

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

**Substantive Hearing
10- 14 May 2021**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant: Dario Adriano Lapegna

NMC PIN: 15K0357C

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – November 2015

Area of registered address: Cambridgeshire

Type of case: Misconduct

Panel members: Michael Murphy (Chair, Registrant member)
Susan Jones (Registrant member)
Andrew Macnamara (Lay member)

Legal Assessor: Laura McGill

Panel Secretary: Xenia Menzl

Nursing and Midwifery Council: Represented by Robert Rye, Case Presenter

Mr Lapegna: Present and not represented

Facts proved by admission: Charge 2

Facts proved: Charge 1

Fitness to practise: Impaired

Sanction: Caution Order, 3 Years

Details of charge

That you, a registered nurse:

- 1) On 4 July 2019 inappropriately viewed pornographic material on a computer within the critical care unit at the Royal Papworth Hospital during your working hours. **[Proved]**

- 2) On 4 July 2019, spent time on a computer within the critical care unit at the Royal Papworth Hospital, engaged in personal matters when you should have been providing care to a patient and/or dealing with clinical or nursing matters. **[Proved by admission]**

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

Background

The charges arose whilst you were employed as a registered nurse by Royal Papworth Hospital NHS Foundation Trust (the Trust) at the Royal Papworth Hospital (the Hospital). Your name was first entered onto the NMC register in 2015. You began working for the Trust as a Band 5 nurse in October 2017.

On 4 July 2019, you were working a night shift in the Critical Care Unit of the Hospital and you were looking after a vulnerable adult male patient. It is alleged that during the early hours, you viewed pornographic material by accessing your home computer via the Hospital's computer system. Two colleagues witnessed you watching the material and the matters were reported to management. You were duly sent home and a local investigation was initiated.

At a disciplinary hearing held on 16 August 2019, you were dismissed for gross

misconduct.

Facts

At the outset of the hearing, the panel heard from you. You informed the panel that you made admissions to charge 2. You denied charge 1.

The panel therefore finds charge 2 proved, by way of your admissions.

In reaching its decisions on the disputed charge, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Rye on behalf of the NMC and by you.

The panel was aware that the burden of proof rests with the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Colleague 1: Registered Nurse at the Royal Papworth Hospital via Agency at time of the incident;
- Colleague 2: Registered Nurse. Sister at the Royal Papworth Hospital;
- Colleague 3: Registered Nurse, Sister at the Royal Papworth Hospital;

- Colleague 4 Registered Nurse. Matron at the Royal Papworth Hospital at the time of the incident;

The panel also heard evidence from you under affirmation.

Decision and reasons on application to admit further evidence under Rule 31

The panel heard an application made by Mr Rye under Rule 31 to allow further evidence and to allow him to reopen his case to address a response provided by you. Mr Rye submitted that the further evidence will show that the web browser Opera states that the browser history, including cookies and data would be deleted upon closing the window. He stated that your response could create a false impression that the browser history would not be deleted, when this is not the case. He submitted that it is appropriate for this evidence to go before the panel as it is fair and relevant to that particular issue.

You stated that you are content with this evidence to go before the panel as long as further evidence from you is also allowed into evidence. You stated that you would be able to provide the panel with several links, including a link to YouTube, explaining how to retrieve data and the browsing history from a private/incognito mode browser page. You explained that the difference between 'normal' mode and incognito mode is that in incognito mode the data is saved, albeit in an encrypted file. You submitted that ultimately, your browser data would have been available to anyone, especially someone trained in IT.

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, whether or not it is admissible in civil proceedings.

The panel was of the view that the specifics of IT, in this case whether the specifics of how the browser data is saved in private/incognito mode or not, is not relevant in this case. The

panel was of the view that this information was not needed to make an informed decision with regard to the disputed charges. It determined that the additional information was neither relevant nor would it be fair to you to admit this at this stage of the hearing.

In these circumstances the panel refused the application.

Decision on Facts

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and you.

