Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

Radisson Blu Hotel, No1 The Light, The Headrow, Leeds, LS1 8TL
30 September 2024, 1-2 October 2024 and 4 October 2024

Virtual Hearing

21-25 and 28-31 October 2024

Name of Registrant:	Nicola Jane East
NMC PIN	90G0150E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – 5 September 1993 Children Nursing (Level 1) – 29 September 1997 Recordable qualifications: Nurse Independent / Supplementary Prescriber (V300) – 3 February 2014
Relevant Location:	Kirklees
Type of case:	Misconduct
Panel members:	Des McMorrow (Chair – Registrant member) Sophie Kane (Registrant member) Alison Lyon (Lay member)
Legal Assessor:	Oliver Wise [30 September – 4 October 2024] Timothy Bradbury [From 21 October 2024 onwards]
Hearings Coordinator:	Vicky Green
Nursing and Midwifery Council:	Represented by James Edenborough, Case Presenter
Mrs East:	Present and represented Matthew Baron, Counsel, instructed by the Royal College of Nursing
Facts proved:	Charges 1)c), 1)f), 3)a) and 3)b

Facts not proved:	Charges 1)a), 1)b), 1)d), 1)e) and 2
Fitness to practise:	Impaired
Sanction:	**Conditions of practice order (12 months)**
Interim order:	**Interim conditions of practice order (18 months)**

Details of charge (as amended)

That you, a Registered Nurse:

1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

a) On one or more occasions gave Patient A greeting cards and/or a gift card and/or cash. **[Not proved]**

b) Gave Patient A a cake. **[Not proved]**

c) On 17 September 2021 engaged in an inappropriate conversation during a telephone call with Patient A. **[Proved]**

d) Told Patient A to dispose of their prescribed medication without clinical justification. **[Not proved]**

e) On one or more occasions contacted Patient A by telephone and/or text message outside of working hours without clinical justification. **[Not proved]**

f) Failed to record significant information disclosed by Patient A in their records. **[Proved]**

2) On 23 February 2022 provided Patient A with a list of people you wanted to be harmed. **[Not proved]**

3) On 13 September 2021 in relation to Patient A:

a) Did not escalate to your line manager and/or the safeguarding team that the patient had disclosed that [they were] being contacted by men asking for sex. **[Proved]**

b) Did not record the information disclosed as specified in charge 3 a) above, in the patient's notes. **[Proved]**

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

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

Before hearing evidence from Patient A, the panel heard an application pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The application was made by Mr Edenborough, on behalf of the Nursing and Midwifery Council (NMC) for the entire hearing to be held in private to protect the anonymity of Patient A.

Patient A supported this application.

Mr Baron, on your behalf, did not oppose this 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 decided to hold the entire hearing in private to protect the anonymity of Patient A.

Rule 19 application revisited

After Patient A had finished giving evidence, they indicated that they would like to have the opportunity to observe the hearing.

Having determined that the entire hearing should be heard in private, the panel was directed to Rule 19(4) of the Rules in which the following is stated:

> *4) In this rule, "in private" means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.*

The panel heard the advice of the legal assessor.

The panel considered that Patient A, although they are the referrer and central witness in this case, Patient A is member of the public as defined by the Rules and would therefore be unable to observe the hearing.

When the hearing resumed on 21 October 2024, Mr Edenborough provided the panel with a Skeleton argument on behalf of the NMC and made an application to revisit its decision on allowing Patient A to observe the hearing. His application was made on the following grounds:

a. *The Panel were incorrectly and/or incompletely advised on the law when they made their original decision.*

b. *There is new material relevant to the balancing exercise which was not before the Panel at the time they made their original decision.*

Mr Edenborough submitted that a variation of the Rule 19 application to allow Patient A to observe is in the interests of justice and the interests of fairness to Patient A. He submitted that as it was decided to hear the entire hearing in private to protect Patient A's privacy, it would create an absurdity if they were not permitted to observe the hearing.

Mr Edenborough informed the panel that Patient A is currently working with the NMC to produce a victim impact statement to be provided to the panel at a later stage. Mr Edenborough submitted that Patient A is available to address the panel directly on his request to observe the remainder of the hearing if required.

Mr Baron opposed this application. He submitted that Rule 19(4) is clear in defining the category of person who is permitted to attend a private hearing, and that Patient A does not fall within this category. Mr Baron also submitted that any impact statement should be written without the influence of Patient A hearing any further evidence.

The panel accepted the advice of the legal assessor who reminded the panel of the provisions set out in Rule 19 of the Rules:

19.(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.

(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.

(2A)All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

> *(a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and*
> *(b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.*

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied

> *(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and*
> *(b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.*

(4) In this rule, "in private" means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

He confirmed the previous legal advice in that the construction of Rule 19(4) is unambiguous and clearly defines the parties permitted to be present during a hearing that is conducted wholly in private.

The panel considered that there was no new information to undermine it's previous decision and the rule 19(4) is clear and unambiguous. However, the panel decided to speak with Patient A and invited them to join the hearing.

Patient A told the panel that when they indicated that they supported the application for the entire hearing to be in private, it was not explained to them that this would mean that they could not observe the hearing and that the decision would not be published online. Patient A stated that their understanding of the application was that this meant that their name would not be included in any public records. Patient A stated that they would like to be able to observe the hearing and read the panel's decision. Patient A confirmed that they are content for the hearing to be public with their identity anonymised.

Mr Edenborough informed Patient A that if the hearing was made public, then someone who knew the details of this case may be able to identify them.

Patient A said that they will leave it to the panel to determine, and it is their wish to be able to observe and be able to read the decision in full.

Having heard further information from Patient A, the panel decided to revoke its previous decision to hear the entire hearing in private and decided to hold the remainder of the hearing in public. The panel considered that it was appropriate to hear Patient A's evidence in private to protect their anonymity. The panel decided that it was in the interests of fairness to Patient A for them to be able to observe the hearing and to read the determination. The panel noted that Patient A's anonymity will be protected by ensuring that their name is not included in the public domain.

The panel was mindful that Patient A has not yet provided a victim impact statement. The panel therefore made a direction that Patient A must provide the NMC with their victim impact statement before they observe the hearing. The panel also made a

direction that if Patient A were to observe the hearing, they must do so by telephone rather than via MS Teams.

