

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

**Substantive Hearing  
Monday, 8 July 2024 – Wednesday, 10 July 2024  
Friday, 12 July 2024 – Wednesday, 17 July 2024**

Nursing and Midwifery Council  
2 Stratford Place, Montfichet Road, London, E20 1EJ  
10 George Street, Edinburgh, EH2 2PF

**Wednesday, 6 November 2024 – Thursday, 7 November 2024**

Virtual Hearing

**Name of Registrant:** Alesia Louise Miller

**NMC PIN:** 15I0990E

**Part(s) of the register:** Nurses Part of the Register Sub Part 1  
RNA: Adult Nurse, level 1 (4 September 2016)

**Relevant Location:** Suffolk

**Type of case:** Misconduct

**Panel members:** Anthony Mole (Chair, Lay member)  
Jonathan Coombes (Registrant member)  
Caroline Friendship (Lay member)

**Legal Assessor:** Angus Macpherson

**Hearings Coordinator:** Eleanor Wills (Monday, 8 July 2024 –  
Wednesday, 10 July 2024)  
Elizabeth Fagbo (Friday, 12 July 2024 –  
Wednesday, 17 July 2024 and Wednesday, 6  
November 2024 – Thursday, 7 November 2024)

**Nursing and Midwifery  
Council:** Represented by James Lloyd of Counsel, Case  
Presenter

**Ms Miller:** Present and represented by Wafa Shah,  
instructed by Thompsons Solicitors

**Facts proved by your admission:**

Charges 1a, 1b, 1c, 1d, 2, 3 (including Schedule 1 in its entirety), 4, 6a, 6b, 8a, 8b, 8c, 8d (including Schedule 2 in its entirety)

**Facts found proved:**

Charges 5 and 7

**No case to answer:**

Charges 9 and 10

**Fitness to practise:**

**Impaired**

**Sanction:**

**Caution Order (3 years)**

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

At the outset of the hearing, Mr Lloyd on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be held partly in private on the basis that exploration of your case involves reference to [PRIVATE]. The application was made in accordance with Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Shah on your behalf indicated that she supported the application.

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

The panel determined to go into private session in connection with [PRIVATE] as and when such issues are raised in order to protect your privacy.

## **Decision and reasons on application to amend charge 2 and 10**

The panel, of its own volition, proposed to amend charge 2 and charge 10. The proposed amendment was to insert the word '*inappropriate*' before the word relationship in order to provide clarity.

"That you, a registered nurse:

2) On or around November 2021 engaged in an **inappropriate** relationship with Patient A

10) Your conduct at 9 was dishonest in that you knew you were in an **inappropriate** relationship with Patient A before 11 November 2021.

Mr Lloyd submitted that there was an alleged relationship between you and Patient A starting in November 2021. He submitted the nature of that relationship is not a

matter which needs to be set out at the facts stage, it can be determined at the misconduct stage. He informed the panel that no party is at any disadvantage as both were given notice of the context of the case in June 2022.

Ms Shah submitted that you would contest the use of the word *'inappropriate'* as it does not accurately reflect the nature of your relationship with Patient A. Further she submitted that the use of the word inappropriate has a wide-ranging interpretation. She submitted that if the panel were minded to clarify the nature of the relationship, she would invite it to use the word *'romantic.'*

Mr Lloyd submitted that the proposed amendment of the insertion of the word *'romantic'* would also not assist to clarify the charges. He submitted that it is alleged that your relationship with Patient A developed beyond proper professional boundaries during your interactions with him in November 2021. Then in December 2021 you announced your relationship with Patient A on Facebook. He submitted that the regulatory concern of breach of professional boundaries occurred before you announced your relationship in December 2021. Mr Lloyd invited the panel to leave charge 2 and 10 as drafted and to analyse the nature of the relationship at the misconduct stage.

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel determined that the proposed amendment was not necessary and charges 2 and 10 would remain as originally drafted. The panel was mindful that both parties were in agreement, that the proposed amendment would not assist to clarify the charges. The panel took into account that neither party is prejudiced in that their cases were prepared on the original drafting of the charges. Further the panel was of the view that it can address the issue of the nature of the relationship at the misconduct stage.

The panel therefore did not amend charges 2 and 10.

### **Decision and reasons on application to amend charge 1**

The panel heard an application made by Mr Lloyd, on behalf of the NMC, to amend the wording of charge 1.

The proposed amendment was to strike out the words '*On or around 23 September 2021*'. Mr Lloyd submitted that this amendment would provide clarity and more accurately reflect the evidence. He submitted that this would also help to narrow the issues in dispute and that there is no prejudice to any party as the nature of the conduct alleged has not changed.

The legal assessor invited the panel to consider inserting the words '*Before 11 November 2021*' to provide further clarity. He said that there was no issue between the parties that the gifts to which charge 1 referred were accepted before 11 November 2021.

The proposed amendment was therefore as follows:

“That you, a registered nurse:

- 1) ~~On or around 23 September 2021~~ **Before 11 November 2021** accepted from Patient A:
  - a) Flowers
  - b) £150 worth of massage vouchers
  - c) E-cigarette
  - d) Tote bag”

Ms Shah agreed with the proposed amendment in that it would better reflect the evidence before the panel and does not change the nature of the charge. She submitted that it would help the panel in narrowing down the disputed issues. Further there is no prejudice to you in inserting the phrase '*Before 11 November 2021*' as it is accepted by you that all the gifts were received on dates before 11 November 2021.

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such an amendment was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment to ensure clarity and accuracy.

### **Decision and reasons on application to amend charge 6**

The panel had regard to your partial admission in relation to charge 6b, in that you admit the alleged conduct in charge 6b but dispute the date on which it occurred.

The panel, having regard to the advice of the legal assessor, proposed to amend the introductory line of charge 6 to reflect the respective positions of the parties.

