

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

**Substantive Hearing
19 February 2024 – 23 February 2024**

Virtual Hearing

Name of Registrant:	Ms Karen Louise Vergen	
NMC PIN	17A0164E	
Part of the register:	Registered Nurse Adult – February 2017	
Relevant Location:	East Sussex	
Type of case:	Misconduct	
Panel members:	Anthony Griffin	(Chair, Lay member)
	Alison Thomson	(Registrant member)
	Derek McFaull	(Lay member)
Legal Assessor:	Paul Housego	
Hearings Coordinator:	Leigham Malcolm	
Nursing and Midwifery Council:	Represented by Ms Hena Patel, NMC Case Presenter	
Ms Vergen:	Not present and not represented in absence	
Facts proved:	Charges 1a, 1b, 1c, 1d, 1e & 2 (not in relation to Charge 1a)	
Facts not proved:	Charge 3	
Fitness to practise:	Currently impaired	
Sanction:	Suspension Order (six months)	
Interim order:	Interim Suspension Order (18 months)	

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Vergen was not in attendance and that the Notice of Hearing letter had been sent to her registered email address by secure email on 17 January 2024. Further, the panel noted that the Notice of Hearing was also sent to Ms Vergen's representative at the Royal College of Nursing on 17 January 2024.

Ms Patel, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel considered that the Notice of Hearing provided details of the allegations along with the date, time and details of the virtual hearing. Amongst other things, the Notice of Hearing included information about Ms Vergen's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Ms Vergen had been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Ms Vergen

The panel next considered whether it should proceed in the absence of Ms Vergen. It had regard to Rule 21 and the submissions of Ms Patel.

Ms Patel referred the panel to an email dated 10 February 2024 from Ms Vergen's representative. The email did not mention whether Ms Vergen's representative planned to

attend the hearing, however, it did state clearly that Ms Vergen would not be attending. Ms Patel informed the panel that the Hearings Coordinator had also made unsuccessful efforts to gain clarification from the representative via email and over the telephone.

Ms Patel informed the panel that there had been no request for an adjournment made by Ms Vergen or her representative nor was there any information to suggest that an adjournment would result in their attendance in the future. Furthermore, two witnesses had been organised to attend and give oral evidence and adjourning the hearing would be disruptive to them.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*'.

The panel has decided to proceed in the absence of Ms Vergen. In reaching this decision, the panel has considered the submissions of Ms Patel and the advice of the legal assessor. It had regard to the factors set out in the decision of *R v Jones [2002] UKHL 5* and *General Medical Council v Adeogba [2016] EWCA Civ 162* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Vergen,
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have been organised to give oral evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, and the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong public interest in the expeditious disposal of the case.

The panel bore in mind that Ms Vergen will not be able to challenge the evidence in person which the NMC seeks to rely upon. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies.

In these circumstances, the panel decided that it is fair to proceed in the absence of Ms Vergen.

Details of charge

That you a registered nurse:

1. *Between July 2021 and August 2021;*
 - a. *Took Patient A's personal contact details.*
 - b. *Initiated contact with Patient A without clinical justification.*
 - c. *Maintained contact with Patient A without clinical justification.*
 - d. *Met with Patient A on one or more occasion without clinical justification.*
 - e. *Allowed Patient A to kiss you.*
2. *Your actions at any or all of the charges above were inappropriate in that you failed to maintain professional boundaries.*

3. *Your actions at any or all of the charges above were sexually motivated in that you intended to pursue an intimate relationship with Patient A.*

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

Background

On 31 December 2021, the NMC received a referral from Practice Plus Group (PPG) regarding one of their employees, Ms Vergen.

Ms Vergen was employed as the Primary Care Lead at HMP Lewes, a category B local remand prison ('the Prison'). Patient A was treated by Ms Vergen between 16 May and 20 June 2021 for various reasons including his high blood pressure. Patient A was released on 5 July 2021.

On 31 August 2021 Ms Vergen visited Ms 1, the Head of Healthcare, and disclosed that she had become 'friendly' with a former healthcare orderly prisoner, Patient A. Ms Vergen shared details of the relationship, including meeting Patient A on one occasion subsequent to his release, and several text messages between him and her with Ms 1.

Ms 1 escalated her concerns about to the Deputy Governor and also decided that there should be an investigation into the matter. She subsequently produced the terms of reference and passed them to HR, who appointed Mr 2, Head of Healthcare at HMP Wayland, to produce an investigation report. Mr 2 interviewed Ms Vergen on 23 September 2021.

