

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

**Substantive Hearing
Monday 22 May 2023 to Friday 26 May 2023**

Virtual Hearing

Name of Registrant: Claire Louise Dobson

NMC PIN 9814471E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 29 September 2001

Relevant Location: Coventry

Type of case: Misconduct

Panel members: Caroline Jones (Chair, Registrant member)
Lisa Punter (Registrant member)
Seamus Magee (Lay member)

Legal Assessor: Oliver Wise

Hearings Coordinator: Berivan Genc

Nursing and Midwifery Council: Represented by Unyime Davies, Case Presenter

Miss Dobson: Present and represented by Kriti Upadhyay on behalf of Royal College of Nursing (RCN)

Facts proved: 1 and 2 (charges 3, 4 and 5 proved by way of admission)

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Caution Order (3 years)**

Details of charge

That you, a registered nurse:

1. Between 11 March 2014 and 8 June 2018, accessed your personal patient records on one or more occasion. [This was the original content of the charge]
2. On 12 January 2018, accessed Colleague A's patient records.
3. Between 10 May 2016 and 19 July 2019 accessed Relative A's patient records on one or more occasion.
4. Between 2 November 2017 and 30 November 2017, accessed Relative B's patient records on one or more occasion.
5. On 12 June 2018, accessed Person C's patient records on one or more occasion.

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

At the outset of the hearing, Ms Upadhyay made a request that this case be held in private on the basis that proper exploration of your case involves references to your [PRIVATE] and your family members' [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Davies indicated that she supported the application to the extent that any reference to your [PRIVATE] and your family members' [PRIVATE] should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold

hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to your [PRIVATE] and your family members' [PRIVATE], the panel determined to hold the entirety of the hearing in private.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Davies under Rule 31 to allow the written statements of Colleague A into evidence on the basis that it is fair and relevant to do so as it relates to charge 2.

Ms Davies referred the panel to the principles to be applied when considering the admission in evidence of a witness statement when the witness is not attending to give evidence, set out in *Thorneycroft v NMC* [2014] EWHC 1565 (Admin). She submitted that an admission of a statement of an absent witness would not be regarded as a routine matter, and the fitness to practise rules require the panel to consider the issue of fairness before it decides on admissibility.

Ms Davies submitted that the fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to balance but will not always be sufficient to answer the objection to admissibility. She submitted that the existence or otherwise of a good and cogent reason for the non-attendance of the witnesses is an important factor, however, the absence of a good reason, does not automatically result in the exclusion of the evidence. The decision whether or not to admit the evidence requires a panel to make a careful assessment, weighing up the competing factors.

Ms Davies submitted that the conversation Colleague A had with you in relation to the contents of the medical records come from the audit records and this was referred to by Witness 2, which is primary evidence in relation to charge 2. She also submitted that the statement from Colleague A may provide some supporting evidence.

Ms Upadhyay opposed the introduction of the witness statement and the exhibits. She submitted that Colleague A makes reference to other individuals observing you logging in and accessing non-patient records and that there are no other statements before this panel from anyone who has allegedly directly observed you in doing so. She also submitted that there were no other statements taken by the individuals at the Trust who are alleged to have purportedly directly observed you accessing anyone's records.

Ms Upadhyay submitted that the NMC in this case has not taken any further steps to secure Colleague A's attendance since the initial chain of correspondence in September and October 2021. In fact, even in that initial chain of correspondence, there is no mention of any invitation to Colleague A to attend the hearing. She submitted that this has been repeatedly raised by you in the last few months, and that you have only had confirmation in the last two weeks that the NMC was not intending to call Colleague A to give evidence.

Ms Upadhyay submitted that you dispute Colleague A's evidence entirely and that their credibility must be called into question.

Ms Upadhyay submitted that Colleague A had a reason to fabricate her allegations as she held a grudge against you due to your previous interactions and working relationship. Ms Upadhyay submitted that no steps have been taken to invite Colleague A to attend and provide evidence. Her e-mail stated that she would rather not have to re-visit this unless absolutely necessary. Colleague A should have been told that it was necessary for her to attend. Ms Upadhyay submitted that an adverse finding of fact may well impact your career. This is a very serious matter. Ms Upadhyay submitted that the NMC has failed to take reasonable steps to secure Colleague A's attendance at this hearing.

Ms Upadhyay submitted that the NMC statement of Colleague A, the internal Trust Investigation, interview reports and any references to Colleague A's evidence which would otherwise be hearsay should not be put in evidence, as it would be entirely unfair to you not to be able to challenge that evidence and the credibility of Colleague A by cross examination.

