

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

**Substantive Hearing
Monday, 28 April 2025 – Friday, 2 May 2025
Thursday, 15 May 2025 – Friday, 16 May 2025**

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

Name of Registrant:	Brandon Ernest	
NMC PIN:	06I0883E	
Part(s) of the register:	Nurses part of the register Sub part 1 RNMH, Registered Nurse - Mental Health (12 September 2007)	
Relevant Location:	England	
Type of case:	Misconduct	
Panel members:	Ashwinder Gill Vickie Glass Robert Marshall	(Chair, lay member) (Registrant member) (Lay member)
Legal Assessor:	Charles Apthorp	
Hearings Coordinator:	Samara Baboolal	
Nursing and Midwifery Council:	Represented by Stephen Earnshaw, Case Presenter	
Mr Ernest:	Present and represented by Rebecca Paterson, instructed by the Royal College of Nursing (RCN)	
Facts proved:	Charges 1 and 2	
Facts not proved:	Charge 3	
Fitness to practise:	Impaired	

Sanction:

Suspension Order (4 months)

Interim order:

Interim suspension order

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

At the outset of the hearing, Mr Earnshaw, on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be partly held in private on the basis that proper exploration of your case involves some reference to [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 Paterson, on your behalf, indicated that she supported the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session in connection with [PRIVATE] as and when such issues are raised in order to protect Service User A's privacy.

Details of charge

'That you, a registered nurse:

- 1) Between 27 August 2022 and 13 September 2022 breached professional boundaries with Service User A in that you:
 - a. During a discharge visit, made inappropriate comments to Service User A;
 - i. Asked about their sexual relationships, or words to that effect.

- ii. Said that they should go and look for a relationship, or words to that effect.
 - iii. Said that sleeping naked was good and relaxing, or words to that effect.
 - b. Made a telephone call to Service User A after they had been discharged from the care of the North Wiltshire Intensive Service, without clinical justification for doing so.
 - c. Told Service User A you wanted to come and visit them and their daughter at their home, without clinical justification for doing so.
- 2) On 12 September 2022 accessed Service User A's medical records via the RIO case management system on one or more of the following occasions without clinical justification:
- a. 17.09hrs
 - b. 17.10hrs
- 3) Your actions in one or more of charges 1 and 2 above was sexually motivated in that you intended to pursue a future sexual relationship with Service User A.

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

Background

On 17 January 2023 the NMC received a referral from Coyle Medical, an agency, that placed you with North Wiltshire Intensive Service (the Trust). You worked at the Trust as a Community Psychiatric Nurse. It is alleged that you failed to maintain professional boundaries in respect of Witness 1/Service User A.

On 30 July 2019, you started work at the Trust as a Band 6 Community Psychiatric Nurse. NWIS is a mental health service which offers care and treatment to service users in their own homes. NWIS has a system where the team have a list of patients to be seen. No individual holds their own caseload. You were not solely responsible for the care and treatment of Witness 1/Service User A. She only knew you in a professional capacity.

On 29 August 2022, you visited Witness 1/Service User A in their home on behalf of NWIS. This was to facilitate a discharge from the service. You allegedly made a number of inappropriate comments that made Witness 1/Service User A feel uncomfortable. You allegedly asked Witness 1/Service User A about Witness 1/Service User A's sexual relationships. You allegedly suggested Witness 1/Service User A should go and look for a relationship. You allegedly said sleeping naked was good and relaxing. Witness 1/Service User A did not report these comments at the time.

It is alleged, following an audit, that on 12th September 2022, you accessed Witness 1/Service User A's medical record at 17:09 and 17:10, without clinical justification. You would have had access to Witness 1/Service User A's address and contact information from "RiO", the Trust's electronic record system. On 12th September 2022 Witness 1/Service User A allegedly received a telephone call from you at 17:17 from a private telephone number. You allegedly said that you were in the area and wanted to come and visit Witness 1/Service User A and her child at home. Witness 1/Service User A allegedly repeatedly indicated this was not okay and questioned why you were contacting them. Witness 1/Service User A allegedly repeatedly said no in relation to the request to check

in and visit Witness 1/Service User A. You allegedly then said that's fine and ended the call. On the same day Witness 1/Service User A reported this concern to NWIS.

