

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

Substantive Hearing

Monday 06 February 2023 – Friday 10 February 2023

Virtual Hearing

Name of registrant:	Robyn Mcpherson
NMC PIN:	0711317S
Part(s) of the register:	Nurses part of the register - Sub part 1 RNMH: Mental health nurse, level 1 (10 September 2010)
Relevant Location:	Inverclyde
Type of case:	Misconduct
Panel members:	Anthony Griffin (Chair, Lay member) Lisa Punter (Registrant member) Mary Golden (Lay member)
Legal Assessor:	Fiona Barnett
Hearings Coordinator:	Tyrena Agyemang
Nursing and Midwifery Council:	Represented by Yvonne Ferns, Case Presenter
Miss Mcpherson:	Not present and unrepresented in her absence
Facts proved:	Charges 1, 1.1 and 1.2
Facts not proved:	N/a
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 Mcpherson was not in attendance and that the Notice of Hearing letter had been sent to Miss Mcpherson's registered email address by secure delivery on 6 January 2023.

Ms Ferns, 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 Mcpherson'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 Mcpherson 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 Mcpherson

The panel next considered whether it should proceed in the absence of Miss Mcpherson. It had regard to Rule 21 and heard the submissions of Ms Ferns who invited the panel to continue in the absence of Miss Mcpherson. She submitted that Miss Mcpherson had voluntarily absented herself.

Ms Ferns referred the panel to the documentation from the NMC that details a telephone conversation between the Case Coordinator and Miss Mcpherson on 3 February 2023. The telephone note states:

She acknowledges that she has a hearing from next Monday (6th) but would not be attending the hearing. Partly due to school strikes and, she has no intention of returning as a Nurse, as such does not feel the need to attend the hearing. I said that the hearing will proceed in her absence.

In light of this, Ms Ferns invited the panel to proceed in the absence of Miss Mcpherson.

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 Mcpherson. In reaching this decision, the panel has considered the submissions of Ms Ferns, 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 Mcpherson;
- Miss Mcpherson confirmed she is aware of the hearing and she will not be attending. The panel concluded that she has voluntarily absented herself;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- The charges relate to events that occurred between 2019 to 2022; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Mcpherson in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she has made no response to the allegations. Miss Mcpherson 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 Mcpherson's decision to absent herself from the hearing, waive her right 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 Mcpherson. The panel will draw no adverse inference from Miss Mcpherson's absence in its findings of fact.

Details of charge

That You, a Registered Nurse,

1. Between an unknown date in or before 2019 and 31 March 2022 were in a relationship with Patient A which was and/or became
 - 1.1 In breach of professional boundaries
 - 1.2 Sexual in nature

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

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

During the course of the hearing, Ms Ferns made a request that parts of this case be held in private on the basis that proper exploration of Miss Mcpherson's case involves reference to the health and private matters of Witness 1. The application was made

pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (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.

The panel determined to go into private session in connection with Witness 1's health and private matters as and when such issues are raised, to protect Witness 1's right to privacy. All other matters will remain in public.

Decision and reasons on application to admit written statement of Witness 1

The panel heard an application made by Ms Ferns under Rule 31 to allow the written statement of Witness 1 into evidence. [PRIVATE].

Witness 1 stated in his email to the NMC dated 3 February 2023:

[PRIVATE]

Ms Ferns submitted that Witness 1's statement is relevant to the charges before the panel and that it is fair for the statement to be admitted. She submitted that the key words when considering this application, are relevance and fairness because the test of admissibility of evidence is, whether the evidence is relevant to the issue that the panel is considering and also if it would be fair to admit that evidence. She further submitted that should the panel decide to admit Witness 1 evidence, the panel can then decide what weight to apply to his evidence at a later stage in the proceedings.

Ms Ferns referred the panel to the cases of *El Karout v NMC* [2019] EWHC 28 (Admin) and *Thorneycroft v NMC* [2014] EWHC 1565 (Admin), which she submitted are important when considering a hearsay application.

Ms Ferns submitted that the case of *El Karout* confirms that the question of admissibility and weight are different considerations and for the panel to decide that it is fair to admit the statement, it must then turn to what weight it intends to apply to that evidence.