The panel accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. He emphasised that it was a decision for the panel. He referred to Rule 31, which provided that it is 'fair and relevant', a panel may accept evidence, whether or not it is admissible in civil proceedings. He advised that the principles set out in *Thorneycroft* were applicable in deciding whether to admit the witness statement and exhibits.

The panel was of the view that the hearsay evidence, which the NMC proposed to adduce will add only limited value to the evidence already before the panel. The audit logs provide the key information in relation to the charge.

There appeared to be no proper justification for Colleague A not being called to give evidence. As a registered nurse, she was under a duty to cooperate in NMC investigations. No medical or other specific reason had been put before the panel to justify the normal course of her being called to give evidence.

In these circumstances the panel refused the application.

Decision and reasons on application to admit Witness 3's exhibit

The panel heard an application made by Ms Davies under Rule 31 to allow Witness 3's (who was employed as a 'People Partner') exhibit into evidence. She submitted that whilst the material was in the possession of the NMC, it had not been included as part of Witness 3's statement. This was due to an internal oversight by the NMC. Ms Davies submitted that the panel now had in its possession the material which comprised of the additional audits dating from 2014.

Ms Davies acknowledged that this is an unsatisfactory position, which could place the representative at some difficulty in obtaining instructions. However, she submitted that this evidence should go before the panel as it is fair and relevant to charge 1. Ms Davies also submitted that this evidence relates to the time frame of charge 1 and the evidence before the panel only contains audits in relation to you accessing your own records from 2018.

The panel also heard from Ms Upadhyay in response to Ms Davies' submissions. Ms Upadhyay submitted that although this is a matter for the panel, it is incumbent upon the regulator to put forward its evidence in good time for you to be able to respond properly to the charges concerned.

Ms Upadhyay submitted that you do not want this hearing to be adjourned and that you will do your best to respond to matters that have been raised for the first time if the panel is minded to admit the evidence.

Ms Upadhyay submitted that if the logs are admitted into evidence, then she would need to make sure that if there are any questions arising from them or any NMC witnesses then she would need additional time to allow for this. Ms Upadhyay submitted that she is already conscious of time constraints and that you do not want the hearing to be adjourned. She submitted that it would be unfair to you if these logs were admitted as evidence at such short notice.

The panel accepted the advice of the legal assessor. He advised that the evidence should have been served no later than when service of the notice of hearing took place. He advised the panel to consider the relevance and importance of this evidence and whether it would be fair to admit it.

After considering the application, the panel determined that it would be unfair to admit the audit logs dating from 2014 when you have not had the proper opportunity to view these logs. The panel was of the view that these logs do not significantly affect the gravity of charge 1, which is the charge relating to your own records and therefore the least serious of the charges. Therefore, the panel decided that the audit logs are inadmissible due to the short notice and unfairness against you in not having sufficient time to properly respond to the contents.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Upadhyay on your behalf to amend the wording of charge 1.

The proposed amendment was to amend the dates written in charge 1 to '*14 May 2018 and 8 June 2018*'. It was submitted by Ms Upadhyay that the earliest event date according to the logs is 14 May 2018 and latest is 8 June 2018. She submitted that the panel have not been provided with admissible evidence that relates to any earlier period. Ms Upadhyay submitted that it would be fair to you for the panel to amend the charge to reflect the evidence before it. She also submitted that there is no prejudice to the NMC as this is only to amend the charge to reflect the evidence considered by the panel in relation to the audit logs, which would not affect the charge in its entirety.

Therefore, the proposed amendment would provide clarity and more accurately reflect the evidence.

That you, a registered nurse:

1. Between **14 May 2018 and 8 June 2018**, accessed your personal patient records on one or more occasion.

The panel heard from submissions from Ms Davies that the way the charge is drafted encompasses a period of time where the panel can still find the matter proved without an amendment of the charge, but this is a matter for the panel to amend the charge.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment as it would provide an accurate reflection of the evidence before the panel. There is no unfairness in permitting the amendment. Accordingly, the panel has decided to grant your application to amend charge 1.

Decision and reasons on application of no case to answer

On your behalf, Ms Upadhyay applied under Rule 24(7) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules') that you did not have a case to answer on the facts set out in charge 2. Ms Upadhyay made a further submission that if there was a case to answer under Rule 24(7), the panel should determine that sufficient evidence had not been presented to support a finding of impairment and that you had no case to answer as to impairment in relation to charge 2. Ms Davies opposed both of those submissions.

