Conduct and Competence Committee
Substantive Hearing

11–15 and 18–19 March 2013, 16-20 September 2013, 30 September-4 October 2013 -NMC, 61 Aldwych, London, WC2B 4AE &
13-16 January 2014 – NMC, Old Bailey, London, EC4M 7LN

Name of Registrant:	**George Castledine**
NMC PIN:	**68C0272E**
Part(s) of the register:	**Registered Nurse – sub part 1** **Adult (March 1968)** **Lecturer/Practice Educator (September 1986)**
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Susan Hurds (Chair, Lay member) Dr Mooi Standing (Lay member) Duncan Henderson (Registrant member)
Legal Assessor:	Margaret Dodd
Panel Secretary:	Mairead Shenton/Darrell Vincent/Paul McHugh
Professor Castledine:	Present and represented by Mr Terry Munyard, Counsel and Mr David Phillips, Solicitor
Nursing and Midwifery Council:	Represented by Dr Mary-Teresa Deignan, counsel, instructed by NMC Regulatory Legal Team
Facts proved:	1b, 2a, 2d, 3, 6, 7a-e, 10 and 12a by admission 1a, 1c, 1d, 2b, 2c, 6Aa, 6Ab, 7f-n, 8, 9, 11 12b and 13
Facts not proved:	**4 and 5**
Fitness to practise:	**Impaired**
Sanction:	**Striking-off order**
Interim order:	**18 month interim suspension order**

Details of charge as amended:

That you, a registered nurse, whilst employed as the Centre Manager of Onneley House, part of the Institute of Ageing and Health ('The Institute'), for which you were also the Chief Executive:

1) Having been requested on behalf of her General Practitioner to carry out bereavement counselling with Patient A you carried out and/or attempted to carry out and/or purported to carry out bereavement counselling with Patient A from February 2009 to October 2009:

    a) when you did not have sufficient qualifications and/or experience to do so;
    b) failed to undertake supervision with a person with appropriate professional qualifications and experience;
    c) failed to obtain the appropriate qualifications and/or experience;
    d) failed to attend regular training and keep any skills you had up to date.

2) Having been requested on behalf of her General Practitioner to carry out bereavement counselling with Patient A, from February 2009 to October 2009 whilst carrying out and/or attempting to carry out and/or purporting to carry out bereavement counselling with Patient A:

    a) failed to keep any or any sufficient notes of each session;
    b) failed to meet Patient A at the same time each session;
    c) failed to confine your communication with Patient A by telephone to times of acute emotional response from Patient A that could not wait until the next session;
    d) accompanied Patient A to the opening of her daughter's hair dressing salon in September 2009.

3) Having recorded in your diary on 6th October 2009 that your work with Patient A had finished, you failed to inform her General Practitioner that she had been discharged from your care.

4) In or around March 2009 at Onneley House asked Patient A's son if he was happy to sign a 'Do Not Resuscitate' form in relation to Patient A while informing Patient A that the form was a 'do resuscitate' form.

5) Your conduct as set out 4) above was dishonest in that you intentionally gave misleading information to Patient A and/or Patient A's son.

6) Having recorded in your diary on 6th October 2009 that your work with Patient A had concluded obtained her consent to participate in 'a case study research to explore the problems of loneliness in older people'.

6A) Having recorded in your diary on 26th May 2009 that Patient A 'needs memory help':

a) carried out and/or attempted to carry out and/or purported to carry out work on cognitive impairment with Patient A;
b) failed to keep any or any sufficient notes of each session of work on cognitive impairment.

7) You failed to maintain appropriate professional boundaries with Patient A in that you:

a) visited Patient A at her home, including late at night;
b) gave to Patient A at Christmas 2009 a gift of a CD player & some CDs;
c) accepted from Patient A at Christmas 2009 a gift of aftershave;
d) gave to Patient A gifts of flowers;
e) accepted telephone calls from Patient A;
f) made telephone calls to Patient A;
g) ate at Patient A's home;
h) accompanied Patient A in June or July 2010 on a trip to Wales;
i) addressed Patient A as 'my little Tinkerbell', 'darling', 'the attractive woman';
j) described yourself to Patient A as 'your lover', 'your shadow';
k) told Patient A on more than one occasion 'I love you', 'I do love you dearly', 'I miss you';
l) told Patient A that you had to go to the gym to keep fit or you 'wouldn't be able to make love' to Patient A;

m) continued to have contact with Patient A after she told you on more than one occasion that she loved you;
n) continued to have contact with Patient A when you knew or should have known that she was emotionally dependent upon you.

8) Your conduct set out in paragraph 7 above was sexually motivated.

9) Your conduct set out in paragraph 7 above was financially motivated.

10) Having been informed by Ms I, Associate Director of Nursing at the South Birmingham Community Health NHS Trust, orally and by letter dated 13th September 2010 to have no further contact with Patient A continued to do so.

11) Having been informed by Ms J, Chair of the Board of Trustees for the Institute, orally on 14th September 2010 not to have any client contact at all pending an investigation, accompanied clients on a holiday to Bridlington from 20th to 24th October 2010 and stayed with them at the Balmoral Hotel.

12) In or around August to October 2010 encouraged and/or supported Patient A to lie on your behalf in relation to:

a) the nature of her personal relationship with you;
b) the nature of her financial relationship with you.

13) Your conduct as set out above was dishonest in that you sought to procure from Patient A statements that you knew not to be true..

And in light of the above your fitness to practice is impaired by reason of your misconduct.

Determination on application to amend charge:

Professor Castledine,

The panel heard an application made by Dr Deignan, on behalf of the NMC, to amend the wording of charges 12(a) and 12(b).

The proposed amendments were to change the wording of charges 12(a) and 12(b) to read as follows:

(a) "the nature of her personal relationship with you."

(b) "the nature of her financial relationship with you"

It was submitted by Dr Deignan that the proposed amendments would provide clarity and more accurately reflect the other charges, in particular charges 8 and 9.

Mr Munyard, on your behalf, made no objection to the proposed amendments.

The panel accepted the advice of the legal assessor that Rule 28 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended 2012) (The Rules) states:

28.— (1) At any stage before making its findings of fact…
(i)… the Conduct and Competence Committee, may amend—
(a) the charge set out in the notice of hearing…
unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

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

Determination on application to anonymise witnesses:

Professor Castledine,

Dr Deignan, on behalf of the NMC, made an application to anonymise 4 witnesses, who are the friends and family of Patient A. She submitted that Patient A could be identified if the names of the 4 witnesses were disclosed. As such, their names require anonymisation to protect the identity of Patient A.

Mr Munyard, on your behalf, made no objection to this application.

The panel decided to grant this application. The panel was of the view that Patient A's identity must remain anonymous, and therefore determined that the names of the 4 witnesses must also be anonymised.

Determination on application for disclosure:

Professor Castledine,

The panel heard an application made by Mr Munyard, on your behalf, in relation to the disclosure of additional taped evidence by the NMC.

Dr Deignan, on behalf of the NMC, informed the panel that the NMC was made aware this morning that the family of Patient A were in possession of further tape recordings. Dr Deignan submitted that the NMC does not propose to expand the case it presents in relation to you, and would therefore not seek to rely on these additional tapes.

Dr Deignan stated that the NMC proposed to rely on 5 tapes, which span the time frame from 3 August 2010 to 25 September 2010. She contended that there are tapes covering the period from Christmas 2011 to February 2012, but that these neither supported your case, nor undermined the NMC's case. She told the panel that a transcript for these tapes has already been requested.

Mr Munyard submitted that the admissibility of the tapes has already been a fundamental issue in these proceedings. He asserted that taping someone's telephone conversations is now a criminal offence, if carried out without the requisite authority, and he submitted that there was no authority for these recordings. He referred the panel to the Regulation of Investigatory Powers Act.

Mr Munyard told the panel that he became aware only last week that the recordings had continued beyond September 2010. He stated that the NMC told him that attempts would be made to transcribe the tapes. Further, Mr Munyard was informed this morning that there are additional tapes of conversations between you and Patient A. He asserted that you have not had the opportunity to hear these tapes or read transcripts, and that you therefore cannot say whether the tapes are relevant or not. Mr Munyard invited the panel to compel the NMC to disclose the additional tapes, and grant you an opportunity to consider this new material. Mr Munyard proposed that the panel could use the adjournment to read through the witness statements, so as to use the time effectively.

Dr Deignan then invited the panel to bear in mind the charges when considering this application. She submitted that charges 1, 2, 3, 4, 5, and 6 do not require a transcript of the taped conversations. She stated that for the matters that do require transcripts, such as charge 7, transcripts have been provided to you and your representative. She submitted that none of the charges require transcripts in addition to those that have been provided already.

Mr Munyard submitted that charges 4, 5, 6 and 7 require the provision of the additional transcripts. He contended that the transcripts disclosed by the NMC thus far have been relevant to the case, and as the content of the additional tapes is unknown, the interests of justice require that you should be given the opportunity to consider the additional tapes. Mr Munyard proposed that the tapes may contain conversations between Patient A and yourself, or between Patient A and others, and as such may assist your case or undermine the NMC's case.

Dr Deignan submitted that the charges are time limited; the panel will be making findings upon matters within a specified time frame, and the additional tapes do not fall within this time frame and are therefore not relevant.

Mr Munyard drew the panel's attention to charges 8 and 9, and asserted that there may be material in these additional tapes which has a direct bearing on these charges. He submitted that, although the recordings were not made within the time frame as specified in the charges, it may be that matters raised in these recordings refer back to the specified time frame. He contended that common sense and natural justice require the provision of the additional tapes.

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

The panel decided to grant the application for disclosure of the additional tapes. The panel was of the view that, even if it transpires that the material in the tapes is not relevant to their findings on facts, the material may be pertinent to the panel's consideration of impairment and sanction, if those stages of the proceedings are reached. It also concluded that, in the interests of fairness, you should be given the opportunity to listen to the tapes, in order to assess whether their content is relevant to your case. In coming to its decision, the panel was aware that there is still to be an argument regarding the admissibility of all the tape recordings. The panel welcomed the opportunity to read the witness statements and skeleton arguments during the adjournment. The panel was of the view that the witness statements should be read into evidence, rather than adopted, given that this hearing is held in public.

Determination on information provided in relation to an NMC witness:

Professor Castledine,

The panel heard information provided by Dr Deignan in relation to Dr 1, an NMC witness.

Dr Deignan informed the panel that Dr 1's evidence relates to the qualifications required for a professional bereavement counsellor, which is pertinent to charges 1 and 2. Dr Deignan informed the panel that Dr 1 is overseas. A suggestion had been made by the NMC that Dr 1 could give her evidence by telephone or video link. However, Dr Deignan told the panel that Dr 1, with support from her Trust's legal team, had advised that this

would not be professionally appropriate, given the nature of the evidence. Dr Deignan submitted that Dr 1 would have had to carry a large number of documents, including sensitive information, with her overseas, which Dr 1 felt would have been inappropriate in the circumstances. As a consequence, Dr 1 is not available to give evidence in the 7 days currently listed to hear this case. Dr Deignan did not invite the panel to adjourn the matter at this stage, in light of the other witnesses present and willing to give evidence this week, including one who is not available to give evidence until the 5th day of this case. However, Dr Deignan sought assurance from the panel that she would not be precluded from calling Dr 1 to give evidence at a resumed hearing on a future date. She submitted that Dr 1's evidence is highly relevant to the NMC's case. Dr Deignan referred the panel to the case of *Nursing and Midwifery Council v Eunice Ogbonna [2010] EWCA Civ 1216*. She submitted that this matter is distinguishable, as the NMC had made reasonable efforts to secure the attendance of Dr 1. Dr Deignan informed the panel that the NMC had made every effort to ensure that this hearing was listed on a date convenient to all parties. She also informed the panel that Dr 1 has communicated her willingness to attend at a future date to give evidence.

