Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday, 9 January 2024 – Friday, 12 January 2024
Friday 9 February 2024
Monday 12 – Friday 16 February 2024
Friday 26 April 2024

Virtual Hearing

Name of Registrant:	**Joanna Nowak**
NMC PIN	07J0164C
Part(s) of the register:	Registered Nurse – Adult RN1 31 October 2007
Relevant Location:	London
Type of case:	Misconduct
Panel members:	Simon Banton (Chair, Lay member) Pamela Campbell (Registrant member) Nicola Jackson (Lay member)
Legal Assessor:	Gelaga King (9 – 12 January 2024) Nigel Mitchell (Friday 9 February 2024) Mark Ruffell (from 12-16 February 2024) Nigel Pascoe KC (26 April 2024)
Hearings Coordinator:	Sharmilla Nanan (9 January – 12 January 2024) Vicky Green (from 9 February 2024 onwards)
Nursing and Midwifery Council:	Represented by David Claydon, Case Presenter
Mrs Nowak:	Present and represented by Thomas Buxton, (instructed by the Royal College of Nursing)
Facts proved by admission:	Charges 5a, 7 (in its entirety), 8 (in its entirety), 9a, 9b, 9c, 9d, 9e, 10a, 10c, 10d, 11 and 12b
No case to answer:	Charge 12a in respect of Schedule 1 - (1), (3), (5) and (6)

Facts proved:	1)a), 1)b), 1)d), 1)f), 2, 3, 4)a), 4)b), 6)a), 6)b), 9)f)iii), 9)f)iv), 10)b)
Facts not proved:	1)c), 1)e), 5)b), 5)c), 5)d), 9)f)i), 9)f)ii), 12)a)
Fitness to practise:	Impaired (only on public interest grounds)
Sanction:	Caution order (5 years)
Interim order:	N/A

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

At the outset of the hearing, Mr Buxton, on your behalf, made a request that this case be held entirely in private [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Claydon, on the behalf of the Nursing and Midwifery Council (NMC), 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.

[PRIVATE]. The panel determined to hold the entirety of the hearing in private [PRIVATE].

Details of charge

That you, whilst employed by Care UK ('the employer") at HMP Brixton, between 30 January 2019 and 6 June 2019;

1) Did not disclose a conflict of interest to your employer, in that you;

a) [PRIVATE]. **[Proved]**

b) [PRIVATE]. **[Proved]**

c) [PRIVATE]. **[Not proved]**

d) [PRIVATE]. **[Proved]**

e) [PRIVATE]. **[Not proved]**

f) [PRIVATE]. **[Proved]**

2) On or around 14 June 2019, during an investigatory meeting when asked by your employer why you did not disclose your personal relationship with Patient A, on one or more occasion, you inaccurately stated that you had not recognised Patient A. **[Proved]**

3) Your actions in one or more of charges 1) a), 1 b), 1 c), 1 d), 1 e), 1 f) & 2, were dishonest in that you sought to conceal your personal relationship/connection/conflict of interest with Person A, from your employer. **[Proved]**

4) On or around 31 January 2019;

a) Incorrectly recorded an entry into Patient A's System One records, dated 3 December 2018. **[Proved]**

b) Incorrectly recorded that Patient A had suffered a head injury at/from HMP Wandsworth. **[Proved]**

5) On or around 3 March 2019;

a) Recorded that Patient A's blood pressure was 153/98. **[Proved by admission]**

b) Did not record the clinical rationale for taking Patient A's blood pressure. **[Not proved]**

c) Did not record any clinical action taken in response to the blood pressure reading. **[Not proved]**

d) Did not record a clinical rationale as to why Patient A required stronger pain medication. **[Not proved]**

6) On or around 17 March 2019 after referring Patient A for physiotherapy;

a) Did not record a clinical entry to show that a consultation had taken place. **[Proved]**

b) Did not record a clinical rationale for the physiotherapy referral. **[Proved]**

7) On or around 22 March 2019 did not record a clinical rationale for referring Patient A to The Wellness Centre. **[Proved by admission]**

8) On or around 4 June 2019 after visiting Patient A;

a) Did not contemporaneously record details of your visit in Patient A's System One record. **[Proved by admission]**

b) Did not record the clinical rationale/purpose for the visit in Patient A's System One record. **[Proved by admission]**

c) Did not record the details of your visit in Patient A's Assessment Care in Custody and Teamwork Record. **[Proved by admission]**

d) Did not record the details of your visit with Patient A in the wing observation book. **[Proved by admission]**

9) On or around 5 June 2019 after visiting Patient A;

a) Did not record the details of your visit in Patient A's Assessment Care in Custody and Teamwork record. **[Proved by admission]**

b) Did not record the details of your visit with Patient A in the wing observation book. **[Proved by admission]**

c) Retrospectively recorded your visit for the 4th of June 2019 in Patient A's System One record. **[Proved by admission]**

d) Did not record a rationale as to the delay/why the entry was retrospective. **[Proved by admission]**

e) Did not record the clinical rationale/purpose for the visit in Patient A's System One record **[Proved by admission]**

f) Did not adequately record;

i) Patient A's presentation. **[Not proved]**

ii) The content of the conversation with Patient A. **[Not proved]**

iii) Patient A's thoughts. **[Proved]**

iv) Patient A's feelings. **[Proved]**

10) On or around 4/5 June 2019 did not adequately escalate concerns regarding Patient A to;

a) Oscar 1/Officer in Charge of the Prison. **[Proved by admission]**

b) The mental health team. **[Proved]**

c) The wing officer. **[Proved by admission]**

d) A senior member of staff. **[Proved by admission]**

11) On or around 4/5 June 2019 did not check for/open Patient A's Assessment Care in Custody and Teamwork record Plan. **[Proved by admission]**

12) On one or more occasion as listed in schedule 1, accessed/opened Patient A's System One records;

a) Without any clinical justification. **[Not proved]**

b) Without recording any clinical rationale. **[Proved by admission]**

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

Schedule 1:

1) 3 February 2019 **[No case to answer]**
2) 15 February 2019 **[Not proved]**
3) 3 March 2019 **[No case to answer]**
4) 28 March 2019 **[Not proved]**
5) 3 April 2019 **[No case to answer]**
6) 24 April 2019 **[No case to answer]**

Admissions to the charges

At the outset of the hearing, the panel heard from Mr Buxton, who informed the panel that you made full admissions to charges 5a, 7 (in its entirety), 8 (in its entirety), 9a, 9b, 9c, 9d, 9e, 10a, 10c, 10d, 11 and 12b.

