Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Meeting
Thursday 30 January 2025 – Friday 31 January 2025

Virtual Meeting

Name of Registrant:	**Mr Bernard Kidiavai**
NMC PIN	21B1329E
Part(s) of the register:	Registered Nurse - Mental Health RNMH April 2021
Relevant Location:	Lancashire
Type of case:	Misconduct
Panel members:	Dave Lancaster (Chair, lay member) Dorothy Keates (Registrant member) Laura Wallbank (Registrant member)
Legal Assessor:	John Moir
Hearings Coordinator:	Emma Norbury-Perrott
Facts proved:	All charges found proved
Fitness to practise:	Impaired
Sanction:	**Conditions of practice order (12 months)**
Interim order:	**Interim conditions of practice order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Kadiavai's registered email address by secure email on 16 December 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and that the meeting was to be heard virtually.

In the light of all of the information available, the panel was satisfied that Mr Kadiavai has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Kidiavai had previously indicated to the NMC that he was happy to proceed with a meeting, rather than a hearing.

Details of charge

That you, a registered nurse:

1) In relation to Service User A:

    a) On 2 January 2023 gave her £10 when aware of her substance abuse issues.

    b) On unknown dates communicated with her using your personal mobile phone.

2) Your conduct at any or all of charge 1 breached professional boundaries with Service User A.

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

Background

On 12 January 2023, the NMC received a referral from the Lancashire Care NHS Foundation Trust ("the Trust"). The concerns in this case related to Mr Kidiavai's breach of professional boundaries with Service User A.

Mr Kidiavai previously worked with Service User A as their support worker, and Mr Kidiavai was aware that Service User A had a variety of serious vulnerabilities including complex mental health, alcohol/substance misuse, and ADHD.

On 2 January 2023, Mr Kidiavai gave Service User A £10 when he was fully aware of their drug/alcohol abuse issues. Mr Kidiavai also contacted Service User A using their personal mobile phone on multiple occasions.

Decision and reasons on facts

The panel had sight of Mr Kidiavai's completed Case Management Form (CMF). Mr Kidiavai's made full admissions to all charges.

The panel therefore finds all charges proved in their entirety, by way of Mr Kidiavai's admissions.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Consultant Nurse at the Trust
- Witness 2: Mental Health Nurse at the Trust
- Witness 2: Team leader at [PRIVATE]

The panel also had regard to two reflective pieces and the completed CMF from Mr Kadiavai.

Fitness to practise

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

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the case of *Roylance v GMC (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 NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards

of practice and behaviour for nurses and midwives (2015' ("the Code") in making its decision.

The NMC identified the specific, relevant standards where Mr Kadiavai's actions amounted to misconduct in its statement of case;

> ***"Misconduct***
>
> *9. The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:*
>
> *'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.*
>
> *10.As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively '[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*
>
> *And*
>
> *'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.*
>
> *11.Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.*

12.We consider the following provision(s) of the Code have been breached in this case:

1 Treat people as individuals and uphold their dignity
To achieve this, you must:

1.2 Make sure you deliver the fundamentals of care effectively

4 Act in the best interests of people at all times

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

20.5 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

13.We consider the misconduct serious because breaches of professional boundaries with service users, particularly those with complex health need such as Service User A, has the potential to cause serious harm. The actions of Mr Kidiavai are a serious departure from the standards expected of a registered nurse and if repeated would put patients at risk of harm."

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mr Kadiavai's fitness to practise impaired;

> *"**Impairment***
> *14.The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. 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?"*
>
> *15.If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.*
>
> *16.Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.*
>
> *17.When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:*
>
> *a. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*

b. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or

c. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or

d. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.

18.It is the submission of the NMC that a, b and c can be answered in the affirmative in this case.

19.Mr Kidiavai's actions in breach professional boundaries put an individual receiving care at unwarranted risk of harm. This particular Service User under Mr Kidiavai's care was vulnerable and [PRIVATE]. By giving the Service User money and communicating with them on their personal phone, Mr Kidiavai's compromised Service User A's safety and had the potential to cause serious harm to this service user.

20.Mr Kidiavai's actions had in the past and is liable in the future to bring the profession into disrepute. Such conduct could seriously damage the profession.

21.The nursing profession is a caring profession. Mr Kidiavai has breached individual provisions of the Code which constitute the fundamental tenets of the nursing profession, namely practising effectively and preserving safety. The conduct involved engaged and breached the above provisions.

22.Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v

General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

23.We consider that Mr Kidiavai has displayed some insight in that he accepted the regulatory concerns and provided some evidence that he has reflected. In the reflective account provided by Mr Kidiavai he recognised that he did not set clear professional boundaries. However, the insight provided could be categorised as not fully developed as he appears to have limited understanding of the potential impact of his actions on Service User A. Therefore, the NMC considers the insight is developing.

