

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

**Substantive Hearing  
Wednesday 25 October 2023 – Wednesday 01 November 2023**

Virtual Hearing

<b>Name of Registrant:</b>	<b>Natalie Rafferty</b>
<b>NMC PIN</b>	07B0844E
<b>Part(s) of the register:</b>	RNMH: Mental Health Nurse - Level 1 Sub Part 1 -25 May 2007
<b>Relevant Location:</b>	Cumbria, Northumberland
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Richard Weydert-Jacquard (Chair, Registrant member) Hannah Harvey (Registrant member) Matthew Wratten (Lay member)
<b>Legal Assessor:</b>	Caroline Hartley
<b>Hearings Coordinator:</b>	Hazel Ahmet
<b>Nursing and Midwifery Council:</b>	Represented by Victoria Shehadeh, Case Presenter
<b>Ms Rafferty:</b>	Not present and not represented at the hearing
<b>Facts proved:</b>	Charges 1, 2, 3, 4, and 5.
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-Off Order</b>
<b>Interim order:</b>	<b>Suspension (18 months)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Rafferty was not in attendance and that the Notice of Hearing letter had been sent to Ms Rafferty's registered email address by secure email on 21 September 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Rafferty's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

## **Decision and reasons on proceeding in the absence of Ms Rafferty**

The panel next considered whether it should proceed in the absence of Ms Rafferty. It had regard to Rule 21 and heard the submissions of Ms Shehadeh who invited the panel to continue in the absence of Ms Rafferty. She submitted that Ms Rafferty had voluntarily absented herself. Ms Shehadeh was engaging with Ms Rafferty prior to the beginning of this hearing, whereby Ms Rafferty confirmed that she would not be attending.

Ms Shehadeh referred the panel to the documentation from Ms Rafferty which included an email sent by her to her case officer, stating the following:

*'Apologies for the delay in replying , I will not be attending the hearing and would like it to go ahead without me.'*

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 decided to proceed in the absence of Ms Rafferty. In reaching this decision, the panel considered the email sent by Ms Rafferty voluntarily absenting herself, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Rafferty;
- Ms Rafferty has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a witness who will attend today to give live evidence
- Not proceeding may inconvenience the witness, their employer and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred between 2012 and 2019.
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

The panel considered that there was some disadvantage to Ms Rafferty in proceeding in her absence. Although the evidence upon which the NMC relies would have been sent to her at her registered email address, she would not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be partially mitigated by the panel making allowances and exploring any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Ms Rafferty's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and not provide oral evidence or make oral submissions on her own behalf. However, the panel did have regard to her written materials.

In these circumstances, the panel decided that it is fair to proceed in the absence of Ms Rafferty. The panel drew no adverse inference from Ms Rafferty's absence in its findings of fact.

## Details of charge

*'That you, a registered nurse:*

- 1) *Between January 2012 and November 2019 accessed Patient A's RIO Audit Records on 261 occasions without their consent or a lawful basis to do so.*
- 2) *Between January 2012 and November 2019 accessed Patient B's RIO Audit Records on 126 occasions without their consent or a lawful basis to do so.*
- 3) *Between January 2012 and November 2019 accessed Patient C's RIO Audit Records on 19 occasions without their consent or a lawful basis to do so.*
- 4) *Between January 2018 and November 2019 accessed Patient D's RIO Audit Record on 1 occasion without their consent or a lawful basis to do so.*
- 5) *Between January 2018 and November 2019 accessed Patient E's RIO Audit Record on 1 occasion without their consent or a lawful basis to do so.*

*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 Shehadeh made an application for parts of this case be held in private on the basis that proper exploration of Ms Rafferty's case may involve the identification of Patients A, B, C, D, and E, and put at risk their own confidentiality. She further applied to go into private session as there may be mention of Ms Rafferty's own health and personal, family matters. 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 reference to the nature of the relationships between Ms Rafferty and Patients A, B, C, D, and E, the panel determined to go into private session if and when such matters arise, in order to protect the privacy of these patients, and to avoid the risk of *'jigsaw identification'*. The panel determined that given the close personal nature of the observers in this case, and their inter-related connections, the panel will be asking all observers to leave the hearing should this situation arise. The panel further determined to go into private session if and when any matters regarding Ms Rafferty's family matters, or health, were to arise.