On 6 October 2021, Mr 2 produced an investigation report. He recommended that the matter be referred to a formal disciplinary hearing, which was scheduled for 15 October

2021. However, Ms Vergen resigned from her employment with PPG on 14 October 2021 before the hearing took place.

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 Ms Patel on behalf of the NMC.

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 two witnesses called on behalf of the NMC:

- Ms 1, Head of Healthcare at HMP Lewes, at the time of the alleged incidents;
- Mr 2, Head of Healthcare at HMP Wayland and Norfolk, at the time of the alleged incidents.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC as well as Ms Vergen's written responses to the allegations dated 10 and 18 January 2022.

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

Charge 1a

1. *Between July 2021 and August 2021;*

a. *Took Patient A's personal contact details.*

Charge 1a is found proved.

In reaching this decision, the panel considered all of the information before it, in particular the witness statements and oral evidence of Ms 1 and Mr 2 as well as Mr 2's investigation report dated 16 October 2021 and his meeting notes dated 23 September 2021.

Ms 1's witness statement set out:

"Ms Vergen told me that she discovered during treating Patient A and his day to day activities [sic] as the healthcare orderly, that they both had a lot in common and they exchanged email addresses on the day of his release on 5 July 2021..."

Mr 2's witness statement set out:

"Ms Vergen admitted that she had contact with him as she had swapped email addresses with Patient A when he was released..."

The interview notes dated 23 September 2021 set out that Patient A gave his email address to Ms Vergen and she accepted it:

"[Patient A] gave his email address for Karen to contact him on release..."

Ms 1, in her oral evidence, told the panel that Ms Vergen had disclosed to her that there had been an exchange of contact details. The panel however considered it unclear from the evidence available whether Ms Vergen and Patient A exchanged email addresses or whether Patient A gave his email address to Ms Vergen and she accepted it out of politeness. In any event, the panel was satisfied by the evidence before it that regardless

of her intention in that moment, Ms Vergen did take Patient A's email address, which was a personal contact detail, as set out in the charge.

Charge 1b

1. *Between July 2021 and August 2021;*
- b. *Initiated contact with Patient A without clinical justification.*

Charge 1b is found proved.

Mr 2's investigation report dated 16 October 2021 records Ms Vergen as having admitted to initiating contact with Patient A soon after his release from HMP Lewes:

"KV initiated contact with soon after his release in July; this was to see how he was, as he had a bracelet (a tag). emailed KV a picture of his bracelet."

The interview notes dated 23 September 2021 set out that Ms Vergen emailed Patient A subsequent to his release from HMP Lewes:

"soon after his release KV emailed him to see how he was saying how his bracelet was meaning the tag"

There were multiple sources of evidence before the panel that Ms Vergen had initiated contact with Patient A subsequent to his release from HMP Lewes. The panel considered that the timing of her contact, being subsequent to Patient A's release, suggested that there could not have been any clinical justification. Further, it is recorded that Ms Vergen's intention was to 'see how he was as he had a bracelet (a tag)'. There was no information to suggest that Ms Vergen was clinically justified in initiating contact with Patient A in these circumstances. The panel considered the driving force in the circumstances to be Ms Vergen's own curiosity and concern for Patient A, and a matter on which the panel withheld judgement.

Charge 1c

1. *Between July 2021 and August 2021;*
 - c. *Maintained contact with Patient A without clinical justification.*

Charge 1c is found proved.

It is already established that Ms Vergen contacted Patient A without clinical justification.

The panel also had regard to an exchange of text messages between Ms Vergen and Patient A. The exact dates of all of the texts were not visible however it was clear to the panel that communication had been maintained throughout various dates in August 2021.

The evidence before the panel showed that communication had been maintained and given that Patient A was no longer under the care of HMP Lewes, because care had been transferred to his GP, there was no clinical justification for Ms Vergen to maintain contact. The panel therefore found charge 1c proved as set out.

Charge 1d

1. *Between July 2021 and August 2021;*
 - d. *Met with Patient A on one or more occasion without clinical justification.*

Charge 1d is found proved.

The notes of the investigative interview with Mr 2 on 23 September 2021 were agreed by Ms Vergen. The notes read:

“In July [Ms Vergen] met [Patient A] only once at a public place that was near the beach in Chichester”

Further, Ms Vergen herself, in an email dated 18 January 2022 wrote:

“...I recognise the need to own the fact that I saw a former patient outside of the care setting...”

