Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Meeting
Thursday 21 September 2023- Friday 22 September 2023

Virtual Meeting

Name of Registrant:	**Paul Michael Simpson**
NMC PIN	94I3977E
Part(s) of the register:	Registered Nurse - Sub Part 1 Mental Health Nursing (Level 1) – 10 September 1998
Relevant Location:	Dorset
Type of case:	Misconduct
Panel members:	Nicola Dale (Chair, Lay member) Richard Curtin (Registrant member) Gregory Hammond (Lay member)
Legal Assessor:	Nigel Ingram
Hearings Coordinator:	Renee Melton-Klein
Facts proved:	**1a, 1b, 1c, 1d, 2, 3**
Facts not proved:	**None**
Fitness to practise:	**Impaired**
Sanction:	**Striking Off Order**
Interim order:	**Interim Suspension Order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Simpson's registered email address by secure email on 8 August 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegations, the date after which the meeting would be held and the fact that this meeting would be heard virtually.

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

Details of charge

That you, a registered nurse:

1) Between 10 July 2021 and 30 November 2021 breached professional boundaries in that you:

a. On one or more occasions communicated with Patient A by telephone when that communication was not part of your therapeutic and/or clinical relationship with Patient A;
b. On one or more occasions attended Patient A's home without clinical reason;
c. On one occasion invited Patient A to attend your home without clinical reason;
d. Entered into and continued a personal relationship with Patient A.

2) Your actions in charge 1 a), b) and c) above were sexually motivated.

3) Your actions in charge 1 d) above were sexual and sexually motivated.

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

Background

Mr Simpson was referred to the NMC on 19 January 2022 by Dorset Healthcare University NHS Foundation Trust (the Trust) while employed as a Band 6 registered mental health nurse working at The Retreat, which is a service which assists those who are having difficulty coping or feel as though they are in crisis.

On 12 September 2021 Mr Simpson admitted to being in a relationship with Patient A, a person whom he had met whilst providing care via The Retreat's Attend Anywhere online service.

The relationship was said to have commenced in July 2021 and Patient A continued using The Retreat's services for a time following this. According to Mr Simpson at his first Trust investigation, he entered into an intimate relationship with Patient A on 20 July 2021, although he later admitted that this happened on their first meeting earlier in July 2021. He remained in close contact with her and for some of the period of their relationship lived with Patient A at her home. He was suspended in September 2021.

During the Trust disciplinary process, it was identified that Mr Simpson was still in contact with Patient A, although no longer in a relationship with her. At the disciplinary hearing of 30 November 2021, Mr Simpson was given a final written warning for one year by the Trust, redeployed in a non-patient facing role, and placed on an action plan.

Mr Simpson was later dismissed by the Trust following a second disciplinary hearing held on 25 March 2022 as a result of concerns that he had not provided an honest and factual account of the timeline of the relationship with Patient A during the initial disciplinary hearing on 30 November 2021.

Decision and reasons on facts

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

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

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

- Witness 1: Patient A, [Private]

- Witness 2: Employed by Dorset HealthCare University NHS Foundation Trust ('The trust') [Private] The Retreat comes under access mental health services, which is under her purview, though she did not know Mr Simpson personally before the interview.

- Witness 3 Employed by Dorset HealthCare University NHS Foundation Trust ('The trust') as a Band 6 nurse at The Retreat in Bournemouth. [Private]

The panel also had regard to written documentation that has been received from Mr Simpson.

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

The panel noted the written documentation received from Mr Simpson in which, throughout, he is open about his sexual relationship with Patient A, and specifically the Case Management Form (CMF), which contains his admissions to charges 1a, 1b, 1c, 1d, 2, and 3.

The panel therefore finds charges 1a, 1b, 1c, 1d, 2, and 3 proved, by way of Mr Simpson's admissions.