Decision and reasons on application to amend charge 1)b)

After the NMC had called all of its witnesses, Mr Edenborough made an application pursuant to Rule 28 of the Rules, to amend the wording of charge 1)b) which currently reads as follows:

> *'1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:*
>
> *b) Gave Patient A a cake with a teddy on it.'*

Mr Edenborough submitted that during the evidence of Patient A, they said that they did not recall the cake having a teddy on it. He therefore invited the panel to make the following amendment to properly reflect the evidence:

> *'1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:*
>
> *b) Gave Patient A a cake. ~~with a teddy on it~~.'*

Mr Baron, on your behalf, did not oppose this application.

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

The panel considered that the proposed amendment did not alter the substance of the charge and it better reflects the evidence. The panel noted that this application was not opposed and considered that this amendment could be made without any injustice to any party. The panel therefore granted this application and charge 1)b) now reads as follows:

‘1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

b) Gave Patient A a cake.’

Decision and reasons on application to admit hearsay evidence of Mr 2

Mr Edenborough made an application to admit the witness statement and exhibits of Mr 2 into evidence as hearsay. He submitted that the NMC were expecting to call Mr 2 as a witness however, despite its best efforts, the NMC has been unable to locate this witness. Mr Edenborough referred the panel to a number of documents which included information that Mr 2 was no longer employed by the Trust and that after enquiries from the NMC, it was confirmed that *“his departure did not concern allegations of dishonesty and there was nothing… that would affect his credibility as a witness in general."* Mr Edenborough submitted that the NMC instructed a company to trace Mr 2 but this was unsuccessful.

Mr Edenborough submitted that Mr 2 had an investigatory role and produced a report containing a number of appendices which included interview notes and transcripts of calls. He submitted that the material produced by Mr 2 is clearly relevant to the charges and should be admitted as hearsay.

Mr Baron submitted that he had no strong view in respect of this application and that whether this evidence is admitted is a matter for the panel.

The panel heard and accepted the legal assessor’s advice in which he referred the panel to Rule 31 of the Rules and to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin).

The panel had regard to the NMC Guidance on *‘Evidence’* (Reference: DMA-6 Last Updated 30/08/2024), and in particular the section entitled *‘Admissibility of evidence’* and *‘Hearsay’*. The panel noted the following:

'Hearsay evidence is not in-admissible just because it is hearsay in our proceedings. However there may be circumstances in which it would not be fair to admit it, for example where it is the sole and decisive evidence in respect of a serious charge and it isn't 'demonstrably reliable' and not capable of being tested.'

The panel also had regard to the following principles set out in the case of *Thorneycroft*:

1. *Whether the statements were the sole and decisive evidence in support of the charges;*
2. *The nature and extent of the challenge to the contents of the statements;*
3. *Whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
4. *The seriousness of the charge, taking into account the impact which adverse findings might have on the registrant's career;*
5. *Whether there was a good reason for the non-attendance of the witnesses;*
6. *Whether the [the NMC] had taken reasonable steps to secure the attendance of the witness;*
7. *The fact that [the registrant] did not have prior notice that the witness statements were to be read.*

The panel considered that the evidence of Mr 2 was not the sole or decisive evidence in support of the charges. It noted that the evidence produced by Mr 2 was collected as part of a local investigation into the allegations. The panel was of the view that the evidence provided by Mr 2 appeared to be objective, and he was not a direct witness to any of the events that led to the charges. Given the objective nature of his evidence and that it was collected as part of a local investigation, the panel determined that there was no suggestion that Mr 2 had any reason to fabricate his evidence. The panel appreciated that the charges you face are serious, and adverse findings may have a detrimental effect on your career as a registered nurse.

The panel noted that Mr 2 no longer works for the Trust, and that the NMC have instructed a third party to locate him, but these efforts have been unsuccessful. Whilst the panel heard no information from Mr 2 about why he has disengaged with the NMC, it found that the NMC had taken all reasonable steps to secure his attendance in the circumstances. The panel noted that you were made aware of this application and that Mr Baron, on your behalf, did not oppose this application.

The panel determined that the evidence of Mr 2 is clearly relevant as it was collected as part of a local investigation into the allegations made by Patient A. Balancing all of the above factors, the panel decided that it was fair to admit the evidence of Mr 2 as hearsay. Once it has heard all of the evidence in this case, the panel will decide what weight should be attached to it when it carries out its assessment of all of the evidence.

Application for special measures pursuant to Rule 23

After the close of the NMC case, and before calling you to give evidence, Mr Baron made an application for Patient A to be excluded from observing the hearing while you give evidence. He referred the panel to Rule 23(1)(f) and Rule 23(2) of the Rules:

> *'23.(1) In proceedings before the Fitness to Practise Committee, the following may be treated as vulnerable witnesses*
>
> *f) any witness who complains of intimidation.*
>
> *2) After seeking the advice of the legal assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.'*

Mr Baron submitted that you are a vulnerable witness in that you complain of intimidation. He drew the panel's attention to two emails sent by you. Mr Baron submitted that if Patient A is allowed to observe, given your concerns outlined in the emails, their presence would impact on your ability to give best evidence. He submitted

that it is within the panel's powers to make a direction to exclude Patient A from observing the hearing while you give evidence.

Mr Edenborough submitted that you do not fall under the definition of a vulnerable witness and that the assertions of intimidation are generalised, and no specific allegations have been provided. He reminded the panel of the principle of open justice and submitted that ordinary case management provisions can deal with any concerns.

The panel accepted the advice of the legal assessor who referred the panel to Rule 23 of the Rules.

The panel also had regard to the NMC Guidance on *'Supporting people to give evidence in hearings'* (Reference: CMT-12 Last Updated 01/08/2023).

The panel had regard to all of the information before it and to the contextual factors of this case, including Patient A's behaviour during these proceedings. The panel noted that in your emails you state that you feel intimidated by Patient A. Having been advised by the NMC to vacate these proceedings after threats were made by Patient A towards NMC staff and/or to the panel on 4 October 2024, the panel considered that it was more likely than not that your fear of intimidation was well founded. In any event, according to the Rules, the panel noted that for you to be regarded as a vulnerable witness you only have to complain of intimidation, which you have. The panel therefore decided that it was appropriate to adopt special measures to ensure that it receives the best evidence from you. In order to get best evidence from you, the panel decided to allow you to give evidence without Patient A observing either over a video or telephone link and the panel considered that this measure was both reasonable and proportionate.

