Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
19, 20, 21 and 22 August 2024

Virtual Hearing

Name of Registrant:	**Rachel Scarlet Smith**
NMC PIN	18C0657E
Part(s) of the register:	Registered Nurse – Mental Health Nursing
Relevant Location:	Derby
Type of case:	Misconduct
Panel members:	Elliott Kenton (Chair – Lay member) Alex Forsyth (Lay member) Louise Poley (Registrant member)
Legal Assessor:	Andrew Lewis
Hearings Coordinator:	Vicky Green
Nursing and Midwifery Council:	Represented by Alastair Kennedy, Case Presenter
Miss Smith:	Present and represented by Samantha Madden, Counsel, instructed by the Royal College of Nursing
Facts proved by admission:	Charges 1, 3, 4 and 5
Offer no evidence:	Charge 2
Fitness to practise:	Impaired
Sanction:	**Striking off order**
Interim order:	**Interim suspension order – 18 months**

Details of charge

That you, a registered nurse:

1) On an unknown date disclosed the name of Patient X to Person A. **[Proved by admission]**

2) Whilst in a professional relationship with Patient X entered into a personal and/or sexual relationship with him. **[Offer no evidence]**

Or, in the alternative:

3) Shortly after your professional relationship with Patient X came to an end entered into a personal and/or sexual relationship with him. **[Proved by admission]**

4) Your conduct at charge 2 or, in the alternative, charge 3 breached professional boundaries. **[Proved by admission]**

5) Your conduct at charge 2 or, in the alternative, charge 3 was sexually motivated in that it was in pursuit or performance of a sexual relationship. **[Proved by admission]**

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

Decision and reasons on application to admit evidence of Ms 1 and Ms 2 as hearsay evidence

Mr Kennedy, on behalf of the Nursing and Midwifery Council (NMC) made an application for the evidence of Ms 1 and Ms 2 to be admitted as hearsay evidence. He referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) and the following principles:

1. *The admission of the statement of an absent witness should not be regarded as a routine matter and the Fitness to Practise (FTP) rules require the Panel to consider the issue of fairness before admitting the evidence.*
2. *The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but will not always be a sufficient answer to the objection to admissibility.*
3. *The existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However the absence of a good reason does not automatically result in the exclusion of the evidence.*
4. *Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit requires the Panel to make a careful assessment, weighing up the competing factors. The assessment should involve a consideration of the issues in the case, the other evidence to be called and the potential consequences of admitting the evidence and the Panel must be satisfied having undertaken this assessment that, either the evidence is demonstrably reliable or that there is some means of testing its reliability.*

Mr Kennedy submitted that the evidence of Ms 1 and Ms 2 relates to charge 2, in that they both give evidence that a personal and/or sexual relationship between you and Patient X started whilst he was a patient at the hospital.

In respect of Ms 1, Mr Kennedy submitted that she reported her concerns to the NMC. Ms 1 [PRIVATE], and it was confirmed that you met Patient X while he was an inpatient. Mr Kennedy referred the panel to Ms 1's witness statement in which she stated that you had met Patient X while he was an inpatient at the hospital. He submitted that the NMC

has been unable to secure the attendance of Ms 1 [PRIVATE]. Mr Kennedy informed the panel that the only contact details for Ms 1 are her work email and contact number. He submitted that reasonable efforts have been made by the NMC to obtain Ms 1's personal contact details, however, these efforts have been unsuccessful.

In respect of Ms 2, Mr Kennedy submitted that her evidence was anonymous hearsay. He referred the panel to Ms 2's witness statement in which she stated that in October 2021 Service User A had disclosed to her that you had been in a relationship with Patient X for eight months while you had been providing care to him. He submitted that Service User A has not been called to give evidence and that it was a matter for the panel to determine whether it would be fair to admit the evidence of Ms 2.

Ms Madden, on your behalf, opposed the application in respect of both Ms 1 and Ms 2's evidence.

In respect of Ms 1, Ms Madden submitted that whilst it has been established that Ms 1 is [PRIVATE], there is no information about when she would be available to give evidence. She submitted that Ms 1 did not know you until January 2022 and there is no means of testing the reliability of her evidence or the evidence given to her. Ms Madden submitted that it would be unfair to you to admit the evidence of Ms 1.

In respect of Ms 2, Ms Madden submitted that her evidence is anonymous hearsay as it reports what she was told by an unnamed patient. She submitted that there is no other evidence, apart from hearsay, that supports the contention that you started a relationship with Patient X while he was an inpatient.

