean she got yelled at by, by her parents so I said ok I was thinking ok I thought this was established so the only thing that came to my mind was just like saving her (inaudible) just sightseeing, just had sightseeing and that’s it so just, just went home.*

**Witness 3:** *So you told, forgive me if I’ve heard that wrong, you told [Patient A] to tell her parents that you just went sightseeing?*

**You:** *Yeah coz if, if that was the case that she’s gonna be in trouble I didn’t want any like, any negativity about me since I thought that it was it already established that I’m like a friend to her...*

**Witness 3:** *Ok.*

**You:** *... so I just told her just do it like that coz I didn’t think that this was an issue.*

[...]

**Witness 3:** *You've told [Patient A] to basically lie.*

**You:** *Yeah, yeah*

**Witness 3:** *... In order to protect her?*

**You:** *Yeah coz I didn't think, coz I'm thinking if the parents would, would lets say find out that she went out with me then it's gonna be a big issue so if it becomes a big issue I was think that they'd call the hospital right away and just mere suspicion that would, would mean that I could be fired from the hospital so...*

**Witness 3:** *Ok.*

**You:** *Yeah I was in a way also protecting myself coz I mean in my mind I didn't think I did anything wrong anyway so it's just that I didn't want this to blow up my employers knowing that this kind of thing happened coz again it might just like lead to my termination from the hospital so it's not, I don't feel that I deserve that, that's why I tried to keep it as minimal as possible, yeah,"*

The panel bore in mind your written response to this charge. You said:

*"Agree. She messaged me that her parents scolded her and might call the police that night so I begged her not to implicate me. I was fearful of the repercussions and didn't want to exacerbate it."*

The panel had regard to all the evidence before it, it noted that you deny this charge, and deny that you were trying to manipulate Patient A. However, on the basis of all the evidence before it, including your oral evidence in which you explained to the panel that

you were “*desperate and trying to save yourself*”, the panel was satisfied that, on the balance of probabilities, you instructed Patient A to lie to her parents about meeting with you on 11 July 2020.

The panel therefore found this charge proved.

### **Charge 5)**

- 5) Your actions in one or more of the above charges 1 a), 1 b), 2 a), 2 b), 2 c), 3),-4 a), 4 b), & 4 c) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A

**This charge is found proved in respect of charges 2b), 4a), 4b), and 4c) only.**

The panel considered your motivation in respect of each charge individually. It bore in mind that it has not found charges 1b) and 3 proved, so did not consider these in relation to charge 5.

The panel bore in mind its finding in relation to charge 1a), that you passively obtained Patient A’s Instagram details whilst she was an inpatient on the ward. The panel considered that this was inappropriate, however, it could not be satisfied that your actions were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A, on the balance of probabilities.

In respect of charge 2a, the panel noted its finding that one or more of the messages which you sent to Patient A were not clinical in nature, in that you discussed your interests such as movies and cats. Although the panel deemed this to be unnecessary, it could not be satisfied that your actions in relation to this charge were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A, on the balance of probabilities.

When considering whether your actions in relation to charge 2b) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A. The panel concluded that the fact that you had booked a hotel near the place where you agreed, or were to agree, to meet Patient A, demonstrates that you had formed an interest in having a sexual relationship with her. The panel determined that you had formed such interest during the sexting communication which you had undertaken with Patient A. The panel bore in mind that you had not closed down the sexting conversations, thereby keeping open the possibility of developing a sexual relationship. The panel therefore finds that your actions in sending Patient A messages of a sexual / inappropriate nature were done to pursue a future sexual relationship with Patient A, on the balance of probabilities.

In respect of charge 2c), the panel concluded that it is unprofessional for a registered nurse to send messages using words such as “*Good Morning Pretty*” to former patients by social media. The panel heard your evidence, that you had sent such messages to encourage Patient A’s compliance with her medication and to make her feel good about herself. Although the panel concluded that such messages were unprofessional and inappropriate, it considered that there was insufficient evidence to be satisfied that your actions in relation to this charge were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A, on the balance of probabilities.