The panel considered the evidence of the witnesses and made the following conclusions:

Colleague 1: The panel considered the evidence of Colleague 1 to be credible. Colleague 1 was a primary witness to the incident. The panel found her to be reliable, clear and honest. Colleague 1 admitted when she did not know things and also admitted when she confused the dates related to the incident. The panel found that her oral evidence was consistent with her NMC witness statement and her contemporaneous statement to the Trust. The panel was of the view that Colleague 1 was trustworthy and fair.

Colleague 2: The panel considered the evidence of Colleague 2 to be credible. Colleague 2 was independently also a primary witness to the incident. The panel found her to be reliable, clear and honest. Colleague 2 did her best to assist the panel and was consistent in her oral evidence with her previous statements, to the NMC and the Trust. The panel was of the view that Colleague 1 was fair to you.

Colleague 3:

The panel considered the evidence of Colleague 3 to be credible. Colleague 3 was not a primary witness to the incident, however, she was on shift at the time of the incident and called to assistance by Colleague 1 and Colleague 2. Colleague 3 did her best to assist the panel and admitted when she did not remember something. The panel found her recollections detailed, and that her oral evidence supported and concurred with the evidence of Colleague 1 and Colleague 2. The panel was of the view that Colleague 3's oral evidence was consistent with her earlier witness statement to the NMC. The panel found Colleague 3 to be helpful in relation to the IT issues and the reasons as to why the Trust's IT department did not get involved.

Colleague 4:

The panel considered the evidence of Colleague 4 to be credible. Colleague 4 explained the Trust's internal investigation. She did her best to help the panel. The panel found her to be professional and fair.

You:

The panel also considered your evidence. The panel was of the view that you were not completely consistent with your evidence and found that your evidence changed and evolved over the period from 4 July 2019 to your oral testimony to the panel. The panel found that you at times made contradictory statements, for example, you stated in your oral evidence that you were not very IT literate, however later confidently explained IT issues and seemed versed in IT terminology. The panel was of the view that your evidence was sometimes vague, especially with regards to IT, and steering away from the core points of what witnesses gave evidence to. Overall, the panel did not find you as reliable or credible as the other witnesses.

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

Charge 1

- 1) On 4 July 2019 inappropriately viewed pornographic material on a computer within the critical care unit at the Royal Papworth Hospital during your working hours.

This charge is found proved.

In reaching this decision, the panel took into account all the relevant evidence which included witness statements given to the NMC, the NMC exhibit bundle containing the relevant parts of the Trust's investigation report, the minutes of an investigation meeting between the Trust and you, the Trust's notes on investigation meetings with Colleague 1, Colleague 2 and Colleague 3 as well as their local investigation statements, an IT activity log, your employment contract with the Trust, and training records. The panel also took into account a bundle provided by you which contained a reflective accounts form, your OPERA browsing history of 3 and 4 July 2019, several references and training certificates.

The panel was of the view that Colleague 1 and Colleague 2 were clear about what they had seen on your screen. The panel was of the view that both gave evidence that they had enough time to look at the screen and determine what they could see on it.

Colleague 1, in her witness statement to the NMC, states:

'I could see pornography on the computer screen in front of the Registrant. I had not intentionally looked into the room the Registrant was in, but I had caught a glimpse of his computer screen. [...]

I decided that if I was going to tell someone about what I had seen, I should be sure the Registrant was in fact watching pornography. I therefore looked again into the room the Registrant was in. This time I could see more clearly what was displayed

*on the screen. [...] I was absolutely sure these videos were pornography. [...] showing adults engaged in sexual conduct
[...]*

I asked [Colleague 2] to come look for herself so she could check if the Registrant was definitely watching pornography. [Colleague 2] came into the room I was in to look into the Registrant's room for herself. She confirmed that she had also seen the Registrant watching pornography.'

The panel found that this was consistent with Colleague 1's local investigation statement and that this was also confirmed in her oral evidence to the panel.