## Background

The charges arose whilst Ms Rafferty was employed as a registered nurse by Tyne and Wear NHS Foundation Trust, ('the Trust').

Ms Rafferty faces charges of having accessed private records without the patients consent or lawful basis to do so. The documents accessed by Ms Rafferty relate not only to adults, but also to children. Ms Rafferty's employer was made aware of her unauthorised accessing of these patients records during an audit exercise which took place in March 2019. The information governance team at the Trust carried out regular audits of patients' notes, and during the course of one of those audits, it was discovered that Ms Rafferty had accessed patient notes. Each charge alleges that she accessed the patients Electronic Patient Record System (RIO) without a lawful basis, ranging from 1 single time to 261 occasions. Ms Rafferty informed her employer during the course of her investigation, that the accessing of patient notes had over time become '*a habit*'. Ms Rafferty has indicated in writing that she admitted the charges, however, is not present and will not be able to admit to the charges formally, on record. Ms Rafferty further expressed significant remorse during the investigation.

Ms Shehadeh provided her closing submissions.

Ms Shehadeh submitted that Ms Rafferty made admissions at a local level during the Trusts' fact findings stage, and that none of the patients had given consent for their records to be accessed. Ms Shehadeh submitted that Ms Rafferty was aware that the patients did not consent for her to access their patient records and that she was not involved in their care, nor did she have reason to access them. She submitted that Ms Rafferty had accepted that she did not access the patient records for any clinical reason, but for her own personal interest.

Ms Shehadeh submitted that the evidence in this case is clear, consistent, and '*overwhelming*', and invited the panel to find each of the charges proved.

## **Decision and reasons on facts**

At the outset of the hearing, Ms Shehadeh confirmed to the panel that Ms Rafferty on the Case Management Form (CMF), had admitted to Charges 1, 2, 3, 4, and 5, however, due to her non-attendance, she cannot make any admissions in person, into the record.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Witness 1: [PRIVATE]

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC, and Ms Rafferty's CMF response.

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

In reaching its decision on finding all of the charges proved, the panel took into account the Case Management form in which Ms Rafferty accepted and admitted to all charges, her admission made in November 2019 during the Trust's fact-finding meeting, the witness statement made by Witness 1 and the supporting exhibit documents which were extensive and comprehensive.

### **Charge 1)**

*'Between January 2012 and November 2019 accessed Patient A's RIO Audit Records on 261 occasions without their consent or a lawful basis to do so.'*



**This charge is found proved.**

The panel took account of the following:

*'Witness Statement of [Witness 1] – para 6, 7, 14, 15 and 17, 18, 19, 20 and 21  
Exhibit [...] 5 Patient A's RIO Records'*

**Charge 2)**

*'Between January 2012 and November 2019 accessed Patient B's RIO Audit Records on 126 occasions without their consent or a lawful basis to do so.'*

**This charge is found proved.**

The panel took account of the following;

*'Witness Statement of [Witness 1] – para 6, 7, 14, 15 and 22, 23, 24  
Exhibit [...] 6 – Patient B's RIO Audit Records'*

**Charge 3)**

*'Between January 2012 and November 2019 accessed Patient C's RIO Audit Records on 19 occasions without their consent or a lawful basis to do so.'*

**This charge is found proved.**

The panel took account of the following:

*'Witness Statement of [Witness 1] – para 6, 7, 14, 15 and 25, 26  
Exhibit [...] 7 – Patient C's RIO Audit Records'*

**Charge 4)**

*'Between January 2018 and November 2019 accessed Patient D's RIO Audit Record on 1 occasion without their consent or a lawful basis to do so.'*

**This charge is found proved.**

The panel took account of the following:

*'Witness Statement of [Witness 1] – para 6, 7, 14, 15 and 27, 28  
Exhibit [...] 8 – Patient D's RIO Audit Record'*

**Charge 5)**

*'Between January 2018 and November 2019 accessed Patient E's RIO Audit Record on 1 occasion without their consent or a lawful basis to do so.'*

**This charge is found proved.**

The panel took account of the following:

*'Witness Statement of [Witness 1] – para 6, 7, 14, 15 and 27, 28  
Exhibit [...] 9 – Patient E's Audit Record'*

Therefore, the panel found Charges 1, 2, 3, 4, and 5, proved in their entirety.