Witness 1/Service User A said this made her feel scared and worried that you would try and gain access to her home. Witness 1/Service User A also then reported the alleged comments from 29 August 2022. Witness 1/Service User A said this incident *“made [her] no longer want to receive support (or) contact from NWIS again.”*

Decision and reasons on facts

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 written and oral submissions made by Mr Earnshaw and by Ms Paterson, on your behalf.

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: Service User A
- Witness 2: Employed by the Trust as Lead Nurse for the Clinical Bank Team.

The panel also heard evidence from you under affirmation.

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 both the NMC and your representative.

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

In its deliberations, the panel took into account that the allegations outlined in charge 1 first came to light following a phone call which took place on 12 September 2022.

Charge 1(a)

“Between 27 August 2022 and 13 September 2022 breached professional boundaries with Service User A in that you:

- a. During a discharge visit, made inappropriate comments to Service User A;
 - i. Asked about their sexual relationships, or words to that effect.
 - ii. Said that they should go and look for a relationship, or words to that effect.
 - iii. Said that sleeping naked was good and relaxing, or words to that effect.”

Sub charges 1(a)(i), 1(a)(ii), and 1(a)(iii) are found proved.

In reaching this decision, the panel took into account the oral evidence and written statement of Witness 1/ Service User A, your oral evidence and your written statement, dated 28 April 2025, and the documentary records. The panel considered each allegation set out in this charge individually.

The panel took into account that Witness 1/Service User A’s oral evidence was consistent with her written statement, which says:

'During the discharge visit conducted by the registrant in August 2022, he made some inappropriate comments to me that made me feel uncomfortable. The registrant asked me about my sexual relationships. I said that I was not interested in any of that, and he then suggested that I should go and look for a relationship. The registrant also said that sleeping naked was good and relaxing.

I did not verbalise to the registrant that his comments made me feel uncomfortable as I wanted to get through the visit as quickly as possible. If there would have been more visits conducted by NWIS, then I would have requested another person conducted the visit.'

The panel took into account that in Witness 1/Service User A's oral evidence, she was taken to the statement of Ms 1. Ms 1 was the Band 4 Health Care Assistant with whom Witness 1/Service User A had raised concerns during the telephone call on the 12 September 2022. Ms 1's statement outlined that Witness 1/Service User A said that you were *'very inappropriate and 'suggestive' towards her. When [Ms 1] asked for more information [Witness 1/Service User A] stated that [you] had told her that a new relationship would solve all her problems, asking intimate questions and suggestion that she 'sleeps naked' in order to help her sleep'.*

While the panel decided to put less weight on Ms 1's statement given its nature as hearsay evidence, the panel took into account that when Witness 1/Service User A was taken to Ms 1's statement during her oral evidence, she accepted that she spoke to Ms 1 and she agreed to providing that account.

You accepted that you attended the discharge meeting. In your RiO note dated 29 August, you recorded that you discussed with Witness 1/Service User A the [PRIVATE]. You deny making inappropriate comments or any comments which breach professional boundaries. You said that your record of the meeting, contained in the RiO record, is an accurate account which reflects what you discussed in the discharge meeting.

The panel took into account that none of these allegations appear in your RiO record of the meeting. However, the panel was of the view that Witness 1/Service User A is a credible witness, and that if you were to make inappropriate comments to a service user, you would be unlikely to record it in their medical records.

The panel, in reaching its decision, took into account its findings in charges 1(b), 1(c) and charge 2, where at core aspects of your evidence, you were inconsistent.

The panel determined that, on the balance of probabilities, sub charge 1(a)(i),(ii) and (iii) is found proved.

Charge 1(b)

“Made a telephone call to Service User A after they had been discharged from the care of the North Wiltshire Intensive Service, without clinical justification for doing so.”

This sub charge is found proved.

In reaching this decision, the panel took into account the call log provided by Witness 1/Service User A, the audit trail provided by Witness 2, your oral evidence and written statement, Witness 2’s oral evidence and written statement, and Witness 1/Service User A’s oral evidence and written statement, specifically her account of the allegations in this charge, set out below:

‘On 12 September 2022, I received a telephone call from the registrant at 17:17 pm. The call was made from a private telephone number and lasted a few minutes (no more than five).

When I answered the telephone call, the registrant introduced himself as ‘Brandon’. I did not immediately recognise his voice but soon realised that he was

the person who had previously conducted my discharge visit. The registrant said that he was going to be in the area soon and he wanted to come and visit me and my daughter at home. I told him that this was not okay and asked why he was contacting me. The registrant said that he wanted to check in and visit me. I cannot recall whether he was being persuasive or not, but I know that after I told him 'no' a few times, he said okay that's fine and then ended the call.'

