

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

**Substantive Hearing
Monday, 22 July 2024 – Friday, 26 July 2024**

Virtual Hearing

Name of Registrant:	Alexander James Pell
NMC PIN:	0610445S
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nurse (Level 1) – 12 September 2009
Relevant Location:	Jersey
Type of case:	Misconduct
Panel members:	Bryan Hume (Chair, Lay member) Pamela Campbell (Registrant member) Paul Hepworth (Lay member)
Legal Assessor:	Joseph Magee
Hearings Coordinator:	Elizabeth Fagbo
Nursing and Midwifery Council:	Represented by Beverley Da Costa, Case Presenter
Mr Pell:	Present and not represented at the hearing
Facts proved by way of admission:	Charges 1a, 1b, 1c, 1d, 1e, 1f, 1g, and 1h
Facts found proved:	Charges 2a, 2b, 2c, 2d, 2e, 3 and 4
Fitness to practise:	Impaired
Sanction:	Striking-off order

Interim order:

Interim suspension order (18 months)

Details of charge

That you, a registered nurse:

1. From around April 2020:
 - (a) Established contact with Patient A through Tinder
 - (b) Met Patient A at the reservoir in Queens Valley
 - (c) Met Patient A in your car
 - (d) Engaged in sexual acts with Patient A
 - (e) Discussed with Patient A you moving into Patient A's property
 - (f) Told Patient A that you were going to look after her
 - (g) Sent Whatsapp messages to Patient A
 - (h) Entered into an intimate relationship with Patient A

2. In or around January 2018:
 - (a) Exchanged Whatsapp messages with Patient B of a sexual nature
 - (b) Exchanged Whatsapp messages with Patient B about meeting in your car at the reservoir
 - (c) Exchanged Whatsapp messages with Patient B about a meeting with Patient B at your flat
 - (d) Sent pictures to Patient B of you naked and semi naked
 - (e) Received pictures from Patient B of them semi naked.

3. Your conduct in Charge 1 was sexually motivated in that you were seeking sexual gratification and/or in pursuit of a future sexual relationship

4. Your conduct in Charge 2 was sexually motivated in that you were seeking sexual gratification and/or in pursuit of a future sexual relationship

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Da Costa under Rule 31 to allow the written statements of Witness 1 and Witness 2 into evidence. She told the panel that Witness 1 and Witness 2's statements include accounts given by Patient A in the local investigation, which relate to charge 1. Ms Da Costa submitted that the NMC is also seeking to allow Witness 3's written statement into evidence, in order to adduce Patient B's account which is contained within this statement and goes to charge 2. She told the panel that the NMC did not obtain witness statements from Patient A or Patient B as they are vulnerable patients and the NMC took the view that it would not be appropriate to do so.

Ms Da Costa reminded the panel that under Rule 31, the panel has the discretion to admit evidence in the proceedings, including hearsay evidence, as long as it meets the criteria of being relevant and fair. She further referred the panel to the NMC guidance on 'Evidence' (reference: DMA-6) and the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

Ms Da Costa submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations. The NMC therefore made an application to adduce this written evidence and associated exhibits into evidence before the panel by way of hearsay.

Ms Da Costa submitted that the statements of Witness 1, Witness 2 and Witness 3 are not the sole and decisive evidence, as there is further evidence before the panel and therefore, their exclusion would not meet the threshold for unfairness to you. Ms Da Costa therefore invited the panel to admit the statements and exhibits of Witness 1, Witness 2 and Witness 3 as hearsay. She submitted that the absence of the witnesses can be balanced by the weight that the panel attaches to the evidence in its final deliberations.

You stated if the panel determines that it is necessary for this hearsay evidence to be adduced, you do not oppose.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that 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.

The panel took into account your admissions and determined that these statements are not the sole and decisive evidence in relation to the charges. The panel also noted that you did not raise any concern in relation to these statements. There are also exhibits that the NMC say corroborate its case. It determined that any disadvantage to you could be addressed if you choose to give evidence.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statements of Witness 1, Witness 2 and Witness 3 but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

The panel therefore admitted the written statements of Witnesses 1, 2 and 3 into evidence.

Background

You were referred to the NMC on 12 November 2020 by the Government of Jersey Health and Community Services where you were employed as a registered Senior Staff Nurse on the Cedar Ward (the Ward).

It is alleged that you had a sexual relationship with Patient A who was a vulnerable female in-patient at Orchard House, detained under Article 22 of Jersey Mental Health Law (2016), an Adult Mental Health Acute Assessment and Treatment Unit. You allegedly

failed to disclose this relationship to your managers who became aware of the relationship when Patient A told another member of staff.

