

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

**Substantive Hearing
Tuesday, 7 January 2025 – Friday, 10 January 2025**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Paul Simon Morrell

NMC PIN 11H1096E

Part(s) of the register: Nurses part of the register Sub part 1 RNC:
Children's nurse, level 1 (26 September 2011)

Relevant Location: Nottingham

Type of case: Misconduct

Panel members: Andrew Quested Harvey (Chair, lay member)
Janine Ellul (Registrant member)
Gary Trundell (Lay member)

Legal Assessor: Jayne Salt

Hearings Coordinator: Rose Herson-Lynch

Nursing and Midwifery Council: Represented by Brittany Buckell, Case Presenter

Mr Morrell: Present and represented by James Marsland, (5
Paper Buildings instructed by Royal College of
Nursing)

Facts proved by admission: Charges 1 and 2

Fitness to practise: Impaired

Sanction: Caution Order (2 years)

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

At the outset of the hearing, Mr Marsland made a request that this case be held partly in private on the basis that proper exploration of your case [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 Buckell supported the application to the extent that any references to [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.

The panel determined to rule on whether or not to go into private session in connection with matters related to [PRIVATE].

Notification of previous position held

As a preliminary matter, the Chair explained to the parties that the bundle of NMC papers had been served on the panel the day before this hearing commenced. On reviewing the papers, the Chair had noted that (prior to the matters to which the allegations in this case relate) you had worked at a hospital in Derby.

The Chair explained that, at the time at which you had worked there, he had been a Governor of the then Derby Hospitals NHS Foundation Trust and Chair of its Appointments Committee. The Chair stated he did not recall ever having met you or having any other contact with you, although it was possible he may have met you as governors had contact with a wide-range of staff. The Chair invited observations from the NMC and your representative.

For the NMC, Ms Buckell saw no reason that required the Chair to recuse himself from consideration of your case. On your behalf, Mr Marsland took the same position.

Details of charge (as amended)

That you, a registered nurse:

- 1) Between 30 June 2022 and 17 July 2022 engaged in a personal relationship with a patient's mother.

- 2) Some of the communications you engaged in with the patient's mother were sexual.

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

Decision and reasons on application to amend the charge

The panel, under Rule 28 of 'The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004' (The Rules), proposed to amend the wording of charge 2.

The proposed amendment was to reflect the serious elements of the case as the current charge may not allow findings to be made that sufficiently protect the public. It was submitted by the panel that the proposed amendment would more accurately reflect the mischief in the case.

That you, a registered nurse:

- 1) Between 30 June 2022 and 17 July 2022 engaged in a personal relationship with a patient's mother.

2) ~~Your conduct specified in charge 1 was sexually motivated in that you intended to pursue a future sexual relationship with a patient's mother.~~ **Some of the communications you engaged in with the patient's mother were sexual.**

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

The panel heard submissions from Ms Buckell who was not opposed to the amendment, although she further submitted that the charge might be worded to include references to sexual gratification in accordance with the case of *Basson v General Medical Council [2018] EWHC505 (Admin)*.

The panel also heard submissions from Mr Marsland that there was no objection to the amendment which Mr Marsland considered to be an improvement.

The panel accepted the advice of the legal assessor which included reference to *The Professional Standards Authority for Health and Social Care v The Nursing and Midwifery Council, Ms Winifred Nompumelelo Jozi [2015] EWHC 764 (Admin)* and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' (the Rules).

The panel was of the view that such an amendment was in the interest 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 amend the charge to better reflect the evidence presented in the case.

Background

The NMC received a referral in respect of you on 5 September 2022. You first entered onto the NMC register on 26 September 2011.

You informed your manager that you had engaged in a virtual sexual relationship with a child patient's mother [PRIVATE] between 30 June 2022 and 17 July 2022. You stated that the relationship had consisted of the mutual sending of social media messages, text messages and phone calls, some of which were of a sexual nature.

