

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

**Substantive Meeting
Thursday 1 December 2022
Monday 5 December 2022**

Virtual Meeting

Name of Registrant: Paul Hunter

NMC PIN 88H0696E

Part(s) of the register: Registered Nurse – Sub Part 2
Learning Disabilities Nursing (Level 2) –
(September 1990)

Registered Nurse – Sub Part 1
Learning Disabilities Nursing (Level 1) – (October
1995)

Specialist Practitioner: Community Learning
Disabilities Nursing – (August 2000)

Lecturer/Practice Educator – (March 2009)

Relevant Location: Shetland

Type of case: Misconduct

Panel members: Adrian Blomefield (Chair, Lay member)
Patience McNay (Registrant member)
Jude Bayly (Registrant member)

Legal Assessor: Michael Hosford-Tanner

Hearings Coordinator: Charis Benefo

Facts proved by admission: All

Fitness to practise: Impaired

Sanction: **Suspension order (3 months) without review**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Mr Hunter's registered email address by secure email on 6 September 2022.

Further, the panel noted that the Notice of Meeting was also sent to Mr Hunter's representative at Anderson Strathern on 6 September 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation and advised Mr Hunter that a substantive meeting would be held on or after 11 October 2022.

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

Details of charge

That you, whilst working as a Learning Disability Nurse for Community NHS Shetland, attended the home address of Patient X:

1. On 24 September 2019 and said to his mother words to the effect of "you've got a wonderful/big pair of boobs/baps".
2. On 26 or 27 September and said to his mother words to the effect of "I can't stop thinking about your boobs and I really want to grab them" and/or "I must go and work with my sausage".
3. On 7 October 2019, when you had been advised by email on 5 October 2019 that all further contact was to be made through the social worker.

4. Your conduct in any or all of charges 1 to 3 was sexually motivated in that it was done for sexual gratification and/or was harassing in nature.
5. Your conduct in any or all of charges 1 to 3 was a breach of professional boundaries.

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

Background

The NMC received a referral in respect of Mr Hunter on 5 April 2020 from Community NHS Shetland (the Trust).

The allegations in this case arose whilst Mr Hunter was employed as a Learning Disability Nurse at the Trust. Mr Hunter began working at the Trust in February 2019.

Whilst working for the Trust, Mr Hunter was caring for Patient X. Patient X has Autism and is on a community welfare plan. During a visit to Patient X's home on 24 September 2019, Mr Hunter allegedly made an inappropriate sexual comment to Patient X's mother. It is alleged that Mr Hunter said "*you've got a wonderful/big pair of boobs/baps*".

On 26 or 27 September 2019, Mr Hunter returned to Patient X's home address for an unscheduled visit. During this visit, he allegedly made further inappropriate sexual comments. It is alleged that Mr Hunter said to Patient X's mother, "*I can't stop thinking about your boobs and I really want to grab them*". He also said, whilst leaving the property, that he wanted to go home and "*work*" with his "*sausage*" after Patient X's mother had said that she had to go and fry some sausages for Patient X.

On 5 October 2019, Patient X's mother informed Mr Hunter via email that they were cancelling all home visits with him and that all future contact should be through their social worker. Following this, on 7 October 2019, it is alleged that Mr Hunter attended Patient X's home and gave Patient X's mother a card and some flowers to apologise for his behaviour.

Decision and reasons on facts

At the outset of the meeting, the panel noted the Case Management Form dated 3 July 2022 and the written submissions from Mr Hunter's representative, which stated that Mr Hunter had made full admissions to all the charges.

The panel therefore found charges 1, 2, 3, 4 and 5 proved in their entirety, by way of Mr Hunter's admissions.

Fitness to practise

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

Representations on misconduct and impairment

In coming to its decision, the panel had regard to the following written submissions contained within the NMC's Statement of Case:

'The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define misconduct:

'[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rule and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances'.

As may the comments of Jackson J in Calheam v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin), respectively:

'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.

And

'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioner'.

Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.