Ms Ferns then referred the panel to the case of *Thorneycroft*, specifically paragraphs 45 and 56, which she submitted set out the key considerations to be weighed up by the panel when deciding whether to admit hearsay.

Ms Ferns first addressed the panel in relation to paragraph 45 of the *Thorneycroft* case. She submitted that the admission of the witness statement is not a routine matter and therefore should be considered carefully. She submitted that the absence of Witness 1 can be reflected in the weight to be attached to his evidence, but she stated, it will not always be a sufficient answer to the objection to admissibility.

Ms Ferns went on to address the existence or otherwise of a good and cogent reason for the non-attendance of Witness 1. [PRIVATE].

Ms Ferns addressed the panel in relation to whether the evidence of Witness 1 is the sole and decisive evidence. She submitted that the evidence of Witness 1 is the only statement produced by the NMC however, his evidence is not sole and decisive. She told the panel that Witness 1 carried out the investigation into Miss Mcpherson's professional conduct. She told the panel that his statement is not factual but, presents the evidence from other witnesses obtained in the investigation interviews which the panel may consider and from which it may draw inferences in relation to the charges. She further submitted that the investigation interviews are from credible and reliable sources.

Ms Ferns told panel that Witness 1's evidence and exhibits were not challenged by Miss Mcpherson and the issue as to whether Miss Mcpherson breached professional boundaries can be considered by looking at the exhibits provided. Ms Ferns told the panel that evidence includes an investigation interview with Miss Mcpherson, where she accepts that she has breached professional boundaries.

In relation to paragraph 56 of the case of *Thorneycroft*, Ms Ferns submitted that Witness 1's evidence is not the sole and decisive evidence but he presents evidence in support of the charges before the panel today and reminded the panel that the evidence was not challenged by Miss Mcpherson.

Ms Ferns told the panel that there is no suggestion that Witness 1 has fabricated his evidence. She submitted that the charges that Miss Mcpherson faces are serious and may have an adverse impact on her career, if found proved. She again outlined that various attempts have been made to secure the attendance of Witness 1, [PRIVATE], he is unable to attend the hearing to give evidence. Ms Ferns told the panel that [PRIVATE].

Ms Ferns conceded that Miss Mcpherson, would not have been aware that the witness statement of Witness 1 would be read in the hearing, but she reminded the panel that Miss Mcpherson has been served with all the documentation from the NMC and there was no challenge from her regarding this witness or his evidence.

Ms Ferns therefore invited the panel to admit Witness 1's statement and the exhibits as hearsay.

The panel heard and accepted the advice of the legal assessor which included reference to relevant case law, *Ogbonna v NMC* [2010] EWCA Civ 216 and *Bonhoeffer V GMC* [2011] EWHC 1585 (Admin).

In reaching its decision the panel first considered whether Witness 1's statement was relevant and concluded that it was. Witness 1 conducted an internal investigation into Miss Mcpherson's alleged conduct in relation to Patient A and has produced documentation acquired during the course of that investigation. These are matters which may assist the panel in reaching its conclusions about the matters in issue in this case.

The panel next considered whether it would be fair to admitted Witness 1's statement and the exhibits as hearsay. The panel noted that Witness 1's statement had been

prepared in anticipation of being used in these proceedings and contained the paragraph, *'This statement ... is true to the best of my knowledge and belief'*, signed and dated by him.

The panel considered whether Miss Mcpherson would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 1 to that of allowing hearsay testimony into evidence.

The panel considered that as Miss Mcpherson had been provided with a copy of Witness 1's statement and his exhibits. As the panel had already determined that Miss Mcpherson had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness in any case.

The panel considered that Witness 1's evidence was not sole and decisive in this case and that it is supported by other evidence before the panel. It further determined Witness 1's evidence supported the charges and set the background of the case. The panel also acknowledged that Witness 1 was not a first-hand witness to the events alleged by the NMC, although he did conduct an interview with Miss Mcpherson.

