

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

**Substantive Hearing
4- 6 July 2022**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

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| Name of registrant: | Cheryl Rosemary Sutcliffe |
| NMC PIN: | 13H4449E |
| Part(s) of the register: | Nurses part of the register Sub part 1 RNMH: Mental health nurse, level 1 (20 June 2014) |
| Relevant Location: | Leeds |
| Type of case: | Misconduct |
| Panel members: | Patricia Richardson (Chair, Lay member) Angela O'Brien (Registrant member) Margaret Wolff (Lay member) |
| Legal Assessor: | Justin Gau |
| Hearings Coordinator: | Sophie Cubillo-Barsi |
| Nursing and Midwifery Council: | Represented by Mary Kyriacou, Case Presenter |
| Cheryl Rosemary Sutcliffe: | Not present and not represented |
| Facts proved: | Charges 1, 2, and 3 |
| Fitness to practise: | Impaired |
| Sanction: | Striking off order |
| Interim order: | Interim suspension order – 18 months |

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Sutcliffe was not in attendance and that the Notice of Hearing letter had been sent to Miss Sutcliffe's registered email address on 24 May 2022.

Ms Kyriacou, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Sutcliffe's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Sutcliffe has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Sutcliffe

The panel next considered whether it should proceed in the absence of Miss Sutcliffe. It had regard to Rule 21 and heard the submissions of Ms Kyriacou who invited the panel to continue in the absence of Miss Sutcliffe.

Ms Kyriacou referred the panel to an email from Miss Sutcliffe to the NMC, dated 20 June 2022, in which Miss Sutcliffe requested that the hearing be dealt with in her absence. A further email was received from Miss Sutcliffe on 20 June 2022, in which she stated:

“I would prefer the hearing to go ahead in my absence if possible, just because I feel it’s dragged on so long and I need and end to this also.”

Ms Kyriacou invited the panel to proceed in Miss Sutcliffe’s absence. Ms Kyriacou submitted that Miss Sutcliffe has voluntarily absented herself and that there is no reason to believe that an adjournment would secure Miss Sutcliffe’s attendance at a future date. Ms Kyriacou reminded the panel that two witnesses have attended today to give live evidence.

[PRIVATE].

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised ‘*with the utmost care and caution*’ as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Sutcliffe. In reaching this decision, the panel has considered the submissions of Ms Kyriacou, the representations from Miss Sutcliffe that the case proceed in her absence, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Sutcliffe;
- Miss Sutcliffe has informed the NMC that she has received the Notice of Hearing and has asked for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have attended today to give live evidence;

- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Sutcliffe in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her, Miss Sutcliffe will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Sutcliffe's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Sutcliffe. The panel will draw no adverse inference from Miss Sutcliffe's absence in its findings of fact.

Details of charge

That you a registered nurse:

1. On 3 May 2018 permitted Prisoner A to kiss and/or touch you without challenge.
2. Did not maintain professional boundaries with Prisoner M, in that you:
 1. Sent one or more personal letters to Prisoner M.

2. Sent him a 'jail mate card' with a picture of yourself included.
3. Your actions at charge 2 were sexually motivated in that you intended to pursue a future sexual relationship with Prisoner M.

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

Background

The allegations arose whilst Miss Sutcliffe was employed by Care UK whilst working at Her Majesty's Prison Leeds (the Prison) as a Mental Health Nurse. Her responsibilities included triaging mental health patients, completing mental health assessments, and attending Assessment, Care in Custody and Teamwork (ACCT) reviews.

On 3 May 2018, whilst working at the Prison, CCTV footage allegedly captured Miss Sutcliffe being overfamiliar with Prisoner A, allowing him to kiss and touch her without challenging him. On 4 May 2018, Miss Sutcliffe was suspended by the Prison Deputy Governor to allow the Prison to investigate the incident. Miss Sutcliffe was subsequently allowed to return to her role pending further investigation.

In September 2018, an Intelligence Report produced by the Prison raised further concerns about Miss Sutcliffe's conduct. The report included allegations that Miss Sutcliffe had been going into prisoner's cells closing the door behind her and engaging in flirtatious behaviour. Miss Sutcliffe was suspended by the Prison and subsequently resigned from her role at the Prison on 24 September 2018 and her last day of service was 1 October 2018.