The panel found that Colleague 1's evidence was confirmed by Colleague 2 in her oral evidence, which was consistent with her local statement and the witness statement to the NMC. In the latter Colleague 2 states:

'When peering into the room, I could clearly see that the Registrant was watching pornography. The screen was full of approximately 9 smaller screens each showing moving images of sexual activity. I recall seeing close up nude images, however these were not static photographs, but videos. I was certain that it was pornography on the Registrant's screen.'

The panel noted that Colleague 2 stated that when she advised Colleague 3 of the incident they both went to see the screen again. However, at this point the images were gone from the screen. Both, Colleague 2 and Colleague 3 stated that the door had slammed after them entering the adjacent room, alerting you to their presence.

The panel further noted that Colleague 1 in her written statements as well as in her oral evidence, was very disturbed and distressed by the images she had seen. The panel found that this was also confirmed by Colleague 2.

Colleague 2 stated:

'She was looking from side to side as if she was looking for somebody to help. I remember her appearing quite distressed from looking at her facial expression. I walked over to [Colleague 1] and asked her what was wrong.'

The panel noted your oral evidence. It acknowledged that it did not see your nursing documentation for that day nor did it see the layout of the unit. However the panel was of the view that this information was not relevant to the allegation that you inappropriately viewed pornographic material on a computer during working hours.

The panel also acknowledged that you provided your browser history for the 3 and 4 July 2019 and took said documentation into account, however, determined that first hand primary evidence from witnesses was more reliable in this case.

The panel further noted that in your closing submissions you pointed the panel to inconsistencies between Colleague 1 and Colleague 2's oral evidence regarding whether the images on your screen were static and how many 'pop-ups' were showing on the screen. The panel determined that these inconsistencies can be attributed to the passage of time during the incident. Further, the panel noted that Colleague 1 and Colleague 2 saw the screen at different times, with several minutes time difference. Additionally, Colleague 1 looked at the screen on two separate occasions, again, with several minutes difference in time. The panel therefore determined that it was not drawing inference from the difference in these details and disregarded these inconsistencies in the witnesses' oral evidence.

The panel already determined that it found Colleague 1 and Colleague 2 credible and reliable in their evidence. The panel was therefore of the view, that it was more likely than not that you were viewing pornographic material accessing your own computer via the Trust's computer during working hours on the 4 July 2019.

The panel was therefore satisfied, on the balance of probabilities, that on 4 July 2019 you inappropriately viewed pornographic material on a computer within the critical care unit at the Royal Papworth Hospital during your working hours.

Fitness to practise

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

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

The panel heard live evidence from Mr 5, a witness called on your behalf. Mr 5 is a Registered nurse and stated that he has been a colleague of yours for about 2 years. Mr 5 is employed by Healthcare Homes and regularly works on night shift with you. Mr 5 was aware of the allegations against you, however he had not had any in depth discussion with you about the incident. He stated that you appeared disappointed and worried about your involvement in the incident. Mr 5 gave evidence regarding your good character, he confirmed that he did not consider you to be a risk to patients, that you always acted in a professional and respectful manner and are respected by colleagues. He further stated that he had no concerns at all about your clinical practice and the quality of your work was '*second to none*'.

Submissions on misconduct

Mr Rye referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*’

Mr Rye invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of ‘The NMC code of professional conduct: standards for conduct, performance and ethics (2004)’ (the Code) in making its decision. ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) in making its decision.

Mr Rye identified the specific, relevant standards where your actions amounted to misconduct. He submitted that viewing pornography at work whilst caring for a vulnerable patient is serious misconduct and brought the nursing profession into disrepute. Mr Rye submitted that during the time in question you should have been conducting nursing duties and that it was not appropriate to ignore that. He submitted that an informed member of the public would be shocked and their trust in nurses would be damaged.