The panel referred to the correspondence with Witness 1 and acknowledged the numerous attempts made by the NMC to secure Witness 1's attendance. [PRIVATE]. The panel was therefore satisfied that all reasonable steps were taken by the NMC to secure Witness 1 in the hearing.

The panel went on to consider if there is a good and cogent reason to accept the witness statement of Witness 1 as hearsay.

The panel accepted there is a good and cogent reason for the non-attendance of Witness 1, although it did not have a medical note and any medical documentation before it.

[PRIVATE]. The panel acknowledged that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live

evidence of Witness 1 and the opportunity of questioning and probing that testimony as would the panel.

The panel considered that all reasonable steps were taken by the NMC to secure Witness 1's attendance, stressing that it was a virtual hearing, and suggesting reasonable adjustments. The panel also noted the NMC's reasons for not being able to reschedule the hearing to a later date.

The panel considered that as Witness 1 was not present during the alleged events, he therefore has no personal knowledge of the matters at issue. The panel considered that Witness 1's evidence was not the sole and decisive evidence and that there is no reason for it to have been fabricated.

The panel considered although Miss Mcpherson was not aware there would be a hearsay application during the hearing, she has been provided with the evidence the NMC intend to rely on and she did not challenge it.

The panel concluded that Witness 1's evidence is relevant and that it would be fair to admit it into evidence as hearsay. The panel further concluded that it would give what it deemed appropriate weight once it had heard and evaluated all the evidence before it.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case, together with the submissions made by Ms Ferns, on behalf of the NMC.

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

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 the panel is satisfied that it is more likely than not that the incident occurred as alleged.

Background

The charges arose whilst Miss Mcpherson was employed as a registered Band 5 Addiction Nurse at Inverclyde Health and Social Care Partnership (HSCP), Drug Treatment and Testing Order (DTTO) Service. She was employed from 8 July 2015 until her resignation on 12 December 2019.

[PRIVATE].

The charges relate to a breach of professional boundaries, as it is alleged that Miss Mcpherson commenced a relationship with Patient A, on or before 2019.

Prior to the matters alleged in these proceedings, there was a previous investigation by HSCP, in May 2019, following a complaint from Miss Mcpherson's ex-partner, that alleged a breach of professional boundaries with the same patient, Patient A. Miss Mcpherson denied these allegations and her ex-partner subsequently withdrew the complaint. The internal investigation found there was no case to answer in relation to these matters.

Subsequently, Miss Mcpherson's colleague, Person 1 alleged having seen Patient A at Miss Mcpherson's house and reported their concerns. A second investigation took place. Miss Mcpherson accepted that she breached professional boundaries and resigned from her post on 12 December 2019.

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

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

Charge 1 and 1.1

1. Between an unknown date in or before 2019 and 31 March 2022 were in a relationship with Patient A which was and/or became

1.1 In breach of professional boundaries

This charge is found proved.

In reaching this decision, the panel first looked at the stem of the charge.

The panel took into account Miss Mcpherson's reflective piece, the NMC Investigating Committee transcript of 23 December 2019, Patient A's EMIS clinical notes and the HSCP's investigation interview notes provided by Witness 1, which included interview notes with Person 1 and Person 2.

The panel first considered whether Miss Mcpherson was in a relationship with Patient A and when the relationship commenced.

[PRIVATE]

The panel referred to the HSCP investigation interview notes dated 19 December 2019, with Miss Mcpherson, where she stated:

Patient A was providing me with practical and emotional support and I was providing the same to him.

During the HSCP investigation Miss Mcpherson also stated:

I got into the situation of seeing him as a friend, but I know it was wrong but by then I didn't know how to stop the friendship or who to speak to.

However, the panel noted Person 3 stated in his HSCP interview with Witness 1 regarding Miss Mcpherson on 6 February 2020:

Witness 1: Robyn advised us that she knew having a friendship with Patient A was wrong but she had not one to speak to at work as felt unsupported and did not know who her line manger [sic] was. Was she aware you were her line manager?

Person 3: I believe she did know I was her line manager. Her resignation letter was addressed to me, as I said before I authorised her annual leave and sick leave. ...

...I remember doing her return to work after she returned from sick leave following the first allegation. I sat with her for about 1.5 hours ensuring she was made to feel supported.