The NMC Code

The relevant parts of the NMC code which the Panel are invited to consider is:

- 1.1 treat people with kindness, respect and compassion;*
- 2 listen to people and respond to their preferences and concerns;*
- 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;

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

20.6 stay objective and have clear professional boundaries at all times with people in your care, their families and carers;

20.8 act as a role model of professional behaviour for students and newly qualified nurses to aspire to.

We consider the misconduct serious because the Respondent's alleged behaviour towards a patient's mother was a significant departure from the standards expected of a registered nurse and caused her to feel vulnerable resulting in her not wanting any further contact with him. The Registrant's behaviour raised fundamental concerns about his attitude as a registered professional so that restrictive action may be necessary to protect the public and maintain public confidence in the profession.

Impairment

Impairment needs to be considered as at today's date, i.e. whether the Registrant's fitness to practice is currently impaired. The NMC defines impairment as a Registrant's suitability to remain on the register without restriction.

The questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

- 1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- 2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*

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

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

It is the submission of the NMC that questions 1, 2 and 3 can be answered in the affirmative in this case.

Impairment is a forward thinking exercise which looks at the risk the Registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

We consider the Registrant has displayed some insight by providing a reflective piece. The mitigating features in this case are that the Registrant says he was [PRIVATE]. He appears to be remorseful and regretful of his actions and has admitted the majority of the concerns at a local level investigation. The Registrant has also recognised the inappropriateness of his behaviour. However, the aggravating features in this case are the repeated instances of harassing behaviour towards Patient A's mother which took place in Patient A's home. The Registrant continued with this conduct despite being asked to stop.

The NMC considers there is a continuing risk to the public due to the Registrant's lack of full insight. We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior [sic]. The Registrant's conduct engages the public interest because of his abuse of a position of trust.'

The panel also had regard to the written submissions of Mr Hunter's representative:

'1. The registrant accepts both the factual evidence presented by the NMC and the allegations against him, misconduct arising from those actions and by virtue also accepts that his Fitness to Practice is currently impaired.

2. The registrant wished to dispense with the need for a public hearing as he did not wish to further disrupt the lives of the witnesses and to further provide any secondary stress to the family (Patient X and his mother) as Shetland is a rural island community which is tight knit and did not wish for there to be any further negative reverberations to the family which might result from a public hearing over a number of days. The registrant did not wish to add to any secondary stress and harm beyond that already caused to a vulnerable family which he apologises for.

3. ...

4. ...

...

5. Having taken the above submission along with the Registrant's reflective statemen [sic] into account, in which he admits to the allegations and misconduct, the Panel is entitled to find the Facts proven by the registrant's admittance and accordingly misconduct arising out of his actions. Subsequently, the registrant admits that his Fitness to Practice is currently impaired in due to the public interest. The registrant accepts that his misconduct falls significantly short of the standards that are expected by the profession.

6. The registrant does not understand the averment made on behalf of the NMC of the master bundle, where they assert:

"The NMC considers there is a continuing risk to the public due to the Registrant's lack of full insight. We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper

standards of conduct and behaviour. The Registrant's conduct engages the public interest because of his abuse of a position of Trust".

The NMC have posited that the registrant is currently impaired by engagement of the public interest alone. It is my submission that the NMC have incorrectly referenced a "continuing risk to the public due to the Registrant's lack of insight". It is my submission that any perceived risk would be attached to matters of patient safety and public protection as lack of insight predicates repetition of the behaviour outlined within the allegations and would not appropriately be factored into an assessment of Fitness to Practice under the public interest banner.

7. The registrant has accepted the wrongdoing of his behaviour and despite wholly accepting that his behaviour was unacceptable and having shown significant insight into his wrongdoing, and never having repeated any of the conduct again, that giving the seriousness of the conduct that the panel will have to mark this wrong doing to protect the public interest and maintain confidence in the profession what the panel will be minded to restrict the registrant's practice.'

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments, which mirrored the cases set out above. The legal assessor also referred the panel to *Johnson & Maggs v NMC* [2013] EWHC 2140 (Admin) where the court held that misconduct for a registered nurse is established if there has been a 'serious departure from acceptable standards'.