24.Whilst Mr Kidiavai has undergone some relevant training, in that he has provided evidence of having undertaken online courses on safeguarding children and adults, there is no evidence of Mr Kidiavai having undertaken training on maintaining appropriate professional boundaries.

25.We note the registrant has not worked since the issues of concern and has not yet been able to address the deficiencies in their practice.

26.We consider that there is a continuing risk to the public due to Mr Kidiavai's conduct. A finding of impairment is therefore required for the protection of the public.

Public interest

27.In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:

"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."

28.Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/ or to maintain public confidence in the profession.

29.In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.

30.However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.

31.We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Mr Kidiavai's conduct in breaching professional boundaries calls into question their ability to preserve safety for those in their care.

32.Registered professionals occupy a position of trust and must therefore act with integrity and promote a high standard of care at all times. Mr Kidiavai's failure to do so has brought the profession into

disrepute and is likely to bring the profession into disrepute in the future.

33.We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. Mr Kidiavai's misconduct engages the public interest because members of the public would be concerned to hear of a nurse failing to maintain professional boundaries with a particularly vulnerable service user. Such conduct would severely damage and undermine public confidence in the nursing profession and the NMC, as the regulator."

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, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

The panel noted that the material before it contained multiple references to very serious concerns in relation to Mr Kidiavai's conduct which had not been charged and ought not to have been before it. Nevertheless, as an experienced professional panel, it put those additional serious concerns to one side and restricted its consideration to the conduct charged and admitted by Mr Kidiavai.

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

The panel was of the view that Mr Kadiavai's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Kadiavai's actions amounted to breaches of the Code. Specifically:

"1 Treat people as individuals and uphold their dignity
To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

3 Make sure that people's physical, social and psychological needs are assessed and responded to
To achieve this, you must:

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

4 Act in the best interests of people at all times

13 Recognise and work within the limits of your competence
To achieve this, you must, as appropriate:

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

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

20 Uphold the reputation of your profession at all times
To achieve this, you must*:*

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

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

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

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

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

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

When considering misconduct, the panel had sight of the guidance FtP-12 Taking account of context;

"When we look at concerns that have arisen in somebody's practice we need to ask:

- *Is there evidence of a serious concern that requires us to take regulatory action to protect the public?*
- *If so, why did this happen and do we think it could happen again?*
- *If so, what action do we need to take to protect the public?"*

The panel determined that Mr Kidiavai's actions were a serious breach of professional boundaries and noted that in his previous career as a carer, Mr Kidiavai stated it was '*the norm'* to use personal phones to contact Service Users. However, the panel was of the view that as Mr Kidiavai's career progressed towards becoming a registered mental health nurse, there would have been an abundance of training and learning undertaken by Mr Kidiavai on maintaining professional boundaries, and this should have corrected his previous practice in terms of using his personal phone to contact patients. This enhanced knowledge and training should have also given Mr Kidiavai a deep understanding of the appropriate escalation pathways for vulnerable service user's needs. Alerting and involving relevant multidisciplinary teams, who are appropriately equipped to assess needs of Service Users and intervene appropriately and safely, should be a fundamental understanding of a mental health nurse.

The panel found that Mr Kadiavai's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their

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

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

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:*
>
> 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 determined that limbs a), b) and c) are engaged in this case.

The panel finds that Service User A was put at risk and was caused mental and emotional harm as a result of Mr Kadiavai's misconduct. Mr Kadiavai's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to breaching professional boundaries very serious.

The panel noted that Mr Kadiavai made full admissions to the charges and provided evidence for the panel to consider in the form of a reflective piece, training certificates, and testimonials.

The panel had sight of Mr Kidiavai's reflective piece. The panel determined that Mr Kidiavai has reflected and demonstrated an understanding of how his conduct was inappropriate, and how he would choose to maintain appropriate professional boundaries in future clinical practice. In his reflective piece, Mr Kidiavai stated;

"…
I understand that breaching professional boundaries is a serious violation and cannot be overlooked. This process forced me to take a hard look at my behaviour and my understanding of professional boundaries.
…
This experience has made me realise the deep importance of maintaining professional boundaries at all times.
…
This experience has been a painful but transformative one. It forced me to confront the importance of ethical practice, self-reflection, and emotional regulation. The mental toll it took on me was significant, and [PRIVATE] in order to perform my duties competently. I have

learned that professional boundaries are not just guidelines but essential components of patient safety and trust."