The panel then referred to Miss Mcpherson's undated reflective statement, which was received in preparation for the initial NMC Investigating Committee hearing on 23 December 2019. In this piece, Ms Mcpherson, states:

...I realise I breach professional boundaries...[sic]

...I was aware that my actions were breaching professional boundaries...

The panel referred to the Investigating Committee hearing transcript dated 23 December 2019, in which Miss Mcpherson confirms she was in both a professional and personal relationship:

THE CHAIR: You continued to see him in what capacity? In a professional capacity?

A [Miss Mcpherson]: Yeah.

THE CHAIR: In a personal capacity? Or both?

A [Miss Mcpherson]: Erm — I'd probably say both.

The panel also had regard to the HSCP investigation interview conducted by Witness 1 with Person 1 on 19 December 2019. Person 1 was a social worker who had worked with Miss Mcpherson in the DTTO team. Person 1 said that she thought she had seen Patient A at Miss Mcpherson's house on 2 occasions, once in September 2019 and once in October 2019. Whilst these interview notes were hearsay and were not prepared for the purpose of these proceedings, the panel was not aware of any issues which would cast doubt on the reliability of Person 1. Further, Miss Mcpherson had been provided with this evidence in advance of the hearing and had raised no objection to it. The panel therefore accepted this evidence.

The panel also bore in mind the interview that Witness 1 carried out with Person 2 on 25 January 2020. [PRIVATE]. Person 2 stated that another colleague, (Person 4) had reported seeing Patient A at Miss Mcpherson's house in October 2019. Again, these interview notes were hearsay and were not prepared for the purpose of this hearing, but the panel had no reason to doubt the reliability of Person 2 or Person 4 and accepted this evidence which was unchallenged by Miss Mcpherson.

The panel was therefore satisfied that Miss Mcpherson was in a personal relationship with Patient A.

The panel then considered charge 1.1 to determine whether the relationship between Miss Mcpherson and Patient A was in breach of professional boundaries.

At the HCSP interview on 19 December 2019, Miss Mcpherson admitted to Witness 1 [PRIVATE], which in the panel's view demonstrated a non-professional relationship between Miss Mcpherson and Patient A. Yet, on 24 September 2019, the panel noted that Miss Mcpherson was still working as Patient A's addiction nurse and therefore the panel considered that Miss Mcpherson had breached professional boundaries.

The panel took into consideration Miss Mcpherson's own admissions as documented above (in her reflective statement), that she was aware, that by having a relationship with Patient A, she was breaching professional boundaries.

The panel also considered the HSCP investigation interview with Miss Mcpherson and Witness 1, where Miss Mcpherson stated:

Yes I know I breached professional boundaries with the patient and should not have formed a friendship.

The panel was therefore satisfied on the balance of probabilities that Miss Mcpherson was in a relationship with Patient A, and this relationship was in breach of professional boundaries. This charge is therefore found proved.

Charge 1.2

1. Between an unknown date in or before 2019 and 31 March 2022 were in a relationship with Patient A which was and/or became

1.2 Sexual in nature

This charge is found proved.

In reaching this decision, the panel took into account Patient A EMIS clinical notes and the Investigation Committee transcript dated 23 December 2019.

The panel accepted that Miss Mcpherson has never admitted to being in a sexual relationship with Patient A. When asked if she had ever had an intimate relationship with Patient A, during the HSCP investigation interview on 19 December 2019, she answered 'No'. However, the panel was able to draw the inference, based on the information before it, that Miss Mcpherson and Patient A were in a sexual relationship due to the numerous references to Patient A [PRIVATE].

The panel noted the following dates on which Patient A's partner is mentioned in Patient A's EMIS clinical notes:

- 13 March 2022
- 10 March 2022
- 18 November 2021
- 20 September 2021
- 6 May 2021
- 25 March 2021
- 4 February 2021
- 19 November 2020
- 3 November 2020
- 10 September 2020
- 13 August 2020
- 23 July 2020
- 6 July 2020
- 18 June 2020
- 4 June 2020
- 20 May 2020
- 12 May 2020
- 5 May 2020
- 20 April 2020

The panel considered that the '*Robyn*' mentioned in Patient A's EMIS clinical notes, is never referred to as for example, a house mate or friend, but Patient A's clinical notes specifically refer to her as his '*partner*'.

