

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

**Substantive Hearing
Friday 29 July 2022**

Virtual Hearing

Name of registrant:	Samuel Broomhead
NMC PIN:	15C2760E
Part(s) of the register:	Registered Nurse - February 2016 RNMH - Mental Health
Relevant Location:	Lancashire
Type of case:	Misconduct
Panel members:	Adrian Ward (Chair, lay member) Margaret Wolff (Lay member) Judith McCann (Registrant member)
Legal Assessor:	Oliver Wise
Hearings Coordinator:	Shela Begum
Nursing and Midwifery Council:	Represented by Vanya Headley, Case Presenter
Mr Broomhead:	Not present and represented at the beginning of the hearing by Mr Michael Nolan
Consensual Panel Determination:	Accepted
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on proceeding in the absence of Mr Broomhead

At the outset of this hearing, the panel heard from Mr Nolan, on behalf of Mr Broomhead. Mr Nolan explained that he and Mr Broomhead were not planning to attend this hearing today but that they agreed that this hearing should proceed in their absence. Mr Nolan explained that Mr Broomhead previously had intended to attend the hearing but on reconsideration, decided not to attend.

The panel noted that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Mr Broomhead and the Nursing and Midwifery Council (NMC) on 28 July 2022.

The panel accepted the advice of the legal assessor.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mr Broomhead.

Details of charge

'That you, a registered nurse, whilst working as a Crisis Practitioner [PRIVATE] at Lancashire and South Cumbria NHS Foundation Trust:

- 1) On one or more occasions, had sexual intercourse with Patient A.
- 2) Took Patient A to your home address.
- 3) Went with Patient A to the pub and/or permitted her to consume alcohol.
- 4) Contacted and/or saw Patient A outside of working hours.
- 5) Your actions in one or more of charges 2 to 4 above was sexually motivated in that you were acting in pursuit of a sexual relationship.

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

Consensual Panel Determination

At the outset of this hearing, Ms Headley informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Mr Broomhead.

The agreement, which was put before the panel, sets out Mr Broomhead's full admissions to the facts alleged in the charges, that his actions amounted to misconduct, and that his fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be striking-off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("NMC") and Mr Samuel Broomhead ("Mr Broomhead"), PIN 15C2760E ("the Parties") agree as follows:

- 1. Mr Broomhead is aware of the CPD hearing. Mr Broomhead and his representative plan to attend the hearing. Mr Broomhead understands that if the panel wishes to make amendments to the provisional agreement that he doesn't agree with, the panel will reject the CPD and refer the matter to a substantive hearing.*

The charge

- 2. Mr Broomhead admits the following charges:*

That you, a registered nurse, whilst working as a Crisis Practitioner [PRIVATE] at Lancashire and South Cumbria NHS Foundation Trust:

- 1) On one or more occasion, had sexual intercourse with Patient A.*

- 2) *Took Patient A to your home address.*
- 3) *Went with Patient A to the pub and/or permitted her to consume alcohol.*
- 4) *Contacted and/or saw Patient A outside of working hours.*
- 5) *Your actions in one or more of charges 2 to 4 above was sexually motivated in that you were acting in pursuit of a sexual relationship.*

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

Background

3. Mr Broomhead appears on the register of nurses, midwives and nursing associates maintained by the NMC as a mental health nurse and has been a registered nurse since 20 February 2016.

4. This case represents the first time Mr Broomhead's practice has come to the attention of the NMC.

5. On 19 July 2021, the NMC received a referral from Lancashire and South Cumbria NHS Foundation Trust ("the Trust") regarding Mr Broomhead's fitness to practise.

6. At the time of the concerns raised in the referral, Mr Broomhead was employed by the Trust as a Crisis Practitioner [PRIVATE] which manages people experiencing a moderate to severe mental health crisis.

7. Patient A [PRIVATE] was allocated to Mr Broomhead's caseload and was under his care for approximately six to eight weeks.

8. [PRIVATE]

9. On 30 September 2020, [PRIVATE] Patient A was transferred to hospital and, during the journey, disclosed [PRIVATE] that she [PRIVATE] was in an intimate and sexual relationship with a nurse from the team. Following this, [PRIVATE] made a safeguarding referral and informed the Trust of what Patient A had said.

