

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

**Substantive Hearing
Monday 15 January 2024 - Friday 19 January 2024**

Virtual Hearing

Name of Registrant: Mrs Kerri Dunn

NMC PIN 06H0194E

Part(s) of the register: Registered Nurse- Sub Part 1
RNA: Adult nurse, Level 1 (25 September 2006)

Relevant Location: Dudley

Type of case: Misconduct

Panel members: Anne Ng (Chair, Lay member)
Linda Pascall (Registrant member)
Nicola Strother Smith (Lay member)

Legal Assessor: Graeme Sampson

Hearings Coordinator: Claire Stevenson

Nursing and Midwifery Council: Represented by Jemima Lovatt, Case Presenter

Mrs Dunn: Not present and not represented

Facts proved: Charges 1 and 2

Facts not proved: N/A

Fitness to practise: **Impaired**

Sanction: **Striking-off Order**

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

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Dunn was not in attendance and that the Notice of Hearing letter had been sent to Mrs Dunn's registered email address by secure email on 14 December 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Dunn's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Mrs Dunn

The panel next considered whether it should proceed in the absence of Mrs Dunn. It had regard to Rule 21 and heard the submissions of Ms Lovatt who invited the panel to continue in the absence of Mrs Dunn. She submitted that Mrs Dunn had voluntarily absented herself.

Ms Lovatt referred the panel to an email dated 13 December 2023 from Mrs Dunn, which states:

'I will not be attending any hearing for this case.

[PRIVATE]'.

The panel accepted the advice of the legal assessor.

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

The panel decided to proceed in the absence of Mrs Dunn. In reaching this decision, the panel considered the submissions of Ms Lovatt, the written representations from Mrs Dunn, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Dunn;
- Mrs Dunn has informed the NMC that she has received the Notice of Hearing and she confirmed she will not be attending the hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Witnesses have made themselves available to attend the hearing virtually today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred over two years ago;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Dunn in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Dunn at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Dunn's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

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

At the outset of the hearing, Ms Lovatt made a request that this case be held in private on the basis that proper exploration of Mrs Dunn's case [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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

Having heard that there will be reference to [PRIVATE], the panel determined to hold the entirety of the hearing in private in order to protect the privacy of all parties involved with the case.

Details of charge

That you, a registered Nurse:

1) *Accessed Patient A's medical records without clinical justification on or about;*

a) 15 June 2021;

b) 16 June 2021;

c) 6 August 2021.

2) *On one or more occasions on or after 15 June 2021 disclosed details from Patient A's medical records to a third party without clinical justification.*

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Lovatt, on behalf of the NMC, to amend the wording of the charge.

The proposed amendment was to amend an incorrect date in charge 1b). It was submitted by Ms Lovatt that the proposed amendment would not cause any injustice to the case.

That you, a registered Nurse:

Accessed Patient A's medical records without clinical justification on or about;

a) 15 June 2021;

b) 16 ~~June~~ July 2021;

c) 6 August 2021.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mrs Dunn and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, as there would be no detriment to Mrs Dunn to amend an obvious typographical error.

Decision and reasons on facts

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 2: Head of Patient Experience, The Dudley Group NHS Foundation Trust (the Trust).
- Patient A:

Background

'On 9 August 2021 Patient A called the complaints department at Russell's Hall Hospital, as they had reason to believe that a Nurse, Mrs Dunn, had accessed and shared their personal information [PRIVATE].

Patient A stated that [PRIVATE].

This allegation was investigated within the Trust, and it was found that Mrs Dunn's login was used to access [Patient A's] records during the dates and times of which Patient A had suggested. After a thorough trust investigation Mrs Dunn was dismissed from her role as Staff Nurse on the grounds of gross misconduct.

Mrs Dunn does admit to knowing Patient A's [PRIVATE] but she has denied accessing [Patient A's] records, and sharing [their] personal information with a third party without [their] consent'.

The charges arose whilst Mrs Dunn was employed as a registered nurse by the Trust.