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: Professional standards of practice and behaviour for

nurses and midwives 2015' (the Code). The panel also considered the NMC guidance on how seriousness is determined.

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 *treat people with kindness, respect and compassion.*

2 Listen to people and respond to their preferences and concerns

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*

20.5 *treat people in a way that does not ... cause them upset or distress*

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

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

20.9 *maintain the level of health you need to carry out your professional role'*

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

The panel considered that charges 1 and 2 were of a similar nature, relating to two or three instances of inappropriate comments that Mr Hunter had made towards Patient X's mother within a three-day period. It noted that charge 3 related to Mr Hunter's subsequent attendance at Patient X's house about ten days later, despite being advised by his mother via email that all further contact was to be made through a social worker. The panel also

took into account charges 4 and 5 which related to Mr Hunter's conduct being sexually motivated in that it was done for sexual gratification and/or was harassing in nature, and breaching professional boundaries.

The panel decided to consider the charges as a collective, rather than individually because, they were sufficiently similar in nature, although the panel also considered that each of the charges were sufficiently serious to constitute professional misconduct.

The panel considered that Mr Hunter had a long-standing career in nursing, which included senior positions in safeguarding and working with vulnerable people. The panel was of the view that a nurse of Mr Hunter's experience would have been very familiar with the Code and the behaviour that was expected of him. The panel considered the seriousness of Mr Hunter's actions and where it fell on the 'spectrum' of inappropriate sexual conduct. It determined that in the circumstances, his conduct was not at the most serious end of the spectrum of sexual conduct, but was at the serious end of sexual comments. The panel's view was that although Mr Hunter's behaviour was clearly inappropriate, serious and breached the standards in the Code and the professional standards that the public would expect of a registrant, the behaviour was restricted to two or three comments and an unwanted visit when he delivered a card with an apology, and the registrant immediately apologised to Patient X's mother after his comments. The panel was of the view that there was no excuse for such behaviour which crossed the professional boundary between a healthcare professional and a patient's family and therefore jeopardised the therapeutic nurse-patient relationship.

The panel took into account the position of trust that Mr Hunter held as Patient X's Learning Disabilities Nurse. It noted that Patient X was a vulnerable service user and that his mother, whilst not in herself vulnerable, was at a disadvantage as she was a single mother and was relying on Mr Hunter's professional work to support and help her son. The panel determined that Mr Hunter had abused his position of trust by making inappropriate comments towards Patient X's mother on two occasions over a three-day period. The panel was concerned that as Patient X was in the room when some of the comments were made, there was a risk that Patient X could have absorbed some of the comments and may have suffered harm as a result.

The panel noted the evidence that Mr Hunter's role had been vacant for some time and had been a difficult post to fill. Patient X and his mother had been waiting a significant period of time for support in this area. The panel considered that following his actions, Patient X's mother could have felt unsafe in her own home. She could no longer trust Mr Hunter to come to her house again, which then deprived Patient X of the care he needed. Mr Hunter's actions, therefore, had an impact on Patient X, as well as his mother. Further, Mr Hunter had read Patient X's mother's email which essentially asked him to stop attending their home, but made a specific, premeditated decision to visit their house again anyway.

In all the circumstances, the panel found that Mr Hunter's actions fell seriously short of the conduct and standards and behaviour expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mr Hunter's 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. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

In the case of *CHRE v NMC and Grant*, the court approved the test in the case of *Cohen V GMC*, namely that there is '*necessity to determine whether the misconduct is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated*'.

Further in paragraph 74 of *CHRE v NMC and Grant*, Mrs Justice Cox said:

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

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel found that a patient was put at risk of harm as a result of Mr Hunter's misconduct. Mr Hunter's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mr Hunter had made full admissions to the allegations from the outset at a local level and had recognised the inappropriateness of his behaviour, whilst also exhibiting remorse.