Mr Munyard informed the panel that this 7 day listing was booked a significant time ago. He was concerned by Dr 1's assertion that providing evidence by video link or telephone would not be professionally appropriate. He submitted that she is an expert witness, who will be giving evidence about the standards and practices that apply to professional full-time counsellors and therapists. He contended that this expert evidence could be given via video link or the telephone, and stated that he failed to understand why Dr 1 is of the view that these methods would not be appropriate. Mr Munyard asserted that in her witness statement, Dr 1 makes no reference to Patient A, and simply provides factual evidence in relation to professional standards and practices.

The panel heard and accepted the advice of the legal assessor.

In the light of the information presented to it, as to the unavailability of Dr 1, the panel decided to proceed with the case. The panel was of the view that in any event, given the volume of papers before it and the number of witnesses due to give oral evidence this week, it is not certain that the NMC would close its case prior to the final day of this

listing. Therefore, the panel considered that the unavailability of Dr 1 is unlikely to affect the timing of these proceedings and should not delay the commencement of the case.

Determination on application under Rule 31:

Professor Castledine,
The panel heard an application by Mr Munyard, on your behalf, pursuant to Rule 31 of the *Nursing and Midwifery (Fitness to Practise) Rules Order of Council 2004* (the Rules), to exclude the tapes and transcripts of Patient A's telephone conversations with you.

Mr Munyard submitted that Patient A's daughters (Witness B and Witness C) who made the covert recordings of the telephone conversations and messages committed a criminal offence, namely the unlawful interception of communications, contrary to section 1(1)(a) of the *Regulation of Investigatory Powers Act 2000* ('*RIPA*'). He contended that the tapes and transcripts of these conversations and messages are thus inadmissible in these proceedings, as is any information flowing from them whether by way of hearsay evidence or otherwise. Mr Munyard outlined the meaning of various terms as defined in *RIPA* and asserted that the actions of Patient A's daughters fall within the scope of *RIPA*.

He drew the panel's attention to the witness statement of Witness B, and in particular the passage which stated, "*I know that what we were doing by recording the phone calls might be unlawful but mum was the paramount concern*." Mr Munyard asserted that Witness B thus recognised that what she was doing was wrong in 'bugging' the telephone. He submitted that after Patient A's daughters had obtained initial recordings, they believed they had enough proof to make complaints against you. He stated that Patient A's daughters pursued a complaint against you with your professional body, the NMC, and wrote letters of complaint to nine separate organisations or persons, which he said demonstrates that any further interception of telephone conversations was unnecessary even by their standards.

Mr Munyard pointed out that it was not until November 2010 that the existence of the tape recordings and transcripts was disclosed to you. He further submitted that Ms 2,

who he asserted has effectively acted as the NMC's lead investigator with regard to you, apparently accepted all of the tape recordings without complaint and with no suggestion to the daughters that their activity should cease. Mr Munyard also contended that Ms 2 violated your Article 6 rights under the *Human Rights Act 1998* ('HRA'), in conducting interviews with you on 15 and 16 September 2010 without disclosing to you the existence of the tape recordings.

Mr Munyard asserted that there can be no question of a justified departure from Patient A's rights under Article 8 of the *HRA*, since what has been done in relation to the recording of the telephone conversations and messages is wholly disproportionate. He submitted that the use and in particular, further continued use, of illegal means to obtain evidence in this case is not proportionate to the mischief that Patient A's daughters were seeking to prevent. Mr Munyard told the panel that there is no suggestion that Patient A consented to the recording of her telephone conversations, and thus her Article 8 rights were breached.

Mr Munyard made reference to Rule 31(1) of the Rules, and highlighted that the panel's powers to admit evidence are subject to the requirement of relevance and fairness. My Munyard submitted that it would be unfair and a breach of your Article 6 and Article 8 rights to admit the tapes and transcripts, both because of the way in which they were obtained and because of their unreliable nature. As such, he submitted that it is a matter of public policy that the panel should not hear the evidence of the tapes and transcripts. Further, he contended that it would also constitute an important breach of Patient A's Article 8 rights.

Mr Munyard submitted that, for the bulk of the charges, the NMC does not rely on the tapes and transcripts as evidence. He asserted that it is only charges 7(i) to 7(m) which rely on this unlawfully-obtained evidence.

Mr Munyard referred the panel to the case of *Chairman and Governors of Amwell View School v Dogherty [2007] IRLR 198 EAT*, which held that covert recordings of a disciplinary body, which included the private deliberations of panel members, should not be admitted in hearings before the employment tribunal as they were in breach of public policy. He referred the panel to pertinent paragraphs of the judgment, which included the statement, "*It is always somewhat distasteful when a party seeks to introduce in*

legal proceedings evidence obtained otherwise than openly and fairly." Mr Munyard submitted that this matter is comparable to the case of ***Dogherty***, as to allow the evidence of the tapes and transcripts would also be a breach of public policy. He asserted that the NMC is a body which has the power to deprive individuals of their profession, and thus its status as a charitable body has no relevance. Mr Munyard stated that in this way the NMC is comparable to an employment tribunal.

Dr Deignan submitted that the tapes and transcripts are admissible in these proceedings and should not be excluded. Dr Deignan invited the panel to bear in mind Article 3 of the *Nursing and Midwifery Order 2001* ('the Order') when considering this application, which establishes the NMC and its Committees. She pointed out that Article 3(4) provides that: "*The main objective of the Council in exercising its functions shall be to safeguard the health and well-being of persons using or needing the services of registrants*."

Dr Deignan informed the panel that the NMC relies upon 5 tape recordings of Patient A's telephone conversations, and these were:

Tape 1: 3 August to 7 August 2010;

Tape 2: 11 August to 19 August 2010;

Tape 3: 22 August to 26 August 2010;

Tape 4: 26 August to 30 August 2010;

Tape 5: 19 September to 25 September 2010.

Dr Deignan stated that transcripts of the first 4 tapes were prepared by or on behalf of Patient A's family and then the Trust. The NMC has now obtained verbatim transcripts of all 5 tapes. She invited the panel to consider these verbatim transcripts as they are an accurate record of the contents of the tapes.

Dr Deignan contended that Patient A was particularly vulnerable at the time that you met her, not simply due to her age and level of education, but particularly because of the result of her recent bereavement. Patient A had been married for 59 years, to a man described by Patient A's son (Witness D) as being "*someone who had always been in charge of the household*." Patient A was unable to read or write, Witness D saying he had never seen her write anything beyond her own name. Witness C described Patient A as taking the death of her husband very badly, Patient A had no recollection of the

funeral, and was clearly depressed. Dr Deignan submitted that, as Patient A had not had schooling past the age of 13, and due to your status as a Professor, Patient A and her family referring to you as "*Professor Sir George*", the imbalance between you was obvious and real. Dr Deignan stated that Patient A's daughters were conscious of your status and thus felt they needed tangible evidence upon which to base a complaint. It was in this context that Patient A's daughters decided to record their mother's phonecalls. Dr Deignan drew the panel's attention to Witness C's witness statement, and her explanation as to why she continued to record Patient A's telephone conversations: "*In light of what we recorded on this first occasion we decided to carry on recording mum's telephone conversations. We decided we needed as much evidence about what was going on as soon as possible and wanted to establish how many times the Registrant spoke to mum.*" Dr Deignan submitted that the continuation of the recording of Patient A's telephone conversations does not provide a basis to exclude the tapes and transcripts. She contended that Mr Munyard, on your behalf, would be able to question Witness B and Witness C in cross examination as to why they continued to record Patient A's telephone conversations having already lodged a number of complaints about you.

Dr Deignan referred the panel to Rule 31(1) of the Rules, which provides:

> '*Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).*'

She asserted that the tapes and transcripts are "*documentary or other evidence*", and that the tapes are highly relevant, in particular to charges 7, 8 and 9. Dr Deignan submitted that the transcripts demonstrate the inappropriateness of the relationship between yourself and Patient A. She contended that it is not simply the words said, but the way in which the words are spoken, which is relevant to the charges, and that the panel would be better placed to consider the charges having listened to the tape recordings. Dr Deignan told the panel that Patient A can be heard to be distressed and crying on several of the tape recordings. Dr Deignan then highlighted material in the tapes which the NMC seeks to rely upon, both prior to the complaint made by Patient

A's daughters about you, and after the complaint became known to you, which she asserted was highly relevant to a number of the charges.

Dr Deignan submitted that the applicable rule on the admissibility of the tapes in civil proceedings in England and Wales is Part 32 of the Civil Procedure Rules 1998 ('CPR'). She also referred the panel to the case of *John Anthony Helliwell v Terry D. Piggott-Sims [1977] H. No. 6500*, which prior to the CPR was the leading authority on the admissibility of evidence in civil cases. Lord Denning in his judgment in this case stated:

> "*I know in criminal cases the judge may have a discretion. […] But so far as civil cases are concerned, it seems to me that the judge has no discretion. The evidence is relevant and admissible. The judge cannot refuse it on the ground that it may have been unlawfully obtained in the beginning.*"

In relation to the breaches of your Article 6 and Article 8 rights under the *HRA*, Dr Deignan referred to the case of *Jones v University of Warwick [2003] EWCA Civ 151*. In this matter the Claimant injured her hand at work and alleged that she had a continuing disability. The Defendant's insurers instructed an inquiry agent who, on 2 occasions, obtained access to the Claimant's home by posing as a market researcher and used a camera to film the Claimant without her knowledge. It was claimed in this case that the Claimant's Article 6 and Article 8 rights were infringed. Dr Deignan highlighted the following principal from the judgment of Lord Wolf C.J. in this matter, submitting that it may assist the panel:

> "*The court must try to give effect to what are here two conflicting public interests. The weight to be attached to each will vary according to the circumstances. The significance of the evidence will differ as will the gravity of the breach of Article 8, according to the facts of the particular case. The decision will depend on all the circumstances. […] It would be artificial and undesirable for the actual evidence, which is relevant and admissible, not to be placed before the judge who has the task of trying the case*."

Dr Deignan directed the panel to consider Article 3(4) of the Order, and to bear in mind the panel's guiding principals in this jurisdiction. She submitted that in this case, balancing the conflicting interests of your Article 8 rights and the role of the NMC, the

balance is in favour of safeguarding those who use or need the services of registrants. While the way in which the tapes were obtained is a matter the panel will bear in mind, Dr Deignan asserted that the safeguarding of the health and well-being of the public requires the totality of the evidence against you to be considered, so that all of the charges alleged can be properly determined, and thus a foundation properly established for a decision on impairment.

