Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
6 – 9 June 2022

Virtual Hearing

Name of registrant:	**Mrs Elizabeth Lynne Ashton**	
NMC PIN:	06E1238E	
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – September 2006	
Relevant Location:	Sheffield City	
Type of case:	Misconduct	
Panel members:	Sophie Lomas Donna Hart Matthew Burton	(Chair, lay member) (Registrant member) (Lay member)
Legal Assessor:	John Caudle	
Hearings Coordinator:	Ruth Bass	
Nursing and Midwifery Council:	Represented by Shekyena Marcelle-Brown, Counsel instructed by the NMC	
Mrs Ashton:	Not present and unrepresented	
Facts proved:	Charges 1, 2, 3 4	
Facts not proved:	None	
Fitness to practise:	Impaired	
Sanction:	Suspension order – 6 months with a review	
Interim order:	Suspension order – 18 months	

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Ashton was not in attendance and that the Notice of Hearing letter had been sent to her email address, as recorded on the Nursing and Midwifery Council's (NMC's) Register, on 5 May 2022.

Ms Marcelle-Brown, on behalf of the 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 allegations, the time, dates, virtual hearing link and, amongst other things, information about Mrs Ashton's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In light of all of the information available, the panel was satisfied that Mrs Ashton 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 Mrs Ashton

The panel next considered whether it should proceed in the absence of Mrs Ashton. It had regard to Rule 21 and heard the submissions of Ms Marcelle-Brown who invited the panel to continue in the absence of Mrs Ashton. Ms Marcelle-Brown submitted that Mrs Ashton had voluntarily absented herself.

Ms Marcelle-Brown referred the panel to a telephone note between Mrs Ashton and an NMC officer dated 6 May 2022, which recorded that Mrs Ashton *'…would not attend and was happy for [the hearing] to proceed in her absence.'* Ms Marcelle-Brown submitted that Mrs Ashton was aware of today's hearing and had waived her right to attend and be represented. She told the panel that Mrs Ashton had been served all papers that the NMC would be relying on, and submitted that adjourning the hearing would serve no useful purpose as Mrs Ashton had stated clearly that she did not wish to attend.

Ms Marcelle-Brown invited the panel to consider the balance of fairness to Mrs Ashton in proceeding in her absence, and the public interest. She submitted that it was both fair and appropriate to proceed in Mrs Ashton's absence.

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 Mrs Ashton. In reaching this decision, the panel has considered the submissions of Ms Marcelle-Brown, the representations from Mrs Ashton, 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 Mrs Ashton;
- Mrs Ashton has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- Four witnesses are expected to attend the hearing to give live evidence;

- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- 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 Mrs Ashton in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her, she 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 Mrs Ashton'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 Mrs Ashton. The panel will draw no adverse inference from Mrs Ashton's absence in its findings of fact.

Decision and reasons on application to offer no evidence

The panel considered an application from Ms Marcelle-Brown to offer no evidence in respect of the following charge:

> *'2. Disclosed confidential information relating to Patient A to a third party without clinical reason and/or Patient A's consent;'*

In relation to this application, Ms Marcelle-Brown submitted that the evidence had changed since the Case Examiner had made its decision that there was a case to answer, and as such there was no longer a realistic prospect for the panel to find the charge proved.

Ms Marcelle-Brown referred the panel to the case of *PSA v NMC & X [*2018] EWHC 20 (Admin) and the NMC Guidance on offering no evidence. She informed the panel that there were now statements from three witnesses stating that Mrs Ashton did not tell them any information from Patient A's records, and although initially accepted by Mrs Ashton that she had, Mrs Ashton had now clarified that the information provided to the three witnesses was from her personal knowledge of Patient A and not from Patient A's medical records. In these circumstances, it was submitted that there was no real prospect that this charge would be found proved and therefore should not remain before the panel.

The panel took account of the submissions made by Ms Marcelle-Brown and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel had regard to the evidence before it. It noted that the charge in question related to an allegation that Mrs Ashton had passed confidential information relating to Patient A, to social workers. The panel noted that the social workers in question had confirmed that confidential information had not been given to them by Mrs Ashton. It had regard to Mrs Ashton's initial admission that she had provided information to the social workers, and her subsequent clarification that the information mentioned had been information gained from her personal knowledge of Patient A, and not from his medical notes.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of this charge proved. It therefore determined to allow the NMC to offer no evidence in respect of this charge.

