Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Order Review Hearing
Tuesday, 13 February 2024

Virtual Hearing

Name of Registrant:	Theresa May Cobbold
NMC PIN:	09A1020E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nurse (Level 1) – 5 June 2009
Relevant Location:	Norfolk
Type of case:	Misconduct
Panel members:	Mary Hattie (Chair, registrant member) Mark Gibson (Registrant member) Sue Davie (Lay member)
Legal Assessor:	John Bassett
Hearings Coordinator:	Catherine Blake
Nursing and Midwifery Council:	Represented by Kiera Vinall, Case Presenter
Miss Cobbold:	Present and represented by Dominic Lewis, instructed by the Royal College of Nursing (RCN)
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	**Conditions of practice order (18 months) to come into effect on 19 March 2024 in accordance with Article 30 (1)**

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

At the outset of the hearing, Ms Vinall, on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be held partly in private on the basis that proper exploration of this case involves reference to [PRIVATE], and/or Patient A's health and personal circumstances. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Lewis, on your behalf, indicated that he 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.

Having heard that there will be references to [PRIVATE], and/or Patient A's health and personal circumstances, the panel determined to hold such parts of the hearing in private in order to protect their respective rights to privacy and confidentiality.

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a conditions of practice order.

This order will come into effect at the end of 19 March 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee by Consensual Panel Determination on 22 August 2023.

The current order is due to expire at the end of 19 March 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a registered nurse:

1) Between 27 and 29 September 2021 breached professional boundaries with Patient A in that you:

a) Spoke to him by phone without clinical justification.

b) Exchanged text messages with him without clinical justification.

c) Asked Patient A to keep the contact you were having with him secret.

2) Failed to record the contact you were having with Patient A in his clinical notes.

3) Your actions at charge 1c and/or 2 lacked integrity in that you were seeking to prevent your breach of professional boundaries with Patient A from coming to light.

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

The original panel determined the following with regard to impairment:

'The panel found that Miss Cobbold's misconduct placed Patient A at an unwarranted risk of harm, both due to the nature of the interactions she had with him and through undermining his relationship with mental health services. Her actions brought the nursing profession into dispute and breached fundamental tenets of the profession by actively breaching professional boundaries with a patient and then seeking to prevent this coming to light. The panel determined that her acting without integrity and contrary to the duty of candour is not conduct which is easily remediable

The panel considered Miss Cobbold's attempts at strengthening her practice and was of the view that, although she had undertaken training which was relevant to the charges, her insight was limited and did not appear to show genuine remorse as

it did not take into account the impact of her behaviour on Patient A, his partner, his family members, her colleagues and the profession. She has also not indicated in the reflective statement provided to the panel what she would do differently to prevent a repetition if faced with similar circumstances.

The panel also determined that Miss Cobbold sought to deflect responsibility for her actions and, rather than take full responsibility offered reasons such as not being issued with a work telephone as an action that would prevent a reoccurrence. In light of her limited insight, the panel was not assured that that Miss Cobbold is highly unlikely to repeat her misconduct and that a finding of current impairment should be made to protect the public and was necessary on the grounds of public protection.

The panel further determined that a finding of current impairment is necessary in the public interest to uphold proper professional standards and maintain confidence in the profession. The panel consider that maintenance of professional boundaries is important in any healthcare relationship but perhaps nowhere more fundamental than in mental health nursing. It agreed with the NMC that the duty of candour and the responsibility on healthcare professionals to act with honesty and integrity is the bedrock of professional trust. The panel determined that Miss Cobbold's professional practice fell seriously short of the standards expected and that a finding of current impairment is required in the public interest.

The original panel determined the following with regard to sanction:

'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 Miss Cobbold'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 Miss Cobbold's 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 Miss Cobbold's 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 general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *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 agreed with the NMC that, whilst Miss Cobbold may in due course benefit from training and supervision when she returns to practice, a conditions of practice order would not adequately mark the seriousness of this case.

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;*

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

The panel considered that positive testimonials have been referred to and that there was an immediate acceptance from Miss Cobbold that she had done wrong once the matters came to light. The panel notes her attempts to reflect on the issues in this case but considers that her insight is still limited.