The panel therefore finds charges 5a, 7 (in its entirety), 8 (in its entirety), 9a, 9b, 9c, 9d, 9e, 10a, 10c, 10d, 11 and 12b proved in their entirety, by way of your admissions.

Background

You started work as a registered nurse at HMP Brixton on 5 November 2018.

After you completed the relevant inductions at the prison, you worked first as a healthcare assistant due to an inadvertent lapse of your NMC registration and then once

your NMC PIN became active you worked as a prison nurse in the healthcare department.

Patient A entered HMP Brixton from HMP Wandsworth in January 2019 and sadly took his own life on 6 June 2019. When you were informed of Patient A's death you were described by Witness 1 as being *"uncontrollably tearful"*. It was noted by Witness 1 that this was your first experience of dealing with a death in custody and that you were the last person to see Patient A before his suicide. [PRIVATE].

During the local interviews with the investigators at the prison, during the investigation into Patient A's suicide, you stated that you did not recognize him as he had changed his physical appearance by growing a beard and had gained some weight.
It is alleged that you took an undue part in Patient A's care which you should not have done. There are a number of clinical escalation and recording errors which have been admitted by you at this hearing.

Decision and reasons on application of no case to answer

The panel considered an application from Mr Buxton, after the NMC had closed its case, that there is no case to answer in respect of charge 12a and its associated schedule. This application was made under Rule 24(7).

In relation to this application, Mr Buxton referred the panel to the principles in the case of *R v Galbraith (1981) 73 Cr App R 124.* He submitted that the evidence in respect of charge 12a and its associated schedule is entirely unsatisfactory and when looked at carefully it is inconsistent. He referred the panel to the four essential sources of evidence for this charge, namely:

- Witness 2's timeline of contact between Patient A and the Registrant 31 January 2019 - 5 June 2019 (described by Witness 2 as her *"aide memoir"* for her investigation and here referred to as Document A).
- Tasks for [Patient A] on SystemOne, exhibited by Witness 2 but composed by Witness 3 (here referred to as Document B).

- An appendix from the Care UK investigation which outlines the dates on which you accessed Patient A's medical records through SystemOne. This document was exhibited by Witness 2 but compiled by Witness 3. (Here referred to as Document C).
- The System One Record for Patient A 30 January 2019 – 28 October 2020 (showing when Patient A's records were accessed and here referred to as Document D).

Mr Buxton took the panel through the evidence for each date outlined in the charges schedule with reference to the documentation outlined above and submitted why it could not and would not be proper to rely on it. Mr Buxton acknowledged that there are two instances where the evidence suggests there is no activity with a clinical justification, but he noted the contradictory and conflicting evidence between all three live witnesses. He submitted that when looking at the underlying evidence, it is not consistent or correct, and on this basis, he invited the panel to find that the evidence is so unsatisfactory and tenuous that charge 12a and all elements of its associated schedule cannot proceed beyond this stage.

Mr Claydon submitted that in respect of 3 February 2019, 28 March 2019 and 3 April 2019, there is some evidence of your alleged inappropriate activity, however the correct time to consider this evidence would be at the facts stage of the hearing. He acknowledged that this was a matter for the panel. He took the panel through the remaining dates, with reference to the documentary evidence and live witness evidence which the panel heard. He submitted that there is clear evidence in relation to 15 February 2019 and sufficient evidence, at the very minimum, for 3 March 2019 and 24 April 2019 to be considered at the facts stage of the hearing. He noted that the panel only need find that the evidence for at least one date of the six listed in the schedule is sufficiently credible for charge 12a to stand.

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

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. It considered if the evidence taken at its highest could support a finding of proved for each charge.

The panel first considered Document C compiled by Witness 3. Document C recorded the instances of when you had accessed Patient A's records in SystemOne. The panel noted that not all the entries related to a specific charge. The panel noted that Witness 3 said in her evidence that she had used the computer-based system to compile this document rather than a paper-based document such as Document D. The panel bore in mind the intricacies of using a computer-based system, which allows you to click through to different screens, compared to a paper version which may not contain all the information held on the computer-based system. The panel was of the view that it was appropriate for Witness 3 to analyse Patient A's SystemOne records given her role as Deputy Head of Healthcare in HMP Brixton and the circumstances of Patient A's death. The panel noted that Witness 3 reiterated several times during her live evidence that she compiled Document C by working through SystemOne to discover your activity in Patient A's records. The panel bore in mind Witness 3's oral evidence regarding her familiarity with the system in respect of its structure and interface. It also considered that this document is a near contemporaneous record as Witness 3 produced it for the immediate 72 hour review following Patient A's death. The panel considered that this document has value and will determine what weight to attach to it at the facts stage.

The panel next considered whether you had a case to answer in respect of charge 12a and its associated schedule and that it was to solely consider whether sufficient evidence had been presented, such that it could find the facts proved to the charge. The panel considered each date outlined in Schedule 1.

1) 3 February 2019

The panel considered that Document A states *"03/02/19 records opened at 10.57 ? reason admin of meds",* Document B states on 3 February 2024 *"Nurse JN task MH to review medication as non-compliant.",* Document C states on 3 March at 10.57 *"Tasks Health and wellbeing"* and noted that Document D has an entry for access at 10.57 but

no corresponding reason. Having examined all the relevant documents, the panel was satisfied that the evidence before it, taken at its highest, was such that it would not be able to find that you had no clinical justification to access Patient A's SystemOne records on this date. The panel therefore determined to accept a no case to answer for charge 12a in respect of 3 February 2019.

2) 15 February 2019

The panel considered that Document A states "*15/02/19 records opened coded entry XaOck- check this"*, Document B appears to have no task attached to this date, Document C states on 15 February at an unknown time *"No activity"* and Document D has an entry for access with no time but a read code that states "*Date (Xa0ck)*". The panel considered the evidence before it and determined that there was no evidence to support a clinical justification of your access of Patient A's SystemOne records on 15 February 2019. The panel therefore determined not to accept a no case to answer for charge 12a in respect of 15 February 2019.

3) 3 March 2019

The panel considered that Document A states *"records opened at 08.21 ? reason admin of meds Same date16.32 saw him checked obs- BP raised 153/98 (no comment from JW)*
Sent task to GP for "review and stronger medication"". It noted that Document B has two entries for the 3 March 2019. The first entry states *"Entry from nurse JN regarding patient complaining of cold"* and the second entry states *"Nurse JN tasked GP for medication as paracetamol was not sufficient."* Document C also has two entries, the first entry at 08.21 states *"No activity"* and the second entry at 16:32 states *"Documents regarding cold symptoms and tasks GP."* Document D has an entry for access and states at 3 March 2019 16:32, *"Patient A complains of cold , flu symptoms more than 2 weeks. He is taking regularly Paracetamol. Today he stataed[sic] that he feels worse and he has got headache. Observation done:BP-153/98, P-88, Temp-37.Paracetamol received. Tasked to GP for review and for stronger medication."*

The panel was satisfied, having examined all the relevant documents, that the evidence before it, taken at its highest, was such that it would not be able to find that you had no clinical justification to access Patient A's SystemOne records on this date. The panel therefore determined to accept a no case to answer for charge 12a in respect of 3 March 2019.