Mr Rye submitted that it is not appropriate for a nurse to carry out personal affairs within working times. He submitted that you violated that rule and also violated the trust of your employer and your colleagues and your patients. Mr Rye submitted that this was a serious breach of your terms of contract and that using the Trust’s computer to access your own computer could have resulted in a serious breach of the Trust’s IT security. He further submitted that this risk was exacerbated by searching unsavoury sites, where the risk of computer viruses is increased.

Mr Rye invited the panel to find that individually and cumulatively the charges amount to misconduct.

You accepted the panel's decision with regard to charge 1. You acknowledged that you denied watching pornographic materials and that it is therefore difficult to show insight into your misconduct. However you understand that watching pornographic material at work is serious misconduct. You also stated that you apologised for dealing with your personal matters whilst at work.

You explained that you were unable to find training specifically addressing your misconduct. However, you assured the panel that you now do not deal with any personal matters at work. You stated that you have completed GDPR and safeguarding training. You stated that you are open to any suggestions of training but that it was a matter for the panel to determine which training you need.

Submissions on impairment

Mr Rye moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Mr Rye invited the panel to find that you are currently impaired. He submitted that the first three limbs of Grant are engaged in this case. Although no harm was caused to the patient, there was a risk of physical harm as you were focussing on matters not clinically related. He also submitted that there was a risk of emotional harm, had the patient woken up and noticed what you were doing. Mr Rye submitted that by doing so you brought the profession into disrepute and your actions fell far below the standard expected of a registered nurse. Mr Rye submitted that you put your own needs over the needs of your employment, the Trust, your colleagues and the patient. He therefore submitted that you not only breached the trust of your employer, but also the trust of the public.

Mr Rye submitted that your misconduct stems from an attitudinal issue. He reminded the panel that in your evidence you stated that you did not fear being caught and that you were blasé about this. Mr Rye submitted that this suggests that you thought you had the right to carry out such matters within your working hours.

Mr Rye addressed your reflective statement. He submitted that the statement shows some limited insight. He submitted that in it you fail to deal with the impact your actions could have had on the patient's welfare and his trust in the profession. Further, Mr Rye addressed the testimonials provided by you and Mr 5's witness evidence. He submitted that whilst they are all positive with regard to your clinical abilities, they do not provide information regarding a detailed discussion with you regarding your misconduct. Mr Rye therefore submitted that little weight can be attached to them attesting to current insight.

Mr Rye then addressed the training certificates provided by you and suggested that none of these deal with the misconduct displayed. Mr Rye therefore submitted that you only have limited insight and have not remediated your misconduct and invited the panel to make a finding of current impairment on the ground of public protection.

Mr Rye also invited the panel to make a finding of current impairment on the grounds of public interest. He submitted that you displayed serious misconduct and that you failed to uphold professional standards and the public's trust in the profession. He submitted that you abused your position for personal gain, accessed pornography whilst at work and therefore brought the profession into disrepute.

You stated that you provided objective evidence to the situation and your conduct since 2019. You stated that there were no issues with your practice before and since the incident. You referred the panel to your testimonials and the witness evidence and submitted that you have the full trust of your current colleagues and current employer. You also stated that you had no complaints from colleagues, patients or their relatives since the incident.

You submitted that the panel is making a decision on less than 12 hours within a 10 year professional nursing career. You stated that your clinical skills and your documentation on 4 July 2019 were in order and not in question. You said that outwith the incident you have always met the standards of the NMC and your employer. You stated that you try to improve your practice shift by shift and that you go the extra mile to improve documentation and make it clearer. You explained that you are doing everything in your power to improve yourself and gain trust. You stated that you are fully trusted by your colleagues, your friends and the public.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*_(No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

1 *Treat people as individuals and uphold their dignity*

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

20 *Uphold the reputation of your profession at all times*

To achieve this, you must:

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

25 Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system

To achieve this, you must:

25.1 identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first

The panel recognised that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that viewing pornography whilst at work amounts to serious misconduct.