In respect of charges 4a) and 4b), the panel rejected your oral evidence that you travelled to the Hotel and entered the Hotel room with Patient A because she was tired and needed to rest. The panel concluded that the fact that you had booked a hotel near the place where you agreed, or were to agree, to meet Patient A, demonstrates that you had formed an interest in having a sexual relationship with her. The panel concluded that it is more likely than not that you attended and/or brought Patient A to the Hotel with the intention of pursuing such a sexual relationship. It concluded that this was your primary motivation in respect of charges 4a) and 4b). The panel therefore finds that your actions in travelling to, and entering a room at Jury’s Inn Hotel Croydon with Patient A were done to pursue a future sexual relationship with Patient A, on the balance of probabilities.

When considering whether your actions in relation to charge 4c) were sexually motivated, in that you sought to pursue a future sexual relationship with Patient A. The panel concluded that the fact that you had booked a hotel near the place where you agreed, or were to agree, to meet Patient A demonstrates that you had formed an interest in having a sexual relationship with her. The panel determined that you had formed such interest during the sexting communication which you had undertaken with Patient A. The panel considered that you acted in a similar manner when discussing Patient A's sex life with her on 11 July 2020. The panel bore in mind that you had not closed down such conversations, thereby keeping open the possibility of developing a sexual relationship. The panel therefore finds that your actions in talking about Patient A's sex life were done to pursue a future sexual relationship with Patient A, on the balance of probabilities.

The panel therefore found this charge proved in respect of charges 2b), 4a), 4b), and 4c) only.

### **Charge 6)**

- 6) Your actions in one or more of the above charges 4 d) i), 4 d) ii), 4 d) iii), & 4 d) iv), were sexually motivated in that you sought sexual gratification from such contact.

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

The panel bore in mind that your actions at charges 4d)(i)-(iv) arose from the same incident over a short period of time. It therefore considered your motivation in respect of this single incident as a whole.

The panel considered your written response to this charge. You said:

*“Deny. There has been numerous times that I denied/declined her sexual advances.”*



The panel had regard to your oral evidence in respect of each of these charges, and its findings as outlined above. It noted that you accepted that you did not immediately remove your hand, and continued sexual contact with Patient A for a period of around five seconds. It bore in mind that you admitted your temptation during this incident several times throughout your oral evidence, and you told the panel that it is “*human nature*” for a man to be tempted were he to find himself in a similar situation. You told the panel that you did not immediately move away from Patient A when your hand was on her thigh, under her leggings, in her underwear and when she encouraged you to digitally penetrate her as you were shocked and did not want to “*make a fuss*”. The panel did not find your explanation to be credible. It considered that you had multiple opportunities to stop the sexual contact, regardless of how it arose, by moving away from Patient A. The panel found that, on the balance of probabilities, you failed to do so and continued to engage with Patient A was for the purposes of seeking sexual gratification.

The panel therefore found this charge proved.

### **Charge 7)**

- 7) Your actions in charge 4 e) lacked integrity, in that you sought to conceal that you had met Patient A without any clinical justification, from Patient A’s family/parents.

**This charge is found proved.**

The panel considered integrity in this context to mean respecting the overarching principles, including the ethical and moral codes, expected of registered nurses in their practice. This includes a nurse’s duty to adhere to the NMC Code of Conduct and professional standards.

The panel took into account its finding in relation to charge 4e), and concluded your actions lacked integrity. It found that, by encouraging Patient A to lie to her parents about

her whereabouts on 11 July 2020, you lacked openness, transparency and the moral fortitude expected of a registered nurse.

The panel found that it was not in the best interests of Patient A to encourage her to lie to her parents. In your oral evidence you said that you did so for your own “*survival*”. The panel determined that you sought to prioritise your own interests over those of Patient A in order to avoid any adverse consequence that your actions in meeting Patient A may have had on your career as a registered nurse. The panel noted that you said in your police interview, on 15 July 2020, that you did not feel that you had done anything wrong. However, it concluded that you instructed Patient A to lie in the knowledge that, were her parents to find out that you had spent the afternoon together, this could have opened the potential for disciplinary and regulatory scrutiny. Accordingly, the panel found that, on the balance of probabilities, your actions in charge 4e) lacked integrity.

The panel therefore found this charge proved.