In November 2018, the Prison Security Department intercepted correspondence allegedly exchanged between the Registrant and Prisoner M. A search of Prisoner M's cell found further correspondence allegedly from Miss Sutcliffe.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Kyriacou on behalf of the NMC and by written representations provided by Miss Sutcliffe.

The panel has drawn no adverse inference from the non-attendance of Miss Sutcliffe.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact 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:

- Mr 1: Security Senior Officer at HMP Leeds (at time of incidents); and
- Mr 2: Head of Healthcare (Care UK) at the Prison;

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. The panel then considered each of the disputed charges and made the following findings.

Charge 1

That you a registered nurse:

1. On 3 May 2018 permitted Prisoner A to kiss and/or touch you without challenge.

This charge is found proved.

In reaching this decision, the panel considered all the evidence before it, including Mr 2's description of the CCTV footage of the incident, specifically:

"The footage showed Prisoner A, walking down the stairs whilst the registrant is walking up the stairs, Prisoner A then kisses the Registrant on the cheek and she does not object..."

The panel also considered Miss Sutcliffe's written submissions in which she states:

"I agree that I viewed the CCTV and I could see that it may have appeared that Prisoner A had kissed my cheek, however I can recall this prisoner smelling my perfume as he walked past me as I walked down the stairs."

The panel noted that neither the NMC nor Miss Sutcliffe dispute that Prisoner A had touched her.

It is the evidence of both Mr 1 and Mr 2 that Miss Sutcliffe did not pull away from Prisoner A or challenge his behaviour.

The panel next considered the evidence in relation to the alleged kiss. It is the evidence of Mr 1 that he was not sure whether a kiss took place. However, Mr 2 was able to provide the panel with a thorough description of the CCTV footage. He said that the footage showed Miss Sutcliffe walking up a flight of stairs towards Prisoner A talking to him. When she reached the top of the stairs Prisoner A leaned in, put his hand on Miss Sutcliffe's shoulder, pulled her towards him and kissed her. Neither the touch nor the kiss was rebuffed. When questioned by the panel, Mr 2 stated unequivocally that he believed a kiss took place. The panel noted that Mr 2's assertion is supported by the Prison's Intelligence Report. Further, when questioned Mr 2 described Prisoner A as 'charismatic' and 'tactile'.

The panel carefully considered Miss Sutcliffe's previous responses in relation to the alleged kiss. It noted the written statement of Mr 2 which states that on 4 May 2018,

after having viewed the CCTV footage, Miss Sutcliffe stated that Prisoner A had whispered in her ear. It is the evidence of Mr 2 that in a subsequent interview, Miss Sutcliffe stated that she had 'been very naïve and that Prisoner A may have kissed her.' However, in Mrs Sutcliffe's NMC Case Management Form, dated 27 April 2021, she states that Prisoner A smelt her perfume.

The panel determined that Miss Sutcliffe's various accounts of the incident on 3 May 2018 were inconsistent and unreliable. It preferred the evidence of Mr 2, who the panel found to be consistent, credible and a reliable witness.

Considering this, the panel was satisfied that on the balance of probabilities, Miss Sutcliffe did permit Prisoner A to kiss and/or touch her without challenge on 3 May 2018 and therefore this charge is found proved.

Charge 2 (1) and (2)

2. Did not maintain professional boundaries with Prisoner M, in that you:
 1. Sent one or more personal letters to Prisoner M.
 2. Sent him a 'jail mate card' with a picture of yourself included.

This charge is found proved.

When making a decision in relation to this charge, the panel considered the written statement of Mr 1, who describes:

"The correspondence was a jail mate card with a picture of a woman. I have seen the card and confirm that the woman in the picture is the Registrant...Following interception of the card a search was conducted of Prisoner M's cell and further letters were found. These intercepted letters also appeared to be addressed from the Registrant to Prisoner M and appeared to indicate that there was an unprofessional relationship between the Registrant and Prisoner M..."

The panel also had before it the written statement of Mr 2, who states:

“I am certain the letters were from the Registrant because her photo was included in the card and I recognised her handwriting.”

