### Conduct and Competence Committee

**Substantive Hearing**

**26 – 29 September 2016**

Nursing and Midwifery Council, 61 Aldwych, London WC2B 4AE

<table>
<thead>
<tr>
<th>Name of Registrant Nurse:</th>
<th>Mr Albert Chinedu Nwabufo</th>
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<tbody>
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<td>NMC PIN:</td>
<td>10F0239E</td>
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<td>Part(s) of the register:</td>
<td>Registered Nurse (Sub part 1)</td>
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<td>Mental Health (30 August 2010)</td>
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<td>Area of Registered Address:</td>
<td>England</td>
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<td>Type of Case:</td>
<td>Misconduct</td>
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<td>Panel Members:</td>
<td>Mr Paul Powici (Chair – Lay member)</td>
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<td></td>
<td>Dr Veronica Offredy (Registrant member)</td>
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<td></td>
<td>Mrs Christine Russell (Lay member)</td>
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<tr>
<td>Legal Assessor:</td>
<td>Mr Michael Epstein (Day 1, 3 and 4)</td>
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<td></td>
<td>Mr Richard Tyson (Day 2)</td>
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<td>Panel Secretary:</td>
<td>Miss Melissa Daysh</td>
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<td>Mr Nwabufo:</td>
<td>Present but not represented</td>
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<tr>
<td>Nursing and Midwifery Council:</td>
<td>Represented by Mr Stephen Reynolds, instructed by NMC Regulatory Legal Team.</td>
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**Facts proved by admission:**

- All

**Fitness to practise:**

- Impaired by reason of misconduct

**Sanction:**

- Striking off order

**Interim Order:**

- Interim suspension order – 18 months
Details of charge:

That you, a registered nurse, whilst employed, [or having been employed.] by Oxleas NHS Foundation Trust, between March and December 2014:

1. Breached professional boundaries in that you:

1.1 On one or more occasion had sexual intercourse with Patient A;

1.2 Allowed Patient A to use your personal mobile phone to make a phone call;

1.3 Accompanied Patient A to a sexual health clinic where you both got tested for Sexually Transmitted Infections;

1.4 On one or more occasion gave Patient A money.

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

You qualified as a Registered Mental Health Nurse in October 2010 and commenced permanent employment with the Oxleas NHS Foundation Trust (“the Trust”) as a Band 5 Mental Health Nurse during the same month. In March 2014, you resigned from the Trust as a permanent staff member and joined the Trust’s nursing bank before being dismissed from this position in February 2015.

At the time of some of the allegations, you were working on Avery Ward, an acute ward, at Oxleas House. On 25 February 2014, Patient A was admitted as an inpatient to Oxleas House. You were not Patient A’s primary carer but you were a registered nurse at that institution and did meet Patient A in a clinical context. During her admission to Oxleas House, it is alleged that you allowed Patient A to use your personal mobile telephone to make a telephone call. After Patient A’s discharge from Oxleas House in March 2014, you commenced a sexual relationship with her. During the period of this relationship, Patient A continued to be treated as an outpatient at Oxleas House. Whilst the allegations in your case commenced when Patient A was an inpatient at Oxleas House they continued when she became an outpatient. Patient A was a vulnerable service user and you held a position of responsibility.

It is alleged that during the period of your sexual relationship with Patient A you accompanied her to a sexual health clinic in London, where you were both tested for Sexually Transmitted Infections (“STI”). Further, it is alleged that that during this period, you also gave Patient A money on one or more occasions.

[PRIVATE].

[PRIVATE].

Subsequently, a referral was made to the NMC on 13 February 2015 by Ms 1, Head of Human Resources and Workforce Development at the Trust. [PRIVATE].
Decision and reasons on application under Rule 19:

At the outset of the hearing Mr Reynolds, on behalf of the NMC, made a request that the hearing of your case be held wholly in private on the basis that proper exploration of your case involves matters relating to the health and treatment of Patient A and your own health conditions. He also submitted that due to the sensitivity of the allegations it would be preferable that this hearing be held in private.

You indicated that you supported the application to the extent that any reference to Patient A’s health and medical treatment and your own health conditions should be heard in private.