Ms Madden submitted that the evidence of Ms 1 and Ms 2 is the sole or decisive evidence in relation to charge 2 and it would be unfair to you to admit it.

The panel accepted the advice of the legal assessor.

The panel had regard to the cases of *Thorneycroft* and *Mansaray v Nursing and Midwifery Council* [2023] EWHC 730 (Admin). The panel also had regard to Rule 31

provides that, so far as it is *'fair and relevant'*, a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. In addition to this, the panel had regard to the NMC Guidance on *'Evidence',* in particular *'Hearsay'* (Reference: DMA-6 Last Updated 01/07/2022).

Decision and reasons on application to admit hearsay evidence of Ms 1

The panel had regard to the evidence of Ms 1 and considered that it was relevant to charge 2 as she stated that she was informed that your relationship with Patient X started while he was an inpatient. Nevertheless, the panel noted that Ms 1 did not know you, Person A or Patient X at the relevant time and only [PRIVATE] in January 2022. In her witness statement she stated that Person A had reported to [PRIVATE] and the police that you were having 'an affair' with Patient X while you were nursing him in hospital. The panel noted that there were no other details provided that were capable of supporting this assertion.

The panel had regard to the circumstances that have led to Ms 1's non-attendance and determined that there was no good or cogent reason for her non-attendance. The NMC should have ensured that contact with the witness was maintained and that she provided alternative contact details.

The panel noted that the evidence of Ms 1, apart from the hearsay evidence of Ms 2, was the sole or decisive evidence in respect of charge 2. The panel also noted that there was no witness statement or evidence from Person A or from the police. The panel considered the potential consequences of admitting the evidence and was of the view that the charge is serious, and if found proved, could have serious consequences for you.

The panel considered whether you would be disadvantaged by the change in the NMC's position of moving from reliance upon the live evidence of Ms 1 to that of a written statement. The panel noted that you had been given no prior warning of this change in position. The panel determined that as you dispute the charge that the evidence of Ms 1 relates to, it would be unfair to you to allow this into evidence without you having the

opportunity for cross examination. Furthermore, the panel would not have the opportunity to test its reliability.

Having regard to all of the above, the panel decided to reject the application to admit the evidence of Ms 1 as hearsay evidence.

Decision and reasons on application to admit anonymous hearsay evidence of Ms 2

The panel had regard to the witness statement of Ms 2, who provided an account of what she had been told by Service User A. Having decided to reject the application to admit the evidence of Ms 1, the panel noted that the evidence of Ms 2 is the sole or decisive evidence in relation to charge 2. The panel noted that Service User A has not been called as a witness and there was no objective evidence to support this charge.

Given the seriousness of the charge and the potential consequences for you if it is found proved, and the tenuous nature of anonymous hearsay, the panel decided that it was unfair to admit the evidence of Ms 2. The panel therefore rejected the application to admit the evidence of Ms 2 into evidence as hearsay.

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

Ms Madden made an application for parts of the hearing to be heard in private pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). She submitted that there will be reference to matters pertaining to your health and family life and that there is no public interest in these matters being heard in public.

Mr Kennedy supported the application to the extent that any reference to your health or personal life should be heard in private.

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 decided to hear any matters relating to your health or personal circumstances in private to protect your right to privacy. It determined that any public interest in hearing the entire hearing in public would be outweighed by your interests in keeping matters relating to your health and personal life in private.

Decision and reasons on application to offer no evidence in respect of charge 2

Following the panel's decision in relation to the hearsay applications, Mr Kennedy made an application to offer no evidence in relation to charge 2. Mr Kennedy submitted that following the panel's decision to reject Ms 1 and Ms 2's evidence in relation to charge 2, and this is the sole or decisive evidence in respect of this charge, the NMC could offer no further evidence.

Ms Madden supported this application and submitted that there is insufficient evidence to realistically make a finding of fact in relation to charge 2.

The panel accepted the advice of the legal assessor.

The panel had regard to the NMC's guidance document *'Offering no evidence'* (DMA-2). It determined that following the exclusion of the evidence of Ms 1 and Ms 2, there was no evidence in support of charge 2. It also had regard to the case of *PSA v NMC v X* (2018) EWHC 70.