In a second reflective piece, which is undated, Mr Kidiavai stated;

> *"Moving forward, I will adhere strictly to professional guidelines and the NMC code regarding boundaries. If a patient is in financial need, I will refer them to appropriate social services or community resources rather than offering personal financial help. I will also ensure that all communication is conducted through secure, professional means, such as the work phone or email. Additionally, I will seek supervision or guidance from colleagues when I feel uncertain about how to support a patient without crossing boundaries. Finally, I plan to engage in further training on boundary management to strengthen my understanding of maintaining professionalism in all interactions."*

The panel noted Mr Kadiavai has reflected on his actions, but has not fully reflected specifically on how his actions negatively impacted Service User A, his colleagues, or the nursing profession as a whole. The panel noted Mr Kidiavai's statement relating to making an apology to those affected by his actions;

> *"I have not had an opportunity to apologise to service user A or the unit that supports the service user, as this would have been deemed as interfering with the ongoing investigation. However, I do remain remorseful of my actions and given an opportunity I would personally apologise to the victim."*

The panel noted that although Mr Kidiavai references Service User A, and his colleagues, he does not show insight into how his actions directly affected them in a negative way. Therefore, the panel determined that Mr Kidiavai's insight has progressed but is still developing.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Kadiavai has taken steps to strengthen his practice. The panel took into account the additional, relevant training Mr Kadiavai has undertaken and the undated reflective pieces written by Mr Kadiavai addressing the concerns.

However, the panel is of the view that there is a risk of repetition based on the fact that Mr Kidiavai's strengthening of practice and deepened knowledge is yet to be tested in the clinical setting. A recent testimonial provided by Mr Kidiavai's manager, dated 14 November 2024, stated;

> *"I am pleased to inform you that we have received commendable feedback from [PRIVATE] regarding Bernard's performance during his tenure with us"*

The panel determined that although this is a positive statement regarding Mr Kidiavai's employment as a senior healthcare support worker, it does not speak specifically to the concerns related to the charges which relate to professional boundaries, and he has not worked in a registered Nurse capacity for some time. Mr Kidiavai is yet to demonstrate, and put into practice, the theory which he has learned through his endeavours to strengthen his practice. Despite the progress Mr Kidiava has shown, the panel was not yet satisfied that it could conclude that the misconduct was highly unlikely to be repeated.

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 general public expects nurses to behave with integrity, honesty and respect. An informed member of the public would be seriously concerned about Mr Kidiavai's misconduct. Public confidence in the profession, and also the confidence of colleagues, would be undermined if a finding of impairment were not made. The panel therefore finds Mr Kidiavai's fitness to practice also to be impaired on public interest grounds.

Having regard to all of the above, the panel was satisfied that Mr Kadiavai's fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months. The effect of this order is that Mr Kadiavai's name on the NMC register will show that he is subject to a conditions of practice order and anyone who enquires about his registration will be informed of this order.

Representations on sanction

The panel noted that in the Notice of Meeting, dated 16 December 2024, the NMC had advised Mr Kadiavai that it would seek the imposition of a suspension order if it found Mr Kadiavai's fitness to practise currently impaired.

The NMC submitted in its statement of case;

> *"We consider the following sanction is proportionate:*
> *Suspension order for a period of 12 months with a review.*
>
> *35.The aggravating factors in this case include:*
> *• [PRIVATE] that went on for a long period of time.*
> *• Mr Kidiavai was in a position of trust with knowledge of Service User A's complex history [PRIVATE].*
> *• Lack of full insight*

36.The mitigating factors in this case include:

• Admission to the charges.

• Engagement with proceedings.

• Demonstration of some insight and remediation

37.Taking no further action or imposing a caution order would be wholly disproportionate in this case and would not be sufficient to mitigate the risks in this case. It would not be adequate to protect the public or satisfy the public interest in such a case. The NMC Sanctions Guidance at SAN 3a and SAN 3b states in the former that although the Fitness to Practise Committed does have a discretion to take no further action, this would only be used in rare cases and would not be appropriate if there remained a risk of repetition or harm to patients. In the latter, such an order would only be appropriate if there was no risk to patients or the public and would be in appropriate in this case because it would not sufficiently protect the public nor mark the seriousness of the conduct and would be insufficient to maintain the high standards of the profession.

38.This case involved [PRIVATE] service user and failure to raise the contact to the appropriate individuals when the service user reached out. Mr Kidiavai accepts that he should not have used his personal mobile phone and demonstrates a willing to retrain. A breach of professional boundaries with service users, regardless of the nature of the relationship is serious and raises significant concerns. There are no conditions which can adequately address these concerns It would therefore not be appropriate in these circumstances to impose conditions as they would not adequately protect the public or satisfy the public interest in this case.

39.The NMC considers that a suspension order would be sufficient to protect the public and satisfy the public interest.