4) 28 March 2019

The panel considered that Document A states "*28/03/19 08.13 and 08.41 gives pain relief"* and Document B has a single reference regarding 28 March 2019 which states *"Patient A did not attend his appointment with TAC and was subsequently discharged."*

Document C shows four entries for the 28 March. The first entry is at 08:13 and states *"administered paracetamol*". The second entry is at 08:42 and states *"Administered ibuprofen".* The third entry is at 15:19 and states "*No activity"*. The final entry is at 17:21 and states "*No activity".*

Document D shows entries for access on the 28 March 2019 at 8:13, 8:14, 8:41 and 8:43. It noted that at 8:13 the SystemOne entry states *"(From PGD or Homely Remedy) Paracetamol 500mg soluble tablets - 2 tablets - 1-2 tablet - Once only (Oral) Stopped 28 Mar 2019 Medication has been administered by Joanna Nowak"* and at 8:41 it states *"(From PGD or Homely Remedy) Ibuprofen 200mg tablets - 2 tablets - 2 tablet - Once only (Oral) Stopped 28 Mar 2019 Medication has been administered by Joanna Nowak".* It noted that there are no entries for the times of 8:14 and 8:43.

The panel was satisfied, having examined all the relevant documents, that the evidence before it, taken at its highest, was such that it would not be able to find that you had no clinical justification to access Patient A's SystemOne records on this date. The panel therefore determined to accept a no case to answer for charge 12a in respect of 28 March 2019 at 8:13, 8:14, 8:41, 8:42 and 8:43.

However, it determined that there is no evidence to support a clinical justification of your access of Patient A's SystemOne records on 28 March 2019 at 15:19 and 17:21. The

panel therefore determined not to accept a no case to answer for charge 12a in respect of 28 March 2019 at 15:19 and 17:21.

5) 3 April 2019

The panel considered that Document A states *"03/04/19 12.03 records opened ? why"*, and Document B states on 3 April 2019 *"Nurse JN sent task to Health and wellbeing for referral back to forward trust and TAC"*. Document C states at 12:03 *"Tasks health and wellbeing"*. Document D has an entry for access on 3 April 2019 at 12:03 but no other information. The panel noted that at the entry on 4 April 2019 at 11:56 it states "*History: Wed 03 Apr 12:06 - Joanna Nowak Assigned to Health and Wellbeing Admin".*

The panel was satisfied, having examined all the relevant documents, that the evidence before it, taken at its highest, was such that it would not be able to find that you had no clinical justification to access Patient A's SystemOne records on this date. The panel therefore determined to accept a no case to answer for charge 12a in respect of 3 April 2019.

6) 24 April 2019

The panel considered that Document A had no entry for this particular date. Document B has two entries for 24 April 2019. The first entry states *"Did not attend Minor ailments appointment for repeat of sleeping tablets"* and the second entry states "*Nurse JN sent task to physiotherapist for assessment."* Document C has two entries for the 24 April. The first entry at 11:19 states *"No activity"* and the second entry at 14:04 states *"Tasks Physio RE shoulder pain."* Document D has an entry for access on 24 April 2019 at 09:45 which was entered in at 10:29 which states *"Did not attend for Minor Ailment appointment with Ma Minor Ailments. Did not attend (Xa1kG)"* and an entry for access at 14:04 which has not other information.

The panel was satisfied, having examined all the relevant documents, that the evidence before it, taken at its highest, was such that it would not be able to find that you had no clinical justification to access Patient A's SystemOne records on this date. The panel

therefore determined to accept a no case to answer for charge 12a in respect of 24 April 2019.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it could find the facts of charge 12a proved in respect of Schedule 1 - (1), (3), (5) and (6).

The panel was of the view that there has been sufficient evidence to support charge 12a in respect of Schedule 1 - (2) and (4) at this stage and, as such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer with respect to these dates. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

[This hearing resumed on 9 February 2024]

Decision and reasons on application for a short adjournment

Since the last hearing, there has been a change in legal assessor. Today's legal assessor, appearing on Friday 9 February 2024, will be replaced by another on Monday 12 February 2024, and this legal assessor will be present for the remaining scheduled dates. At the last hearing, the panel was aware that there would be a change in legal assessor and it was decided that you would start your evidence fresh on the first day of the resuming hearing to avoid your evidence going part heard during the break and to ensure that the same legal assessor would be present for the entirety of your evidence.

At the outset of the first day of the resuming hearing the panel heard a joint application for a short adjournment.

Mr Claydon informed the panel that there had been a delay in starting proceedings today due to the late arrival of your defence bundle. He submitted that he will need some time to review this bundle before it can be provided to the panel and before we hear evidence from you. Nevertheless, he submitted that it would be undesirable to start your evidence today given that there will be another change in legal assessor on

Monday. Mr Claydon submitted that even if the next legal assessor was provided with a transcript of any evidence given by you today, this would cause difficulties and delay in starting again on Monday as the legal assessor would inevitably need time to read and consider these transcripts before we are able to resume on Monday. Mr Claydon therefore invited the panel to adjourn today and start your evidence fresh and in the presence of the legal assessor who will be present for the remainder of the hearing.

Mr Buxton agreed with and had nothing to add to the factual elements of Mr Claydon's submissions. He submitted that a legal assessor is an important and integral part of regulatory proceedings and the legal assessor currently present has only been booked for one day. Mr Buxton submitted that the hearing was previously adjourned with the view to you being able to give your evidence on one day and in the presence of a legal assessor who would be providing legal advice. He submitted that even if the legal assessor is provided with a transcript, as this would be computer generated there are likely to be some inaccuracies. Mr Buxton submitted that the legal assessor would be at a disadvantage by not hearing your evidence and this may impact on fairness to you in these proceedings. He submitted that having a change in legal assessor part way through your evidence raises concerns and it would be improper to proceed on this basis given the nature of the case and the seriousness of the allegations. Mr Buxton therefore supported the application to adjourn until Monday morning.

The legal assessor informed the panel that he had been asked to cover this hearing today at the last minute and he had not been provided with all of the relevant documentation in advance. The panel accepted the advice of the legal assessor.