The panel considered whether there were any other lines of enquiry that could be made in order to secure further evidence. The panel was of the view that as three years have elapsed since the charge arose, any statements obtained now would not be contemporaneous. The panel noted that the NMC had made enquiries with the police and the hospital for evidence to support this charge. It noted that these enquiries resulted in no evidence to support this charge and that the enquiries of the hospital

resulted in two colleagues reporting that they had no concerns about your relationship with Patient X when he was an inpatient.

Having decided that there were no other lines of enquiry and that there is insufficient evidence to support charge 2, the panel accepted the NMC's application to offer no evidence in respect of charge 2.

Background

The charges arose whilst and/or shortly after you were employed by Cygnet Healthcare Hospital (the Hospital) as a registered nurse working on Litchurch Ward (the Ward). The Ward is a low secure ward, with 15 rooms for male patients.

On 13 June 2021, the [Mr 4] received a message on Facebook Messenger from your phone which included the name and photographs of Patient X. On 6 July 2021, Mr 4 reported that he had received these messages to his line manager. During a meeting with you on 8 July 2021, you admitted that you had disclosed the name of Patient X to Person A [PRIVATE]. Following your admission of breach of patient confidentiality, you were suspended from the Hospital pending investigation. This matter was also referred to Derby Safeguarding and to the Care Quality Commission. You were dismissed from your role in July 2021, you appealed this decision and your appeal was upheld and your dismissal was replaced with a final written warning. You did not work at the Hospital after July 2021.

Patient X had been a patient on the Ward since 2012, [PRIVATE]. You were involved in his care from September 2018 until February 2020 and from May 2021 until July 2021. Patient X was discharged from the Hospital in August 2021 and contacted you by Facebook Messenger in October 2021. You entered into a romantic relationship with Patient X in November 2021. [PRIVATE].

Decision and reasons on facts

After the charges were read, Ms Madden informed the panel that you made full admissions to charges 1, 3, 4 and 5.

The panel therefore finds charges 1, 3, 4 and 5 proved in their entirety, by way of your admissions.

Fitness to practise

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

Your evidence

The panel heard oral evidence from you. In your evidence, you provided a history of your nursing career and employment at the Hospital which included an initial period of employment as a healthcare assistant whilst undertaking your nursing training, and a

further period of employment as a registered nurse. You said that you had never received any complaints about your clinical practice. [PRIVATE].

You told the panel that you first met Patient X whilst working as a bank healthcare support worker in 2018. Whilst providing care to Patient X and other patients at the Hospital, you ensured that you maintained strict professional boundaries. You said that you prioritised the care of the patients and ensured you maintained professional boundaries and engaged in regular clinical supervision and escalated any concerns to management.

In respect of the allegation made by Patient X in December 2020, that you had approached him in a sexual manner, you said that these allegations were made because you did not provide him with medication as requested. You said that there was a policy in place about dispensing medication and that medication was not allowed to be dispensed during mealtimes. As the hatch was still open when Patient X requested paracetamol, you refused his request and said that he would have to wait. You denied the allegation made by Patient X and when he subsequently withdrew his complaint, you continued to work on the same ward. You said that after the allegations made by Patient X, you felt unsupported and uncomfortable as the allegations were serious and it would have been beneficial for you to have moved to a different ward, but you accepted that you did not raise this at the time.

You told the panel that at the time that Patient X made a complaint about you, you told Person A that one of your patients had made this complaint and that it involved allegations of a sexual nature. [PRIVATE]. As a consequence of the breach of confidentiality you were dismissed, you told the panel that you appealed this decision. Your appeal was upheld and you were given a final written warning but you did not return to work at the Hospital.

[PRIVATE].

When asked if you would do anything differently, you told the panel that you would definitely not have engaged with Patient X, you would have sought support and advice

from colleagues. You said that it is not worth the stress and not worth risking patient safety and putting the reputation of the profession at risk. You told the panel that a breach of confidentiality and a breach of professional boundaries could lead to the public losing trust in nurses and the profession. You said that a *"violation"* of confidential information could lead to emotional and physical harm, especially in mental health patients. You told the panel that when professional boundaries are breached, this can have a detrimental effect and compromise patient care.

[PRIVATE].

You said that you have undertaken training and reflection, and if you were faced with a similar situation in the future you would deal with it very differently. You said that you would not engage in any contact with a patient or former patients and you would seek support and advice from an employer, the RCN or a union.

You told the panel that you have not worked in a healthcare setting since July 2021. You said that you would like the opportunity to return to work as a nurse and outlined the reasons behind you entering the profession. You said that you are very good at advocating for patients and ensuring that the best care is provided to them. You told the panel that you get satisfaction from working as a nurse and providing good care and making a difference in patients lives. Having been through these proceedings, you said that you do not want to and would not repeat your actions and would ensure that this never happened again.