The panel was of the view that Witness 1/Service User A is a reliable witness. It took into account that her oral evidence and written statement were consistent, and that she has no motive to fabricate her accounts of the incidents.

In your reflective statement dated 28 September 2022, you stated that you had received a call from the on-call manager. You said:

'The on-call manger (sic) advised a female had made an allegation to have received a of a call from myself. As I recall I made no calls to any other service user that I had had previous contact or discharged as alleged. Further to this from the information provided thereafter regarding times the alleged time of call, I was still in the office and have not gone for the visits – of an approximately 30 mins drive minimum.'

You said in your statement, dated 28 April 2025, that you did not recall calling Witness 1/Service User A. However, RiO records show that you had accessed Witness 1/Service User A 's records shortly before the call to her was made. The panel had reference to a call log which shows Witness 1/Service User A receiving a call, calling her mother several times shortly after, and then receiving a call from Ms 1 at the Trust after reporting the incident. In your written statement, you accepted that you may have called Witness 1/Service User A, whereas in your oral evidence, you accepted that you did make a call to Witness 1/Service User A. You stated that any call you made would have been made with clinical justification.

In your statement, dated 28 April 2025, you stated that the primary psychiatric liaison service (PPLS) had provided you with a handwritten list of service users to contact in a handover communication book, and Witness 1/Service User A was on the list as her General Practitioner (GP) had contacted the PPLS. You said that it had *'been less than 14 days since [Witness 1/Service User A] was discharged from and I was asked to check if our input was still required. I checked [Witness 1/Service User A 's] RiO'* and informed colleagues at the PPLS that you would action the request. You stated that any phone call to Witness 1/Service User A shortly after this was for a welfare check. However, the panel determined that the evidence before it did not support your assertion that a welfare check of Witness 1/Service User A had been requested or was required at that time. In reaching this conclusion, it took into account Witness 1/Service User A 's medical notes and the audit trail, there was no reference to a referral from the PPLS service or Witness 1/Service User A's GP on that date.

In terms of the audit trail spanning the dates of 1 September through 15 September 2022, there is no evidence which shows the RiO records being accessed by anyone else before you. You accepted that it would be good practice to record a GP referral on the record. The panel was of the view that it is unlikely that the person taking the referral would have not, at the very least, read or accessed Witness 1/Service User A's RiO record and therefore this would have appeared on the audit trail. The panel also noted that there is an absence of the GP referral on the record.

Witness 2 confirmed in her oral evidence that Witness 1/Service User A was discharged from the Trust's service. The panel therefore concluded that a call did in fact take place, that Witness 1/Service User A was discharged from the service when this call took place, and that there was therefore no clinical justification for the call being made.

The panel concluded that your account was inconsistent with your written statement and reflective statement. Further, it considered that the first time that you raised your explanation relating to the PPLS asking you to contact Witness 1/Service User A was in your statement dated 28 April 2025. The panel noted that this account was not supported

by documentary evidence which the panel considered would have existed if this account were correct.

The panel determined that, on the balance of probabilities, this sub charge is found proved.

Charge 1(c)

“Told Service User A you wanted to come and visit them and their daughter at their home, without clinical justification for doing so.”

This sub charge is found proved.

In reaching this decision, the panel took into account your oral evidence and written statement and Witness 1/Service User A 's oral evidence and written statement.

In Witness 1/Service User A 's written statement, she stated that you called her from a private number, and introduced yourself as 'Brandon' and that you were in the area and wanted to visit her and her daughter at home.

The panel took into account the evidence that shows you had accessed Witness 1/Service User A 's RiO records shortly before this call. Additionally, the call log provided by Witness 1/Service User A shows that she received a call from a private number at the time stipulated in her witness statement; 17:17. She contacted her mother several times following the call, and the call log then shows that Witness 1/Service User A received call from the Trust. Witness 1/Service User A calls to her mother and the call from the Trust to report the incident, both of which occurred soon after, supports Witness 1/Service User A account that she was concerned by your call and suggestion to visit her and her daughter. She spoke to Ms 1, reporting the incident and this record of the conversation was consistent with Witness 1/Service User A 's oral evidence. The panel was of the view that Witness 1/Service User A is a credible witness.

You denied telling Witness 1/Service User A that you wanted to visit her and her daughter and stated that the call would only have been made as a welfare check.