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 written submissions from Mrs Dunn.

The panel has drawn no adverse inference from the non-attendance of Mrs Dunn.

Ms Lovatt invited the panel to take the view that the facts should be found proved in both charges. She submitted the panel has heard how Mrs Dunn, whilst employed in the [PRIVATE] at The Trust, accessed Patient A's records. At that time, Patient A was under the care of the [PRIVATE], Patient A was not under Mrs Dunn's care, so there was no clinical justification for her to access Patient A's records. Ms Lovatt referred the panel to the evidence given by Witness 2 who dealt with the original complaint and conducted an initial search. She referred the panel to exhibit JF05 in the NMC bundle which clearly shows Mrs Dunn's login details accessing Patient A's records on 15 June 2021, 16 July 2021 and 6 August 2021.

Ms Lovatt submitted that in the Trust's interview which took place on 2 September 2021, Mrs Dunn suggested that someone else had hacked or gained access to her account login and accessed Patient A's records. Witness 2, in response to questions from the panel,

explained that staff members are required by the system to change their passwords every 28 days. She further submitted that Mrs Dunn's login details would have had to have been compromised on three separate occasions.

Ms Lovatt referred the panel to Patient A's live evidence in which they explained the information that had been shared with Person B, who is their ex-partner. Ms Lovatt submitted that this information was confidential and there was no other way for Person B to have accessed it. This breach of confidentiality has caused them great concern and emotional harm in the context of other proceedings that were taking place between them and Person B in the breakdown of their relationship. She further submitted Patient A's medical information has been shared without their consent and this was a significant breach of their confidential information.

The panel also had regard to written submissions in an email dated 3 December 2023 from Mrs Dunn which stated:

'I have not done anything wrong, but my [PRIVATE] are far more important to me [and] [PRIVATE].

After 15 years of nursing, of which I put my heart [and] soul into my job, [PRIVATE].

You can take my name off the NMC register.

I'm not fighting anymore, [and] I'm certainly [PRIVATE].

I wanted to fight this all the way previously but, [PRIVATE].

The panel accepted the advice of the legal assessor.

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

Charge 1

That you, a registered Nurse:

1) *Accessed Patient A's medical records without clinical justification on or about;*

a) 15 June 2021;

b) 16 July 2021;

c) 6 August 2021.

This charge is found proved in its entirety.

The panel found charge 1 proved in its entirety and in reaching this decision it took into account Exhibit JF05, the Sunrise Audit Report which indicated that Mrs Dunn's login was used to access Patient A's medical records on three separate occasions in three consecutive months. The panel also had regard to the live evidence of Witness 2 who explained the significance of the Sunrise Audit Report that showed Mrs Dunn's login details were used to access Patient A's records. The witness testified that in the course of the investigation there was no evidence of any other person using Mrs Dunn's login. The witness informed the panel that individual passwords must be changed every 28 days or the user gets locked out of the system which would make it very difficult for another person to use Mrs Dunn's login details for three consecutive months. The panel noted that Witness 2's evidence was consistent with their witness statement.

The panel noted, during Mrs Dunn's interview with the Trust, she explained how nurses regularly share their passwords. Her explanation of these events, was that someone else must have either used her login details or was looking over her shoulder when she was logging into the computer. The panel considered this scenario to be unlikely to have occurred on three separate occasions. The panel was of the view that there was no clinical justification for Mrs Dunn to access Patient A's records as she works in a different

department from which Patient A was receiving care and Patient A was not under her care. The panel determined, on the balance of probabilities, that Mrs Dunn did access Patient A's records on all three occasions without clinical justification.

Charge 2

2) On one or more occasions on or after 15 June 2021 disclosed details from Patient A's medical records to a third party without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account the live witness testimony of Patient A. The panel noted that Patient A's evidence is consistent with their witness statement and was confident with their answers under questioning. It noted Patient A's live testimony that they concluded that the only person who could have accessed their records and passed information to Person B is Mrs Dunn. Patient A testified that Person B is their [PRIVATE] and [PRIVATE] Person B. Patient A explained that in July 2021 [PRIVATE] Patient A [PRIVATE]; At that point they thought of the link between Mrs Dunn and Person B. [PRIVATE] that could have only been known by someone accessing their medical records.