The contact began when the patient's mother contacted you on Facebook and you accepted their message request. You said initially it was more of a friendship relationship that began [PRIVATE].

You were asked by your manager to show examples of the messages exchanged but you said you could not do so as you had already deleted them. You told your manager that the relationship with the patient's mother started as a friendship and escalated into the sending of sexual messages.

You stated that as the messages of a sexual nature and the frequency of messages escalated you ended contact with the patient's mother and blocked their number. You told your manager that the patient's mother started to harass you and contact you through your eBay account. You subsequently contacted the police regarding the harassment.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Marsland who informed the panel that you made full admissions to charge 1. During the hearing, after charge 2 was amended, the panel heard again from Mr Marsland who informed the panel that you made full admissions to charge 2 as amended.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of your admissions.

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 ability to practise kindly, safely and professionally.

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.

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.*', and the case of *R (remedy UK Ltd) v General Medical Council* [2010] EWHC 1245.

Miss Buckell 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.

Miss Buckell identified the specific, relevant standards where your actions amounted to misconduct.

Mr Marsland submitted that you have made a number of admissions about your conduct in the context of the Code and the potential consequences of your actions.

Mr Marsland submitted that as the panel begin to make judgements about the case, beyond finding the facts, that they consider this case primarily through the prism of the breach in professional boundaries resulting in sexual messaging rather than sexual misconduct. Mr Marsland further submitted that cases concerning sexual misconduct and the subsequent guidance often relates to somewhat different and more serious, even criminal, actions.

Mr Marsland submitted that this case regards the breaching of professional boundaries, how they were breached and the consequences of that breach rather than being a case regarding sexual misconduct.

Submissions on impairment

Miss Buckell 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).

Miss Buckell submitted that parts of your reflections that you provided to the panel do not fully accept your own role in the matters that gave rise to these proceedings.

Miss Buckell submitted that you have brought the nursing profession into disrepute and that your conduct could be considered attitudinal and so you could be liable to repeat this conduct in the future.

Miss Buckell referred the panel to the NMC Guidance DMA-1 and specifically the section with regards to consideration of the public interest. Miss Buckell submitted that the nature of the concerns are more difficult to put right.

Miss Buckell further referred the panel to NMC Guidance *Can The Concern Be Addressed* FTP-15a and specifically:

'Decision makers need to be aware of our role in maintaining confidence in the professions by declaring and upholding proper standards of professional conduct. Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.

Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:...

- *inappropriate personal or sexual relationships with people receiving care or other vulnerable people or abusing their position as a registered nurse, midwife or nursing associate or other position of power to exploit, coerce or obtain a benefit'*

Miss Buckell submitted that you engaged in a personal relationship with the patient's mother and that the patient's mother could be seen as being in a particularly vulnerable position.

Mr Marsland submitted that your fitness to practice is not currently impaired. Mr Marsland further submitted that:

‘Submissions relating to the relevant considerations set out in the NMC Guidance appear below. It is hoped that that approach assists the Panel, however, it does lead to an element of repetition. Therefore, in summary, the Registrant invites the Panel to consider the following:

- *The finding of misconduct in this case is isolated.*
- *He has been transparent about his actions and taken responsibility.*
- *He has demonstrated insight.*
- *He has taken positive steps to address the issue.*
- *He remains highly thought of by colleagues who are aware of the facts of his misconduct.*
- *He remains dedicated to the profession.*
- *His previous awards and nominations demonstrate that he is capable of excellent nursing.’*

Mr Marsland also conceded that the panel will consider everything closely where, notwithstanding a registrant’s efforts to remediate, that the facts of the case will be found to be of a serious nature and thus impairment may be found. However, Mr Marsland submitted that due to wider mitigating features such a declaratory finding is not required even if the panel considered it to be desirable. Mr Marsland further submitted that, although the guidance does specifically allude to a sexual relationship and someone in their care, if the panel came to the view that such a declaratory finding is not required, on the particular findings of the facts of this case it is not required even if thought desirable. Mr Marsland submitted that the test is whether the finding is required.