You were suspended from duty on 12 August 2020. Following an internal investigation and disciplinary hearing you were dismissed from your employment on 29 October 2020 for gross misconduct. The matter was referred to the States of Jersey Police, who decided to take no further action.

It is further alleged that, you had previously engaged in an inappropriate sexual relationship with Patient B, another vulnerable female patient in 2018. Patient B alleged that you sent WhatsApp messages of a sexual nature, exchanged photographs of an explicit nature with her, and met her outside of the psychiatric ward where she was a patient. Following an internal investigation into that earlier allegation you received a final written warning to be held on your file indefinitely.

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

Ms Da Costa made a request that this case be held partially in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that whilst 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 as and when [PRIVATE] are being discussed, in order to protect your privacy.

Decision and reasons on application for adjournment

At the end of the NMC case, you made a request for the hearing to be adjourned to allow you more time to prepare your statement. You told the panel that hearing the opening of the case and Witness 3's live evidence was difficult. [PRIVATE]. Therefore, you requested for 24 hours to allow you to prepare your statement.

Ms Da Costa did not oppose this application. She submitted that you have admitted the majority of the charges and the NMC closed its case yesterday afternoon, so there is ample time if the panel were to grant the adjournment that you are seeking.

[PRIVATE]. It determined that it was fair to adjourn the hearing for 24 hours to allow you the opportunity to thoroughly prepare your statement.

The panel recognised that there is a public interest in the expeditious disposal of this matter, however, took into account the NMC's values of fairness and kindness and the fact that you were not represented. The panel noted that there is a need to balance your interests with the need to protect the public and uphold the standard of the profession. The panel determined that it would be fair to allow an adjournment to enable your full and meaningful participation in the hearing.

The panel adjourned the proceedings and reconvened the next day.

Decision and reasons on facts

At the outset of the hearing, you informed the panel that you made full admissions to charges 1a, 1b, 1c, 1d, 1e, 1f, 1g and 1h.

You also admitted charges 2b and 2c, but you disputed that Patient B was a patient at that specific time. As there were disputed facts on those specific charges the panel did not accept the partial admissions and left it to the NMC to prove those charges.

The panel accepted your admission. It was of the view that there was clear evidence from WhatsApp messages, notes from an internal investigations and statements from witnesses to demonstrate this relationship had occurred. The panel therefore found charge 1 proved in its entirety, by way of your admissions.

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 Ms Da Costa. It also took your two written statements into account, one contained within the exhibit bundle dated 2020 and one which you prepared for this hearing.

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 witness called on behalf of the NMC:

- Witness 3: A Healthcare Assistant at Orchard House

The panel accepted the evidence of this witness and found that her credibility was not in dispute. The panel concluded that she was a reliable witness who gave her evidence honestly and fairly. The panel was impressed by the quality of her evidence and her demeanour whilst taking part in this hearing. It was clear to the panel that this incident has had a lasting effect upon her.

You were offered the opportunity to cross examine Witness 3 but chose not to do so. Furthermore, you were given the opportunity to give sworn oral evidence but, instead, chose to present a pre-prepared statement which meant that you could not be cross examined by Ms Da Costa. The panel did, however, choose to ask you some questions for the purposes of clarification on your short statement.

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 2(a)

That you, a registered nurse

“2. In or around January 2018:

(a) Exchanged Whatsapp messages with Patient B of a sexual nature”

This charge is found proved.

In reaching this decision, the panel took into account all of the documentary evidence before it including the live evidence of Witness 3 and your written statement.

The panel took into account Witness 3’s written statement, where she stated the following:

‘...The messages that Patient B showed me were between her and Mr Pell via WhatsApp. There were a lot of messages between the two of them of a sexual nature and describing plans to meet each other...’

The panel also took into account Witness 3’s live evidence.

In relation to charge 2 you stated the following in your written statement:

‘.... I accepted points (b-c), however do not recall or remember ever sending any other messages or images to patient B. I maintain that patient B was not a patient at this time...’

The panel preferred the evidence of Witness 3. The panel heard that Witness 3 had a strong therapeutic relationship with Patient B, which is why Patient B disclosed details of your relationship to her. It was of the view that Witness 3’s evidence was credible, reliable and fair as it corroborated with her written statement, and she had no reason to fabricate this evidence.

The panel also took into account the internal disciplinary hearing in which you were given a final written warning for your inappropriate relationship with Patient B.

Therefore, the panel found charge 2(a) proved.