The panel took the view that her actions were not a single or isolated instance of misconduct, but accepted that the issues in this case could fairly be thought of as a single "episode" since they occurred over a very short time period, between 27 September 2021 and 29 September 2021 (3 days).

The panel has relied on the information before it that the NMC has no reason to believe Miss Cobbold's remorse is not genuinely held. However, it noted that, although she does express some regret in her reflective statement contained above, she did not elaborate on it to any real extent, particularly as to the impact her actions had on Patient A.

The panel did conduct the exercise of considering 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 Miss Cobbold's case to impose a striking-off order.

Balancing all of these factors the panel agreed with the CPD that a suspension order would be the appropriate and proportionate sanction.'

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in

light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, and your defence bundle. It has taken account of the submissions made by Ms Vinall on behalf of the NMC.

Ms Vinall summarised the decision of the original panel. It identified that today's panel would be assisted by an updated reflection from you, testimonials from colleagues, evidence of up-to-date training, and evidence of any work undertaken during the suspension period.

Ms Vinall referred to the contents of your defence bundle, noting your updated reflective piece as the most determinative document. Ms Vinall submitted that the training certificates submitted pre-dated the substantive hearing in August and that there is no evidence of further training besides a reading log. She also noted the testimonials, and that there are only two new testimonials before today's panel, one of which is from consultant psychiatrist Dr 1. She further submitted that there is limited information about the jobs you have undertaken during the suspension period.

Ms Vinall submitted that your fitness to practice remains impaired. She reminded the panel of the decision of the original panel, and their finding that asking a vulnerable mental health patient to lie on your behalf was contrary to the duty of candour and not easily remediable.

Ms Vinall referred to the case of *Abrahaem v GMC [2008] EWHC 183 (Admin),* and noted the persuasive burden is on the practitioner at a review to demonstrate that they have fully acknowledged why past professional performance was deficient through insight. She directed the panel to your reflective statement in your bundle, and noted you believed that you and Patient A had built up a therapeutic relationship, that he had engaged well in his recovery, and that you were acting out of concern and worry for Patient A. Ms Vinall submitted that there will always be a level of concern and worry treating vulnerable patients, and that the panel may be concerned how that boundary may be managed in future. Ms Vinall also submitted that there is a lack of evidence of further training. She

submitted that, on the basis of the available evidence, the misconduct has not been remedied to the extent that it is highly unlikely it will be repeated.

Ms Vinall submitted that a sanction remains necessary for public protection and in the public interest. She referred to the decision of the original panel and submitted that to take no action or to make a caution order would not be appropriate given the seriousness of this case. She referred to your reflective piece and invited the panel to consider whether a conditions of practice order would now adequately protect the public, or whether a further period of suspension is necessary to allow you time to develop your insight further.

Ms Vinall submitted that, should the panel be minded to make a conditions of practice order, the NMC would suggest the following conditions of practice to assist with the transition:

- Fortnightly meetings with your supervisor to discuss your clinical practice;
- Working with your supervisor to develop a personal development plan (PDP);
- Training to address the underlying charges and a record of completion sent to the NMC prior to the next hearing; and
- A reflective practice profile detailing care.

You gave evidence under oath.

In response to questions from Ms Vinall, you said that your reasons for acting the way you did was out of care, consideration and worry for Patient A. [PRIVATE].

Ms Vinall asked how you will ensure these professional boundaries are not crossed in future. [PRIVATE].

Ms Vinall asked you what signs you would look out for to recognise it sooner, to which you said that repeated contact is the first sign.

Ms Vinall asked you to explain what impact your actions had and how you feel about it. You said that you were extremely ashamed and embarrassed, that as a clinician for this many years you know your practice was impaired because you never would have acted this way beforehand nor going forward.

Ms Vinall asked what training you have undertaken. [PRIVATE]. You said that you would benefit from training within a clinical environment, as well as any training to keep your registration up to date.

Ms Vinall asked you to clarify what supervision would be beneficial, to which you responded clinical supervision with your line manager on a regular basis.