On being asked by the panel if the courses you have undertaken with *Udemy* are accredited, Mr Marsland informed the panel that *Udemy* is not an accredited institution, and the certificates are not formally recognised.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments and guidance. These included: *Cheatle v General Medical Council* [2009] EWHC 645 (Admin), *R (remedy UK Ltd) v General Medical Council* [2010] EWHC 1245, Article 22 of the NMC Order 2001 and NMC Guidance FTP-2a.

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 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 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

4 Act in the best interests of people at all times

To achieve this, you must:

4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

20.10 *use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times'*

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 engaging in sexual messaging and entering into an albeit brief online relationship with a patient's mother is misconduct.

The panel considered your actions to be a serious breach of professional boundaries and demonstrated a lack of understanding on your part of the boundaries in place and the reasons for these boundaries to be maintained. The panel further considered that if you had properly understood the professional boundaries required then you would have subsequently understood that your actions were not in the best interests of the patient or others.

The panel also took the view that such a breach would always have the potential to impact on the delivery of care to the patient. The panel further noted that you did not respect the patient's mother's status as the mother of a sick young person and hence vulnerable.

The panel found that others in the nursing profession would find your actions deplorable despite your assertion that your actions only had a "*sexual tinge*".

The panel also was of the opinion that you were not forced or coerced into engaging in messaging the patient's mother or in carrying out your actions. The panel noted that the hospital ward is not a place to make personal connections with patients and their families. The panel further took the view that nurses must be very cautious in interactions with patients and their families, especially outside of the workplace, and your [PRIVATE] is not an excuse for your actions.

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.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not 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* [2011] EWHC 927 (Admin)) (Grant) in reaching its decision. In paragraph 74, she said:

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

undermined if a finding of impairment were not made in the particular circumstances.'

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

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

The panel found that the patient was put at risk and could have been caused physical 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, although there is evidence that you can practise kindly and safely, there is a concern regarding whether you can practise professionally, and three limbs of the Grant test are engaged.

The panel considered that the majority of the courses you have undertaken since your actions are not certified and there is limited evidence of accredited learning around

professional boundaries. Furthermore, the panel noted that [PRIVATE], and the panel did not accept the testimonial from your partner as evidence to demonstrate that you would act differently in the future.

The panel found that you have some insight and understanding. The panel took the view that your oral evidence, in which you stated [PRIVATE] was inconsistent as you also told the panel that you could have [PRIVATE] during the period of time.

The panel also found that you displayed a sense of victimhood and that the courses you have undertaken are mainly introspective and lack being directly relevant to the charges. The panel further considered that the courses you have undertaken focus mainly on you and not on the impact of your actions on others.

The panel took the view that you do not fully recognise the position of trust that you held and that the responsibility and onus was on you to say no and reject any advances made to you by the patient's mother. The panel was of the opinion that you should have rebuffed advances and contact from the beginning when it was made.

While the panel did find that you responded appropriately to the issues at the end of your communications by informing your manager, the panel also found that you have not considered or demonstrated sufficient insight into the issues of and at the commencement of communications with the patient's mother and the associated risks of this.

The panel was however satisfied that the misconduct in this case is capable of being addressed. 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 the courses you have undertaken on professional boundaries and duty of candour, the testimonials from colleagues and also your own recent reflection which detailed the similar circumstances you have since found yourself in and how you dealt with these appropriately:

'Since the situation arose, I have had the opportunity on several occasions to deal with situations differently, I have been asked by two different parent/carers if they could add me on social media and both times I have voiced that this is against hospital policy and my code of conduct, one person was fine with this and understood the other person was a little put out and suggested I just add them anyway as no-one would know. I explained I would know and I have colleagues on my social media and it would send out the wrong signal to them especially new qualified nurses.'

The panel also noted that you were returned to unrestricted practise by the Trust after the incident.

