

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

**Substantive Hearing
23 – 27 and 30 January 2023**

Virtual Hearing

Name of registrant:	Gordon Bernard George Linton
NMC PIN:	93B0123S
Part(s) of the register:	Nurses part of the register, sub part 1 RNMH: Mental Health Nurse, level 1 (12 February 1996)
Relevant Location:	Dundee
Type of case:	Misconduct
Panel members:	Konrad Chrzanowski (Chair, Lay member) Louise Poley (Registrant member) Barry Greene (Lay member)
Legal Assessor:	Graeme Henderson
Hearings Coordinator:	Tyrena Agyemang
Nursing and Midwifery Council:	Represented by Dr Raj Joshi, Case Presenter
Mr Linton:	Not present and unrepresented in his absence
Facts proved:	All
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 Mr Linton was not in attendance and that the Notice of Hearing letter had been sent to Mr Linton's registered email address by secure and encrypted delivery on 15 December 2022.

Mr Joshi, 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, dates and venue of the hearing and, amongst other things, information about Mr Linton's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

The panel next considered whether it should proceed in the absence of Mr Linton. It had regard to Rule 21 and heard the submissions of Mr Joshi who invited the panel to continue in the absence of Mr Linton. Mr Joshi told the panel that several attempts had been made by the Hearings Coordinator this morning, to contact Mr Linton to ensure he could attend the hearing, but successful contact was not made. Mr Joshi outlined that Mr Linton was initially engaging with the NMC and referred the panel to the completed Case Management Form (CMF) where he indicated he was not going to attend and then to Mr

Linton's last correspondence to the NMC dated 14 November 2022, in which he stated that he would attend the hearing, but there has been no contact with him since. Mr Joshi submitted that Mr Linton has chosen to voluntarily absent himself from the hearing. He therefore invited the panel to proceed in Mr Linton's absence.

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*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Linton. In reaching this decision, the panel has considered the submissions of Mr Joshi and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Linton;
- Mr Linton has not engaged with the NMC since his last email dated 14 November 2022;
- Mr Linton has not provided the NMC with details of how he may be contacted other than his details on the NMC register;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- A number of witnesses are due to attend the hearing to give live evidence;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2020;

- 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 Mr Linton in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address. He will not be able to challenge the evidence relied upon by the NMC in person 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 Linton's 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 Linton. The panel will draw no adverse inference from Mr Linton's absence in its findings of fact.

Details of charge

That you, a Registered Nurse:

1. Between around 2 April 2020 and around end April 2020 sent messages to patient A as set out in Schedule 1. **Found proved**
2. Sent an email to colleague A dated 9 August 2020 timed at 02:56 that contained the words set out in Schedule 2. **Found proved**

3. Following patient A messaging you as set out in Schedule 3 you continued to send messages. **Found proved**
4. Your action at charge 1 was sexually motivated in that it was done in pursuit of a future sexual relationship. **Found proved**

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

Schedule 1

[not an exhaustive list)

“Just reach out to me x”

“You’re an absolute babe, a lovely person and I want to spend time with you x”

“You are beautiful [patient A]”

“Give me a chance”

“I thought we connected”

“I think you’re beautiful”

“Ask me out if you want”

“I had a bit of a crush on you x”

“That was me hitting on you [emoji]”

“I think you’re adorable”

“Will you still marry me?”

“You were physically stunning”

Schedule 2

“You fuck with me you are unemployed within a year. I fucking mean business”.

Schedule 3

“Know what please leave me alone...Just leave me alone”

“Gordon I asked you to leave me alone ages ago”

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

During the course of the hearing, Mr Joshi made a request that parts of this case be held in private on the basis that proper exploration of Mr Linton’s case involves references to the private and medical information of Mr Linton and others involved in this case. 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.

The panel determined to go into private session in connection with the private and medical information of Mr Linton and others involved in this case as and when such issues are raised. All other matters are to remain in public.