The panel considered that there are also numerous references in the EMIS clinical notes, to Patient A living with his partner and this indicates they were in a relationship. The panel noted that Miss Mcpherson also confirmed in the HSCP interview on 19 December 2019, that Patient A has stayed overnight at her house. Miss Mcpherson denied that they were in an intimate relationship at the time. The panel therefore drew

the inference that throughout the period April 2020 to March 2022, Patient A had lived with Miss Mcpherson as evidenced in Patient A EMIS clinical notes.

The panel also noted the fact that Patient A's home address had been noted as Miss Mcpherson's home address on his Social Work Person Profile notes dated July 2019 to November 2019 in the evidence before the panel.

[PRIVATE].

Taking into account all the information before it, and its findings at charge 1 and 1.1, the panel could infer on the balances of probabilities that the relationship between Miss Mcpherson and Patient A did become sexual in nature.

The panel therefore finds charge 1.2 proved.

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 Mcpherson'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, maintain public confidence in the profession and to uphold the proper professional standards and conduct. 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 Mcpherson's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Ferns invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

Ms Ferns identified the specific, relevant standards where Miss Mcpherson's actions amounted to misconduct. She submitted that there is a risk, that by breaching professional boundaries, any care provided by Miss Mcpherson would have been fundamentally compromised and would not be objective.

Ms Ferns submitted that Miss Mcpherson's breach of professional boundaries, may indicate underlying attitudinal issues which are hard to address. This behaviour, she told the panel undermines public confidence in the profession and professional standards.

Ms Ferns subsequently submitted that Miss Mcpherson's actions do amount to misconduct. She referred the panel to the case of *Roylance v GMC* (No. 2) [2000] 1 AC 311 where misconduct was defined by Lord Clyde as:

"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 [medical] practitioner in the particular circumstances".

Ms Ferns finally submitted in relation to misconduct that Miss Mcpherson's actions were serious, individually and collectively fall seriously short of the conduct expected of a registered nurse and amount to misconduct.

Submissions on impairment

Ms Ferns moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *Meadow v GMC* (2006) EWCA Civ 1390, and *Cohen v GMC* [2007] EWHC 581 (Admin).

Ms Ferns first referred the panel to *Grant*. She submitted that the word ‘*medical*’ in paragraph 76 of the judgement can be substituted with the word ‘*nursing*’. She went on to submit that limbs a, b and c of the Grant test are engaged.

Ms Ferns referred the panel to the NMC guidance entitled Insight and strengthened practice, which states the following:

“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”*

Ms Ferns submitted that the allegations in Miss Mcpherson's case meets the criteria as set out in the NMC guidance, Insight and strengthened practice.

Ms Ferns then referred the panel to Miss Mcpherson's reflective statement in which she stated that she felt an "*obligation*" to support the patient as she had been his primary means of support.

Miss Mcpherson stated that:

"I was aware that my actions were breaching professional boundaries but felt unable to disclose this with anyone due to the lack of support I had encountered within my workplace."

It is disputed by the NMC that Miss Mcpherson had lack of support within her workplace and Person 3 provides evidence to the contrary of this, which is before the panel.

Ms Ferns submitted that Miss Mcpherson has demonstrated limited insight into her failings. Ms Ferns further submitted that Miss Mcpherson's reflective statement does not address many of the key issues, for example the risk of harm to Patient A or damage to public confidence in the nursing profession.

Further, Ms Ferns submitted even after Miss Mcpherson confirmed during the Investigating Committee at hearing on 23 December 2019, that she was in both '*a professional and personal relationship*' with Patient A, and that she was aware '*her actions were breaching professional boundaries*', she nevertheless continued to remain in that relationship with Patient A and continued to breach professional boundaries, which Ms Ferns submitted does not show any evidence of remorse or remediation.