10. Mr Broomhead was identified as the member of staff Patient A was referring to and the Trust investigated the allegations. Mr Broomhead was suspended pending investigation and later resigned from the Trust on 30 June 2021.

Facts relating to the charges

11. A personal relationship occurred approximately three weeks after Patient A came into [PRIVATE]. Mr Broomhead would text Patient A from his work phone. Mr Broomhead had sexual intercourse with Patient A on at least two occasions when he saw her for their sessions, the first time that they had sexual intercourse was at his home address. On an unknown date, Patient A asked Mr Broomhead if he was just using her, he responded 'if it is just sex... why would I risk my job'.

12. Mr Broomhead took Patient A on a trip [PRIVATE] one evening outside of working hours. He permitted Patient A to consume alcohol by going to the pub with her and watching her drink alcohol. Mr Broomhead was aware that Patient A should not drink alcohol with her [PRIVATE] medication as both substances shouldn't be mixed.

13. Mr Broomhead did not document anything about his visit with Patient A [PRIVATE] to the pub, his house or any other visits or communication outside of the agreed hours in Patient A's medical records. Each visit and communication with a patient should have been documented in the medical records. It has been confirmed by Colleague 1 that whilst the service is available 24 hours a day, it would not be appropriate to contact a service user outside of the usual agreed hours unless there was a clinical need such as where the person was at risk of self-harm.

14. [PRIVATE]

15. Mr Broomhead's behaviour in taking Patient A to his home address and the pub, in addition to contacting and seeing her outside of working hours was inappropriate in any event. The seriousness of this behaviour is aggravated however by the fact that he was doing it with the intention of pursuing a sexual relationship with Patient A.

16. Mr Broomhead admits to all the charges and accepts that his fitness to practise is impaired. This was indicated in his response to the case management form dated 28 April 2022.

17. Witness statements have been obtained from:

17.1. Colleague 1 who was, at the material time, the Team Leader who had operational management [PRIVATE].

17.2. Colleague 2, Consultant Nurse and Associate Director of Nursing at the Trust, who conducted a local investigation into concerns surrounding Mr Broomhead's practice.

18. [PRIVATE]

Misconduct

19. The Parties agree that the facts amount to misconduct.

20. 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 rules and standards ordinarily

required to be followed by a [nurse] practitioner in the particular circumstances”.

21. As may be seen from 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):

“[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”.

22. The Parties agree that Mr Broomhead’s misconduct is serious and falls short of what is expected of a registered nurse. The misconduct is a serious departure from expected standards, and is likely to cause risk to patients and risk to the reputation of the profession in the future if not addressed. Nurses occupy a position of privilege and trust in society and are expected at all times to be professional.

23. At the relevant time, Mr Broomhead was subject to the provisions of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (“the Code”). The Parties agree that the following provisions of the Code have been breached in this case;

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.4 take account of your own personal safety as well as the safety of people in your care

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or ~~at risk from harm, neglect or abuse~~

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

20.2 act with ~~honesty~~ and integrity at all times, ~~treating people fairly and without discrimination, bullying or harassment~~

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 (~~including those who have been in your care in the past~~), their families and carers

*24. Mr Broomhead has also breached the **Trust's Disciplinary Policy and Procedure** which confirms that "being involved in an inappropriate relationship with a service user" may be classified as gross misconduct. Further, the **Trust's Code of Conduct for Employees Policy** states:*

The Trust regards as wholly unacceptable (and may in some circumstances be illegal) any close personal relationship between an employee and a vulnerable adult client whom they meet as a result of their employment. If this type of relationship exists/develops, the situation can be regarded as:

- an abuse of the employee's position of trust*
- a breach of the standards of propriety expected in the post*
- a compromise of professional standards/code of conduct.*

25. Mental health patients are particularly vulnerable and Mr Broomhead took advantage

of a vulnerable patient for his own benefit. Mr Broomhead met the patient when she was seeking the services of the mental health team and later engaged in a relationship which became sexual in nature.