Amendment to the charge

Following its decision to allow the NMC to offer no evidence in respect of one of the charges, the panel amended the charges to remove the charge in question.

The proposed amendment was necessary to identify the charges now being considered by the panel. The amendments are set out as follows:

'That you, a registered nurse, whilst working at Northern General Hospital:

1. *Between 30 September 2019 and 16 September 2020, accessed Patient A's medical records on at least 50 occasions when Patient A was not in your care and you had no clinical reason for doing so;*

~~***2. Disclosed confidential information relating to Patient A to a third party without clinical reason and/or Patient A's consent;***~~

2. *On 9 September 2020, accessed Patient B's medical records when Patient B was not in your care and you had no clinical reason for doing so;*

3. *On 22 August 2020, accessed medical records for Patient's C, D, E, and F when said patients were not in your care and you had no clinical reason for doing so;*

4. *On 2 September 2020 and 17 August 2020, accessed Patient G's medical records when Patient G was not in your care and you had no clinical reason for doing so;*

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

Details of charge

That you, a registered nurse, whilst working at Northern General Hospital:

1. *Between 30 September 2019 and 16 September 2020, accessed Patient A's medical records on at least 50 occasions when Patient A was not in your care and you had no clinical reason for doing so;* ***[Found proved]***

2. *On 9 September 2020, accessed Patient B's medical records when Patient B was not in your care and you had no clinical reason for doing so;* ***[Found proved]***

3. *On 22 August 2020, accessed medical records for Patient's C, D, E, and F when said patients were not in your care and you had no clinical reason for doing so;* ***[Found proved]***

4. *On 2 September 2020 and 17 August 2020, accessed Patient G's medical records when Patient G was not in your care and you had no clinical reason for doing so;* ***[Found proved]***

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

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 Marcelle-Brown.

The panel has drawn no adverse inference from the non-attendance of Mrs Ashton.

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 witness called on behalf of the NMC:

- Witness 1: Matron for Respiratory and Outpatients and Manager, responsible for managing the Cystic Fibrosis Unit, Pulmonary Hypertension Unit and Outpatients Unit at the time of the incidents.

Background

The NMC received a referral on 11 December 2020 from Sheffield Teaching Hospitals Foundation Trust (the Trust) alleging that Mrs Ashton had inappropriately divulged information that had been accessed inappropriately. Mrs Ashton had been employed at the Trust since 2001, and at the time of the alleged incidents was working as a Band 6 Sister on the Cystic Fibrosis Unit. The Trust advised that it had received a complaint from Patient A, a relative of Mrs Ashton, that she had inappropriately accessed his medical records and shared information with others.

The Trust carried out an investigation into this allegation and found that Mrs Ashton had accessed Patient's A's records on 58 occasions and had also accessed the medical records of another family member and persons known to her who were not under her care. Mrs Ashton admitted, during the course of the Trusts investigation, that she had accessed medical records of patients not under her care on some occasions.

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

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

Charge 1

> *'Between 30 September 2019 and 16 September 2020, accessed Patient A's medical records on at least 50 occasions when Patient A was not in your care and you had no clinical reason for doing so;'*

This charge is found proved.

In reaching this decision, the panel took into account the Record Access Sheet for Patient A. It noted that the sheet itemised all of the dates that Patient A's medical records had been accessed by Mrs Ashton between 1 November 2019 and 7 September 2020.

The panel also had regard to the Record Access Table for Patient A which set out the dates and times Patient A's medical records were accessed, and further that Mrs Ashton had been working on those days or had been at the hospital for other purposes on those days.

The panel also had regard to the oral evidence of Witness 1, who confirmed that she had carried out the investigation at the Trust and stated that Mrs Ashton had confirmed to her that Patient A was a relative of hers who was not under her care at any time.

The panel also considered Mrs Ashton's statement dated 29 September 2020, which was submitted for the purposes of the Trusts local investigation and states:

'I am very ashamed and embarrassed by my actions and believe that I became obsessed with accessing [Patient A's] records…'

The panel was satisfied, based on the evidence before it, that this charge was proved.

Charge 2

'On 9 September 2020, accessed Patient B's medical records when Patient B was not in your care and you had no clinical reason for doing so;'

This charge is found proved.

In reaching this decision, the panel had regard to the user patient access audit report which set out the time and dates that Patient B's medical records had been accessed by Mrs Ashton. It noted that Mrs Ashton was recorded as having accessed Patient B's medical records on 9 September 2020.