“That you, a registered nurse:

6) On 12 November 2021 **or 13 November 2021**:

- a) Accepted flowers from Patient A delivered to your home address.
- b) Gave Patient A a penis shaped key ring.”

Mr Lloyd and Ms Shah both agreed to the proposed amendment.

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such an amendment was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed given that the material content of the charge has not changed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

### **Charges as amended**

That you, a registered nurse:

1) **Before 11 November 2021** accepted from Patient A:

- a) Flowers
  - b) £150 worth of massage vouchers
  - c) E-cigarette
  - d) Tote bag
- 2) On or around November 2021 engaged in a relationship with Patient A
- 3) On or around 1 November 2021 told Colleague A one or more matters set out in Schedule 1.
- 4) On 6 November 2021, allowed Patient A to act as a sponsor to enable you to access RAF Lakenheath.
- 5) On 11 November 2021, during an appointment with Patient A, arranged to go on a date.
- 6) On 12 November 2021 **or 13 November 2021**:
- a) Accepted flowers from Patient A delivered to your home address.
  - b) Gave Patient A a penis shaped key ring.
- 7) On 13 November 2021 went on a date with Patient A.
- 8) On or around January 2022 told Colleague B:
- a) you and Patient A had an adult sleepover or words to that effect.
  - b) That you had done everything apart from full sex
  - c) Who knew how good dry humping could be or words to that effect.
  - d) One or more matters as set out in Schedule 2.
- 9) On 7 January 2022 asked Patient A to contact the surgery to backdate that he was no longer a patient of the surgery from 11 November 2021.
- 10) Your conduct at 9 was dishonest in that you knew you were in a relationship with Patient A before 11 November 2021.

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

[PRIVATE  
Schedule 1]

[PRIVATE  
Schedule 2]

### **Decision and reasons on first application to admit hearsay evidence**

The panel heard an application made by Mr Lloyd under Rule 31 to allow the written statements of Witnesses B, C and E into evidence, as exhibited by Witness 1. Mr Lloyd 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 investigation at the Surgery. He submitted that these statements include a declaration of truth and are signed by the witnesses. He submitted that this evidence is not sole or decisive in relation to any fact, there is other evidence to test the content of the witnesses' statements. He submitted that there is no unfairness to you as you were given notice of the NMC's intention to rely on this hearsay evidence in June 2022. Further he submitted that you have not raised an objection or given any indication that you were going to oppose the introduction of the hearsay evidence until today and therefore the NMC decided not to call these three witnesses. He submitted that their evidence provides contextual and supporting information rather than addressing the main issues of the case.

Ms Shah submitted that you admit to the allegations which the hearsay statements relate to and did so during the investigation at the Surgery. However, you do not accept the additional alleged contextual information regarding your relationship with Patient A provided in the hearsay statements. Ms Shah submitted that the hearsay statements are the sole and decisive evidence in relation the alleged contextual information. She submitted that this alleged contextual information is not relevant as it does not go to the basis of the charges. Further Witness B and Witness E's statements were not challenged during the Surgery's investigation and Witness C's



statement was not even used during the Surgery's investigation as it contained opinion evidence and was deemed inadmissible. Ms Shah submitted that it would be unfair to admit these statements as they amount to sole and decisive evidence in respect of contextual matters, and you would not be able to challenge the evidence.

The panel heard and accepted the advice of the legal assessor and had regard to Rule 31 and the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin).

The panel came to the view that it would be fair and relevant to accept into evidence the written statements of Witnesses B, C and E. The panel considered that you have been previously made aware of the fact that the NMC was seeking to rely on these statements and had not raised any concern. The panel took into account your admissions and determined that these statements are not the sole and decisive evidence in relation the actual charges. The panel was mindful that this evidence is the sole and decisive evidence in relation the alleged context of your relationship with Patient A. However, the panel was of the view that the context of your relationship is relevant as it may play a role in determining the nature of your relationship. Further the panel determined that it would consider what weight it should attach to this evidence once it has heard and evaluated all the evidence before it.

The panel therefore admitted the written statements of Witnesses B C, E into evidence.

### **Decision and reasons on second application to admit hearsay evidence**

The panel heard an application made by Mr Lloyd under Rule 31 to redact the commentary bubbles in the margin of your statement of case provided during the Surgery's investigation. He submitted that the comments are irrelevant and express a judgment of another individual and are not admissible.

Ms Shah supported this application.

The panel had regard to the nature and the unknown source of the commentary provided not only in the margin of your statement of case but also in the margins of other documentary evidence provided. The panel determined, in light of the fact that the commentary appears irrelevant at this time and is from an unreliable source, to redact all commentary. The panel concluded that if either party wanted to introduce any specific commentary at a later stage, they could introduce the comments if evidence of its source was available, and it was considered relevant to the facts.

## **Background**

On 28 February 2022, the NMC received a referral from the Guildhall and Barrow Surgery ('the Surgery'). You were employed by the Surgery between 31 July 2018 until your dismissal on 18 February 2022. You were referred to the NMC in relation to your conduct and relationship with a vulnerable Patient (Patient A), who had attended the Surgery for post-operative wound care [PRIVATE]. Patient A registered with the Surgery on 6 February 2018. From March 2021 Patient A attended the Surgery twice a week for dressing changes. You were allegedly Patient A's main care provider, on some occasions Patient A allegedly specifically requested you to be their care provider.

It is alleged that your relationship with Patient A went beyond a clinical patient interaction and professional boundaries were eroded over time. Patient A was registered as a patient at the Surgery until 7 January 2022.

It is alleged that, between April 2021 and 11 November 2021, you received and accepted gifts from Patient A including Flowers, £150 worth of massage vouchers, an E-cigarette and a tote bag. Three of these gifts were declared in line with policy, in that one must make a declaration of a gift in excess of £25. The E-cigarette was not declared.

On 1 November 2021 it is alleged that you had a conversation with a Colleague (Colleague A) during which you allegedly disclosed intimate details of Patient A's [PRIVATE], including details of a sexual nature without clinical justification, which was in breach of patient confidentiality.