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

Having heard that there will be reference to your own health conditions and Patient A’s health and medical treatment, the panel determined to hold such parts of the hearing in private. It has determined not to hold the entirety of the hearing in private as this would not satisfy the public interest in your case. The panel determined to rule on whether or not to go into private session as and when such issues are raised.

Evidence adduced by the NMC:

Opening the case for the NMC, Mr Reynolds took the panel through the charges and identified the evidence that would assist the panel with its determination on facts. He told the panel that the principal mischief in your case is effectively an exploitation of the balance of power and abuse of trust. Your sexual relationship with Patient A was built upon these foundations. The panel read and considered all the written evidence put before it.
The panel also heard oral evidence from the following witness who had been employed by the Trust:

- Ms 1, who was employed by the Trust as Head of Human Resources and Workforce Development.

The above title also refers to Ms 1’s position at the time of the charges. The panel found Ms 1 to be a credible witness. While she was unable to give evidence relating specifically to the mischief of the charges, Ms 1 was able to confirm that you were employed by the Trust during the period of March to December 2014 and that Patient A was a patient with the Trust at the same time.

Decision and reasons on application pursuant to Rule 31:

The panel heard an application made by Mr Reynolds, on behalf of the NMC, under Rule 31 of the Rules to allow email correspondence between Ms 1 and a Trust colleague to be admitted into evidence. Mr Reynolds submitted that the series of emails between Ms 1 and her Trust colleague are relevant and should be admitted as hearsay evidence.

He submitted to the panel that the information contained in these emails go precisely to the crux of the charges in that they concern the chronology of Patient A’s treatment at Oxleas House, her discharge as an inpatient of the Trust and her continued treatment [PRIVATE].

Mr Reynolds submitted that these matters underpin the mischief in your case and pertain to Patient A’s status at Oxleas House and her vulnerability at the time of the events. He reminded the panel that you have been in contact with the NMC for some time and at no time have you given any indication that you disputed the dates that you were employed with the Trust or when Patient A was a patient, and receiving treatment, by the Trust. He told the panel that this information is absolutely relevant as it goes to each of the charges and it is fair to adduce this evidence.
You submitted that the information contained within the series of emails, dated 26 September 2016, are irrelevant and should not be put before the panel.

The panel 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, whether or not it is admissible in civil proceedings.

In considering the application, the panel took account of both Mr Reynolds’ submissions, and those made by you. The panel determined that it would be fair to both parties to allow the series of emails to be adduced into evidence. It was of the view that this evidence would clarify your employment position, despite you not agreeing for the evidence to be adduced. The information will provide confirmation of the dates you were employed by the Trust and Patient A’s status as a patient at the Trust. While the panel had regard to the fact that Ms 1 had not adduced this evidence herself, her colleague has produced the email as a result of interrogating the Trust’s IT systems.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the series of emails between Ms 1 and her colleague, dated 26 September 2016 as it is relevant to the charges and it is fair to all parties that it be admitted as evidence. However, the panel would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

**Decision and reasons on application to amend charge:**

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

The proposed amendment was to cover all aspects of the mischief of the charges before you. The amendment is as follows:

*That you, a registered nurse, whilst employed, [or having been employed,] by Oxleas NHS Foundation Trust, between March and December 2014:*
It was submitted by Mr Reynolds that the proposed amendment would more accurately reflect the evidence. He submitted that this amendment can be made without injustice to you and would not be unfair. Mr Reynolds reminded the panel that until the start of these proceedings, you had not disputed your employment dates with the Trust and the NMC have addressed this issue as soon as it came to light. He told the panel that you have had the opportunity to bring your own documents to these proceedings and have seen those put forward by Ms 1. Mr Reynolds submitted to the panel that there will be ample opportunity for you to give evidence before the panel in respect of these charges.

You submitted to the panel that you think it is unfair as the NMC is now attempting to cover a period where, in your opinion, you were not employed, or working, as a permanent employee for the Trust. You told the panel that you oppose the NMC’s application to amend the stem of the charges.

The panel accepted the advice of the legal assessor that Rule 28 of 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 an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed.

The panel determined that it is fair to both parties to amend the stem of the charge as the technical issue of employment status is a recent matter and the amendment of this charge clears up the issue. It allows the panel to consider more important, and serious,
matters relating to charges 1.1, 1.2, 1.3 and 1.4 and your misconduct as a registered nurse with Patient A.