The panel also considered the statement of Witness 1 which stated that Patient B was an *'infant'* who was *'not under [Mrs Ashton's] care…'* and *'therefore it was not appropriate for [Mrs Ashton] to access these records.'* The panel also heard oral evidence from Witness 1 that the Cystic Fibrosis Unit, which Mrs Ashton worked on, was a unit specifically for adults. Witness 1 also confirmed that Mrs Ashton explained to her during the course of the investigation that she had seen the details of the infant on a white board in a different unit and had then gone to look at Patient B's medical records out of curiosity.

The panel also had regard to the Trust's Investigation Meeting outcome letter to Mrs Ashton dated 2 October 2020, which set out the notes from the investigation meeting with Witness 1, and which Mrs Ashton had signed to confirm that it was an accurate summary of the meeting which took place on 1 October 2020.

In particular, the panel had regard to the following conversation between Witness 1 and Mrs Ashton in response to Witness 1 asking Mrs Ashton who Patient A was:

> *'[Mrs Ashton]: A bay (sic) at Jessops.*
> *[Witness 1]: A friend?*
> *[Mrs Ashton] No. a patient at Jessops that I had seen from handovers on another ward. A few of us did that. Not anyone i (sic) know.'*

The panel was satisfied that this exchange evidenced an admission to the charge, that Mrs Ashton had accessed Patient B's medical and that Patient B was not a patient under her care. It therefore found this charge proved.

Charge 3

> *'On 22 August 2020, accessed medical records for Patient's C, D, E, and F when said patients were not in your care and you had no clinical reason for doing so;'*

This charge is found proved.

In considering this charge the panel had regard to the user patient access audit report which clearly set out the time and dates that the medical records for Patients C, D, E and F had been accessed by Mrs Ashton.

The panel also had regard to the statement of Witness 1 and noted the following:

> *'I asked the Registrant about why she had accessed the other patients records not within her care…she said she had looked at the records of Patient C, Patient D, Patient E, and Patient F, who were the Registrants ex neighbours because she wanted to see where they'd moved to.'*

The panel also had regard to the signed interview notes from the Investigation Meeting on 1 October 2020, wherein Mrs Ashton accepted that she had accessed the medical records for Patients C, D, E, and F.

Based on the evidence before it, the panel was satisfied that Mrs Ashton had accessed medical records for Patient's C, D, E, and F when these patients were not in her care and had no clinical reason for doing so. It therefore found this charge proved.

Charge 4

> *'On 2 September 2020 and 17 August 2020, accessed Patient G's medical records when Patient G was not in your care and you had no clinical reason for doing so;*'

This charge is found proved.

In considering this charge the panel had regard to the user patient access audit report which clearly set out that Patient G's medical records had been accessed by Mrs Ashton on 2 September 2020 and 17 August 2020.

The panel also had regard to the statement of Witness 1 which states:

> *'Patient G is the Registrant's [relative]. These highlighted individuals were not patients on the CF Unit and not under the Registrant's care, therefore it was not appropriate for the Registrant to access these records.'*

The panel also had regard to the Trust's Investigation Meeting outcome letter to Mrs Ashton dated 2 October 2020 and noted that Mrs Ashton had confirmed that she had *'looked up his clinic letter as he had been referred to a new consultant'* and that it was *'her [relative]'.*

The panel further had regard to Mrs Ashton's statement dated 29 September 2020 and noted that she had expressly stated that she *had 'accessed [Patient G's] records to read a clinic letter.'*

Based on the evidence before it, the panel was satisfied that Mrs Ashton had accessed Patient G's medical records on 2 September 2020 and 17 August 2020, when Patient G was not in her care and she had no clinical reason for doing so. It therefore found this charge proved.

Decision and reasons on application for hearing to be held in private

Ms Marcelle-Brown made a request that matters in respect of misconduct and impairment be held in private, on the basis that she would be making reference to Mrs Ashton's health, the health of Mrs Ashton's family members, and personal family circumstances. The application was made pursuant to Rule 19 the Rules.

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

Having heard that there will be reference to Mrs Ashton's health, the health of family members and personal circumstances, the panel determined to hold such parts of the hearing in private in order to protect the privacy of those involved.

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 Mrs

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

Submissions on misconduct

Ms Marcelle-Brown referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 *(Roylance)* 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 Marcelle-Brown invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to the terms of *'The Code: Professional standards of practice and behaviour for nurses and midwives (2015') (the Code)* and identified the specific, relevant standards where she submitted that Mrs Ashton's actions amounted to misconduct.

