

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

**Substantive Hearing
9 - 11 November 2020**

Virtual Hearing

Name of registrant:	Kevin Stewart Harris
NMC PIN:	97D1126E
Part(s) of the register:	Registered Nurse Adult Nursing – April 2000
Area of registered address:	Kent
Type of case:	Misconduct
Panel members:	Debbie Hill (Chair, Lay member) Sue Rourke (Registrant member) Paul Leighton (Lay member)
Legal Assessor:	Mark Piercy
Panel Secretary:	Amira Ahmed
Nursing and Midwifery Council:	Represented by Rakesh Sharma, Case Presenter
Mr Harris:	Not present and not represented
Facts proved:	All
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 Hearing

The panel was informed at the start of this hearing that Mr Harris was not in attendance and that the Notice of Hearing letter had been sent to the registrant's registered email address on 09 October 2020.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Harris' right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Harris 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 Mr Harris

The panel next considered whether it should proceed in the absence of Mr Harris. It had regard to Rule 21 and heard the submissions of Mr Sharma who invited the panel to continue in the absence of Mr Harris. He submitted that Mr Harris had voluntarily absented himself.

Mr Sharma submitted that there had been no engagement at all by Mr Harris with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

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 has decided to proceed in the absence of Mr Harris. In reaching this decision, the panel has considered the submissions of Mr Sharma and the advice of the legal assessor. It has had particular regard to the overall interests of justice and fairness to all parties. It noted that no application for an adjournment has been made by Mr Harris, he has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing; there is no reason to suppose that adjourning would secure his attendance at some future date. Furthermore two witnesses are prepared to give oral evidence during the course of this hearing, the panel were concerned that not proceeding may inconvenience the witnesses, and that further delay may have an adverse effect on the ability of witnesses accurately to recall events. The panel also noted that there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Harris in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address, he has made no response to the allegations. He will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his 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 Mr Harris' decisions to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

Details of charge

That you, a registered nurse:

- 1) Between 25 March 2005 and 29 March 2005, on 2 or more occasions breached professional boundaries in that you kissed Patient A on the lips.

- 2) Between 25 March 2005 and 29 March 2005, on 2 or more occasions kissed Patient A on the lips and your conduct in so doing was motivated by sexual gratification.

- 3) Between 25 March 2005 and 29 March 2005, on 2 or more occasions breached professional boundaries in that you touched Patient A's breasts without clinical reason.

- 4) Between 25 March 2005 and 29 March 2005, on 2 or more occasions touched Patient A's breasts and your conduct in so doing was motivated by sexual gratification.

- 5) On or before 19 May 2015 breached professional boundaries in that you kissed Patient B on the lips.

- 6) On or before 19 May 2015 kissed Patient B on the lips and your conduct in so doing was motivated by sexual gratification.

- 7) Between 19 May 2015 and 06 September 2015 breached professional boundaries in that, without clinical reason, you sent text messages and emails to Patient B.

- 8) Between 19 May 2015 and 06 September 2015 sent text messages and emails to Patient B and your conduct in so doing was in pursuit of a sexual relationship.

- 9) Between 19 May 2015 and 06 September 2015, on 2 or more occasions breached professional boundaries in that you arranged to and did meet with Patient B without clinical reason.

10) Between 19 May 2015 and 06 September 2015, on 2 or more occasions met and had physical contact with Patient B and your actions in so doing were in pursuit of a sexual relationship.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Sharma, on behalf of the NMC, to amend the wording of charges 2, 4 and 6.

The proposed amendment was to take out the words 'motivated by' and 'gratification'

It was submitted by Mr Sharma that the proposed amendment would provide clarity and more accurately reflect the evidence.

"2) Between 25 March 2005 and 29 March 2005, on 2 or more occasions kissed Patient A on the lips and your conduct in so doing was ~~motivated by sexual gratification~~.

4) Between 25 March 2005 and 29 March 2005, on 2 or more occasions touched Patient A's breasts and your conduct in so doing was ~~motivated by sexual gratification~~.

6) On or before 19 May 2015 kissed Patient B on the lips and your conduct in so doing was ~~motivated by sexual gratification~~."