Ms Upadhyay and Ms Davies agreed that the legal test in relation to Rule 24(7) was whether the NMC's case taken at its highest was sufficient to enable charge 2 to be proved. The legal assessor advised the panel that this was the correct test. In addition, he advised the panel that the onus of proof was on the NMC and the standard of proof was on the balance of probabilities.

The panel took account of the submissions made and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was required to decide whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer. The determination at this stage does not amount to a determination on the facts.

The panel was of the view that there had been sufficient evidence to find the facts proved in charge 2. In particular, the Clinical Results Reporting System (CRRS) audit, taken alone, provided evidence that you had accessed Colleague A's records on 12 January 2018. The panel interpreted charge 2 as referring to accessing records rather than accessing specific details of the records. The panel considered Witness 1's and Witness 2's evidence. Both stated that accessing records gave a summary of the contents which relate to the relevant patient and that the tabs provided specific information including

consultant letters etc. The panel noted that you had a specific log in and password and that the ICT Security Policy stated that:

'I will not allow anyone else to use my login' and:

'I will not share my password.'

As the NMC case only has been presented, the panel has not yet heard from you or any witness you may call in relation to the possibility of others making use of your login, sharing, or using your password.

Accordingly, there was a case to answer on the facts.

Ms Upadhyay's primary submissions were that there was no case to answer on the facts of charge 2. She submitted that if the panel did not accept that submission, it should accept her submission that there was no case to answer in respect of impairment. She based that submission on the evidence not establishing facts which justified a finding of misconduct.

The panel considered that accessing a colleague's records without authority could be a serious breach of confidentiality and the NMC's Code of Conduct. This could be serious enough to amount to misconduct.

The evidence was that you had been given a username and password known only to you, and you were required, under the ICT Security Policy to maintain confidentiality. The panel determined that allowing your login details to be used by others could breach confidentiality, whether this was done deliberately or recklessly and could also amount to misconduct.

Depending on the evidence before the panel at the next stage, it might be open to the panel to conclude that your accessing Colleague A's records without any professional justification to do so could be taken as requiring a finding of impairment. This might be

either on the basis of the possibility of repetition, or on the basis that such an act would seriously undermine the confidence of the public and the nursing profession as well as the NMC as the regulator. It could be concluded that a fully informed member of the public would be seriously concerned if they knew that a nurse was able to view a colleague's records without consent of the Colleague or authority from the organisation.

For these reasons, the panel rejected Ms Upadhyay's submissions of no case to answer on the facts of charge 2 and in relation to impairment on that charge. What conclusions the panel will give in respect of the NMC's evidence, are to be considered afresh after the panel has heard all the evidence including any evidence to be given on your behalf, and after hearing final submissions. The same applies to any questions of misconduct and impairment, which will be considered afresh after the panel has made its decisions on the facts and heard any further evidence and final submissions at the next stage.

Background

At the time of the allegations, you were employed by University Hospitals Coventry and Warwickshire NHS Trust ('the Trust') since September 2001. At the time of the referral, you worked as a gynaecological clinical manager. You have been on the NMC register since 2001. Concerns about your practice were identified in July 2019 and resulted in an audit of the Trust's Clinical Reporting System ('CRRS'). The concerns raised were that you had inappropriately accessed health records without proper authority.

An internal investigation was conducted and highlighted inappropriate activity on the CRRS system over the previous two years.

Investigation meetings were held on 1 and 29 August 2019 when you were asked about inappropriate access of the CRRS. During the investigation meetings, you initially denied that you had inappropriately accessed clinical records and that you had used the CRRS on one occasion to find a telephone number for Colleague A, who was a nurse colleague.

The audit logs showed that when you logged onto the CRRS system you viewed your own records, records relating to a colleague, your parents' records, and the records of a family friend who was recently deceased.

The audit logs showed that you accessed your own records, on five separate occasions between May 2018 and June 2018, you viewed your mother's records on six occasions between July 2017 and July 2019, your father's records on six occasions between November 2017 and July 2019. You viewed your deceased family friend's records in November 2017 and lastly, you accessed Colleague A's clinical records on 12 January 2018.

You admitted that you had accessed your deceased family friend's records but that you had not shared any medical information contained in the records.

A disciplinary hearing was held on the 21 October 2019 and you admitted that you had inappropriately accessed your parents' records and that of your deceased family friend. You denied that you accessed your own medical records and those of Colleague A.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Upadhyay, who informed the panel that you made admissions to charges 3, 4 and 5.

The panel therefore finds charges 3, 4 and 5 proved by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Davies and by Ms Upadhyay.