It is Miss Sutcliffe’s case that she sent the letters and the ‘jail mate card’ to Prisoner M after she had resigned from her position as a Mental Health Nurse at the Prison.

The panel had before it copies of the letters found in Prison M’s cell and the ‘jail mate card’. The panel noted that the nature of the letters are explicit and personal, relating to Miss Sutcliffe’s emotional feelings and her sexual interest in Prisoner M.

The panel was satisfied that the letters before it were from Miss Sutcliffe. It accepted Miss Sutcliffe’s admissions. The panel also accepted the NMC’s evidence that the address handwritten on the top of one of the letters allegedly sent by Miss Sutcliffe to Prisoner M, matched the address the NMC has on record for her since 19 February 2018. Further, the panel accepted the evidence of both Mr 1 and Mr 2 that the photo included within the ‘jail mate card’ was indeed Miss Sutcliffe.

When determining whether Miss Sutcliffe had breached professional boundaries, the panel noted Miss Sutcliffe’s written submissions that she began developing feelings for Prisoner M whilst she was working at the prison. At that time, Miss Sutcliffe was working in her capacity as a professional Mental Health Nurse, caring for Patient M [PRIVATE]. In this regard the panel carefully considered ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015’ (the Code), specifically:

“20 Uphold the reputation of your profession at all times

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”

Considering all the information the panel concluded that it is more likely than not, on the balance of probabilities, that Miss Sutcliffe did not maintain professional boundaries with Prisoner M, in that she sent personal letters and ‘jail mate card’ to him. The panel rejected Miss Sutcliffe’s submission that it was appropriate behaviour to attempt to form a relationship in this way by sending these letters and card as she was no longer employed by the Prison. This was a serious breach of professional boundaries. This charge is therefore found proved in its entirety.

Charge 3

3. Your actions at charge 2 were sexually motivated in that you intended to pursue a future sexual relationship with Prisoner M.

This charge is found proved

When making a decision in relation to this charge, the panel considered the content of the letters and correspondence from Miss Sutcliffe to Prisoner M. The panel noted that within the ‘jail mate card’ Miss Sutcliffe states:

“I can’t wait to get my hands on you you naughty little fucker. Don’t be flirting with any of them nurses in there or il snap her neck clean in half haaaaa xxx” [sic]

Further, within the letters from Miss Sutcliffe to Prisoner M, Miss Sutcliffe states:

“...And if you started shagging a nurse in there Id be well fucked off haha I’d wana kill you, although I wouldn’t say owt, but I don’t want you doing owt like that before I’ve had a chance to get my hands on you.” [sic]

Miss Sutcliffe further states:

“...Then me & you are going & all we are gona do is just shag like fuck! I cant wait ha.” [sic]

In another letter Miss Sutcliffe states:

“I cant wait to see your lovely sexy face again. I can't fuckin wait to kiss those fuckin lips properly...” [sic]

In light of the correspondence before it, the panel could draw no other conclusion than that Miss Sutcliffe's communication with Prisoner M was sexually motivated and that she intended to pursue a future sexual relationship with him. This charge is therefore found proved on the balance of probabilities.

Decision and reasons on application to admit a written statement

Before hearing submissions on impairment and misconduct, Ms Kyriacou informed the panel that Miss Sutcliffe had contacted the NMC with a character reference which she wished the panel to have sight of. The reference was forwarded from Prisoner M's mother's email address.

Ms Kyriacou submitted that the reference is not relevant in that it does not comment on the facts of the case, nor does it comment on Miss Sutcliffe's character. Ms Kyriacou therefore opposed the reference being accepted as evidence.

Ms Kyriacou told the panel that Miss Sutcliffe has been informed of the NMC's opposition. In response Miss Sutcliffe stated that she wished the panel to see the reference, forwarded from Prisoner M's mother's email address, as she believes the information provides context to the charges.

The panel heard and accepted advice from the legal assessor. 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 legal assessor advised that should the panel determine that the character reference is relevant and fair, the panel may want to go onto consider the provenance of the reference as it appeared to have been sent to Patient M's mother from Miss Sutcliffe's email address and then forwarded from Patient M's mother's email address to the NMC.