Dr Deignan contended that it is fair that the tapes and transcripts remain part of the evidence. You and your legal representatives received copies of the tapes and transcripts and so are aware of their contents. She stated that you accepted that the tapes recorded telephone conversations you had with Patient A, and that the transcripts are accurate. Dr Deignan submitted that it would be extraordinary and totally artificial if material relevant to the charges against you, known to you, the NMC, and many of the NMC's witnesses, were to be withheld from the panel.

Dr Deignan directed the panel to the case of *Chairman and Governors of Amwell View School v Dogherty [2007] IRLR 198 EAT*, referred to by Mr Munyard in his submissions. She asserted that this case relates to a different jurisdiction, and different test in relation to the admissibility of evidence. She submitted that the judgment makes it clear that this matter confined itself to the specific circumstances of that case, and directed the panel to the following extract of the judgment in support of her contention:

> "*We are far from suggesting some new broad class of common-law public interest immunity in the law of evidence. Rather we confine ourselves to the particular circumstances of this case*."

The panel was invited by Dr Deignan to consider the case of *The Council for the Regulation of Health Care Professionals v The General Medical Council, Dr Gurpinder Saluja [2006] EWCA 2784 (Admin)*. Dr Deignan submitted that a number of principals arose in this case. In *Saluja* the GMC came into possession of a recording; Dr Deignan stated that the NMC were similarly provided with the tapes by the daughters of Patient A. She asserted that the NMC had no role in the obtaining or creation of the tapes. The tapes were obtained by the daughters of Patient A arising from their concerns about your conduct in relation to their mother. Dr Deignan contended that in relying on the

tapes and transcripts, the NMC is carrying out its obligation to safeguard the health and well-being of persons using or needing the services of registrants.

Mr Munyard, in relation to the case of *Jones v University of Warwick* referred to by Dr Deignan, asserted that the present case is distinguishable from that matter. He stated that in *Jones v University of Warwick*, there was no breach of criminal law, rather the civil tort of trespass occurred. He also submitted that in that case, the evidence which was unfairly obtained constituted the entirety of the evidence, whereas in the present matter the tapes and transcripts only go to a few of the charges.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that so far as it is '*fair and relevant'* a panel may accept evidence in a range of forms and circumstances and whether or not it is admissible in civil proceedings. The legal assessor advised the panel that, in relation to an offence under *RIPA*, it would be entirely speculative to consider whether the daughters of Patient A would be prosecuted for their actions in recording Patient A's conversations. However, the illegality or otherwise of the daughters' conduct does not impact upon the admissibility of the evidence in these proceedings. The panel was referred to the *Police and Criminal Evidence Act 1984* ('PACE') and in particular section 78(1). The legal assessor confirmed that the case of *John Anthony Helliwell v Terry D. Piggott-Sims [1977] H. No. 6500* sets out the criteria for the admissibility of evidence in civil proceedings.

The panel took into account not only the verbal submissions, but also the skeleton arguments submitted by Mr Munyard and Dr Deignan.

The panel gave Mr Munyard's application to exclude evidence very serious consideration, but decided to refuse his application for the reasons outlined below.

The panel determined that although the tapes and transcripts may only go to some of the charges, the charges they do relate to are nonetheless very serious. The panel was of the view that the tapes and transcripts are relevant to those charges. Mr Munyard, in his submissions, accepted that the evidence was relevant to some of the charges. The panel was invited by Dr Deignan to listen to the tapes. The panel did not consider this

necessary at this stage as relevance was not an issue. It would welcome the opportunity during the course of the proceedings to listen to some or part of the taped evidence. The panel will hear any parts which are considered relevant by either party.

In relation to fairness the panel took account of its guiding principle, as set out in Article 3(4), "*to safeguard the health and well-being of persons using or needing the services of registrants*." When balancing your Article 8 rights and those of Patient A, with the need to protect the public and uphold the reputation of the profession and public confidence in it and in the NMC as regulator, the panel concluded that its safeguarding duty outweighed your right to privacy in the circumstances. The panel recognised that its decision to admit the tapes and transcripts may affect Patient A, however the panel was of the view that this impact is reduced by the anonymisation of Patient A.

The panel considered Mr Munyard's submission regarding *RIPA* and the fact that this Act creates the offence of unlawful interception of communications. The panel however, took the view that the legality or otherwise of obtaining the evidence was not a matter which would inevitably lead to evidence being excluded. In determining whether the evidence should be admitted it considered the motives of Patient A's daughters in taping her telephone conversations. The panel concluded that they felt compelled to take the action to protect their mother, who was at the time vulnerable, in their view. Due to your professional standing, the daughters felt the need for some tangible evidence to ensure their complaints would be believed. In addition, the panel took into account the fact that the tapes were not produced by or at the request of the NMC. Again, the panel balanced your right to a fair hearing with its overarching duty to protect patients, service users and the wider public, and concluded that this duty outweighed your interests.

In addition to the submissions relating to admissibility of evidence, the panel heard arguments from both parties regarding Mr Munyard's application to stay proceedings for abuse of process in relation to the charges for which the tapes evidence was relevant. The panel considered the submissions with care, but took the view that a fair hearing was possible even with the inclusion of the evidence of the tapes and transcripts. In reaching this decision, the panel had in the forefront of its mind the balance between fairness to you and its overriding duty to protect patients and the wider public interest.

In light of all of the above, having balanced the competing interests of your right to privacy and those of Patient A, with that of the wider public interest, the panel decided not to grant Mr Munyard's application, and therefore the tapes and transcripts remain admissible in these proceedings. The panel considered that the admission of the evidence under rule 31 would not preclude a fair hearing.

Determination on application to adduce evidence not presently before the panel:

Professor Castledine,

The panel heard an application made by Dr Deignan under Rule 31 of the *Nursing and Midwifery (Fitness to Practise) Rules Order of Council 2004* (the Rules) to put further evidence before the panel. Dr Deignan submitted that the panel heard matters put to Witness B and Witness C in cross examination based on a document that the panel did not have sight of. The evidence concerned was a copy of part of the record from a disciplinary hearing at the Institute of Ageing and Health, which took place on 8 April 2011, exhibited through Ms 3's witness statement. The panel already had before it an extract from the notes of this hearing, but this extract omitted the evidence of Witness B and Witness C. Dr Deignan informed the panel that this extract had been agreed between herself and your representative, Mr Munyard, prior to the commencement of this hearing. Dr Deignan contended that the panel should have sight of the part of the notes in which Witness B and Witness C gave evidence to that disciplinary hearing, to assist the panel in reaching a view on the credibility of these witnesses. She stated that at the 2011 disciplinary hearing, the notes would not have been taken by an independent shorthand writer, but would be a 'best note' of the hearing, taken by a staff member in the Institute.

Mr Munyard, on your behalf, said that he cited parts of the 2011 disciplinary hearing relating to a single point, namely the issue concerning the DNR form, which he put to Witness B and Witness C. Mr Munyard submitted that the vast bulk of Witness B and C's evidence was hearsay evidence, being information that their mother told them. He submitted that his reference to the disciplinary hearing related solely to charge 4, and the allegation that you asked Witness D to sign a DNR form for Patient A. Mr Munyard

stated that he only put a small extract from these notes to Witness B and Witness C, totalling eight and a half lines, and read a short passage which had been agreed with Dr Deignan in advance. He confirmed that the issue relating to the DNR form was the full ambit of his challenge to both witnesses, and stated that this matter takes up a tiny fraction of the whole document. As such, Mr Munyard submitted that it would not be necessary to put any further parts of the notes from this disciplinary hearing before the panel. He contended that, as he only put a handful of lines to the witnesses, it would be unjustified and unnecessary to put the entirety of Witness B and Witness C's evidence given at the disciplinary hearing before this panel. Mr Munyard clarified that he was challenging the credibility of Witness B and Witness C on the basis that they did not mention the DNR form at the disciplinary hearing in 2011. Mr Munyard stated that he would have no objection for the parts of the notes relating solely to the DNR form being put before the panel.

It was accepted by both parties that the document was not a verbatim record of the 2011 disciplinary hearing.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that so far as it is '*fair and relevant'* a panel may accept evidence in a range of forms and circumstances and whether or not it is admissible in civil proceedings. The legal assessor advised the panel that, subject to fairness, it would be proper and appropriate to have before it a note of the evidence given by Witness B and Witness C at the disciplinary hearing, so that the panel can make a proper and fair determination as to the credibility of these witnesses.

The panel considered Dr Deignan's application carefully, and decided to grant the application. The panel was of the view that, if the credibility of the two witnesses is being called into question, it should be given the opportunity to assess their answers in the context of the entirety of their evidence given at the disciplinary hearing. The panel concluded that in order to come to a proper and fair determination as to the credibility of Witness B and Witness C, it would need to have sight of the questions asked at the disciplinary hearing, the manner in which the hearing was conducted, and whether

Witness B and Witness C were offered any opportunity to put forward issues other than those put to them directly.

Determination on application to put evidence to a witness:

The panel heard submissions from both parties, at the conclusion of cross examination, as to whether a transcript should be placed before, and a tape should be played to, Witness D, and for him to be asked questions about the content. Dr Deignan submitted that it should. Mr Munyard, on your behalf, objected to the application.

The panel heard the advice of the legal assessor, but considered that the evidence from Witness D was sufficient to enable them to form a view as to his credibility.

The panel considered the submissions from both parties carefully. The panel are able to form a view as to the credibility of Witness D. He gave lengthy evidence and provided clear answers in relation to whether he was '*angry'* or '*worried'* when speaking to his sister about Patient A's will. The panel determined that they would not be assisted at this stage in having Witness D listen to the tape or read the transcript. The panel will hear the tapes in due course and will be able to form its own views, having heard Witness D's answers.

4 OCTOBER 2013

Determination on proceeding in absence

Mr Munyard addressed the panel initially about hearing the circumstances of the absence of Professor Castledine in private which the panel granted. Mr Munyard informed the panel that he took instruction last night after the hearing adjourned for the day. Professor Castledine was present this morning and spoke to Mr Munyard. Mr Munyard told the panel that he was extremely concerned about Professor Castledine's health. Mr Munyard then asked Professor Castledine to contact his wife and make arrangements for her to accompany him home and seek medical help. Mr Munyard informed the panel that he took instructions from Professor Castledine regarding whether he should proceed with his closing submissions in his absence to which

Professor Castledine replied ”I think so”. Mr Munyard submitted that it may not be right for him to proceed on that basis.

Dr Deignan made no submission on behalf of the NMC.

The panel has heard and has accepted the advice of the legal assessor regarding the absence of Professor Castledine. The panel was advised that it has a discretion to proceed in a registrant's absence. However that discretion must be exercised with the utmost care and caution.

The panel is mindful of the public interest in the expeditious disposal of the case and the potential inconvenience caused to the parties. The panel has considered that Professor Castledine is entitled to attend the hearing. He has fully engaged with these proceedings to date. The panel also had in mind Rule 32 of *The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004* which states that:

(2) A Practice Committee considering an allegation may, of its own motion or upon the application of a party, adjourn the proceedings at any stage, provided that—

(a) no injustice is caused to the parties; and
(b) the decision is made after hearing representations from the parties (where present) and taking advice from the legal assessor.