The panel therefore concluded it was appropriate to allow the amendment, as applied for, to ensure accuracy in light of the new evidence before the panel.

Matters relating to hearsay evidence:

Before closing the NMC’s case, Mr Reynolds reminded the panel that a handwritten document exhibited within the NMC’s hearing bundle, namely Patient A’s Accident & Emergency referral dated 8 September 2014, had been agreed by both you and the NMC to be adduced as evidence in your case. Mr Reynolds told the panel that despite this being hearsay evidence, it is admissible in these civil proceedings.

The panel, having received legal advice, considered this matter and determined that it will in due course attach what weight it deems appropriate to this hearsay document.

Admissions:

Despite initially denying the charges at the outset of these proceedings, at the start of your oral evidence you admitted the following charges:

That you, a registered nurse, whilst employed, [or having been employed,] by Oxleas NHS Foundation Trust, between March and December 2014:

1. Breached professional boundaries in that you:

1.1 On one or more occasion had sexual intercourse with Patient A;

1.2 Allowed Patient A to use your personal mobile phone to make a phone call;

1.3 Accompanied Patient A to a sexual health clinic where you both got tested for Sexually Transmitted Infections;
1.4 On one or more occasion gave Patient A money.

These were therefore announced as proved by your admission.

Evidence adduced by you:

The panel also heard oral evidence from you and had regard to the documentary evidence you placed before the panel.

You told the panel that despite initially disputing the evidence of Ms 1, in that you had not worked for Oxleas House in the month of April 2014, you accept that you may have completed shifts in April 2014 which correlates with the timesheets produced by Ms 1 during these proceedings. You told the panel that you had worked for Oxleas House for four years before you met Patient A and were aware that Oxleas House was a mental health facility. You accepted that when you met Patient A you [PRIVATE] would have been aware of her vulnerability.

You told the panel of the circumstances in which you found yourself. You did not deny that you engaged in sexual intercourse with Patient A on a number of different occasions over a lengthy period of time nor did you deny that you had given her your mobile telephone to make a personal call, accompanied her to a sexual health clinic or gave her money on more than one occasion.

You told the panel that you were forced to behave in such a manner with Patient A during an eight month period as you were being threatened by Patient A, and her friends, that they would kill you, your wife and your child, if you did not do what Patient A asked of you. You said that Patient A would physically abuse you and extort money from you if you did not follow her demands. These threats made you feel trapped and scared. You were forced to engage in a sexual relationship with Patient A as well as provide her with money at her request. You told the panel that you felt scared from the beginning of your relationship with Patient A when she started calling your mobile telephone after she had used it while she was an inpatient at Oxleas House. Initially, it
was only Patient A making threats to you, but over time this moved to include two of her male friends. These threats were made by telephone, in person and on at least one occasion, they were present in your street.

During your evidence, you told the panel that you had avoided telephone calls from Patient A during the summer of 2014 for a period of a few weeks. However, you could not continue to ignore her out of fear of what she, or her friends, might do to your family. [PRIVATE], you remained in contact with her until December 2014, speaking with her as late as 23 December 2014 and engaging in sexual intercourse with her a month prior to this date.

You told the panel that despite opportunities to talk to someone about your situation with Patient A, you were told by Patient A not to speak to anyone so did not out of fear for your safety and that of your family. You said that it was not in your nature to speak out and that you keep to yourself when you are “feeling down”. You accept that you should have told your wife about the situation at the time [PRIVATE]. This is because you were fearful of what Patient A and her friends would do to you, your wife and your child.

You maintained your account of events throughout your evidence [PRIVATE]. You told the panel that Patient A’s version of events, albeit not tested by this panel, were false in their entirety.

When asked what you thought the public would think of a registered nurse who had embarked on an inappropriate relationship with a patient, you told the panel that it would depend on how they view the circumstances at the time of incidents. You believe that some members of the public would think a relationship with a patient “is not right” and that others may be sympathetic to the circumstances in which you found yourself. You told the panel that you believe a fellow nurse might consider that your actions are inappropriate but then they would “look at why it happened”.