Decision and reasons on application to admit the written statements and exhibits of Patient A and Witness 3 into evidence

The panel heard an application made by Mr Joshi under Rule 31 to allow the written statement of Patient A and Witness 3 into evidence and their exhibits.

Patient A was not present at this hearing and, whilst the NMC had made numerous efforts to ensure that this witness was present and the panel had allowed additional time, Patient A did not attend the hearing. Mr Joshi told the panel that the Hearings Coordinator had made contact with Patient A, who said she was joining the hearing, but unfortunately Patient A was uncontactable at the appropriate time.

Mr Joshi told the panel had Patient A attended the hearing, under Rule 23, he would have requested Patient A is considered to be a vulnerable witness. He told the panel that her statement is highly relevant and provides context to the very serious allegations. Mr Joshi told the panel that Patient A, outlines what happened to her and the impact of Mr Linton's actions on her wellbeing.

Mr Joshi referred the panel to Rule 23.4 of The Rules and outlined the special measures that were put in place to support Patient A throughout this process. He told the panel that the special measures included securing special, independent Counsel to carry out Mr Linton's cross examination of Patient A.

Mr Joshi submitted that should the statement be admitted it would be for the panel to determine the admissibility of Patient A witness statement and fairness in allowing the statement into evidence.

Mr Joshi referred the panel to the relevant case law, namely, *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) and *El Karout v NMC* [2019] EWHC 28 (Admin).

Mr Joshi addressed the panel on *Thorneycroft*. He took the panel through paragraph 56 of the judgement addressing each point. He told the panel that Patient A evidence was not the sole and decisive evidence. Mr Joshi submitted that although Mr Linton is not present nor is he represented, the panel have had ample opportunity to hear from other witnesses in this case and question them. Mr Joshi referred the panel to Mr Linton's completed CMF, where apart from charge 4, Mr Linton does not dispute or challenge the charges against him.

Mr Joshi submitted that the panel not only have a witness statement from Patient A, it also has the copies of the messages exchanged between Patient A and Mr Linton. He submitted that the panel can place the appropriate weight on the messages as it deems necessary. Further he submitted that it would be very difficult to suggest that the messages have been fabricated. He submitted that charges are very serious and if found proved would have a detrimental impact on Mr Linton's career.

Next he addressed the panel on point five. He submitted that the panel is aware the Patient A is considered to be a vulnerable in a number of respects. The panel has also heard from other witnesses about the effects of the events on Patient A together with her health, Mr Joshi submitted that there is a good reason for the non-attendance of Patient A.

Mr Joshi addressed point 6 and provided the panel with a record of contact with Patient A which details successful contact and the attempts that were made. He submitted that all reasonable steps were taken to secure the attendance of Patient A.

Mr Joshi told the panel in relation to the last point, that Mr Linton has been notified about all the evidence the NMC seek to rely on during the hearing and that the admission of Patient A's statement would not have taken him by surprise.

Mr Joshi then referred the panel to the case of *El Karout* and submitted that it is for the panel to determine the admissibility of evidence in this case. Mr Joshi submitted that his application is for the witness statement of Patient A to be read into the records, which he further submitted compiled with all relevant case law.

Mr Joshi went on to address his application in respect of Witness 3. He submitted that in the preparation of this hearing, the NMC had indicated to Mr Linton in the Case Management Form (CMF), that it was the NMC's intention for Witness 3's witness statement to be read into the record, without Witness 3 attending the hearing to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Witness 3, Mr Linton made the decision not to attend this hearing. On this basis Mr Joshi advanced the argument that there was no lack of fairness to Mr Linton in allowing Witness 3's witness statement into evidence.

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

The panel gave the application in regard to Patient A serious consideration. The panel noted that Patient A's witness statement had been prepared in anticipation of being used in these proceedings and signed by her.

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

The panel considered that as Mr Linton had been provided with a copy of Patient A's statement and, as the panel had already determined that Mr Linton had chosen voluntarily to absent himself from these proceedings. There was no material in respect of which the panel would require to ask questions of this witness. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

The panel referred to paragraph 56 of *Thorneycroft*.