40.With regard to our sanctions guidance (SAN-3d) the following aspects have led us to this conclusion:
• the seriousness of the case requires temporary removal from the register

41.The checklist within the sanction's guidance on if a suspension order is appropriate will be considered. Whilst the misconduct went on for a duration of time it relates to a single instance of failing to keep professional boundaries and a less sanction would not be sufficient. The Registrant has provided some insight and is engaging and there is no evidence of harmful deep-seated personality or attitudinal problem. Given the reflection provided the committee may be satisfied that there is insight and no significant risk of repetition.

42.The NMC considered whether a striking-off order (SAN-3e) would be appropriate in this case. Whilst Mr Kidiavai's breaches are serious, given their admissions and developing insight, there is a lesser sanction which can protect the public and maintain public confidence in the profession. Permanent removal from the register would be disproportionate at this stage as there is a lesser sanction that can adequately protect the public and satisfy the public interest.

43.A 12-month suspension order with a review would be sufficient to protect the public and maintain public confidence in the professions. It would also provide Mr Kidiavai the opportunity to continue to develop reflection and provide any steps taken by them to a future reviewing panel. Temporary removal from the register is required to uphold nursing standards and maintain confidence in the professions."

The panel had sight of the registrant's response which indicated that he did not feel he was impaired;

"it's my hope that the panel will make a decision with sanctions that are proportional and will enable me to continue practicing as a registered mental health nurse"

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Abuse of a position of trust with previous knowledge of Service User A's vulnerabilities
- Put Service User A at a direct risk of harm

The panel also took into account the following mitigating features:

- Admission to charges
- Engagement with proceedings
- Evidence of theoretical remediation and insight
- [PRIVATE]

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.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Kadiavai's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel considered that a caution order would be inappropriate in view of the fact that although Mr Kidiavai has undertaken training and reflection relevant to the charges, he has not yet demonstrated that he can effectively apply this theoretical learning and strengthening of practice in a clinical nursing capacity. The panel decided that it would be neither proportionate nor in the public interest to impose an order that did not restrict his practice whilst this application of learning proceeded and therefore felt that a caution order was not appropriate at this time.

The panel next considered whether placing conditions of practice on Mr Kadiavai's 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;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *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 it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel noted that Mr Kadiavai has demonstrated theoretical learning and strengthening of practice, and is developing insight, but has not yet had the opportunity to demonstrate that he has embedded this new learning and knowledge into his clinical nursing practice.

The panel was of the view that it was in the public interest that, with appropriate safeguards, Mr Kadiavai should be able to return to practise as a nurse.

Therefore, the panel determined that appropriate conditions of practice would be the least restrictive and proportionate sanction which will protect the public and also meet the public interest in this case.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of this case. Mr Kidiavai has engaged with proceedings, admitted to the charges, completed relevant and specific professional learning which addresses the concerns, and has demonstrated developing insight. When considering all of the factors, the panel was of the view that it would be punitive to prevent Mr Kidiavai from having the opportunity to demonstrate that he can practise kindly, safely and professionally.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

In making this decision, the panel carefully considered the submissions of the NMC, set out in the statement of case, in relation to the sanction that the NMC was seeking. However, the panel considered that a suspension order would be punitive in Mr Kidiavai's case, and this would be disproportionate in light of its findings.

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. While working as a nurse you must limit your nursing practice to:
   a) One substantive employer

2. You must keep a reflective diary which evidences how you have maintained professional boundaries and demonstrated how you have put your theoretical learning into practice.

3. You must have monthly supervision with a clinical supervisor (band 6 or above) discussing aspects from your reflective diary which relates to how you maintain professional boundaries which is documented and signed off by your supervisor.

4. You must keep us 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.

5. You must keep us 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.

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

7. You must tell your 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.

8. 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.

Before the end of the period of the order, a panel will hold a review hearing to see how well Mr Kadiavai has complied 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.

The panel noted that Mr Kidiavai can request an early review if he is able to demonstrate his achievement of the conditions as a clinical nurse, before the expiry of the order.

Any future panel reviewing this case would be assisted by:

- Reflective account demonstrating how you have applied your learning regarding professional boundaries to any role in a care setting
- Testimonials from current employers which specifically speaks to how you manage and maintain professional boundaries
- Continued engagement with NMC proceedings
- Attendance at future reviews

This will be confirmed to Mr Kadiavai in writing.

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 Mr Kadiavai's own interests until the conditions of practice sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC in its statement of case;

> *"44.In the event that a sanction resulting in the restriction of the Registrant's practice is imposed, it is also necessary for the protection of the public and otherwise in the public interest for there to be an interim order on the same terms as the substantive order for a period of 18 months to cover any potential appeal period."*

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that 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 detailed in the substantive order for a period of 18 months, to allow for the possibility of an appeal to be made and determined.

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 Mr Kadiavai is sent the decision of this hearing in writing.

That concludes this determination.