You told the panel that on a prior occasion your manager had not given approval for another patient to use a mobile telephone. You told the panel that if you were in the
same situation again, in regard to giving a patient access to your mobile telephone, you would not give them the telephone and advise them to talk to the nurse in charge and use the hospital telephone.

You told the panel that since the ordeal with Patient A you see things in a different perspective, in that you are not judgemental of others and you believe to “never say never”. You assured the panel that you would not act in such an inappropriate manner in the future. If you found yourself in a similar, threatening situation with a patient you would talk to a colleague or your manager, even if they did not believe you.

[PRIVATE]

During your evidence you told the panel that you are now working within the security field while you are studying Public Health and Health Promotion at a university. You are currently working part time, equivalent to approximately 18 hours a week. You hope to complete these studies and move on to complete a Masters degree in Mental Health. Once you have accomplished your Masters degree, you would like to look for work in nursing.

Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. The NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

In his submissions, Mr Reynolds invited the panel to take the view that your actions amount to a breach of The Code: Standards of conduct, performance and ethics for nurses and midwives 2008 (“the Code”). He then directed the panel to specific paragraphs and identified where, in the NMC’s view, your actions amounted to misconduct.
Mr Reynolds referred the panel to the case of *Roylance v GMC (No. 2) [2000] 1 AC 311* which defines misconduct as a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.

He submitted that the NMC’s position is that your actions, which underpin the charges, do amount to misconduct and as a result, do amount to current impairment. Mr Reynolds submitted that such a finding would maintain public confidence in the profession and the proper standards expected of a registered nurse. He referred the panel to the case of *GMC v Meadow [2007] QB 462 (Admin)* which states that misconduct needs to be something considered deplorable by fellow registrants and the case of *Ashton v GMC [2013] EHWC 943 (Admin)* which goes on to state that a single act or omission is less likely to cross the threshold of misconduct than multiple acts.

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

Mr Reynolds submitted to the panel that the key mischief in your case is an imbalance of power that would inevitably arise when a registrant and patient form a relationship. He submitted that you had a responsibility as a registered nurse for Patient A’s ongoing welfare. By cultivating and allowing your relationship with Patient A to continue, you exposed Patient A to risk of harm and/or her trust being breached. Mr Reynolds submitted that your actions also undermined the public’s trust and confidence in the profession. He submitted that there is risk of a vulnerable patient suffering emotional and psychological harm when entering into an intimate relationship with a registered nurse and this risk is heightened when set in a mental health context.

Mr Reynolds submitted that a nurse’s ability to make decisions regarding the care and treatment of the patient is hindered by commencing and continuing such a relationship. He submitted that by entering into an inappropriate sexual relationship with Patient A
you placed her at unwarranted risk of harm. As a result of entering into and continuing your relationship with Patient A, Mr Reynolds submitted that you brought the profession into disrepute.

In relation to insight and remediation, Mr Reynolds referred the panel the NMC’s *Guidance for decision makers on insight, remediation and risk of reoccurrence*. He invited the panel to consider that you have shown some degree of insight by engaging with the NMC for some time [PRIVATE]. He reminded the panel that you have provided documentation of continued training and education in the health care sphere which they may also consider as a demonstration of some insight and understanding on your part.

Mr Reynolds also invited the panel to have regard to the circumstances surrounding the allegations. He submitted that the panel should give some consideration to the evidence before it which undermines Patient A’s creditability. Mr Reynolds submitted that the panel may consider that all those factors mitigate against Patient A’s credibility and favour your version of events.

Mr Reynolds told the panel that the NMC does not accept your account of the events. He submitted that you should have ceased communication with Patient A immediately, reported her initial threat to a colleague and/or manager and contacted the police at any point during the period in question to alert them to your situation. He reminded the panel that it was your evidence that you ignored Patient A’s telephone calls for a period, and that even at this point afforded you a possible opportunity to terminate your contact with Patient A. However, you continued to communicate and meet with Patient A.