On 6 November 2021 it is alleged you attended RAF Lakenheath, with your daughter and that Patient A sponsored this visitation.

On 11 November 2021 it is alleged that Patient A attended their last clinical appointment and during this appointment you allegedly arranged to go on a date with Patient A.

On 12 November 2021 and/or 13 November 2021 it is alleged that you received another bouquet of flowers from Patient A delivered to your home address and that you gave Patient A a penis shaped key ring.

On 13 November 2021 it is alleged that you went on a date with Patient A.

On 21 December 2021, you allegedly posted a photo on Facebook of yourself and Patient A with the caption '*when the boyfriend flies all the way across the pond to meet the parents.*'

On or around January 2022, discussions between you and colleagues at the Surgery took place regarding your relationship with Patient A.

On 7 January 2022 it is alleged that you suggested to Patient A that they notify the Surgery to state that they were no longer a patient and to '*backdate*' that from 11 November 2021.

On 10 January 2022, you were suspended from employment from the Surgery pending an internal investigation. During the internal investigation you provided a statement of case. A disciplinary meeting took place on 14 February 2022. On 18 January 2022 you were dismissed from your role at the Surgery.

### **Decision and reasons on application of no case to answer**

The panel considered an application from Ms Shah that there is no case to answer in respect of charges 9 and 10. This application was made under Rule 24(7).

Prior to Ms Shah explaining the application, Mr Lloyd addressed the panel. He submitted that the NMC evidence regarding these charges has been undermined. Although the papers disclosed before the hearing included a timeline which suggested there was *'an email'* from Patient A requesting to be removed from the GP Surgery list back dated to November. He said that Witness 1 had never seen the email and Witness 2 could not recall the contents of that email. This makes the basis on which the charges were drafted unsafe. He then referred the panel to a WhatsApp message which was sent by you to Patient A which requested Patient A to confirm when their care with the Surgery ended. That is significantly different to the allegation made by the NMC in charge 9 which reads:

*'On 7 January 2022:*

*Asked Patient A to contact the Surgery to back date that he was no longer a patient of the Surgery from 11 November 2021.'*

He submitted that the evidence in respect of charge 9 is tenuous, it is insufficient to establish that you asked Patient A to 'backdate' the date at which they left the practice. As charge 10 is dependent on charge 9 being proved both charge 9 and charge 10 should fall away.

In relation to this application, Ms Shah agreed with Mr Lloyd's submissions in that charge 9 and 10 should fall away as Witness 1 stated that the entries in her timeline were based on information that was relayed to her by Witness 2. However, in Witness 2's live evidence she confirmed that she does not remember the email in question. In these circumstances Ms Shah submitted that the NMC has not presented sufficient evidence to find the charge 9 and 10 proved and the charges should not be allowed to remain before the panel.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer in relation to charges 9 and 10.

The panel understood that the evidence in the timeline provided by Witness 1 could initially have been interpreted as supporting charges 9 and 10. However, Witness 1 during oral evidence accepted that she had not seen the actual email sent to the Surgery by Patient A in relation to being removed from the patient list. Witness 2 who was the receptionist and who received the email from Patient A explained in her oral evidence that she did not read the email and immediately forwarded it on to her Managers. She was unable to produce the actual email sent to the Surgery by Patient A.

In her written statement Witness 2 outlined the wording you had used in the conversation with her in relation to your contact with Patient A when requesting them to notify the Surgery when they had ceased to be a patient at the practice. Witness 2's written statement stated the following:

*'Alesia instantly messaged Patient A saying "you are still a patient, I thought you said you left, can you email in to reception." She showed me the message, I think just to check that it made sense and that Patient A would understand what she was asking.'*

In Witness 2's oral evidence to the panel she confirmed that she could not recall the exact wording allegedly used by you in relation to your alleged request to Patient A. Witness 2 confirmed that some conversation in relation to this matter had taken place.

The panel noted that Witness 2 during her evidence was shown a screenshot of the WhatsApp message that you say was sent to Patient A, and which you say you had shown to Witness 2 at the time of the conversation. The text message stated the following:

*'Could you please email ... to inform them when you left our care as you are still on the system'*

Witness 2 accepted that this could have been the message that you had shown her at the time. The panel accepted that the message did not support the proposition that you had specifically asked patient A to 'backdate' the time that they were no longer a patient at the Surgery.

The panel determined that based on the evidence it had received, there was insufficient evidence to establish that you had ever requested for Patient A to 'backdate' the date that they left the surgery from 11 November 2021.

The panel determined that despite the evidence given, there was insufficient information before it to prove that you had ever requested for Patient A to 'backdate' the date that they left the surgery from 11 November 2021 and there was not a realistic prospect that it would find the facts of charges 9 and 10 proved.

### **Decision and reasons on facts**

At the outset of the hearing, the panel heard from Ms Shah, who informed the panel that you made full admissions to charges 1a, 1b, 1c, 1d, 3 (including Schedule 1 in its entirety), 4, 6a, 6b, 8a, 8b, 8c, 8d (including Schedule 2 in its entirety).

The panel therefore finds charges 1, 3, 4, 6, 8 proved in their entirety, by way of your admissions.

At the close of the NMC case, Ms Shah asked for charge 2 to be put to you again. Upon the Hearings Coordinator doing so, Ms Shah admitted charge 2 on your behalf. The charge was found proved by way of admission.

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

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Practice Business Manager at the Surgery, at the relevant time
- Witness 2: Receptionist at the Surgery, at the relevant time
- Witness 3: Receptionist at the Surgery, at the relevant time

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Ms Shah.

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

### **Charge 5**

“That you, a registered nurse:

5. On 11 November 2021, during an appointment with Patient A, arranged to go on a date.”

**This charge is found proved.**

In reaching this decision, the panel relied on the Cambridge definition of the word 'date' which is as follows:

*'...a social meeting planned before it happens, especially one between two people who have or might have a romantic relationship...'*

The panel addressed the two parts of the definition. First, it considered whether a social meeting was planned before it happened (Part A) and secondly, whether there was or might be a romantic relationship between you and Patient A (Part B).

