Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 10 July 2023

Virtual Hearing

Name of Registrant:	**Andrea Jayne Gollings**
NMC PIN	84J0545E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – May 1988
Relevant Location:	England
Type of case:	Misconduct
Panel members:	Shaun Donnellan (Chair, Lay member) Mary Karasu (Registrant member) Linda Redford (Lay member)
Legal Assessor:	Tim Bradbury
Hearings Coordinator:	Rene Aktar
Nursing and Midwifery Council:	Represented by Unyime Davies, Case Presenter
Mrs Gollings:	Not present and unrepresented at the hearing
Consensual Panel Determination:	Accepted
Facts proved:	Charges 1a), 1b), 1c), 1d), 1e), 2, 3
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	**Caution order (5 years)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Gollings was not in attendance and that the Notice of Hearing letter had been sent to Mrs Gollings by secure email on 1 June 2023.

Ms Davies, 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.

In the light of all of the information available, the panel was satisfied that Mrs Gollings has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Decision and reasons on proceeding in the absence of Mrs Gollings

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

Ms Davies informed the panel that a provisional Consensual Panel Determination (CPD) agreement had been reached and signed by Mrs Gollings on 27 June 2023.

Ms Davies also referred the panel to the CPD documentation which included:

> *‘Mrs Gollings is aware of the CPD hearing. Mrs Gollings does not intend on attending the hearing and is content for it to proceed in her and her representative’s absence. Mrs Gollings will endeavour to be available by telephone should clarification on any point be required, or should the panel wish to make other amendments to the provisional agreement.’*

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 Gollings. In reaching this decision, the panel has considered the submissions of Ms Davies, 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:

- Mrs Gollings has engaged with the NMC and has signed a provisional CPD agreement which is before the panel today;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious disposal of the case.

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

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

At the outset of the hearing, Ms Davies made a request that this case be held in private on the basis that proper exploration of Mrs Gollings' case involves reference to private matters relating to the health of a patient (Patient A). 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.

Having heard that there will be references to private matters relating to the health of a patient (Patient A). The panel determined to hold parts of the hearing in private in order to preserve the confidential nature of those matters. The panel was satisfied that these considerations justify that course, and that this outweighs any prejudice to the general principle of hearings being in public.

Details of charge

That you, a registered nurse:

1. Accessed Patient A's records without clinical justification on:
   a) 19 October 2005;
   b) 31 July 2007;
   c) 27 March 2008;
   d) 29 October 2010 at 17.19h;
   e) 29 October 2010 at 17.28h.

2. Accessed Patient B's records without clinical justification on 29 October 2010 at 17.18h.

3. Your actions at one or more of charges 1 - 2 above were motivated by your personal interest in Patient A and/or Patient B’s medical history

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

Consensual Panel Determination

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

The agreement, which was put before the panel, sets out Mrs Gollings’ full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a caution order for a period of 5 years.

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

That provisional CPD agreement reads as follows:

‘The Nursing & Midwifery Council (“the NMC”) and Mrs Andrea Jayne Gollings (“Mrs Gollings”), PIN 84J0545E (“the Parties”) agree as follows:

1. Mrs Gollings is aware of the CPD hearing. Mrs Gollings does not intend on attending the hearing and is content for it to proceed in her and her representative’s absence. Mrs Gollings will endeavour to be available by telephone should clarification on any point be required, or should the panel wish to make other amendments to the provisional agreement.

2. Mrs Gollings understands that if the panel proposes to impose a greater sanction or make other amendments to the provisional agreement that she does not agree with, the panel will reject the CPD and refer the matter to a substantive hearing.

Preliminary issues

3. The parties agree that certain parts of this agreement should be dealt with in private under Rule 19(3) of the NMC Fitness to Practise Rules 2004 as amended ('the Rules') which provides that hearings may he held wholly or partly in private where the Committee is satisfied that this is justified by the interests of any party or third party (including a complainant witness or patient) or by the public interest. The parties also invite the panel to deal with the same matters in private in any written determination; while this is a matter for the panel's discretion the parties have sought to indicate those parts of the following agreement which may be suitable to be so treated, and why, at the relevant points.

Regulatory background

4. The history of the regulatory concerns raised about Mrs Gollings is set out in some detail here because the parties agree that it may be relevant to the panel's assessment of the issues in this case.

5. The charges brought by the NMC against Mrs Gollings stem from two separate referrals. Referral 1, concerning Patient A, was made by Ms 1, Practice Director of Ancora Medical Practice ('the Practice'), and received by the NMC on 21 November 2016. Referral 1 was first considered by the Case Examiners in April 2017 where it was determined that no further action should be taken.

6. Following that decision, a request to review the closure of the case was received under Rule 7A of the Rules. An Assistant Registrar reviewed the information available and determined that the original decision was materially flawed and that a fresh decision was required in this case. It was further determined that the matter should be referred back to the Case Examiners for consideration.