During cross examination, you said that your privacy settings on Facebook are very high and that it would have been difficult for Patient X to find you. You accepted that in engaging in a relationship with Patient X there was a risk that his mental health could have deteriorated. However, you told the panel that this did not happen, [PRIVATE]. You said that your actions were unacceptable and, depending on the outcome of this hearing, you said that you would complete further training, develop your insight more and work under conditions to attempt to restore trust in you.

In response to panel questions, you said that Patient X was discharged from the Hospital in August 2018, and you had no contact with him from July 2021 until October 2021. [PRIVATE].

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 Kennedy referred the panel to the terms of *'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)'* (the Code). He identified the specific paragraphs which, in his submission, had been breached. He submitted that a breach of confidentiality is serious and fell below the standards expected of a registered nurse. Mr Kennedy submitted that in breaching professional boundaries with Patient X, there was an imbalance of power involving a very vulnerable patient and also left yourself in a vulnerable position. He submitted that your actions did fall below the standards expected of a registered nurse and invited the panel to find that the facts found proved amount to misconduct.

Ms Madden submitted that determining misconduct is ultimately a matter for the panel. She submitted that given that you admitted the charges, it is accepted that the panel may find that your actions amounted to misconduct.

Submissions on impairment

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

Mr Kennedy submitted that you have made admissions to the charges, shown insight and acknowledged that what you did was wrong, patient care is of paramount importance and that you should not have embarked on a relationship with Patient X. [PRIVATE]. Notwithstanding this, Mr Kennedy submitted that there is a risk of repetition of the conduct.

[PRIVATE]. He submitted that when the charges arose, you had already completed the relevant training and you still proceeded to breach confidentiality and professional boundaries.

Mr Kennedy submitted that your conduct placed Patient X at a risk of harm as it was an unequal relationship. He submitted that Patient X was a vulnerable patient and was previously subject to the restraints of the Mental Health Act. Mr Kennedy submitted that an informed member of the public would be shocked to learn that a nurse acted in the way you did and would expect the NMC to take action to ensure that this behaviour was not repeated. He submitted that breaching confidentiality undermines trust in the profession and entering into a relationship with a former patient goes against nursing practice. Mr Kennedy submitted that a finding of no impairment would send a message that it is okay to act in an unacceptable manner. He submitted that a finding of impairment is necessary to protect the public, satisfy the public interest and uphold public confidence in the profession and its regulator.

Ms Madden submitted that a finding of misconduct does not always mean that a finding of impairment must be made. She submitted that you have been subject to a rigorous regulatory process and that a finding of impairment is not necessary in the particular circumstances of this case.

Ms Madden submitted that you have been candid in your evidence and your acceptance of the charges. [PRIVATE]. Ms Madden submitted that you do not seek to make excuses for your behaviour, and you accepted that what you did was wrong and unacceptable. However, she submitted that the contextual factors in this case are clearly relevant and should be given the appropriate weight.

[PRIVATE].

Ms Madden submitted that you have taken some time away from nursing and you have not practised since July 2021. She submitted that an interim suspension order has been in place since June 2022, and you have therefore been unable to demonstrate that you have addressed the concerns. She submitted that these proceedings and the interim order has had a salutary impact on you. Whilst you have been unable to practice as a nurse, Ms Madden submitted that you have completed training courses, independent research which has been reflected in your evidence and the reflective discussions you have had with other registered nurses.

Ms Madden submitted that the contextual factors no longer exist, you have demonstrated full insight into your actions and therefore the risk of repetition of such behaviour is so low that it can be discounted. She submitted that there is no risk to patients and the public and a finding of impairment is not necessary.

In respect of public interest and the maintenance of proper standards, Ms Madden submitted that a fully informed member of the public may have a significant degree of sympathy for you and there would be no loss of confidence in the profession if a finding of impairment was not made.

Ms Madden submitted that if the panel was not in agreement with her in relation to a finding of no impairment on both grounds, then a finding of impairment should only be made on public interest grounds.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

The panel was of the view that your actions fell significantly short of the standards expected of a registered nurse, and that your 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*
> >
> > ***5.2** make sure that people are informed about how and why information is used and shared by those who will be providing care*
>
> ***17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection***
>
> *To achieve this, you must:*
>
> > ***17.1** take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*
> >
> > ***17.3** have knowledge of and keep to the relevant … policies about protecting and caring for vulnerable people*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

20.6 *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*

[PRIVATE]*.'*

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 the charges individually and cumulatively amounted to misconduct.