The panel concluded that your account was inconsistent with your written statement and reflective statement as set out in charge 1(b) above.

The panel determined that, on the balance of probabilities, this sub charge is found proved.

Having determined that sub charges 1(a), 1(b) and 1(c) were found proved, the panel determined that you breached professional boundaries with Witness 1/ Service User A as alleged.

Charge 2)

“On 12 September 2022 accessed Service User A’s medical records via the RIO case management system on one or more of the following occasions without clinical justification:

17.09hrs

17.10hrs”

This charge is found proved.

In reaching this decision, the panel took into account Witness 2’s written statement and oral evidence, your oral evidence and written statement, and the audit trail of the RiO records.

The parameters of the audit trail were between 1 September 2022 and 15 September 2022. The audit trail shows that you accessed Witness 1/Service User A ’s RiO records on

12 September 2022. Witness 2 confirmed that Witness 1/Service User A was discharged from the Trust's services on 29 August 2022. The panel also took into account that there are medical notes which support that Witness 1/Service User A was discharged from the service on this date.

You accepted in your evidence that you accessed the records on 12 September 2022, but denied that this was without clinical justification.

The panel then went on to consider whether there was clinical justification for your accessing of Witness 1/Service User A 's medical records on the 12 September 2022.

The panel bore in mind its findings in relation to charge 1(b) where the panel has found that there was no clinical justification in contacting Witness 1/Service User A and therefore there would have not been any clinical justification in accessing her medical records via RiO on 12 September 2022.

The panel also took into account that you did not update Witness 1/Service User A 's records to reflect that you had been asked to contact service user A, had called her, or the clinical justification for either of these. In oral evidence, when asked why you had not updated Witness 1/Service User A 's RiO record on 12 September 2022, you stated that you were told to go home and were told to only document visits to male service users that day.

The panel concluded that your account was implausible given that you had updated the RiO record for other service users but not Witness 1/Service User A. The panel also noted a further inconsistency in your email, dated 13 January 2023, where you stated:

'I have no recollection of these times, and surely after the allegation when my colleagues mentioned the name, I did open RIO checking on why she had to put such any allegation and when I had last had contact with the individual.

If there has been any other RIO access prior, then would be only completion of all discharge or updating forms of any client I would have had contact with during my partaking my role at the time'

The panel determined that, on the balance of probabilities, this charge is found proved in its entirety.

Charge 3)

"Your actions in one or more of charges 1 and 2 above was sexually motivated in that you intended to pursue a future sexual relationship with Service User A."

This charge is found NOT proved.

As the panel found that charges 1 and 2 were found proved in their entirety, it went on to consider charge 3 in relation to charges 1 and 2.

The panel considered whether there was evidence to support the allegation that you intended to pursue a future sexual relationship with Witness 1/Service User A . It took into account the witness statements and oral evidence of Witness 1/Service User A , and your oral evidence and written statement. It also took into account the positive testimonials provided by you.

The panel noted that Witness 1/Service User A in her oral evidence described this incident as "inappropriate" and "suggestive" but not provide any further detail in this respect. The panel determined that based on the limited evidence before it, it cannot draw a reasonable inference that there was an intention to pursue a future sexual relationship with Witness 1/Service User A .

As such, the panel determined that the NMC has failed to discharge the burden of proof in relation to charge 3.

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.*'

Mr Earnshaw 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.

Mr Earnshaw identified the specific, relevant standards where your actions amounted to misconduct.

Mr Earnshaw submitted that the charges found proved are serious. He submitted that accessing Witness 1/Service User A's personal details was also a very serious matter, as there was no clinical reason to do so and Witness 1/Service User A no longer wanted to engage with the service.

Ms Paterson, on your behalf, submitted that while misconduct is a matter for the panel, breaches of the code do not automatically lead to a finding of misconduct.

Ms Paterson submitted that the seriousness of the case has significantly reduced owing to the lack of sexual motivation. However, she acknowledged that the panel has made findings that you breached professional boundaries. She submitted that you have acknowledged the importance of professional boundaries within your written reflection, and that you accept that the conduct fell short of what should be expected of a registered nurse.

Submissions on impairment

Mr Earnshaw 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), *Cheatle v General Medical Council* [2009] EWHC 645 (Admin),¹*Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Mr Earnshaw submitted that while there has been engagement from you, there has been little reflection. Mr Earnshaw acknowledged your previous work record and character.