Mr Reynolds submitted that your behaviour amounted to misconduct and that your fitness to practise is currently impaired. He reminded the panel that it is even your own account that you accept acting inappropriately and submitted that the public’s trust and confidence in the profession would be undermined by virtue of your inappropriate, sexual relationship with Patient A. Mr Reynolds submitted that a finding of misconduct and current impairment should be made on the grounds of public protection. Additionally he submitted that this finding also be made in the public interest, to maintain confidence in the profession and the NMC as its regulator.
You submitted to the panel that you accept that your behaviour amounts to misconduct however reminded the panel that you have explained the situation and why it happened. You submitted that you would never behave in this manner again and that experience is the best teacher of learning and that you have learnt from your mistakes. You told the panel that you know what you would do if you found yourself in the same situation in the future by ensuring you spoke to a colleague or manager immediately.

You invited the panel to give consideration to your reference from your manager at Oxleas House. You submitted that during your time as a nurse there have been no other issues regarding your practice. You told the panel that you now know how to maintain professional standards and that this incident is an exception. You told the panel that you love your job as a nurse and that you would update your nursing knowledge by undertaking online training and courses. You submitted to the panel that you believe that if you are allowed to continue to work as nurse, you would undertake your role efficiently and follow the rules and laws as set out by the NMC and the Trust that you are working for.

The panel accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included: Roylance v General Medical Council (No 2) [2000] 1 A.C. 311, Cheatle v The General Medical Council [2009] EWHC 645 (Admin) and Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin).

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.
**Decision on misconduct:**

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2008.*

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

**Preamble:**

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

- *work with others to protect and promote the health and wellbeing of those in your care, their families and carers, and the wider community*

- *provide a high standard of practice and care at all times*

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.
Whilst some of your actions occurred whilst Patient A was an outpatient and was not directly under your care, the panel noted that throughout the whole period Patient A was a patient of the Trust. The panel also noted that the later events were a continuation of events that commenced when Patient A was an inpatient on the ward where you were employed.

The panel considered your account for your actions. You told the panel that you first felt threatened by Patient A during your first meeting with her as an inpatient at Oxleas House in March 2014. However you never reported this to a colleague or manager. The panel was of the view that despite having several opportunities to report the threats you allege were being made by Patient A and her friends, you did not take advantage of these occasions. You allowed yourself to continue to behave inappropriately by seeing Patient A at least 11 times during this period and engaged in a sexual relationship with her.

The panel had regard to Patient A’s vulnerability as a mental health patient. It was of the view that a patient who has been admitted to a mental health facility for treatment and care is at a psychological risk of forming an attachment to nurses caring for them. The panel noted that as a mental health nurse, you should have been aware of the risk of harm in which you placed Patient A in by engaging in an inappropriate, sexual relationship with her. The panel determined that you abused your position and balance of power by commencing and continuing to have a sexual relationship with Patient A, despite your account of the events.

In relation to your account, the panel found there was no evidence before it to corroborate your version. There is no supporting evidence of the events you report to have occurred including evidence from the friends who you say witnessed your interactions with Patient A. The panel has no evidence before it that you did in fact withdraw any money for Patient A. [PRIVATE]. On the following day, namely 8 September 2014, Patient A repeated her account to two nurses during an assessment at Accident and Emergency. Whilst the panel acknowledge that Patient A’s account of events is contained within hearsay documents, to which the panel afforded appropriate
weight, [PRIVATE]. The panel concluded that it does not believe your account of the events.

The panel had regard to your evidence where you told it that you were forced into your relationship with Patient A. It noted that you felt you had no choice but to continue your relationship with Patient A because of the threats she, and her friends, were making on your life and that while you accept that you behaved inappropriately, you do not agree that your behaviour was your fault. However, the panel determined that even if your account of the incidents is in fact truthful, this does not provide an excuse for you to behave the way you did.

In light of the above, the panel determined that your actions, in that you had sexual intercourse on a number of occasions with Patient A, allowed her to use your mobile telephone, accompanied her to a sexual health clinic and gave her money on more than one occasion, would be considered deplorable by fellow nurses. The panel found that your actions did fall seriously short of the conduct and standards expected of a registered nurse.

The panel therefore found your actions amount to serious misconduct.

**Decision on impairment:**

The panel next went on to decide if as a result of this misconduct your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession. In this regard the panel considered the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* in reaching its decision, in paragraph 74 she said:
In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
d. …
The panel was satisfied that all the above limbs of the test identified by Dame Janet Smith were engaged. It determined that your actions have put a patient at risk of harm, brought the profession into disrepute and breached fundamental tenets of the profession.