The panel carefully considered the evidence, which included, the Investigation interview notes dated 24 January 2021, correspondence with your Union representative detailing amendments to the timeline of the events, the oral evidence of Witness 1. It also considered your evidence given under oath.

The panel considered whether on 11 November 2021 you planned a meeting between you and Patient A.

The panel first took into account the following sections of the Investigation meeting notes, which are as follows:

*'...AM stated she had been invited for dinner with pt and that she attended. He had invited her for dinner at his last consultation on the 11<sup>th</sup> November and they felt this was OK as it was the final date of treatment. She stated she was clear that dinner would be as friends and it was to say thank you. Asked if she told anyone – yes her mum and friend as per her usual practice to ensure safety. She did not tell anyone within the practice...'*

...



*...She felt on this occasion a relationship was acceptable because care had ended. We confirmed care had ended on 11th November, she had accepted dinner invitation on this date for 13th [sic] November and had received a large bouquet of flowers on 12 November...'*

The panel was of the view that although the statements in the Investigation meeting notes were not written by you, you had read the statements and had not challenged them prior to this hearing with your Union representative. Therefore, it determined that the written statements in the meeting notes were likely to be the most accurate reflections of the events as the statements were taken closer to the time.

The panel then noted the correspondence with your Union representative who made amendments to the timeline. It specifically noted the following entry which appears in the 'agreed timeline' :

*'...11/11/21 - Last date care was provided (Thursday) when leaving pt asked if he could take AM to dinner...'*

Neither you nor your union representative challenged this entry.

In your oral evidence you told the panel that Patient A had given you their contact details on a piece of paper on 11 November 2021, which was the last day of Patient A's treatment at the Surgery. You stated that at the bottom of the paper Patient A asked you out to dinner, however, you were sure that the social arrangement to go to dinner was not agreed until the following day, 12 November 2021, after you had sent Patient A a text to wish them well on their journey to the United States of America.

Further, the panel heard in evidence that, after Patient A's last appointment, but still on 11 November 2021, you ordered a penis shaped key ring that was given to Patient A on 13 November 2021, the day you met for dinner. The panel was of the view that this demonstrated that you knew on 11 November 2021 there would be a social meeting of some kind between you and Patient A following treatment at the

Surgery. The panel was satisfied on the balance of probabilities that the agreement to meet between you and Patient A was made on 11 November 2021.

In relation to part A of the Cambridge definition of the word 'date,' *'a social meeting planned before it happens'* the panel was satisfied on the balance of probabilities that the social arrangement to go out to dinner had been made on 11 November 2021. The panel therefore found Charge 5 proved.

The panel went on to determine whether on 11 November 2021, you considered that there was or might be a romantic relationship between you and Patient A.

The panel noted that you accepted that there were a number of gifts sent by Patient A which went beyond the normal patient and carer relationship. Further, it noted that you had visited the Royal Air Force (RAF) Lakenheath with your daughter on 6 November 2021, a visit which was sponsored by Patient A [PRIVATE]. The panel accepted your explanation regarding your visit to the RAF, and that you believed a strong friendship had developed between you and Patient A. It also noted that on 11 November 2021 you ordered a gift for Patient A in the form of a key ring as set out above and that you had never given any patient any gifts previously. You told the panel that Patient A informed you that gifts such as this were commonplace at appropriate stages of gender reassignment treatment in the United States of America.

The panel was not satisfied that on 11 November 2021 you understood Patient A's invitation for dinner was a romantic arrangement. It therefore did not consider that the arrangement reflected Part B of the definition. Therefore, the panel found charge 5 proved in relation to Part A of the Cambridge definition of the word 'date'.

### **Charge 7**

"That you, a registered nurse:

On 13 November 2021 went on a date with Patient A."

**This charge is found proved.**

The panel carefully considered the same evidence as outlined for charge 5.

The panel took into account the following section of the Investigation meeting notes, which stated:

*'...Asked when it turned from professional to personal relationship, she stated that she knew dinner would not be 'just as friends' as on the 12<sup>th</sup> November she received a large bouquet of flowers to her home address. She was asked how he know her address and she said this was because they had arranged a taxi to the dinner...'*

The panel considered whether there was or may have been a romantic relationship between you and Patient A on 13 November 2021.

The panel considered your oral evidence. You stated that you had not interpreted going to dinner with Patient A as a romantic meeting as after you received the bouquet of flowers you had a conversation with Patient A who reassured you that the flowers were a gift for the care you had provided for them at the Surgery. However, based on the fact that Patient A had shown you more attention by way of gifts etc than any of your previous patients, and the fact you had questioned Patient A's motives, the panel was of the view that at this point you were aware that Patient A may have been romantically interested in you. The panel inferred that going to dinner with Patient A in light of the above showed that you had or might have a romantic interest in Patient A yourself.

In light of the above the panel was satisfied that charge 7 is found proved on the balance of probabilities.

**Fitness to practise**

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

### **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 Lloyd invited the panel to take the view that the facts found proved in charge 1 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. He referred the panel to a number of undecided facts, including whether you disclosed a letter from Patient A to management when enquiring whether you were allowed to retain the massage vouchers and a card in respect of the gift of flowers. In addition, he referred to the dispute with Colleague A concerning the date and circumstances in which you disclosed to her details concerning Patient A the subject of Paragraph 3. He invited the panel to determine those issues but only

if the panel considered it necessary to do. He determined that each of the allegations whether taken individually or cumulatively amounted to misconduct.