Charge 2(b)

That you, a registered nurse

“2. In or around January 2018:

(b) Exchanged Whatsapp messages with Patient B about meeting in your car at the reservoir”

This charge is found proved.

The panel carefully considered the same evidence as outlined for charge 2(a).

The panel therefore found charge 2(b) proved.

Charge 2(c)

That you, a registered nurse

“2. In or around January 2018:

(c) Exchanged Whatsapp messages with Patient B about a meeting with Patient B at your flat”

This charge is found proved.

In reaching this decision, the panel took Witness 3’s written statement and live evidence into account. The panel also took your partial admission into account.

The panel noted that Witness 3 stated the following in her written statement:

‘...I saw Patient B later talking to one the housemates of Mr Pell ... who is a staff member, that she had been to Mr Pell’s house. She spoke to his housemates and described the layout of their house to them to prove it...’

The panel noted that when Witness 3 was questioned on how she was aware of the above conversation she told the panel that the staff nurse in question, directly spoke to her about the conversation regarding Patient B’s accurate description of the flat.

The panel also took into account that you do not recall sending any messages to Patient B.

Therefore, on the balance of probabilities, the panel found charge 2(c) proved,

Charge 2(d)

That you, a registered nurse

“2. In or around January 2018:

(d) Sent pictures to Patient B of you naked and semi naked”

This charge is found proved.

In reaching this decision, the panel took Witness 3’s written statement and live evidence into account.

In Witness 3’s written statement she stated:

‘...Alongside the messages, I saw pictures that Patient B and Mr Pell had sent each other over WhatsApp. Patient B had sent pictures to Mr Pell where she was posed semi naked in her underwear. Mr Pell had sent pictures of himself in which he was naked. I remember one picture specifically in which Mr Pell was lying naked on a bed or settee...’

Witness 3 further corroborated what she saw during her live evidence, where she said that she was sure of what she had seen and stated “*I wouldn't make it up. They were there. I saw them.*”

The panel noted that you do not recall sending any images to patient B. You did not explicitly deny this.

Therefore, on the balance of probabilities, the panel found charge 2(d) proved,

Charge 2(e)

That you, a registered nurse

“2. In or around January 2018:

(e) Received pictures from Patient B of them semi naked.”

This charge is found proved.

The panel carefully considered the same evidence as outlined for charge 2(d).

Therefore, on the balance of probabilities, the panel found charge 2(e) proved.

Charge 3

That you, a registered nurse

“3. Your conduct in Charge 1 was sexually motivated in that you were seeking sexual gratification and/or in pursuit of a future sexual relationship”

This charge is found proved.

In reaching this decision, the panel took into account a screenshot of a WhatsApp message thread between you and Patient A, along with your admission to charge 1 in its entirety and your written statement.

The WhatsApp screenshot messages stated the following:

'...i loved having you in my mouth..

...I loved tasting you. x [sic] would love to be there. x [sic] Felt very good this afternoon...

... Morning sexy man...

...Morning gorgeous...'

The panel also took your written statement into account:

'...In relation to charge 3, I deny that this was a sexually motivated, and was driven by love. Following my dismissal, I began a yearlong loving, caring and consensual relationship with patient A even becoming engaged to be married. Unfortunately, this did not continue...'

The panel noted that you do not deny having entered into a sexual relationship with Patient A and admitted to the panel that you had a yearlong relationship with Patient A.

The panel concluded that on the basis of the evidence before it including explicit WhatsApp messages, the relationship was sexually motivated due to the sexual nature of your communication with Patient A. Therefore, it found charge 3 proved.

Charge 4

That you, a registered nurse

“4. Your conduct in Charge 2 was sexually motivated in that you were seeking sexual gratification and/or in pursuit of a future sexual relationship”

This charge is found proved.

In reaching this decision, the panel took into account all of the documentary evidence before it and the oral evidence given by Witness 3.

The panel accepted entirely Witness 3's evidence which included details Patient B had disclosed to her arranging to meet up at your flat and the reservoir with Patient B. Furthermore, the panel entirely accepted that Witness 3 had seen messages with explicit content and explicit pictures shared between you and Patient B. The panel therefore concluded that your relationship with Patient B was sexually motivated and was for your sexual gratification.

The panel therefore found charge 4 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether 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.

NMC's submissions on misconduct and impairment

Ms Da Costa 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.

Ms Da Costa referred the panel to the charges found proved and identified the specific, relevant standards where your actions amounted to misconduct. She told the panel that despite you being a Senior Mental Health Nurse with the knowledge and understanding of Patient A and Patient B's conditions, you still pursued sexual relationships with these two patients. She submitted that by engaging in sexual conduct with two vulnerable patients, one of whom was Patient A who was particularly vulnerable to advances from men. She submitted that your conduct fell far short of The Code and what would have been expected of a registered nurse, therefore amounting to serious professional misconduct.