The panel noted your late admissions to the allegations and was of the view that this was due to a lack of understanding of the NMC process and these proceedings. It acknowledged that you have engaged with the NMC throughout its investigation, [PRIVATE] and have attended and actively engaged in these proceedings.

It had regard to the university degree you are currently undertaking and that you are passionate about health care and wish to return to nursing. It also had regard to your positive employer reference, albeit it is dated before the matters were brought to the attention of the Trust.

The panel had regard to your account of events noting specifically that you had ignored Patient A for a period of time during the summer of 2014. The panel was of the view that, if true, this demonstrates that you could have ceased your relationship with Patient A, instead of choosing to re-engage with her. The panel determined that even if Patient A made threats against you and your family unless you continued to have a sexual relationship with her or follow her demands, you had plenty of opportunities to report this to other people, namely your colleagues, your manager, your wife or the police. Instead, you chose to continue your relationship with Patient A.

Regarding insight, the panel acknowledged that you told it that if you found yourself in the same situation again in the future that you would not repeat your actions or behave in an inappropriate manner. However, it had regard to your evidence in which you still maintain that you were forced to engage in a sexual relationship with Patient A. The panel was of the view that you are still continuing to shift the blame for your serious misconduct to others and demonstrate an apparent inability to accept responsibility for your actions. You have never accepted that by engaging in an inappropriate relationship with Patient A, who was a vulnerable patient, you could have caused her harm. The panel determined that you have limited insight into your misconduct.
The panel considered whether your misconduct is remediable. It recognised that remediation is difficult when the misconduct is sexual in nature. The panel have seen no evidence that you have attempted to remediate your inappropriate behaviour and was of the view that you still continue to deflect responsibility for your misconduct. It determined that you have not accepted your role in your inappropriate, sexual relationship with Patient A nor do you understand that your actions placed Patient A at unwarranted risk of harm.

You have not been able to offer the panel any evidence to corroborate your version of events. Regardless of the circumstances surrounding your relationship with Patient A, your misconduct brought the profession into disrepute and as you have not accepted responsibility for your misconduct, nor acknowledged the gravity of your actions, the panel could not be satisfied that you would not repeat your misconduct if you were placed in a similar situation with a vulnerable patient in the future. The panel concluded that it cannot be satisfied that you would not repeat your inappropriate actions and place patients in your care at unwarranted risk of harm.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel also bore in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession, and the NMC as its regulator, and upholding the proper standards and behaviour. The panel determined that a member of the public would consider your behaviour to be deplorable. So accordingly, the panel concluded that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel is satisfied that your fitness to practise is currently impaired.
Determination on sanction:

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

Mr Reynolds, on behalf of the NMC, referred the panel to the NMC’s Indicative Sanctions Guidance (‘ISG’) (updated September 2016) and reminded it that, when making its decision on sanction, it should observe the principle of proportionality and make the least restrictive order which is sufficient to protect the public and the wider public interest. He told the panel of the aggravating and mitigating features in your case.

He reminded the panel that during her evidence, Ms 1 had told the panel that you are subject to an interim suspension order. Mr Reynolds told the panel that they must not give any weight to this information when making its decision on the most appropriate sanction in your case.

You submitted to the panel that you agree with its decision in relation to misconduct and current impairment however you love nursing and have been a good nurse throughout your career with the exception of this incident. You still wish to be a nurse. You alerted the panel to your difficult financial situation and invited the panel to be lenient in its decision on sanction.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case, as well as submissions from Mr Reynolds and yourself.

The panel accepted the advice of the legal assessor.

The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences.
The panel had careful regard to the NMC’s ISG. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel was mindful of its overarching objective to protect the public, as specifically outlined in paragraph 3 of the ISG:

3. **The pursuit by the Council of its over-arching objective of protecting the public involves the pursuit of the following objectives:**

3.1 *to protect, promote and maintain the health, safety and well-being of the public;*

3.2 *to promote and maintain public confidence in the professions regulated under this Order; and*

3.3 *to promote and maintain proper professional standards and conduct for members of those professions.*

The panel found the following aggravating features in this case:

- Your actions amounted to serious sexual misconduct;
- You abused your position of trust with a vulnerable patient;
- Your actions had potential for patient harm;
- You continue to deflect blame and responsibility for your misconduct;
- This was a pattern of serious misconduct which continued over an eight month period.