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

be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Associate director of nursing for integrated care.
- Witness 2: Information Security Officer

The panel heard evidence from you under affirmation, together with live evidence from the witness called on your behalf:

- Witness 4: Band 6 in Gynaecology (your former line manager)

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

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

Charge 1

Between **14 May 2018 and 8 June 2018**, accessed your personal patient records on one or more occasion.

This charge is found proved.

In reaching this decision, the panel took into account oral evidence from both NMC witnesses, their witness statements, audit logs taken from the CRRS system, your evidence and evidence from Witness 4.

The panel noted that the audit logs evidenced your login accessed your personal patient records on more than one occasion and also showed that your login details were used to access clinical records repeatedly:

- 14.05.18 at 16.05-16.07, fourteen times
- 17.05.18 at 14.09, once
- 21.05.18 at 10.36-17.21, four times
- 05.06.18 at 11.47, once
- 08.06.18 at 14.08-14.09, four times

Witness 2 in her witness statement gave details of your records being accessed and viewed:

'...The highlighted entry dated 14/05/2018 16:01 shows that a person logged on under the username DOBSONC viewed all results (Pathology and Radiology) tab for patient Miss Claire Dobson 16:01 on 14 May 2018...'

In her witness statement, Witness 2 explained how the CRRS system operated:

'CRRS is accessed via a portal called Hosportal. To log in on the Hosportal page you must enter your log in details and then click a tick box which states, "I accept the terms and conditions stated in the ICT Security Policy". On the Hosportal page next to the login section there is also a summary outlining the ICT Security Policy Key Points. Listed as key points are;

- *'I will not allow anyone else to use my log in*
- *I will not share my password*
- *I will not leave my PC/ workstation logged in and unattended*
- *I will only access the records of the patient for which I am providing care*
- *I will not access my own health records or ask others to do so on my behalf*
- *I will not access records of relatives or friends*

- *Highly sensitive and confidential patient information may be shown by this system.*
- *This system audits all activity, including read access to information.'*

Witness 2 was an independent witness who had not known you previously and was able to explain how to access the CRRS including the use of unique login and password.

Witness 2 also explained that staff should not be accessing each other's login information and to access clinical records. She stated that when one clicks on a patient name, one is able to see a summary of activity and clicking on specific tabs takes one to consultant letters and results. She explained that the system automatically logs out after 20 minutes of inactivity.

The panel noted that the audit log extracted from the CRRS system was independently prepared by the Trust's information security officer who was not known to you. The panel was satisfied that the audits produced gave a detailed and comprehensive overview requested by HR. The panel noted that the audit log showed your login had been used to access your parents' records and those of your deceased family friend. These audit findings were not challenged by you and in fact, you admitted to the charges relating to them namely, charges 3, 4 and 5.

The panel heard from you and other witnesses that the access to the CRRS system was governed by the IT security policy. As such, the only way to access records was to use a unique login and password which was unique to each individual user. You told the panel that you never shared your login details or password with any other member of staff. The audit provided clear evidence that you were personally responsible for accessing your own records.

The panel considered your evidence and that of Witness 4. Your case was that you did not access your records and that it must have been someone else, because other colleagues were able to access the computers which were often left unattended and logged in. It was argued on your behalf that you had frankly admitted charges 3-5 and that your evidence on this point should be believed because no one had witnessed you accessing your own

records and there were frequent opportunities for others to use your login to access your records. You and Witness 4 gave detailed evidence of a '*fractious*' working relationship with Colleague A who you directly line managed and that you considered it was the possibility that she could have accessed your login.

The panel also acknowledged that Witness 4 was very supportive of you and gave a character reference that stated you were clinically '*very good*', '*passionate*' about your work, had '*integrity*' and was '*open and honest*' with her. However, the panel noted that Witness 4 confirmed that you only informed her that you accessed your parents' and deceased family friend's records once the Trust's investigation had commenced.

In relation to the timeframe of accessing the records, the panel determined that it was not feasible that someone else would have used your login to access your records due to the times presented through the audit including the one minute time difference after logging in to access the clinical record. The panel noted that by your own admission, you had a history of accessing other family members' records without permission and the panel inferred that it was likely that you have accessed your own records on that basis.

The panel concluded that it heard no credible explanation as to who could have or would have wanted to access your records other than yourself. It therefore concluded that you were responsible for accessing your records on the dates specified in the charge.

Therefore, on the balance of probabilities, the panel found charge 1 proved.

Charge 2)

On 12 January 2018, accessed Colleague A's patient records.

This charge is found proved.

In reaching this decision, the panel took into account all the evidence before it as stated in its reasoning under charge 1.