Fitness to practise

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

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

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

Representations on misconduct and impairment

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

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

The NMC's statement of case prepared for this meeting set forward the following in regard to misconduct:

> **'*Misconduct***
> *19. It is submitted that the facts amount to misconduct.*
>
> *20. The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct: '[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.*
>
> *21. As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively '[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*
> *And*
> *'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.*
>
> *22. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct 2015 ('the Code').*

23. At all relevant times, Mr Simpson was subject to the provisions of the Code. The Code sets out the professional standards that nurses must uphold. These are the standards that patients and members of the public expect from health professionals. On the basis of the charges alleged, it is submitted, that the following parts of the Code have been breached in this case:

> **20 Uphold the reputation of your profession at all times**
> *20.1 keep to and uphold the standards and values set out in the Code*
> *20.2 act with honesty and integrity at all times, 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*
> *20.4 keep to the laws of the country in which you are practising*
> *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 nurse, midwives and nursing associates to aspire to*
> *20.9 maintain the level of health you need to carry out your professional Role*

24. It is submitted that Mr Simpson's conduct detailed in charges 1-3 fell far short of what would have been expected of a registered nurse. Mr Simpson's significant departure from the principles of promoting professionalism and trust put a highly vulnerable patient's safety at significant risk of harm. Mr Simpson's conduct would be seen as deplorable by fellow practitioners and would damage the trust that the public places in the profession. Treating people in a way that does not take advantage of their vulnerabilities and acting with honesty, integrity and keeping clear professional boundaries at all times with people in your care are integral to the standards expected of a registered nurse and central to the

Code. Mr Simpson's conduct fell far below what would be expected of a registered nurse and a finding of misconduct must follow.

25. The provisions of the Code constitute fundamental tenets of the profession and Mr Simpson's actions have clearly breached these in so far as they relate to promoting professionalism and trust.'

The NMC asks the panel to bear in mind its overarching objective to protect the public and the wider public interest. This includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and any other cases referred to.

The NMC invited the panel to find Mr Simpson's fitness to practise impaired for the following reasons set out in their statement of case:

26. It is submitted that Mr Simpson's fitness to practice is impaired by reason of his misconduct on both the grounds of public protection and public interest.

27. Impairment needs to be considered as at today's date, i.e. whether the nurse's fitness to practice is currently impaired. The NMC defines impairment as a nurse's suitability to remain on the register without restriction.

28. The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is: "Can the nurse, midwife or nursing associate practise kindly, safely and professionally?" If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.

29. When determining whether Mr Simpson's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

> *I. has [Mr Simpson] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
> *II. has [Mr Simpson] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
> *III. has [Mr Simpson] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
> *IV. has [Mr Simpson] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

30. It is the submission of the NMC that limbs I, II and III can be answered in the affirmative in this case. Dealing with each one in turn:

31. Although Mr Simpson's conduct detailed in charges 1-3 did not relate to his clinical practice, the nature of his actions is such that it could be said to impact on the mental health of patients, in particular, the mental health of adults in his care. It is therefore not guaranteed that a member of the public in Mr Simpson's care, would be safe, or indeed, feel safe, in his care. His conduct involved a serious departure from the provisions of the Code and caused harm to the public, namely to Patient A. Patients will therefore be put at unwarranted risk of harm if his conduct is not addressed. As such, there is a real public protection risk present here.

32. Mr Simpson's conduct has also brought the profession into disrepute – his conduct is of a serious nature, and aggravated because it involved a highly vulnerable patient. Mr Simpson has taken advantage of his patient's vulnerabilities and failed to maintain clear professional boundaries

appropriately resulting in extreme upset and distress to the patient in his care. Mr Simpson has failed to keep to and uphold the standards and values set out in the Code and as such has failed to uphold the reputation of the profession. The public has the right to expect high standards of registered professionals.

33. Mr Simpson's actions demonstrate a flagrant departure from the standards expected of a registered nurse and a breach of the fundamental tenets of the profession.

34. Impairment is a forward thinking exercise which looks at the risk Mr Simpson's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

35. it appears that there are attitudinal concerns here. It is often said that conduct of an attitudinal nature is difficult to remediate. The NMC guidance entitled: Can the concern be addressed?(Reference: FTP-13a) is likely to be of assistance: "Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the concerns in the case can be addressed. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious. The first question is whether the concerns can be addressed. That is, are there steps that the nurse, midwife or nursing associate can take to address the identified problem in their practice? It can often be very difficult, if not impossible, to put right the outcome of the clinical failing or behaviour, especially where it has resulted in harm to a patient. However, rather than focusing on whether the outcome can be put right, decision makers should assess the conduct that led to the outcome, and consider whether the conduct itself, and the risks it could pose, can be addressed by taking steps, such as completing training courses or supervised practice. Decision makers need to be aware of our role in

maintaining confidence in the professions by declaring and upholding proper standards of professional conduct. Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice. Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include: inappropriate personal or sexual relationships with patients, service users or other vulnerable people."