In his first reflective account dated 28 November 2019, Mr Hunter had laboured the point of his [PRIVATE] and demanding workload as mitigation, and although remorseful, he appeared to blame his actions on [PRIVATE] rather than taking full accountability. However, in his second reflective account, written almost three years later and dated 3 October 2022, Mr Hunter had developed full insight by demonstrating an understanding of why what he did was wrong, how this impacted negatively on Patient X, his mother, Mr Hunter's colleagues and the reputation of the profession, and how his actions put Patient X at a risk of harm.

The panel did not accept the NMC's submissions in its Statement of Case that Mr Hunter had '*displayed some insight by providing a reflective piece*' but lacked full insight. The NMC Statement of Case made no reference to Mr Hunter's most recent reflective piece. The panel was of the view that, in light of his most recent reflections, Mr Hunter had shown full insight into his actions.

The panel was satisfied that, although difficult, the misconduct in this case was capable of being addressed, especially as there was no indication that Mr Hunter had acted similarly before during a 30-year nursing career. Therefore, the panel carefully considered the evidence before it in determining whether or not Mr Hunter had taken steps to strengthen his practice. The panel took into account that Mr Hunter had not practised as a nurse since 2019 and so he had not been able to demonstrate that he had addressed his conduct specifically in a nursing capacity. However, he has been working in a role supporting vulnerable young people with complex needs within the employability service of the Moving On Employment Project (MOEP) since November 2020 and the strong testimonials provided demonstrate that there has not been any repetition of the serious misconduct and unacceptable behaviour which formed the charges proved in this case.

Mr Hunter's reflective account dated 3 October 2022 explained that whilst he had not been able to work as a nurse, he '*had worked in an environment for a mental health charity which deals with vulnerable service users and family and other professions*' and had '*never had any incidents of misconduct or any incidents where [his] conduct has been called into question in any manner*'. Further, it stated that in terms of maintaining his practice and up-to-date knowledge, Mr Hunter:

- Was a member of several forums and groups focused on the development of innovative and contemporary Learning Disability Nursing practice;
- Was in regular contact with many learning disability and autism colleagues and practitioners;
- Intended to continue attending courses, conferences, and study days to ensure his knowledge is relevant and to keep him informed of current initiatives, research and developments; and
- Had recently completed an online CPD Accredited course on Maintaining Professional Boundaries to show that he had taken steps to strengthen his practice.

In his reflective account, Mr Hunter indicated that he was currently working as a Transition Support Worker with the MOEP. The panel noted that he had been working in this role since November 2020 and that his role involved supporting young people who have conditions and disabilities such as autism, learning disabilities, mental health issues, substance and alcohol use, and offending behaviour.

Mr Hunter had previously expressed that he did not intend to return to nursing practice, since he felt such remorse and shame for his actions, that he could not see himself returning to the nursing profession. Subsequently, Mr Hunter decided that he would like to remain on the Register and prove to the NMC and the public that he can be trusted to practise safely.

The panel was satisfied that whilst not currently working in a nursing capacity, Mr Hunter's work as a Transitional Support Worker requires a similar type of professional relationship with service users in a rural setting where there is the same duty of care and trust expected of him.

The panel noted that Mr Hunter's misconduct involved three incidents within a two-week period, against an otherwise unblemished nursing career of 33 years. The panel noted from Mr Hunter's own representations that his inappropriate conduct occurred during a period when [PRIVATE].

The panel considered the various mitigating factors in this case, including Mr Hunter's reflective account, the numerous positive testimonials, [PRIVATE], the testimonial from Mr Hunter's current workplace, the ongoing support from his wife and family, and the absence of any concerns about him in his very long career. Having considered these factors, the panel was of the view that it is highly unlikely for Mr Hunter to repeat this behaviour.

The panel was therefore not satisfied that a finding of current impairment was appropriate on the grounds of public protection. This in no way meant that the panel considered the misconduct in this case as anything other than very serious.