Ms Da Costa 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 professional standards and maintain public confidence in the profession and in the NMC as a regulatory body. She made reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Da Costa submitted that the following questions outlined in the case of Grant can be answered in the affirmative in respect of this case, in that you:

- i. 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*
- ii. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- iii. 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*

Ms Da Costa submitted that your failings involved a serious departure from expected standards and put patients at risk of harm, in particular harm was caused to Patient A, who had to be put on suicide watch after these matters were reported and investigated. Also, this relationship continued after your dismissal.

Further, Ms Da Costa submitted that there is a clear pattern of you breaching professional boundaries with patients and engaging in sexual misconduct, therefore this is an attitudinal issue rather than a simple lapse in judgment. She told the panel that attitudinal issues are not always easy to remediate and there is nothing before the panel to indicate that you have demonstrated meaningful insight or remediation into your misconduct and therefore, a risk of harm to patients in the future remains.

Additionally, Ms Da Costa submitted that you have breached provisions of the Code, and that your actions constitute a breach of fundamental tenets of the nursing profession and have brought the profession into disrepute.

Ms Da Costa referred to the following guidance which stated:

‘...Sexual misconduct is likely to be serious enough to impair fitness to practise whether the conduct takes place in professional practice or outside professional practice. Sexual misconduct poses risks both to people receiving care and colleagues and can seriously undermine public trust and confidence in our professions...’

For these reasons, she submitted that a finding of impairment is required to maintain public confidence in the profession and to uphold proper professional standards. She submitted that public confidence in the profession and the NMC as its regulator would be undermined if such behaviour were not marked as unacceptable.

Registrant’s submissions

You agreed that your actions and behaviours have brought the profession and the organisation into disrepute and went against the professional code of conduct. You also agreed that you had breached the trust of your previous employer, patients and colleagues. You told the panel that you have no excuses for your conduct and that you are aware of the impact that your actions and behaviour have caused Patient A and B, and you regret your actions. You accepted that you are currently impaired.

You told the panel that you previously received feedback from people commending your helpfulness and also feedback from those who have found your input helpful to their recovery. [PRIVATE].

Decision and reasons on misconduct

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, *General Medical Council v Meadow* [2007] QB 462 (Admin) and Grant [2011] EWHC 927 (Admin).

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

4 Act in the best interests of people at all times

4.3 keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process

8 Work cooperatively

8.5 work with colleagues to preserve the safety of those receiving care

16 Act without delay if you believe that there is a risk to patient safety or public protection

16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards, taking prompt action to tackle the causes of concern if you can

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

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

20 Uphold the reputation of your profession at all times

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

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

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. It noted that serious harm was caused to Patient A, who had to be placed on suicide watch and was prescribed medication following the investigation of your relationship. The panel also took your submissions into account. The panel was of the view that you were aware of Patient A and Patient B's vulnerability and their conditions, and still chose to pursue sexual relationships with them. It also noted that the allegations of your relationship with Patient B arose in 2018 which you received a formal warning for, however, you still went on to pursue a sexual relationship with Patient A despite this.

The panel determined that your actions would be considered deplorable by fellow practitioners, thereby damaging the trust that the public places in the profession. It therefore concluded that your actions proved in the charges did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'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. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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*

The panel also referred to FTP-3a last updated on 27 February 2024, which is as follows:

‘A small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening.’

The panel finds that Patient A was put at risk and was caused harm as a result of your misconduct. This occurred approximately two years after you received a final written warning for an inappropriate relationship with Patient B. The panel was of the view that given this repeated course of conduct and your obvious failure to adhere to the final written warning other vulnerable patients would be put at risk.

The panel determined that your repeated misconduct was of such a serious nature that it had breached the fundamental tenets of the nursing profession and brought its reputation into disrepute.

Regarding insight, the panel considered that you made full admissions to charge 1 and had demonstrated some limited understanding of how your actions put the patients at a risk of harm. The panel was of the view that the misconduct in this case evidenced behaviour that is inherently more difficult to put right, since it raises concerns about attitudinal issues and a pattern of behaviour. These attitudinal issues are difficult to remediate, and as there is no evidence of remediation or strengthening of practice, therefore, it determined that there is a risk of repetition.