The panel noted from the CRRS audit that Colleague A's records were accessed by your unique login on 12 January 2018 at 13:54. Then at 13:55, the user viewed the Pathology and Radiology tab on the summary sheet. This was confirmed by Witness 2 in her witness statement:

“The highlighted entry dated 12/1/2018 13.55 shows that a person logged on under the username DOBSONC viewed “All Results (Pathology and Radiology)” tab for patient [PRIVATE] at 13:55 on the 12 January 2018.”

You told the panel that you had not shared your unique login details or password with anyone else and you could not understand how Colleague A's records were accessed using your login. You speculated in your written submission how this may have happened:

- *‘Sometimes Colleague A would come to my room to discuss the off-duty rota with me. She would wait in my office if I was elsewhere. She could have checked her own results whilst she was waiting for me to return as my computer would have been logged on.*
- *I often worked with a support worker who was close friends with Colleague A. We would regularly work in the same clinical room together and it is not inconceivable that she observed my input my login details into the system. The support worker may have seen me entering my login and may have shared that information with colleague A who then could have looked at her records on my login.*
- *The support worker could have checked the results for Colleague A using my login when I left the room and had not logged out.’*

The panel acknowledged that you admitted charges 3, 4 and 5 and that you were tearful and remorseful. In relation to both charges 1 and 2, you were unable to provide any evidence that anyone else had access to your login details. You stated that a work

colleague may have accessed Colleague A's records but you were unable to produce any evidence to this effect.

The panel also took into account Witness 4's evidence who stated that she had known and worked with you for 19 years. She described the busy clinic environment and that more often than not, staff were logged on to a number of devices in one go depending on what rooms needed to be used for any given clinical interventions. However, she was not able to comment on the dates presented as evidence that you had accessed both your own records and that of Colleague A. Witness 4 was also not able to comment on what happened on these dates, who was in the room with you at any time and if it was possible that a staff member could have looked over your shoulder to see your login details.

You have consistently denied accessing Colleague A's records.

Having heard all of the evidence, the panel concluded that the person who accessed and viewed Colleague A's records on 12 January 2018 was you. A likely explanation was that you wanted to get confirmation from the CRRS system that what Colleague A told you about her health during her return to work interview was correct.

Therefore, the panel determined that on the balance of probabilities, charge 2 is found 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 your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no

burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

The panel heard evidence from you under affirmation.

You stated that you have learnt a lot since your mother's illness and have worked on coping mechanisms to manage stressful situations by being aware of the need to ask for assistance from your employer or GP where necessary. You have also learnt coping mechanisms in stressful situations.

You said that you do not know why you accessed their clinical records and you deeply regret doing so.

You accepted that you made mistakes and the reason why you did not ask for help was because you thought you just had to 'get on with it' and that you were '*never off sick*.' On reflection you regard this as a mistake. You are now aware that you should have taken time off to help you cope with your personal circumstances.

In response to whether something similar happens in the future, you responded by saying that you would approach your parents as their daughter rather than approaching them as a nurse and that you would support them emotionally.

When asked about how your actions in relation to accessing Colleague A's records may have impacted her. You stated that you would like to take this opportunity to apologise and that each individual has a right to privacy and confidentiality. You stated that the Code of Conduct should be followed at all times to maintain public trust in the profession.

You stated that you currently work for a pharmaceutical company. You are responsible for maintaining confidential information. You also stated that although your current role is not a nursing role, you still ensure that things are done correctly, respecting confidentiality. You would make sure to seek for assistance if you have any concerns.

You said that you have always wanted to become a nurse as you enjoy the challenge it brings and you are passionate for delivering care to the public.

Submissions on misconduct and impairment

Ms Davies referred the panel to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Ms Davies submitted that the misconduct had to be serious.

Ms Davies 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 Davies identified the specific, relevant standards where your actions amounted to misconduct. She submitted that the following provisions of the Code have been breached:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion.

5 Respect people's right to privacy and confidentiality

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

5.3 respect that a person's right to privacy and confidentiality continues after they have died.

20 Uphold the reputation of your profession at all times

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.

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers.

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

Ms Davies submitted that your actions fell significantly short of the standards expected of a nurse. She submitted that one way the panel might consider seriousness is that even though no actual patient harm was caused, there was a risk of potential serious harm particularly by passing on health information to individuals when you should not have done so.

Additionally, Ms Davies submitted that there was psychological harm caused to Colleague A by your actions, as acknowledged in your evidence. She submitted that the panel may be concerned that these actions constitute a pattern of behaviour over a considerable period of time. This was an abuse of position of trust in your roles as a nurse, a colleague, and a manager.