The panel has decided not to proceed in Professor Castledine's absence, but to adjourn the hearing. In reaching its decision, the panel had regard to the following factors. The panel considers that an adjournment will enable Professor Castledine to seek medical advice. The adjournment will also allow Mr Munyard to take further instructions from Professor Castledine regarding his submissions on facts, and allow the attendance of Professor Castledine.

The panel has determined that, in light of the factors identified above, it would be neither safe nor fair to proceed with the hearing today.

The hearing is therefore adjourned until 13 November 2013.

13- 16 January 2014

Determination on the facts

Professor Sir George Castledine,

In reaching its decision the panel has considered all the evidence adduced in this case both oral and documentary. It has considered the submissions of Dr Deignan the case presenter for the Nursing and Midwifery Council and those on your behalf by Mr Munyard, who represents you.

The panel received and accepted the advice of the legal assessor.

The panel has borne in mind 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 may be found proved only if the panel is satisfied that it was more likely than not to have occurred.

Background

At the time of the allegations you were the Honorary Chief Executive of the Institute of Ageing and Health and salaried Centre Manager of Onneley House, a job share with another nurse, a day centre for elderly people which provides advice and activities for elderly people. The Institute of Ageing and Health is a charity.

This case concerns your professional conduct towards a service user, identified during these proceedings as 'Patient A.'

On behalf of the NMC, the following witnesses gave evidence:
Witness B, Patient A's daughter;
Witness C, Patient A's daughter;
Witness D, Patient A's son;
Witness E, a family friend;
Mr F, a family friend;

Dr G, Patient A's GP;
Ms H, GP's practice manager;
Ms I, Associate Director of Nursing at the South Birmingham Community Health NHS Trust (the Trust);
Ms J, Chair of the Board of Trustees of the Institute of Ageing and Health;
Ms K, a Lead Nurse for Older Adults at University Birmingham NHS Foundation Trust;
Ms L, a nurse working at Onnely House
Dr M, a psychology manager for the Birmingham Health Care Trust who holds a doctorial qualification in clinical psychology, an MSc in clinical pyschology and a BA hons in psychology and an MPhil in Criminlogy.

You gave evidence on your own behalf.

Both daughters of Patient A gave evidence in person and her son gave evidence by video link. Patient A was 83 years old at the time these allegations arose. She is described by Witness D as being unable to read or write beyond her own name. The panel heard that there is another sibling, a son, who was described by Witness C as being estranged from her and her siblings.

The children of Patient A informed the Panel that following the death of their father in November 2008, after 59 years of marriage, Patient A did not cope well. As a result of their concerns about their mother, one daughter, Witness C, contacted Patient A's GP, Dr G, on 13 January 2009.

Dr G recommended bereavement counselling and requested that Practice Manager, Ms H, arrange this for Patient A. Ms H contacted Onneley House on 20 January 2009 and spoke with you about bereavement counselling and it was agreed that you would contact Patient A. Ms H arranged a home visit as the GP felt Patient A needed counselling urgently.

Witness C told the Panel that after going with her mother to the GP, she telephoned you and you told her that you were a bereavement counsellor. Witness C told the panel she was not present at the initial appointment as her mother did not wish her to be there. She visited her mother afterwards with her sister and commented that her mother

looked better, however on speaking to her mother about the counselling Witness C became concerned about your behaviour. Her mother told her that you had expressed an interest in some paintings, offering to have them valued. She also said you had asked for a hug at the end of the session, although when pressed about this, Patient A refused to admit there had been a hug. In addition both daughters were concerned at the lack of paperwork surrounding your sessions.
Over time, flowers and potted plants appeared in Patient A's house which were believed to be from you, there was food in Patient A's house believed to be for you, daily telephone calls from you to Patient A and visits by you to the home of Patient A with no appointments. They were concerned that whenever their mother spoke about you, she 'lit up.'

It is alleged that you were turning up to visit Patient A without any prior appointment, sometimes late at night. Witness B described you as turning up when it suited you and she told the panel that you seemed overly familiar and unprofessional. She had telephoned CRUSE to see if they could arrange a different counsellor because of her concerns, but her mother had said she was happy to keep seeing the 'professor' as she referred to you.

The panel heard that Patient A asked to take you to a party being held to mark the opening of Witness B's hair salon in September 2009. In the words of witness C, that was a 'defining moment, a watershed.' She told the panel that seeing you and Patient A together at that party made her think you were having an 'inappropriate sexual relationship.' The panel heard that you arrived at the party with Patient A and then sat together away from the other guests. The Panel heard Witness C describe you and Patient A as, 'like two long lost buddies who were sat facing each other. Although they were not touching or holding hands, it was clear at the party that they were very close.'

Witness E was at the party and spoke to you when Patient A was in the toilet. She said that she noticed glitter from Patient A's eye shadow on your cheek. She asked you if it was not beyond the call of duty to attend the party and asked what outcome you were expecting from the evening. You told her that you did it for all your patients and that it would help Patient A to socialise. Witness E told the panel that you became defensive

when she commented that Patient A was sitting apart with you and not socialising with the other guests.

The following day, witness B told the panel that she had telephoned her mother who ‘went mad’ about Witness E’s conduct, asking ‘how dare your friend challenge’ you and told her daughter to stop interfering. This was described by Witness B as a defining moment. She continued, saying that she had told her brother, Witness D, of her concerns, and that she believed you were going to kill Patient A.

Witness B further described her concerns about your relationship with Patient A, in November when her mother was due to go on holiday to Spain. As a result of what she had seen at the salon opening, she asked to see her mother’s tickets to ensure she was not going to Spain with you. She went on to describe seeing ‘frilly underwear’ in the bathroom, unlike her mothers usual underwear; also roses which her mother said were from you, adding that you always gave her flowers.

Patient A’s daughters felt that confronting their mother with their concerns about you was not an option as ‘going on about it’ only made their mother angry and they did not want to lose their connection with their mother as, ‘She was still so vulnerable and could end up on her own.’

Witness D came to England and visited you at Onneley House. He had been kept informed by his sisters of their concerns by regular telephone calls. He also gave evidence that he spoke to his mother daily on the telephone. In those calls, she had nothing but praise for you and although she did appear more positive, he was worried about the means used to achieve this, describing his mother as being like a ‘teenager in love.’

He described how his first impression of you was that you seemed to be a very pleasant, easy-going and sociable man. However, his opinion of you changed immediately after you asked him if he was happy to sign a ‘Do Not Resuscitate’ form on behalf of his mother. Witness D stated that he was too shocked to respond.

Witness D said that you told him that his mother was planning to join the Onneley

House trip to Torquay and that it was normal procedure to complete a 'Do Not Resuscitate' form and that anyone who wished to attend a trip with Onneley House had to sign one. You did not show him the 'Do Not Resuscitate' form. He told the panel that he felt he was being pressured to sign the form and had a feeling that 'they wanted to do some sort of harm to my mother.'

In addition Witness C was concerned that Patient A was giving money to you. She told the panel how she assisted her mother after the death of her father, in particular she wrote out cheques for her mother to sign. She explained that her father had kept cash in the house, in a safe and in a locked drawer. At the time of his death, there was £13.000, plus some Euros and some Swedish Krona. She thought this money had gone by 2010 but did not know when or where.

In September 2009 Witness C also found a cheque stub showing £2,000 in respect of a cheque that she had not written for her mother, and in November 2009 she found a second cheque stub showing £500, again for a cheque that she had not written.

Witness C, aware that after her father's death there was £13,000 in cash in Patient A's home, asked Patient A whether she could lend her cash to pay wages at her salon while she was away on a trip to New Zealand, Patient A said that she could only give her £5,500 in cash and nothing else. She believed that her mother had given money to you, in particular the sum of £6,000 which was referred to in a telephone call between you and Patient A.

Both Witnesses B and C were aware of the content of their mother's telephone calls because, such was their concern about your relationship with their mother, they felt compelled to tape record her telephone calls from August 2009. Witness C said it had been a difficult decision to make but told the panel that they had to do something and that their mother's well being was the paramount consideration. Furthermore, Witness E told the panel that "it was obvious that something was going on and Witness B and Witness C felt that no one would believe what they were saying so they decided to record Patient A's telephone conversations with the registrant." The taped conversations between you and Patient A were later transcribed verbatim and during the course of this hearing the panel heard extracts from the recordings and heard the

transcripts read. In one of those recordings the sum of £6,000 was referred to, together with other references to money. The recordings also disclosed your use of inappropriate and sexual language. You were heard to describe Patient A as 'my little Tinkerbell', and 'your lover'. In addition you told her in the course of those calls that you loved her and missed her.

The conversations recorded between you and Patient A where described by Witness C as a complete shock, she described you as being ' like a stalker, making six or seven calls in a weekend.' Witness B said she recognised your voice and one of the first things she heard you say to Patient A was 'I love you.'

In July 2010, the panel heard that you took Patient A to Towyn in North Wales to visit her late husband's niece. Witness C described this incident as 'my turning point.'

Further concerns regarding Patient A were raised when in about Christmas 2009 they found that you had given Patient A a CD player and some CDs. Patient A wanted to buy you a Christmas present. Witness B told the panel that she reluctantly purchased aftershave on behalf of Patient A with Patient A's money as a gift to you.

The panel heard from Mr F who said he tried to look in on Patient A every day, and had met you on one occasion, when Patient A introduced you as her 'grieving counsellor.' He said that he had seen your car parked outside Patient A's home at about 11.00pm on a Sunday in 2010, although in cross -examination he conceded that it could have been closer to 10pm.

Witnesses B and C contacted a number of organisations raising their concerns about your conduct. They felt that no one would believe them or take any action, which initially was the case, and the tape recordings were made in order that their concerns would be taken seriously.

This was demonstrated when, with the assistance of Witness E, they contacted the Safeguarding Lead for Birmingham Social Services and the Adult Protection Unit, however neither considered it appropriate to take any action as Patient A had capacity and was not considered to be at risk.

The panel heard from Ms I, who received a complaint about you from Patient A's daughters, that she told you verbally and subsequently by letter dated 13 September 2010, that you were to have no further contact with Patient A. The letter stated that 'Due to the nature of the allegation I must stress that you should refrain from having any contact with Patient A until the investigation is completed.' The audio tapes of your telephone conversations made by Patient A's daughters disclose that you were in contact with Patient A after 13 September 2010 before the investigation was completed.

Ms I conducted an investigation into the complaint which included an interview with you on 15 September 2010. At this stage Ms I was aware of the tape recording but did not mention them to you as she wished to take legal advice about them. In the course of that interview you explained that you had counselled people for over forty years and told her about the bereavement counselling service offered by Onnenley House. You denied that there was any discussion about money with Patient A or that there was any sexual overtone to your contact with her. The witness produced your job description which did not mention counselling or befriending services as part of your role. She also produced a leaflet outlining services offered by Onneley House.
You were invited again for interview after you were informed of the existence of the taped telephone calls. This took place on 2 December 2010. You did not deny it was you on the tape, although you said in that interview you knew you were wrong, but could not 'run away. It really pulled at my heart strings.'