The panel determined that the clinical information shared with Person B could only have come from someone accessing hospital records. It noted that Patient A became aware of the breach of confidentiality in July 2021 and [PRIVATE]. The panel determined that the nature of the clinical information Mrs Dunn was viewing was consistent with the information Person B give to Patient A. It acknowledged that there are other ways of finding out a [PRIVATE] but knowing details such as the [PRIVATE] is very specific and someone would have had to access medical records to know it.

The panel found that there was no evidence of a clinical justification for disclosing the details of Patient A's medical details to Person B.

Fitness to practise

Having reached its decision 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 Mrs Dunn'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 ability to practise kindly, safely and professionally.

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, Mrs Dunn's 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.*' Lord Clyde in that case went on to identify that the standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances.

Ms Lovatt invited the panel to take the view that the facts found proved amount to misconduct. Ms Lovatt suggested the panel should have 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 Lovatt suggested the following sections of the NMC Code have been breached:

- 1. Treat people as individuals and uphold their dignity;**
- 2. Listen to people and respond to their preferences and concerns;**
- 5. Respect people's right to privacy and confidentiality;**
- 14. Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place; and**
- 20. Uphold the reputation of your profession at all times.**

Ms Lovatt identified the specific, relevant standards where Mrs Dunn's actions amounted to misconduct.

Ms Lovatt referred the panel to Exhibit JF02, which is an extract of the "*The Trust IT User Acceptable Use Policy (IT AUP), (Appendix 12) (the Policy)*", it states:

13.12 Information, both clinical and non-clinical, must only be accessed if necessary to fulfil your role. Users are reminded that accessing information without a business need is prohibited. The Trust has the ability to and will monitor users access to all systems when required; and

13.13 Users are reminded that accessing clinical information for anything other than legitimate, and appropriate, clinical care, audit or research is prohibited'.

Ms Lovatt submitted this would assist in understanding what would be proper in these circumstances. She referred the panel to paragraph 13.12 of the Policy which identifies that it is a requirement that information is only accessed if necessary for an individual's

role and where there is a business need. She further referred the panel to paragraph 13.13 which makes explicit that accessing clinical information for anything other than legitimate and appropriate reasons is prohibited. She suggested this amounts to the rules and standards which a practitioner would ordinarily be required to follow.

Ms Lovatt directed the panel to consider the comments of *Jackson J in Calhaem v GMC 2007 EWHC 2606 (Admin)*, which defines misconduct as a serious breach which indicates that the nurse's fitness to practise is impaired. In *Nandy v GMC 2004 EWHC 2317 (Admin)* the Court suggested that misconduct refers to conduct which would be regarded as deplorable by a fellow practitioner.

Ms Lovatt submitted that accessing a patient's records without clinical justification, and disclosing confidential information to a member of the public, is clearly a serious breach of professional conduct and falls short of what would be expected from a Registered Nurse. She further submitted it is contrary to and undermines the Rules and standards that govern the nursing profession. She invited the panel to find that the charges found proved amount to misconduct.

Submissions on impairment

Ms Lovatt moved onto 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 authority of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)*.

Ms Lovatt invited the panel to have regard to their role in protecting 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. Ms Lovatt submitted that impairment needs to be considered as of today's date and reminded

the panel that its decision is whether Mrs Dunn's fitness to practise is currently impaired. The NMC defines impairment as a registrant's suitability to remain on the Register without restriction. She submitted that the questions set out in the judgement in *Grant* drawn from Dame Janet Smith's Shipman enquiry are of assistance to the panel. The questions are as follows:

- a. has the registrant in the past acted and or is liable in the future to act so as to put the patient or patients at unwarranted risk of harm?
- b. has the registrant in the past brought and or is liable in the future to bring the nursing profession into disrepute;
- c. has the registrant in the past committed a breach of one of the fundamental tenets of the nursing profession and or is liable to do so in the future; and
- d. has the registrant in the past acted dishonestly and or is liable to act dishonestly in the future.