Although Mr Lloyd referred the panel of the Staff Handbook, he reminded it that the NMC's code sets out the primary obligations of a nurse and submitted that the following sections had been breached:

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

**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

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

**21 Uphold your position as a registered nurse, midwife or nursing associate**

**21.1** refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

In particular he stated that all but the most trivial gifts should be refused. He acknowledged that the staff handbook introduced a second set of rules concerning gifts, especially in respect of gifts the value of which exceeded 25 pounds. He argued that none of the gifts were trivial (the doctrine might apply to a single gift), but triviality is to be related to the circumstances in which the gift was given. In respect of the tote bag, he referred the panel to the annotation on the bag and the WhatsApp message that you received, he contended that it was not merely a thank you gift, it went further than that. Moreover, it was part of a series of gifts, part of a pattern and you accepted more than one gift. Although management permitted you to keep the vouchers, it did not follow that you should have kept them and your doing so was seriously below the professionalism expected of a registered nurse. He argued that likewise the E-Cigarette was not a trivial gift. And related to a particular problem you had at the time and which you had disclosed to Patient A. He stated that this further eroded the patient/carer boundary.

Mr Lloyd contended that you developed a relationship with Patient A outside a strict patient/nurse relationship. He contended that such a boundary was integral to the

profession and that any breach thereof created risk for the patient and the profession. Care could be compromised, a different attitude to care could be developed by virtue of the relationship and communications outside of the surgery were particularly dangerous. He argued that pursuing a relationship would be considered deplorable by the public, leading to preferential treatment and other practitioners being compromised. This would lead to stress and strain and was the justification for the hard line identified in the Code. He stated that this was a fundamental tenet of the profession.

Mr Lloyd also argued that the treating of patients with respect and dignity and the principle of confidentiality were also fundamental tenets of the profession. Patients should be able to disclose without reticence or reluctance.

In respect of charges 3 and 8 he submitted that there was no clinical justification for disclosing this information to a third party, least of all a non-clinical third party. He said it was entirely disproportionate to reveal the detail and was a gross abuse of the obligation of confidentiality.

In respect of your acceptance of Patient A's sponsorship to enable you to visit RAF Lakenheath, Mr Lloyd stated that this was part of your erosion of the status of the relationship and the boundaries. This was a social meeting outside of the surgical environment. You were relying on Patient A for a favour and were relying on Patient A's standing at RAF Lakenheath. There was a clear conflict of interest; you were benefiting in a way that was not available to other colleagues and this was outside clinical boundaries. There was no justification for you accepting Patient A's assistance in this regard.

Mr Lloyd argued that arranging a date to meet with Patient A was likewise an abuse of power. If you had not been a registered nurse, you would not have known Patient A; you took advantage of the privileged position you were in, and the confidence Patient A reposed in you. It was seriously below the standard expected of you as a registered nurse.

In respect of charge 6 likewise these were further gifts. Charge 6b concerns a gift that you gave Patient A of a penis shaped key ring. He submitted that your explanation of this gift made no sense and demonstrated how far you had fallen from an appropriate place of professionalism.

In the light of the foregoing Mr Lloyd argued that your conduct amounted to misconduct which was serious.

Ms Shah, on your behalf, began by referring to case law, in particular *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin). In addition, she contended that it was necessary to take into account the attitude of the registrant. She invited the panel to refer to the NMC's guidance.

In addition she referred to *Professional Standards Authority for Health and Social Care v NMC* [2017] CSIH 29 for the proposition that a finding of misconduct does not always lead to a finding of impairment and that it was permissible for the panel to mark its concerns about the public interest by reference to the finding of misconduct and your exposure to NMC fitness to practice proceedings; further she referred to *Bawa-Garba vs GMC* [2018] civ 1879, [2019] 1WLR 1929 for the proposition that the panel should only take into account when considering the public confidence in the profession the view of a reasonable member of the public, someone who is fully appraised of the facts and the extent of the insight of the registrant and the extent they have sought to remediate concerns. She said that the panel should exercise proportionality to meet the aims of the NMC.

In respect of the gifts Ms Shah referred to your chronology, the time lapse of between each gift and other details which inform the gravity of you having received the gifts. So far as the flowers were concerned (charge 1a) she contended that they were given on 14 October 2021 along with a card which was disclosed by you in your bundle of documents. She contended that Witness 1 had accepted this timeline which went before the disciplinary hearing. The flowers had not been the first gift. She reminded the panel that you are of good character and that you had disclosed the card and provided this to Witness 1 and provided all of the relevant details. You

contended that you had complied with all of the relevant rules of the Staff Handbook which stated that any gift which exceeds the value of 25 pounds should be reported to a manager. In any event, Witness 1 stated that she authorised this and did not think anything more about it. You kept the gift and therefore your conduct does not amount to serious misconduct. Although Ms Shah recognised Mr Lloyd's argument that the Staff Handbook was of lesser importance than the NMC code, she contended that nevertheless, it was relevant and as an employee you ought to be able to rely on what is or is not in the Staff Handbook.

In respect of the vouchers (charge 1b) Ms Shah reminded the panel that you declared them to a manager and had received authorisation to keep them. Further she submitted that the evidence established that a letter from Patient A had accompanied the vouchers and was disclosed to management. This was copied by the manager and retained in her records. The manager merely said that she could not find this letter. She referred to the timeline of the gift on September 2021 and that you had sent an email reminding the manager to send her written authorisation. She stated that it would be perverse to say this amounted to misconduct.

In respect of the E-Cigarette Ms Shah stated that this was not declared as the value was below 25 pounds and therefore disclosure to management was not necessary under the Staff Handbook. Ms Shah reminded the panel that you had disclosed matters over and above those which the Surgery knew about, including the fact that flowers were sent by Patient A to your home and that you went to dinner together. You had attended the disciplinary hearing and had not misrepresented anything. You had been honest and frank and put everything on the table. The panel should take this into account when considering whether your acceptance of the E-Cigarette amounted to misconduct.