Ms J told the panel that she met with Witnesses B and C on 13 September 2010. She then telephoned you at Onneley House and went to see you that day. You told her that you were still seeing Patient A for cognitive impairment. You told Ms I in your interview on 15 September 2010 that Patient A had agreed to take part in a research study into loneliness, and had signed a consent form to that effect.

Ms J told the Panel, that no research proposals were put forward by you at any educational research meetings at the Institute from 2009 to 2010, nor was she aware that you had made an application to any external ethics committee with regard to research. No notes have ever been produced about the work undertaken by you on research in relation to the problems of loneliness in older people as it related to Patient

A.

Ms J told the panel that she explained to you that there was a safeguarding issue arising from the complaint received and that, therefore, you were to have no client contact at all pending the investigation.

The panel heard that you had attended a trip to Bridlington on 25 October 2010 with clients and stayed overnight with them in a hotel for a number of days.

Ms K gave evidence and told the panel that you had provided her with an undated handwritten note which was purported to have been written by Patient A and reads: 'Mr George Castledine has never touched me inappropriately or asked me for any money or anything from me in any way during our visits inside or outside of my home.'

Ms L said in her statement that in September 2010 she was working at the office at Onneley House when you approached her and told her you had been counselling a lady (Patient A) whose daughters had raised concerns that you were having a relationship with her. She said that you produced a statement on behalf of Patient A disputing the allegations and wanted her to go through that statement with Patient A.

You told Ms L that you had written the statement on behalf of Patient A.

Finally, Dr M was called by the NMC to give expert evidence and provide an opinion on best practice with regards to bereavement counselling.

She gave evidence that normally a counsellor would arrange an initial appointment to assess the patient and determine the issues. At that appointment it would be important to decide on a plan for the individual and for future sessions, arranging a place, time and length of the sessions. She said that it was possible to see patients in their own home but that best practice was that it should in a neutral environment. She described how it is important to have the same venue and same time for sessions to provide a client with a sense of safety. Although in some circumstances it may be necessary to see a patient at home ideally counselling should take place in a neutral space. She told the panel that counsellors are regulated by the British Association for Counselling

(BACP) but that membership is not mandatory. She went on to say that a key element in counselling is to establish boundaries and that it would be very rare to have no notes of sessions. It would be best practice to write-up notes after each session. She said she would have expected some note showing an assessment of the clients needs and issues, together with a treatment plan and information about the bereavement. Dr M was shown your diary and various entries relating to Patient A. These she said were no more than entries in a diary and she would have expected notes to be recorded and kept in a locked cabinet. The notes in the diary made no mention of outcomes, plans, assessments nor anything about the nature of the relationship with the person who had died. She said that there was nothing to lead one to the conclusion that the entries were notes of a counselling session.

She told the panel that 'transference' is very common in counselling, however she said it was imperative that transference be managed carefully, hence the need for supervision and monitoring, to ensure safe practice. She said it would be extremely unusual and not best practice to have no supervisor.

She said it would be inappropriate to form a sexual relationship with a patient. The nature of counselling involves a patient revealing intimate details and a counsellor therefore has increased power and should not take advantage of the patient as a result, that would be to exploit a position of trust. She said that the relationship between the counsellor and the client is a professional one, not a friendship. If the counselling is successful, a strong therapeutic bond develops but that is not the same as a friendship and the counsellor should take care and be aware of the limits and boundaries of that relationship. When asked, Dr M said that in her opinion, it would be unusual for a nurse to accompany a patient with whom they are having professional contact, to family social event as you had to the salon opening in September 2009.

She also said it was inappropriate to accept or receive gifts of significant value.

She also indicated to the panel that the GP should be updated as to the progress of sessions and also notified when the sessions ceased.

In relation to you she told the panel that she could see nothing in the evidence submitted to indicate that your qualifications were regularly updated, which would be best practice.

Dr M was asked about an entry in the diary for 26 May 2009, which states in relation to Patients A 'needs memory help and encouragement to talk about fears and problems'. Dr M replied that the entry provided no context or rationale as to why the patient needed help and that there was no link to bereavement counselling. A number of entries in the diary were shown to Dr M and her conclusion was that they provided no evidence that any counselling had been undertaken nor indicated the nature of the counselling that had been offered. She repeated that there was no evidence of assessment, any needs identified as a result, nor any model of bereavement counselling mentioned.

In cross-examination Dr M was asked about her qualifications and she was asked about the concept of embedded counselling. She agreed that it is recognised that the skills of nurses, doctors and paramedics are enhanced by the inclusion of counselling skills alongside the primary treatment, which would be embedded counselling; but that should still be supervised. However she maintained that if one is referred for bereavement counselling, one would expect to receive bereavement counselling.

In relation to your qualifications in bereavement counselling, Dr M maintained that the 15 hour training course in understanding bereavement run by CRUSE, listed on your CV, was not sufficient to prepare you to offer bereavement counselling. There remained a need for supervision, qualifications and updating of qualifications of which she could find no evidence in your CV.

In relation to any research project to which Patient A consented, the doctor confirmed this would create a professional relationship, and there should be tight protocols around entering any research study. Although there was a document signed by the patient indicating a consent to participate in research, that was the only evidence, and there was no mention in that document of any rights to withdraw from the research. It was not clear, she said from the document, what was being consented to and she would also have expected a protocol and an outline of the research proposal to have been included.

The panel heard the statement of Ms L, in which she stated that she was a registered general nurse and had worked at Onneley House since 21 August 2010 as the assistant manager. She said that at present the centre does not offer counselling and that she did not have the appropriate training. In September 2010 she recalled you approaching her in the office producing a document on behalf of Patient A disputing the allegations that had been raised by her daughters that you were having a relationship with Patient A. In her statement she went on to say that on 6 September together with another employee, she met with Patient A in order to go through the statement with her. She read the statement to Patient A, who signed it. The signed statement with a handwritten amendment, made by yourself, was given to you.

The panel heard evidence from you over a number of days. You gave evidence of your qualifications and produced a CV to outline your training as a nurse in 1966 and your subsequent career.

You said during the course of your evidence that you had extensive experience in counselling and had carried out counselling for a number of years, and that you had been Chairman of a local branch of CRUSE at one stage in your career. Throughout your evidence, you described the type of counselling that you were providing through Onneley House in a number of different ways. These included low level listening and support, befriending, embedded counselling and bereavement counselling. You claimed that local GP surgeries were aware of what Onneley House was offering. You said that notes were not kept at the request of clients and that the GP's were in agreement with this. You said that you and your job share partner had visited GP surgeries to explain the counselling service, however, when pressed, your recollection of the nature and number of visits was vague and inconsistent.

During the course of your evidence, you told the panel that you taught counselling skills to students in a number of establishments. You also took the panel through your CV and your career history at length with particular emphasis on the occasions when you were involved in counselling.

In relation to the alleged relationship between you and Patient A, you did not dispute that you telephoned Patient A nor did you dispute the content of the calls although you made light of the sexual content describing it as banter. Despite the reference to money you disputed that Patient A had given you money and that any present given to her or received was actually not personal but on behalf of Onneley House. You claimed that the calls recorded were the only ones where sexually explicit language was used. You explained that during the time in question, you received further calls from Patient A, made from locations outside her home, and during these calls no sexually explicit language or 'banter' was used.

In your evidence, you told the panel that Patient A was herself pestering you and that you were trying to manage the situation.

You agreed that you had had contact with Patient A after you were told not to by Ms I. You maintained that Ms J had merely told you not to counsel and had not told you to have no client contact. Hence, you attended the trip to Bridlington. You said that had you not gone the trip would have had to be cancelled.

You stated that you did not receive any money from Patient A and assured the panel that you had no financial difficulties.

You told the panel that Patient A had, on one occasion, told you that she intended to leave you money in her will. You said, on hearing this, you went 'ballistic'. You maintained in cross examination that you had not received money from Patient A and that references to not being able to afford to go out for dinner, and the cost of train fares, were just 'a throwaway line'. You said you could have gone out if you wanted to and that although it could have been interpreted as you needing money, that wasn't the case.

In relation to the DNR form, you said that this related to a question that was asked as part of a general holiday/travel health form required of all clients prior to participating in trips. You did recall a conversation with Patient A, when discussing the form, when she stated that she did not wish to be resuscitated. Following your explanation, you said she told you 'oh well leave it like that then' meaning that she would be resuscitated. You told

the panel that when Witness D attended Onneley House, you showed him a blank holiday/travel health form.

Determination on facts.

In coming to its decision in relation to the charges, the panel has had full regard to the evidence called; the witnesses who gave oral evidence, the statements which were read, and the tape-recorded telephone conversations which the panel both listened to and read having been provided with transcripts. In addition the panel paid due regard to the exhibits produced by both parties.

In relation to the witnesses called by the NMC, the panel is of the view that those witnesses giving live evidence gave credible and honest evidence.

In particular, the panel took the view that both Witness C and B were credible, open and sincere, and was of the opinion that they had not attended the hearing to mislead but to tell the truth. The panel took the view that they acted out of concern for their mother and had no other motive. In recording telephone conversations, they believed their actions were justified as it was evident without these recordings the matter was not being pursued by relevant authorities. The panel accepts their motives for recording the telephone calls.

The panel did not think either sister was motivated by money as it was apparent from the evidence they had known all along where cash was kept in Patient A's house and had access to their mothers cheque books.

Neither sister had embellished or added to their evidence and they were prepared to make concessions in cross-examination in circumstances where their memories had faded. This added to their credibility.

The panel considered that Witness D was articulate and straightforward in his evidence similarly making appropriate concessions in cross examination. His evidence regarding the DNR form was strong, and the fact that it was not raised at the initial internal investigation does not in the panel's opinion indicate that it was fabricated or untrue.

Insofar as Witness E is concerned, there was nothing to indicate that she was anything other than honest, she was a family friend who behaved professionally throughout. The panel rejected your suggestion that she was being flirtatious with you at the salon opening. The panel finds that she was merely reporting her concerns as she was duty bound to do, as a safeguarding nurse. Similarly the evidence of Mr F was credible, he too making concessions in cross examination, for example that he had seen your car closer to 10 PM rather than 11 PM. This did not detract from his evidence.

Ms J gave evidence by telephone. Her evidence was clear and credible despite the difficult circumstances in which she gave it, being in a car on the telephone. It was suggested that she did not like you but the panel took the view that she approached her evidence in a businesslike way, as your manager, and did not appear vindictive. Her credibility was supported by the fact that she had clearly trusted you, and had initially taken the view that the complaint was not valid. She had written a note to defend you, admitting she had not followed up the complaint. The panel rejects your suggestion that she made up the notes of her meeting with you. The panel took the view that as nothing untoward had happened on the trip to Bridlington, despite you having client contact after she told you not to, there would have been no reason to make up her notes. Similarly the panel found the evidence of Ms I to be credible, and found nothing to suggest she was being other than honest about what she said had happened.