Background

The charges arose whilst you were employed by Bradford District Care NHS Foundation Trust (the Trust) as a Band 7 Specialist Nurse for Care Leavers. You were employed in this role from 1 June 2015. As part of this role, you worked autonomously and were responsible for planning your own workload, which included undertaking risk

assessments. You had discretion within your role to seek any supervision above the mandatory supervision requirements via your team leader.

Patient A was a child in care whose care had, at the relevant time, been recently transferred to the Leaving Care team of nurses. Patient A had a history of reported involvement in organised crime, a history of suicidal thoughts and had been the victim of sexual exploitation.

Patient A had been under the care of Children in Care Nurses since November 2019. Patient A was transferred to Leaving Care Nurses in June 2021 and to your caseload on 14 July 2021 until September 2021. From October 2021 Patient A was transferred to Colleague A's caseload but you remained involved in his care.

On 8 March 2022, the NMC received a referral from Patient A who alleged that you had breached professional boundaries, failed to report safeguarding incidents and abused your position of trust when you were providing care between July 2021 and March 2022.

Decision and reasons on facts

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

- Patient A: Service user of Looked After Children and Care Leavers.

- Ms 1: Named Nurse for Children in Care, Care Leavers and Youth Justice within Bradford District Care NHS Foundation Trust (the Trust).

The panel also heard evidence from you under affirmation.

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

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

Professional boundaries

In determining the question of whether professional boundaries had been breached, the panel had regard to the Trust's Safeguarding Policy in which it states:

> *'The rapport that staff develop with service users should be on a professional footing. Engaging in enjoyable activities and using humour can be therapeutic but it can be harmful if this progresses into exchange of personal comments or jokes.'*

The panel also had regard to the NMC Guidance on the Standards for competence for registered nurses, in particular, the following:

> *'[All nurses must] use therapeutic principles to engage, maintain and, where appropriate, disengage from professional caring relationships, and must always respect professional boundaries.'*

The panel was also mindful of the *'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)'* (the Code) which sets out that nurses must *'stay objective and have clear professional boundaries at all times with people in [their] care.'*

Charge 1)a)

1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

   a) On one or more occasions gave Patient A greeting cards and/or a gift card and/or cash.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Ms 1 and to your evidence.

The panel had sight of Patient A's witness statement in which they stated the following:

> *'At the Wednesday clinics, Ms East gave me gifts. This included money (I do not recall the exact value but it happened often), Easter themed chocolate (I think this must have been available in the supermarket even though it was not Easter at the time), Amazon gift cards, candles and toiletries sets. The value of the Amazon gift card was always £15, and I received a gift card two or three times…'*

The panel also had regard to Patient A's oral evidence.

In her witness statement to the NMC dated 26 June 2023, Ms 1 stated the following:

> *'Patient A added that professional boundaries had been crossed significantly. This included receiving gifts in the form of case / vouchers or gift cards and other trivial things such as chocolate and candles…*

Patient A raised in their complaint that Ms East had given them gifts. Prior to the Covid Pandemic, the Team would do bake sales to raise money to provide all patients a present around Christmas time. The presents would be given by the whole team, not an individual nurse. The presents would typically be toiletries, hats or gloves, and chocolate selection boxes. Post Covid, this practice stopped. Previously at Christmas time, the wider organisation did a shoebox appeal and the whole cohort of patients the Team saw received a box, rather than individuals. We do not have a policy within the Trust for giving gifts. I have not seen any actual gifts given, however, a picture of a gift tag on a gift bag suggests there were items given to Patient A at Christmas.'

The panel had sight of a number of photographs, which included a Christmas card from you to Patient A, cards that were from Colleague A and you, and an Eid card to Patient A signed *'Nicola'*.

The panel had regard to the written statement of Ms 1 in which she stated the following:

'The card to Patient A for Eid, although purportedly signed by Ms East, does not appear to be from Ms East. I believe the handwriting is not that of Ms East's. I cannot be certain that the card was written by Ms East.'

In your evidence, you told the panel that you accepted that you sent one Christmas card to Patient A. You said that you sent Christmas cards to a number of your patients, and that this was an act of kindness as you knew that some of the patients were likely to be alone over the Christmas period. You said that the Eid card was not sent by you and that the handwriting in this card was not yours. You said that there was another nurse called Nicola but you do not know if it was her who had sent this card. You told the panel that you had not seen the cards that were signed from Colleague A and you and that these had been sent without your knowledge.

In respect of the gifts, you told the panel that funds were often raised to be able to provide gifts to the service users for Christmas and birthdays. You said that following a

corporate donation, there were a number of Costa vouchers left over and the team was told to hand these out to service users. You also informed the panel that there were surplus funds that were used to purchase Amazon gift vouchers and that this was permitted. You said that you did not personally purchase these, but you were aware that your colleagues had. You told the panel that you would never give a patient cash due to the risks that could arise from this.

The panel was not satisfied that there was sufficient evidence to find that you had sent the Eid card and had knowledge of the cards sent by Colleague A. The panel was also not satisfied that the NMC had discharged its evidential burden in establishing that gift cards and/or cash was given by you to Patient A. However, the panel found that there was evidence to support this charge factually, in that you sent a Christmas card to Patient A. Whilst the panel found that you did send Patient A a Christmas card, it was of the view that this was not a breach of professional boundaries as these are often sent by professionals to service users. Accordingly, the panel found this charge not proved.

Charge 1)b)

1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

   b) Gave Patient A a cake.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A, Ms 1 and to your evidence.

In their evidence, Patient A told the panel that they received a birthday cake from Colleague A and you for their 18th birthday.

In your evidence, you told the panel that you bought a cake for Patient A's 18th birthday. You said that you bought a small cake to mark their birthday and that acts of kindness

like this were common in this service where patients were vulnerable and often on their own. You told the panel that you did not purchase the cake with your own money and that the Trust had a fund to use for occasions such as this.