26.It is accepted that not every breach of the Code or of a Trust policy will result in a finding of misconduct, however Mr Broomhead accepts that the failings set out above are a serious departure from the professional standards and behaviour expected of a registered nurse. Mr Broomhead acknowledges that his conduct presented a risk of harm to Patient A whom he was tasked with caring for, and he abused his position of trust.

Impairment

27.The Parties agree that Mr Broomhead's fitness to practise is currently impaired by reason of his misconduct.

28.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 and therefore it is imperative that nurses make sure that their conduct at all times justifies both their patients' and the public's trust in them and in their profession.

29.In relation to impairment, the Parties have considered the factors outlined by Dame Janet Smith in the Fifth Shipman Report and approved by Cox J in the case of CHRE v Grant & NMC [2011] EWHC 927 (Admin) ("Grant"). A summary is set out in the case at paragraph 76 in the following terms:

"Do our findings of fact in respect of the doctor's [nurses] 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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”*

30. *The panel should also consider the comments of Cox J in Grant at paragraph 101:*

“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.”

31. *The Parties agree that limbs a, b and c as identified in the above case, are engaged.*

Dealing with each limb in turn:

Public Protection

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

32. Mr Broomhead’s conduct relates to serious misconduct, in relation to an inappropriate sexual relationship with a vulnerable patient. It is considered that should Mr Broomhead’s actions be repeated, there would be an unwarranted risk of harm to patients. Therefore, the Parties agree that Mr Broomhead is liable in the future to put patients at unwarranted risk of harm if the concerns are not addressed.

Public Interest

Has in the past brought and/or is liable in the future to bring the medical profession into disrepute

33. Registered professionals occupy a position of trust in society. Mr Broomhead's actions have impaired patient confidence in the nursing profession. The public, quite rightly, expect nurses to provide safe and effective care, and conduct themselves in ways that promote trust. Mr Broomhead's actions/inactions could cause patients and members of the public to be concerned about their safety and feel unnecessarily anxious about their mental health treatment. This, the Parties agree, could result in patients, and members of the public, feeling deterred from seeking medical assistance when they should. Therefore, it is agreed that Mr Broomhead's conduct has brought the profession into disrepute and that he has breached the trust placed in him.

Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession

34. The Code divides its guidance for nurses into four categories which it can be considered are representative of the fundamental principles of nursing care. These are:

- 34.1. Prioritise people;*
- 34.2. Practice effectively;*
- 34.3. Preserve safety and*
- 34.4. Promote professionalism and trust.*

35. The Parties have set out above the relevant sections of the Code they agree have been breached in this case. As such the Parties agree that Mr Broomhead has breached fundamental tenets of practice.

Remediation, reflection, training, insight, remorse

36. In **Cohen v GMC** [2007] EWHC 581 (Admin), the Court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment:

- a) "Whether the conduct that led to the charge(s) is easily remediable;
- b) Whether it has been remedied;
- c) Whether it is highly unlikely to be repeated."

37. The Parties have considered the **NMC's Fitness to Practise guidance** (Reference: FTP-13a) in regards to whether to Mr Broomhead's conduct is easily remediable.

The guidance states:

"Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.

Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include

- ...
- inappropriate personal or sexual relationships with patients, service users or other vulnerable people"*

38. The Parties accept that sexual misconduct is more difficult to put right because it suggests underlying problems with his attitude. Insight, along with tangible and targeted remediation such as training and demonstrable nursing competency, cannot remedy this type of concern.

39. *Notwithstanding the above, the Parties acknowledge that Mr Broomhead has demonstrated some level of insight, evidenced by way of his admission to the charges.*

40. *In an email to the NMC dated 1 September 2021, Mr Broomhead stated:*

“I’m personally sure that I shouldn’t be a nurse any more as a result of my own actions”.