36. It is submitted that whilst Mr Simpson has displayed some insight, has made admissions to the allegations and has shown remorse and reflected on his behavior [sic] by providing personal mitigating factors that he was experiencing at the relevant time as an explanation of his attitudinal behaviors, [sic] his conduct has fallen so far short of the standards the public expect of professionals caring for them that the public confidence in the nursing and midwifery professions could be undermined. In a case such as this one and in a case where behaviours could suggest underlying problems with the nurse's attitude it is less likely the nurse will be able to address their conduct by taking steps such as completing training courses or supervised practice to remedy their behaviour and address the concerns.

37. Also relevant are the comments of Cox J in Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74: "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."

38. We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Notwithstanding that Mr Simpson has shown remorse and insight in relation to his behavior [sic], the concerns in this case are of such a serious nature, involving a vulnerable patient in Mr Simpson's care and involving breaches of the fundamental principles of the profession, it is submitted that a member of the public appraised of the facts, would be shocked to hear that a registered nurse was entitled to practice without restriction. As such, the need to protect the wider public interest calls for a finding of impairment to uphold standards of the profession, maintain trust and confidence in the profession and the NMC as its regulator. Without a finding of impairment, public confidence in the profession, and the regulator would be seriously undermined.

In Mr Simpson's documentation before the panel, he indicated that he accepted that his practice was currently impaired and submitted the following information to the NMC regarding his insight and any mitigating circumstances in his CMF form and reflection dated 31 January 2022:

'At the time of the incident, [Private]. A supportive relationship had also recently ended. And, I had had a difficult meeting [Private] prior to going into work. I felt upset following this. I very soon felt that I had crossed a line I couldn't come back from. I felt guilt and shame every time I went into work. It was also very stressful at times. These thoughts were related to what I had done. These thoughts and feelings intensified.

[Private] I believe that their care was compromised because of the relationship. [Private] I was supportive and acted in a way to maintain their safety during these episodes. That also, the patients' trust in services, and their willingness to engage with services in the could have been detrimentally

affected. That this could negatively impact on their mental health, and their ability to cope in the future.

It is apparent to me also how the patient's family could feel 'let down' and distrusting of services. And, that relationships could be affected. I can see that staff/colleagues could have been also affected. That they would have felt let down by my actions, possibly feeling deceived. That this could damage trust in any future working relationships. That they feel some guilt themselves about a possible/perceived' lack of action'.

I continue to feel guilt, shame and remorse because of my actions and the impact of these actions on the patient, their family and my colleagues.'

And:

'Since informing my workplace about PC12 the incident in early to mid-September Insight and '21, I have been suspended pending Remediation investigation. [Private] I have not been back at work yet, although I was hoping to return a couple of weeks ago. This has restricted opportunities to do work related training. I have re-familiarised myself with the Code of practice and conduct. I am aware of what the local policy states. I have had some time to reflect on what has happened. I have known that entering into a relationship with a patient is morally, ethically and professionally wrong. I still know this is the case…

I have and still know that it is a breach since the incident to ensure it of NMC codes and local Trust policy. would not happen again? (if I understand the full impact of how applicable) damaging a relationship of this kind can be to the patient. How someone who is emotionally vulnerable can find it very difficult. And how it can impact on their safety. I have reflected on the difficult situations that the patient involved experienced. And the part I played in them. And how this is an abuse of the nurse's trust and position. I have discussed this with my line manager in supervision during the investigation, both prior to and after the hearing.