Ms Davies 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)*.

Ms Davies acknowledged that you were going through a difficult time in your personal life and it may be that the panel will conclude that Colleague A was also going through a difficult time. Ms Davies acknowledged your training certificates, reflective statements and remorse put forward by you regarding your actions and evidence of training; but she submitted that you have not shown sufficient insight and this could best be described as developing. The panel should determine whether you have addressed any potential underlying attitudinal issues and whether you present a risk to the public.

Ms Davies submitted that based on the facts found proved, this panel may be concerned that it raises fundamental concerns about your trustworthiness as a registered professional. It could be said that at the time of committing these charges, you took advantage of your position as a nurse to obtain confidential, sensitive clinical information.

Ms Davies submitted that a finding of impairment is required on the grounds of public protection and public interest. She submitted that the panel are aware of the objectives of the NMC to protect, promote and maintain health and safety and wellbeing of the public and patients, and to uphold and protect the wider public interest. Public confidence in the profession would be undermined if a finding were not made in this case. This also includes upholding the proper professional standards for members of the nursing profession and with that in mind, Ms Davies submitted that public confidence in the profession would be undermined.

Therefore, Ms Davies submitted that your fitness to practise is impaired.

Ms Upadhyay referred the panel to your written statement which deals with each section of the Code that Ms Davies submitted to the panel. Ms Upadhyay submitted that you have acknowledged that section 1 of the Code is engaged as you stated that a colleague has the right to decide what information if any, they wish to disclose about their health.

In relation to 5.1, 5.3 and 5.5 of the Code, Ms Upadhyay submitted that you agreed in your own evidence that this Code applies in respect to your colleagues and that a manager must not abuse their power to access a colleague's or any other individual's records. Additionally, Ms Upadhyay submitted that you acknowledged that you breached 20.1, 20.2, 20.3, 20.5, 20.6 and 20.8 of the Code.

Ms Upadhyay submitted that you also acknowledged that you were in a managerial role at the time and breached the policy by accessing records without permission. She submitted that you clearly acknowledge at some length in your statements, but particularly in your further reflective statement and in your oral evidence that you have fallen short of the standards expected of a nurse.

Ms Upadhyay submitted that you have acknowledged the distress that your actions caused to others in particular, Colleague A, but there is no evidence of any actual harm caused to individuals. Ms Upadhyay referred the panel to Witness 4's evidence where she described you as '*open and honest*' and she had no reason to question your clinical performance, which would not put patients at risk of harm. Ms Upadhyay submitted that there is no risk of unwarranted harm to patients in the future as confirmed by Witness 4 in her oral evidence. You provided evidence about the way you have reflected on your actions and how you would address the difficulties from which they arose if they recurred.

Ms Upadhyay referred to your completed training. Ms Upadhyay submitted that you have demonstrated considerable insight by way of your reflection in relation to your actions, you were tearful, remorseful and you have remediated the concerns. The panel has heard compelling evidence of the mitigating exceptional personal circumstances at the time of these concerns. Ms Upadhyay submitted that she strongly disputes the suggestion that these actions demonstrate deep seated attitudinal issues that cannot be remedied. Ms

Upadhyay submitted that you have had a long standing and unblemished career as a nurse since 2001 and have received positive references from your current employer explaining that they had no concerns about your ability to follow and uphold patient confidentiality.

Ms Upadhyay submitted that there is high quality of evidence in respect of the extensive training that you have completed, your oral evidence and your reflection provided you with much deeper and more fundamental understanding of the principles and the absolute nature of the principles as far as confidentiality is concerned. She also submitted that there is no evidence of repetition since these incidents occurred including in your most recent nursing role at 'Tummy to Mummy.'

Ms Upadhyay submitted that you fully engaged with the NMC, provided evidence twice under affirmation, you were present at the hearing, provided detailed statements and other supporting evidence. She submitted that you have developed insight and demonstrated that you can practise kindly, safely and professionally. Therefore, Ms Upadhyay submitted that your fitness to practise is not currently impaired.

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor, who referred the panel to the case of *Grant* [2011].

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

1.5 respect and uphold people's human rights

5 Respect people's right to privacy and confidentiality

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

5.3 respect that a person's right to privacy and confidentiality continues after they have died.

10.5 take all steps to make sure that all records are kept securely

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

20 Uphold the reputation of your profession at all times

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

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

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

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers.