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 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 Mr Harris 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, to ensure clarity and accuracy.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Sharma under Rule 31 to allow the hearsay testimony of Ms 2 into evidence. Ms 2 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, Mr Sharma explained that Ms 2 recently passed away and would not be present at this hearing. Mr Sharma stated that although the NMC had been able to obtain a written statement from Ms 2 before her death it had not been signed. However, he explained that the the evidence in the statement is highly relevant.

The panel gave the application in regard to Ms 2 serious consideration. The panel noted that Ms 2's statement had been prepared in anticipation of being used in these proceedings but did not contain her signature after the statement: 'This statement ... is true to the best of my information, knowledge and belief'.

The panel considered whether Mr Harris would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Ms 2 to that of allowing hearsay testimony into evidence.

The panel considered that as Mr Harris had been provided with a copy of Ms 2's statement and, as the panel had already determined that Mr Harris had chosen voluntarily to absent himself from these proceedings, he would not be in a position to cross-examine this witness in any case. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live evidence of Ms 2 and the opportunity of questioning and probing that testimony.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Ms 2, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

The charges arose whilst Mr Harris was employed as a registered nurse by Kent and Canterbury Hospital. It is alleged that between 25 March 2005 and 29 March 2005, on 2 or more occasions Mr Harris breached professional boundaries in that he kissed Patient A, a vulnerable woman, on the lips and that this was sexual. It is alleged that between 25 March 2005 and 29 March 2005, on 2 or more occasions Mr Harris breached professional boundaries in that he also touched Patient A's breasts without clinical reason and that this was sexual.

In 2015, it is alleged that Mr Harris on or before 19 May 2015 breached professional boundaries in that he kissed Patient B on the lips and that this was sexual. It is also alleged that Mr Harris breached professional boundaries in that, without clinical reason, he sent text messages and emails to Patient B in pursuit of a sexual relationship.

It is alleged that between 19 May 2015 and 06 September 2015, on 2 or more occasions Mr Harris breached professional boundaries in that he arranged to and did meet with Patient B without clinical reason. It is further alleged that this was done in pursuit of a sexual relationship.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Sharma on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mr Harris.

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:

- Patient A: Inpatient at Kent and Canterbury Hospital (on Invicta Ward) at the time of allegations.
- Ms 1: Emergency Care Centre Matron at Kent and Canterbury Hospital at the time of allegations.

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

The panel considered the evidence of the witnesses and made the following conclusions:

Patient A: The panel were aware of Patient A's medical history. The panel considered the evidence of Patient A to be credible. The panel noted that she tried to be as helpful as she could be. It also noted that it was clear how deeply affected by the allegations she was.

Ms 1: The panel considered Ms 1 to be a credible, professional and clear witness. It noted that she answered the questions put to her as best she could.

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

Charge 1

“Between 25 March 2005 and 29 March 2005, on 2 or more occasions breached professional boundaries in that you kissed Patient A on the lips.”

This charge is found proved.

In reaching this decision, the panel took into account Patient A’s oral evidence and her documentary evidence. The panel also noted the consistent account that Patient A has given over time and the police evidence which supports this. The panel concluded that charge 1 was found proved as Mr Harris on the balance of probabilities did breach professional boundaries by kissing Patient A on the lips between 25 March 2005 and 29 March 2005, on 2 or more occasions.

Charge 2

“Between 25 March 2005 and 29 March 2005, on 2 or more occasions kissed Patient A on the lips and your conduct in so doing was sexual.”

This charge is found proved.

In reaching this decision, the panel took into account Patient A’s oral evidence that Mr Harris would close the curtains around her before kissing her on the lips. The panel determined that this was pre-meditated conduct and that there was no other reason why Mr Harris would kiss Patient A other than it being sexual. The panel noted that Patient A’s account to the police was consistent with her original account.

Charge 3

“Between 25 March 2005 and 29 March 2005, on 2 or more occasions breached professional boundaries in that you touched Patient A’s breasts without clinical reason.”

This charge is found proved.

The panel noted that no clinical reason had been offered for why Mr Harris should be touching Patient A’s breasts. As the panel had found Patient A to be a credible witness it decided that Mr Harris had breached professional boundaries by touching Patient A’s breasts without clinical reason.