## **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 Ms Rafferty's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

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

## **Submissions on misconduct**

In coming to its decision, the panel had regard 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 Shehadeh invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of '*The NMC code of professional conduct: standards for conduct, performance and ethics (2004)*' (the Code) in making its decision.

Ms Shehadeh identified the specific, relevant standards where Ms Rafferty's actions amounted to misconduct. She submitted that, the fact that you have found charges

proved, and that Ms Rafferty's conduct falls far below the standards expected of a registered nurse, her actions merit a finding of misconduct.

Ms Shehadeh submitted that Ms Rafferty abused her position as a mental health nurse in accessing the patient records, which she would not have had access to if it had not been for her privileged position. Further, it was submitted that Ms Rafferty was an experienced professional, and thus would have been well aware of what was expected of her as a registered nurse, and what was not permitted.

Further, Ms Shehadeh submitted that Ms Rafferty herself accepted that she knew at all times that the accessing of those patient records was unethical and a breach of the rules. Ms Rafferty stated the following: *'The whole time I had been accessing these notes, I felt sick to my stomach. I knew what I was doing was wrong. I have worried about it so much and then it became a habit. I had to know what was going on.'*

Ms Shehadeh highlighted that this is not a case where there was a training need or a gap in knowledge. She noted that this is a case whereby the same misconduct and action of accessing patient records was repeated on over 200 occasions, over the course of a protracted period starting in 2012 and extending up until her access to notes was removed by her employer in 2019.

Ms Shehadeh stated that Ms Rafferty said she was motivated by worry and concern [PRIVATE]. In particular, she says that she was concerned about [PRIVATE]. Ms Shehadeh submitted that this was a clear violation of Patient A's privacy.

Ms Shehadeh submitted that Ms Rafferty used her privileged position as a nurse to gain access to very sensitive personal information that the individuals in question had chosen not to share with her of their own volition. It was said that Ms Rafferty made a clear choice to cross the boundaries of patient confidentiality because of [PRIVATE], in the full knowledge that doing so was wrong.

Ms Shehadeh submitted that [PRIVATE].

Ms Shehadeh submitted that Ms Rafferty stated that her [PRIVATE].

Ms Shehadeh submitted that that the charges span from the period of 2012 through to 2019, and that multiple areas of the NMC Code had been breached in this case. She referenced the following codes:

***NMC, The Code, Standards of Conduct, Performance and Ethics for Nurses and Midwives (2008):***

- 4) You must act as an advocate for those in your care, helping them to access relevant health and social care, information and support.*
- 5) You must respect people's right to confidentiality.*
- 6) You must ensure people are informed about how and why information is shared by those who will be providing their care.*
- 7) You must disclose information if you believe someone may be at risk of harm, in line with the law of the country in which you are practising.*
- 49) You must adhere to the laws of the country in which you are practising.*
- 57) You must not abuse your privileged position for your own ends.*
- 61) You must uphold the reputation of your profession at all times.*

***NMC, The Code, Professional Standards of Practice and Behaviour for Nurses, Midwives, and Nursing Associates (2015):***

- 5.1) respect a person's right to privacy in all aspects of their care*
- 5.2) make sure that people are informed about how and why information is used and shared by those who will be providing care*
- 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*
- 20.4) keep to the laws of the country in which you are practising*
- 20.5) treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

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

The same breaches in the 2018 NMC Code, apply.

Ms Shehadeh submitted that Ms Rafferty's conduct falls far below the standards expected of a registered nurse and constitutes a substantial breach of the Code of conduct over the course of a prolonged period of time. She submitted that basic and fundamental principles of patient confidentiality have been breached on the basis of her submissions. Ms Shehadeh invited the panel to find that Ms Rafferty's conduct amounted to misconduct.

### **Submissions on impairment**

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

Ms Shehadeh submitted that if the panel were to conclude to a finding of misconduct, then the issue of impairment should be considered.