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that accessing records without authority is serious misconduct as this involved a breach of policy and procedures within the Trust as well as the NMC Code. The panel also noted that there has been a pattern of behaviour over a prolonged period of time and that you were in a managerial position at the time of these concerns. The panel acknowledged that you had access to the policy and undertook training but you failed to comply with the policy. The panel determined that confidentiality of patient records is a fundamental tenet of the nursing profession.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, your 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...'*

The panel finds that Colleague A was caused emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that you made some admissions to the charges, demonstrated an understanding of how your actions caused Colleague A emotional harm.

You demonstrated an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. You apologised to this

panel for your misconduct and demonstrated how you would handle the situation differently in the future. You accepted that you made an error of judgment and said this would not be repeated.

The panel acknowledged that you were going through a difficult time at the time in your personal life. In relation to your clinical practice as a nurse, there were a number of positive testimonials from your former colleagues and most recent employer.

The panel was satisfied that the misconduct in this case is capable of being remedied. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account your training certificates dated from 3 February 2020 to 16 April 2023 and reflective pieces written by you some of which are undated, addressing the concerns raised against you. The panel accepted that the evidence it heard from you was sincere and that you were determined not to repeat the misconduct.

The panel is of the view that you do not represent a risk to the public.

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 impairment on public interest grounds is required. The panel was of the view that considering you repeatedly accessed your parents', your deceased family friend's and your own records and although you accessed Colleague A's records only on one occasion, this was serious enough to breach a fundamental tenet of the nursing profession. This is because patients and members of the public rely on a healthcare professional to keep their information private and confidential. The panel determined that this would undermine public confidence in the profession and the NMC as

the regulator if a finding of impairment were not made in this case. Therefore, the panel finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of three years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

Submissions on sanction

Ms Davies outlined a number of aggravating factors. These included an abuse of position of trust in relation to Colleague A when you held a management position. Ms Davies submitted that you breached the Trust's policy on confidentiality and there had been a pattern of misconduct which spanned two years. Ms Davies submitted that you caused psychological harm to Colleague A and placed your parents at a risk of suffering harm. Ms Davies also submitted that you blamed other colleagues for the misconduct.

She submitted that the mitigating factors were that you have shown insight and remorse.

Ms Davies submitted that taking no further action or making a caution order would be inappropriate to deal with serious concerns surrounding the wider public interest. She submitted that whilst the panel found your misconduct is remediable, conditions of practice would not be appropriate.

Ms Davies submitted that the most appropriate sanction would be to impose a 12 month suspension order with no review. She submitted that the conduct displayed by you is very serious as it involved multiple incidents over a sustained period of time. In addition, there

was an abuse of trust, and psychological harm caused to Colleague A. With that in mind, Ms Davies submitted that this is not a type of conduct that could be isolated or be placed at the lower end of the spectrum of impaired fitness to practise as this calls into question your professionalism and trust as a registered professional.

Ms Davies submitted that the public should feel their sensitive personal data will not be improperly accessed by health care professionals. She submitted that this sort of conduct could have a '*knock on*' effect on the health and safety of the public generally.

Ms Davies acknowledged the work you have done to strengthen your practice, which is why the sanction bid has changed from a strike off order.

Therefore, Ms Davies submitted that the sanction of a 12 month suspension is proportionate to demonstrate the unacceptability of your actions and to declare and uphold proper standards. As you have reflected sufficiently and showed insight means that in due course that you could return to the register. The panel heard you had a difficult time and that this is not an explanation for this conduct that might feel that is something that may have impacted on your general mental state and therefore, there is some mitigation rather than an explanation. Ms Davies submitted that the order be allowed to lapse on expiring without review.

Ms Upadhyay submitted that charge 1 relates to breach of process but not confidentiality. When considering the seriousness of the charges and pattern of misconduct, there is a difference between charges 2 and 5 and there is a single date of access to the records only in both of these charges. Ms Upadhyay submitted that there is no suggestion that you shared any information you discovered as far those two charges are concerned and there has been no further breach of confidentiality.

In terms of breach of trust in your position as a manager, Ms Upadhyay submitted that this is relevant to the panel's consideration, but that this occurred only on one occasion. She also submitted that there is no suggestion that you acted improperly and breached

confidentiality on any other occasion as far as colleagues are concerned. Ms Upadhyay submitted that you apologised and showed remorse and insight into the concerns.

In relation to the mitigating features, Ms Upadhyay submitted that you have provided evidence of insight and attempted to address the concern including apologising to the panel and your admissions to some of the charges. You have also demonstrated an effort to prevent similar things happening again. You subsequently followed principles of good practice. Your personal mitigation included periods of stress and illness, personal hardship and workplace difficulties. Ms Upadhyay submitted that you put forward compelling evidence in that regard.