The panel considered this application carefully and had regard to the submissions of Mr Claydon and Mr Buxton. Whilst the panel was mindful to the public interest of the expeditious disposal of cases, its primary consideration was fairness to you and giving you the opportunity to present your best evidence. The panel was of the view that given that it has been delayed in starting today and is still yet to be provided with your bundle of documents, it would not be in a position to start your evidence until this afternoon. This means that it is highly likely that you would not complete your evidence today and that there would be a particularly unnatural break in your evidence given the weekend

break and one legal assessor hearing the start or your evidence and a different legal assessor hearing the remainder of your evidence on Monday. The panel therefore decided to allow the application for a short adjournment in fairness to you.

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 submissions made by Mr Claydon on behalf of the NMC and by Mr Buxton 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: Head of Healthcare at HMP Brixton.
- Witness 2: Reviewer for Nina Murphy Associates, commissioned by NHS England to provide an independent clinical review into the death of Patient A.
- Witness 3: Deputy Head of Healthcare at HMP Brixton.

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 by Mr Buxton on your behalf.

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

Determination on whether you recognised Patient A at HMP Brixton

The panel had regard to the evidence provided by you in that you assert that you did not recognise Patient A. The panel had regard to your statement to the Coroner and responses during the Investigation into the death of Patient A. It noted that you stated you had not seen Patient A in five years and during this time his appearance had significantly changed. You said that he was much more muscular than he was the last time you saw him and that he had grown a beard. The panel noted that you have been consistent in your denial of recognising Patient A, who you provided care to at HMP Brixton from January 2019 until June 2019.

The panel considered that whether you recognised Patient A is a fundamental question as it underpins a significant amount of the charges. The panel therefore decided to make a first determination on whether, it is more likely than not, you recognised Patient A during the course of your interactions with him at HMP Brixton.

The panel had regard to all of the evidence before it. [PRIVATE].

[PRIVATE]. The panel also heard evidence about how, by your own admission, Patient A had a distinct accent. The panel also found that Patient A had a distinctive name that you would have heard personally and seen written down when working at HMP Brixton. The panel also heard evidence from your colleagues who said that upon finding out that Patient A had died, you were extremely upset and *"absolutely distraught"* beyond what would be expected of a nurse whose patient had died. The panel noted that Witness 3 considered you to be *'inconsolable'*.

The panel took into account that identifying someone you know is dependent not only on physical appearance, but on their overall demeanour, way of talking and moving as well as their personal details.

Taking all of the above factors into account, even if his appearance had significantly changed, given your previous interactions and relationship with him the panel found it more likely than not that you would have recognised Patient A at some stage during the six months he was at HMP Brixton.

Charge 1)a)

1) Did not disclose a conflict of interest to your employer, in that you;

a) [PRIVATE].

This charge is found proved.

[PRIVATE].

Charge 1)b)

1) Did not disclose a conflict of interest to your employer, in that you;

b) [PRIVATE].

This charge is found proved.

[PRIVATE].

Charge 1)c)

1) Did not disclose a conflict of interest to your employer, in that you;

c) [PRIVATE].

This charge is found not proved.

[PRIVATE].

Charge 1)d)

1) Did not disclose a conflict of interest to your employer, in that you;

d) [PRIVATE].

This charge is found proved.

[PRIVATE].

Charge 1)e)

1) Did not disclose a conflict of interest to your employer, in that you;

e) [PRIVATE].

This charge is found not proved.

[PRIVATE].

Charge 1)f)

1) Did not disclose a conflict of interest to your employer, in that you;

f) [PRIVATE].

This charge is found proved.

[PRIVATE].

Charge 2

> 2) On or around 14 June 2019, during an investigatory meeting when asked by your employer why you did not disclose your personal relationship with Patient A, on one or more occasion, you inaccurately stated that you had not recognised Patient A.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Witness 1 and the Care UK investigation documents.

The panel had sight of the Investigatory meeting notes dated 14 June 2029. It noted that when you were asked about why you did not disclose your personal relationship with Patient A, you stated that you had not recognised him. Having already determined that it was more likely than not that you did recognise Patient A, the panel found that stating that you had not recognised him was inaccurate. Accordingly, the panel found this charge proved.

Charge 3

> 3) Your actions in one or more of charges 1) a), 1 b), 1 c), 1 d), 1 e), 1 f) & 2, were dishonest in that you sought to conceal your personal relationship/connection/conflict of interest with Person A, from your employer.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to its findings at charges 1)a), 1)b), 1)d), 1)f) and 2.

The panel found that it was more likely than not that you had recognised Patient A. It also found that you were aware of your duty to disclose the conflict of interest and you failed to do this. The panel determined that in not disclosing that you knew Patient A, you were attempting to conceal your past relationship with him. The panel was of the view that in not disclosing your past relationship with Patient A, your conduct would be considered dishonest by the standards of ordinary decent people. The panel therefore found this charge proved in respect of charges 1)a), 1)b), 1)d), 1)f) and 2.

Charge 4)a)

4) On or around 31 January 2019;

a) Incorrectly recorded an entry into Patient A's System One records, dated 3 December 2018.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's System One records dated 3 December 2018 and your evidence.

The panel had sight of an entry dated 3 December 2018 in Patient A's notes made by you that was entered on 31 January 2019. The panel noted that you accepted that you must have made this entry incorrectly. The panel therefore found this charge proved.

Charge 4)b)

4) On or around 31 January 2019;

b) Incorrectly recorded that Patient A had suffered a head injury at/from HMP Wandsworth.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Witness 2 and the notes of the Investigatory interview dated 24 October 2019.

The panel had sight of the interview for the Investigation into the death of Patient A at HMP Brixton in which the following was stated:

> *'[Witness 2]: And it's in all the records. What I don't understand is why on the 31st of January, at a … you make reference to an injury.*
>
> *Joanna Nowak: This is my mistake, I think, how I maybe I put a wrong – Because he hasn't have any injury because head injuries on that day – '*

In your evidence you told the panel that you must have made this entry by mistake. The panel saw evidence that Patient A had a cut on his eye but there was no evidence that he had sustained a head injury at HMP Wandsworth. The panel was satisfied that it was more likely than not that you incorrectly recorded that Patient A had suffered a head injury at HMP Wandsworth. Accordingly, the panel found this charge proved.

Charge 5)b)

> 5) On or around 3 March 2019;
>
> b) Did not record the clinical rationale for taking Patient A's blood pressure.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's nursing record.