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 determined that a finding of impairment on public interest grounds was required because Mr Hunter's actions were a serious departure from the behaviours expected of a registered nurse, and a well-informed member of the public would be concerned if a finding of impairment were not made in such a case.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also found Mr Hunter's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

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

Representations on sanction

The panel noted that in the NMC's Statement of Case attached to the Notice of Meeting, dated 6 September 2022, the NMC had advised Mr Hunter that it would seek the imposition of a striking-off order if it found Mr Hunter's fitness to practise currently impaired. In its written submissions, the NMC stated:

'The NMC sanctions guidance on sexual misconduct is relevant here. It notes that concerns will be particularly serious if the nurse has abused a special position of trust they hold as a registered caring professional. It also goes on to say that the level of risk to patients will be an important factor, but a panel of the Fitness to Practise Committee ('FtPC') should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses.

...

No action or a caution order

The case is too serious for taking no action or a caution order.

Conditions of practice

This sanction would not be appropriate to address the concerns given that there is evidence that the Registrant's behaviour could be as a result of deep-seated personality or attitudinal problems. Similarly, the Registrant has expressed that he no longer wishes to practise as a nurse so has not confirmed that he would be willing to adhere to conditions. In any event, it is the view of the NMC that conditions would not be sufficient to address the seriousness of the concerns.

A suspension order

In this case there is some evidence of deep-seated personality problems and the conduct could be seen as a pattern of harassment which continued despite the Registrant being told to stop, it cannot be said to be a single instance of misconduct and therefore a suspension order would not be appropriate.

A striking off order

A striking off order (SAN-3e) is likely to be appropriate when what the Registrant has done is fundamentally incompatible with being a registered professional. The Registrant has provided a reflective piece but it is predominately focussed on the incidents occurring because he was not thinking straight and due to his high caseload. He does express remorse for his actions and acknowledges that he has brought the reputation of the profession into disrepute but he does not appear to fully reflect on the impact on Patient X and his mother, and how his actions may have prevented them from getting the care that they required.

The final sentence of the reflective piece states “[PRIVATE]”. The NMC is of the view that the Registrant is not showing full insight into his behaviour and there is still a risk that it would happen again if the same pressures were placed on him.

As the concern is difficult to address or put right and constituted a very serious breach of professional boundaries, the NMC submit that a sanction of a striking-off order is the appropriate and minimum necessary sanction in all circumstances. This would properly reflect the Registrant’s sexual misconduct.’

The panel also bore in mind Mr Hunter’s representative’s written submissions. These submissions referred to Mr Hunter’s reflections on 3 July 2022 and 3 October 2022 which were not covered in the NMC’s submissions and in which he had accepted full responsibility and the full effect of his actions on Patient X, Patient X’s family and the reputation of the nursing profession. [PRIVATE]. In the submissions, Mr Hunter accepted that impairment should be found in the public interest and that a suspension order would be appropriate to mark the seriousness of his misconduct. The submissions were accompanied by his latest reflective account and a number of strong testimonials from colleagues who have worked with him as a registered nurse in East Anglia and most recently, in his non-nursing post as a Transitional Support Worker since November 2020.

The submissions pointed out that in his current role, there had been no repetition of the inappropriate comments and misconduct over the last two years, even though there are similarities in his current post with the situations he would come across as a Learning Disabilities Nurse.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Mr Hunter's actions towards a vulnerable service user's mother amounted to an abuse of a position of trust in the home. Patient X's mother was reliant on the service provision to help her son and would have expected Mr Hunter to act appropriately in her home.
- Mr Hunter's conduct put Patient X at risk of suffering harm. His actions could have had had an adverse impact on Patient X.
- Mr Hunter demonstrated an initial lack of insight into his failings.
- Mr Hunter's conduct included instances of inappropriate and sexually motivated behaviour towards Patient X's mother.