In respect of charge 1, the panel determined that disclosing the name of a patient to a member of the public was serious. Whilst such a breach was serious in its own right, the panel considered that this breach was exacerbated by [PRIVATE]. The panel therefore found that your actions at charge 1 amounted to misconduct that was serious.

In respect of charge 3, the panel found that your actions fell seriously short of what is expected of a registered nurse. Entering into a relationship with a former patient who was vulnerable and detained under the Mental Health Act, in the panel's view, was very serious. The panel determined that as a mental health nurse, you were aware of Patient X's health condition and, as a consequence, there was an imbalance of power which placed him at a risk of harm. Maintaining professional boundaries is a fundamental tenet of the profession and essential to ensure patient safety and to ensure the safety of

those delivering care. The panel therefore determined that your actions at charge 3 amounted to misconduct that was serious.

The panel found that charge 4 (in relation to charge 3) amounted to misconduct. As set out above, the panel determined that breaching professional boundaries is serious, falls far short of what is expected of a registered nurse and amounted to misconduct that was serious.

The panel determined that charge 5 (in relation to charge 3) was serious and the breach of professional boundaries that was sexually motivated in pursuit of a sexual relationship fell far below the standards expected of a registered nurse. Maintaining professional boundaries is a fundamental tenet of the profession and essential to ensuring patient safety. Breaching these boundaries has the potential for harm to the patient and also places the registrant at a risk of harm.

The panel found that your actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct that was serious.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the NMC Guidance on *'Impairment'* (Reference: DMA-1 Last updated: 27/02/2024), in which the following is stated:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
>
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

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 found limbs a, b and c engaged in this case.

The panel found that by disclosing Patient X's name to Person A, you placed Patient X at unwarranted risk of harm. Patients are entitled to keep information about their health private and by disclosing Patient X's name to Person A, you breached his right to privacy. [PRIVATE]. Furthermore, Patient X was a vulnerable mental health patient and him learning that you had breached confidentiality could have had a detrimental effect and caused his mental health to worsen and had the potential for emotional harm.

In respect of breaching professional boundaries with Patient X, the panel considered that as you had provided care to him while he was detained under the Mental Health Act for a significant period of time, there was an imbalance of power which could have been detrimental to his mental health and caused this to deteriorate and placed him at risk of harm.

The panel also found that your breach of confidentiality and professional boundaries brought the profession into disrepute. The public expects high standards, and the panel was of the view that the seriousness of the misconduct is such that it calls into question the safety of any patient under your care. The panel considered that your actions had a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.

The panel noted that the provisions of the Code constitute fundamental tenets of the profession and your actions breached these in so far as they relate to prioritising people, practising effectively, preserving safety and promoting professionalism and trust. They also relate to basic nursing knowledge. The panel found that your actions

demonstrate a departure from the standards expected of a registered nurse and constitute a breach of the fundamental tenets of the profession.

The panel considered whether the misconduct in this case is capable of being remediated. The panel found that your misconduct relates to a breach of confidentiality and a breach of professional boundaries, both are attitudinal in nature. [PRIVATE], the panel determined that even when faced with difficult circumstances, patient safety should have been your priority. The panel considered that whilst not impossible, it is more difficult to remediate conduct that includes breaching confidentiality and professional boundaries which it found to be attitudinal in nature.

In determining whether you have remediated your practice, the panel had regard to your evidence, reflective statements, reflective accounts and the training you have undertaken since the charges arose.

In respect of insight, the panel found that you have reflected deeply on your actions and demonstrated remorse. The panel noted that in your evidence, when asked about how you would respond to finding out that a nurse had breached confidentiality and professional boundaries, you said that you acknowledged that this behaviour was unacceptable, however, you would look at the *"circumstances in which these breaches occurred"*. The panel considered that a breach of confidentiality and professional boundaries cannot be justified by contextual factors as these are fundamental tenets of the profession and essential for maintaining patient safety and therefore did not consider that you had developed full insight into your misconduct.