Ms Ferns told the panel that it may therefore, take the view that in light of the serious nature of the concerns and the lack of evidence of significant insight, that Miss Mcpherson remains a risk to the health, safety and well-being of the public. In the absence of any remediation, Ms Ferns further submitted that there remains a risk to the

health, safety and wellbeing of the public should Miss Mcpherson return to unrestricted practice.

Ms Ferns submitted that Miss Mcpherson has had limited engagement with the NMC and has not demonstrated any remediation. Further, Miss Mcpherson has not admitted the charges and/or that her fitness to practise is currently impaired by reason of her misconduct.

Ms Ferns referred the panel to the case of *Cohen* and submitted that the three questions set out in *Cohen*, (1. *Whether the conduct that led to the charge(s) is easily remediable*, 2. *Whether it has been remedied* and 3. *Whether it is highly unlikely to be repeated*) can be answered as follows.

Ms Ferns submitted that the regulatory concerns in this case are not easily remedied and the panel may form the view that Miss Mcpherson's behaviour may indicate underlying attitudinal issues which are hard to address.

Ms Ferns submitted that as there is no evidence of remediation, it is a matter for the panel to determine whether Miss Mcpherson has already remediated her conduct in relation to the charges before them. Ms Ferns referred the panel to the case of *Meadow v GMC* (2006) EWCA Civ 1390.

Ms Ferns told the panel that Miss Mcpherson has not admitted the charges and therefore does not accept that her actions are a regulatory concern and a risk to the public or to the public's confidence in nurses. Ms Ferns submitted that in the light of this lack of insight and her lack of acceptance, there is a risk of repetition.

Ms Ferns told the panel that it may find that Miss Mcpherson's actions are so serious so that they bring the nursing profession into disrepute. She submitted that nurses occupy a position of privilege and trust in society and are expected at all times to be professional.

Ms Ferns submitted that the question for the panel is whether in light of the above, the misconduct found proved and the lack of remediation, Miss Mcpherson is liable in the future to repeat the behaviour and conduct. In addition, Ms Ferns stated the reputation of the nursing profession would be damaged if Miss Mcpherson be permitted to practise unrestricted.

Ms Ferns submitted that the NMC would need to take restrictive action against Miss Mcpherson's registration to promote public confidence in the profession and uphold standards for nurses, midwives and nursing associates. NMC's guidance states: *'...that this is necessary when a nurse, midwife or nursing associate's past conduct raises fundamental concerns about their trustworthiness as a registered professional.'*

Ms Ferns then referred the panel to the NMC guidance entitled Serious concerns which are more difficult to put right. This guidance states:

"A small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening."

The guidance also provides examples of such conduct, and this includes:

- *"...relationships with patients in breach of guidance on clear sexual boundaries..."*

Ms Ferns submitted that Miss Mcpherson's case meets the above criteria and as a result there is a need for the NMC to take restrictive action on Miss Mcpherson's registration to promote public confidence in the profession and the NMC as its regulator and uphold the professional standards expected of nurses. She further submitted that Miss Mcpherson's failings are serious, a breach of professional misconduct and sexual in nature and in light of this, a finding of current impairment is necessary to declare and uphold proper standards.

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, *Kimmance v GMC* [2016] EWHC 1808 (Admin) and *Cohen v GMC* [2007] EWHC 581 (Admin) and *Yeong v GMC* [2009] EWHC 1923.

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 Mcpherson's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Mcpherson's actions amounted to a breach of the Code. Specifically:

20 Uphold the reputation of your profession at all times,

To achieve this, you must:

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

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

20.5 treat people in a way that does not take advantage of their vulnerability,

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).

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Mcpherson's conduct did fall seriously below the standard expected of a registered nurse. It considered that Miss Mcpherson would have been well aware that commencing a non-professional

relationship, with a patient, particularly a vulnerable patient to whom Miss Mcpherson was providing Court ordered treatment, was not acceptable and a serious breach of professional standards.

The panel took into consideration that the misconduct found proved is serious and had the potential to cause physical and emotional harm to Patient A and could prevent other patients from accessing treatment, if they were aware of the misconduct.

The panel therefore found Miss Mcpherson's actions did fall seriously short of the conduct and standards expected of a registered 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 Mcpherson's fitness to practise is currently impaired.