The panel noted that you had begun to demonstrate an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. However, it was of the view that your insight was limited as you did not reflect on how you would handle the situation differently if a similar situation were to arise in the future. The panel concluded that it has not received enough information to suggest that you have taken any steps to address the specific concerns raised about your conduct and you did not provide any reflection on the consequences of your conduct and only one testimonial attesting to your previous conduct at work, but it is unclear if the author was aware of the charges. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest. A member of the public in possession of all the facts in this case would be surprised if a finding of impairment was not made by this regulator given that it involved a pattern of behaviour that is difficult to remediate.

Having regard to all of the above, the panel was satisfied that your 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 you off 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

Ms Da Costa informed the panel that in the Notice of Hearing, dated 14 June 2024, the NMC had advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired.

Ms Da Costa outlined the aggravating factors she identified in this case:

- Abuse of position as Patient A and Patient B were vulnerable patients
- Harm suffered by Patient A and also a risk of harm to Patient B
- Failure to comply with the warning on your file
- Failure to maintain professional boundaries despite warning and advise from Witness 3

Ms Da Costa also outlined the possible mitigating factor she identified in this case:

- Acceptance of some of the charges

Ms Da Costa submitted that making no order or imposing a caution order would not be applicable given the seriousness of this case which involves you breaching sexual and professional boundaries, putting Patient B at risk of harm and causing actual harm to Patient A. She submitted that imposing a conditions of practice order would also not be adequate as there is evidence of harmful, deep seated attitudinal problems. Therefore, no workable conditions can be formulated to sufficiently protect the public and meet the public interest.

Ms Da Costa submitted that at present you have demonstrated very limited insight, and as this is a very serious case with deep seated attitudinal issues, there remains a great risk of repetition and a risk of harm to patients. She further submitted that your relationships with vulnerable patients violates professional guidance and significantly deviates from the standards expected of a registered nurse. Therefore, a striking off order is the only applicable and appropriate sanction in this case.

The panel also bore in mind your submissions. You submitted that you understand the seriousness of the case and the concerns that have been raised, and you had no doubt that the investigation would result in you being struck off the register.

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 took into account the following aggravating features:

- Abuse of power when in a position of trust
- Repeated sexual misconduct over a period of time involving two vulnerable patients
- The vulnerability of the patients who were long-standing in-patients in a mental health setting
- Lack of insight
- High risk of repetition
- Previous disciplinary investigation

The panel also took into account the following mitigating features:

- Your admissions to the majority of the charges
- During the hearing you accepted that your actions would have a long-term effect on the patients involved and that you had brought the nursing profession into disrepute

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness and nature of the case.

The panel decided that it would be neither proportionate nor in the public interest to take no further action. Furthermore, having found that there is a real risk of repetition of the misconduct and that your fitness to practise is currently impaired, the panel determined that an order that does not restrict your practice would place patients at a risk of serious harm. Therefore, the panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, 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 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 which involve you breaching sexual and professional boundaries with two vulnerable mental health patients. The misconduct identified in this case relates to attitudinal issues and did not concern issues with your clinical practise, therefore the panel was of the view that it was not something that can be addressed through training. It concluded that the placing of conditions on your registration would not adequately address the seriousness of this case or the attitudinal concerns and would not adequately protect the public or satisfy the public interest.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel considered that these factors are not apparent in this case.

The panel noted that the concerns of your inappropriate relationship with Patient B were raised in 2018, which resulted in you receiving a warning on your file. You then went on to pursue another inappropriate relationship with Patient A in 2020. The panel took the view that your actions reflected attitudinal concerns, as you went on to repeat the same conduct that you had received a warning for in 2018. The panel was of the view that you had repeated the same conduct over a relatively short period of time with two vulnerable in-patients, who were receiving care for their mental health. The panel also took into account that your insight was very limited and therefore, it found a consequent risk of repetition.

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 your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*

- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Additionally, the panel noted that you have demonstrated very limited insight and remorse into your misconduct and how the impact of your misconduct could have affected patients and colleagues, therefore it had nothing before it to suggest that your behaviour would not be repeated. The panel was of the view that your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that allowing you 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 your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, 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.

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 sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Da Costa. She submitted that the NMC is seeking the imposition of an interim suspension order for a period of 18 months to cover any appeal period until the substantive striking off order takes effect.

Ms Da Costa submitted that given the seriousness of the charges found proved, an interim suspension order is necessary on the grounds of public protection and is also otherwise in the wider public interest.

You submitted that it is unlikely that you will appeal the striking off order.

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 in order to protect the public and the wider public interest, also to cover the 28-day appeal period and the duration of any appeal should you decide to appeal against the panel's decision.

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

That concludes this determination.

This will be confirmed to you in writing.