### **Application for Adjournment on 11 January 2023**

At the conclusion of the fact stage, you were sent the panel’s determination on facts by email. You were advised that the panel would move on to the next stage, and would hear submissions on misconduct and impairment from 09:30 on 11 January 2023. You were asked if you wished to provide any written submissions or representations in respect of misconduct and impairment. You responded:

*“I’m really not sure what’s next but here’s a copy of my case management form. If possible, I would also request for the hearing to adjourn base on hearsay and what was already presented last time.” [sic]*

The panel understood this email to be an application for an adjournment.

Ms Da Costa opposed this application. She asked the panel to analyse reasons why you are seeking an adjournment. She said that you do not appear to be seeking an adjournment in order to attend and participate in the hearing, but your email indicates that you want to present matters already presented in relation to the factual stage of proceedings. Ms Da Costa said that the Chair was clear on Friday 6 January 2023, when you indicated that you would not be attending the hearing from 9 January 2023, as to what would happen. She said that you were informed of the next stage of, and how the panel would proceed to deal with any future stages, should your fitness to practise found to be impaired. Ms Da Costa submitted that, prior to the hearing, you were sent proper notice that this hearing would sit between Wednesday 4 to Thursday 12 January 2023. In light of this, she said that you were fully aware of all the listed dates, and you have voluntarily absented yourself from this hearing.

Ms Da Costa submitted that your request for adjournment did not indicate whether you wish to participate in the next stage of these proceedings. She reminded the panel of its findings in relation to the facts. She submitted that this matter relates to your conduct towards a 17-year-old, vulnerable, former patient, and relates to events which took place in 2020. In light of this, she submitted that it is in the public interest to proceed with this matter.

The panel accepted the advice of the legal assessor.

### **Decision and Reasons on Application for Adjournment on 11 January 2023**

The panel rejected your application for an adjournment.

It had regard to the wording of your adjournment request: *“I would also request for the hearing to adjourn base on hearsay and what was already presented last time” [sic]*. The panel took into account its decisions on facts and noted that its findings in respect of any charge were not based solely on hearsay evidence.

The panel bore in mind that an application was made to adduce the hearsay evidence on 5 January 2023, and you had the opportunity to make full representations on this matter at that time. It took into account the fact that the legal assessor has explained to you the law and procedure at each stage of this hearing, and you were provided every opportunity to put forward your views and submissions at the factual stage. Additionally, the panel noted that your adjournment request seems to be based on re-visiting facts which have already been resolved. The panel bore in mind that, subject to typographical amendments, its decision on facts is finalised, and it is therefore not open to you to re-visit the fact stage.

The panel considered the issue of fairness to both you and the NMC in considering this application. It noted that you have not made any previous applications for an adjournment in this matter, and to adjourn part-heard at this stage would likely result in unfairness to the NMC when it is not clear whether you would attend any future resuming dates.

The panel bore in mind the public interest in the expeditious disposal of this matter. It had regard to the length of time since the incidents which are subject to the charges took place in 2020. It concluded that the public interest in concluding with this hearing is high. Accordingly, the panel rejected your application for adjournment.

### **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**

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

Ms Da Costa invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

Ms Da Costa identified the specific, relevant standards where your actions amounted to misconduct. She submitted that your conduct in the charges found proved amounts to misconduct in that it fell far short of what was proper in the circumstances.

Ms Da Costa submitted that you failed to act in the best interests of people at all times, and such failure presented a risk of harm to a young vulnerable patient. Ms Da Costa said that your actions of sexting, meeting in a hotel, and having sexual contact with Patient A were not in her best interests.

Ms Da Costa further submitted that you entirely failed in your duty to uphold the reputation of your profession at all times as you did not act with honesty and integrity. She said that you failed to ensure clear and professional boundaries by communicating with Patient A

without clinical justification, engaging in sexting communication with Patient A and instructing Patient A to lie to her parents.

Ms Da Costa submitted that your conduct fell far short of the Code and the actions expected of a registered nurse. She said that the facts found proved, and specifically in relation to your sexual conduct with Patient A, demonstrate your failure to act in Patient A's best interests. She said that you were aware of your duty to maintain professional boundaries with Patient A, and knowingly failed to adhere to such duty by continuing to contact, and arranging to meet with, Patient A. Ms Da Costa said that you should have been aware of the risk of harm to Patient A. She reminded the panel that during your oral evidence you described Patient A as "*easy to manipulate*". Ms Da Costa submitted that this demonstrates that you understood that Patient A was vulnerable.