The panel had sight of Colleague A's reflective statement in which she stated the following:

> *'We purchased the cake for Service user A for the occasion of his 18th birthday- when myself and my colleague had planned to meet with [them] at Social Services Central Office. My colleague purchased the cake, with my full approval, from the funds we had leftover from Christmas.(approximate value £2.00).'*

The panel noted that it was not disputed that you bought a birthday cake for Patient A. Having regard to all of the evidence before it, the panel was satisfied that this was accepted practice within the team and provided for by the Trust. The panel therefore found that this was not a breach of professional boundaries and found this charge not proved.

Charge 1)c)

1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

   c) On 17 September 2021 engaged in an inappropriate conversation during a telephone call with Patient A.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A. It also had regard to your evidence.

The panel had sight of a transcript of a call that took place between you, Patient A and Colleague A on 17 September 2021. The panel also heard an audio recording of this call. The panel had particular regard to the following parts of the transcript:

> *'[NE] It's only cos we care about you, we want you do to well so you can look after us when we are old biddies, that's why we do it…*
>
> *…[Patient A][Mr 3] is a nonce and he make me sick thinking about him…*
> *…[Colleague A] Slimeball that is the only way to describe the animals unfortunately…*
>
> *…[Colleague A] He doesn't like me [Mr 2] let me tell you, he knows that I know what he is and I can't be in the same room as him I want to fucking kill him…*
>
> *…[Colleague A] Yeah, well don't ever give me a AK47 trust me there will be nobody left standing up there.'*

The panel also noted that the tone of these conversations was frivolous throughout, with frequent laughter at distasteful and disrespectful comments about colleagues. The panel considered that the tone and nature of the conversation was unprofessional and swear words were used.

In your evidence you told the panel that you have listened to this call and that you are *"mortified"*. You said that you accepted that the telephone conversation was inappropriate and that you were not concentrating on the call throughout as you were working in the background. You told the panel that you were not aware of what an AK47 was at the time of the call.

Whilst the panel accepted that you did not say some of the more serious comments, you were involved and engaged in an inappropriate conversation and did nothing to challenge the extremely inappropriate content. The panel determined that this conversation went beyond building rapport and while there was some reference to Patient A's health, it was not professional. The content of the conversation was personal

and involved inappropriate conversations about colleagues which the panel considered could have been harmful to Patient A. The panel therefore found this charge proved.

Charge 1)d)

1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

   d) Told Patient A to dispose of their prescribed medication without clinical justification.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A and it had regard to Colleague A's evidence.

The panel had sight of Patient A's witness statement to the NMC in which they stated the following:

> *'With regard to conversations about sex, I used to take seritaline, circadin (melatonin) and mirtazapine, and [Colleague A] talked to me about the side effects with regards to my sexual activity, []. I do not believe this conversation was recorded in any of the recordings that have been transcribed, as it must not have recorded, as above. They used to tell me to not take my medication because of the impact on my sexual activity.'*

In your evidence you told the panel that you did not have a conversation about the side effects of Patient A's medication and that you did not know that this was one of them. You told the panel that you would never advise a patient to stop taking prescribed anti-depressant medication and in fact had told Patient A not to do so without consulting their GP first.

The panel had no objective evidence to support Patient A's evidence and they were unable to recall any specific details about this during panel questions. The panel therefore found that the NMC had not discharged its evidential burden and found this charge not proved.

Charge 1)e)

1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

   e) On one or more occasions contacted Patient A by telephone and/or text message outside of working hours without clinical justification.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence including the evidence of Ms 1, Patient A and photographs of call logs and text messages provided by Patient A. The panel also had regard to your evidence.

The panel noted that there was no information about *'working hours'* in your role in the community, and there was no specific guidance that sets out what a clinical justification for contacting a patient outside of working hours could be. The panel had regard to the photographic evidence and concluded that there were no telephone calls or text messages from you to Patient A that could be considered as being outside of working hours. Whilst the panel accepted that a text message sent by you to Patient A on Christmas day did not have any direct clinical justification, this appears to have been done with therapeutic intention and as an act of kindness and, in the panel's view, did not breach professional boundaries. The panel therefore found this charge not proved.

Charge 1)f)

1) Between 13 July 2021 and 4 March 2022 breached professional boundaries in that you:

f) Failed to record significant information disclosed by Patient A in their records.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A, Mr 2 and it had regard to your evidence.

The panel heard audio recordings and saw transcripts of telephone calls between you and Patient A. The panel also had sight of Patient A's medical records.

The panel had regard to Mr 2's witness statement in which he stated the following:

> *'There was an additional concern that arose from the investigation into this concern, in that Ms East had not always maintained accurate records of the communication between Patient A and themselves. It became evident that Ms East had not documented some conversations with Patient A, where she considered what Patient A had said to be untrue, for example, when Patient A had disclosed concerns about corrupt employees. However, it is not for a staff member to determine what is factual in the circumstances and they should keep a record of everything said; this is highlighted in the role profile for Care Leavers Nurses.'*

The panel had sight of the Care Leavers Nurses role profile in which it stated the following:

> *'Input into clinical electronic systems such as SystmOne and RiO as well as ICS (Local Authority and the Leaving Care nursing paper records ensuring than an accurate and contemporaneous record for the young person's journey within the Leaving Care system is maintained and is readily available for reference.'*

The panel had sight of your reflective statement in which you stated the following:

‘I should have spoken to my manager for some advice regarding this and clarified exactly what to document in [Patient A’s] medical records.’

Having regard to all of the above, the panel was of the view that you were under a duty to record significant information disclosed by Patient A in their records. The panel noted that you accepted that you did not record all information disclosed by Patient A as you said that you did not believe some of the information disclosed. The panel considered that you were under a duty to remain objective and in not doing so, you breached professional boundaries. Accordingly, the panel found this charge proved.

Charge 2)

2) On 23 February 2022 provided Patient A with a list of people you wanted to be harmed.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A and to your evidence.

The panel had regard to the witness statement of Patient A in which he stated the following:

‘Ms East gave me a post it note of names of people within the social services team that they said they wanted me to organise have killed. This happened during a clinic appointment at Sir Henry Mitchell House, although I do not recall the date of this incident…’

In Patient A’s evidence, they said that by doing this, it made them feel good as you trusted them. When Patient A was asked about what you had said, they were unable to provide any information about what you had asked them to do with the list of names and that they did not recognise all of them.