7. Referral 1 was considered again in August 2018. On that occasion, the Case Examiners decided that there was a case to answer on the facts but decided to issue a warning.

8. Following that decision, a further request to review the closure of the case was received under Rule 7A the Rules. An Assistant Registrar reviewed the information available and in December 2019 determined that the Case Examiners' decision was materially flawed due to the limited information before them and their failure to request further investigation. It was determined that a fresh decision was required. It was further determined that the matter should be referred back to the Case Examiners for consideration, and that it should be looked at together with the matters contained within Referral 2, made by and concerning Patient B, which had been received by the NMC on 15 October 2018.

9. The case was considered for the third time in December 2020. On that occasion a new pair of Case Examiners determined that the matter required further investigation. A supplementary investigation report was provided in September 2021.

10.The case was considered for the fourth time in November 2021, in light of the further material provided. However, on that occasion the Case Examiners again requested further investigation. On 22 December 2021, the Assistant Registrar declined the recommendation for further investigation and returned the matter to the Case Examiners.

11.On 17 March 2022 the Case Examiners, considering the case for the fifth time, found a case to answer and referred the matter to be determined by the Fitness to Practise Committee.

The Charges

12.Mrs Gollings admits the following charges:

That you, a registered nurse:

1. Accessed Patient A's records without clinical justification on:
a. 19 October 2005;
b. 31 July 2007;
c. 27 March 2008;
d. 29 October 2010 at 17.19h;
e. 29 October 2010 at 17.28h.

2. Accessed Patient B's records without clinical justification on 29 October 2010 at 17.18h.

3. Your actions at one or more of charges 1 - 2 above were motivated by your personal interest in Patient A and/or Patient B's medical history

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

The Statement of Agreed Facts

Background

13.Mrs Gollings appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered nurse and has been on the NMC register since 1 June 2000.

14.On 21 November 2016 the NMC received a referral from Ancora Medical Practice ("the Practice"). On 15 October 2018 a further referral was made by Patient B, a patient at the Practice, and the sister of Patient A. At the time of the concerns Mrs Gollings was working as a Practice Nurse.

Charge 1 a-e

15. Patient A was a patient at the Practice where Mrs Gollings was employed as a Practice Nurse from 1998 until 2011 before she joined the Northern Lincolnshire and Goole NHS Foundation Trust ('the Trust'). In December 2015 Mrs Gollings began working as a Respiratory Nurse Specialist at the Trust. [PRIVATE]

16.On 16 November 2015 Patient A entered a staff office which contained Mrs Gollings and other colleagues. As a result of a comment made to her, Patient A became concerned that her medical records had been accessed.

17.[PRIVATE]

18.Patient A made a complaint to the Practice who investigated the matter by undertaking an audit of their clinical records which identified that Mrs Gollings had accessed Patient A's medical records. Mrs Gollings had accessed Patient A's records on 5 separate occasions on; 19 October 2005, 31 July 2007, 27 March 2008, 29 October 2010 at 17.19h and 29 October 2010 at 17.28h. The Practice could find no clinical justification for Patient A's records to be accessed on these occasions by Mrs Gollings.

Charge 2

19.The second referral came from Patient B, the sister of Patient A, who requested that her own medical records were reviewed by the Practice to establish if there had been any similar accesses by Mrs Gollings. The Practice confirmed that Mrs Gollings had accessed Patient B's electronic patient records on 29 October 2010 at 17:18h, just 10 minutes before accessing Patient A's records.

20.The Practice concluded there was no discernible reason for Mrs Gollings accessing Patient B's records at the material time, as there were no clinical entries made to support the access and Patient B was not receiving any ongoing treatment.

Charge 3

21.During a local investigation meeting carried out by the Practice on 7 November 2016, Mrs Gollings was initially unable to say why she had accessed Patient A's records, but went on to say that her reason for accessing Patient A's contact details was to discuss a course she was undertaking and for which Patient A had been acting as a mentor through any course. Mrs Gollings said that any knowledge she may have had of Patient A's medical condition may have been shared with her when they were both at school. However, Patient A denied any knowledge of the course or being Patient A's mentor. Patient A has stated that her condition was not known to her during school days, therefore making it impossible for Patient A to have shared this information with Mrs Gollings at that time.

22.Ms 1, practice manager of the Practice, explains that the electronic clinical file management system used by the Practice is called SystmOne. When a user searches for a patient using SystmOne, an initial screen pops up which includes the patient's names, NHS number, gender, address and telephone contact numbers. Accessing this screen would not register that the user has looked up this patient as this stage is known only as a "call-up". SystmOne will only record that a user has access a patient record if the user goes beyond the initial "call-up" screen and accesses medical records, known as "recalls".

23.The audit carried out by the Practice showed the length of time, to the minute, that Mrs Gollings spent in each of the Patient records; the times range between one and three minutes. While it is not possible to say from the audit what had been reviewed by Mrs Gollings, there would be no reason to access patient records in order to access patient contact details.