Accordingly, Ms Da Costa invited the panel to make a finding of misconduct in this matter.

You did not provide written submissions on misconduct. In an email dated 10 January 2023 you invited the panel to have regard to your Case Management Form. However, you did not directly address the issue of misconduct in that form.

### **Submissions on impairment**

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

Ms Da Costa submitted that your failings were a serious departure from the standards expected of a registered nurse. She said that your conduct put Patient A at a risk of harm, and such failings, if repeated, would likely cause risk to patients in the future.

Ms Da Costa submitted that you have not demonstrated any insight or remediation into your failings, and you have not taken any responsibility for your actions. She said that you have consistently identified Patient A as the instigator of the sexting and sexual conduct which occurred. Ms Da Costa submitted that, even if this is true, as a nurse you are a professional adult bound by a code of conduct and you should not have engaged in such activities.

Ms Da Costa submitted that your inability to consider and reflect upon your failings is indicative of an attitudinal concern which would not be easily remediable. She said that such attitudinal concern is demonstrated by your attitude towards the charges throughout your oral evidence and written submissions.

Ms Da Costa invited the panel to consider the test as set out in *CHRE v NMC and Grant*:

*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;*

She said that, given the evidence concerning your lack of insight and remediation, and the attitudinal concerns, the first three limbs of this test are engaged. Accordingly, Ms Da

Costa invited the panel to find that your fitness to practise is currently impaired on the ground of public protection and also in the wider public interest.

In an email dated 10 January 2023 you invited the panel to have regard to your Case Management Form, in which you set out, in relation to impairment:

*“I am traumatized by this experience since the beginning and conclusion of the investigation in which I cooperated freely with the authorities handling the case. I believe that I don’t pose as a threat to the public. I know that I could still do the job. It is my hope that I be given a chance to go back to the job that I love.”*

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 and *Cheatle v GMC* [2009] EWHC 645 (Admin).

## **Decision and reasons on misconduct**

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

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

### **“4 Act in the best interests of people at all times**

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



## **20 Uphold the reputation of your profession at all times**

*To achieve this, you must:*

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

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

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

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

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

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

*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 appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel went on to consider whether these breaches of the code amounted to misconduct in relation to the charges found proved individually and collectively.

### **Charge 1**

The panel concluded that, given its finding that you obtained Patient A’s Instagram details by passive means, this action was not so serious as to amount to misconduct.

### **Charge 2 and Charge 5 in relation to Charge 2b)**

The panel determined that your actions in sending Patient A messages which were not clinically justified, including messages which were inappropriate and of a sexual nature fall far below the standard expected of a registered nurse and amounts to serious misconduct. The panel concluded, in respect of charge 2, you failed to set clear professional

boundaries with Patient A and used Instagram to maintain inappropriate and unprofessional contact with her.

In respect of charge 5, the panel determined as your actions at charge 2b) were sexually motivated in that you sought to pursue a future sexual relationship with Patient A this was extremely serious and amounts to misconduct. It considered that other members of the nursing profession would find your actions in this regard deplorable.

### **Charges 4a) – c) and Charge 5 in relation to Charges 4a) – 4c)**

The panel determined that your actions in travelling to the Hotel and entering a room with Patient A, and discussing Patient A's sex life with her amount to serious misconduct which falls far below the standard expected of a registered nurse. The panel concluded that, in respect of charges 4a), 4b) and 4c), you failed to set clear professional boundaries with Patient A and failed to act in her best interests.

In respect of charge 5, the panel determined that as your actions at charges 4a), 4b) and 4c) were sexually motivated in that you sought to pursue a future sexual relationship with Patient A, this was extremely serious and amounts to misconduct. It considered that other members of the nursing profession would find your actions to be deplorable in respect of these charges.