Ms Paterson submitted that your practice is not currently impaired, and that you are able to practise kindly, safely, and professionally.

Ms Paterson submitted that the findings relate to an isolated incident, that you have a record of 15 years of unblemished practice as a mental health nurse, that your reflections demonstrate meaningful insight, that you have undertaken relevant and specific remediation, that you have a period of strengthened practice post-incident, and that you have engaged in these proceedings and been exposed to a very serious process of investigation and heard first-hand the perspective of Witness 1/Service User A.

Ms Paterson submitted that, while it is extremely regrettable that Witness 1/Service User A suffered harm as a result of her interactions with you, the key consideration for the panel is the future risk to patients. She submitted that the above factors demonstrate that the risk that you would repeat the conduct found proved is so low that a finding of impairment is not required to protect the public.

Ms Paterson invited the panel to find that your fitness to practise is not currently impaired on account of your insight, remediation, and the very low risk of repetition.

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, *R (on the application of Young) v General Medical Council* [2021] EWHC 534 (Admin), *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

In making its decision, the panel considered that it had a duty to consider the Equalities Act 2010 and whether the charges found proved fell under the scope of the Act. In particular, it looked at the Act in the context of Section 26:

1. *'A person (A) harasses another (B) if—*
 - a. *A engages in unwanted conduct related to a relevant protected characteristic, and*
 - b. *the conduct has the purpose or effect of—*
 - i. *violating B's dignity, or*
 - ii. *creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
2. *A also harasses B if—*
 - a. *A engages in unwanted conduct of a sexual nature, and*
 - b. *the conduct has the purpose or effect referred to in subsection (1)(b).*
4. *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
 - a. *the perception of B;*
 - b. *the other circumstances of the case;*
 - c. *whether it is reasonable for the conduct to have that effect.'*

The panel took into account that Witness 1/Service User A found the comments that you made to her during the discharge meeting to be “uncomfortable” and “very inappropriate”. She also described the comments as “suggestive” and the questions you asked as “intimate”.

The panel considered the wider context of the comments, and noted that you made these comments during a discharge meeting visit which took place at Witness 1/Service User A's home, while she was a vulnerable service user. It took into account that the phone call that you made to her following this visit, compounded by the comments at the previous meeting, had the impact of violating Witness 1/Service User A's dignity. It also created an intimidating environment, supported by the fact that Witness 1/Service User A expressed that your call made her nervous, that she closed and locked the doors, called her mother several times and called the Trust to report the call.

The panel was of the view that it is reasonable that your conduct would have had this effect on Witness 1/Service User A, as she would not expect a professional to ask her about her sexual relationships, suggest that she sleep naked, or ask to visit her and her daughter at home after she had been discharged from the service.

The panel therefore determined that the Equality Act 2010 was engaged and that you had subjected Witness 1/Service User A to unwanted conduct of a sexual nature, violating her dignity and creating an intimidating environment for her in her own home.

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*

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*

10 *Keep clear and accurate records relevant to your practice*

**10.1 *Complete records at the time or as soon as possible after an event,
recording if the notes are written some time after the event***

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

20 *Uphold the reputation of your profession at all times*

**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'*

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 your conduct in the charges found proved were serious. It was of the view that fellow practitioners would find your conduct in the charges found proved to be deplorable. You accessed private records belonging to Witness 1/Service User A and contacted her without clinical justification. The panel also took into account the overall context of the inappropriate comments at the discharge meeting, that you accessed Witness 1/Service User A's private medical records and then made an inappropriate phone call which caused her distress.

The panel concluded that members of the public would be very concerned if a finding of misconduct were not made.

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 whether, 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. 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 Witness 1/Service User A was put at risk and 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. The panel also considered its findings in relation to the Equality Act 2010 as outlined in the misconduct findings.

The panel considered whether there is a risk of repetition and whether you are liable to repeat the conduct found proved in the future.

In consideration of the risk of repetition, the panel took into account your written reflection and your evidence of any remediation. You provided two reflective statements, evidence of training and CPD certificates. The training and certificates are relevant to the charges found proved.

The panel took into account that you have 15 years of otherwise unblemished practise and numerous positive testimonials including from four registered mental health nurses. The panel also acknowledged that you have been subject to a lengthy and serious fitness to practise process and have closely engaged with the NMC proceedings.