24.Moreover, on 29 October 2010 Mrs Gollings accessed both Patient A and Patient B's records in quick succession which would not have been necessary to obtain Patient A's contact details.

25.Absent any clinical justification for accessing Patient A's and Patient B's records, and the proven access being more than was required to obtain a telephone number, it follows that the most likely reason for Mrs Gollings to access Patient A's notes was to satisfy her own curiosity about Patient A's medical history. The quick alternation between Patient A's and Patient B's notes on 29 October 2020 makes it more likely than not that Mrs Gollings was comparing the two sisters' records due to satisfy her own interest.

26.In a written reflective piece provided to the NMC on 27 June 2023, Mrs Gollings said: "I admit all three charges, including that I accessed the medical records out of personal interest in the medical history of Patient A."

Misconduct

27.The facts amount to misconduct. While there is no statutory definition of misconduct, it has been held1 that that misconduct is a word of general effect involving some act or omission falling 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 practitioner in the particular circumstances.

28.The NMC Code of Conduct sets out the standards expected to be followed by a nurse. In light of the dates of Mrs Gollings' actions it is necessary to consider previous versions of the NMC Code of Conduct.

29.The NMC Code of Conduct 2004 ('the 2004 Code') is relevant to charges 1a, 1b, 1c and 3. The 2004 Code says: 1 Roylance v GMC (no 2) [2000] 1 AC 311
1.2 As a registered nurse, midwife or specialist community public health nurse, you must:

- *protect and support the health of individual patients and clients*
- *protect and support the health of the wider community*
- *act in such a way that justifies the trust and confidence the public have in you*
- *uphold and enhance the good reputation of the professions.*

5 As a registered nurse, midwife or specialist community public health nurse, you must protect confidential information

5.1 You must treat information about patients and clients as confidential and use it only for the purposes for which it was given. ... You must guard against breaches of confidentiality by protecting information from improper disclosure at all times.

7 As a registered nurse, midwife or specialist community public health nurse, you must be trustworthy

7.1 You must behave in a way that upholds the reputation of the professions. Behaviour that compromises this reputation may call your registration into question even if is not directly connected to your professional practice

30.The NMC Code of Conduct 2008 ('the 2008 Code') came into effect on 1 May 2008 and is relevant to Mrs Gollings' conduct in charges 1d, 1e, 2 and 3. The 2008 Code provides:

The people in your care must be able to trust you with their health and wellbeing.

To justify that trust, you must:

- make the care of people your first concern, treating them as individuals and respecting their dignity

- work with others to protect and promote the health and wellbeing of those in your care, their families and carers, and the wider community

- provide a high standard of practice and care at all times

- be open and honest, act with integrity and uphold the reputation of your profession.

As a professional, you are personally accountable for actions and omissions in your practice, and must always be able to justify your decisions.

1 You must treat people as individuals and respect their dignity.

5 You must respect people's right to confidentiality

47 You must ensure all records are kept securely

61 You must uphold the reputation of your profession at all times

31.For the avoidance of doubt, the standards and principles set out in previous versions of the Code continue to be the basic and fundamental standards expected of nurses, midwives and nursing associates today. This can be seen from the current NMC Code of Conduct which provides:

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. To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care

20 Uphold the reputation of your profession at all times
To achieve this, you must:

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

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

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

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

32.The parties agree that, in acting as she did, Mrs Gollings' conduct fell far below that which was expected of her. Patients' medical records can be expected to contain information which is highly personal, very sensitive and should be treated with the utmost confidence. By accessing, on numerous occasions, such information without clinical justification, Mrs Gollings has breached Patient A's and Patient B's expectations that their medical information will be retained securely and only accessed by those with a proper reason.

33. Breaching patient confidentiality to satisfy her own interest in the medical history of a patient or patients known to her outside the clinical setting amounted to an abuse of Mrs Gollings' privileged position as a nurse.

34.Accessing the notes of any patient without clinical justification for one's own interest is likely to be a matter of concern for that patient. In the present case Mrs Gollings' conduct left Patient A "in a desperate state". [PRIVATE]

35.Mrs Gollings' actions have caused undoubted concern, anxiety and distress to the patients whose records she accessed. Her actions fell below the standards of conduct expected of a registered nurse and amount to serious professional misconduct.

Impairment

36.The Parties agree Mrs Gollings' fitness to practise is currently impaired by reason of her misconduct.

37. The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. This involves a consideration of both the nature of the concern and the public interest.

38. The parties agree that consideration of the nature of the concern involves looking at the factors set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;

- *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*
- *Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
- *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or*
- *Has in the past acted dishonestly and/or is liable to act dishonestly in the future?*

39. The parties agree that the first three limbs of the 'Grant test' apply in this case.

40. Mrs Gollings' clinically unjustified breach of patient confidentiality for her own interest did not just create a risk of harm to patients but resulted in actual harm. As set out above, the effects on Patient A and on Patient B have been acute, severe and long lasting.