Finally the panel considered the evidence given by Dr M who it determined gave honest, measured and straightforward expert evidence. She maintained her views about your lack of adequate qualifications despite lengthy cross-examination and maintained her view that in offering bereavement counselling, there should be qualifications, updating of those qualifications, note taking, and supervision, whatever the nature of the counselling and despite whether the counselling took place within the NHS or not.

In contrast, you gave evidence which the panel often found difficult to believe, in that you lacked consistency in your responses, added elements to your account and altered your story as it suited you. You conceded that you had lied at the outset of the initial internal investigation and at various times as proceedings have continued. That seriously damaged your credibility. You have offered no plausible explanation for those

lies and stated that you lied in the absence of any evidence to support the allegations. As evidence was put before you, you modified your account.

The panel find it incredible to suggest, as you do, that the endearments and erotic language which have been heard on the tape recorded telephone conversations, were used at no other time but on the occasions where you have been heard on tape.

Your answers were not straightforward and on occasion during your evidence the panel took the view that you were being deliberately evasive. The panel did not consider that you were confused but intentionally changing your story.

Turning to the charges, in coming to its conclusion the panel have interpreted 'fail' to mean not to do something. The question whether you were under a duty to do certain things, and failed in that duty is something to be considered at a later stage, should there be one, not when deciding whether a fact has been established.

Charge 1(a) is found proved

The panel had regard to the evidence of the GP and his practice manager, evidence which was read and unchallenged during the hearing. It is clear from that evidence that Patient A was grief stricken following her husband's death and in need of bereavement counselling and that was what the GP requested and asked his practice manager to organise after he saw Patient A. In determining charge 1(a) the panel had regard to the evidence of Dr M, Ms J, Ms I and you, including the bundle produced by you detailing your qualifications. In the bundle was a certificate which purported to support your assertion that you had training in bereavement counselling from CRUSE. The panel preferred the view of Dr M that the certificate was in fact for Understanding Bereavement as identified on the certificate, rather than for a training course in bereavement counselling. When challenged in cross examination on this matter you asserted that you had done a further course in counselling but had no certificate for it, claiming not to be in the business of collecting certificates. The panel took the view that your experience in bereavement counselling was limited to you being a volunteer with CRUSE. You acknowledged that after you ceased to be chairman you did not do many cases. You gave evidence concerning the counselling you provided to Patient A which

you variously described as embedded counselling, or low-level counselling, and listening and befriending support service. It was quite clear from the evidence that what was requested and expected by the GP was bereavement counselling. The GP clearly took the view that it was necessary and urgent, as a result of seeing Patient A and her distress, asking for a domiciliary visit to expedite matters. He describes Patient A in his statement as grief stricken and needing bereavement counselling. Onnely House was contacted because the surgery had been told that the centre had expertise in bereavement counselling, although the GP did not know you. The referral was urgent. CRUSE could not be contacted or used as it required self referral, and would have taken time. The panel heard from you that you were in fact providing listening and support with low profile bereavement counselling which the panel considered very different from what had been requested by the GP.

The panel took the view that the certificate from CRUSE did not qualify you to carry out bereavement counselling, and in terms of the other experience relied on and set out in your CV, nothing pointed to any evidence of experience or qualification specifically in bereavement counselling. Whether you had practiced embedded or low-level counselling, the panel had no evidence to support your assertion that you had experience and qualifications in bereavement counselling. The panel took account of your evidence regarding embedded counselling as described in the book by Mr N, produced during the hearing. However, the panel found no evidence of the provision of primary nursing care in relation to Patient A.

You said in evidence that you had met with various GPs and attended surgeries to make them aware of the services offered at Onnely House however neither the GP nor his practice manager had ever met you. The daughter of Patient A clearly asked for bereavement counselling. She telephoned you and you said you were a bereavement counsellor, furthermore Patient A clearly thought you were a bereavement counsellor and she is described as such introducing you as ‘my grieving counsellor’. The document which you produced, which was found on a memory stick after the complaint about you had been made, purports to be a note provided to clients at Onnely House describing the counselling offered. The panel placed little evidential value on that document and was of the view that had that document been in common use it would familiar to your colleagues and not merely have been on a memory stick.

Belatedly you attempted in your evidence to justify your counselling of Patient A, saying you were offering embedded counselling and that you were also treating her as a nurse. From the evidence you adduced to justify embedded counselling you would have had to have been treating her as a nurse. The panel found no evidence of you acting as a nurse as there were no care plans or nursing records, nor any other evidence to support this assertion. This was found by the panel to be another attempt to justify your actions late in the day and mitigate your lack of qualifications as a bereavement counsellor, further damaging your credibility.

In the light of the above the panel is satisfied that you did not have sufficient qualifications or experience to carry out bereavement counselling.

Charge 1(b) found proved by admission.

Charge 1(c) is found proved.

It follows from the findings in charge 1(a) that having no sufficient qualifications, you had failed to obtain appropriate qualifications and/or experience.

Charge 1(d) is found proved.

Although you asserted that you have kept up to date with bereavement counselling, there is no documented evidence to corroborate this.

There is some evidence that you kept up-to-date insofar as nursing is concerned but nothing to update or qualify you in bereavement counselling. The panel does not accept your argument that because you are not a full-time counsellor, working within the NHS, you should not necessarily be judged by the standards set out by Dr M. You claimed that you should be judged by the expectations of the GP who had made no complaints.

You asserted that you keep up to date by teaching, searching the Internet and by going to the library and that you could not have been accepted for your teaching posts if you were not keeping up-to-date. Again the panel accepted that in general terms you may

have kept up-to-date, but in your capacity as a bereavement counsellor as required in this particular instance there is nothing to suggest you kept up-to-date.

Charge 2(a) is found proved by admission.

The panel is satisfied that that you had been asked to carry out bereavement counselling. Some notes were kept in the diary but these were by no means sufficient.
Charge 2(b) is found proved.

This charge is found proved on the basis that you did not see Patient A at the same time each session. The evidence quite clearly suggests that various different times were arranged, and the diary entries do not display a fixed pattern of any sort. Furthermore, your diary is incomplete as it is clear that there were meetings at times other than those noted in the diary. You accept that you did not meet with Patient A at the same time for each session. Evidence from Patient A's daughters was that you would 'pop in' and this is supported by the taped telephone conversations.

Charge 2(c) found proved.

The panel heard evidence from Witness C that between February 2009 and October 2009, you telephoned Patient A almost every day to see how she was. The evidence of Witness B was that you would phone or pop in to see the patient. These phone calls and visits were ad hoc and not in response to any request by their mother and since the evidence suggests that Patient A was improving the inevitable inference must be that they were not confined to acute episodes.

Charge 2(d) is found proved by admission.

You accepted you accompanied Patient A to the opening of her daughter's salon.

Charge 3 is found proved by admission.

You did give an explanation that the GP would not expect to be informed. The GP's evidence made no reference to what he expected, however, he noted he did not receive

any feedback. It was clear from Dr M that it would be usual and best practice to notify the GP that Patient A had been discharged from your care.

Charge 4 is not proved.

This charge relates to a request by you for Patient A's son, Witness D to sign a Do Not Resuscitate Form whilst Patient A thought it was a Do Resuscitate Form. Witness D was clearly shocked by the request, saying that he was being urged to sign the form prior to Patient A leaving for a trip to Torquay; a trip organised by Onnely House. The witness was unmoved in cross examination, maintaining that he was asked to sign a Do Not Resuscitate Form, but that he was at no time shown one. His evidence on this point was clear throughout, in contrast to your evidence which was misleading and incomprehensible as to what was being requested. The panel is satisfied so far as witness D's evidence is concerned that he was asked to sign a Do Not Resuscitate Form. However the panel is unable to determine, on the evidence, what Patient A understood the form to be. She told her daughter that it was a 'Do Resuscitate Form'. The evidence as to what Patient A had been told about the form is unclear and as such charge 4 is not made out.

Charge 5 is not proved

As charge 4 is not proved it must follow that charge 5 falls.

Charge 6 is proved by admission.

The charge is admitted, the signed and dated consent form was produced to the panel, and a diary entry made by you showed that your work was completed insofar as Patient A was concerned.

Charge 6A(a) is found proved.

In coming to its decision the panel took account of the evidence of Ms J. She gave evidence that she had written a clear note, which the panel saw, mentioning cognitive impairment which the panel found credible and reliable. The panel also took into

account the evidence of Patient A's daughter who gave evidence that her mother was being treated for memory loss. In addition you said you had used photographs and the Sussex assessment tool, which the panel considered was indicative of having purported to carry out work on cognitive impairment on Patient A.

Charge 6A(b) is found proved.

Beyond a diary entry for 26 May, made by you, no other notes were produced. You explained that no notes were taken at the request of clients. When spoken to on 13 September by Ms J, you told her that Patient A may have an early dementia however you denied treating her for memory loss in your interview on 15 September.

Charge 7 is proved by admission.

This charge is admitted in full. The panel heard extensive evidence from witnesses regarding the allegations in charge 7 and in addition had the advantage of listening to tape recorded telephone conversations between Patient A and yourself.

Charge 8 is found proved.

The panel gave consideration to the meaning of sexual motivation within the context of the allegation, and took the view that it was not exclusive to sexual intimacy or intercourse but included sexual gratification and that the context and the way in which the words were spoken by you indicated an intimacy of a sexual nature far beyond simple friendship or banter.

A further factor weighed into the balance was the persistent nature of these telephone calls and the timing of the calls, late at night and early in the morning.

In your evidence you described the exchanges alleged at charge 7, as banter. This explanation was rejected by the panel who considered the explicit language and sexual innuendo, including describing yourself as Patient A's ‘lover’ and ‘shadow’, and telling

her that you had to go to the gym to keep fit otherwise you would not be able to make love to her, to be sexually motivated. These conversations of a sexual nature were instigated by you. In addition the panel considered that giving gifts, and eating together in an intimate setting were also sexually motivated.

Charge 9 is found proved.

In coming to a decision on this allegation the panel had regard to the taped telephone conversations between Patient A and yourself. On one occasion Patient A refers to having ‘got the £6000 for you.’ When this was mentioned, it was simply accepted by you, you did not ask why she had got it nor say you did not want it or that you could not accept it. The panel finds this a striking contrast to your reaction when Patient A suggested to you that she would leave you money in her will. There were other references during the course of the telephone conversations to money, you claiming you could not afford to eat out, and travel by train was expensive. There was also mention by Patient A that she had some coins for you for your lunch money, to which you replied ‘Brilliant yeah,’ not no thank you I don't need it. These exchanges suggest that money was an issue for you.

There was also evidence from Patient A's daughters that money which they thought their mother had in her possession she no longer had, and that cheques had been written not by themselves. The panel had heard evidence that one of Patient A's daughters was in the habit of writing her cheques for her, as they were both were under the impression that their mother could not read or write, as was their brother Witness D. Taking all this into account the panel concluded that your actions were not only sexually but also financially motivated.

Charge 10 is proved by admission.

The panel had sight of the letter from Ms I, heard her evidence and heard recorded telephone calls which took place between you and Patient A following the letter telling you to have no further contact.

Charge 11 is found proved.