The panel determined that having heard from two live witnesses, Patient A's evidence was not sole and decisive in this case. The panel considered that the text messages and emails, support Patient A's witness statement and add more weight to the NMC's case. The panel also considered that there is no dispute from Mr Linton as he admits during the local investigation that he sent messages to and engages in a dialogue with Patient A over social media.

In considering the nature and extent of the challenge to the contents of the statements, the panel acknowledged Mr Linton had not challenged the evidence, or witness statement that the NMC intended to rely up during the hearing. The panel noted Mr Linton's admissions during the local investigation and his responses on the completed CMF. The panel was of the view that if Mr Linton, did want to challenge anything before the panel, that he had ample time to do so, the panel is also aware that it must make its decision based on the information before and not make any speculations behind Mr Linton's behaviour.

The panel considered that in relation to fabrication and whether there was any suggestion of fabrication from any of the witnesses, the panel referred to the messages, witness statements and Mr Linton's own admissions. The panel determined that it would be difficult to determine that there had been any fabrication or colluding between the witnesses based on the information and admissions before it. The panel considered the witnesses to be credible and therefore there was nothing before it to suggest any fabrication of evidence.

The panel went on to consider the seriousness of the charges in this matter and the impact of any adverse findings on Mr Linton's career. The panel acknowledged that the charges in this case are very serious and if found proved, could have a detrimental effect on Mr Linton's career. However, the panel bore in mind its duty to protect the public and maintain professional standards of nursing.

The panel went on to consider whether there was a good reason for the non-attendance of Patient A. The panel acknowledged the evidence before it which outlines the health and emotional state of Patient A. The panel further acknowledged her respective vulnerabilities and the numerous attempts made to secure Patient A's attendance at the hearing. The panel considered the support put in place for Patient A and bore in mind that further attempts may have an adverse effect on Patient A and her recovery and may not have secured her attendance.

The panel in considering the reasonable steps taken to secure Mr Linton's attendance acknowledged the numerous attempts of the NMC to secure his attendance. The panel noted that Mr Linton did have prior notice and it referred to his email dated 14 November 2022, in which he states he would attend. The panel also noted the completed CMF which provides Mr Linton with prior notice of all witness statements and evidence the NMC will be relying on. The panel considered that Mr Linton was well aware of the evidence in this case, but he chose not to attend the hearing.

In relation to the witness statements of Witness 3, the panel was of the view that her witness statement would probably not have been contested by Mr Linton had he attended the hearing, as her part in the case was to start the initial process of raising concerns about Mr Linton's conduct with Patient A. The panel was aware that Witness 3, provides a background narrative to the case and doesn't actually speak to the charges.

The panel also noted that the CMF also made Mr Linton aware that Witness 3 would not be called to give live evidence during the hearing.

The panel further 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 Patient A and the opportunity of questioning and probing that testimony. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. The panel also noted that there was never any intention by the NMC to call Witness 3 as a live witness.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement and hearsay evidence of Patient A and Witness 3 into evidence, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

The panel therefore granted the application of Mr Joshi.

Decision and reasons on facts

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

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

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

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:

- Colleague A : Senior Nurse at the Carseview
Centre part of NHS Tayside and
colleague of Mr Linton

- Witness 2: Senior Charge Nurse at the Carseview Centre part of NHS Tayside

Background

The charges arose whilst Mr Linton was employed as a registered nurse at NHS Tayside, in the Carseview Centre (the centre). Mr Linton was referred to the NMC on 8 December 2020 by the Lead Nurse of NHS Tayside where he was employed as a nurse. It is alleged that he breached professional boundaries by using social media to contact and pursue Patient A, a patient he had cared for during her inpatient stay at the Carseview Centre between 28 March 2020 and 2 April 2020.

Mr Linton allegedly contacted Patient A via social media approximately a week after she had been discharged from the mental health unit. Patient A stated, that when she initially accepted the Facebook friend request, she did not know that the person messaging her was Mr Linton. Patient A alleged that Mr Linton continued to her send messages and tried to call her on several occasions despite her asking him to stop contacting her.