In respect of the tote bag (charge 1d) Ms Shah told the panel that this was the first gift you received from Patient A. You received a WhatsApp message from Witness E on the day the tote bags were received. At that time, you had been off sick for two months. The gift had been placed in your in-tray and a declaration was submitted on your behalf by Witness E and you were both permitted to keep the gifts. Ms Shah submitted you could have done nothing more.



In respect of Mr Lloyds submission to cumulatively consider the charges in respect of misconduct, Ms Shah submitted that this should not be done. She relied on the case of *Ahmedsowida v GMC* [2021] EWHC 3466 (Admin) and *Schodlok v GMC* [2015] EWCA Civ 769. Ms Shah submitted that you explained in your evidence that a distressing incident had occurred when treating Patient A, which you then offloaded to Colleague A. Although you acknowledged that it was improper of you to do so, you stressed that the conversation started when you were asked what was wrong. Colleague A had agreed with this in her evidence. Moreover, she concluded that Doctor 1 was present at the time. She submitted that if this was misconduct, it was in the context of this being an unusual incident.

### **Submissions on impairment**

Mr Lloyd 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 Lloyd submitted that there were two approaches to these issues namely a private and a public component. In relation to the private component namely whether you currently impose a risk to patient safety and whether there is a risk of repetition, he invited the panel to consider your insight and remediation. He acknowledged that some of the courses which you have undertaken have reduced the risk of repetition, but he stated, some did not. Mr Lloyd noted the documentary material and your evidence which you submitted. He noted that you concede that at the time of the disciplinary inquiry, you had no insight; you stated you could now see that there were red flags; you now understand how badly the patient/nurse relationship had been eroded. He acknowledged that you have shown remorse, and you have made yourself available to cross examination and made admissions, and that is to your credit. You have cooperated and engaged with the NMC enquiry. He submitted that the issue for the panel is whether your insight is full and developed, as this will tell on

whether you are likely to repeat this conduct. He submitted that your insight was not yet fully developed. And that your views and rationalisation of your past behaviour does not yet satisfy that there is no risk of repetition.

By way of example Mr Lloyd referred to the gift of the vape. He explained that until your cross examination you had not understood the implications of your having received the vape and how doing so eroded the nurse/carer relationship. Although you accepted this in cross examination, the fact that you had not thought it through beforehand, constituted a ground for finding that your fitness to practise remains impaired. Although some remediation had taken place, it did not address all the aspects required.

So far as the public component of impairment is concerned, namely the need to maintain public confidence in profession and the need to uphold proper standards of behaviour, he stated that a finding of impairment was also required. The panel ought not to be seen to be condoning the erosion of boundaries and that if the panel were not to find impairment the obligation to follow the overarching objective would be undermined.

He stated a finding of impairment on these grounds was necessary to mark and demonstrate the standard of behaviour expected of a registered nurse and to reflect the standard which the public expects. He therefore contended that your fitness to practise is impaired on public interest grounds.

Ms Shah submitted that any misconduct found was capable of remediation; she stated that although an inappropriate relationship began with you and Patient A, it was not a romantic sexual relationship during the period when you were caring for Patient A. A relationship only occurred when Patient A disclosed that they were due to go back to the USA on 11 November 2021. This was a very different case to where a sexual relationship had developed between a registrant and patient during the period of care; however, she submitted that even such a case can be remediated. Ms Shah submitted that your case was in the middle and capable of remediation provided you were able to demonstrate insight.

In respect of insight Ms Shah argued that you were very open. You had disclosed your relationship on Facebook; you did not know at that time that this was wrong. You did not secretly pursue the relationship; you disclosed that you received flowers at home. You did not seek to deceive anybody about what came to be considered a breach of professional boundaries. She submitted that you have reflected and read the Code repeatedly and have also read articles. You have acknowledged being in a position of power by being in receipt of private information from Patient A including information on his mental health.

Regarding the Vape, Ms Shah submitted that you acknowledge the submission made by Mr Lloyd. The depth of the level of your insight may be discerned by the panel from the words you used in evidence; you said that you were *“ashamed, wrong in so many ways, did not know where to start”*. You have submitted a detailed reflection on why your actions were wrong and have not sought to deflect accountability. You have accepted that it was your responsibility to act in a professional manner. You have acknowledged that Patient A was vulnerable and that they were entitled to have trust in you, and you had no business betraying that trust. She reminded the panel that this is the first time you have been before your regulator, and you have no history of unacceptable behaviour. She added that these were highly unlikely circumstances that were unlikely to be repeated. She submitted that you have fully engaged with the NMC and these proceedings.

The panel heard nothing from you about the impact of these proceedings on yourself; Ms Shah contended that they would have a remedial effect on any registrant. She submitted that the insight component of remediation has been satisfied. Concerning your training she submitted that this is helpful for the panel to know provided that you have gained something from it. She referred to the course that you undertook in respect of professional boundaries and health and social care level 2, - 2 hours continual practise development. You had gained 100 percent. There is a list of learning outcomes which the panel can read. You have undertaken a data privacy course and obtained a certificate. This remediation should be reviewed in conjunction with the development of your insight. She submitted that your insight has improved since the disciplinary hearing, and you have admitted to almost all of the charges. Although you were defensive at the beginning of this time

period, you have now acknowledged that professional boundaries were breached; there was a conflict of interest; you have provided documents and undertaken courses and are concerned about the harm you may have caused. Ms Shah contended that there should remain no concerns that you will repeat your behaviour in the future.

So far as the public interest is concerned, Ms Shah referred to *Professional Standards Authority for Health and Social Care v GMC and Uppal* [2015] EWHC 1304 (Admin): Not every finding of misconduct should be visited with a finding of impairment on public interest grounds. You have undergone the experience of a fitness to practice hearing itself and, if the panel is considering impairment, a finding of misconduct will have been made. That should be sufficient in this case. She referred also to the fact that these are matters which occurred over two years ago.

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 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

### **Decision and reasons on misconduct**

In assessing whether the charges amounted to misconduct, the panel considered the charges individually and cumulatively as well as the circumstances of the case as a whole. The panel had regard to the terms of the Code; it also took the Staff Handbook into account.