Ms Marcelle-Brown submitted that Mrs Ashton failed to observe professional boundaries and had breached Trust policies and the General Data Protection Regulation (GDPR) laws. She further submitted that Mrs Ashton was a nurse in a position of authority who abused her privilege and accessed medical records in a way which fell far short of being

proper in the circumstance. Ms Marcelle-Brown further submitted that Mrs Ashton had accessed records for some people who could not have given permission, and had evidenced attitudinal issues by accessing a patient's records due to curiosity, and demonstrating a flippant attitude in checking to see where her neighbours had moved to.

Ms Marcelle-Brown referred the panel to the guidance on seriousness and submitted that Mrs Ashton's actions were so serious they should properly amount to a finding of misconduct.

Submissions on impairment

Ms Marcelle-Brown 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. She referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) *(Grant)*.

Ms Marcelle-Brown acknowledged that Mrs Ashton had demonstrated some insight and remorse in her reflections, however she submitted that there remained a risk of repetition. Ms Marcelle-Brown invited the panel to consider the limbs of impairment set out in the case of *Grant*. She submitted that Mrs Ashton's actions had taken place over a long period of time, there had been no evidence of remediation or further training, and as such Mrs Ashton posed a risk to public. She submitted that Mrs Ashton's insight was insufficient, and limited to the extent of recognising her own embarrassment, and showed no real understanding of how her actions affected the patients concerned or members of the public.

Ms Marcelle-Brown submitted that members of the public would expect their confidential information to be safe. She submitted that a finding of impairment was required on both public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Grant, Roylance, General Medical Council v Meadow* [2007] QB 462 (Admin), *and Johnson and Maggs v NMC 2013 EWCH 2140 [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 Mrs Ashton's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

> *'**5 Respect people's right to privacy and confidentiality***
> ***As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.***
>
> ***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*

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, it was of the view that by accessing the medical records of patients without any clinical reason to do so, Mrs Ashton had breached the privacy of those patients and gained access to highly sensitive information of patients. The panel was of the view that this was a clear breach of professional boundaries towards patients who were not under Mrs Ashton's care.

The panel had regard to the fact that Mrs Ashton accessed patient notes, without clinical justification, on numerous occasions. It noted that the patients fell into three categories: family members, ex-neighbours, and those unknown to her. The panel noted that there was a wide range of patients, none of whom Mrs Ashton had care of, and that her actions were carried out over a 12 month period. The panel was satisfied that accessing confidential information in this manner was a clear breach of privacy and amounted to misconduct, noting that the knowledge of such actions could have a serious impact on the patients, knowing that someone unauthorised had accessed their information.

The panel was of the view that maintaining the privacy of patients is a fundamental tenet of the profession, and was satisfied that fellow members of the profession would find Mrs Ashton's actions, in accessing medical records without any clinical justification, deplorable.

The panel considered the fact there was a policy in place at the Trust, with clear guidelines for accessing patients' medical notes went to the seriousness of the misconduct. Further, Mrs Ashton had also been on a relevant training course and was fully aware of the policy in place.

The panel therefore found that Mrs Ashton'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, Mrs Ashton'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 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 *Grant* in reaching its decision. In paragraph 74, she said:

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

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

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

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *…'*

The panel finds that patients were put at risk of emotional harm as a result of Mrs Ashton's misconduct. In particular it had regard to Patient A, who was aware that his medical records had been accessed, and was of the view that he may have suffered psychological harm by not knowing what was being done with his information and having knowledge that his privacy had been breached.

The panel was satisfied that Mrs Ashton's misconduct had breached fundamental tenets of the nursing profession, in failing to maintain the fundamental right of privacy afforded to patients, and therefore had brought its reputation into disrepute by undermining public confidence in the profession.

Regarding insight, the panel had regard to Mrs Ashton's statement dated 3 March 2021 and noted the following:

'I am very ashamed and embarrassed by my actions and believe that I became obsessed with accessing his records although not to read any information, just to see if he was due a hospital appointment. I have never informed anyone else of this.

I have accessed patient medical records in the course of my work. Occasionally I have accessed other records to gain information to see if patients have been

suitable for my place of work. Although I have accessed my own and a colleagues' records I did not read any information as I was unable to. I have accessed my [relatives]' records to read a clinic letter. Any other people or patients I have accessed has been out of curiosity- I have never used or imparted any information to any other person. I realise that my actions have been unnecessary and forbidden.