The panel asked you to explain what impact your actions had. You said that you recognised how your actions impacted Patient A, his family and the profession as a whole. You said that Patient A's mental state presumably deteriorated and that his family would have had no faith in the nursing profession as a whole, but specifically in the crisis team's ability to support him.

The panel noted you said repeated contact is the first sign that you might repeat the behaviour, and asked what other signs you would look out for. You reiterated that repeated conduct is the primary indicator. [PRIVATE]. You said that you would consult with your colleagues and line managers.

The panel asked what made you overstep the boundaries with Patient A. You said that you wanted to support him to recover and that you were motivated to help sustain his recovery. You said there was nothing particular about Patient A that compelled you to breach professional boundaries.

The panel asked what kind of role you would be looking for if you could return to nursing. You said that you would like to work with people with severe and enduring mental illness and dual diagnosis. You also said you would like to work with your previous team in a community role as you know them well and you know there is support there.

Mr Lewis asked you to confirm if the contents of the reflective statement encompass your view on impact on Patient A and the NHS more widely, which you did. He then asked if you would invite the panel to take your reflective statement into account to clarify anything you were unable to articulate at today's hearing, which you did.

Mr Lewis asked what you have been doing since the suspension order was put in place. [PRIVATE].

Mr Lewis invited the panel to revoke the current suspension order. He submitted that you have cooperated with NMC proceedings and provided all the documentation as indicated by the previous panel.

Mr Lewis submitted that your reflective piece shows your insight into your failings in relation to Patient A and the wider impacts of your misconduct. He submitted you acknowledge that the suspension was necessary for you to take a break and reevaluate your career and reflect on your conduct, and that you now have an action plan for the future which includes taking time off, seeking support and advice, setting boundaries with the patient, and asking for supervision. He submitted there has been considered thought from you about how to avoid this ever happening again. Mr Lewis submitted that this reflective piece is written over time and is the best evidence of your state of reflection.

Mr Lewis directed the panel to the testimonials of your colleagues, and submitted they work in conjunction with the reflective piece. He submitted that there are updated testimonials from January 2024, two of which attest to your competence and compassion as a nurse and an asset to the profession, and one character reference that describes you as being able to form professional relationships with colleagues and always aware of professional boundaries. Mr Lewis also referred to the character reference provided by Dr 1 which attested to your professionalism as a highly motivated asset to team, and a valued member who would be welcomed back.

Mr Lewis submitted, regarding professional development materials, that you have undertaken safeguarding courses. He submitted that while completion pre-dates the substantive hearing, it was after the incident and still demonstrates a degree of development from where you were at the time of the incident. [PRIVATE]. He submitted that additional training has been difficult for you to secure, and that besides the reading log it has been hard for you to find anything more structured.

Mr Lewis submitted that this was a one-off incident against an otherwise unblemished career, and that nursing is your vocation. Accordingly, Mr Lewis submitted that your fitness

to practise is not currently impaired and therefore the current suspension order should be revoked.

However, if contrary to his primary submission, the panel determined that your fitness to practise is impaired, Mr Lewis' secondary submission was that you are safe to return to work under conditions. He submitted that a further period of suspension would not facilitate your return to work and would be disproportionate.

You informed the panel that you are extremely sorry and regretful for what happened, and that you wish to return to your chosen career of nursing that you love and miss.

Ms Vinall submitted that the NMC maintained its view and invited the panel to make a finding of continued impairment. She submitted that the previous panel focussed on a need for you to develop your insight further and to identify the triggers for this behaviour before the risk of repetition can be considered sufficiently reduced. She submitted that there is nothing on the evidence before today's panel to suggest that the risk has reduced. Ms Vinall invited the panel to impose a further period of suspension in order for you to develop your insight further.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel noted that the original panel found that you had developing insight. At this hearing the panel considered your reflective piece and live evidence, and concluded that your insight is progressing. It considered that you had a good understanding of how your actions put the patient at a risk of harm, why what you did was wrong, and how this impacted negatively on the reputation of the nursing profession.