Ms Shehadeh submitted that although Ms Rafferty did immediately admit the conduct and express remorse, she failed to fully grasp the harm that she had caused. Ms Rafferty was not able to satisfy her employers during her disciplinary proceedings in the workplace, that she would not access the records again. Ms Shehadeh referenced the local investigation report, whereby Ms Rafferty stated, *'I would be in big trouble if one of the patients found out [...] she would call the police and get a solicitor'*.

Ms Rafferty appeared largely focused on the consequences for herself, due to what she had done. Ms Shehadeh submitted that it was only after prompting that she began to turn her mind to the effect on the patients themselves.

Ms Shehadeh submitted that within Ms Rafferty's reflective piece, she does accept that she breached the code and fundamental principles. However, it is clear that Ms Rafferty's main focus was herself, and the consequences for herself of her misconduct coming to light.

Ms Shehadeh submitted that although Ms Rafferty does accept her misconduct, she continues to blame her actions on stress and high patient load. Ms Rafferty has not explained what steps she would take to rebuild trust in the nursing profession, or indeed trust that employees could place in her.

Ms Shehadeh also highlighted to the panel that Ms Rafferty had provided it with a GDPR training certificate dated June 2023. However, she went on to stress that this case was not an example whereby Ms Rafferty's misconduct could be attributed to a lack of knowledge, or training. Ms Shehadeh stated that, Ms Rafferty has not addressed what she has done, what boundaries she might have put in place, or what system of accountability she has set up around herself to satisfy people that her misconduct will not be repeated.

Ms Shehadeh submitted that there may be a capacity for remediation, but this is difficult as this case relates to attitudes towards patients and the ability to abide by rules. She further submitted that Ms Rafferty has expressed remorse and accepted the charges but has not explained how she would act differently at a future date. Ms Shehadeh further submitted that there remains a likelihood of repetition in this case, as there are many variable factors, and Ms Rafferty's personal life cannot be controlled.

Ms Shehadeh submitted that there has been emotional harm caused in this case in the form of distress, as the confidentiality of vulnerable information was breached, and therefore a finding of impairment should be found on the basis of public protection.

Ms Shehadeh submitted that the reputation of the profession has been damaged by the conduct in this case, and if the public were aware of the conduct, even in the light of its full circumstances, their confidence in the profession would be shaken.

In light of this, Ms Shehadeh submitted that a finding of impairment should be found on public interest grounds and invited the panel to find Ms Rafferty's practice currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

### **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Ms Rafferty's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Rafferty's actions amounted to a breach of the Code. Specifically, as Ms Shehadeh had stated;

#### ***NMC, The Code, Standards of Conduct, Performance and Ethics for Nurses and Midwives (2008):***

*4) You must act as an advocate for those in your care, helping them to access relevant health and social care, information and support.*

*5) You must respect people's right to confidentiality.*

*6) You must ensure people are informed about how and why information is shared by those who will be providing their care.*

*7) You must disclose information if you believe someone may be at risk of harm, in line with the law of the country in which you are practising.*

*49) You must adhere to the laws of the country in which you are practising.*

*57) You must not abuse your privileged position for your own ends.*



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

***NMC, The Code, Professional Standards of Practice and Behaviour for Nurses, Midwives, and Nursing Associates (2015):***

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

*5.2) make sure that people are informed about how and why information is used and shared by those who will be providing care*

*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*

*20.4) keep to the laws of the country in which you are practising*

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of serious misconduct. However, the panel was of the view that Ms Rafferty's conduct is serious misconduct, with numerous breaches of patient's confidential records over a prolonged period of time. The panel noted that the patients in question were all vulnerable at the time. The panel found that Ms Rafferty's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Ms Rafferty's fitness to practise is currently impaired.

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

In this regard, the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

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

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

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

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

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

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

The panel determined that the first three limbs of Dame Janet Smith's "test" were engaged.

The panel found that patients were put at risk of emotional harm and were directly caused emotional harm as a result of Ms Rafferty's misconduct. The panel determined that as such, Ms Rafferty breached the implicit trust between nurse and patient. Consequently, and in concert with the multiple breaches of the Code, the panel considered that Ms Rafferty had brought the reputation of the profession into disrepute. Further, that Ms Rafferty had breached the fundamental tenets of professionalism and trust placed on the nursing profession.