The panel had sight of Patient A's notes in which you had made the following entry on 3 March 2019:

> *'Patient A complains of cold, flu symptoms more than 2 weeks. He is taking regularly Paracetamol. Today he stated [sic] that he feels worse and he has got a headache. Observation done:BP-153/98, P-88, Temp-37. Paracetamol received. Tasked to GP for stronger medication.'*

The panel noted that you had recorded that Patient A had cold/flu symptoms, that he had a headache and was feeling unwell. The panel considered this to be a sufficient rationale for taking Patient A's blood pressure. The panel therefore found this charge not proved.

Charge 5)c)

> 5) On or around 3 March 2019;
>
> > c) Did not record any clinical action taken in response to the blood pressure reading.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's nursing record on System one.

The panel had sight of Patient A's notes in which you had made the following entry on 3 March 2019:

> *'Patient A complains of cold, flu symptoms more than 2 weeks. He is taking regularly Paracetamol. Today he stated [sic] that he feels worse and he has got a headache. Observation done:BP-153/98, P-88, Temp-37. Paracetamol received. Tasked to GP for stronger medication.'*

The panel noted that following taking Patient A's blood pressure, you tasked the GP for stronger medication. The panel was of the view that you did take clinical action by asking the GP to review Patient A in considering whether he needed stronger medication; this would mean that the GP would need to look at your entry in the notes and see the blood pressure recording. It would then be up to the GP as to whether any action was required. The panel therefore found this charge not proved.

Charge 5)d)

5) On or around 3 March 2019;

d) Did not record a clinical rationale as to why Patient A required stronger pain medication.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's nursing record on System one.

The panel had sight of Patient A's notes in which you had made the following entry on 3 March 2019:

'Patient A complains of cold, flu symptoms more than 2 weeks. He is taking regularly Paracetamol. Today he stated [sic] that he feels worse and he has got a headache. Observation done:BP-153/98, P-88, Temp-37. Paracetamol received. Tasked to GP for stronger medication.'

The panel noted that you recorded that Patient A was feeling unwell and that even when taking Paracetamol, he was still suffering from cold/flu symptoms after two weeks. You recorded that his symptoms were worsening and that he had a headache. The panel heard no evidence that this was not a sufficient clinical rationale for requesting stronger pain medication for Patient A. Accordingly, the panel found this charge not proved.

Charge 6)a)

6) On or around 17 March 2019 after referring Patient A for physiotherapy;

a) Did not record a clinical entry to show that a consultation had taken place.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A's clinical records on System one.

The panel had sight of an entry in Patient A's clinical records made by you on 17 March 2019 in which you recorded the following:

'Dear Team,

Could you please see Patient A due to his pain. He is taking every day, mostly BD Ibuprofen, sometimes with Paracetamol.

Kind Regards,
Joanna'

Having reviewed Patient A's clinical notes, the panel found no entry to show that a consultation had taken place on or around 17 March 2019, after which you referred him for physiotherapy. The panel therefore found this charge proved.

Charge 6)b)

6) On or around 17 March 2019 after referring Patient A for physiotherapy;

b) Did not record a clinical rationale for the physiotherapy referral.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the evidence of Patient A's clinical records on System one and the evidence of Witness 2.

The panel had sight of an entry in Patient A's clinical records made by you on 17 March 2019 in which you recorded the following:

> *'Dear Team,*
>
> *Could you please see Patient A due to his pain. He is taking every day, mostly BD Ibuprofen, sometimes with Paracetamol.*
>
> *Kind Regards,*
> *Joanna'*

The panel noted that this did not indicate the site of the pain.

The panel also had sight of Witness 2's witness statement in which she stated the following:

> *'I reviewed the records for alongside the Tasks that had been made on his record and found that they did not match up. I would expect there to be a clinical entry in the record that matches any Tasks made. For example, on the 17 March 2019 the Registrant referred for physiotherapy, however there was no clinical entry to show the consultation that took place and how or why the Registrant came to the conclusion to refer him. If a referral is made for an individual to see a physiotherapist, I would expect there to be a clinical entry in the records to detail any discussion with the patient and the reason that they were referring them. Without this, I was unable to tell whether the Registrant had simply decided to refer out of her own volition, or whether had requested this for any particular reason.'*

The panel also heard oral evidence from Witness 2. The panel considered that making a referral to another service would require details of the presenting problem and that you did not provide a clinical rationale for referring Patient A for physiotherapy on 17 March 2019. The panel therefore found this charge proved.

Charge 9)f)i)

9) On or around 5 June 2019 after visiting Patient A;

f) Did not adequately record;

i) Patient A's presentation.

This charge is found not proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's clinical notes on System one.

The panel had sight of Patient A's clinical notes in which you made the following entry on 5 June 2019:

'Tried to speak yesterday with Patient A but he refused, he stated that he wants to be alone. Spoken with him today in the evening. Noticed that he feels very down, his eyes full of tears, very low mood. He stated that he hasn't eat yesterday and today as he is not hungry. Encouraged him to try to eat and drink as he will put his body at risk of low blood sugar. He stated that he will try. Patient informed that he will be seen by TAC on Friday. He stated that he is looking forward for his appointment. Spoken with officer to keep an eye on him.'

The panel was satisfied that you had adequately recorded Patient A's presentation in that you had recorded that he felt very down and that he had tears in his eyes and had a very low mood. The panel heard no evidence that this was not adequate in the circumstances. The panel therefore found this charge not proved.

Charge 9)f)ii)

9) On or around 5 June 2019 after visiting Patient A;

f) Did not adequately record;

ii) The content of the conversation with Patient A.

This charge is found not proved.

The panel had sight of Patient A's clinical notes in which you made the following entry on 5 June 2019:

'Tried to speak yesterday with Patient A but he refused, he stated that he wants to be alone. Spoken with him today in the evening. Noticed that he feels very down, his eyes full of tears, very low mood. He stated that he hasn't eat yesterday and today as he is not hungry. Encouraged him to try to eat and drink as he will put his body at risk of low blood sugar. He stated that he will try. Patient informed that he will be seen by TAC on Friday. He stated that he is looking forward for his appointment. Spoken with officer to keep an eye on him.'

The panel was satisfied that you had adequately recorded the content of your conversation with Patient A on 5 June 2019 and noted that this charge does not address whether the conversation was adequate, just that it is adequately recorded. The panel heard no evidence that this was not adequate in the circumstances. The panel therefore found this charge not proved.

Charge 9)f)iii)

9) On or around 5 June 2019 after visiting Patient A;

f) Did not adequately record;

iii) Patient A's thoughts.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's clinical notes on System one and the notes of the Investigation meeting dated 14 June 2019.

The panel had sight of Patient A's clinical record and noted that on 5 June 2019 you did not record any information about his thoughts. The panel was of the view that given Patient A presented as being upset and communicated that he had a low mood, you should have questioned him with regard to what he was thinking about to make him feel so low and recorded this. The panel found no evidence that you had done this and recorded his thoughts. The panel therefore found this charge proved.