However, in considering the serious nature of the concern, the breaches of the Equalities Act, the power imbalance between you and Witness 1/Service User A, the panel was of the view that stronger insight and in-depth reflection is necessary in order to remediate the harm caused and reduce the risk of repetition in the future.

The panel noted that you have not provided a sufficient explanation as to why you contacted Witness 1/Service User A via telephone. You have not demonstrated that you sufficiently understand the severity of this contact, or the accessing of confidential medical records without justification. The panel determined that your reflective statements lacked detail and were therefore more generic in nature.

The panel acknowledged that you provided two reflective statements and that you have demonstrated that you have started the process of developing insight, but at this time it is insufficient.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

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 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 has considered this case very carefully and has decided to make a suspension order for a period of four months. The effect of this order is that the NMC register will show that your registration has been suspended.

Submissions on sanction

Mr Earnshaw informed the panel that the NMC had advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired.

Mr Earnshaw submitted that your actions in the charges found proved are very serious, and that a striking off order is the most appropriate order in these circumstances. However, he invited the panel to make its own assessment, taking into account your positive testimonials and history of good practice.

Ms Paterson submitted that anything more serious than a conditions of practice order would be inappropriate and disproportionate in light of the panel's findings.

Ms Paterson referred the panel to the following mitigating factors:

- This was an isolated incident
- You have 15 years of otherwise unblemished practice
- You were under pressure due to short staffing at the time of the incident
- You have provided numerous positive testimonials
- You have engaged in these proceedings
- You have completed CPD training
- You are developing insight

Ms Paterson informed the panel that you are currently subjected to an interim conditions of practice order. She submitted that this order would remain appropriate and proportionate in these circumstances.

Ms Paterson submitted that there is no evidence of deep-seated attitudinal problems and that the concerns can be addressed through retraining. She submitted that there is no evidence of general incompetence, and you have a willingness to respond positively to retraining, which is evident in your reflections.

Ms Paterson invited the panel to consider the following conditions:

- You must not work in the community
- You must not be the sole nurse on shift
- You must develop a Personal Development Plan (PDP) that would allow you to address the areas that need retraining.

Ms Paterson informed the panel that you would ideally like to continue working as an agency nurse, and that the above conditions would be workable to allow this. She invited the panel to consider imposing the order for a period of six months, as this time would allow you to develop more in-depth insight and give you an opportunity to demonstrate further practice without incident.

The panel accepted the advice of the legal assessor, who referred the panel to the NMC Sanction Guidances.

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

Sanction Guidance (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:

- Abuse of position of trust involving a vulnerable service user in her home
- Insufficient insight
- Conduct which caused distress to a service user

The panel also took into account the following mitigating features:

- Demonstrated some insight and has started the process of developing this further
- Attempts at retraining and CPD certifications
- Compliance with interim conditions of practice since July 2024
- Charges involve an incident which took place over a short duration of time involving one service user
- 15 years of otherwise unblemished practice
- Numerous positive testimonials
- Previous good character or history

The panel went on to consider seriousness in this case. It was of the view that sexual harassment is always a serious matter, and the public interest is therefore engaged.

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, an order that does not restrict your 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel acknowledged that you are currently on an interim conditions of practice order and that there are conditions that can be formulated. However, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case. It also took into account that you have started developing some insight but was not satisfied that this insight was sufficient to reduce the risk of repetition and therefore meet the public interest and public protection in this case.

The panel did acknowledge that, other than these incidents, you have had an unblemished career of 15 years as a nurse and took into account that you have attended these proceedings and engaged with the NMC.

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;*
and
- *No evidence of repetition of behaviour since the incident.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

In making this decision, the panel carefully considered the submissions of Mr Earnshaw in relation to the sanction that the NMC was seeking in this case. However, the panel

considered that a striking off order would be unduly punitive in this case as, although serious, it was not fundamentally incompatible with remaining on the register.

The panel determined that a suspension order for a period of four months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of developed and strengthened insight
- More detailed and specific reflective statement addressing the concerns
- Up-to-date testimonials

This will be confirmed to you in writing.

Submissions on interim order

The panel took account of the submissions made by Mr Earnshaw, who submitted that an interim suspension order for a period of 18 months would adequately protect the public and meet the public interest during the appeal period.

The panel also took into account the submissions of Ms Paterson, who submitted that you have been subject to interim conditions of practice, and you have been able to comply with these and demonstrate safe practice.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to protect the public during the appeal period.

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

That concludes this determination.