The panel identified the following mitigating features in this case:

- You have demonstrated some insight, albeit limited;
- You provided a positive reference from your manager at Oxleas House, however this is dated before the Trust was aware of the allegations;
- You have not been subject to any previous regulatory proceedings;
• You have engaged with the NMC throughout its investigation, and attended these proceedings.

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

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the ISG, which states that a caution order may be appropriate where ‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the ISG, in particular whether:

64.8 *It is possible to formulate conditions and to make provision as to how conditions will be monitored.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the sexual nature of your misconduct.

Furthermore the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of your misconduct and would not protect the public or address the wider public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. Paragraph 68 indicates that a suspension order would be appropriate where (but not limited to):
68 This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

68.1 A single instance of misconduct but where a lesser sanction is not sufficient.

68.2 No evidence of harmful deep-seated personality or attitudinal problems.

68.3 No evidence of repetition of behaviour since the incident.

68.4 The panel is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.

Having heard all the evidence in this case, including your account of the events and Patient A’s, albeit hearsay account, the panel had already concluded that your version of the events is not truthful.

Your conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the register. Your actions were not a single incident, rather a pattern of sexual behaviour which you repeated over an eight month period with a vulnerable patient.

You have continued to deflect blame and not take responsibility for your role in your sexual relationship with Patient A, nor have you shown an understanding of her vulnerability and the harm your actions may have caused her. As you have limited insight into your inappropriate behaviour, the panel was not satisfied that you would not repeat your misconduct if you found yourself in a similar situation in the future.
Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the ISG:

71.1 *Is striking-off the only sanction which will be sufficient to protect the public interest?*

71.2 *Is the seriousness of the case incompatible with ongoing registration?*

71.3 *Can public confidence in the professions and the NMC be sustained if the nurse or midwife is not removed from the register?*

72 *This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following …*

72.1 *Serious departure from the relevant professional standards as set out in key standards, guidance and advice …*

72.2 *Doing harm to others or behaving in such a way that could foreseeably result in harm to others, particularly patients or other people the nurse or midwife comes into contact with in a professional capacity, either deliberately, recklessly, negligently or through incompetence, particularly where there is a continuing risk to patients. Harm may include physical, emotional and financial harm. The panel will need to consider the seriousness of the harm in coming to its decision*

72.3 *Abuse of position, abuse of trust, or violation of the rights of patients, particularly in relation to vulnerable patients*

72.4 *Any serious misconduct of a sexual nature…*
72.6 ...

72.7 Persistent lack of insight into seriousness of actions or consequences

Your actions represented a significant and serious departure from the standards expected of a registered nurse, and are fundamentally incompatible with your remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel accepts that your clinical skills as a nurse are not in question in this case but you abused your position as a nurse, and abused the trust of a vulnerable patient. Your serious misconduct was sexual in nature and by behaving in such a manner, you placed Patient A at risk of harm for a long period of time, namely eight months, despite having had the opportunity on several occasions to cease your relationship with her. The panel had found that you have limited insight into your misconduct and that as you continued to maintain that you were forced into your relationship with Patient A, you were not to blame for your inappropriate actions.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, including the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel acknowledges your current financial situation, however, the public interest outweighs your own interests, given the seriousness of your misconduct in this case.
The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck off the register.

**Determination on Interim Order:**

Pursuant to Article 29 (11) of the Nursing and Midwifery Order 2001, this panel’s decision will not come into effect until after the 28 day appeal period, which commences from the date that notice of the striking off order has been served. Article 31 of the Nursing and Midwifery Order 2001 outlines the criteria for the imposition of an interim order. The panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, otherwise in the public interest or is in the registrant’s own interests. The panel may make an interim order for a maximum of 18 months.

The panel has considered the application made by Mr Reynolds that an interim suspension order for a period of 18 months should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

You did not oppose the NMC’s application.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.
The period of this order is for 18 months to cover any potential appeal, but if at the end of a period of 28 days, you have not lodged an appeal the interim order will lapse and be replaced by the substantive order. On the other hand, if you do lodge an appeal, the interim order will continue to run until the appeal is concluded or withdrawn.

This will be confirmed in writing.

That concludes this determination.