The panel reminded itself that Miss Sutcliffe was not present at this hearing and was not represented in her absence. In order to make a fully informed decision, the panel had sight of the character reference forwarded from Prisoner M's mother's email address.

The panel first considered the relevance of the reference. It accepted the NMC submission's that the information contained within the document did not speak to the facts of the case and was not relevant to the panel's next decision in relation to misconduct and impairment. In these circumstances the panel decided that the reference was not relevant to these proceedings and therefore rejected Miss Sutcliffe's request that the character reference be received into proceedings as evidence.

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 Miss Sutcliffe'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, Miss Sutcliffe's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Kyriacou 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.*'

Ms Kyriacou invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the Code and identified parts of the Code, which in the NMC's submission, had been breached by Miss Sutcliffe.

Ms Kyriacou reminded the panel that the Code is formulated to uphold the integrity of the profession, protect patients, and set standards expected of a registered nurse and/or midwife. Ms Kyriacou submitted that Miss Sutcliffe failed to demonstrate any objectivity and that despite being in an important role, within a fragile and fractious environment, she took unreasonable risks which could have adversely impacted both Prisoner A and Prison M's mental health. Ms Kyriacou invited the panel to find that Miss Sutcliffe failed to demonstrate the correct behaviour expected of a registered nurse and that her behaviour amounted to serious misconduct.

Submissions on impairment

Ms Kyriacou 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 judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). 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) ...*

Ms Kyriacou invited the panel to find that the first three limbs of the test are engaged in Miss Sutcliffe's case. She submitted that whilst Miss Sutcliffe has now been prohibited from working in any prison within the UK, there remains a risk that the behaviour found proved may be repeated in an alternative nursing setting. Ms Kyriacou described Miss Sutcliffe's insight as 'questionable' and invited the panel to find that her repeated behaviour demonstrated an attitudinal problem.

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 Miss Sutcliffe's actions did fall very significantly short of the standards expected of a registered nurse, and that Miss Sutcliffe's actions amounted to clear breaches of the 2015 Code. Specifically:

"20 Uphold the reputation of your profession at all times

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"

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel reminded itself that after the first incident with Prisoner A in May 2018, Miss Sutcliffe was suspended and received training and guidance in relation to appropriate behaviour within a prison setting. Despite this, Miss Sutcliffe subsequently breached professional boundaries with Prisoner M. The panel determined that on both occasions Miss Sutcliffe abused her privileged position and that her behaviour had the potential to adversely affect the wellbeing of the prisoners, particularly Prisoner M. The panel considered that a fellow member of the nursing profession would consider Miss Sutcliffe's actions as deplorable.

The panel therefore concluded that Miss Sutcliffe's actions did fall seriously short of the conduct and standards 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, Miss Sutcliffe'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*. The panel accepted the NMC's submissions that the first three limbs of the test are engaged in Miss Sutcliffe's case. The panel determined that patients were placed at a potential risk of harm and that Miss Sutcliffe's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

When considering whether Miss Sutcliffe has remediated the misconduct found proved, the panel took into account Miss Sutcliffe's reflective statement, in which she explains:

"However, due to the nature of this complaint against me in relation to working the prison and maintain professional boundaries I acknowledge I may need further training. For this reason, I have enrolled on a Level 2 course in 'Professional Boundaries in Health and Social Care'. I have also enquired about other courses relating to the maintaining of professional boundaries in nursing."

Despite the assurances by Miss Sutcliffe that she intended to complete training, the panel did not have any evidence before it suggesting that this training had taken place, although four years have elapsed since the allegations arose.

When considering insight, the panel noted that it did not have any evidence before it demonstrating Miss Sutcliffe's recognition of the impact her misconduct may have had upon her colleagues working in the prison, nor the reputation of the nursing profession. Miss Sutcliffe has also failed to identify the likely impact her behaviour had upon a vulnerable patient in her care, particularly in light of the evidence before the panel of Miss Sutcliffe mocking Patient M, [PRIVATE]. Within a letter she wrote to him she states:

[PRIVATE]

The panel reminded itself that the sexually motivated correspondence with Prisoner M occurred after the incident with Prisoner A. Despite Miss Sutcliffe having been warned, suspended and receiving training in relation to the incident with Prisoner A, she repeated wholly inappropriate behaviour with Prisoner M by sending him sexually motivated communication. The panel determined that this pattern of repeated behaviour demonstrated an attitudinal problem.