Ms Lovatt submitted that all four limbs are engaged as a result of the breaches of confidential information. Patient A's confidential information was disclosed to someone [PRIVATE]. She reminded the panel that Patient A testified about the fear and potential harm that this has caused them.

Ms Lovatt submitted that this breach of inappropriately disclosing confidential information has brought the nursing profession into disrepute and submitted a member of the public would be shocked should they be made aware of the facts in this case. She further submitted that confidentiality is at the heart of the nursing profession and underscores why patients feel comfortable to share personal information when seeking clinical help. Therefore, this breach of confidentiality goes against one of the fundamental tenets of the nursing profession.

Ms Lovatt submitted that accessing Patient A's records with no clinical justification was a dishonest act which occurred on three separate occasions. This shows a repetition of dishonesty and suggests fundamental attitudinal concerns. She reminded the panel that

Mrs Dunn has not provided any reasons for her misconduct and is not fully engaged in the proceedings against her; she has shown no remorse or insight into her actions.

Ms Lovatt submitted that Mrs Dunn presents a clear risk to the public and there is a need to maintain public confidence in the nursing profession and the NMC as a regulatory body through a finding of impairment. She submitted there is a lack of insight or remorse by Mrs Dunn into the seriousness of such misconduct.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included *CHRE v NMC & Grant [2011] EWHC 927 (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 Mrs Dunn's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Dunn's actions amounted to a breach of the Code. Specifically:

5. *Respect people's right to privacy and confidentiality*

As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.

To achieve this, you must:

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

[...]

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*

[...]

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 Mrs Dunn's actions were a serious breach and abuse of her position as a Registered Nurse. Furthermore, the panel noted that there was a real risk of harm to Patient A as the stress caused by Mrs Dunn had the potential to [PRIVATE].

The panel had regard to the "*The Trust IT User Acceptable Use Policy (IT AUP), (Appendix 12) (the Policy)*" and the NMC Code.

The panel was of the opinion that Mrs Dunn breached fundamental tenets of the nursing profession and her actions would be considered deplorable by fellow professionals as well as by members of the public.

The panel found that Mrs Dunn's actions fell far below 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, Mrs Dunn's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and 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.'

The panel had reference to paragraph 76 of the judgement of Mrs Justice Cox in Grant and found that the first three limbs referred to Dame Janet Smith's "test" were engaged.

As regards to the fourth limb of "dishonesty" the panel was of the view that Mrs Dunn's conduct could be viewed as dishonesty but did not feel that it had sufficient evidence to make a finding of dishonesty. Further, the panel noted that dishonesty was not an element of the charges against Mrs Dunn.

The panel finds that Patient A was put at risk and was caused distress and emotional harm as a result of Mrs Dunn's misconduct. Mrs Dunn's misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mrs Dunn has shown no remorse and has not fully engaged with the process. The panel considered that she has not taken any responsibility for her actions and in fact sought to shift the blame on to someone else. The panel noted Mrs Dunn has not shown any insight or evidence of strengthening her practice.

The panel determined the misconduct in this case was serious and there was no evidence of Mrs Dunn making any attempt to acknowledge or address the concerns.

The panel is of the view that there is a risk of repetition based on Mrs Dunn's premeditated and calculated choice to breach Patient A's confidentiality on three separate occasions. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

Sanction

The panel has determined to make a striking-off order in this case. The effect of this order is that the NMC Register will show that Mrs Dunn has been removed from the Register.

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

Submissions on sanction

Ms Lovatt informed the panel that in the Notice of Hearing, the NMC had advised Mrs Dunn that it would seek the imposition of a striking-off order if it found Mrs Dunn's fitness to practise currently impaired. She reminded the panel of its powers and responsibilities.