When determining whether the facts found proved in charges 1a, 1b, 1c, and 1d, amount to misconduct, the panel first considered charge 1a. It was of the view that patients gifting flowers to nurses was not unusual. The panel accepted that you had brought the flowers to your management's attention which was in line with the Staff Handbook. The panel also noted that you were authorised to keep the flowers and had retained them within the Surgery.

When considering charge 1b the panel noted the value of the vouchers was above 25 pounds. It noted that you had questioned whether or not you would be able to keep these vouchers due to their value and that you went to your management to declare this gift. The vouchers were authorised by a manager, and you were allowed to keep the vouchers. The panel agreed that this gift was more than trivial. However, it accepted that you did immediately inform your manager of the gift and followed the Staff Handbook policy regarding declaring gifts. The panel also noted that you had asked for the authorisation of this gift to be put into writing. It did not find that your actions amounted to serious misconduct in this regard.

The panel went on to consider charge 1c. The panel accepted that Patient A had purchased the E-Cigarette as a response to your E-Cigarette being broken. Patient A, of their own volition, upon hearing this decided to buy you a new one. It was of the view that, although it was unwise of you to accept this gift, it was not out of line with the Staff Handbook as the value of the E-Cigarette was less than 25 pounds.

The panel considered charge 1d. It noted that you were off sick and were not present at the Surgery when Patient A provided you and another member of staff, Witness E, with a tote bag. The gifts were declared by Witness E on your behalf and on your return to work you claimed this gift. The panel did not consider this to be an issue as the item was not of high value. It therefore determined that charge 1 in its entirety did not amount to serious misconduct.

In relation to charge 2,3,4,5,6,7,and 8 the panel considered that both individually and cumulatively 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:

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

**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

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

**21 Uphold your position as a registered nurse, midwife or nursing associate**

**21.1** refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

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 your conduct was a serious departure from the standards expected of a registered nurse in that you developed a personal friendship with Patient A that went beyond that of a normal patient/carer relationship. This included a visit to the RAF base where you met Patient A at the reception and let them act as your sponsor to access the base. This personal friendship later developed into a romantic relationship, even though Patient A had completed their treatment on 11 November 2021. You arranged to go to dinner together and you exchanged gifts with Patient A. The panel considered that your behaviour was a breach of the Staff Handbook which states that it is mandatory for management to be informed of any patient/carer relationships. The panel determined that you failed to declare this relationship to management, and you were in a position of authority and should have been maintained your relationship with Patient A, as a professional patient/carer relationship. It determined that you personally benefitted from this relationship.

The panel noted that you disclosed sensitive, private and confidential information about Patient A to a non-clinical staff member in the context of you [PRIVATE]. The panel was of the view that, regardless of the circumstances and [PRIVATE] you should not have discussed Patient A's care with others not involved in their personal care. This presented a risk to Patient A, a breach of confidentiality and a serious breach of the standards expected of a registered nurse.

The panel, therefore, determined that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to serious 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.

The panel considered the evidence before it:

- Your bundle including character references, testimonials, and Continuous Professional Development (CPD) certificates
- Your witness statement dated 14 July 2024 which provided your reflections on what happened, [PRIVATE] and lessons learned
- Your oral evidence

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.’*

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...
- d) ....'

The panel considered the test in *Grant*. The panel was satisfied that limbs a), b) and c) were engaged in respect of your past misconduct. Patient A was a vulnerable patient and your conduct toward them as found proved put Patient A at risk of harm. Forming a personal relationship with a patient and disclosing personal information with non-clinical staff brings the nursing profession into disrepute and breaches a fundamental tenet of that profession. Members of the public and the profession would be dismayed that a registered nurse had behaved in such a way as the panel has found proved.



The panel then considered whether the *Grant* test could be satisfied in respect of the risk of future misconduct. In doing so, it considered the guidance in the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin). It determined that the misconduct was capable of being remediated.

When determining whether you have in fact remediated your misconduct, the panel critically assessed the information before it in terms of your insight and strengthened practice.

The panel acknowledged your statement and your oral evidence in which you stated for example:

*“... Patient A was vulnerable, one, because of the nature of the care that he had whilst he was with us. He was also vulnerable because his emotions were at risk of being potentially hurt as part of being in a relationship. You know, you never know how that is going to pan out and what emotions, et cetera, may be hurt in the process...”*

The panel noted that you had reflected on your initial defensiveness where you stated:

*‘...I recognised how my defensive position impeded my growth and understanding. Reading back through the investigation and disciplinary notes made me aware that my approach could be perceived as detaching myself from the NMC code and failing to critically assess my actions...’*

However, it was of the view that you have now fully developed your insight into the charges and recognise the potential harm that could have been caused to Patient A as a result of your engaging in a personal relationship with them, having been their care provider.

The panel took into account both your reflective piece and your oral submissions. The panel was satisfied that you fully understood the misconduct, recognised your breach of professional boundaries and standards. It was further satisfied that you had addressed the concerns directly and you have outlined how you will conduct yourself in the future should you find yourself in a similar position. The panel also found you to be remorseful and was satisfied that you had strengthened your practice.

The panel further acknowledged you have recently undertaken relevant training in Data Security, Data Privacy and Professional Boundaries in Health and Social Care. [PRIVATE]. The panel was of the view that you have now accepted the impact that your conduct could have on patients, colleagues, and those who use nursing services.

The panel also acknowledged your statement in which you stated:

*'...Moving forward I am committed to upholding the highest standards of professionalism and confidentiality. This experience has been a sobering reminder of the importance of maintaining clear professional boundaries and adhering to the ethical codes that govern my profession. I will use this reflection as a foundation to ensure that such a breach never occurs again...'*

The panel also noted that the positive character references from some of your colleagues and that prior to these allegations, you had an unblemished nursing career.