41. Mrs Gollings' past actions have brought the profession into disrepute. Trust and confidence are the bedrock of the nursing profession. Members of the public need to have confidence that they and their loved ones will be treated with dignity and respect if they require clinical care. In order for that care to be effective, they also need to be able to trust clinicians with private and sensitive information about their health and personal lives. Deliberately breaching that expectation of confidentiality has understandably caused the patients involved to distrust members of the profession.

42.All applicable versions of the NMC Code of Conduct place care for the patient, treating them with dignity and respect, and upholding the reputation of the profession as fundamental requirements of any nurse. As Mrs Gollings breached these aspects of the Code of Conduct, she has thereby breached fundamental tenets of the profession.

43.As a result, the parties agree that Mrs Gollings has in the past put patients at unwarranted risk of harm, brought the profession into disrepute and breached fundamental tenets of the profession.

44.The parties have considered the NMC's guidance on seriousness. Serious concerns include those which could result in harm to patients if not put right. Such concerns are sometimes (though need not necessarily be) described as 'clinical' in nature. The guidance indicates that a pattern of conduct is more likely to require regulatory action, especially where, as here, the evidence shows that the nurse has failed to prioritise people, uphold their dignity, treat them with kindness, and respect people's right to privacy and confidentiality.

45.Serious concerns also include those based on public confidence and professional standards which mean that the NMC may need to take action even if the nurse, midwife, or nursing associate has shown that they have put serious clinical failings right, if the past incidents themselves were so serious they could affect the public's trust in nurses, midwives and nursing associates. This guidance goes on to say that the NMC "may need to take restrictive regulatory action against nurses, midwives or nursing associates whose conduct has had this kind of impact on the public's trust in their profession, who haven't made any attempt to reflect on it, show insight, and haven't taken any steps to put it right."

46.The parties consider that the concerns, though serious, took place in a clinical setting and in an identifiable area of clinical practice, and are capable of being addressed through reflection, further training, and a period of sustained, safe practice.

47.Current impairment is an assessment of a nurse, midwife, or nursing associate's fitness to practise at the present time. This assessment must be informed by past events but as it is a forward-looking exercise it is also necessary to assess whether Mrs Gollings is likely to act in such way in the future. The parties refer to the case of Cohen v General Medical Council [2008] EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment;

- *Whether the conduct that led to the charge(s) is easily remediable.*
- *Whether it has been remedied.*
- *Whether it is highly unlikely to be repeated.*

48.The parties have therefore considered whether Mrs Gollings has made any attempt to reflect on her misconduct, whether she has shown any insight and whether she has taken any steps to strengthen her practice.

49.Mrs Gollings has provided a number of responses to the NMC. In October 2021 Mrs Gollings provided a certificate showing that she had completed, on 21 January 2019, a data security awareness survey; and on 17 November 2020 National Data opt-out training; and on 1 October 2021 a course in Data Security Awareness – Level 1.

50.Mrs Gollings also provided references from her current employer. Dated 21 October 2021, the Practice Manager of Cedar Medical Practice states "[Mrs Gollings] has been employed as a practice nurse by our practice since 21st September 2001… in my/the partners professional opinion [she] is fit to practise as a registered nurse without restriction and we are in receipt of references from her previous employer. Prior to her appointment [she] was open and honest about the NMC proceedings." She also provided a positive character reference from LK, a Nurse Practitioner who was aware of the NMC referral.

51.Mrs Gollings also, in October 2021, provided a reflective piece using the Gibbs reflective model. In that document she said "Over the 13 years of working for the practice I accessed [Patient A's] records on 5 occasions without clinical reasoning in order to obtain contact details. This included telephone number and address. I then used these details to contact patient A where she kindly gave me guidance and supporting information…"

52.On 27 June 2023 Mrs Gollings provided the NMC with an updated reflective piece, also using the Gibbs cycle. She said:

"…Over the 13 years of working for the practice I accessed [Patient A's] records on 5 occasions without clinical reasoning in order to obtain contact details which was of personal interest therefore I accept the charge 3. I understand by opening up her notes gives access to personal information.

…

On reflection as working as a practice nurse between 1998 and 2011 I understand i made some very poor choices. This was in the form of accessing patients A data this was also accessing her notes which gave accessed to her personal history. On reflection this was giving no thought to patent A feelings and was in breach of my ethical obligations with respect to the use of medical records. This I understand has caused undue stress and anxiety to her for that I am truly remorseful. Patient A

should have been able to feel confident that her records were kept confidential and used appropriately within the practice. By accessing data for personal interest and without clinical reasoning patient A's data protection rights (1988) have been infringed. I am aware of the Caldecott enquiry 1997 and have done further reading of the report. This report highlighted the risks of individuals accessing records for which they have no legitimate interest therefore breaching information governance rules. Also, the Caldecott review (DOH 2013) recommended that there should be a strengthening of patient's rights to address incidences where confidentiality has been breached. The development of the SMART card and passwords has enabled limitation of others and the identification of those health care professionals who have inappropriately accessed patient data. The care record guarantee: are guarantee for NHS care records in England (DoH 2001) was set out in order to reasonably meet what a patient would reasonably expect and this includes safe and confidential record keeping.