[Private]. And, it became very quickly, an extremely difficult situation for myself. For all these reasons, I wouldn't repeat the breach of policy and code of conduct and practice again. These are there for a reason. To protect the people we serve. And each other. I am more self aware of my emotional vulnerability. And how this can impact on my life. I have continued to have to deal with extremely difficult situations. [Private] I feel more supported by them. I am much more aware of the importance of 'being open' about feelings. And how keeping feelings held in can be very detrimental. I can see that if I had spoken about how I was actually feeling at the time of the 'check in' at work, on this particular shift (8/7/21) the incident would probably have been averted. I have started to 'step back more' and not react to the difficult emotions, feelings or situations, [Private] I regularly face. I have achieved this through utilising some basic mindfulness techniques. And working with someone who was suggested to me, [Private]. I am more engaged in a support network, than I was before and for a period after the incident took place. This has been ongoing for the past 3 months.
I will be happy to undertake any further training considered necessary should I be able to return to work. I know that I cannot be complacent [Private]. And that I need to talk to someone when things are difficult. And I feel overwhelmed.'

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

Decision and reasons on misconduct

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 Mr Simpson's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Simpson's actions amounted to a breach of the Code. Specifically:

4 Act in the best interests of people at all times

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

To achieve this, you must:

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

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code
20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people
20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers
20.8 act as a role model of professional behaviour for students and newly qualified nurse, midwives and nursing associates to aspire to

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that each charge taken in isolation and collectively amount to serious misconduct in this case. The panel was of the view that Mr Simpson put the needs of himself above those of a vulnerable patient and caused real

harm to the patient in doing so. The panel was of the view that any well-informed member of the public would agree that the behaviour in the charges found proved was deplorable.

Accordingly, the panel found that Mr Simpson's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

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

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

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

determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

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

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *…*

The panel finds that Patient A was put at significant risk and was caused actual harm as a result of Mr Simpson's misconduct. Mr Simpson's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mr Simpson made admissions to all of the charges and had demonstrated some understanding of how his actions put the patient at a risk of harm. In his CMF Mr Simpson demonstrated some understanding of why what he did was wrong and how this impacted negatively on the reputation of the nursing profession, but not how he would handle the situation differently in the future.

The panel was of the view that his insight was still limited and was directed in great part towards the mitigation of his personal circumstances rather than the harm his behaviour caused to Patient A who was extremely vulnerable at the time. The panel noted that, during the course of the relationship, Mr Simpson had asked Patient A to desist from using the mental health services at The Retreat that she needed, because he feared the repercussions for himself. This put Patient A at yet more risk of harm.

The panel found that the misconduct in this case is attitudinal, which is difficult to remediate. The panel carefully considered the evidence before it in determining whether or not Mr Simpson has taken steps to strengthen his practice. The panel took into account

the reflective piece and that Mr Simpson had been seeking further support and [Private]. However, given the gravity of misconduct, the panel could not conclude that there was not continued future risk in regard to repetition in this case.

Accordingly, the panel is of the view that there is a risk of repetition and therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because it was of the view that any well-informed member of the public would find Mr Simpson's behaviour in the charges admitted deplorable. 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 Mr Simpson's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Simpson's 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 Mr Simpson off the register. The effect of this order is that the NMC register will show that Mr Simpson has been struck-off the register.

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

Representations on sanction

The panel noted that in the Notice of Meeting, dated 8 August 2023, the NMC had advised Mr Simpson that it would seek the imposition of a striking off order if it found Mr Simpson's fitness to practise currently impaired.

The panel had before it the written submissions of the NMC as follows:

Sanction

39. The NMC consider the appropriate and proportionate sanction in this case to be a striking-off order.

40. The aggravating features of this case are:

a) Highly vulnerable patient

b) Lengthy relationship

c) Dishonesty in the initial local investigation

41. The mitigating features of this case are:

a) [Private]

b) Difficult personal circumstances

c) Mr Simpson has made full and frank admissions

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

43. The allegations are too serious to take no further action. So as to achieve the NMC's overarching objective of public protection, action does need to be taken to secure patient safety, to secure public trust in nurses and to promote and maintain proper professional standards and conduct.

44. A caution order is only appropriate if there is no risk to the public or the patients requiring the nurse's practice to be restricted. There is a risk of repetition present in this case as Mr Simpson's behaviour and conduct is such that it is not possible to remediate and therefore a future risk remains

present. In those circumstances, a caution order would not be appropriate as it would not be a sufficient sanction to ensure the public are protected.