The panel was satisfied, taking all of the circumstances into account, that you have demonstrated sufficient insight and strengthened practice to enable it to conclude that your misconduct is highly unlikely to be repeated.

For these reasons, the panel was satisfied that you are currently able to practise kindly, safely and professionally, and that your fitness to practise is not currently impaired in respect of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because if a member of the public and/or a member of the profession, appraised of all the circumstances, they would be concerned if a finding of current impairment of fitness to practise were not made. Public confidence in the profession would be undermined if the panel did not make such a finding in a case where there has been a serious breach of confidentiality and a breach of patient/carer professional boundaries. It therefore finds your fitness to practise impaired on the ground of public interest.

## **Sanction**

The panel considered this case very carefully and decided to make a caution order for a period of three years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

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**

In the Notice of Hearing, dated 30 May 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. During the course of the hearing, the NMC revised its proposal and submitted that a caution order or a suspension order is more appropriate in light of the panel's findings on impairment.

Mr Lloyd submitted that making no order would not be appropriate in light of the seriousness of the misconduct in this case and also due to the panel's finding of impairment, solely on the ground of public interest.

Mr Lloyd submitted that the imposition of a caution order would be the appropriate and proportionate sanction as the panel is satisfied that you have sufficiently remediated your misconduct and because the risk of repetition is minimal. It has therefore determined that there is no risk to the public, to patients or to those who make use of nursing services which requires your practice to be restricted at the present time.

Mr Lloyd submitted that the circumstance of the case is serious, and this was not an isolated incident, therefore, imposing a caution order for just one year may not sufficiently address the gravity of the charges. Mr Lloyd submitted that a five-year caution order may be disproportionate. He submitted that a three-year caution order would be more appropriate and would sufficiently mark the seriousness of the case and also demonstrate that such conduct will not be condoned by the regulator.

Mr Lloyd submitted that if the panel was minded not to impose a caution order, the next sanction would be a conditions of practice order. However, he submitted that such an order exists to monitor or moderate practice. He submitted that imposing a conditions of practice order would not be appropriate in these circumstances as there are no clinical concerns. Therefore, it would be difficult to formulate conditions that would be proportionate and would address the reason for impairment, the public interest.

Further Mr Lloyd submitted that if the panel considered that a caution order or a conditions of practice order was not appropriate, then it may go on to consider

imposing a suspension order or a striking off order. He submitted that the panel would have to balance, the weight of the public interest engaged against your interests and your ability to practice as a nurse when deciding whether such an order is appropriate.

Ms Shah submitted that you have been working in a customer service representative role and have not been practising as a nurse in any capacity. She submitted that you still wish to practise as a nurse, however, you have not been successful in obtaining employment. She told the panel that following the final outcome of these proceedings you are hopeful that you will be in a better position to approach an employer and give them some finality as to what the ultimate outcome of the NMC proceedings is. Ms Shah submitted that despite not currently working as a nurse, you have engaged in further training since the last occasion of this substantive hearing and that you wish to return to work in wound care. You hope to work in an NHS setting.

Ms Shah submitted that the panel should impose a caution order in this case as such an order sends a message to other members of the profession, and the public that your conduct has been met with disapproval from the regulator. She submitted that it also serves as a reminder to you that you are still subject to regulatory oversight through the imposition of a caution order.

Ms Shah invited the panel to consider imposing the order for a period of one year as you have an unblemished record and have never been involved in any regulatory proceedings before. Further, she submitted that you have admitted to majority of the charges and have demonstrated full insight, remorse, remediation and strengthening of your practice. You have also described how you will prevent future misconduct.

Ms Shah submitted that if the panel was minded not to impose a caution order a conditions of practice order should still be considered. She suggested a condition relating to a personal development plan which addresses the maintenance of professional boundaries and the protection of sensitive patient data. She further submitted that conditions maintain regulatory oversight and that meets with the public interest aim of sending a message to members of the public.

Ms Shah submitted that you are a single parent, and a suspension order would prevent you from being able to seek work as a nurse and would also cause reputational damage. She submitted that a suspension order would be wholly disproportionate in these circumstances as you have successfully demonstrated to that you have learnt from your past misconduct and will never repeat such conduct again.

The panel accepted the advice of the legal assessor.

### **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 position of trust and confidentiality
- Repeated behaviour over a period of time

The panel also took into account the following mitigating features:

- [PRIVATE].
- Remorse and insight in relation to the harm caused to the Patient A and the profession

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'there is no risk to the public or patients requiring the nurse, midwife or nursing associates practice to be restricted.'*

The panel has already determined that you have shown significant insight into your conduct and that no current risk to the patients, colleagues or the public exists from your practice as a nurse. The panel had previously found impairment solely on public interest grounds. It noted that you made early admissions to the majority of the charges, you have apologised for your misconduct, and you have shown evidence of genuine remorse. Further, the panel noted that you have engaged with the NMC since referral and there have been no adverse findings in relation to your practice either before or since these incidents.

The panel also noted the following:

- There is no evidence of harmful deep-seated personality or attitudinal problems.
- There is no evidence of repetition of behaviour since the incident.
- The panel is satisfied that you have insight and do not pose a significant risk of repeating the behaviour.

In all the circumstances, the panel determined that a caution order for a substantial period is appropriate to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. It was satisfied that a caution order would be the most proportionate sanction, balancing your interests with the importance of marking the public interest and the interests of patients.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel agreed with Mr Lloyd's submission that there are no practical or workable conditions that could be

formulated, given its findings that there are no public protection or clinical concerns and that you are safe to practise unrestricted. The panel concluded that no useful purpose would be served by a conditions of practice order. It is not necessary to protect the public and would not assist your return to nursing practice.

The panel has determined that a three-year caution order would adequately protect the public. For the next three years, your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of three years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

A caution order for a period of three years would also enable you to continue to practise as a nurse, whilst also sufficiently marking the public interest.

At the end of this three-year caution order the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding, and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.