The panel noted that there is evidence that you have been pursuing your personal matters, searching the internet for hours whilst looking after a highly dependent and extremely vulnerable patient on the critical care unit. The panel was of the view that the public would be appalled knowing that you engaged in personal matters instead of focussing solely on the care of your patient. The panel concluded that it is expected of a registered nurse to complete work duties whilst being at work and not spend a significant amount of time on personal activities. The panel therefore concluded that charge 2 also amounts to misconduct.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and was of the view that individually and cumulatively charges 1 and 2 amount to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her 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 finds that the patient was put at risk of physical and emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to watching pornographic material and pursuing personal matters for a significant amount of time during work hours extremely serious.

Regarding insight, the panel considered that you have limited insight. The panel noted that you accepted that your practice was impaired at the time of your misconduct, however, was of the view that you only showed remorse and apologised for your actions until very late in your submissions. The panel considered your reflective piece and your explanation for your misconduct, however was of the view that your insight was limited to the impact this had on you and your career. The panel concluded that you have not yet understood the impact your actions had on the trust of the patient, their family, your colleagues and the public.

The panel was satisfied that, although difficult, the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not you have remedied your practice. The panel noted that the concerns raised were not in relation to your clinical practice. The panel further noted that

you have provided positive references and that there are no concerns regarding your clinical abilities as a nurse. The panel took into account the training certificates provided by you, however did not consider them to be relevant to your misconduct. The panel was of the view that you first need to gain further insight into your misconduct and reflect on your actions before you can remediate your actions.

The panel is therefore of the view that there is a risk of repetition based on limited insight, and lack of remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel was of the view that viewing pornographic material and pursuing personal matters for a significant amount of time, whilst at work, seriously undermines the public trust in the profession and that a member of the public would be shocked if a finding of impairment were not made. The panel therefore concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of three years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

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

Submissions on sanction

Mr Rye outlined the aggravating and mitigating features in this case. He submitted that neither taking no further action nor a caution order would be appropriate in this case due to the public protection issues identified and the seriousness of the case. He further submitted that a conditions of practice order would not be appropriate, as the misconduct identified cannot be addressed through retraining and any conditions imposed would not be measurable.

Mr Rye therefore invited the panel to impose a six month suspension order with a review. He submitted that this balances the serious misconduct with the fact that this was an isolated incident which was not repeated. He acknowledged that you have practised as a registered nurse without any further concerns or incident since 2019. However, Mr Rye submitted that a suspension order is necessary to mark the seriousness of the misconduct displayed and will send a message to other professionals that such conduct is not tolerated. Furthermore, he argued that temporary removal from the register will protect the public until you have reflected on your actions and provided further sufficient insight into your misconduct.

Mr Rye submitted that whilst a striking off order is available to the panel as a sanction and the misconduct displayed calls your professionalism into question it would be wholly disproportionate and unduly punitive. He submitted that it was an isolated incident, the patient did not suffer any actual harm, you have not repeated the misconduct since the incident, shown some insight and made early admissions. Mr Rye argued that it would not be in the public interest to strike an otherwise competent nurse from the register.

You explained to the panel when you decided to become a nurse and why you understand nursing to be your '*calling*'. You reminded the panel that this is the first time you have been referred to the NMC and that there have been no concerns regarding your practice in the almost two years since the incident. You reminded the panel that Mr 5 has described your dedication and practice as '*second to none*'.

You acknowledged the incident was misconduct and reminded the panel that you have recognised this since the beginning.

You explained that you changed your speciality in nursing and that you had to learn a lot of new knowledge and skills but that you completed all the necessary training as you wanted to be knowledgeable in your new nursing speciality. Similarly, you would be happy to undertake any training suggested by the panel necessary to remediate your misconduct.

You again explained that on the night of the incident you had already finished all your documentation and nursing duties and were therefore trying to stay alert. You acknowledged that the patients require your help and that you should aspire to do your best, be empathetic with the patient and give them the best attitude you can in order to meet their and the NMC's expectation. You stated that patients are like family members to you and that based on that you try to familiarise with patients and create a strong relationship with them. You stated that not all patients are the same and that a nurse needs to adjust their care based on the patient's needs. You stressed that your patient, on the night of the incident, was cared for by the standards set by the NMC.