Charge 9)iv)

9) On or around 5 June 2019 after visiting Patient A;

f) Did not adequately record;
iv) Patient A's feelings.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's clinical notes on System one and the notes of the Investigation meeting dated 14 June 2019.

The panel had sight of Patient A's clinical record and noted that on 5 June 2019 you recorded that he was feeling low but failed to expand on the depth and nature of his feelings. The panel was of the view that given Patient A presented as being upset and communicated that he had a low mood, you should have questioned him further about how he was feeling. The panel considered your entry of Patient A *'feeling low'* was an

inadequate record to describe his feelings. The panel therefore found this charge proved.

Charge 10)b)

10) On or around 4/5 June 2019 did not adequately escalate concerns regarding Patient A to;

b) The mental health team.

This charge is found proved.

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's clinical records on System one.

The panel noted from Patient A's clinical record that he was due to start counselling sessions on 4 June 2019 however, his first session did not take place as he was distressed and not in a fit state to take part and that he had a further session booked in the next few days.

The panel had regard to the witness statement of Witness 2 in which she stated the following:

> *'Assessment, Care in Custody and Teamwork (ACCT) is the care planning process for prisoners identified as being at risk of suicide or self-harm. The ACCT process requires that certain actions be taken to ensure that the risk of suicide and self-harm is reduced…*
>
> *The Registrant saw [Patient A] on 4 June 2019, however she did not make an entry in either the Systm One records or the ACCT records for that date. I was aware the Registrant saw as she told me that she had done so. There is evidence to support this on the CCTV log. He had been placed on an ACCT on 4 June after barricading himself in his cell and expressing suicidal thoughts.*

When the Registrant saw [Patient A] on 5 June 2019, she said that she told the officers to keep an eye on [him]. However, she did not record this by making an entry into the ACCT. The Registrant said that she did not know that was on an ACCT. Even if the Registrant did not know that he was on an ACCT, it was of concern that she did not escalate her concerns via healthcare and query whether he should have been seen by the mental health team when his behaviour indicated that this would have been appropriate.'

The panel noted that although you knew Patient A had a further appointment with the Talking and Counselling service (TAC), you should still have referred him to the mental health team in view of his worsening symptoms. The panel accepted the evidence of Witness 2, that having observed Patient A being tearful and in a low mood, you should have referred him to the mental health team and you did not. The panel therefore found this charge proved.

Charge 12)a)

12) On one or more occasion as listed in schedule 1, accessed/opened Patient A's System One records;

a) Without recording any clinical justification.

Schedule 1:
2) 15 February 2019
4) 28 March 2019

This charge is found not proved.

Schedule 1:
2) 15 February 2019

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to Patient A's System One records.

The panel had sight of Patient A's System One record and noted that you had made an entry on 15 February 2019 and you had entered a code. The panel was provided with no evidence about what this code meant. It could therefore not be satisfied that you accessed/opened Patient A's System One records without recording a clinical justification on 15 February 2019. Accordingly, the panel found this charge not proved in respect of Schedule 1: 2).

Schedule 1:
4) 28 March 2019

In reaching this decision, the panel had regard to all of the evidence before it. It had particular regard to the Timeline of contact between Patient A and you, and Patient A's System One records.

The panel had sight of the Timeline of contact between Patient A and you provided by Witness 2. The panel noted that Patient A did not attend an appointment with TAC and was subsequently discharged. The panel also noted that on 28 March 2019, at 08:13 Paracetamol was administered and at 08:42 Ibuprofen was administered. The panel considered that any access made by you around that time on 28 March 2019 was more than likely to be related to you recording that you had administered Paracetamol and Ibuprofen which the panel determined to be reasonable and justified. The panel therefore found this charge not proved in respect of Schedule 1: 4).

Having found this charge not proved in respect of Schedule 1: 2) and 4), this charge is found not proved in its entirety.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether 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 Claydon 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. Mr Claydon identified the specific, relevant standards where in his submission, your actions amounted to misconduct. He submitted that your actions and omissions were serious and amounted to misconduct.

Mr Buxton submitted that but for the sub-optimal record keeping, care was provided diligently and to the best of your ability. He submitted that when the charges arose you were working in a difficult and unfamiliar environment. Mr Buxton submitted that the panel should consider what was reasonable practice in the circumstances in respect of the record keeping errors. He submitted that you were praised with regard to your standard of record keeping in the course of your supervision sessions whilst working at HMP Brixton, and therefore misconduct should not be found in respect of the charges found proved in relation to your clinical practice. Mr Buxton accepted that dishonesty charges would amount to misconduct.

Submissions on impairment

Mr Claydon 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).

Mr Claydon submitted that in treating a patient who you knew in a prison environment there was a risk of undue influence which could jeopardise the integrity of the prison service. He submitted that Patient A was not in a position to seek alternative treatment. In respect of the clinical charges found proved, Mr Claydon submitted that these are potentially remediable. However, he submitted that dishonesty is more difficult to remediate. Mr Claydon submitted that you had steadfastly remained of the view that you did not recognise Patient A. He addressed the panel on the question of insight in cases where a defence has been rejected and referred the panel to the case of *Sawati [2022] EWHC 283 (Admin)*.

Mr Claydon acknowledged that you have provided a number of positive testimonials and that is it clear that you have the ability to be a good nurse. However, he submitted that your actions and omissions raise patient safety concerns and a finding of impairment should be made on public protection grounds. Mr Claydon submitted that a right minded

member of the public would also expect a finding of impairment on public interest grounds to maintain and uphold proper professional standards.

Mr Buxton submitted that any impairment in this case should only be made on public interest grounds in respect of the dishonesty found. He submitted that this is not a contribution or causation case, Mr Buxton submitted that your record keeping may not have been at the *"gold standard"* but it was of a reasonable standard and it did not place Patient A at an unwarranted risk of harm. He submitted that it is clear that you had a desire to help and provide the best possible care to him as you do with all of your patients.

Mr Buxton referred the panel to your bundle of documents and the positive testimonials you have provided. He referred the panel to the testimonial from your current employer and submitted that you are clearly held in high regard and that you are a huge asset to them. Mr Buxton submitted that you have taken steps to strengthen your practice in completing relevant training and reflecting on your practice. He submitted that you have demonstrated a strong appreciation of maintaining professional boundaries and you have a genuine contrition for any failings in respect of the care you provided. He submitted that you have expressed genuine remorse and are apologetic to all concerned in this case. Mr Buxton submitted that in the exceptional circumstances of this case, the passage of time, your remediation in practice and the level of your insight and remorse, a finding of impairment relating to your clinical practice should not be found on public interest grounds. He submitted that if the panel is minded to make a finding of impairment, then this should only be made on public interest grounds in respect of the finding of dishonesty.