It is further alleged that during the course of the local investigation into these concerns, Mr Linton sent threatening emails to Colleague A, the investigating officer.

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 the NMC.

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

Charge 1

1. Between around 2 April 2020 and around end April 2020 sent messages to patient A as set out in Schedule 1.

Schedule 1

[not an exhaustive list)

“Just reach out to me x”

“You’re an absolute babe, a lovely person and I want to spend time with you x”

“You are beautiful [patient A]”

“Give me a chance”

“I thought we connected”

“I think you’re beautiful”

“Ask me out if you want”

“I had a bit of a crush on you x”

“That was me hitting on you [emoji]”

“I think you’re adorable”

“Will you still marry me?”

“You were physically stunning”

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence of Colleague A, her exhibits, which include notes of the investigation meeting dated 17 June 2020 and the messages detailing communication between Mr Linton and Patient A provided by Patient A for the purposes of the local investigation.

The panel carefully examined the evidence before it and confirmed that all the messages in schedule 1 were indeed sent to Patient A, by Mr Linton. The panel also acknowledged Mr Linton's admission in the investigation meeting with Colleague A and on the CMF that he had sent those messages to Patient A.

The panel therefore finds this charge proved.

Charge 2

2. Sent an email to colleague A dated 9 August 2020 timed at 02:56 that contained the words set out in Schedule 2.

Schedule 2

"You fuck with me you are unemployed within a year. I fucking mean business".

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence of Colleague A, her witness statement and her exhibits. The panel also took into account Mr Linton's admission within the completed CMF.

The panel acknowledged that there was no denial from Mr Linton that he had sent this email or alternative account that someone else had used his computer to send the email. The panel acknowledged that the email was sent from Mr Linton's email address and then was followed up on a later date with an email apologising.

The panel was content that the evidence in respect of this charge was consistent and therefore finds this charge proved.

Charge 3

3. Following patient A messaging you as set out in Schedule 3 you continued to send messages.

Schedule 3

“Know what please leave me alone...Just leave me alone”

“Gordon I asked you to leave me alone ages ago”

This charge is found proved.

In reaching this decision, the panel took into account messages detailing the conversation between Mr Linton and Patient A produced by Patient A.

The panel carefully examined the conversation and could see where Patient A had asked Mr Linton not to contact her, and on both occasions, Mr Linton had continued to send messages to Patient A.

Taking into account Mr Linton’s admissions that he did send the messages to Patient A, the panel was satisfied that although Patient A had asked Mr Linton to stop contacting her, he continued to do so. The panel therefore finds this charges proved.

Charge 4

4. Your action at charge 1 was sexually motivated in that it was done in pursuit of a future sexual relationship.

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence of both Colleague A and Witness 2, Patient A's witness statement and the messages between Patient A and Mr Linton.

The panel referred to the oral evidence of Witness 2 when she told the panel that she was shocked and disappointed by the type of contact Mr Linton had had with Patient A. Witness 2 also gave evidence as to the demeanour of Patient A during the telephone conversations, in which Patient A was upset and concerned that Mr Linton may try to come to her home address. She was also angry and distressed by Mr Linton's approach. Witness 2 told the panel that all staff were aware of the policies regarding contacting patients via social media or any other means which was not clinically related.

The panel also looked at the content of the messages and noted that Mr Linton had referred to *'falling in love'* and also stated this during a telephone call with Patient A. The panel also noted Mr Linton's references to Patient A physical appearance and his own admission that he was being *'flirtatious'* with Patient A made during the local investigation interview.

The panel considered Patient A's response to Mr Linton's action and her comment when she stated:

"The messages started fine, just chit chat and then he got creepy..."

...He mentioned my daughter – that freaked me out...

He asked for my address

I realised that he was trying to get to know me, to go out with him or to have sex with him."

The panel considered all the messages and that there was an element of making use of information regarding Patient A which he obtained whilst she was an inpatient and under his care. Mr Linton repeatedly references his physical attraction to Patient A.