Ms Upadhyay submitted that there is evidence of your good practice with no previous or subsequent findings in respect of breach of confidentiality. Since then, you had a period of successfully practising as a nurse since your dismissal from the Trust with multiple references that confirm that you were fully complying with all principles of confidentiality.

Ms Upadhyay submitted that Witness 4 and references of several other colleagues all speak very highly of you both in relation to your clinical ability and your character generally. She submitted that you have an unblemished career and have been working as a nurse since 2001. There is compelling evidence of insight, reflection and strengthened practice.

Ms Upadhyay submitted that a caution order would be the most appropriate order. She submitted that you have shown insight and remorse, reflected at length, have completed further training, and demonstrated a period of safe practice. Ms Upadhyay submitted that you have fully remediated the risk of repetition of the concerns raised in the charges.

Ms Upadhyay noted that the caution order can run up to five years and that the panel has not made a finding that there is any ongoing risk to public safety. She submitted that there are no clinical concerns, no dishonesty involved and the current impairment finding is therefore on public interest grounds.

Ms Upadhyay invited the panel to find that a caution order of an appropriate length is a proportionate and sufficient sanction to mark the finding of current impairment on this basis and to uphold the public confidence and reputation of the profession, particularly when a rigorous disciplinary assessment of your fitness to practise and a finding of misconduct and current impairment is in place.

Ms Upadhyay submitted that you expressed yourself to be embarrassed, humiliated, mortified, deeply ashamed, and that the public interest would not be served by restricting your practise further by way of either the conditions of practice order or a suspension order. She submitted that given the nature of the concerns here, which are not clinical or health related, a conditions of practice order would not be appropriate.

If the panel do not decide on a caution order, Ms Upadhyay submitted that a short suspension order of three months would be appropriate without a review and would be sufficient to mark the seriousness of the concerns found proved including the wider public interest. Ms Upadhyay acknowledged that the panel have not found evidence of harmful deep seated personality or attitudinal problems and no evidence of repetition of behaviour since the incident. Ms Upadhyay submitted that a suspension order will cause significant financial hardship to you. She also submitted that there is no suggestion that a suspension order would be provide an opportunity for you to gain further insight or to reflect further, or to carry out further training. However, Ms Upadhyay submitted that if the panel are minded to impose a suspension order, she submitted that the panel should consider what expectations it has of you, what purpose that order would serve, and what you would be expected to do for the duration of that order.

Ms Upadhyay submitted that her primary submission was that there should be a caution order as it would appropriately serve the public interest and public confidence in the profession.

Decision and reasons on sanction

The panel accepted the advice of the legal assessor.

Having found your 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 considered the following to be the principal aggravating features:

- Prolonged period of time and multiple occasions of the incidents that had occurred;
- Abuse of a position of trust;
- A pattern of misconduct over a period of time;
- Conduct which put your parents at risk of suffering harm;
- Emotional harm caused to Colleague A;
- Breach of Trust policy and confidentiality; and
- Considering your seniority, you should have been aware of the policies and procedures within the workplace.

The panel considered the following to be the principal mitigating features:

- Early admission to some of the charges;
- You apologised appropriately;
- You demonstrated insight and satisfied the panel that you were fit to practise;
- Previous good character and no previous regulatory concerns;
- Your personal difficulties at the time as submitted on your behalf;
- Positive testimonials from colleagues and employers; and
- Undertaken steps to strengthen your practice.

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.

The panel next considered whether to make a caution order.

The panel noted that you have shown insight into your conduct. The panel noted that you made admissions and apologised to this panel for your misconduct, showing evidence of genuine remorse. You have engaged with the NMC since referral. The panel has been told that there have been no adverse findings in relation to your practice either before or since these incidents.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel noted that there is no evidence of any clinical concerns within your practice and based on the testimonials, you have been a competent nurse, you have progressed to a senior level and have obtained a managerial position within the Trust. The panel concluded that no useful purpose would be served by a conditions of practice order. It is not necessary to protect the public and would not assist you to return to nursing practice.

The panel considered that a suspension order would be disproportionate in this case. As a result of your misconduct, you were dismissed from your nurse manager position and your ability to practise as a nurse has been greatly restricted. This misconduct has already had a substantial effect on your life. The public would not be served by an order preventing a nurse of your capability and previous good record from practising during a period of suspension. It would be preferable and proportionate to reflect that misconduct by imposing a caution order which would be a reminder to you and to any employer of your misconduct.

The panel has decided that a caution order would adequately protect the public. For the next three years, your employer or any prospective employer will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of three 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 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 your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your 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 you in writing.

That concludes this determination.