Consequently, the panel was of the view that you have made considerable progress in strengthening your nursing practice and that there is a low risk of repetition in this case. In light of this, this panel determined that you do not pose a risk of harm to the public and that a finding of impairment is not necessary on the ground of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required because of the lack of judgment you displayed and the vulnerability of the patient's mother. The panel also considered that you held a significant position of trust, and your actions broke the medical professional boundary. The panel took the view that the position of trust that the public places in nurses comes with an expectation that nurses will demonstrate good judgement and will make the right decisions which you did not. Furthermore, the panel determined that a nurse forming a sexual relationship with the mother of a child [PRIVATE], however brief, would concern the public.

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 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 on public interest grounds alone.

Application to amend the amendment of charge section of the draft

Miss Buckell, on behalf of the NMC, made an application to amend the amendment of the charge section in the panel's decision.

Mr Marsland submitted that it is a matter solely for the panel if it considers it helpful or necessary.

The panel accepted the advice of the legal assessor.

The panel was of the view that a transcript can be requested if there is a future appeal and that there is no factual error in the section regarding the amendment of the charge. The panel also took the view that a further amendment is not a necessity and that in civil courts there is now a general desire for reasons to be written succinctly. The panel further noted that the current determination provides any member of the public with a clear rationale.

The panel determined not to make the revisions proposed by the NMC.

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of two 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

Miss Buckell informed the panel that it would seek the imposition of a six month suspension order with review if it found your fitness to practise currently impaired. During the course of Miss Buckell's submissions, the NMC revised its proposal and submits that a six month suspension order without review is more appropriate in light of the panel's findings.

Miss Buckell submitted that these were the aggravating features:

- You abused your position of trust as a nurse by having an inappropriate relationship with a patient's mother
- The patient's mother may have been considered to be in a vulnerable position
- The panel found you have not considered or demonstrated sufficient insight at the commencement of communications with the patient's mother and the associated risks of this

Miss Buckell submitted that these were the mitigating features:

- You have engaged with proceedings and attended
- You have provided reflections to the panel

Miss Buckell submitted that, although Charge 2 is not sexual misconduct, the messages sent were sexual and so the panel can consider the NMC Guidance *Sanctions for Serious Cases SAN 2* and in particular:

'Sexual misconduct is likely to create a risk to people receiving care and to colleagues as well as undermining public trust and confidence in the professions we regulate. A panel should always consider factors such as the duration of the conduct in question, the professional's relationship or position in relation to those involved and the vulnerabilities of anyone subject to the alleged conduct...

The Fitness to Practise Committee should be mindful of the following aggravating factors:

- *situations where the nurse, midwife or nursing associate has abused a position of trust they hold as a registered professional or a position of power.*

...

Panels deciding on sanction in cases about sexual misconduct will, as in all cases, need to start their decision-making with the least severe sanction, and work upwards until they find the appropriate outcome. However, as these behaviours can have a particularly severe impact on public confidence, a professional's ability to uphold the standards and values set out in the Code, and the safety of people receiving care, any nurse, midwife or nursing associate who is found to have behaved in this way will be at risk of being removed from the register. If the panel decides to impose a less severe sanction, they will need to make sure they explain the reasons for their decision clearly and carefully. This will allow people who have not heard all of the evidence in the case, which may include those directly affected by the sexual misconduct in question, to properly understand the decision.'

Miss Buckell further submitted that these behaviours can have a particularly severe impact on public confidence and on the safety of people receiving care. Miss Buckell submitted that a registrant found to be behaving in this way would be at risk of being removed from the register.

Miss Buckell submitted that the panel consider the NMC Guidance FTP-3 and specifically the section regarding sexual misconduct:

‘Sexual misconduct is unwelcome behaviour of a sexual nature, or which can reasonably be interpreted as sexual, that degrades, harms, humiliates or intimidates another. It can be physical, verbal or visual. It could be a pattern of behaviour or a single incident.