The panel reminded itself of the advice of the legal assessor who referred to the case of *Basson v GMC* 2018 EWHC 505 (Admin). A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.

The panel considered that the messages, which were sent during one night was in the form of pestering Patient A and with the sexual element present in number of the messages. The panel determined this was in order to pursue a sexual relationship with Patient A.

The panel therefore finds this charge proved on the balance of probabilities.

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 Linton'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 Linton'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.*'

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

Mr Joshi referred the panel to the NMC guidance on Misconduct ([FtP 2a](#)) and 'Serious concerns which are more difficult to put right' ([FtP 3a](#)). He also referred the panel to the Council for Healthcare Regulatory Excellence (CHRE) guidance on 'Clear sexual boundaries between healthcare professionals and patients - Information for patients and carers', dated January 2008.

Mr Joshi went on to identify the specific, relevant standards where Mr Linton's actions amounted to misconduct for the panel's consideration.

Mr Joshi referred the panel to the bullet points in the NMC guidance on serious concerns which states:

- *breaching the professional duty of candour to be open and honest when things go wrong, including covering up, falsifying records, obstructing, victimising or hindering a colleague or member of staff or patient who wants to raise a*

concern, encouraging others not to tell the truth, or otherwise contributing to a culture which suppresses openness about the safety of care

...

- *sexual assault or relationships with patients in breach of guidance on clear sexual boundaries,*
- *deliberately causing harm to patients*

...

- *exploiting patients or abusing the position of a registered nurse, midwife or nursing associate for financial or personal gain*
- *being directly responsible (such as through management of a service or setting) for exposing patients or service users to harm or neglect, especially where the evidence shows the nurse, midwife or nursing associate putting their own priorities, or those of the organisation they work for, before their professional duty to ensure patient safety and dignity.*

Mr Joshi submitted that during the local investigation Mr Linton breached his duty of candour by sending nasty emails to Colleague A. Mr Joshi told the panel that Mr Linton, in answers provided in his CMF, went on to blame Patient A. He submitted that this demonstrated that Mr Linton was not taking responsibility for his actions.

Mr Joshi submitted that Mr Linton crossed appropriate sexual boundaries. He reminded the panel of the impact of Mr Linton's actions on Patient A who describes significant anguish. He submitted as a matter of inference the panel could conclude that even after a significant amount of time has passed, Patient A is still unable to fully engage with these proceedings.

Mr Joshi told the panel that Mr Linton as a healthcare professional, had a duty to ensure patient safety and act in the best interests of the patient. It is clear that Mr Linton did not act in the interests of anyone but himself and a breach of sexual boundaries has the potential to damage the patient's trust in the health service.

Mr Joshi referred the panel to the evidence of Patient A, in which she describes feeling threatened when Mr Linton referenced private matters. She was also fearful of him coming to her home address.

Mr Joshi again referred the panel to the CHRE guidance, specifically the section on Sexual relationships between healthcare professionals and former patients. He submitted that Mr Linton was aware of the health concerns of Patient A. Despite this, and that she had been an in-patient in a mental health unit, shortly after her discharge, he pursued a relationship with her, contacting her and causing harm to Patient A. Mr Linton even used information about Patient A that he had learnt while she was an inpatient as a means to start conversing with her and even when Patient A asked him to leave her alone, he continued to contact her.

Mr Joshi addressed the panel on each section of the Code that Mr Linton had breached. He told the panel that Mr Linton persisted in contacting Patient A, even after she had requested for him to stop. Mr Joshi told the panel that Mr Linton would have been aware of her state of mind and her personal circumstances, but he continued to pursue Patient A.

Mr Joshi told the panel that Mr Linton acted upon his sexual motivation, disregarding the vulnerabilities of Patient A. Mr Joshi told the panel that Mr Linton did not consider the impact of his actions on Patient A.