The panel accepted the advice of the legal assessor.

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:

'10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

***10.2** identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

***13.1** accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*

***13.4** take account of your own personal safety as well as the safety of people in your care*

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

To achieve this, you must:

***19.4** take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public*

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*

20.2 *act with honesty and integrity at all times…*

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 acknowledged that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that failing to disclose a conflict of interest in a prison setting was serious. This lack of disclosure, in the panel's view, had the potential of placing yourself and Patient A at risk and it could have jeopardised the integrity of the prison. In respect of the clinical errors, the panel found that failing to identify that there was an ACCT in place and to update this record, was serious as it had the potential to impact on the care provided to Patient A who had been identified as at high risk and particularly vulnerable at this time. The panel found that your actions as set out above 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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients’ and the public’s trust in the profession.

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

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

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

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

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

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

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

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

The panel carefully considered whether limb a) was engaged. However, it decided that this limb was not applicable, either for past or future practice, given the nature of the clinical findings and the fact that they have been remediated. The panel found limbs b), c) and d) engaged in this case. The panel determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel also determined that you had in the past acted dishonestly in failing to disclose to your employer that you knew Patient A.

The panel went on to consider whether the misconduct identified was capable of remediation, and if so, whether you have remedied the misconduct. In respect of the clinical errors, the panel was of the view that these are remediable. The panel had regard to the training you have undertaken and noted that you have done several courses on record keeping to strengthen your practice. It also noted the four year period of practice you have had without incident since the charges arose. The panel had sight of the references and testimonial from your employer who speak highly of you and attest to your high standards of practice and state that they have no concerns about your record keeping. The panel was satisfied that you have remediated the misconduct arising from your clinical practice/record keeping.

The panel acknowledged that dishonesty is inherently difficult to remediate. It had regard to your reflective statement, a number of very positive testimonials that speak to your good character, your previous good character and many years of successful practice as a nurse. The panel found your reflective statements to be well-structured, detailed and demonstrating a strong awareness of the seriousness of not declaring a conflict of interest in a prison environment. The panel also found that you expressed genuine remorse and a good level of insight. However, the panel considered that you had not fully demonstrated your understanding of the implications of a failure to declare a conflict of interest.

In view of your remorse and period of positive practice since the charges arose and the extremely unique set of circumstances of this case, the panel determined that it was highly unlikely that you would act in a similar way in the future.

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

Having regard to all of the above, the panel decided that a finding of impairment is not necessary on the grounds of public protection. However, it was of the view that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty serious. The panel therefore determined that a finding of impairment on public interest grounds alone is required.

Panels consideration of an interim order

After the panel handed down its decision on current impairment, as this hearing is going part heard, it invited submissions on whether an interim order is necessary in the circumstances.

Mr Claydon submitted that the NMC is not seeking an interim order.

Mr Buxton submitted that in light of the panel's findings on impairment and that you have worked without issue for four years without issue an interim order is not necessary.

The panel accepted the advice of the legal assessor.

The panel determined that an interim order is not necessary given that it has determined that there are no public protection issues and you have worked without incident for four years.

[This hearing resumed on 26 April 2024]

Sanction

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. At this resuming hearing you provided the following further documents:

- A three page reflective statement dated April 2024.
- A certificate of Continuing Professional Development in the '*Statutory Duty of Candour in Health and Social Care – Level 3'* dated 28 February 2024.
- A certificate of completion of a CPD certified course in *'Emotional Intelligence'* dated 29 February 2024.
- A certificate of completion in a course on *'Powerful Honesty: Develop Superior Communication Skills'* dated 25 February 2024.

The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Claydon submitted that the NMC sanction bid is that of a striking off order. He set out a number of features that were in his submission, aggravating in this case. Mr Claydon submitted that your actions as a prison nurse jeopardised Patient A, a vulnerable patient who was in a situation where he did not have a choice about who treated him, or who had access to his private medical notes as he was a detained prisoner. Mr Claydon submitted that your actions placed the integrity and security of the prison in jeopardy and breached your position of trust. He also submitted that by concealing your relationship with Patient A, you acted dishonestly over a significant period of time. Mr

Claydon submitted that the misconduct found in this case is fundamentally incompatible with you remaining on the NMC register (the Register).

Mr Buxton reminded the panel of the background in this case. He referred the panel to the SG and submitted that the panel should have regard to the need for proportionality and to go no further than it needs to achieve a fair balance, remembering that the purpose of sanction is not to punish. In respect of the dishonesty found, Mr Buxton set out the observations of Kerr J. in the case of *Lusinga v NMC* [2017] EWHC 1458, there exists… *'the possibility that dishonest conduct can take various forms; some criminal, some not; some destroying trust instantly, others merely undermining it to a greater or less extent.'* He also referred the panel to the NMC guidance on *'Considering sanctions for serious cases'* (Reference: SAN-2 Last Updated 27/02/2024) and in particular the following:

> *'It is not the case that the Fitness to Practise Committee only has a choice between suspending a nurse, midwife or nursing associate or removing them from the register in cases about dishonesty'.*

Mr Buxton submitted that you qualified as a nurse in Poland in 1990, where you worked as a registered nurse in an acute setting for about 16 years before coming to the UK in 2006. Mr Buxton informed the panel that you joined the NMC Register in 2007 and prior to working at HMP Brixton, you had never worked in a prison or custodial setting.

Mr Buxton identified the following, which were in his submission mitigating features of this case:

- Lack of previous regulatory or disciplinary history.
- Full engagement in the process, heeding and respecting the role of the NMC.
- You have reflected deeply and developed sufficient understanding of the gravity and impact of your actions.
- You have resolved and remedied your failings.
- The singular and exceptional circumstances which presented themselves, unbidden, in a difficult and unfamiliar work environment.

- Your actions caused no patient harm and went no further than caring for Patient A (just as with all of your patients), creating and maintaining a therapeutic relationship.
- You have apologised and expressed genuine remorse.
- You have provided impressive references attesting to your excellent skills whilst following the principles of good practice.
- No evidence of harmful deep-seated personality or attitudinal problems.
- Your actions were out of character.
- Almost five years have passed; nothing similar has occurred and no such situation has arisen or is ever likely to arise again.

Mr Buxton submitted that the particular facts and circumstances of this case have not only served as a salutary lesson to you, [PRIVATE], going far beyond the deep sense of professional shame, contrition and worry (over an unconscionably long period) about what your future holds.