I believe that I have let everyone down by my actions- my former colleagues and my family. None of the above were done with any malice or intention to pass on any information. I am aware that I have let my former profession down by my actions and I am aware of the gravity of the situation and am genuinely sorry for my indiscretions.'

The panel acknowledged that Mrs Ashton had shown remorse for her actions, made admissions during the initial investigation by the Trust, and acknowledged that her actions were wrong. However, the panel was of the view that Mrs Ashton had failed to address, or show an understanding of how her actions potentially could have impacted the patients concerned or the public's confidence in the profession. The panel was of the view that the insight demonstrated by Mrs Ashton was limited and related mainly to her personal feelings of disgrace.

The panel considered the misconduct in this case to be remediable. However, the panel considered that it had not been remedied. Whilst it noted that Mrs Ashton has not been in practice for some time, she could have undertaken online courses in, for example, patient confidentiality and the duty of candour. The panel did not have any evidence of Mrs Ashton having strengthened her practice in this regard.

In light of Mrs Ashton's limited insight into the risk of her actions, and lack of evidence that she has strengthened her practice, the panel was of the view that there remains a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 is required. It was of the view that members of the public would be alarmed that a nurse was accessing patients' medical records without a clinical reason to do so and breaching patients' rights to privacy. It therefore concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Ashton's fitness to practise impaired on the grounds of public interest.

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

Submissions on sanction

Ms Marcelle-Brown informed the panel that in the Notice of Hearing, the NMC had advised Mrs Ashton that it would seek the imposition of a six month suspension order with a review, if it found Mrs Ashton's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mrs Ashton'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:

- The misconduct was carried out over a long period of time
- The misconduct involved a number of patients
- Mrs Ashton accessed a variety of details for each patient, which included sensitive information
- Mrs Ashton demonstrated a lack of insight into the impact that her behaviour potentially had on others.

The panel also took into account the following mitigating features:

- Mrs Ashton's early admissions to the Trust's investigation
- The remorse demonstrated by Mrs Ashton
- Mrs Ashton was experiencing significant difficulties in her personal and family life which provided some limited explanation as to why she acted how she did.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. 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 Mrs Ashton'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 Mrs Ashton'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 Mrs Ashton'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:

- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel was of the view that, given Mrs Ashton's current lack of insight and remediation into her misconduct, there are no practical or workable conditions that could be formulated. It had regard to the fact that nursing requires a nurse to access patient records multiple times a day, and considered that the level of oversight required at this stage would be onerous and unworkable. Also, at the current time, there is insufficient insight to reassure the panel that suitable conditions could be formulated as it had no up to date information on Mrs Ashton's current work situation.

Furthermore, the panel concluded that the placing of conditions on Mrs Ashton's registration would not adequately address the seriousness of this case, address the public confidence concerns highlighted and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It had regard to the fact that Mrs Ashton had breached a fundamental tenet of the profession in accessing patients' records without clinical justification, and further had breached a Trust's policy which specifically addressed accessing patient records and the accessing of relatives medical records. The panel was cognisant to the fact that trust is

paramount to the nursing role and that patient data needs to be protected. The panel was therefore of the view that Mrs Ashton's misconduct was serious, and requires temporary removal from the Register.

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

The panel did go on to seriously consider whether a striking-off order would be an appropriate sanction in light of the seriousness of the misconduct in violating patients' rights to privacy. However, the panel was of the view that a striking-off order would be disproportionate at this time. It heard no issues relating to Mrs Ashton's competency as a nurse, and considered that if Mrs Ashton is able to demonstrate insight and remediation, she should be able to return to nursing which would be in the public interest.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Ashton's case to impose a striking-off order at this stage.

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 Mrs Ashton. 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 six months was appropriate in this case to mark the seriousness of the misconduct and to give Mrs Ashton sufficient time to reflect meaningfully and demonstrate developed insight and remediation, via a written reflective piece and by undertaking relevant training.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Mrs Ashton's attendance
- Evidence of any relevant training undertaken
- Evidence of any relevant work, paid or unpaid
- Testimonials
- A written reflection addressing the impact Mrs Ashton's actions have had on the patients affected, the wider profession, public confidence in the profession, and her position on being a Sister and role model to other nurses.

This will be confirmed to Mrs Ashton 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 Mrs Ashton's own interest until the suspension 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 Marcelle-Brown. She submitted that an interim order was necessary on the grounds of public protection and in the public interest.

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 in line with the legal advice received.

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

That concludes this determination.