The panel accepted Ms J's evidence, in which she made it clear that she had told you that you were to have no client contact, not as you suggested, that you should not do any counselling. She had received a letter of complaint, and was aware of the allegations which involved adult safeguarding issues, and the panel finds it entirely credible that she would have told you that you were to have no client contact, bearing in mind the nature of the allegations. Furthermore by contacting social services and the police it is quite clear that in her mind she recognised that there was an adult safeguarding issue and therefore the proper response would have been to say the registrant should have no client contact in those circumstances.

Charge 12 (a) is proved by admission

Charge 12 (b) is proved

Around the time of the charge, you were recorded in a conversation with Patient A and you could be heard telling her to 'just keep quiet just keep strong'. Following her being questioned as part of the investigation, Patient A can be heard on the telephone saying to you 'I think I got away with it,' and going on to say 'God forgive me.' She went on to ask you if you thought she had given all the right answers.

The panel took account of the tape-recorded telephone conversations in which you encouraged Patient A to lie to those interviewing her about the relationship. It can be inferred from what was said that she was being encouraged to lie, or at the very least keep quiet. You can be heard discussing on the telephone putting something into writing, and when Patient A said she was not good with writing, you said you would bring a tape recorder. You can be heard telling her what to write saying, "just put down that, 'I have never fallen in love with George, he's never had sex with me, and I've never given any money' just in that way". You went on to tell her to sign and date the document and further went on to say 'and hide it. But keep it for me.' It is you who instigated this saying that she needed to do this for you for your 'security.' When Patient A asked if it would be helpful, you replied 'it'll convert the court.' It is apparent from the

conversations that you were encouraging and supporting Patient A to lie about both her personal and financial relationship with you.

Charge 13 is found proved.

The panel considered carefully the meaning of the word dishonesty and determined that you manipulated a vulnerable patient. The panel found that your actions can only be described as dishonest. It must have been apparent to you that your actions were dishonest and you must have recognised them as such.

Decision on misconduct and impairment

Dr Deignan referred the panel to her comprehensive written submissions which addressed each of the charges. She submitted that your conduct amounted to serious misconduct and falls far short of the standards expected of a registered nurse. She submitted that your actions put a vulnerable patient at risk of harm and have brought the nursing profession into disrepute and the public interest required a finding of impairment in this case. Further, she asserted that the nature of the charges, which relate to sexually motivated conduct and dishonesty, are difficult to remedy and you have provided no evidence of remediation.

Dr Deignan referred the panel to a number of cases including *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Cohen v General Medical Council [2008] EWHC 581* and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and in particular the guidance provided by Mrs Justice Cox. Further, she referred the panel to a number of relevant professional guidance documents and paragraphs of the NMC *code: Standards of conduct, performance and ethics for nurses and midwives (2008 version) ('the Code')* which set out your duties and which she submitted you had breached.

Dr Deignan invited the panel to find that your current fitness to practise is impaired by reason of your misconduct and that there is risk of repetition in the future.

Mr Munyard submitted that he did not contest Dr Deignan's submissions save for minor details.

The panel noted that you admit that your current fitness to practise is impaired, however, the panel has exercised its own judgement in determining the questions of misconduct and impairment. It has considered the submissions put forward by Dr Deignan and has noted that Mr Munyard does not contest these submissions save for minor details. It accepted the advice of the legal assessor regarding the factors it must take into account when making its decision on impairment.

The panel first considered whether the facts found proved amount to misconduct. The panel is broadly in agreement with the submissions of Dr Deignan and it considers that your conduct in relation to all charges fell seriously short of the standards expected of a registered nurse. In coming to its findings on misconduct, the panel has carefully considered its findings of fact and has concluded that there were significant breaches of the Code. It has taken into account the evidence of Dr M regarding best practice in counselling. The breaches of the Code and other relevant guidance include your failing to maintain appropriate boundaries with Patient A. In failing to ensure your work was supervised and failing to keep sufficient records, your behaviour was allowed to go unchecked with the consequences identified in the allegations found proved. It considered that the charges amounted to serious misconduct, particularly in light of the proven allegations which relate to dishonesty and sexually motivated behaviour. Further, your actions put a vulnerable patient at serious risk of harm.

For the reasons above, the panel determined that you breached the following sections of the Code:

The Preamble (the guiding principles):

'The people in your care must be able to trust you with their health and wellbeing. To justify that trust, you must:

- *make the care of people your first concern, treating them as individuals and respecting their dignity.*

- *provide a high standard of practice and care at all times.*
- *be open and honest, act with integrity and uphold the reputation of your profession.*

As a professional you are personally accountable for actions and omissions in your practice, and must always be able to justify your actions.
The following paragraphs:

13. You must ensure that you gain consent before you begin any treatment or care.

18. You must refuse any gifts, favours or hospitality that might be interpreted as an attempt to gain preferential treatment.

20. You must establish and actively maintain clear sexual boundaries at all times with people in your care, their families and carers.

22. You must work with colleagues to monitor the quality of your work and maintain the safety of those in your care.

26. You must consult and take advice from colleagues when appropriate.

28. You must make a referral to another practitioner when it is in the best interests of someone in your care.
32. You must act without delay if you believe that you, a colleague or anyone else may be putting someone at risk.

33. You must inform someone in authority if you experience problems that prevent you from working within this code or other nationally agreed standards.

35. You must deliver care based on the best evidence or best practice.

38. You must have the knowledge and skills for safe and effective practice when working without direct supervision.

39. You must recognise and work within the limits of your competence.

40. You must keep your knowledge and skills up to date throughout your working life.

41. You must take part in appropriate learning and practice activities that maintain and develop your competence and performance.
42. You must keep clear and accurate records of the discussions you have, the assessments you make, the treatment and medicines you give, and how effective these have been.

43. You must complete records as soon as possible after an event has occurred.

57. You must not abuse your privileged position for your own ends.

61. You must uphold the reputation of your profession at all times.

Further, the panel had regard to the following documents and considered that you failed to adhere to the guidance therein:

Council for Healthcare Regulatory Excellence - Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals

What constitutes a breach of sexual boundaries?
A breach of sexual boundaries occurs when a healthcare professional displays sexualised behaviour towards a patient or carer…other sexually motivated actions towards patients such as sexual humour or inappropriate comments.

The consequences for patients when sexual boundaries are breached
Breaches of sexual boundaries by healthcare professionals are unacceptable because:

- *they can cause significant and enduring harm to patients*
- *they damage trust - the patient's trust in the healthcare professional and the public trust in healthcare professionals in general*
- *they impair professional judgment. Sexual or inappropriate involvement with a patient may influence a healthcare professional's decisions about care and treatment to the detriment of the patient.*

Trust and safety

Healthcare professionals have a duty to ensure the safety and wellbeing of their patients…A breach of sexual boundaries can seriously damage this trust.

NMC Practitioner-client relationships & the prevention of abuse

Boundaries in professional relationships

9. *All professional relationships contain the potential for conflicts of interest. Registered nurses and midwives may, on occasions, develop strong feelings for a particular client or family. They only compromise the relationship if the practitioner acts upon them improperly. Where personal or business relationships pre-exist the professional relationship, or where duel relationships exist (such as in small communities where the practitioner may already be a friend of the client), it is the responsibility of the registered practitioner to maintain each relationship within its own appropriate boundary*.

Guidance for practitioners and employers on the prevention, detection and management of abuse

23. *…Personal relationships with vulnerable clients are never acceptable*.

25. The prevention of abuse within the practitioner-client relationship depends upon understanding how, why and where abuse occurs. The following factors can contribute to the development of abuse within the practitioner-client relationship.

Supervision

27. This includes the following issues:

lack of effective supervision

practitioners working in isolation with limited supervision

The panel noted that although you have never have been a member of the British Association for Counselling and Psychotherapy (BACP), you asserted in your evidence that the principles outlined in the document below formed the basis of the work you carried out at Onneley House.

The panel also considers that you failed to adhere and have due regard to the following document and to the guidance therein:

Ethical Framework for Good Practice in Counselling & Psychotherapy

Beneficence*: a commitment to promoting the client's well-beingThe principle of beneficence means acting in the best interests of the client based on professional assessment. It directs attention to working strictly within one's limits of competence and providing services on the basis of adequate training or experience.*

Non-maleficence*: a commitment to avoiding harm to the clientNon-maleficence involves: avoiding sexual, financial, emotional or any other form of client exploitation... The practitioner has an ethical responsibility to strive to mitigate any harm caused to a client even when the harm is unavoidable or unintended…*

Self-respect*: fostering the practitioner's self-knowledge and care for self… There is an ethical responsibility to use supervision for appropriate personal and professional support and development, and to seek training and other opportunities for continuing professional development ...*

Providing a good standard of practice and care.

Good quality of care

4. Duel relationships arise when the practitioner has two or more kinds of relationship concurrently with a client, for example client and trainee, acquaintance and client, colleague and supervisee. The existence of a duel relationship with a client is seldom neutral and can have a powerful beneficial or detrimental impact that may not always be foreseeable. For these reasons practitioners are required to consider the implications of entering into duel relationships with clients, to avoid entering into relationships that are likely to be detrimental to clients, and to be readily accountable to clients and colleagues for any duel relationships that occur.

5. Practitioners are advised to keep appropriate records of their work with clients unless there are good and sufficient reasons for not keeping any records. All records should be accurate, respectful of clients and colleagues and protected from unauthorised disclosure. Any records should be kept securely and adequately protected from unauthorised intrusion or disclosure. Practitioners should take into account their responsibilities and their client's rights under data protection and any other legal requirements.

Keeping trust

12. Clients should be adequately informed about the nature of the services being offered. Practitioners should obtain adequately informed consent from their client's and respect a client's right to choose whether to continue or withdraw.

17. Practitioners must not abuse their client's trust in order to gain emotional, financial or any other kind of personal advantage. Sexual relations with clients are prohibited…

Supervising and managing

33. There is a general obligation for all counsellors, psychotherapists, supervisors and trainers to receive supervision/consultative support independently of any managerial relationships.

Researching

38. The rights of all research participants should be carefully considered and protected. The minimum rights include the right to freely given and informed consent…

The panel also had regard to the below document and the sections it considered you had breached.

NMC Record keeping, guidance for nurses & midwives
Principles of good record keeping (July 2009)

7. *You should record details of any assessments and reviews undertaken, and provide clear evidence of the arrangements you have made for future and ongoing care. This should also include details of information given about care and treatment.*

20. *You should not discuss the people in you care in places where you might be overheard. Nor should you leave records, either on paper or on computer screens, where they might be seen by unauthorised staff or members of the public*.

Having concluded that the facts found proved amount to serious misconduct, the panel then considered whether your fitness to practise is impaired by reason of that misconduct.

The misconduct in your case was repetitive over a significant period of time during which you breached and crossed a number of boundaries. You abused your position of trust and abused Patient A's rights and did not respect her dignity. You failed to identify and manage the risks involved with Patient A. The panel has found that your behaviour was sexually and financially motivated and heard the impact of your actions on Patient A and her family.

Although the panel acknowledged that you made an apology to Patient A and her family at the commencement of your evidence, it determined that you have shown little insight or remorse for your actions and the impact of those actions on Patient A and her family. You have made either late or no admissions to the charges found proved, and have now admitted your current fitness to practise is impaired having seen the panel's findings of fact. The panel further notes, that subsequent to making your apology to

Patient A and her family you sought to allege that Patient A was ‘pestering’ you. The panel finds this to be further evidence of lack of insight.