In determining whether you have strengthened your practice, the panel had regard to all of the evidence before it. It noted that when the charges arose, you were a newly qualified nurse with approximately three years in practice. The panel had sight of evidence of relevant training you have completed and self-directed learning through reading articles. Whilst the panel was encouraged by the steps you have taken to strengthen your practice, it noted that you have not worked in a healthcare setting since the charges arose and have therefore been unable to put your learning into clinical practice. [PRIVATE]. Whilst you appear to be taking positive steps, the panel

determined that there is a risk of repetition of the misconduct and a consequent risk of harm to patients. Accordingly, the panel found that your fitness to practise is currently impaired on public protection grounds.

The panel determined that a finding of impairment was required on public interest grounds. It considered that given the public protection issues identified and the repeated and fundamental nature of the misconduct, a member of the public would be concerned if a finding of impairment was not made in the circumstances. The panel determined that public confidence in the profession and the regulator would be undermined if a finding of impairment was not made in these circumstances and proper standards of professional conduct would not be upheld.

The panel determined that your fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the Registrar to strike your name off the NMC Register (the Register). The effect of this order is that the NMC register will show that you have been struck-off the register.

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

Submissions on sanction

Mr Kennedy informed the panel that the NMC sanction bid is that of a striking off order. He identified a number of factors that were aggravating and mitigating in his submission. Mr Kennedy submitted that your misconduct was not confined to a single incident and is indicative of a harmful deep seated attitudinal issue. He submitted that whilst you gave evidence of personal mitigation, this should carry little weight. Mr Kennedy submitted that your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the Register. He submitted that the charges found proved raise fundamental questions about your professionalism and to allow you to continue practising as a registered nurse would undermine public confidence in the profession, and in the NMC as the regulator.

Ms Madden referred the panel to the NMC guidance on *'Considering sanctions for serious cases'* (Reference: SAN-2 Last Updated: 27/02/2024), in particular, the section entitled *'Cases involving sexual misconduct'* in which the following is stated:

> ***'Sexual misconduct** is unwelcome behaviour of a sexual nature, or behaviour that can reasonably be interpreted as sexual, which degrades, harms, humiliates or intimidates another.'*

Ms Madden also referred the panel to the guidance on *'Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels' (January 2008)* produced by the Professional Standards Authority (PSA). She referred the panel to the aggravating and mitigating factors that are relevant to sanction:

'Aggravating factors

- *whether the abuse took the form of a serious criminal offence, such as rape or indecent assault for which the healthcare professional was prosecuted, and if so, whether they were convicted. Failure to secure a conviction does not mean misconduct requiring action on registration did not take place.*
- *the vulnerability of the patient. Research shows that abusers often target vulnerable groups of patients, including those seeking help for mental health or emotional problems, physically disabled young people and adults in institutionalised settings, people with learning disabilities, young females and males, people with life-threatening illnesses and previous victims of abuse. Panel members should take into account the additional responsibilities of healthcare professionals to act in the best interests of patients whose decision-making capacity is impaired*
- *whether the healthcare professional took deliberate steps to facilitate abuse, for example scheduling the appointment as the last of the day, working without a chaperone being present, making inappropriate house calls, dissuading the patient from seeking a second opinion*
- *whether the healthcare professional provided inappropriate prescription drugs, for example as an inducement to secure sexual favours whether there was any grooming of the patient, ie did the healthcare professional deliberately cultivate an empathetic relationship with the patient over a period of time?*
- *whether the healthcare professional used confidential information obtained in the course of treatment to their advantage, for example by encouraging the patient to discuss marital problems whilst providing 'a shoulder to cry on'*

- *whether the abusive behaviour happened on one occasion or on several occasions and whether the abuse involved one patient or several patients.*

Arguments which might be put forward in mitigation

The following are arguments commonly put forward in mitigation. Panel members must decide if any weight should be given to these factors. Panel members must bear in mind the principles set out in this guidance, principally that any sexualised behaviour towards a patient or carer can cause enduring harm.

- *the healthcare professional was depressed and/or had relationship/other personal difficulties at the time of the alleged relationship*
- *a relationship with the patient appeared to have started consensually, or even at the patient's request. This may be combined with the argument that the allegation of inappropriateness was only made when the practitioner broke the relationship off*
- *the fact that several years have passed since the alleged behaviour and that there had been no complaints in the intervening period*
- *the fact that the healthcare professional is held in high esteem by professional colleagues and was able to adduce a number of testimonials.'*

Ms Madden submitted that your misconduct does not constitute sexual misconduct as defined by the NMC. She submitted that your relationship with Patient X was clearly consensual, and whilst you accepted that you should not have engaged in this relationship, he contacted and pursued you. Whilst it is also accepted that Patient X had mental health issues and there was a potential for harm, Ms Madden submitted that none was caused.