Regarding insight, the panel considered that Ms Rafferty has not adequately addressed the harm she has caused to the patients whose records were accessed. Though Ms Rafferty has acknowledged her misconduct, she has not presented full insight into the emotional repercussions this has brought to the patients who were impacted. It determined that Ms Rafferty had not addressed the root cause of her misconduct.

The panel considered the high number of patient confidentiality breaches over a prolonged period, to indicate a deeper-seated behavioural problem, that though, not impossible to remediate, would likely be harder to remediate than a single or confined instance of confidentiality breach. The panel was therefore satisfied that the misconduct in this case is capable of being addressed and is remediable, however, such remediation will be difficult to attain as Ms Rafferty has claimed her misconduct to be '*a habit*'. Furthermore, Ms Rafferty had said that her misconduct arose out of difficult life circumstances. The panel considered that similar circumstances could re-occur, leading to a risk of repetition.

The panel carefully considered the evidence before it in determining whether or not Ms Rafferty has taken steps to strengthen her practice. The panel determined that Ms Rafferty has not provided sufficient evidence to secure confidence that the risk of repetition in this case has been diminished to a satisfactory extent. Ms Rafferty has presented an intense level of remorse, and though intense, was not adequately developed as she lacked insight into the wider impact of her actions upon all of the patients whose confidentiality was breached.

The panel is of the view that there is a risk of repetition based on the fact that Ms Rafferty has limited insight of the impact on the service users and patients to whom she caused actual harm. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds was required because, if a well-informed member of the public were aware of the conduct, even in the light of the contextual circumstances, their confidence in the profession would be damaged. A member of the public would expect impairment to be found for the practice of a nurse facing such misconduct.

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

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

## **Sanction**

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

## **Submissions on sanction**

Ms Shehadeh submitted that this stage of the process is not designed to punish Ms Rafferty, but instead, to protect the public and uphold the standards of the nursing profession.

Ms Shehadeh submitted that this case does fall towards the top end of the scale of seriousness.

Ms Shehadeh submitted in relation to aggravating circumstances, that the misconduct found proved in this case is far from being caused by an isolated lapse of judgement, but rather, is conduct that persisted over many years. She submitted that many patients were affected, and that the misconduct in this case violated basic principles of patient confidentiality, despite Ms Rafferty's long experience and knowledge of clinical rules and represented an abuse of her position of trust as a registered nurse.

Ms Shehadeh submitted in relation to mitigating circumstances, Ms Rafferty has admitted to the charges at a local level and has expressed an intense level of remorse and some limited insight. She submitted that Ms Rafferty [PRIVATE], has no previous misconduct findings, and has expressed her commitment to nursing. Further, there has been material provided by third parties, presenting positive feedback regarding her practice.

Ms Shehadeh submitted that taking no action is not suitable as there is a continuing of risk, and the seriousness of this case is high. She further submitted that a caution order is also unsuitable, as it would fail to send a '*proper message*' regarding the seriousness of this case. Further, Ms Shehadeh submitted that a conditions of practice order would not be suitable, as conditions would not be workable or enforceable, as there are attitudinal concerns within this case. Further, Ms Shehadeh submitted that a suspension order is not suitable in this case, as it would be insufficient to address the issues at hand. Ms Shehadeh highlighted that this was not an isolated incident, and that the misconduct in this case is serious.

Ms Shehadeh submitted that the NMC are seeking a striking-off order, as this is the most appropriate sanction, in light of the panel's findings. Ms Shehadeh submitted that Ms Rafferty's misconduct has raised fundamental questions about her professionalism, and that her actions had become '*an addiction*' of sorts, presenting a deep-seated attitudinal concern, which is hard to remediate. Ms Shehadeh further submitted that the public confidence cannot be maintained if Ms Rafferty remains on the register, and that a striking-off order is the only suitable sanction.