On reflection by accessing patients notes for personal interest in Patient A's medical history did harm to patient A and B. I had known patient A since school and had worked with her as a colleague I had thought of her as an acquaintance / colleague and not as a patient with the same patient rights as everyone else. The DoH (2003) model of confidentiality was devised in order to protect patient information with the intention to do no harm. Confidential patient information not only relates to illness, disability, received care and treatment but also includes demographic information such as age place of residence phone numbers, lifestyle, sexual orientation, religion and cultural beliefs. On reflection this has not only caused harm to patient A and B and their confidence in health care records but has also caused some damage to the reputation to the trust. I also understand if this had not been highlighted and reported then it would be an indicator as a decline in professionalism and acceptance of inferior standards of care. By accessing notes for personal interest/motivation causes a lack of trust and confidence…" (sic).

53.Addressing her current and future practice, Mrs Gollings said:
Non maleficence states that one should do no harm to patients (Amaakone and Panesar, 2006). Amongst the most quoted in the history of codes of medical ethics "above all do no harm" (Beauchamp and Childress 2009). This principle is intended to be the end goal for all practitioner decisions and means that medical providers must consider whether other people or society could be harmed by a decision made even if it is made for the benefit on an individual patient or others.
If I had had a more understanding of ethics and used and applied this principle to the incident, I would not have breached data protection as applying this theory means that although my intention was to help others by increasing my own respiratory knowledge, I did not consider the harm that was caused by my actions to patient A and B and this theory would have guided me against this action

…

I completely understand that respecting confidentiality and data states with a clear understanding of terms, conditions and responsibility. I am also fully aware of the importance of respecting a patient's data and confidentiality in order to protect patients of whom I have a duty of care too. From this lesson I can ensure I would never be confused again regarding misunderstanding the terms and conditions around information governance. Confusion around terms and conditions I now understand can now lead too misconstruing of my responsibilities. I understand that I was complacent about patients A information / data and I made poor decisions, which has resulted in penalties

…

I am more familiar with the terms of the codes of conduct which makes clear the requirements for ethical conduct and maintaining confidentiality of health care records. I also am aware of the importance of acting in a professional manner to in future protect my health care reputation and the reputation of the health care organisation as a whole" (sic).

Public protection impairment

54.The above information indicates that Mrs Gollings has worked in a similar setting to that in which the misconduct took place, and that there is no evidence that the misconduct has been repeated since 2010. Her employer states she is up to date with all relevant information governance and data security training. Although the misconduct took place over an extended time, there have been no other concerns raised about Mrs Gollings in the following twelve years.

55.In light of this, together with the remorse shown for her past misconduct and a clearly articulated understanding by Mrs Gollings of the proper role of nurses in handling patient data, the parties agree there is clear evidence that the concerns are highly unlikely to be repeated. The parties agree that with the risk of repetition so low, Mrs Gollings is not currently, and is not likely in the future to be, a risk to the health, safety or wellbeing of the public.

56.The parties therefore agree that a finding of impairment to protect the public is not necessary.

Public interest impairment

57.The parties next considered whether the Fitness to Practise Committee needs to take action to promote public confidence or professional standards for nurses. The

NMC's guidance says this will only apply if a nurse, midwife or nursing associate's past conduct 'raises fundamental concerns about their trustworthiness as a registered professional.'

58.In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that: "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."

59.In considering this question, the parties note again that a basic tenet of the profession has been breached by Mrs Gollings' misconduct. Accessing medical records without clinical justification is a serious matter. A nurse must respect an individual's right to privacy and confidentiality, and an individual must be confident that their confidential information will be accessed only by those who have justification to do so. In Ms Gollings' case this accessing of medical records took place over several years and involved more than one patient.

60.It is clear from Mrs Gollings' reflective pieces that while she has expressed remorse and shows an understanding of why it is wrong to breach confidentiality, she has only belatedly accepted that her motivation for doing so was her personal interest in Patient A and/or Patient B's medical history; previously she has offered the reason of seeking a contact number which, while she accepted lacked clinical justification, was not supported by the evidence. In admitting charge 3, Mrs Gollings now accepts that she was motivated by personal interest in Patient A's medical history. Although the parties agree that this is evidence of increased insight, Mrs Gollings has not shown complete insight into her misconduct from the earliest stages.

61.In light of this, together with the seriousness of Mrs Gollings' misconduct and the harm she caused by it, the parties agree that a finding of no impairment would not adequately uphold the public interest.

62. In order to maintain and uphold public confidence in the profession, and in order to maintain and uphold professional standards, the parties agree that a finding of impairment is required in the public interest.