In relation to working cooperatively, Mr Joshi submitted that Mr Linton did engage with the local investigation, but subsequently sent a nasty and threatening email to Colleague A. He submitted that this was indicative of the attitude displayed by Mr Linton throughout the proceedings.

Submissions on impairment

Mr Joshi 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.

Lastly Mr Joshi submitted that a member of the public, aware of all the facts in this case would be concerned if as a result of the facts found proved, some form of restriction was not placed on Mr Linton's practice and registration.

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, CHRE Guidance, *Cohen v GMC* [2008] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and 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 Mr Linton's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Linton's actions amounted to a breach of the Code. Specifically:

1.1 treat people with kindness, respect and compassion

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

8.2 maintain effective communication with colleagues

8.4 work with colleagues to evaluate the quality of your work and that of the team

9.3 deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times

16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern

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

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

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

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

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

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

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

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mr Linton's actions did fall seriously short of the conduct and standards expected of a nurse, particularly as he was aware of the vulnerabilities and health concerns of Patient A. Mr Linton would have been well aware of the policies in place regarding sexual conduct with patients and maintaining professional boundaries, which he chose to disregard. The panel also considered that Mr Linton's action in respect of sending an email of a threatening nature to someone investigating his conduct were also sufficiently serious to amount to misconduct.

The panel concluded that Mr Linton's actions amounted to misconduct in relation to Patient A. His actions caused her significant distress and resulted in her losing trust in the mental health profession. This has the potential to impact negatively on her wellbeing and any potential future treatment episodes.

The panel also considered that his actions in relation to Patient A, were in breach of the guidelines issued by CHRE, which state:

- *when the professional relationship ended and how long it lasted*
- *the nature of the previous professional relationship and whether it involved a significant imbalance of power*
- *whether the former patient was particularly vulnerable at the time of the professional relationship, and whether they might still be considered vulnerable*
- *whether they would be exploiting any power imbalance, knowledge or influence*

obtained while they were the patient's healthcare professional to develop or progress the relationship

The panel determined that a fully informed member of the public would be concerned by Mr Linton's actions. The charges found proved included matters that were considered to be sexually motivated and involved significant breaches of professional boundaries.

The panel also considered his actions in relation to Colleague A and the threatening email he sent her. His actions also caused her distress and concern, and as such the panel concluded that Mr Linton's actions also amounted to misconduct in relation to Colleague A.

The panel therefore determined that the charges found proved amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Linton'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 test of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. In paragraph 76, she said:

'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 Patient A was put at risk and subjected to emotional harm and distress as a result of Mr Linton's misconduct. Further, that he was in breach of fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find the charges, which were found to have been sexually motivated, proved. The panel also found that limbs *b)* and *c)* were engaged in relation to charge 2, in respect of Colleague A.

In regard to insight, the panel determined that although Mr Linton had made admissions to some of the charges, his insight regarding his actions was insufficient. The panel noted that he sought to blame Patient A for his actions and focused only on his own wellbeing and feelings. He appeared to have no regard for the vulnerabilities of Patient A or the impact of his behaviour on his colleagues. The panel had very little before it to demonstrate Mr Linton has acknowledged his actions, the impact on Patient A, Colleague A and the wider nursing profession or the reputation of the profession.

In light of the nature of the matters found proved, the lack of insight and evidence of remediation or strengthened practice in addition to the attitudinal concerns, the panel concluded that the misconduct is not easily remediable. Furthermore, there is very little information to indicate Mr Linton has taken steps to address his misconduct. The panel therefore cannot be satisfied that it is unlikely that such behaviour would not be repeated.

The panel therefore determined that a finding of current 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.

The panel determined that a finding of current impairment on public interest grounds is also required. A member of the public, aware of all the circumstances in this case would be concerned that the nurse, against whom such concerns were found proved, was allowed to practise unrestricted.

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

Having regard to all the above, the panel has determined that Mr Linton'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 Linton off the register. The effect of this order is that the NMC register will show that Mr Linton 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 Joshi submitted that in considering the proportionality between Mr Linton's rights and the public protection and public interest concerns of the case, the panel must look at each sanction available to it starting at the least punitive restriction and working its way through the sanctions.