Ms Madden took the panel through the aggravating factors set out by the PSA and submitted that none of these are engaged in this case. [PRIVATE]. Ms Madden submitted that several years have passed since your behaviour and there have been no

other complaints. She submitted that you are held in high esteem by your colleagues and referred the panel to three testimonials.

Ms Madden submitted that the most appropriate sanction would be a conditions of practice order. She submitted that you have indicated that you would abide by any conditions imposed by the panel. Ms Madden submitted that a conditions of practice order could be devised, and that the public would be protected. She suggested some conditions that in her submission would manage any risks. Ms Madden submitted that given the circumstances of this case, an ordinary member of the public might have sympathy and would not be concerned if you were afforded the opportunity to continue to practise. She submitted that if given the chance, you could add value to the profession and that you would never repeat your mistakes.

Ms Madden submitted that if the panel decided that a conditions of practice order was not appropriate, then a suspension would be the most appropriate sanction in the circumstances.

The panel accepted the advice of the legal assessor who referred you to the relevant guidance and to the case of *Bolton v Law Society [1994] 1 W.L.R. 512 (1993)*.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel had regard to the NMC Guidance on *'Factors to consider before deciding on sanctions'* (Reference: SAN-1 Last Updated: 27/02/2024). The panel took into account the following aggravating features:

- Your breach of confidentiality placed Patient X, a vulnerable patient, at a real risk of significant harm.
- Your breach of professional boundaries with Patient X, a former patient who was vulnerable, placed him at a risk of harm.
- Repeated conduct that breached fundamental tenets of the profession which was indicative of an attitudinal issue through a serious disregard for professional boundaries.
- Abuse of position of trust.

The panel also took into account the following mitigating features:

- [PRIVATE].
- You made early admissions and demonstrated developing insight into your conduct.
- You have made efforts to keep up to date with your area of practice through completing relevant training and reading.

The panel noted Ms Madden's submissions that it should take into account your favourable testimonials when considering mitigating features. Having reviewed these testimonials, the panel found that two of them were historic, one was undated and therefore it placed limited weight on these.

Before considering which sanction is the most appropriate and proportionate, the panel had regard to all of the evidence before it, including its decision on impairment and the submissions made by Mr Kennedy and Ms Madden, and made a final determination on the seriousness of your misconduct.

The panel had regard to the NMC Guidance on *'How we determine seriousness'* (Reference: FTP-3 Last Updated: 27/02/2024) and in particular the section entitled *'Sexual misconduct'*. The panel noted Ms Madden's submission that your conduct does not fall within the NMC definition of 'sexual misconduct' as set out below:

'Sexual misconduct is unwelcome behaviour of a sexual nature, or which can reasonably be interpreted as sexual, that degrades, harms, humiliates or intimidates another. It can be physical, verbal or visual. It could be a pattern of behaviour or a single incident.'

Whilst the panel acknowledged that it was Patient X who contacted you, and that the sexual relationship was not unwelcomed by him, entering into a sexual relationship with him had the potential to cause him emotional harm and therefore amounted to sexual misconduct. Patient X was a former mental health patient who had been under your care for a significant period of time and you were aware of his mental health condition and his vulnerabilities. The panel also had regard to the NMC Guidance on *'Serious concerns which are more difficult to put right'* (Reference: FTP-3a Last Updated: 27/02/2024) which included sexual misconduct.

The panel had regard to the guidance on *'Clear sexual boundaries between healthcare professionals and patients: guidance for fitness to practise panels'* (January 2008) produced by the PSA. It had regard to the aggravating and mitigating factors that are relevant to sanction. It also had regard to the PSA Guidance on *'Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals'* (January 2008), in particular, the section entitled *'Sexual activity with former patients or their carers'*:

'Sexual relationships with any former patient, or the carer of a former patient, will often be inappropriate however long ago the professional relationship ended. This is because the sexual relationship may be influenced by the previous professional relationship, which will often have involved an imbalance of power as described above.

The possibility of a sexual relationship with a former patient may arise, for example through social contact. If a healthcare professional thinks that a relationship with a former patient might develop, he or she must seriously consider the possible future harm that could be caused and the potential impact

on their own professional status. They must use their professional judgment and give careful consideration to the following:

- *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 noted that your professional relationship with Patient X started in September 2018 and last until February 2020 when you left the Hospital. The professional relationship started again in May 2021 when you rejoined the Hospital and lasted until July 2021 when you were dismissed. Your sexual relationship started with Patient X approximately four months after your professional relationship ended. Given that you provided care to Patient X for a significant period of time and that you were directly involved in his care until July 2021 there was a significant imbalance of power. As set out previously, the panel found that these factors meant that this imbalance of power and Patient X's vulnerabilities placed him at risk of harm which was serious.