Ms Lovatt submitted that a caution order would not address the public protection concerns raised and that public confidence would not be met given the serious nature of these concerns.

Ms Lovatt submitted that a conditions of practice order is not appropriate as the concerns raised are attitudinal and no conditions could be drafted to address the public protection and meet the public interest in these circumstances.

Ms Lovatt submitted that the NMC Guidance states that a suspension order may be appropriate where the matter concerns a single instance of misconduct, where there are no attitudinal problems and the registrant has shown insight. She further submitted that, in this case none of those factors apply, therefore a suspension order is not appropriate.

Ms Lovatt submitted that a striking-off order is the only sanction that adequately addresses the need to protect the public and ensure public confidence in the profession.

Ms Lovatt told the panel that the aggravating factors in this case are that Mrs Dunn breached confidentiality on multiple occasions. She stated that the breach of trust from her actions caused harm to Patient A in that their personal information was disclosed to a third party and there is an absence of any insight. The SG suggests questions that the panel should consider when deciding whether to impose a striking-off order, they are as follows:

1. Do the regulatory concerns raise fundamental questions about their professionalism; and
2. Can public confidence in nurses and midwives be maintained if said nurse is not removed from the Register.

Ms Lovatt suggested that public confidence would not be maintained if a nurse who had breached confidentiality in this way was allowed to continue to practise. She submitted that the only sanction which would adequately protect patients and members of the public and maintain professional standards is a striking-off order.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Mrs Dunn'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 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:

- Patient A and their family were placed at risk of harm as a consequence of Mrs Dunn's actions.
- The nature of the breach could seriously undermine trust in the nursing profession by the public who may as a result decide not to seek treatment when needed.
- A pattern of behaviour repeated on three separate occasions.
- Abuse of a position of trust as a nurse.
- Failed to demonstrate insight and remorse into her actions.
- Her conduct demonstrated attitudinal issues.

The panel was of the view that there was no evidence of mitigating features in this case.

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, the public protection issues identified and maintaining public confidence, an order that does not restrict Mrs Dunn'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 Mrs Dunn'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 Mrs Dunn's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can easily be addressed through retraining. It is of the view that any conditions that could be formulated would be so restrictive, it would be tantamount to a suspension. Furthermore, the panel concluded that the placing of conditions on Mrs Dunn's registration would not adequately address the seriousness of this case and would not protect the public and maintain public confidence in the profession.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel found that Mrs Dunn's actions were not a single incidence of misconduct, rather it was a pattern of behaviour that was repeated on three separate occasions. The panel determined that this was a deliberate

and considered action in her place of work. The ramifications of her actions are so significant and serious the public would be shocked to learn confidential information had been disclosed to a third party. The panel also noted that Mrs Dunn has shown no insight or remorse into her misconduct nor has she provided any evidence as to how she has attempted to address this misconduct. The panel found that Mrs Dunn's actions caused significant distress and emotional harm to Patient A. The panel noted that the serious breach of a fundamental tenet of the profession evidenced by Mrs Dunn's actions is incompatible with Mrs Dunn 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 was of the view that the findings in this particular case demonstrate that Mrs Dunn's actions were so serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mrs Dunn's actions in bringing the profession into disrepute by adversely affecting the public's view of the conduct of a

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

This will be confirmed to Mrs Dunn 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 Mrs Dunn's 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 Lovatt. She submitted that given the serious nature of the misconduct that you have found proven and interim order is necessary to protect the public and is otherwise in the public interest.

Ms Lovatt submitted that an interim conditions of practice order is not appropriate or proportionate in this case given the serious nature of Mrs Dunn's misconduct.

Ms Lovatt invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period at the end of which the striking-off order would replace the interim suspension order. Ms Lovatt stated that the decision of this hearing will be sent to Mrs Dunn in writing and she will have 28 days to appeal the decision.

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 ensure Mrs Dunn cannot practice unrestricted during the appeal period.

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

That concludes this determination.