The panel is therefore of the view that there is a risk of repetition based on Miss Sutcliffe's lack of insight and 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. In light of this, 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 finds Miss Sutcliffe's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

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

Ms Kyriacou informed the panel that in the Notice of Hearing, dated 24 May 2022, the NMC had advised Miss Sutcliffe that it would seek the imposition of a suspension order for four months with a review if it found Miss Sutcliffe's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Miss Sutcliffe'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. 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:

- Miss Sutcliffe abused her position of trust;
- Miss Sutcliffe has demonstrated a lack of insight into failings;
- The charges relate to a pattern of misconduct over a period of time;
- Miss Sutcliffe's misconduct placed patients at risk of suffering harm; and
- Miss Sutcliffe misconduct was sexually motivated.

The panel could not identify any mitigation in Miss Sutcliffe's case.

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 Miss Sutcliffe'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 Miss Sutcliffe's 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 Miss Sutcliffe'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 Miss Sutcliffe'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;*
- ...
- ...

The misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse, repeated over a prolonged period of time, involving two prisoners. Further, throughout these proceedings the panel had before it additional evidence which indicated a range of serious other concerns surrounding Miss Sutcliffe's practice. The panel determined that these repeated concerns were indicative of a serious attitudinal issue. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Sutcliffe's actions is fundamentally incompatible with Miss Sutcliffe remaining on the register.

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?*

The panel also considered the suggested guidance by the NMC's SG of the Council for Healthcare Regulatory Excellence (CHRE) in relation to 'Clear sexual boundaries between healthcare professionals and patients', specifically:

"Aggravating and mitigating factors relevant to sanction

The following sections outline some common factors to emerge in cases involving sexual boundary transgressions which FtP panel members may wish to consider in determining sanctions. Common aggravating and mitigating factors to emerge are:

Aggravating factors

- ...
- *the vulnerability of the patient. Research shows that abusers often target vulnerable groups of patients, including those seeking help for mental health or emotional problems, physically disabled young people and adults in institutionalised settings, people with learning disabilities, young females and males, people with life-threatening illnesses and previous victims of abuse. Panel members should take into account the additional responsibilities of healthcare professionals to act in the best interests of patients whose decision-making capacity is impaired*
- ...
- ...
- *whether the healthcare professional used confidential information obtained in the course of treatment to their advantage, for example by encouraging the patient to discuss marital problems whilst providing 'a shoulder to cry on'*
- ...

Arguments which might be put forward in mitigation

The following are arguments commonly put forward in mitigation. Panel members must decide if any weight should be given to these factors. Panel members must bear in mind the principles set out in this guidance, principally that any sexualised behaviour towards a patient or carer can cause enduring harm.

- ...
- ...
- *the fact that several years have passed since the alleged behaviour and that there had been no complaints in the intervening period*
- *the fact that the healthcare professional is held in high esteem by professional colleagues and was able to adduce a number of testimonials.*

Determining sanction

In determining sanction, panel members should consider issues including:

- *whether the healthcare professional has demonstrated any insight*
- *whether the healthcare professional works with or has access to vulnerable groups of patients or carers*
- *whether there is a risk of the healthcare professional re-offending if allowed to continue in unrestricted practice.”*

Whilst the panel acknowledged that two mitigating factors of the CHRE guidance were applicable in Miss Sutcliffe’s case, it determined that those factors were outweighed by the aggravating factors.

When considering the guidance collectively, the panel determined that Miss Sutcliffe’s actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this case demonstrate that Miss Sutcliffe’s actions were extremely serious and to allow her to continue practising would seriously 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 determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Sutcliffe's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, 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 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.

This will be confirmed to Miss Sutcliffe in writing.

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 Miss Sutcliffe's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Kyriacou. She submitted that an interim suspension order for a period of 18 months should be imposed in order to cover any potential appeal period.

Decision and reasons on interim order

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 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 order. The panel therefore imposed an interim suspension order for a period of 18 months to cover any potential appeal period.

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

That concludes this determination.