Our Code is clear that nurses, midwives and nursing associates have a responsibility to “uphold the reputation of [their] profession”. This involves demonstrating a personal and professional commitment to core values such as integrity and kindness, and protecting vulnerable people from any form of harm and abuse.¹

Sexual misconduct can have a profound and long-lasting impact, on people, including causing physical, emotional and psychological harm. Acts of sexual misconduct directly conflict with the standards and values set out in the Code. Sexual misconduct is likely to be serious enough to impair fitness to practise whether the conduct takes place in professional practice or outside professional practice. Sexual misconduct poses risks both to people receiving care and colleagues and can seriously undermine public trust and confidence in our professions.’

Miss Buckell submitted that a caution order would be insufficient in this case given the conduct involved and that the seriousness of the concerns are not appropriate for a caution.

Miss Buckell submitted that a conditions of practice order is appropriate when certain factors are present and do not include harmful factors or deep-seated attitudinal issues. Miss Buckell submitted that a deep-seated attitudinal issue may be present based on the facts of the case and that this case is not generally regarding practice concerns.

Miss Buckell submitted that the panel consider the guidance at SAN-3d with regards to the appropriateness of a suspension order and whether the case involves:

- *'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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour'*

Miss Buckell submitted that this is a single instance of misconduct involving one relationship in a short period of time. Miss Buckell also submitted the panel consider this in the context of your career.

Miss Buckell further submitted that there could arguably be evidence of personality problems, but the panel may consider that your reflections provide evidence that this is no longer the case. Miss Buckell also submitted that the panel noted that your insight is not fully developed yet but that does not mean you do not have some and you have provided reflections.

The panel also bore in mind Mr Marsland's submissions who submitted that this case can be met proportionately with a caution order or a conditions of practice order. Mr Marsland submitted that, on the particular facts of this case, a suspension order or strike off would be disproportionate.

Mr Marsland further submitted that he repeated that the gravity of this case is best captured by viewing it as a case concerning the breach of professional boundaries rather than a case concerning sexual misconduct. Mr Marsland submitted that the guidance in relation to sexual misconduct is for different types of cases and that the strident remarks in some of the guidance as to how some of these cases are to be treated defines sexual misconduct as:

‘unwelcome behaviour of a sexual nature, or which can reasonably be interpreted as sexual, that degrades, harms, humiliates or intimidates another’

Mr Marsland submitted that there is a danger of ‘check boxing’ this case as sexual misconduct and using that guidance. Mr Marsland submitted that this case is best looked at as a professional boundaries case with a sexual element.

Mr Marsland submitted that these were the mitigating features:

- An isolated finding of misconduct.
- No previous fitness to practise history.
- No evidence of deep-seated personality or attitudinal problems.
- No ongoing risk to the public.
- The misconduct was reactive and so not a proactive exploitation of anybody’s vulnerability, nor consciously seeking to place anyone in danger.
- The misconduct was brought to an end by the Registrant.
- Some evidence of the particular difficulties (albeit also importance) of maintaining professional boundaries in an [PRIVATE] unit providing care to children.
- Insight (even if introspective) and active steps to improve his practice.
- [PRIVATE]
- Previous excellent practice.

Mr Marsland submitted that a caution order may well meet the merits of this case because it is potentially appropriate when there are no ongoing risks to patients or the public requiring practise to be restricted. Mr Marsland submitted that a caution order may well be proportionate in that it allows the panel to mark your behaviour as unacceptable and condemn it in unequivocal terms, and the sanction would be recorded on the register as a public record of that finding and so likely to achieve the aims the panel needs of upholding proper standards and maintaining public confidence without ill effects. Mr Marsland

submitted that if the panel can achieve its aims without restricting a nurse's practice then that would be the proportionate response.