Sanction

63. The appropriate sanction in this case is a caution order for a period of five years.

64. The parties agree that the aggravating factors in this case are:

- *An abuse of a position of trust*
- *Repeated breaches of confidentiality over a period spanning 5 years*
- *The breaches involved two different patients*
- *Harm caused to Patient A, in particular, and to Patient B.*
- *Belated acknowledgement for the reasons for accessing the patients' notes*

65. The parties consider that the mitigating factors in this case include:

- *Mrs Gollings' expression of remorse*
- *Evidence that Mrs Gollings has followed principles of good practice since 2010, including relevant training*
- *Unusually, but relevant to this case, the protracted nature of the NMC proceedings.*

66. The parties agree that to take no action in this case would not be appropriate due to the seriousness of the misconduct and Mrs Gollings' belated acceptance of her motivation for accessing patient records. Taking no action would not be sufficient to uphold the public interest.

67.The parties have borne in mind the NMC's guidance on proportionality. Being proportionate means finding a fair balance between the nurse, midwife or nursing associate's rights and the NMC's overarching objective of public protection (which includes the promotion and maintenance of public confidence in the nursing and midwifery professions; and the promotion and maintenance of proper professional standards and conduct for members of the nursing and midwifery professions). A sanction must not go further than is needed to meet this objective. This reflects the idea of right-touch regulation, where the right amount of 'regulatory force' is applied to deal with the target risk, but no more.

68.The Fitness to Practise Committee has to be proportionate when making decisions about sanctions. It is under a legal duty to make sure that any decisions to restrict a nurse, midwife or nursing associate's right to practise as a registered professional are justified.

69.To be proportionate, and not go further than it needs to, the parties agree that the Committee should think about what action it needs to take to tackle the reasons why Mrs Gollings' fitness to practise is currently impaired. The Committee should consider whether the sanction with the least impact on the nurse, midwife or nursing associate's practise would be enough to achieve public protection, looking at the reasons for current impairment and any aggravating or mitigating features

70.The parties have considered the NMC's guidance on caution orders[7]. That provides that a caution is only appropriate if the Fitness to Practise Committee decides that there is no risk to the public which requires Mrs Gollings' practice to be restricted. The Committee should ask itself if its decision about impairment indicated any risk to patient safety.

71.The parties, for the reasons set out above, consider that the risk of Mrs Gollings repeating her behaviour is very low. This is because Mrs Gollings has undertaken training in relevant areas, has demonstrated through her reflections that she understands that what she did was wrong, understands the impact her actions have had upon the patients concerned and has demonstrated insight into what she should do differently in future. Significantly in this case, there is evidence that Mrs Gollings has continued to practise for over a decade since her misconduct without further complaint, including in a similar practice area, and her employer suggests no concerns about her practice. The parties invite the Committee to conclude that this provides a sound evidential basis from which to draw the conclusion that Mrs Gollings no longer poses any risk to patient safety.

72.The guidance says that a caution order is suitable when the Committee wants to mark the past behaviour as unacceptable and must not happen again. The parties consider that the imposition of a caution will have such an effect in this case. The parties note that the guidance also says that "a caution order is the least serious of our sanctions in that is it the least restrictive". The parties consider it appropriate to note that this is by comparison with other sanctions; the guidance does not mean that a caution order is a non-serious outcome. The parties remind themselves that in order for any sanction to be imposed, firstly a finding must have been made that the charges were found proved, then that the facts within the charges amounted to serious professional misconduct, and finally that a registrant's fitness to practise is currently impaired by reason of that misconduct. The parties reflect that these are all serious matters to be found against a registered professional, and so is the imposition of any sanction.

73.The parties invite the Committee to consider whether the course of the regulatory proceedings themselves have a relevance at the sanction stage. As set out in the introduction above, the regulatory process in this case has been unusually drawn out. This is to be regretted, as it is not indicative of efficient regulation, but its relevance in the present case is that, unusually, Mrs Gollings has faced five successive decisions by the case examiners before referral to the Fitness to Practise Committee. Mrs Gollings has been represented and engaged with proceedings for an extended period. The parties agree that the regulatory proceedings themselves have had a salutary effect on Mrs Gollings. While this cannot be determinative, or a substitute for a different sanction if one was appropriate, the parties consider that the nature and extent of the regulatory proceedings to date may reasonably inform the Committee's assessment of the proportionality of any sanction.

74.The parties agree that a caution order for a period of five years is appropriate. This is the maximum period for a caution order permitted by the NMC's legislation and indeed represents the longest period of sanction available to the Committee other than a striking off order. The parties agree that a caution for five years is necessary due to the duration and repetition between 2005 and 2010 of Mrs Gollings' misconduct, and to mark the harm caused to Patient A and Patient B.

75.The parties agree that such a sanction addresses the public interest because for a period of 5 years Mrs Gollings' caution will be recorded on the register and published on the NMC's website, and disclosed to anyone enquiring about her fitness to practise history.