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In 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 Patient A was put at risk of physical and emotional harm as a result of Miss Mcpherson's misconduct. There was evidence before the panel which demonstrated that Patient A [PRIVATE]. This could serve to demonstrate that her relationship with him may have impacted on his care and treatment. Miss Mcpherson's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Mcpherson has very limited insight and although she has admitted she breached professional boundaries, she did not end the relationship with Patient A.

The panel considered that Miss Mcpherson has also not demonstrated an understanding of how her actions put Patient A at a risk of harm. Neither has she demonstrated an understanding of why what she did was wrong, how her actions would impacted negatively on the reputation of the nursing profession and other patients seeking treatment. In fact, the panel acknowledged Miss Mcpherson's attempt to blame her actions (in not knowing how to end the relationship with Patient A) on lack of support, which the panel found to be incorrect based on the evidence before it from Person 3.

The panel also noted there was no reflection from Miss Mcpherson, specifically on how she would handle the situation differently in the future.

The panel was satisfied that the misconduct in this case would be difficult to address given that it may be attitudinal in nature. However, it might be capable of being addressed through, for example, training in professional boundaries and then personal reflection. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Mcpherson has taken steps to strengthen her practice. The panel took into account the undated reflective piece written by Miss Mcpherson, however there was no further information from Miss Mcpherson to demonstrate any remediation or strengthening of her practice. The panel acknowledged that Miss Mcpherson has not demonstrated any remorse for her actions.

In light of this, the panel is of the view that there is a risk of repetition based on lack of insight, remediation and remorse and the absence of any strengthening of Miss Mcpherson's practise. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of current impairment on public interest grounds is required as a member of the public, aware of all the circumstances in this case would be concerned that the nurse against whom such concerns were found proved, was allowed to practise unrestricted.

In addition, the panel concluded that public confidence in the profession would be undermined and proper standards of conduct would not be upheld, if a finding of impairment were not made in this case and therefore also finds Miss Mcpherson's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Mcpherson'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 Mcpherson's name off the register. The effect of this order is that the NMC register will show that Miss Mcpherson 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 Ferns informed the panel that in the Notice of Hearing, dated 6 January 2023, the NMC had advised Miss Mcpherson that it would seek the imposition of a striking-off order if it found Miss Mcpherson's fitness to practise currently impaired.

Ms Ferns took the panel through the aggravating and mitigating features of this case, and all the sanctions available to the panel in ascending order. She submitted that a

Striking off order would be the proportionate sanction in this case. She told the panel that the regulatory concerns raise fundamental questions about Miss Mcpherson's professionalism. Ms Ferns further submitted that public confidence in the profession and in the NMC as a regulator cannot be maintained if Miss Mcpherson is not removed from the NMC register.

Ms Ferns submitted that Miss Mcpherson has breached a fundamental tenet of the Code in relation to paragraph 20, *upholding the reputation of the profession at all times*. She told the panel that Miss Mcpherson's behaviour was over a sustained period of time and such behaviour may indicate underlying attitudinal issues which are hard to address, and which also undermines public confidence and professional standards.

Ms Ferns reminded the panel that it had found, Patient A was put at risk of physical and emotional harm as a result of Miss Mcpherson's misconduct. She outlined that the panel accept there was evidence before it which demonstrates that Patient A [PRIVATE].

Ms Ferns submitted, in light of the panel's decision on misconduct and impairment, Miss Mcpherson's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Ms Ferns referred the panel to the SG with regards to Striking off orders. She submitted that a striking off order is likely to be appropriate when what the *'nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional'* and the guidance refers to key considerations to be taken into account.

Ms Ferns also referred the panel the guidance on sexual boundaries produced by the Professional Standards Authority (PSA) when considering sanctions. She submitted that the regulatory concerns regarding Miss Mcpherson, raise fundamental questions about her professionalism.

Ms Ferns further submitted that public confidence in nurses, midwives and nursing associates would not be maintained if Miss Mcpherson is not removed from the register. She asserted that a striking off order is the only sanction which would be sufficient to maintain professional standards.