### **Charge 4d) and Charge 6**

The panel considered charge 4d) in its entirety, which relates to you engaging in sexual activity with Patient A. The panel concluded that this charge is the most serious charge found proved in that it demonstrates your failure to maintain clear professional boundaries. The panel bore in mind Ms Da Costa's submissions that Patient A was a vulnerable 17-year-old. It concluded that Patient A was vulnerable as a result of her health and personal circumstances, and her status as a "*child in need*", which required the intervention of a Social Worker. The panel determined that you treated Patient A in a way which took advantage of her vulnerability and therefore your actions at charge 4d) amount to serious misconduct.

In respect of charge 5, the panel determined that as your actions at charge 4d) were sexually motivated in that you sought sexual gratification from such contact, this was extremely serious and amounts to misconduct. It considered that other members of the nursing profession would find your actions to be deplorable in respect of these charges.

### **Charge 4e) and Charge 7**

The panel concluded that your actions in respect of charge 4e) amounted to serious misconduct in that you failed to look after the best interests of Patient A, and you failed to act with integrity. The panel had regard to its findings, that you prioritised your own interests over those of Patient A, and that you sought to influence a vulnerable patient to avoid an adverse impact on yourself. The panel considered that such actions are so serious to amount to misconduct.

In respect of charge 7, the panel found that such failure to act with integrity amounts to serious misconduct for the same reasons as outlined in respect of charge 4e).

The panel found that your 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, your fitness to practise is currently impaired.

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

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

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

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

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

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

The panel found that Patient A was put at risk of harm as a result of your misconduct. The panel bore in mind the evidence of Witness 1, who described Patient A's non-compliance with her treatment plan and low moods following the termination of contact between you and Patient A. It found that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to your engagement in sexual activity with Patient A to be extremely serious.

Regarding insight, the panel considered the information before it, including your responses throughout the police and NMC investigations, your written submissions and your oral evidence. The panel concluded that you had demonstrated no reflection on your responsibility or your failings to manage your contact with Patient A. The panel bore in mind that you indicated that you had little responsibility for what happened because it was initiated by Patient A. The panel were concerned that you did not seem to acknowledge your responsibility in curtailing such inappropriate communication, which resulted in you engaging in sexual activity with Patient A.

Additionally, the panel were concerned by the lack of insight which you demonstrated throughout your oral evidence. It noted your defences to your actions in that you compared yourself with Patient A's Social Worker in an attempt to justify the inappropriate contact which you were having with her. The panel concluded this also demonstrated a concerning lack of insight into your clinical role and responsibilities as a registered nurse.

The panel also bore in mind your admissions to being "*tempted*" by sexual activity with Patient A. You also told the panel that, if your motivation was sexual, you would have had sex with Patient A. The panel found such comments demonstrated your lack of insight into your failings and the vulnerabilities of Patient A.

The panel noted that you have demonstrated concern about Patient A's wellbeing during the course of the police interview, and demonstrated some remorse. However, the panel

concluded that such comments were limited to your apologies in respect of sexual activity which took place between yourself and Patient A, and the consequences of this, including the police investigation. The panel bore in mind that you have not shown any insight into your failings in respect of the other charges found proved.

Furthermore, the panel did not consider that you have demonstrated any understanding of how your actions impacted negatively on Patient A and the nursing profession, and the effect which your misconduct may have had on public confidence in the profession.

The panel was concerned that you have demonstrated an attitudinal concern which is not easily addressed through retraining. The panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. It noted that there was no evidence before it that you have undertaken any training or development courses to address the concerns in this matter, nor has it received any testimonials which speak to your character or competence as a nurse or at all.

The panel were concerned about your naivety as to the seriousness of the charges found proved, and the consequences of your actions on Patient A and yourself. It considered that you demonstrated your inability to reflect on and manage your actions as the communication with Patient A became inappropriate and sexual. The panel also had concerns about your judgement in that you indicated that you did not believe that contacting and meeting with Patient A was wrong, although you indicated that you knew your job would be at risk were the Trust to find out. Accordingly, the panel is of the view that there is a risk of repetition based of the misconduct found. 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a 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**

Ms Da Costa informed the panel that in the Case Management Form, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise was found to be currently impaired.