In your evidence you told the panel that you were on the telephone to a GP about the care of a close family member. You said that when you were trying to speak with the GP about some important matters, you were interrupted by Patient A who seemed *"giddy"*. You said that Patient A wanted to tell you something and when you finished the call and went into the room, Patient A and Colleague A were laughing. You said that Patient A said that they had been working for the National Crime Agency to identify corrupt staff members. You told the panel that you did not believe Patient A and you tested them by providing a list of random names and asked if they were on their list. You said that you did this to see how they would react, Patient A crumpled up the list and looked angry. You told the panel that there was no intent behind providing a list of names and that you did not believe what Patient A was asserting.

The panel noted that the reasons as to why the list of names was given was conflicting. It considered that there was no direct evidence to support that you gave Patient A a list of names of people whom you wanted to be harmed. Whilst the panel found that it was inappropriate to give a list of names to a patient in this context, it determined that the NMC had not discharged its evidential burden in respect of this charge in establishing your intention. Accordingly, the panel found this charge not proved.

Charge 3)a)

3) On 13 September 2021 in relation to Patient A:

a)Did not escalate to your line manager and/or the safeguarding team that the patient had disclosed that [they were] being contacted by men asking for sex.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A and to your evidence.

The panel had sight of a transcript of a telephone conversation that took place between you and Patient A on 13 September 2021. The panel also listened to the audio recording of this call. The panel noted the following from the transcript:

'[Patient A] This fucking 60 year old man keeps fucking messaging me.

[You] Just ignore 'em,

[Patient A] Hmm well. Fucking [inaudible]

[Patient A] He's put I like young uns. I've heard…

[You] Ewgh dirty bastard.

[Patient A] Right, listen to what he's put. It's fucking. He's a white little baldy yeah he's put [snigger] I've been passed your number. I like young uns. I want. And he's put, I wanna fuck you so hard and I want you to shout fuck me daddy.

[You] Oh my God are these people like morons.

[Patient A] You what?

[You] These people are morons aren't they?
[Patient A] [inaudible]

[You] You've just got to get out of that life [Patient A]. You've got yo get away from that environment.

[Patient A] Then he keeps messaging me. Have not heard from you. Are you looking for fun? And then he's put …

[You] No.

[Patient A] No [sniggering] I didn't reply and then he's put can you suck my dick and sent me a pictures of his knob. I didn't reply. He's put, I mean I can suck you if you want. I didn't reply.

[You] Bloody hell.

[You] Can you not block these people?

[Patient A] [Laughing] I mean am I supposed to block fucking loads. I get fucking hundreds of them messaging me every day.

[You] Right. Can you not just come out of Snapchat shit then?'

In your evidence you told the panel that in August 2021 you had raised concerns of a similar nature to the Leaving Care team leader and to safeguarding. You said that you accepted that you should have reported that Patient A was being contacted by men for sex but that you did not as at the time you felt that it was not a disclosure as you advised Patient A to not use Snapchat.

The panel had sight of the Trusts 'Safeguarding Adults Policy and Procedure' (Issue date 22 July 2020). It noted the definition of an Adult at Risk as follows:

'The adults within the scope of this policy are those aged 18 or above who:

- *Have needs for care and support (whether or not these needs are being met).*
- *Are experiencing, or at risk of, abuse or neglect and*
- *As a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.'*

The panel considered that as a vulnerable patient who had experienced abuse of a sexual nature previously, they fell within the scope of the policy and, having heard that Patient A being contacted by men for sex, you were under a duty to escalate this to your line manager and/or the safeguarding team. The panel found that you failed in your duty and therefore found this charge proved.

Charge 3)b)

3) On 13 September 2021 in relation to Patient A:

b) Did not record the information disclosed as specified in charge 3 a) above, in the patient's notes.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it.

In your evidence you told the panel that you did not regard this as a disclosure and that you felt that it was not necessary to record what Patient A had told you.

The panel had sight of Patient A's notes which contained no record of the information disclosed at charge 3)a). For the reasons set out at charge 1)f), the panel determined that you were under an obligation to record the information disclosed to you by Patient A and you did not. The panel therefore found this charge 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.

Your evidence

You gave evidence under affirmation.

You said that you think it is important that whatever contact you have with patients should remain professional at all times. You said that in the telephone call with Colleague A and Patient A you were doing other things in the background, you were not concentrating and accepted that you should have been fully engaged and listening. You told the panel that you are *"mortified"* [by your behaviour] as a nurse is expected to be professional at all times. You said that this kind of behaviour is not good for the reputation of the profession. You told the panel that you have learned a lot over the past few years and through reflection you are now a very different person and nurse. You said that you would never again do other work in the background when you were on a call with a patient and you would be present.

You accepted that you blurred the boundaries with Patient A. You said that patients and the public put trust and confidence in nurses and if you are not professional then the public may lose confidence in your ability to do that job. You told the panel that you accepted that it is really important to ensure that the way you are coming across is professional and that boundaries are not blurred.

You said that after the charges arose, you returned to work in a quality team as a band 4 in March 2022. You told the panel that as part of this role you worked with nurses, assessing the quality of documentation through audits. You said that this work has allowed you to raise your awareness on the importance of record keeping. You told the panel that having gone through this process you now have a full appreciation for the importance of record keeping and documentation.

You told the panel that you are currently working as a band 5 nurse in a special needs nursing team at a school. You said that you do not stay on telephone calls with patients or family members for longer than needed and if the call diverts from a clinical conversation, you bring it back to health. You also said that you would not engage in an inappropriate conversation again in the future.

You told the panel that since going back to work as a nurse, you have had lots of supervision and three monthly additional supervisions. You said that, whilst at the relevant time you were unsure of what to record in Patient A's notes, if you were faced with a similar situation in the future, you would document everything. You told the panel that you now appreciate that if safeguarding issues arise, then all of the information needs to be included so that when a patient's notes are reviewed, themes and important information can be identified.

In response to questions from Mr Edenborough, you said that if you felt *"out of your depth"* again in the future, you would escalate this and seek further training. You said that if you are not qualified to deal with a patient, you would refer them to someone who is. In respect of your engagement in an inappropriate telephone conversation, you said that you now have more confidence to challenge this behaviour and escalate to a manager. You accepted that public confidence in the profession would be undermined by the blurring of professional boundaries. You told the panel that you accepted that your blurring of professional boundaries with Patient A, who put a lot of trust in you, may have impacted their mental health which you said was *"terrible"* and you did not mean any harm.