Mr Buxton submitted that you are a hard-working, committed nurse whose passion for your profession is not in question. It is recognised and fully understood that the public interest requires a declaration of impairment and, in consequence, some form of sanction to mark both the seriousness of the misconduct in this case, and the regulator's disapprobation of any dishonest conduct by a registered nurse. However, for the reasons stated above, he submitted that a merciful course can properly be taken in this case. He referred the panel to its decision at the impairment stage, namely that your reflection was *'well-structured, detailed and demonstrating a strong awareness of the seriousness of not declaring a conflict of interest in a prison environment.'*

Mr Buxton submitted that in circumstances where a registrant, as here, has demonstrated high levels of insight, reflection and remorse, supported by the ability to practise kindly, safely and professionally (in this case over a period of almost five years) public confidence in the profession can be suitably maintained by imposing a sanction which does not require the nurse to be suspended or removed from practice. Such a course would be justly proportionate in the circumstances, reinforcing the panel's pronouncement that: *'In view of your remorse and period of positive practice since the*

charges arose and the extremely unique set of circumstances in this case (emphasis added), *the panel determined that it was highly unlikely that you would act in a similar way in the future.'* [PRIVATE].

Mr Buxton submitted that a fully informed member of the public would support and understand the need to declare and uphold public confidence in the profession whilst tempering and adjusting the sanction to reflect the uniquely exceptional set of circumstances. He submitted that, in such a way, the panel will have discharged its duty to promote and maintain proper professional standards and conduct for members of the nursing profession while simultaneously acknowledging the clear public interest in permitting a chastened and high functioning nurse to continue in practise. In adopting such an approach and for reasons outlined above, Mr Buxton submitted that a fair balance will have been struck without the reputation of the profession being disproportionately damaged.

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.

The panel took into account the following aggravating features:

- Whilst it occurred in a difficult and unfamiliar work environment, your dishonesty was in a custodial setting which had the potential to put you, Patient A and prison staff at risk, and persisted over a period of time.

The panel also took into account the following mitigating features:

- In your written reflective statement, you have demonstrated a good level of insight and an understanding of the impact of your misconduct and dishonesty.
- You have completed very pertinent training courses which demonstrate that you have taken real steps to address your failings.
- You have demonstrated genuine remorse for your actions.
- Since the charges arose, you have worked as a registered nurse for five years during which you have followed the principles of good practice in delivering excellent nursing care and you have kept your nursing skills up to date.
- A large number of excellent testimonials from patients and their families.
- There is evidence of previous good character and exemplary behaviour since the charges arose.
- At the time that the charges arose, you were working in an unfamiliar and challenging environment and faced with a unique set of personal circumstances.

The panel was mindful that not all dishonesty is equally serious and considered the kind of dishonesty that occurred in this case and where this sits of the spectrum of dishonesty. It had regard to the NMC guidance on *'Considering sanctions for serious cases'* Reference: SAN-2 (Last Updated 27/02/2024), in particular, *'Cases involving dishonesty'*:

> *'Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*
>
> - *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to people receiving care*
> - *misuse of power*
> - *vulnerable victims*
> - *personal financial gain from a breach of trust*
> - *direct risk to people receiving care*

- *premeditated, systematic or longstanding deception*

Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents outside professional practice'*

The panel found that the factors relating to less serious dishonest conduct were engaged in this case. Whilst the dishonesty occurred over a period of time, the panel found that it related to a single issue. It determined that your dishonesty was not pre-meditated and there was no direct personal gain. The panel found that your dishonest conduct arose in a challenging environment, involving an entirely unique set of circumstances [PRIVATE]. Having regard to all of the above, the panel determined that your dishonest conduct fell at the lower end of the spectrum of dishonesty.

Before making its determination on the appropriate and proportionate sanction, the panel reminded itself of the entirely unique contextual considerations in this case. [PRIVATE]. The panel considered that your most recent reflective statement provided today showed a very genuine acceptance of your actions and a full understanding of the implications of them. The panel took into consideration your strong work ethic and your commitment to good practice evidenced by witnesses, and examples such as your concern over making sure things were done right and going the extra mile with patients.

The panel had sight of a number of very positive testimonials that attest to your good character, strong work ethic and good practice since the charges arose. The panel also had regard to your detailed reflective statement dated April 2024, and it had particular regard to the following:

‘I treat my patients the same, regardless of their race, nationality, religion or their illness. I see patients as people who need my care and I have never favoured any of my patients. If other prisoners had become aware of my personal connection to Patient A, this could have caused serious problems for him and potentially other staff. Prisoners have limited access to things like food, communication, health care, and it may have been perceived that I would have given him favourable treatment. This could have caused other prisoners to be jealous, and could have caused physical or verbal abuse for Patient A. I understand that in prison settings professional boundaries are particularly important.

If Patient A had recognised me, he could have told other prisoners personal information about me and they could have used this to put pressure on me to do them favours, like providing additional care, or contact with their families, bringing them food or drugs in from the outside. Thankfully this did not happen, and I treated all the prisoners with respect and dignity. I understand that my actions put HMP Brixton’s reputation at risk.’

The panel found that since the last hearing you had developed your insight and that it is now full. The panel was thoroughly satisfied that if you were faced with a similar set of circumstances, unlikely though this would be given the uniqueness of this case, you would not act in the same way in the future.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the misconduct and dishonesty identified. 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 found that you have demonstrated good insight into your conduct. The panel also found that you have demonstrated genuine remorse for your actions and have strengthened your practice to the point where the panel is completely satisfied that you would not act in the same way in the future. The panel was impressed by your positive references that speak to your strong reputation and excellent service as a registered nurse. There have been no concerns raised about your practice or honesty and integrity as a nurse either before or after the charges arose and the panel found that you appear to have a real commitment to prioritising patients and excellent practice.

The panel found that your dishonesty was at the lower end of this spectrum although this behaviour was unacceptable and it must not happen again. It balanced the public interest in allowing a competent and highly regarded nurse to continue to practise with the public interest in upholding and maintaining proper professional standards.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel was of the view that given the unique nature of the conduct, the fact that public protection is not engaged, and that the concerns are not clinical in nature, workable conditions could not be formulated to address the public interest in this case.

The panel considered carefully whether a suspension order would be appropriate. Given the unique circumstances as set out above, the panel was of the view that a suspension order would not be appropriate. In addition, the panel considered that there was a public interest in enabling a good nurse to continue to practise.

The panel considered that a striking off order would be wholly disproportionate in the unique circumstances of this case.

The panel has decided that a caution order would adequately mark the public interest in this case. For the next five 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 five years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

At the end of this period the note on your entry in the Register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.