She said that there are a number of aggravating factors present in this matter, in that you:

- Abused a position of trust
- Pursued a relationship with a vulnerable patient;
- Engaged in a sexual relationship with a vulnerable patient;
- Demonstrated a pattern of inappropriate behaviour with a vulnerable patient; and
- Breached professional boundaries.

Ms Da Costa said that the panel may regard your admissions to two of the charges at the start of this hearing as a mitigating factor. She submitted that the fact that you have an unblemished career as a nurse to date should not be taken as mitigation, as this is what is expected of a registered nurse.

Ms Da Costa reminded the panel that the charges are serious and relate to a breach of professional boundaries with a vulnerable 17-year-old patient. She submitted that your conduct indicates attitudinal concerns and exposes patients in your care to unwarranted risk of harm, were this behaviour to be repeated. She submitted that, in light of the seriousness of the public protection and public interest concerns identified, it would not be appropriate or proportionate in this matter to impose no order or a caution order.

Ms Da Costa submitted that the NMC has taken the sanction guidance into consideration in identifying an appropriate sanction bid. She said that given the concerns identified in this matter are attitudinal and difficult to address, alongside the fact that your misconduct took place outside of work, it would be difficult to formulate any conditions of practice which would be workable or appropriate in the circumstances.

Ms Da Costa addressed the panel on the possibility of imposing a suspension order. She said that the regulatory concerns are sufficiently serious to warrant a temporary removal from the register in this matter; however a suspension order would not sufficiently address the seriousness of this case.

Ms Da Costa submitted that the charges found proved against you indicate behaviour which is not compatible with remaining on the register. She said that you abused a position of trust and put a young vulnerable patient at a risk of harm by pursuing a personal relationship and engaging in sexual activity with her. She said that this brought the profession into disrepute. Ms Da Costa submitted that this type of misconduct will be difficult to put right given your lack of reflection and absence of insight. She said that your



actions raise fundamental concerns surrounding your professionalism and trustworthiness and therefore are incompatible with continued registration.

You did not provide any submissions in respect of sanction.

### **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 a position of trust in that you pursued a relationship with a vulnerable patient;
- Engaged in a sexual relationship with a vulnerable patient;
- A continuum of inappropriate behaviour with a vulnerable patient;
- Your breach of professional boundaries;
- Your lack of insight into your failings.

The panel also took into account the following mitigating feature:

- Your limited expressions of regret to Patient A for the impact which your conduct and the police investigation had on her following the termination of your contact with her.

Before going on to consider the individual sanctions, the panel first had regard to the NMC guidance on serious charges. The panel bore in mind its finding that Patient A was

vulnerable as a result of her health and personal circumstances, and her status as a “*child in need*”. It bore in mind its findings that some of your actions were sexually motivated, in pursuit of a future sexual relationship and for your own sexual gratification. In light of this, the panel found your misconduct to be serious.

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 far from the lower end of the spectrum and that a caution order would be inappropriate in view of the misconduct found and 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 panel bore in mind that there are no concerns before it in respect of your clinical competency. It bore in mind that the contact with Patient A took place outside of the hospital environment. It considered that it would be difficult for any employer to properly monitor any conditions of practice which it may impose. Additionally, given the panel’s finding of an attitudinal concern in this matter, it concluded that the misconduct identified in this case was not something that can be addressed through retraining. 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.

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

- *No evidence of repetition of behaviour since the incident;*

However, the conduct found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the register.

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

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

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

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel considered that your decision making fell seriously short of what was expected of a registered nurse, and that you have demonstrated a concerning lack of insight and serious attitudinal concerns in that you have continually failed to demonstrate insight into your actions, including throughout the hearing. The panel was of the view that the findings in

this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel determined that a member of the public would be highly concerned were you permitted to remain on the register.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. It concluded that your actions have brought the profession into disrepute and that nothing short of this would be sufficient in this case.

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 standard of behaviour required of a registered nurse.

This will be confirmed to you in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in 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**

The panel took account of the submissions made by Ms Da Costa. She submitted that, as the substantive order does not come into effect, if there is an appeal, until the end of the appeal period, an interim order is required for public protection and also in the wider public

interest. She told the panel that you have been subject to an interim suspension order, however this will lapse upon the making of the substantive order.

### **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 due to cover the period of any potential appeal which you may make.

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.