You outlined the training courses that you have completed since these charges arose. You told the panel that you have completed training in professional boundaries, understanding trauma and the impact on young people, equality, diversity and inclusion, human rights, neglect, domestic violence and mental health training. You also told the panel that you have kept your nursing knowledge and skills up to date by completing mandatory training. You provided evidence of compliance with supervisions and told the

panel that you have ensured that if you have any concerns, then you raise these with safeguarding immediately.

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.'*

The panel had regard to the terms of the Code in making its decision. Mr Edenborough identified the specific standards that were relevant and where, in his submission, your actions amounted to misconduct.

Mr Edenborough submitted that whilst it is accepted that you did not say some of the more serious comments during the telephone conversation between you, Colleague A and Patient A, you were engaged in the inappropriate conversation and did nothing to challenge the behaviour. Mr Edenborough submitted that your relationship and breach of professional boundaries with Patient A caused a pattern of *"unthinking"* behaviour and fell far below the standards expected. He therefore invited the panel to find that the facts found proved amounted to misconduct.

Mr Baron submitted that there was no issue taken with the breaches of the Code as identified by Mr Edenborough. He reminded the panel that a breach of the Code does not in itself amount to misconduct and that the breach has to be serious to do so. Mr Baron submitted that breaches of the Code can happen unintentionally and *"unthinkingly"*, and with the benefit of hindsight, it can be seen that actions had fallen below the standards expected. If breaches happened without realising at the time, Mr Baron submitted that these breaches are not serious enough to amount to misconduct.

In respect of your engagement in an inappropriate conversation, Mr Baron submitted that you were distracted, and you were not fully aware of the true nature of the conversation until you listened to the audio recording of the call. He submitted that your

breach of professional boundaries was accidental, and that this was done without any intent or malice. Mr Baron submitted that the breach of professional boundaries occurred in a one-off situation and due to difficult circumstances.

Mr Baron submitted that a lot of information was disclosed by Patient A to you and not all of it may not have been medically relevant. He submitted that there are contextual factors in this case, and in particular, that conversations with Patient A strayed into inappropriate topics which made you feel uncomfortable. Mr Baron submitted that the charges related to a single instance of information not being recorded and with the benefit of hindsight, you accept that you should have referred and recorded all disclosures. He submitted that you did try to make some form of professional judgement and you unintentionally missed the mark.

Mr Baron submitted that you acknowledged that you felt as though you were practising slightly beyond your level of competence. He submitted that whilst you have not been charged with this, it is natural at times for any professional to find themselves in a difficult situation where they feel they are working beyond their skillset. Mr Baron submitted that sometimes there is not an instant recognition of limitations and that this does not amount to misconduct.

Submissions on impairment

Mr Edenborough 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.

Mr Edenborough submitted that whilst you have provided evidence of remorse, there is still a risk of repetition of the misconduct and a real risk of harm. He submitted that there was a lack of you taking responsibility at the time and challenging Colleague A. Mr Edenborough submitted that your misconduct needs to be marked, you placed a vulnerable patient at risk of harm by breaching professional boundaries. He submitted

that a finding of impairment should be found on public protection and public interest grounds to maintain and uphold proper professional standards.

Mr Baron referred the panel to a number of documents provided by you, which included testimonials, supervision records, written reflections and evidence of training that you have completed. Mr Baron submitted that you are capable of kind, safe and professional practice and that your fitness to practise is not currently impaired.

Mr Baron submitted that throughout these proceedings, you have come across as passionate and professional. Mr Baron submitted that you have reflected on what went wrong and that you were trying to practice kindly, safely and professionally but that your behaviour in a unique set of circumstances, strayed into unprofessional conduct. He submitted that due to the complexities of the case and difficult interactions, you did not make the right judgement at the time. Mr Baron submitted that even if you found yourself in a similar situation in the future, these proceedings have served as a *"sharp shock"* and you have learned your lesson. He submitted that you have given clear evidence that your past behaviour would not be repeated.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments, which included the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that 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:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

***1.1** treat people with kindness, respect and compassion*

***1.2** make sure you deliver the fundamentals of care effectively*

***1.3** avoid making assumptions and recognise diversity and individual choice*

***1.4** make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

***2.1** work in partnership with people to make sure you deliver care effectively*

***2.6** recognise when people are anxious or in distress and respond compassionately and politely*

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

***3.1** pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages*

3.3 *act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it*

3.4 *act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care*

4 Act in the best interests of people at all times

To achieve this, you must:

4.1 *balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment*

6 Always practise in line with the best available evidence

To achieve this, you must:

6.1 *make sure that any information or advice given is evidence-based including information relating to using any health and care products or services*

8 Work co-operatively

To achieve this, you must:

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

8.6 *share information to identify and reduce risk*

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

> ***10.1*** *complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event*
>
> ***10.2*** *identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

> ***13.1*** *accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*
>
> ***13.2*** *make a timely referral to another practitioner when any action, care or treatment is required*

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

To achieve this, you must:

> ***17.1*** *take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*
>
> ***17.2*** *share information if you believe someone may be at risk of harm, in line with the laws relating to the disclosure of information*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

20.5 *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.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the charges found proved individually, and cumulatively, amounted to serious professional misconduct.

The panel considered that in engaging in a highly inappropriate telephone conversation with a colleague and a vulnerable patient, and your failure to maintain clear professional boundaries with Patient A, were serious departures from the standards expected of a registered nurse. Having listened to the audio recordings the panel was concerned about the tone and nature of the conversations that were on the whole, led by Colleague A. The panel considered that as a registered nurse, you were under a duty to recognise that the conversation was highly inappropriate and potentially damaging to Patient A. The panel was of the view that failing to act in these circumstances was a serious departure from the standards expected amounted to misconduct.

The panel considered that in failing to record significant information disclosed by Patient A as a result of the blurring of professional boundaries and a lack of objectivity was serious, presented risks and amounted to misconduct. The panel also considered that

when Patient A disclosed that they were being contacted by men for sex, you had a duty to escalate and record this. The panel determined that in failing to act, you did not prioritise Patient A, practise effectively, preserve Patient A's safety or promote professionalism and trust. The panel therefore found that your actions fell 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. 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 *Grant* in reaching its decision. In paragraph 74, she said:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not*

only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *...'*

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

The panel considered that in breaching professional boundaries with Patient A, you put them at risk of unwarranted harm. As a result of the breach of professional boundaries, Patient A viewed the relationship as a friendship, rather than a professional relationship.