76.To confirm whether this is an appropriate sanction, the parties have considered the next most serious sanction, a conditions of practice order. The parties agree that such a sanction would serve no useful purpose as there are no identifiable conditions which could be imposed, as there are no longer any public protection risks in Mrs Gollings' practice.

77.The parties have therefore considered whether a suspension order would be appropriate. The misconduct in this case was repeated over a prolonged period and caused harm to patients. These are factors which may indicate a suspension is more suitable. However, in light of Mrs Gollings admissions, remorse and increasing insight, the parties do not consider that there is evidence of harmful, deep-seated personality or attitudinal problems. There is no significant risk of the misconduct being repeated. Nor has there been any evidence that the misconduct has been repeated, in the long period since. As a result, the parties agree that the misconduct can be adequately marked with a less severe outcome than temporary removal from the register. The parties agree that Mrs Gollings' admissions, increasing insight, remorse, efforts to strengthen her practice, and evidence of safe practice for over a decade since her misconduct, mean that that removal from the register would be disproportionate.

Maker of allegation comments

78.The NMC has sought comments from the makers of the allegations, Patient A and Patient B. They do not support the proposed sanction (CB, the practice manager who made referral 1, has also been asked to comment but has not provided a response).

79.In light of the effects of Mrs Gollings actions on Patient A and Patient B, the parties consider it appropriate to set out their responses in full. This approach is provided for under Rule 24(13)(a) of the Rules which says that when making a decision on sanction the Committee may invite any person who, in its opinion, has an interest in the proceedings to submit written representations.

80.Patient A said, in an email dated 12 June 2023:

"I have to admit that I laughed as soon as I read this letter because it was so predictable and again highlighted the ineptitude of the NMC in handling this case. You state the purpose of the sanction is not to punish but to protect the public. You go on to say this does not affect her practice so she has essentially got away with it or that is how she will see it. Andrea Gollings has already had notes placed on her registration but was able to continue practicing previously. However, despite those notes she continued to deny any wrongdoing and has denied and lied all the way through this investigation for 7 years. The NMC seem to forget she showed a pattern of behaviour by also looking at my sisters records! And this does not cause the NMC concern? Surprising! How is that protecting the public when you have a senior nurse who does not tell the truth and is prepared to lie to save her own skin. Andrea Gollings has made herself in victim in this case when in actual fact she was the perpetrator. I suspect she has been advised to admit wrongdoing because at this point she can no longer lie her way out of it.

This had a major impact on my life but the NMC has never sought to protect me as member of the public so the actions of the NMC do not marry up well with their aims and objectives in the handling of this case. Thankfully I have had the support of an amazing husband, family and friends throughout this debacle of a side show. They are all once again disgusted yet not surprised at the NMC's inaction. Sadly and unfortunately what was once a great institution has just become a laughing stock to me and my family and an organisation we find difficult to take seriously when dealing with public protection. As I come to the end of my career I look back and I am so proud of what I have achieved. I have maintained my professionalism throughout my career and have always abided by my code of conduct (one that actually doesn't appear to matter to the NMC). So on retiring my feelings will be of great pride and satisfaction of a job well done. I doubt very much that Andrea Gollings will be able to sit back and think the same.

I hope the last 7 years have given Andrea Gollings the opportunity to reflect on her unprofessional behaviour and to at least take some ownership and responsibility for her actions in breaching the most scared part of our code of conduct that of confidentiality. Sadly I suspect this not to be the case and as I said previously stated I believe she has only admitted it now because she has been advised to. I truly hope the NMC looks back and learns many lessons about how badly they have handled this case not only for me but also for Andrea Gollings. The NMC's handling of this case will not give the general public confidence about how they 'protect' the public and uphold standards with the way in which they have handled this case. Those involved should be truly ashamed and should take a long hard look at their practice and decision making"

81.In an email dated 8 June 2023 Patient B made the following comments: "I understand that Andrea Gollings has lied to the NHS, to my sister and to the NMC for 7 years, and has admitted doing so, probably only because the evidence proved as much and she couldn't lie any longer.

[PRIVATE] Yet I also understand that despite the above, Andrea Gollings may still not be held accountable for her actions. How is that protecting my sister or the public, as you state. It is appalling, I am actually quite disgusted. How can a nurse be allowed to practice and have access to patients confidential information when she clearly cannot be trusted and has no respect for her patients, her colleagues or the NHS? I am lost for words. You have allowed Andrea Gollings to continue to practice for 7 years so who knows how many other NHS patients have had their medical records illegally accessed by Andrea Gollings in that time. I have no faith or trust in the NMC any longer. The time taken to investigate is beyond a joke.You have not protected my sister or myself, and if you allow Andrea Gollings to continue to practise, you are not protecting the general public. How can I, my sister or any of the general public have any trust or confidence in the NHS when the NMC allows a senior nurse to get away with lying for 7 years (while still practising may I add) and illegally accessing patients medical records and not being held to account.

Meanwhile, my sister has been to hell and back. Where was her protection by the NMC? It was non existent. It beggars belief to be honest."