[PRIVATE]. When questioned during the course of this hearing about how you would handle the situation differently in the future, in particular how you would recognise this behaviour reoccurring, you listed only repeated contact as an indicator. The panel did not consider this was sufficient to alleviate concerns about your practice as the repeated conduct can itself be a breach of professional boundaries. The panel concluded that, despite the significant improvement in your insight, it is not yet at a level that would sufficiently reduce the risk of repetition.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account that you have undertaken relevant training and reading. However, as you have been suspended, the panel acknowledged that you have not had an opportunity to consolidate this in a clinical environment and so you have not adequately strengthened your practice.

The original panel determined that you were liable to repeat matters of the kind found proved. On the basis of the information before it, today's panel is not satisfied that the risk of repetition had significantly reduced.

In light of this, this panel determined that you are liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel considered that the charges pertain to overstepping professional boundaries, and a purely therapeutic relationship with Patient A. In this case, the panel considered that the public interest concerns in this case have already been marked by the six-month suspension period. The panel therefore determined that, in this case, a finding of continuing impairment on public interest grounds is not required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

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 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 considered substituting the current suspension order with a conditions of practice order. Despite the seriousness of your misconduct, there has been evidence produced to show that you have developing insight, and indication from colleagues that you would be supported in your return to nursing. The panel also noted you have expressed a desire to return to nursing. The panel also noted there is no evidence of general incompetence, and that you previously had an unblemished record prior to this incident.

The panel was satisfied that it would be possible to formulate practicable and workable conditions that, if complied with, may lead to your unrestricted return to practice and would serve to protect the public and the reputation of the profession in the meantime.

The panel considered that it would be disproportionate and unduly punitive to extend the current suspension order.

The panel decided that the public would be suitably protected as would the reputation of the profession by the implementation of the following conditions of practice:

For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your nursing practice to employment with one healthcare provider. This must not be an agency.

2. You must ensure that you are supervised any time you are working. Your supervision must consist of regular meetings with your line manager to discuss your clinical caseload and any factors which might affect your performance. Such meetings should be weekly for a period of at least three months, or such longer period as your line manager considers appropriate whichever is the longer. Thereafter such meetings should be fortnightly. All meetings must be documented.

3. You must keep a reflective practice profile. The profile will:
   a) Detail every case in your designated clinical caseload.
   b) Set out the nature of the care given.
   c) Be signed by your line manager, or a designated senior nurse, each time.
   d) Contain feedback from your line manager, or a designated senior nurse, on how you gave the care. You must send your case officer a copy of the profile before the next review to be put before the reviewing panel.

4. You must work with your line manager, or a designated senior nurse, to create a personal development plan (PDP). Your PDP must address the concerns about professional boundaries, record keeping, and communication. You must:
   a) Send your case officer a copy of your PDP before the next review.
   b) Send your case officer a report from your line manager, or designated senior nurse, before the next review to be put before the reviewing panel. This report must show your progress towards achieving the aims set out in your PDP.

5. You must engage with your line manager, or a designated senior nurse, on a frequent basis to ensure that you are making progress towards aims set in your PDP, which include meeting with your line manager, or a designated senior nurse at least every three months to evaluate your progress towards achieving the aims set out in your PDP.

6. You will send the NMC a report seven days in advance of the next NMC hearing or meeting from your line manager providing a summary of how the clinical supervision has progressed.

7. You must keep the NMC informed about anywhere you are working by:
   a) Telling your case officer within seven days of accepting or leaving any employment.
   b) Giving your case officer your employer's contact details.

8. You must keep the NMC informed about anywhere you are studying by:
   a) Telling your case officer within seven days of accepting any course of study.
   b) Giving your case officer the name and contact details of the organisation offering that course of study.

9. You must immediately give a copy of these conditions to:
    a) Any organisation or person you work for.
    b) Any employers you apply to for work (at the time of application).
    c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.

10. You must tell your case officer, within seven days of your becoming aware of:
    a) Any clinical incident you are involved in.
    b) Any investigation started against you.
    c) Any disciplinary proceedings taken against you.

11. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
    a) Any current or future employer.
    b) Any educational establishment.
    c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 18 months.

This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 19 March 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at the hearing; and
- A further reflective piece from you addressing your learning and development.

This will be confirmed to you in writing.

That concludes this determination.