41. *Mr Broomhead also stated in his returned case management form dated 28 April 2022:*

“I also fully accept that it was me who undertook the actions, and that they were fully unacceptable. I deeply regret my actions and take full responsibility. I regret causing harm to the patient, who did not deserve this at all and deserved fully professional care at all times. I have thought about the consequences of my actions every day since the incident and still struggle to come to terms with the fact that I allowed myself to do what I did. I apologise to the individual specifically involved, and also anybody else who is involved in this process. I would like it to be known I have no intention to stand against any decision, I fully accept the outcomes”

42. *Based on the above paragraphs, the Parties agree that a reasonable and fully informed member of the public would expect a finding of impairment to follow and would be concerned if a nurse was not found impaired due to the concerns raised.*

43. *It is also agreed that the misconduct in this case is so serious a finding of impairment on the basis of public interest is required. Such a public declaration would go some way towards repairing the damage to the reputation of the profession caused by the misconduct by declaring that the misconduct was wholly unacceptable.*

44. Therefore, the Parties agree that Mr Broomhead's fitness to practice is impaired on public protection and public interest grounds.

Sanction

45. In accordance with Article 3(4) of the Nursing and Midwifery Order the overarching objective of the NMC is the protection of the public.

46. Article 3(4A) of The Nursing and Midwifery Order 2001 states:-

"The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives-

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain public confidence in the professions regulated under this Order; and

(c) to promote and maintain proper professional standards and conduct for members of those professions."

47. Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that the appropriate sanction in this case is a striking-off order. A striking-off order is the most appropriate and proportionate sanction which properly reflects the seriousness of the misconduct.

48. In reaching this agreement, the parties considered the **NMC's Sanctions Guidance** ("the Guidance"), bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to be punitive but to protect the public and public interest. The panel should take into account the principle of proportionality and it is submitted that the proposed sanction is a proportionate one

that balances the risk to public protection and the public interest with Mr Broomhead's interests.

*49. The **guidance on sexual boundaries produced by the Professional Standards Authority** is also relevant as it clearly states that healthcare professionals must not display sexualised behaviour towards patients or their carers. The reasons for this is because the healthcare professional/patient relationship depends on confidence and trust.*

50. The aggravating features in this case have been identified as follows:

- 50.1. Abuse of position [sic] of trust*
- 50.2. Actual harm caused to Patient A*
- 50.3. Occurred more than once over a number of weeks*
- 50.4. Patient was particularly vulnerable*

51. The mitigating features of this case have been identified as follows:

- 51.1. Acceptance of concerns at local and NMC level*
- 51.2. Some insight and remorse shown*

52. With regards to the sanctions guidance the following aspects have led the Parties to conclude that a striking-off order is appropriate and proportionate. Taking the sanctions in ascending order starting with the least restrictive :

*52.1. **No further action** - It is submitted that taking no action would not be appropriate in this case. The Guidance states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of the misconduct and the ongoing risk means that taking no action would not be appropriate.*

52.2. Caution order - A caution order is the least restrictive sanction which will only be suitable where the nurse presents no risk to the public. Again, given the concerns highlighted in this agreement, a caution order would not be an appropriate outcome.

52.3. Conditions of practice order – Imposing a conditions of practice order would not be appropriate in this case as there are no identifiable clinical concerns that could be addressed with conditions. This sanction would not reflect the seriousness of the misconduct or address the concerns raised.

52.4. Suspension order – Imposing a suspension order would only temporarily protect the public. It cannot be said that this was a single instance or misconduct or that there is no evidence of harmful deep-seated personality or attitudinal problems. This sanction would not reflect the seriousness of the conduct and therefore public confidence in the profession would not be maintained.

52.5. Striking-off order - The Guidance states:

“... Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional.

... The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates...

Panels deciding on sanction in cases about serious sexual misconduct will, like in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register.”

Patient A was a particularly vulnerable patient and Mr Broomhead's actions caused her actual harm. This behaviour has raised fundamental questions about his professionalism and public confidence can only be maintained if he is removed from the register. Only a striking-off order would be sufficient to protect the public and maintain public confidence in the profession.

Interim order

53. An interim order is required in this case. The interim order is necessary for the protection of the public and otherwise in the public interest. The interim order should be for a period of 18 months in the event that Mr Broomhead seeks to appeal against the panel's decision. The interim order should take the form of an interim suspension order.

The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings, impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

The provisional CPD agreement was signed by Mr Broomhead and the NMC on 28 July 2022.