45. A conditions of practice order would not be appropriate, in that there are no identifiable areas of nursing practise which require assessment and/or retraining. Additionally, the serious breach of professional boundaries by Mr Simpson is a strong indication of deep seated harmful personality problems. In accordance with our guidance on cases involving sexual misconduct:-

> *'Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional.' There is no doubt, the patient was highly vulnerable and it appears that Mr Simpson has abused his position of trust in a potentially very harmful way.*

46. A suspension order would restrict Mr Simpson's practice for a period of time; protecting the public and upholding the public interest to a certain extent. However , such an order would not sufficiently mark the seriousness of the conduct in question, nor sufficiently protect patients and the public confidence in nurses. There are 2 examples of when a suspension may be suitable according to our guidance is when:

- There is single instance of misconduct but where a lesser sanction is not sufficient.
- No evidence of harmful deep seated personality or attitudinal problems.

> *This was not a single incident. This was a course of conduct carried out over several months. This conduct seems to be indicative of a harmful deep-seated personality problem and Mr Simpson's conduct is not such that can be remediated and therefore poses a significant risk to patients and the reputation of the profession. And as such, a suspension order would not mark the seriousness of the conduct in question nor sufficiently protect patients and the public confidence in*

nurses. A suspension order is therefore not to be considered a proportionate response to the concerns raised.

47. A striking-off order must be the most appropriate order in the circumstances as Mr Simpson's actions are fundamentally incompatible with being a registered professional. The NMC will be mindful and rely on cases such as Ige v Nursing and Midwifery Council [2011] EWHC 3721 to support the decision of a strike off despite their being no concerns around Mr Simpson's clinical skills. The case of Ige is an example which displays the courts supporting decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional's clinical skills or any risk of harm to the public. Striking off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions. Similarly, in our case, although there were no concerns around Mr Simpson's clinical skills, sexual misconduct, and particularly, towards vulnerable members of society, undermines everything the profession stands for.

The panel has not seen any representations from Mr Simpson explicitly about sanction, though it has taken note of his submissions in mitigation already quoted.

Decision and reasons on sanction

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

The panel found the following aggravating features:

- Abuse of a position of trust
- Actual psychological harm to a highly vulnerable patient
- Increasing the risk to Patient A by persuading her to withdraw from mental health services at The Retreat, which she needed.
- Attempting to conceal the relationship by colluding with Patient A, showing knowledge that it was wrong and intent to continue.
- A pattern of misconduct over time, as the relationship took place over a period of months.

The panel also found the following mitigating features:

- Mr Simpson has made full and frank admissions
- He has shown some insight and apologised

The panel took into account that Mr Simpson was dealing with a combination of difficult *[Private]* circumstances during this time. However, it considered the personal mitigation carries less weight in regulatory than in criminal cases.

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, an order that does not restrict Mr Simpson's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Simpson's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Simpson's registration would be a sufficient and appropriate response. The panel is of the view that

there are no practicable or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that could be addressed by putting conditions on his clinical practice. Furthermore, the panel concluded that the placing of conditions on Mr Simpson's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered each aspect of the guidance in regard to suspension and found that none of the factors here applied to Mr Simpson. The panel found that the misconduct was not a single instance, and it did stem from deep-seated attitudinal issues. The panel noted that, in regard to repetition, Mr Simpson continued to be in contact with Patient A even after being suspended from his position at The Retreat. Due to this, the panel is not satisfied, even given the insight Mr Simpson has demonstrated, that he does not pose a significant risk of repeating this or similar behaviour.

The panel found that the serious breach of the fundamental tenets of the profession evidenced by Mr Simpson's actions is fundamentally incompatible with Mr Simpson 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?*

The panel considered that Mr Simpson's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with his remaining on the register. The panel concluded that there was demonstrable intent throughout his relationship with Patient A. The panel noted that there were various points in the relationship when it was clear that he knew that his actions were wrong, and not only did he not take steps to stop them, but he sought to conceal the relationship through collusion with Patient A.

The panel was of the view that the findings in this particular case demonstrate that Mr Simpson's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Simpson's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of a striking off order 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 Mr Simpson 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 Mr Simpson's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that, in the event that a sanction resulting in the restriction of Mr Simpson's practice is imposed, it is also necessary for the protection of the public and otherwise in the public interest for there to be an interim suspension order for 18 months to cover the appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to provide sufficient time to conclude any appeal. Not to impose an interim suspension order would be inconsistent with the panel's earlier findings.

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

That concludes this determination.