The panel has borne in mind the words of Mrs Justice Cox in the case of *CHRE v NMC and Grant*. That guidance states that when considering impairment panels should consider whether:

- *The registrant has in the past acted and/or is liable in the future to act so as to put a patient(s) at unwarranted risk of harm; and/or*
- *The registrant has in the past brought and / or is liable in the future to bring the profession into disrepute; and/or*
- *The registrant has in the past breached and / or is liable in the future to breach one of the fundamental tenets of the profession; and/or*
- *The registrant has in the past and / or is liable in the future to be dishonest*

The panel determined that you have breached all four of these points.

The panel is of the view that it would be difficult to remediate the failings highlighted in your case and in any event it has not been provided with any evidence of steps you have taken to remediate your failings. In the absence of any further information the panel cannot be satisfied that you have remedied your misconduct, and there is therefore a risk of repetition of the misconduct.

Mrs Justice Cox stated that panels should not lose sight of the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.

For all these reasons set out above, the panel is satisfied that public confidence in the nursing profession and in the regulatory process would be undermined were it not to make a finding of impairment in this case, bearing in mind the serious nature of the matters found proved, involving a vulnerable patient.

Accordingly, in all the circumstances the panel has concluded that your fitness to practise is currently impaired by reason of your misconduct.

Decision on sanction

Having determined that your fitness to practise is currently impaired, the panel considered what sanction, if any, it should impose on your registration. In reaching its decision the panel had regard to the submissions of Dr Deignan and Mr Munyard and all the evidence in this case, including the evidence of a number of character witnesses called by you at the sanction stage.
Dr Deignan referred the panel to her written submissions and to the NMC's Indicative Sanctions Guidance (ISG). In particular, she referred to the guidance in relation to dishonesty and sexual misconduct. She outlined the aggravating and mitigating factors in your case. She asked the panel to consider with considerable caution the opinions of two of the character witnesses, that there was scope for 'rehabilitation' in your case, given the panel's findings that you have shown little insight or remorse.

Dr Deignan also referred the panel to the cases of *R (on the application of Abrahaem) V GMC* [2004] EWHC 279 (Admin) and *Bolton v Law Society* [1994] 1 W.L.R 512 CA. She conceded that you have many talents and skills and have made a very significant contribution to the nursing profession. However, she asserted that your misconduct is so serious and represents such a departure from the standards expected of a registered nurse that the risk of harm to the public interest is such that you should not be permitted to return to practice.

Dr Deignan invited the panel to find that a striking-off order is the only sufficient sanction in your case to protect the public and the public interest. She submitted that the seriousness of your misconduct is incompatible with you remaining on the register and that public confidence in the profession and the NMC as regulator could not be sustained if you remain on the register.

Mr Munyard outlined your career history and submitted that you had clearly been an outstanding member of the nursing profession. He asserted that your practice has been of 'huge beneficial use' to the wider community over many decades and has led to many accolades including a knighthood. Further, he submitted that despite reaching this

level of practice, you continued to work shifts on the wards and this showed your true nature.

Mr Munyard asked the panel to have regard to the length of time you were giving evidence under oath, some two weeks separated by a week. He stated that by the end of your evidence it is little wonder that your answers appeared ‘confused and bizarre’. He submitted that he was not seeking to go behind the panel’s findings, however, he asserted that the length of time you were giving evidence may have impacted on how you gave evidence.

Mr Munyard submitted that ‘something went horribly wrong’ in 2009/10 which led to the failings identified and which was then compounded by lies. However, he asserted that there was no evidence that you had done anything similar in your long career. He asked the panel to take into account the evidence of the various character witnesses who accept the panel’s findings and who were variously ‘disappointed and appalled’ by your actions and yet still have considerable professional respect for you.

Mr Munyard referred the panel to the ISG which states that the purpose of sanction is not to be punitive, although it may have that effect. He conceded that given the panel’s findings, that either a suspension or striking-off order was the ‘realistic’ sanction in your case. He submitted that you do not wish to return to clinical nursing practice or counselling but wish to continue to work in education and research. He asked the panel to consider imposing a suspension order and submitted that the public interest could be protected by such an order. He asserted that such an order would be subject to review by another panel before you could be restored to the register.

The panel accepted the advice of the legal assessor who referred it to the ISG and Article 29 of the Nursing and Midwifery Council Order 2001 and the factors it must take into account when making its decision on sanction.

The panel has exercised its own judgement in reaching its decision and has applied the principles of proportionality at all times. It is mindful that a sanction must demonstrate, in each case, a considered and proportionate balance between the interests of the public and your own interests. The public interest includes the protection of members of the

public, the maintenance of public confidence in the profession and the NMC as a regulatory body, and the declaring and upholding of proper standards of conduct and performance. The panel further recognises that the purpose of a sanction is to protect the public and not to be punitive although it may have that effect.

The panel considered the aggravating factors of this case. You have breached fundamental tenets of the profession. Your actions represent a serious departure from the standards expected from a registered nurse. The panel has found that your misconduct relates to sexually and financially motivated behaviour and dishonesty involving a vulnerable patient. You have been dishonest during the course of the investigation and were evasive and inconsistent during the course of your evidence. The panel had regard to the length of time you gave evidence and having reviewed the transcripts of your evidence, is satisfied that your evasiveness and inconsistency was not confined to any particular time during your evidence. Further, the panel considers that the length of time you were under oath and subject to cross examination, was extended by your deliberate evasiveness during which you did not give direct answers.

You have shown little insight or remorse for your actions and the impact of those actions on Patient A and her family. You made late admissions to some of the charges but only as the evidence was put before the panel. The panel determined that although it may be difficult for you to remediate some of your failings, bearing in mind their nature, it has not been provided with any evidence of any steps you have taken to remedy any of your failings.

The panel then considered the mitigating factors of this case. The panel has not been provided with any evidence of misconduct before or since the incidents in question. You have had a distinguished career of over 40 years. The panel noted your professional achievements as an author, clinician, educator and mentor. The panel also noted your contribution to the nursing profession which includes the development of the provision of care to older people and the development of palliative care. In addition, you have engaged with the NMC throughout these proceedings.
The panel also had regard to the evidence of the various character witnesses who talked positively of your professionalism and practice and all described your actions as being ‘completely out of character’ and not reflective of the person they knew.

The panel first considered taking no action and decided that this would be inappropriate. The panel considered that in light of the facts found proved and its finding of impairment, it was not in the public interest to take no action and that such a course would be wholly insufficient to mark the seriousness of your actions.

The panel next considered whether to impose a caution order. Taking into account the seriousness and nature of the misconduct found proved, it determined that this too would be inappropriate. The panel considers your misconduct to be at the higher end of the spectrum. The panel did not consider that a caution order would address the seriousness of your misconduct, nor declare and uphold proper standards of conduct and performance and maintain confidence in the profession and the NMC as a regulatory body.

The panel next considered whether to impose conditions on your registration. A conditions of practice order is normally appropriate in cases where there are identifiable areas of nursing practice that require assessment and / or retraining. The panel noted that two of your character witnesses suggested that this could be an appropriate sanction. However, having regard to its findings of dishonesty, financial and sexually motivated misconduct and concerns as to your insight, the panel determined that it is not possible to formulate appropriate conditions of practice that would address this misconduct or address the underlying issues in this case. The panel considers that you have displayed attitudinal problems. You made some late admissions to the charges and have not demonstrated an understanding of the impact of your actions. The panel had no confidence that you would abide by conditions bearing in mind your failure to observe the directions of your managers when instructed not to have contact with Patient A or other clients.

The panel went on to consider the sanction of suspension. It had careful regard to the ISG and the factors identified. The panel notes that this is not a single instance of misconduct. The misconduct in your case was wide ranging and aspects of the misconduct continued beyond the original incidents outlined in the charges. You continued to see Patient A after you had received written instructions not to do so. You have at no time acknowledged that your actions were sexually and financially motivated.

You have sought to mislead the panel and have lied to the panel during the course of these proceedings. The panel considers that you have shown a persistent lack of insight into the seriousness of your actions and the impact of those actions on Patient A and her family. During your evidence to the panel, you sought to blame Patient A for 'pestering' you. The panel considers that your misconduct represents a serious departure from the relevant professional standards as set out in the Code. The panel reminded itself that in finding impairment it formed the view that there was a real risk of repetition of the misconduct found proved. Further, in the absence of any clear and evidenced identification of the cause of your failings and no evidence of remediation, the panel considers that there is a real risk of repetition of your misconduct in the future.

The panel carefully considered the words of Mr Justice Mitting in the case of *Parkinson v NMC* which he stated:

"A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than direct erasure."

Although you have attended throughout, you have failed to satisfy the panel that you have demonstrated remorse and a realisation that the conduct was dishonest and an undertaking that there will be no repetition of the misconduct, as outlined in *Parkinson*.

In all the circumstances and for the reasons stated above, the panel determined that your actions are so serious as to be fundamentally incompatible with you remaining on the Register. The panel concluded that a suspension order in this case would not be appropriate nor would it be sufficient to protect the public interest or uphold the standards of and maintain public confidence in the nursing profession.

Having regard to the nature and seriousness of the misconduct in this case, which relates to sexually and financially motivated misconduct and dishonesty, the panel has determined that a striking-off order is the only appropriate and proportionate sanction.

The panel is mindful of the potential impact that such an order will have on you in terms of financial, personal and professional hardship. Nevertheless taking full account of the important principle of proportionality, the panel is of the view that the interests of the public outweigh your own interests.

The panel concluded that your actions represent fundamental departures from the relevant standards as set out in the Code, and that public confidence in the nursing profession and in the NMC as its regulator would be undermined were the panel not to impose a striking-off order.

The panel, therefore, determines that a striking-off order should be made and will direct the Registrar to strike your name from the Register. In accordance with Article 33 of the Nursing and Midwifery Council Order 2001, you may not apply for restoration until five years after the date that this decision takes effect.

This decision will be confirmed to you in writing. The order will take effect 28 days from the date when notice of it is deemed to have been served upon you. You have the right to appeal this decision.

Decision on interim order

Dr Deignan made an application for an interim suspension order for a period of 18 months to cover the 28 day appeal period and/or the time needed to conclude an appeal if one were lodged.

Mr Phillips, on your behalf, in light of the panel's findings, made no submissions.

The panel accepted the advice of the legal assessor.

The panel considered the application carefully, bearing in mind its findings at the impairment and sanction stages. The panel takes the view that an interim order is necessary on the grounds of public protection and that it is otherwise in the public interest.

The panel, therefore, decided to impose an interim suspension order for a period of 18 months for the same reasons as it imposed the substantive order. To not make such an order would be incompatible with the panel's earlier findings and with the substantive sanction that it has imposed.

The effect of this order is that, if no appeal is lodged, the striking-off order will come into effect 28 days after notice of the decision has been sent to you and the interim suspension order will lapse. If an appeal is lodged then the interim suspension order will continue until the appeal is determined.

The panel's decisions will be sent to you in writing.

That concludes this determination.