There was evidence before the panel that both Ms Vergen and Patient A met subsequent to his release from HMP Lewes, where she nursed him, although the date of the meeting was not corroborated or confirmed.

Again, given that Patient A was no longer under the care of HMP Lewes there was no clinical justification for Ms Vergen to contact him. It follows that there was also no clinical justification for her to meet with him when she did, or indeed at the beach. The panel therefore found charge 1d proved as set out.

Charge 1e

1. *Between July 2021 and August 2021;*
 - e. *Allowed Patient A to kiss you.*

Charge 1e is found proved.

The interview notes dated 23 September 2021 set out:

“[Ms Vergen] informed [Mr 2] that she had spent 4 hours with at the beach, the area was beautiful and at the end of the meeting, he kissed [Ms Vergen].”

The investigation report dated 16 October 2021 records that:

“[Ms Vergen] said that she understands that she should not have made deliberate contact with Patient A; [Ms Vergen] said that the contact was meant to be

supportive because Patient A had long term conditions, however he kissed [Ms Vergen] to say goodbye.”

“[Ms Vergen] acknowledged that she has breached the NMC code of conduct by meeting and kissing [Patient A]”

The panel bore in mind that the notes of the investigative interview dated 23 September 2021 were agreed by Ms Vergen and Mr 2. Based on this evidence the panel found charge 1e proved.

Charge 2

- 2. Your actions at any or all of the charges above were inappropriate in that you failed to maintain professional boundaries.*

Charge 2 is found proved, except as it relates to Charge 1a.

In relation to charge 1a, the panel considered the evidence to be insufficient for it to determine that Ms Vergen’s actions were inappropriate and breached professional boundaries. It may have been that Ms Vergen accepted the email address out of politeness, and in the moment, she may not have had any intention of contacting Patient A. The panel had no evidence before it of what exactly Ms Vergen’s intentions were at the time she received Patient A’s email address.

In relation to charges 1b, 1c, 1d and 1e, the panel determined that these actions were inappropriate and did technically amount to a breach of professional boundaries. The panel took account of section 20.6 of the NMC Code:

“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 was of the view that initiating contact with Patient A after his release from HMP Lewes, maintaining contact, meeting with him, and allowing a kiss to occur, were breaches of 20.6 of the Code.

Charge 3

3. *Your actions at any or all of the charges above were sexually motivated in that you intended to pursue an intimate relationship with Patient A.*

Charge 3 is found NOT proved.

Ms Vergen, in an email dated 18 January 2022 wrote:

“I did this out of concern for their welfare nothing more and nothing less. Sadly my naivety led to my being stalked by this individual to the degree that I had to leave my job, and I needed to seek help...”

The panel considered there to be evidence that the charges occurred as alleged. It was not satisfied, however, that there was sufficient evidence that Ms Vergen’s actions were sexually motivated.

The panel noted that it had no evidence before it from Patient A nor had they appeared as a witness. Although Ms Vergen was not present, the evidence presented was unclear in respect of her motivation for the relationship.

In relation to charge 1a, it was unclear to the panel whether Ms Vergen and Patient A exchanged email addresses or whether Patient A gave his email address to Ms Vergen and she accepted it out of politeness.

Within the text messages exchanged between Patient A and Ms Vergen, Patient A is readily expressive and states his feelings of 'love' for Ms Vergen. Ms Vergen, meanwhile, is relatively reticent.

There is also evidence that a kiss between Ms Vergen and Patient A occurred. However, Ms Vergen's motivations and feelings about the incident are not clear or available to the panel. The panel was unable to determine whether it was a simple 'goodbye' kiss from Patient A to Ms Vergen, or a more enthusiastic engagement by both parties.

The driving forces in all the circumstances are unclear and may have been Ms Vergen's own perhaps heightened feelings of empathy and concern for Patient A, a matter on which the panel withheld judgement.

Moreover, after Patient A's release from HMP Lewes, he was no longer under the professional care of Ms Vergen. Ms Vergen may have technically breached the NMC Code, however, not every breach of the Code is a serious breach, or of a fundamental tenet of nursing practice. Seriousness and context must be considered only in the context of professional obligation.