Submissions by the case presenter

Ms Headley referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. She reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mr Broomhead. Further, the panel should consider whether the provisional CPD

agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

Decision and reasons on the CPD

The panel accepted the legal assessor's advice. The legal assessor advised the panel that it could accept or reject the provisional CPD agreement. He referred the panel to parts of the CPD which set out the legal tests for impairment.

The panel decided to accept the CPD.

The panel noted that Mr Broomhead admitted the facts of the charges. Accordingly the panel was satisfied that the charges are found proved by way of Mr Broomhead's admissions, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Mr Broomhead's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Mr Broomhead, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of misconduct, the panel determined that Mr Broomhead's actions fell far below the standards expected of a registered nurse. The panel noted that a patient was placed at a real risk of harm as a result of Mr Broomhead's actions, specifically in relation to his knowingly allowing a patient to consume alcohol which was against her care plan. The panel considered that Mr Broomhead's actions breached professional boundaries in that he had an inappropriate and sexual relationship with a vulnerable patient in his care causing her emotional harm and loss of trust in male nurses. In doing also Mr Broomhead also harmed the reputation of the nursing profession. The panel determined that the facts

found prove amount to misconduct and demonstrated a serious departure from the fundamental tenets of the nursing profession. In this respect, the panel endorsed paragraphs 19 to 26 of the provisional CPD agreement in respect of misconduct. The panel had regard to the Code and was in agreement that the provisions as set out in the CPD had been breached in this case.

The panel then considered whether Mr Broomhead's fitness to practise is currently impaired by reason of misconduct. The panel determined that Mr Broomhead's fitness to practise is currently impaired. The panel considered that limbs a – c of Dame Janet Smith's test are engaged in this case.

The panel is of the view that Mr Broomhead's actions placed a patient at an unwarranted risk of harm in that he abused his position of trust by engaging in a sexual relationship with a vulnerable patient who was in his care. The parties were in agreement that there is a risk of future harm to patients if the conduct were to be repeated.

The panel considered that Mr Broomhead's actions are deplorable, breached fundamental tenets of the profession and brought the profession into disrepute.

The panel had regard to the case of Cohen v GMC. It considered whether the areas of concern identified in this case are capable of remediation and whether insight and any steps to strengthen his practice would sufficiently address the concerns. The panel concluded that sexual misconduct is suggestive of underlying attitudinal concerns and therefore are more difficult to put right. Mr Broomhead accepts this. The panel noted that Mr Broomhead has demonstrated some insight in that he made admissions to the charges but it is of the view that this does not adequately address the concerns in this case. The panel therefore determined that there is a risk of repetition in this case.

The panel concluded 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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, in this case, a finding of impairment on public interest grounds is also required. The panel considered that a fully informed member of the public would expect the NMC to take action against a nurse who has acted in the way Mr Broomhead has.

Having regard to all of the above, the panel was satisfied that Mr Broomhead's fitness to practise is currently impaired. In respect of impairment, the panel endorsed paragraphs 27 to 44 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mr Broomhead'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 Guidance. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Actual harm was caused to a patient
- Abuse of a position of trust
- The patient was a vulnerable mental health patient
- A pattern of misconduct over a period of time

The panel also took into account the following mitigating features:

- Admissions to the conduct at a local level and to the NMC
- Some evidence of insight and remorse

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, and the public protection issues identified, an order that does not restrict Mr Broomhead'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 Broomhead's 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 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 Broomhead's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Broomhead's registration would not adequately address the seriousness of this case and would not protect the public.

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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel noted that these factors did not apply in this case and therefore determined that a suspension order would not be the appropriate sanction in this case.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mr Broomhead's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with him remaining on the register.

The panel was of the view that the findings in this particular case demonstrate that Mr Broomhead's actions were serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Broomhead's actions in causing actual harm to a vulnerable patient and 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 considered that this order was necessary to mark the importance of protecting the public, 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.

Decision and reasons on interim order

As the striking-off 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 Broomhead's own interests until the striking-off sanction takes effect. The panel accepted the advice of the legal assessor.

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

The panel agreed with the CPD that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to cover any period if an appeal is lodged and for the appeal to be heard.

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

This will be confirmed to Mr Broomhead in writing.

That concludes this determination.