The panel was of the view that this breach had caused Patient A emotional harm. In being engaged in an inappropriate and unprofessional telephone conversation and not challenging Colleague A's behaviour, the panel found that you placed Patient A at unwarranted risk of harm. The panel determined that you did not act in the best interests of Patient A, and by *"gatekeeping"* information and not by not appropriately referring, you deprived Patient A of specialist support which could have been detrimental to their mental health. Furthermore, your lack of referring and escalating might have caused Patient A to lose confidence in the profession and prevented them from disclosing potentially relevant information about their health and this could have led to harm.

The panel was of the view that in breaching professional boundaries, being involved in a highly inappropriate telephone conversation with a colleague and a vulnerable patient and failing to refer and record significant information, your conduct brought the profession into disrepute. The panel considered that maintaining professional boundaries and prioritising patient care are fundamental tenets of the profession and that your conduct breached these.

The panel went on to consider whether the misconduct in this case is capable of remediation. It had regard to the case of *Cohen* and the NMC Guidance entitled *'Can the concern be addressed?* (Reference FTP-15a Last Updated 27/02/2024), in particular the following:

> *'Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the concerns in the case can be addressed. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious.*
>
> *Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:*
>
> - *…*

- *inappropriate personal or sexual relationships with people receiving care or other vulnerable people or abusing their position as a registered nurse, midwife or nursing associate or other position of power to exploit, coerce or obtain a benefit.'*

Whilst you formed an inappropriate relationship with Patient A and breached professional boundaries, the panel determined that this was not done with the intention to exploit, coerce or obtain a benefit. However, the panel was of the view that breaching professional boundaries is attitudinal in nature and therefore inherently difficult to remediate. The panel considered that the breach of professional boundaries in this case was not at the lower end of the spectrum of seriousness as it involved a vulnerable patient, it occurred over a sustained period of time and caused actual harm. The panel was of the view that given your evidence of some remorse, developing insight and efforts you have made to remediate your practice, a deep seated attitudinal concern is not present. The panel therefore determined that whilst it may be difficult to remediate your practice, it would not be impossible in these circumstances.

In considering whether you have remediated the concerns, the panel had regard to your evidence, written reflections, testimonials, training and supervision records. The panel noted that you are currently working as a band 5 nurse in a special needs nursing team at a school. Whilst the panel acknowledged that there has been no repetition of the conduct found and that you have maintained professional boundaries in your current role, the panel was not satisfied that if faced with a similar set of circumstances in the future, you would act differently. The panel found that you have expressed some remorse for your actions. It considered that your insight at times was self-focussed as you used phrases such as *"what had been done to me"*. The panel was of the view that you did not have sufficient insight into the impact of your actions on Patient A.

In your evidence, you told the panel that your future aspirations are to work towards securing another band 7 role. The panel appreciated that you have made efforts to complete relevant training courses, however, the panel was not satisfied that if working in a pressurised role you would maintain focus and prevent repetition of the conduct found. The panel found that there was a risk of repetition of the conduct and a

consequent risk of harm to patients. 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.

The panel was of the view that a fully informed member of the public would be concerned to hear about a nurse who was complicit in a highly inappropriate, unprofessional and potentially damaging conversation with a vulnerable patient. The panel was also of the view that the public would be concerned to about your breach of professional boundaries with a vulnerable patient and the emotional harm this relationship caused. The panel therefore determined that a finding of impairment on public interest grounds is required to uphold proper professional standards and maintain confidence in the profession and its regulator.

Having regard to all of the above and to the question of whether you are currently able to practise kindly safely and professionally, the panel determined that your fitness to practise is currently impaired on both public protection and public interest grounds.

Application for an amendment

After the panel handed down its decision on misconduct and impairment, Mr Edenborough made an application to amend some information contained within the determination on the Rule 23 application. He submitted that a potential inaccuracy was brought to his attention by Patient A in relation to the following sentence:

> *'Having been advised by the NMC to vacate these proceedings after threats were made by Patient A towards NMC staff and/or to the panel on 4 October 2024, the panel considered that it was more likely than not that your fear of intimidation was well founded.'*

Mr Edenborough referred the panel to the chronology of events that occurred on 4 October 2024 which he had set out in an email:

1. *There was concern in light of the frustration of Patient A as reported by email from [PSS] to others including [Hearings Coordinator], at 11:20 and 11:33 on 4 October 2024*

2. *Those emails did not include any specific threat of violence but did include reference to 'derogatory' things being said by Patient A about the Hearings Co-ordinator, and that was sufficient for a Manager within the Hearings Team to request the hearing adjourn as a precautionary measure.*

3. *It subsequently became apparent that Patient A had said to [PSS] words to the effect that he 'felt like getting a taxi to the hearing venue and punching someone'.*

4. *There was no explicit threat to an individual member of staff reported to the Panel.*

Mr Edenborough submitted that Patient A had not made an explicit threat to a member of NMC staff or to the panel explicitly and made an application for this part of the determination to be amended.

Mr Baron made no observations in respect of this application.

The panel accepted the advice of the legal assessor.

The panel had sight of the emails sent by PSS on 4 October 2024 and considered that having raised that Patient A was angry and directed derogatory comments towards the Hearings Coordinator, there were safeguarding issues. The panel considered that whilst Patient A may not have explicitly named who they felt like punching, it was clear that it was directed at someone who would have been involved in the hearing at the venue,

which would have been a member of NMC staff or the panel. The panel therefore determined that the following information was factually correct:

> *'Having been advised by the NMC to vacate these proceedings after threats were made by Patient A towards NMC staff and/or to the panel on 4 October 2024, the panel considered that it was more likely than not that your fear of intimidation was well founded.'*

Having found that the above sentence is factually correct, the panel rejected Mr Edenborough's application.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that your entry on the NMC register (the Register) will show that you are subject to a conditions of practice 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

Mr Edenborough submitted that the NMC sanction bid is that of a 12 month suspension order. He referred the panel to Patient A's *'Witness Impact Statement'* and invited the panel to take into account the impact that your misconduct had on Patient A. Mr Edenborough submitted that the misconduct found proved in this case is serious, relating to a breach of professional boundaries and a failure to escalate. He submitted that a suspension order is the most appropriate and proportionate order and nothing less would protect the public or meet the public interest considerations of this case.