You stated that a nurse needs to be empathetic and compassionate. You stated that the patient was not distressed or unsettled. You again acknowledged that you had done something unacceptable.

You invited the panel to consider your conduct in the last two years and that no further concerns have been raised, you provided the panel with several positive testimonials. You stated that in this time you have set an example for other colleagues and that it would not be in the public interest to remove an exemplary nurse from the register. You stated that in this context a striking off order would be disproportionate. You further argued that a suspension order in this case would send the wrong message to the public, as you have been working as a registered nurse since the incident, however, such a drastic sanction would leave the public to question why the NMC left an '*unsafe*' nurse to practice in the period since the incident.

You therefore invited the panel to impose a caution order and direct you to some suitable training, so you can work on your attitude. You questioned, whether there is a risk to the public considering the context of the last two years and that there have been no concerns about your clinical practice.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Breach of trust;
- Attitudinal conduct;
- Pursued personal interests at expense of focussing solely on patient care with the risk of harm to patients;
- Distress to colleagues; and
- Potential data risks to the trust's IT system.

The panel also took into account the following mitigating features:

- Admission to charge 2 at local level, and from outset of first internal investigation;
- Unblemished record with no issues around clinical practice;
- Single, isolated incident;
- No actual patient harm;
- Shown commitment to his practice and nursing by continuing to develop himself and learn new skills since the incident; and
- Positive testimonials from a variety of people including your current employer;

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 SG, 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.'*

Whilst the panel had previously found that you were impaired on public protection grounds the panel was impressed by the further insight you have shown in your submissions on sanction. The panel noted that you made admissions to charge 2 at an early stage and have apologised to this panel for your misconduct, showing evidence of genuine remorse. You have engaged with the NMC since your referral. The panel has been told that there have been no adverse findings in relation to your practice either before or since this incident. It considered the several positive testimonies you have provided as well as Mr 5's testimony which acknowledged your good practice as being '*second to none*'.

The panel noted the following comments in the testimonials made with regard to your practice:

'He is a proactive member of staff and had a significant contribution in improving the standards of care delivered at the home, improving the care records and more importantly developing the team in nursing right approach and right actions taken for the benefit of your residents based on their individual needs.'

'he is dedicated to his job and aims to work to a high standards level. Mr Lapegna has great respect of his profession and he has always played an important role in his work environment, he is caring with patients but at the same time has a great deal of knowledge and skills, which he is always ready to share with his colleagues'

'[Mr Lapegna] is really a passionate hardworking Nurse that always prioritise his patients and more than everything loves his job. [...] due to his professional background, knowledge and skills, founding him a good resource.' [sic]

The panel acknowledged that although it had found that there could be a risk of repetition, your further insight and the positive feedback you have received show that you have learned from your mistake. This and your clinical practice since the incident persuaded the panel that the risk of repetition in this particular case is low. The panel was also of the view that the mitigating features outweighed the aggravating features in this case because they were reflective of the current situation and your clinical practice since the incident.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel noted that the misconduct shown is not related to your clinical practise and cannot be addressed through retraining. It would have been therefore unable to formulate workable conditions, addressing the misconduct. The panel concluded that no useful purpose would be served by a conditions of practice order.

The panel further considered a suspension order would be disproportionate in this case. In making this decision, the panel carefully considered the submissions of Mr Rye in relation to the suspension order that the NMC was seeking in this case. However, the panel considered that it would not be in the public's interest to remove a good nurse, who is respected and looked up to by his colleagues, and has shown dedication to the profession from the register for any amount of time.

The panel has decided that a caution order would adequately protect the public. For the next three years, your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that you are subject to a caution order. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of three years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

The panel noted your request for direction in relation to further training. The panel considered that the issue of any further training should be discussed with your employer.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is

impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.