Charge 4

“Between 25 March 2005 and 29 March 2005, on 2 or more occasions touched Patient A’s breasts and your conduct in so doing was sexual.”

This charge is found proved.

The panel took into account Patient A’s oral evidence in which she was adamant that Mr Harris had touched her breasts over her clothing and not underneath. However, the panel concluded that this was still sexual as there is no other reason for why he would have done it.

Charge 5

“On or before 19 May 2015 breached professional boundaries in that you kissed Patient B on the lips.”

This charge is found proved.

The panel noted the documentary evidence, the oral evidence of Ms 1 and the hearsay evidence of Ms 2. It also noted that the kissing of Patient B is admitted on multiple occasions in the texts and emails. In particular the text message sent by Mr Harris on 19 May 2015 is one example of this. He stated:

“Hiya, it’s Kevin, sorry if I was a bit too forward in kissing you...”

Patient B on the same date replied:

“Hey. It’s ok, it’s was just a moment of weakness [sic].”

This reply by Patient B is confirmation that the kiss did in fact happen on 19 May 2015 and therefore Mr Harris did breach professional boundaries.

Charge 6

“On or before 19 May 2015 kissed Patient B on the lips and your conduct in so doing was sexual.”

This charge is found proved.

The panel noted that Mr Harris when admitting kissing Patient B on the lips also stated that she had ‘kissable lips’. The panel determined that Mr Harris’ actions were of a sexual nature as there is no other explanation. It concluded that charge 6 was therefore found proved.

Charge 7

“Between 19 May 2015 and 06 September 2015 breached professional boundaries in that, without clinical reason, you sent text messages and emails to Patient B.”

This charge is found proved.

The panel considered the bundle of text messages and emails it had seen that were sent by Mr Harris to Patient B and it was satisfied that they were graphically sexual in nature and were a clear breach of professional boundaries. Ms 1 also corroborated seeing the emails with photos attached of Mr Harris semi clothed. The panel therefore concluded that charge 7 was found proved.

Charge 8

“Between 19 May 2015 and 06 September 2015 sent text messages and emails to Patient B and your conduct in so doing was in pursuit of a sexual relationship”

This charge is found proved.

The panel noted the text messages and emails that were sent by Mr Harris including those that detailed graphic sexual content. It also noted the emails sent after seeing Patient B which stated ‘it was so good to see you today’ and ‘kissing you was wonderful, feeling your lips on mine’. The panel concluded that along with the photograph Mr Harris sent in his underwear and also posing in a towel his conduct was in pursuit of a sexual relationship with Patient B. Therefore charge 8 is found proved.

Charge 9

“Between 19 May 2015 and 06 September 2015, on 2 or more occasions breached professional boundaries in that you arranged to and did meet with Patient B without clinical reason.”

This charge is found proved.

The panel took account of the text messages which show that Mr Harris had breached professional boundaries with Patient B. It noted the text message that stated:

"I don't know if you really want to know, At the pub, saw us walk in"

This was followed later by:

"Room booked for the 5th September, breakfast included, if you want to?"

The panel decided that these text messages go to prove meetings had already happened and meetings were being planned in the pursuit of a sexual relationship.

The panel further noted the text from Mr Harris stating 'seeing you yesterday was wonderful' which followed later by an exchange that was clearly arrangements being made for another meeting:

"I really enjoyed last night, really hope we can do that again?"

Ms 1 in her witness statement and oral evidence explained that Patient B had told her that Mr Harris would meet up with her in a car on the grounds of the hospital and sexual activities would take place. The panel determined that Mr Harris between 19 May 2015 and 06 September 2015, on 2 or more occasions breached professional boundaries in that he arranged to and did meet with Patient B without clinical reason. Therefore charge 9 is found proved.

Charge 10

"Between 19 May 2015 and 06 September 2015, on 2 or more occasions met and had physical contact with Patient B and your actions in so doing were in pursuit of a sexual relationship."

This charge is found proved.