The panel also took into account the following mitigating features:

- Mr Hunter made early admissions to his supervisors at the Trust.
- Mr Hunter had remained consistent since his original admission.
- Mr Hunter developed full insight into the impact of his actions.
- The personal mitigation at the time of the incidents, which included [PRIVATE].
- Mr Hunter's work case load was demanding and, [PRIVATE].
- Mr Hunter's supervision support at the Trust did not take place because of cancellations prior to the incidents.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict Mr Hunter's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Hunter's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of harmful deep-seated personality or attitudinal problems; and*
- *No evidence of general incompetence.*

The panel noted that it had not made a finding of current impairment on the grounds of public protection. It took into account that the misconduct in this case did not relate to clinical failings or identifiable areas of Mr Hunter's practice in need of assessment or re-training. Further, the panel was satisfied that there was no evidence of general incompetence in Mr Hunter's practice. The panel considered that Mr Hunter had remedied his misconduct and determined that there were no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel was also of the view that a conditions of practice order was not a proportionate or sufficient sanction to mark the seriousness of the misconduct in this case.

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

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

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

The panel noted that the NMC had asked the panel for the imposition of a striking-off order, whilst Mr Hunter's representative had asked the panel to impose a suspension order for the period of six months.

The panel bore in mind that Mr Hunter's behaviour amounted to serious misconduct of a sexual nature, albeit on the lower end of the spectrum for sexual misconduct. It took into account that Mr Hunter had worked to address the concerns, there had been no repetition of the misconduct in the last two years, and he had indicated an intention to return to nursing practice to put right what he had done wrong. The panel also had regard to its finding that Mr Hunter did not pose a significant risk of repeating the behaviour and that a finding of impairment on public protection grounds was not appropriate in this case.

The panel had regard to the fact that, other than these incidents, Mr Hunter has had an unblemished career of 33 years as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, Mr Hunter should be able to return to nursing practice.

However, the panel determined that a temporary suspension from practice was appropriate to mark the seriousness of his misconduct of a sexual nature and meet the public interest.

The panel did go on to consider whether a striking-off order would be proportionate and it carefully considered the NMC's submissions in relation to the sanction it was seeking in this case. However, taking account of all the information before it, including the mitigation provided and the panel's decision on current impairment, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Hunter's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Hunter. However this is outweighed by the public interest in this case.

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

The panel determined that a suspension order for a period of three months was appropriate in this case to mark the seriousness of the misconduct. The panel was of the view that Mr Hunter had much to give to the public as an experienced nurse when he returns to practice. The panel was informed by Mr Hunter's representative that Mr Hunter had been subject to an interim conditions of practice order and then an interim suspension order from September 2021. The panel took this into account, but only as a background factor and has not directly reduced the period of suspension on this account.

Having found that Mr Hunter's fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision. In this respect it found Mr Hunter's fitness to practise impaired on the grounds of public interest.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not required.

Article 29 (8A) states:

‘29.— (8A) If, at the time of making an order under paragraph (5)(b) or (c), the Fitness to Practise Committee is satisfied that, with effect from the date of the expiry of that order, it will not be necessary to—

- (a) extend the period of the order;*
- (b) vary the order; or*
- (c) make any other order falling within article 29(5), the Committee may decide that article 30(1) does not apply to that order.’*

The panel determined that it made the substantive order having found Mr Hunter’s fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards.

Accordingly, the current substantive order will expire, without review.

This will be confirmed to Mr Hunter in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Hunter’s own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC that an interim order in the same terms as the substantive order should be imposed if a finding of impairment on a public protection basis were made and a restrictive sanction imposed. It was the NMC's submission that an interim order was necessary for the protection of the public and otherwise in the public interest.

The NMC submitted that if the panel had made a finding of impairment on a public interest only basis and that Mr Hunter's conduct was fundamentally incompatible with continued registration, then it would invite the panel to impose an interim order of suspension on the basis that it is otherwise in the public interest.

Decision and reasons on interim order

The panel was mindful that there is a high bar in relation to imposing an interim order on public interest grounds alone. It had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel took into account that Mr Hunter's actions consisted of serious misconduct of a sexual nature and that it had found impairment in the public interest leading to a substantive suspension order to mark the seriousness of the misconduct. The panel was satisfied that an interim order is otherwise in the public interest.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive suspension order. The panel therefore imposed an interim suspension order for a period of 18 months to ensure that Mr Hunter cannot practise without restriction before the substantive suspension order takes effect. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.