Mr Joshi referred the panel to the SG and suggested some aggravating and mitigating features for the panel to consider. He submitted that the panel must take into account Mr Linton's conduct which put Patient A at risk of suffering harm. He also referred to Mr Linton's behaviour during the local investigation during which he made threats to Colleague A.

Mr Joshi submitted that the panel's real consideration at this stage is the seriousness of Mr Linton's conduct. He submitted that this case involved sexual misconduct and he the panel to NMC guidance, Cases involving sexual misconduct (SAN-2) which states:

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 ... The level of risk to patients will be an important factor, but the panel

should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates.

Mr Joshi submitted these matters could have had a profound effect on Patient A, the nursing profession and the reputation of the profession. He further submitted in these circumstances that the only appropriate sanction, is that of a striking-off order. He therefore invited the panel to impose a striking-off order.

Decision and reasons on sanction

Having found Mr Linton'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. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Minimal insight, remorse and evidence of strengthened practice
- Conduct which put patients at risk of suffering harm
- Abuse of a position of trust
- Attempts to blame the patient
- Attitudinal concerns, which continued over a period time specifically during the local investigation
- Experienced mental health nurse
- Deliberately contacting a vulnerable patient
- Attempts to obstruct and interfere with the local investigation

The panel also took into account the following mitigating features

- Some admissions
- Incident occurred whilst Mr Linton was experiencing a period of stress and alcohol related issues

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 wholly disproportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Linton'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 Linton'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 Linton'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, nor Mr Linton's attitudinal concerns identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Linton'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:

- *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 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 Linton's actions is fundamentally incompatible with him remaining on the register.

The panel considered that although Mr Linton's misconduct may appear to be one instance, the panel took into account the unpleasant and intimidating email he sent to Colleague A and his interference with the local investigation, which contribute to the seriousness of the misconduct.

The panel acknowledged Mr Linton's response to the charges. He had ample opportunity to reflect upon his actions during the local investigation and demonstrate some level of insight and remorse. However, the panel found that he endeavoured to shift the blame to Patient A and interfere with and disrupt the internal investigation process.

The panel acknowledged the absence of any evidence of remediation or strengthening of practice.

The panel referred to the SG specifically the guidance on Serious concerns which are more difficult to put right (FTP-3a) and Serious concerns which could result in harm to patients if not put right (FTP-3b). The panel also had regard to the guidance on Serious concerns based on public confidence or professional standards (FTP-3c), which states:

We may also need to take action in cases where the concerns were not directly related to the care the nurse, midwife or nursing associate provided to people, but which call into question the basics of their professionalism. This may cover things that have happened in the nurse, midwife or nursing associate's private life. For

example, if they've committed serious criminal offences, or there's evidence to suggest a deep-seated attitudinal problem such as displaying discriminatory views and behaviours.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. The panel was of the view that Mr Linton failed to uphold the proper standards of nursing by not acting with integrity and instead harassing, bullying and intimidating both Colleague A and Patient A.

The panel took into consideration the time in between Patient A's discharge and Mr Linton contacting her, which was only a matter of days. The panel considered Mr Linton's uninvited and unwanted contact with Patient A and the email sent to Colleague A as forms of harassment and intimidation to them. The panel acknowledged Patient A's perception for Mr Linton's motive for contacting her, as wanting to have sex with her, which would have been humiliating and had a profound effect on Patient A, given her vulnerabilities.

The panel next considered the email Mr Linton sent to Colleague A, which included intimidating and offensive language. These actions would have a negative effect of the public perception of the profession and the NMC should it not take action.

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 Linton's 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 Linton'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 effect of Mr Linton'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 this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Mr Linton 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 Linton's 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 Joshi. He invited the panel to impose an interim suspension order for the period of 18 months to cover the appeal period, should Mr Linton decide to appeal the panel's 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, due to the public protection and public interest concerns in this case.

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

That concludes this determination.