The panel took into account Ms 1's credible oral evidence that the meet ups that took place were clearly of a sexual nature. It also noted all the text messages and emails it had seen that detailed graphic sexual content including photographs sent by Mr Harris in pursuit of a sexual relationship. The panel concluded that between 19 May 2015 and 06

September 2015, on 2 or more occasions Mr Harris met and had physical contact with Patient B. Therefore charge 10 is found proved.

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 Harris' 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 Harris' 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.*'

Mr Sharma invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The NMC code of professional conduct: standards for conduct, performance and ethics (2004)' (the Code) and 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Mr Sharma identified the specific, relevant standards where Mr Harris' actions amounted to misconduct. He also referred to relevant case law including: *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Submissions on impairment

Mr Sharma 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin).

Mr Sharma submitted that insight is an important concept when considering impairment. The panel may consider the Registrant has evidenced no insight at all. There is no evidence to demonstrate that he has taken steps personally or professionally to ensure that should similar circumstances arise again he would refrain from sexual misconduct. Therefore Mr Sharma submitted that Mr Harris' actions are so serious that a finding of current impairment is required in order to protect the public and to maintain public confidence in the professions.

The panel accepted the advice of the legal assessor who confirmed the relevance of the judgements referred to in Mr Sharma's written submissions.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the 2004 Code and 2015 Code. The panel noted that charges 1-4

had taken place in 2005 and therefore the 2004 Code was relevant. It also noted that in regards charges 5-10 the 2015 Code applied.

The panel was of the view that Mr Harris' actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the 2004 Code in relation to charges 1-4. Specifically:

1.2 Act in such a way that justifies the trust and confidence the public have in you.

Uphold and enhance the good reputation of the professions

2.3 You must, at all times, maintain appropriate professional boundaries in the relationships you have with patients and clients. You must ensure that all aspects of the relationship focus exclusively upon the needs of the patient or client.

7.1 You must behave in a way that upholds the reputation of the professions.

The panel also found that his actions amounted to a breach of the 2015 Code in relation charges 5-10. 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.

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that this case concerns Mr Harris' breaches of professional boundaries in a range of ways. The panel noted that these include the sending of messages to a patient for no clinical reason, kissing patients, sexual touching of patients, engaging in sexual conduct and seeking to form a sexual relationship with a patient.

The panel found that Mr Harris' 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 Harris' 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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

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

The panel finds that patients were put at risk and were caused harm as a result of Mr Harris' misconduct. An example of the harm caused includes Patient A discharging herself early from the hospital and also avoiding treatment in order to not come into further

contact with Mr Harris. Mr Harris' misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that it heard no evidence in regards to insight, remorse and remediation. The facts of this case indicate that Mr Harris has a propensity to act in a sexually predatory manner which has put and is likely to put patients at risk of significant harm. The panel therefore determined that there is a risk of repetition. The panel 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.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Harris' 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 Harris off the register. The effect of this order is that the NMC register will show that Mr Harris 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.

Submissions on sanction

Mr Sharma submitted that in all the circumstances of this case, the very serious nature of the misconduct, the actual harm caused, the potential for further harm, the damage to the reputation of the profession and the lack of evidence of insight, the only suitable sanction is a striking off order.

Decision and reasons on sanction

Having found Mr Harris' 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. 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:

- The demonstrable harm to Patient A occasioned by the conduct in charges 1-4;
- The lasting effect of this conduct on Patient A;

- The vulnerability of Patient A and B;
- The prolonged nature of the conduct in charges 5-10;
- The planning and pre-meditation involved.
- Abuse of power/position

The panel determined that there were no 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. The panel considered that Mr Harris' 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 next considered whether placing conditions of practice on Mr Harris' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Harris' 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 panel noted that the conduct, as highlighted by the facts 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 Mr Harris' actions is fundamentally incompatible with him 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?*

Mr Harris' actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Harris' 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. Mr Harris' actions had put members of the public at risk and has damaged the reputation of the nursing profession. The panel considers Mr Harris to be a continuing risk to the public in the event that he is permitted to practice as a nurse. Therefore the panel has concluded 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 Harris 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 Harris' own interest 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 Mr Sharma. He submitted that a corresponding interim order is necessary and that the NMC apply for an interim suspension order for a duration of 18 months.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.