Ms Ferns referred the panel to the case of *Iqbal v Solicitors Regulation Authority* (2012) EWHC 3251 (Admin).

Finally, Ms Ferns submitted that for all the reasons outlined, and in the light of the finding that Miss Mcpherson's fitness to practise is currently impaired by reason of her misconduct, she submitted that public confidence would be undermined if a striking off order was not made and that in cases of this kind, the only proportionate sanction is to remove Miss Mcpherson from the NMC register.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found Miss Mcpherson'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 panel noted that the decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- This was a pattern of misconduct over a sustained period of time;
- The conduct overlapped with active period of care for Patient A, which put Patient A at risk of suffering emotional and physical harm; and
- [PRIVATE].

The panel also took into account the following mitigating features:

- Partial admissions from Miss Mcpherson in relation to her breach of professional boundaries; and
- Miss Mcpherson demonstrated some insight into charge 1 and 1.1.

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 Mcpherson'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 Mcpherson'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 Miss Mcpherson'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 and in any event, Miss Mcpherson has expressed intentions of not returning to nursing. The misconduct identified in this case was not something that can be easily addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Mcpherson's registration would not adequately address the seriousness of this case, would not protect the public nor would it uphold the public interest.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. Miss Mcpherson's misconduct was not a single instance, but was a non-professional relationship with a vulnerable patient which started in 2019 and was still ongoing in 2022 (although Miss Mcpherson did resign from her position on 12 December 2019). When interviewed in the local investigation, and also during the NMC Investigating Committee hearing, Miss Mcpherson said that she did not know who to speak to about Patient A as she lacked support at work and did not know who her line manager was. The panel found this assertion to be unsubstantiated and found that Miss Mcpherson's attempt to deflect blame indicates a failure on her part to take responsibility for her actions and is suggestive of an attitudinal problem. The panel also found that at some stage, the relationship between Miss Mcpherson and Patient A developed into a sexual one, which further increases the seriousness of the misconduct.

Miss Mcpherson has engaged with these proceedings only to a limited extent and has shown limited insight. She has made no apology for her actions nor has she attempted to strengthen her practice to ensure that she will not repeat her misconduct. The panel concluded in its findings on impairment that Miss Mcpherson had placed Patient A at unwarranted risk of harm and that it could not rule out the risk of repetition.

The panel therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. A suspension order might protect patients in the short term, but would not be sufficient to maintain confidence in the nursing profession and uphold proper standards of professional conduct.

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 had regard to the Professional Standards Authority (PSA) Guidance on Sexual Boundaries. The panel was of the view that Miss Mcpherson's actions were significant departures from the standards expected of a registered nurse. Her insight was limited, she has made no attempts to strengthen her practice, and has shown no remorse for her actions. Patient A was a vulnerable patient who placed his trust in Miss Mcpherson to provide objective care. By crossing professional boundaries, she compromised his care, consequently placing him at risk of harm and damaging the trust which members of the public place in nursing professionals. The panel was satisfied that Miss Mcpherson's misconduct raised fundamental questions about her professionalism.

The panel balanced the aggravating and mitigating features, however, it found that the mitigation was very limited and was far outweighed by the aggravating features. The panel concluded that Miss Mcpherson's misconduct was fundamentally incompatible with her remaining on the NMC register and after taking into account all the evidence before it, the panel determined that the only appropriate and proportionate sanction is that of a striking off order. Any sanction short of striking off would not be sufficient to uphold the overarching objective of the NMC.

The panel considered that this order was necessary to protect the public, 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 Mcpherson 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 Mcpherson'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 Ferns. She submitted that an interim order is necessary for the protection of the public and is in the public interest. Ms Ferns invited the panel to impose an interim suspension order for the period of 18 months, which would cover the 28-day appeal period and the period of time should Miss Mcpherson decide to appeal the panel's decision.

Ms Ferns submitted that there is a future risk of repetition should an interim order not be imposed on Miss Mcpherson's registration. She further submitted that an interim suspension order is also necessary based on the panel's earlier decision and for the same reasons as the substantive order.

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, nor according to its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months, due to the public protection and public interest concerns in this case.

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

That concludes this determination.