82. In line with the NMC's guidance the NMC reviewed its sanction bid in light of the comments made. The explanation for advancing the sanction bid of a 5-year caution, agreed between the parties, is set out fully above. It is a matter of considerable regret to the NMC that it has clearly lost the trust and confidence of two members of the public most affected by this case. The parties invite the panel to assess whether the protracted history of this case, as set out in the introduction to this agreement, may have contributed to their understandable frustration and loss of trust. The parties respectfully remind the Committee that any sanction must be proportionate, and it would not be appropriate to punish a nurse, midwife or nursing associate for any failings by the regulator. Rather the sanction must be commensurate with the risk posed to public protection or the public interest by that individual.

83. For the reasons set out in this agreement, the parties invite the Committee to impose a 5-year caution order.

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

Here ends the provisional CPD agreement between the NMC and Mrs Gollings. The provisional CPD agreement was signed by Mrs Gollings on 27 June 2023.

Decision and reasons on the CPD

The panel decided to accept the CPD.

Ms Davies referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. She reminded the panel that they could accept, propose amendments or outright reject the provisional CPD agreement reached between the NMC and Mrs Gollings. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel heard and accepted the legal assessor's advice.

The panel noted that Mrs Gollings admitted the facts of the charges. Before finding the facts proved on Mrs Gollings' admission, the panel caused enquiries to be made with regard to Charge 3 and the extent of her admission concerning her motive. The panel received confirmation by email by Mrs Gollings' representative, that Mrs Gollings admitted that although she was initially seeking Patient A's details, she had subsequently accessed Patient A and Patient B's records because she was being *'nosey'*. Accordingly, the panel was satisfied that the charges are found proved by way of Mrs Gollings' admissions, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

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

In respect of misconduct, the panel noted that Mrs Gollings accepts the charges and accepts that she is impaired. It determined that Mrs Gollings is impaired on public interest grounds and that a nurse should not have accessed patient records without a clinical need.

In this respect, the panel endorsed paragraphs 32 to 62 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Mrs Gollings' fitness to practise is currently impaired by reason of misconduct. The panel determined that Mrs Gollings' fitness to practise is currently impaired on public interest grounds. In this respect the panel endorsed paragraphs 32 to 62 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mrs Gollings' 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:

- An abuse of a position of trust
- Repeated breaches of confidentiality over a period spanning 5 years
- The breaches involved two different patients
- Harm caused to Patient A, in particular, and to Patient B.
- Belated acknowledgement for the reasons for accessing the patients' records

The panel also took into account the following mitigating features:

- Mrs Gollings' expression of remorse
- Evidence that Mrs Gollings has followed principles of good practice since 2010, including relevant training
- Unusually, but relevant to this case, the protracted nature of the NMC proceedings

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 did not consider that the misconduct in the present case was at the lower end of the spectrum. However, the panel noted with concern, that it was only after numerous referrals to the NMC case examiners that this case was referred to a fitness to practise committee, and that the original misconduct occurred between thirteen and eighteen years ago. The panel considered that whereas misconduct of this level of seriousness might ordinarily merit a more restrictive sanction to meet the public interest, the panel could not ignore the considerable delay. Furthermore, since the original misconduct, Mrs Gollings has continued to practice without restriction and without any further regulatory concerns being raised. During this time, Mrs Gollings has undergone retraining, developed insight, and has produced testimonials attesting to her safe practice.

The panel noted that Mrs Gollings has shown insight into her misconduct. The panel noted that she has produced a reflective account showing evidence of remorse. Mrs Gollings has engaged with the NMC since referral.

The panel took into account the views from Patient A and Patient B. It also took into account the impact of Mrs Gollings' actions on their health. Dr 1 described both Patient A and Patient B as suffering emotional harm.

The panel considered a conditions of practice order. The panel agreed with the terms of the CPD that such a sanction would serve no useful purpose, as there are no identifiable conditions which could be imposed, and also it is not necessary to protect the public as there are no longer any public protection risks in Mrs Gollings' practice.

The panel agreed with the CPD that a caution order would adequately mark the seriousness of this case and reflect the public interest concerns. It would also serve as a reminder to Mrs Gollings that the behaviour was wholly unacceptable and must not happen again. For the next five years, Mrs Gollings' employer - or any prospective employer - will be on notice that her fitness to practise had been found to be impaired and that her practice is subject to this sanction. Having considered the sanctions guidance and the findings on the evidence, the panel has determined that to impose a caution order for

a period of five years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send Mrs Gollings, the public and the profession a clear message about the standards required of a registered nurse.

At the end of this period the note on Mrs Gollings' entry in the register will be removed. However, the NMC will keep a record of the panel's finding that her fitness to practise had been found impaired. If the NMC receives a further allegation that Mrs Gollings' fitness to practise is impaired, the record of this panel's finding, and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to Mrs Gollings in writing.

That concludes this determination.