The panel also bore in mind Ms Rafferty's final registrant's response bundle, in particular, it noted the work testimonials which attested to the positive, good character, to her good clinical ability outside of data protection concerns. The panel also considered the recognition Ms Rafferty received for her work supporting homeless people. Further, the panel also took into account that Ms Rafferty had undertaken GDPR training and submitted reflective pieces. The panel gave consideration to the difficult personal circumstances Ms Rafferty was experiencing during the time of the misconduct.

## **Decision and reasons on sanction**

Having found Ms Rafferty's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features in Ms Rafferty's case:

- Ms Rafferty's abuse of her position of trust as a registered nurse;
- Her incomplete insight into her failings;
- Her pattern of repeated misconduct over a long period of time;
- Her conduct which caused harm to five patients;
- Her misconduct having involved people she knew to be vulnerable patients;
- Her misconduct violating basic principles of patient confidentiality.

When considering the aggravating features in this case, the panel was concerned by the persistent nature of the misconduct. Furthermore, the panel considered that Ms Rafferty put patients at risk of harm and had testimony before it in the form of impact statements, from vulnerable mental health patients. These patients attested to the deleterious impact of Ms Rafferty's actions on their mental health.

The panel also considered that Ms Rafferty's persistent breaching of confidentiality was made worse by the fact that she was an experienced registered mental health nurse. Ms Rafferty was therefore aware of the importance of maintaining confidentiality, particularly for vulnerable patients.

The panel also took into account the following mitigating features in Ms Rafferty's case:

- Ms Rafferty's admissions of her misconduct in these proceedings at a local level;
- Her expression of an intense level of remorse;
- Her having no previous history of misconduct or regulatory findings;
- All of her references and positive work testimonials;
- Her commitment to nursing;
- [PRIVATE]

The panel bore in mind that the misconduct was admitted at a local level, and whilst they did consider that there was an intense level of remorse, it was a narrow level of remorse that did not fully demonstrate the insight into the impact upon vulnerable service users. The panel considered that there were no previous fitness to practice findings against Ms Rafferty and accepted her positive work testimonials and the GDPR training she undertook. Consequently, the panel determined that prior to the misconduct which started in 2012, and ended in 2019, Ms Rafferty has demonstrated effective clinical practice. Her current good conduct is confirmed by a reference from her present nursing agency, Florence.

However, on balance, when weighed against the evident persistent misconduct, and its deleterious impact upon vulnerable patients' mental health, the panel considered that the aggravating features of this case far outweighed the evidence of mitigation presented to it.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Ms Rafferty's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*



The panel considered that Ms Rafferty's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Rafferty's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining, but rather raises fundamental, deep seated, attitudinal concerns. Furthermore, the panel concluded that the placing of conditions on Ms Rafferty's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious

breach of the fundamental tenets of the profession evidenced by Ms Rafferty's actions is fundamentally incompatible with her remaining on the register.

A suspension order would protect the public for a short period of time. However, the panel determined that in view of the severity, the longitudinal, far-ranging nature of the misconduct, and the sanctions guidance, a suspension order would not meet the public interest in this case.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Ms Rafferty's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Rafferty's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Ms Rafferty's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession and to declare and uphold proper professional standards expected of a registered nurse.

This will be confirmed to Ms Rafferty in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Ms Rafferty's own interests until the striking-off sanction takes effect. The panel accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Shehadeh. She submitted that the NMC are requesting for an interim suspension order to be placed on the practice of Ms Rafferty, for a period of 18 months. Ms Shehadeh highlighted that Ms Rafferty is currently working, and therefore, if an interim order is imposed, she will need to stop working as a registered nurse immediately. Ms Shehadeh submitted that an interim suspension order would be both consistent with the panel's findings on public protection and risk, and with their findings on the public interest.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate in this case, due to the reasons already identified in the panel's

determination for imposing the substantive order. In the panel's determination on impairment, the panel concluded that Ms Rafferty still represented a risk to the public. The panel therefore imposed an interim suspension order for a period of 18 months in order to stop Ms Rafferty from being able to work as a registered nurse, until the striking-off order commences. This order is made for the protection of the public and otherwise in the public interest, because of the seriousness of Ms Rafferty's misconduct.

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

That concludes this determination.