On the balance of probabilities, the panel considered the evidence before it to be insufficient for it to find that Ms Vergen's actions were sexually motivated, and she had been pursuit of a relationship with Patient A. The panel therefore found Charge 3 not 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 Ms Vergen'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, Ms Vergen's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct and impairment

Ms Patel invited the panel to take the view that the facts found proved amount to misconduct. She submitted that there had been several instances where Ms Vergen's actions had fallen substantially below the standard expected of registered nurses.

Ms Patel submitted that from the very first instance, whether Ms Vergen accepted Patient A's email address out of politeness or otherwise, her actions were untoward. She highlighted the dynamic between Ms Vergen and Patient A and the imbalance of power that existed between them as a Primary Care Lead at HMP Lewes and prisoner. She submitted that this power imbalance would have continued after Patient A's release because of the knowledge and personal information that Ms Vergen would have gained about his health and wellbeing whilst caring for him. She submitted that Patient A's release, and him ceasing to be under Ms Vergen's care, was not an answer to the NMC's submission that there had been a serious breach of professional boundaries.

Ms Patel submitted that in the specific circumstances of this case the facts found proved undoubtedly amount to misconduct.

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

Ms Patel submitted that Ms Vergen had demonstrated no insight and provided no reflection for the panel to consider, despite indicating that she would do so in her email dated 18 January 2022.

Ms Patel stated that Ms Vergen did not take responsibility at the time by raising or escalating her breach of professional boundaries, instead she was 'nudged' to come forward. Further, only during the local investigation did she reveal the full extent of the relationship to Ms 1.

Ms Patel submitted that Ms Vergen had breached limbs a, b, and c of the test set out in the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin) 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) ...*

In the absence of any insight and remediation Ms Patel stated that the panel could not be satisfied that Ms Vergen would not make similar breaches in future. For these reasons Ms Patel invited the panel to find Ms Vergen's fitness to practice currently impaired.

The panel accepted the advice of the legal assessor which included reference to *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).

Ms Vergen had not submitted any representations or documents for the panel to consider in respect of the issues of misconduct or current impairment.

Decision and reasons 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.'*

When determining whether 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). The panel was of the view that Ms Vergen's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

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. It also appreciated that charge 3 was not found proved, and that this case is not one involving sexual misconduct. However, given the prison setting in which the concerns arose, the panel decided that it was the particular setting and the power imbalance in this case which made the breach of professional boundaries sufficiently serious as to amount to misconduct.

The evidence before the panel did little to illustrate the exact nature, flavour and nuances of the relationship between Ms Vergen and Patient A. The oral evidence of Ms 1 and Mr 2 assisted, but ultimately the panel was unable to draw any conclusions about the personality and behaviour of Patient A and, for example, whether he had acted manipulatively towards Ms Vergen. It was a matter of regret for the panel that Ms Vergen had not attended the hearing to give evidence and provide the panel with her account of events or provided further written information for them to consider.

The panel noted that Ms Vergen has a right to a private life, and to form relationships, of whatever sort, with whomsoever she wished. However, in the circumstances of this case if she wished to engage with Patient A there were processes to enable her to do so, with which she did not comply.

Ms Vergen is reported by both Ms 1 and her subsequent employer to be a caring nurse and the panel accepted that the breach of professional boundaries in this case was an isolated incident. Further, the panel saw no evidence that Ms Vergen had ever put patients in her care at risk of harm. However, the evidence of Witness 1 and of Witness 2 was that it was a cardinal principle of prison nursing that personal details were not shared with prisoners. Therefore, the panel determined that due to the prison setting in which the relationship was initiated, Ms Vergen's actions did fall seriously short of the conduct and standards expected of a nurse and did amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Ms Vergen'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. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

The panel also looked at Ms Vergen's misconduct in relation to the test set out in the case of *Grant*:

'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 considered whether Ms Vergen's actions had caused harm to any patients and in particular Patient A. The panel had only text conversations before it from Patient A and were unable to place great weight on the context and nature of these texts. The panel therefore concluded that there was inadequate evidence before it to indicate that any harm had been caused to any patients including Patient A.

The panel did determine that Ms Vergen's actions did bring the nursing profession into disrepute and that she had breached a fundamental tenet of the profession.

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 Ms Vergen has taken steps to strengthen her practice.