Mr Marsland submitted that a conditions of practice order could be appropriate as there are workable conditions relating to strengthening your practice in relation to professional boundaries. Mr Marsland submitted that you have already taken some steps with regards to this, but if the panel thinks there is greater progress that can be made in terms of upholding public confidence and upholding proper standards the public might be satisfied if a conditions of practice order is made which requires you to improve and is monitored. Mr Marsland submitted that a conditions of practice order usually focuses on public protection but can also be sensibly used to address public confidence and uphold proper standards.

Mr Marsland submitted that a suspension order would be disproportionate as demonstrated by the presence of the mitigating factors. Mr Marsland further submitted that:

'The risk to the patient was relatively remote and easily addressed by the hospital, in simply ensuring that Mr Morrell and the patient's mother would not see each other.'

Mr Marsland submitted that a striking off order is the most severe sanction and only appropriate when the misconduct is fundamentally incompatible with being a registered healthcare professional. Mr Marsland further submitted that this should only be considered when a problem cannot be remedied or sufficiently marked and that this is not the case here. Mr Marsland submitted for completeness that the NMC has not bid for this sanction.

Mr Marsland submitted that the regulatory aims can be achieved with a caution order but if the panel disagrees that a conditions of practice order can achieve this.

Decision and reasons on sanction

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.

In making this decision, the panel carefully considered the submissions of Miss Buckell in relation to the sanction that the NMC was seeking in this case. However, the panel considered that it is not appropriate in this case to use the NMC Guidance on sexual misconduct as there is no evidence before the panel of harm, degradation or humiliation or that the relationship was abusive or exploitative which are often features of sexual misconduct. The panel also took the view that there was no evidence of risk of sexual harm to the public or that the conduct was non-consensual. The panel also noted your previous good character and that the patient's mother made the first contact with you. The panel also was of the view that your conduct was due to [PRIVATE] and was not sexually predatory behaviour.

The panel found there was no evidence supporting the guidance definition in FTP-3 that:

'Sexual misconduct is unwelcome behaviour of a sexual nature, or which can reasonably be interpreted as sexual, that degrades, harms, humiliates or intimidates another'

Therefore, the panel determined that this guidance was not applicable in this case and that this is a case regarding professional boundaries with a sexual element to it.

The panel took into account the following aggravating features:

- To a lesser degree you abused a position of trust you enjoyed as the patient's mother would have viewed you as a trustworthy person who was caring for her child
- The patient's mother was in a vulnerable position by nature of her circumstances at the time

The panel also took into account the following mitigating features:

- Parts of your written reflection demonstrated actions which you have taken when placed in similar positions since these matters occurred
- An isolated finding of misconduct
- No previous fitness to practise history
- No evidence of deep-seated personality or attitudinal problems
- No ongoing risk to the public
- The misconduct was reactive and so not a proactive exploitation of anybody's vulnerability, nor consciously seeking to place anyone in danger
- You brought the misconduct to an end and reported it to your employer
- Insight (even if introspective) and active steps to improve your practice
- [PRIVATE]
- You have demonstrated previous excellent practice as evidenced in the testimonials provided to the panel

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 vulnerable position which the patient's mother was in and the panel's finding of impairment. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate

where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'

The panel noted that you have shown some 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 this incident.

The panel also noted that there is no evidence of risk to the public or to patients which would require your practice to be restricted in any way. The panel was of the view that, notwithstanding your level of insight and remorse, your behaviour was unacceptable, cannot be repeated and it should be marked; given there are no concerns about protecting the public, a caution order would be appropriate. The panel further noted that a caution order means your conduct will be marked and you will need to explain your conduct to prospective employers as you will be asked about any regulatory findings.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel concluded that there are no workable conditions possible due to the nature of the case.

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 your return to nursing practice. The panel further considered that a suspension order would be wholly disproportionate and punitive in this case. The panel further noted that there is no coercion or elements of sexual misconduct as defined in the guidance present in this case. The panel also noted that your practice has been reported as excellent as evidenced by the testimonials provided and that you would be a loss to the profession.

The panel has decided that a caution order would adequately protect the public. For the next two 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 two years would be the appropriate and proportionate response. It marks 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.