In determining seriousness in respect of your breach of confidentiality, the panel had regard to the NMC Guidance on *'Serious concerns based on public confidence or professional standards'* (Reference: FTP-3c Last Updated:27/02/2024). Keeping patient information private is essential in maintaining patient safety and confidentiality. The panel determined that breaching Patient X's confidentiality in the way that you did was

very serious and raised fundamental questions about your ability to uphold the standards and values set out in the Code.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the serious nature of the case and the public protection issues identified. Taking no further action would not protect the public, address the public interest in this case or maintain and uphold proper professional standards.

It then considered the imposition of a caution order but again determined that, due to the serious nature of the case and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was 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 your registration would be a sufficient and appropriate response. The panel noted that Ms Madden submitted that a conditions of practice order would mitigate against any risks to patients, serve the public interest, as well as giving you the opportunity to return to practice. The panel noted that both instances of misconduct, whilst they related to your professional practice, occurred outside of the workplace. The panel found that your misconduct did not relate to clinical failings, but they were attitudinal in nature and related to your judgement and professionalism. The panel considered that in those circumstances it would be impossible to formulate and monitor conditions that would address the misconduct. The panel determined that there are no practical or workable conditions that could be formulated that would protect the public. Furthermore, the panel concluded that imposing a conditions of practice order would not sufficiently address the public interest in this case or uphold and maintain proper professional standards.

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

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

The panel found that whilst your misconduct related to the same patient, it was not a single instance. It was two instances of misconduct, one related to a breach of confidentiality and the other related to a breach of professional boundaries. The panel determined that these two breaches were indicative of an attitudinal issue in relation to boundaries, professionalism and your ability to uphold the standards and values of the Code. Whilst there is no evidence of repetition of the behaviour, the panel noted that you have not worked in a healthcare setting since July 2021. Whilst the panel found that you had developing insight, it was not satisfied that you would not repeat your conduct in some form given the attitudinal issues identified.

The panel also had regard to the wider public interest in maintaining public confidence in the profession and upholding professional standards. It concluded that whilst a suspension order would protect patients while it is in place, it would not satisfy the public interest or promote and maintain professional standards because of the gravity of the misconduct identified above.

The panel went on to consider a striking-off order and had regard to 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 found that your conduct, in breaching confidentiality and professional boundaries were significant departures from the standards expected of a registered nurse. Whilst the panel found that you have developing insight into your conduct, it was not satisfied that you were capable of fully addressing the behaviour. This is because when your misconduct occurred, you had already undertaken training on patient confidentiality and professional boundaries, but you still engaged in this behaviour. The panel therefore found that you did not uphold the reputation of your profession and you failed to demonstrate a personal and professional commitment to core values such as acting with integrity, kindness and protecting vulnerable patients from harm. Having regard to all of the above and given your lack of professionalism and inability to properly observe boundaries, the panel determined that your conduct is fundamentally incompatible with you remaining on the Register.

The panel had regard to the case of *Bolton* and determined that as your actions were so serious and brought the profession into disrepute, to allow you to continue practising would seriously undermine public trust and confidence in the profession and the NMC as a regulatory body. The public expect nurses to act professionally at all times, and to maintain patient confidentiality, professional boundaries and to prioritise patient safety. The panel considered that a striking off order was necessary to protect the public and 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. The panel therefore determined that the appropriate and proportionate sanction is that of a striking-off order.

Interim order

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

The panel accepted the advice of the legal assessor.

Submissions on interim order

Mr Kennedy invited the panel to impose an interim suspension order for a period of 18 months to cover any appeal period. He submitted that an interim suspension order is necessary for the reasons set out in the panel's reasons for finding current impairment and imposing a striking off order.

Given the panel's findings, Ms Madden made no contrary submissions.

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, for the reasons already identified in the panel's determination for imposing the striking-off order. Having already determined that a striking-off order is necessary to protect the public and to satisfy the public interest in this case, to not impose an interim suspension order to cover the appeal period would be inconsistent with its earlier findings. The panel therefore imposed an interim suspension order for a period of 18 months to cover any appeal period.

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

This will be confirmed to you in writing.

That concludes this determination.