Mr Baron submitted that a suspension order would be wholly disproportionate in the circumstances and go further than needed to achieve the overarching objectives. Mr Baron addressed the panel on what, in his submission, were mitigating features of this case. He submitted that you have been subject to an interim conditions of practice order which you have complied with. Mr Baron submitted that you have worked without incident for 20 years and that this was the first instance of misconduct which occurred in a unique set of circumstances. Mr Baron submitted that the imposition of a conditions of practice order would strike the right balance, give you the opportunity to improve your practice, and not be *"overly draconian"* in the circumstances.

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:

- Your breach of professional boundaries with Patient A, who was a particularly vulnerable patient, caused actual emotional harm.
- Your failure to challenge inappropriate behaviour and to escalate a potential safeguarding issue placed Patient A at a risk of harm.
- Whilst your misconduct arose in relation to one patient, it arose on more than one occasion in relation to Patient A.

The panel also took into account the following mitigating features:

- You have expressed remorse and demonstrated some insight into your misconduct.

- You made some early admissions during the local investigation and made efforts to strengthen your practice.
- You have been working as a registered nurse since the charges arose and there is evidence in the form of testimonials that you have followed principles of good practice. You have also kept up to date with your area of practice.

The panel noted that you gave evidence that at the relevant time you were under significant pressure with a high case load and dealing with particularly stressful matters arising from another patient. The panel also heard evidence from you that you were dealing with some difficult personal circumstances. Whilst the panel acknowledged your evidence, it had no objective evidence to support these factors.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. The panel decided that it would also 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 protect the public and would also 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 issues identified. 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 mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *…*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that there is no evidence of harmful deep-seated personality or attitudinal problems. Whilst it found that your insight is not currently sufficient, it considered that you have taken positive steps in an attempt to address the concerns. The panel was of the view that there are identifiable areas of your practice in need of retraining, namely professional boundaries, record keeping and escalation. The panel found no evidence of general incompetence, it had sight of positive testimonials from your current employer who speak highly of your nursing skills and have no concerns about your competence. The panel noted that you have been complying with an interim conditions of practice order and Mr Baron, on your behalf, submitted that you would be willing to comply with a substantive conditions of practice order. The panel considered that patient safety can be maintained with the imposition of a conditions of practice order. The panel also considered that conditions can be created that can be monitored and assessed.

These incidents arose in relation to one patient and happened over two years ago, the panel had no evidence of this behaviour being repeated since and there was no history of similar incidents occurring in your career spanning approximately 20 years. The panel had sight of positive testimonials which attest to your professional conduct which was described as *'exemplary'*. The panel also had regard to the following set out in a testimonial dated 8 August 2024 from a Senior Nurse with whom you currently work:

‘From working with Nicola, I can see how committed she is, she works with competence and passion it would be a great loss to Nursing if Nicola was unable to practice. It has been a pleasure to work with such an experienced nurse, sharing our mutual dedication to the profession following our NMC code. I believe from having worked with Nicola and seeing how competent she is that she is fit to work within practice with no restrictions.

I can’t thank Nicola enough for her enthusiasm, kindness and positive attitude. At times our job can be challenging, yet I know that regardless of the situation I can turn to Nicola for support and advice, and she is always committed to pick up additional work to ensure or service need is covered whilst also maintaining transparency around her own capacity to ensure safe practice.’

Having regard to all of the above and applying the principle of proportionality, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order. The panel determined that a conditions of practice order would protect the public. The panel determined that a conditions of practice order would mark the public interest in this case and maintain proper professional standards and uphold confidence in the profession and the NMC as its regulator. The panel was also of the view that it was in the public interest that, with appropriate safeguards, you should be able to practise as a nurse.

The panel acknowledged that the NMC sanction bid was that of a suspension order. It was of the view that imposing a sanction that is more restrictive than a conditions of practice order would go further than is needed to meet the overarching objective of public protection, and it would be wholly disproportionate in the circumstances for the reasons set out above.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

1. You must ensure that you are supervised at any time that you are working. This supervision must consist of:
    - Working at all times on the same shift as, but not always directly observed by, a registered nurse of Band 6 or above.
    - Weekly meetings to discuss your clinical caseload and your adherence to professional boundaries.

2. You must keep a reflective practice profile. Your profile will:
    - Set out how you are maintaining professional boundaries and managing your case load.
    - Include specific examples of how you have maintained professional boundaries.
    - Contain feedback from your line manager mentor or supervisor on how you have achieved these objectives.

    You must send a copy of your reflective practice profile to your NMC case officer every three months.

3. You must keep your NMC case officer informed about anywhere you are working by:
    a) Telling your case officer within seven days of accepting or leaving any employment.
    b) Giving your case officer your employer's contact details.

4. You must keep your NMC case officer informed about anywhere you are studying by:

a) Telling your case officer within seven days of accepting any course of study.
b) Giving your case officer the name and contact details of the organisation offering that course of study.

5. You must immediately give a copy of these conditions to:
   a) Any organisation or person you work for.
   b) Any agency you apply to or are registered with for work.
   c) Any employers you apply to for work (at the time of application).
   d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

6. You must tell your NMC case officer, within seven days of your becoming aware of:
   a) Any clinical incident you are involved in.
   b) Any investigation started against you.
   c) Any disciplinary proceedings taken against you.

7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

   a) Any current or future employer.
   b) Any educational establishment.
   c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 12 months. The panel considered that this will allow you sufficient time to address the concerns in your practice whilst protecting the public, as well as marking the public interest in this case.

Before the order expires, a panel will hold a review hearing to consider your compliance with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Interim order

As the conditions of practice 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 conditions of practice order takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Edenborough who invited the panel to impose an interim conditions of practice order to cover the appeal period. He submitted that this was necessary for the protection of the public and otherwise in the public interest as highlighted by the panel in its determination.

Mr Baron, on your behalf, did not object to this application.

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, the public protection issues and public interest considerations, 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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those set out in the substantive order for a period of 18 months.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice 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.