There was evidence of limited insight within Ms Vergen's email dated 18 January 2022. Plainly this matter has had a great effect upon her, which makes it less likely that she would repeat such an action. However, Ms Vergen failed to provide any detail or assurances to the panel that she would act differently in future. There was no evidence before the panel of training or professional development in respect of professional boundaries or the danger posed by manipulative patients and, as Ms Vergen had not attended the hearing, the panel was deprived of the opportunity to hear from her. Given the lack of demonstrated insight and remediation, the panel considered that there was a risk that Ms Vergen would not act differently if she were to find herself in a similar situation again.

Although the panel found that in this case there was no harm to patients, should similar circumstances happen again, patients might come to harm. Accordingly, while the panel found limb a) of *Grant* not to be engaged for the past, it was engaged for the future. Therefore, the panel determined that a finding of impairment was necessary for the protection of the public.

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 also determined that a finding of current impairment is required on public interest grounds. The panel concluded that public confidence in the profession, as well as

the NMC, would be undermined if a finding of impairment were not made in this case given the context of the prison setting in which the issues initially arose.

Having regard to all of the above, the panel was satisfied that Ms Vergen's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months. The effect of this order is that the NMC register will show that Ms Vergen's registration has been suspended.

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

Submissions on sanction

Ms Patel informed the panel that in the Notice of Hearing, dated 17 January 2024, the NMC had advised Ms Vergen that it would seek the imposition of a striking-off order if it found her fitness to practise currently impaired.

Ms Patel submitted that the issues in this case raise concerns about Ms Vergen's behaviour and engagement with Patient A. She highlighted that the panel found three limbs of the *Grant* test proved, and that this indicated the severity of the misconduct. She referred the panel to the NMC guidance and submitted that Ms Vergen's misconduct was sufficiently serious to make her incompatible with remaining on the register.

In the absence of any steps taken by Ms Vergen to address the risk of repetition identified by the panel, Ms Patel submitted that a striking-off order was the only appropriate sanction.

Decision and reasons on sanction

Having found Ms Vergen'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 accepted the advice of the legal assessor and had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel identified the following aggravating feature:

- Ms Vergen has demonstrated only limited insight into her breach of professional boundaries.

The panel also identified the following mitigating features:

- An isolated incident in an otherwise unblemished career.
- Ms Vergen's insight appeared to be limited and developing, not fully developed.
- Ms Vergen stated in her email of 18 January 2022 that she had undertaken some training and professional development, although the panel had no further details.

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 an order that does not restrict Ms Vergen'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 Ms Vergen's 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 Ms Vergen'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;*
- *...*
- *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 had no information about Ms Vergen's current work circumstances. The panel may have been minded to impose conditions but was concerned that the relationship with Patient A was outside of the work environment. While it may have been possible to devise conditions, the panel did not know whether Ms Vergen was working as a nurse, and if so, in what kind of environment. Without this information, the panel was not confident that any conditions imposed could be monitored or assessed and would therefore be effective. Without Ms Vergen's participation in this hearing, the panel did not know if she would be

willing to engage with any conditions imposed. For these reasons, the panel decided that a conditions of practice order was not appropriate.

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

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

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

Balancing all of the factors the panel concluded that a suspension order would be the appropriate and proportionate sanction in this case. The panel determined that a suspension order for a period of six months was appropriate not only to mark the seriousness but to also provide Ms Vergen with time to reflect, fully develop her insight and begin addressing the issues identified by the panel around maintaining professional boundaries. This period of suspension will allow Ms Vergen time to make efforts to strengthen her practice and prepare to meet with a review panel, where she will have an opportunity to portray her progress and potentially return to nursing unrestricted.

The panel noted the hardship such an order may cause Ms Vergen. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information apparent from the documentation provided to it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Ms Vergen's case to impose a striking-off order.

In making this decision, the panel carefully considered the submissions of Ms Patel in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a striking-off order would be wholly disproportionate as the misconduct is not of a sexual nature and the breach of professional boundaries was an isolated incident.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Ms Vergen's attendance and participation.
- A reflective statement addressing the breach of professional boundaries and the possible risks to patients and the reputation of the nursing profession.
- Recent training relevant to professional boundaries.
- Up-to-date references and testimonials.

This will be confirmed to Ms Vergen in writing.

Decision and reasons on interim order

As the suspension 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 Ms Vergen's own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel took account of the submissions made by Ms Patel.

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to allow for any potential appeal period.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after Ms Vergen is sent the decision of this hearing in writing.

That concludes this determination.