

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
5-7 August 2019

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

Name of registrant:	John Edward Middleton
NMC PIN:	95J0615E
Part(s) of the register:	Registered Nurse – sub part 1 Mental Health (RNMH) – 18 December 2007
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	David Boden (Chair, Lay panel member) Michael Murphy (Registrant panel member) Anne Phillimore (Lay panel member)
Legal Assessor:	Barrie Searle
Panel Secretary:	Raj Patel (5 August 2019) Lucy Eames (6-7 August 2019)
Mr Middleton:	Not present and not represented
Nursing and Midwifery Council:	Charles Drinnan, Case Presenter
Facts proved:	None
Facts proved by admission:	1, 2, 3, 4 and 9
Facts not proved:	5, 6, 7 and 8, offer no evidence for all
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order, 18 months

Details of charge:

That you, a registered nurse, between January 2014 and the end of April 2016:

1. *Gave Patient A's mother a fridge freezer; [proved by admission]*
2. *Provided details to your wife about Patient A and/or involved your wife in the care of Patient A; [proved by admission]*
3. *On one or more occasion:*
 - a. *Took Patient A out for lunch; [proved by admission]*
 - b. *Gave Patient A a lift in your car; [proved by admission]*
 - c. *Communicated with Patient A by text using your personal mobile phone. [proved by admission]*
4. *On one or more occasion:*
 - a. *Took Patient A to your home address; [proved by admission]*
 - b. *After April 2014 visited Patient A at the hostel where she was staying; [proved by admission]*
 - c. *After September 2014 visited Patient A at the bungalow where she was staying. [proved by admission]*
5. *On one or more occasion:*
 - a. *Gave Patient A a gift; [not proved- offered no evidence]*
 - b. *Kissed Patient A; [not proved- offered no evidence]*
 - c. *Cuddled Patient A; [not proved- offered no evidence]*
 - d. *Had sex with Patient A. [not proved- offered no evidence]*
6. *Told Patient A that you had bought her a sex toy. [not proved- offered no evidence]*
7. *Told Patient A not to tell anyone that you were seeing her. [not proved- offered no evidence]*
8. *Your conduct in one or more of charges 1 to 7 was sexually motivated. [not proved- offered no evidence]*
9. *Your conduct in one or more of charges 1 to 7 breached professional boundaries. [proved by admission in relation to charges 1-4]*

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

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Middleton was not in attendance and that written notice of this hearing had been sent to his current registered address by recorded delivery and by first class post on 5 July 2019. Notice of this hearing was delivered to Mr Middleton's registered address and signed for under the name of 'MIDDLETON' on 6 July 2019.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Middleton's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Mr Drinnan submitted that notice of this hearing was delivered on 6 July 2019 and was signed for by Mr Middleton on the same date at 11:39 hours. He submitted that the NMC had complied with the requirements of Rules 11 and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004*, as amended ("the Rules").

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Middleton has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in absence of Mr Middleton

The panel next considered whether it should proceed in Mr Middleton's absence.

Mr Drinnan invited the panel to proceed in the absence of Mr Middleton on the basis that he was aware of the hearing and had chosen to voluntarily absent himself.

Mr Drinnan referred the panel to the NMC's Proceeding in Absence (PIA) Summary bundle. He first drew the panel's attention to Mr Middleton's response to the notice of hearing dated 12 July 2019. In that correspondence, he confirmed that he will not be planning to come to this hearing and was satisfied for the panel to proceed with the hearing in his absence. Mr Middleton, in his response, further confirmed that he did not need to ask for a postponement or need to change the date.

Mr Drinnan submitted that it was clear from the information outline above, that the NMC had made a clear attempt to ascertain whether Mr Middleton would be attending this hearing. Mr Drinnan noted that Mr Middleton had provided a response to the NMC in relation to this, and stated that he would not be attending.

Mr Drinnan also referred the panel to Mr Middleton's written submissions also dated 12 July 2019, in which he stated:

"I'm not attending this hearing as I do not intend to work in a nursing or care sector, neither do I regard myself as a 'Nurse' anymore, in any sense [sic]."

As such, Mr Drinnan submitted that there was no reason to believe that an adjournment would secure Mr Middleton's attendance on some future occasion. He therefore invited the panel to proceed in the absence of Mr Middleton.

The panel had regard to Rule 21 (2) which states:

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;*
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or*

(c) may adjourn the hearing and issue directions.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is one that should be exercised “with the utmost care and caution”.

In reaching its decision, the panel considered the submissions of the case presenter and accepted the advice of the legal assessor. It had regard to the overall interests of justice and fairness to all parties.

The panel considered the recent correspondence and communication sent between Mr Middleton and the NMC.

It determined that Mr Middleton, despite his awareness of the hearing, had chosen to voluntarily absent himself. The panel took into account that Mr Middleton has clearly indicated that he did not wish to attend this hearing as he does not intend to work in the nursing profession and he has not requested an adjournment.

The panel also noted:

- No application for an adjournment has been made by Mr Middleton;
- Mr Middleton is clearly aware of this hearing and its proceedings;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- No witnesses or Mr Middleton himself, were attending today or any other day scheduled in this hearing to give live evidence;
- The charges relate to events that occurred between January 2014 and at the end of April 2016;
- The allegations are serious and there is a clear public interest in the expeditious disposal of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Middleton.

Decision and reasons on application under Rule 19

Mr Drinnan made an application under Rule 19 for parts of this hearing to be held in private, as they may require reference to Patient A's health.

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.

Rule 19 (3) states:

- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied*
 - (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and*
 - (b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.*

The panel decided that, as this case would make reference to Patient A's health throughout this hearing, it would go into private session as and when such health matters would be raised.

Decision and reasons on application pursuant to Rule 31

The panel heard an application made by Mr Drinnan under Rule 31 of the Rules to allow the written statements of Patient A and Relative D into evidence. Neither witness was present to give evidence at this hearing.

Mr Drinnan invited the panel to consider whether the evidence is the sole and decisive evidence and referred it to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). He told the panel that the NMC had made significant efforts to obtain the attendance of Patient A and Relative D at this hearing and letters had been sent to both Patient A's old and new addresses. He said that Patient A is vulnerable and the NMC has found difficulty in securing her attendance due to her circumstances. He said there was no recent independent corroboration pertaining to Patient A's health as this information was relied upon in the investigation stages from Relative D.

Mr Drinnan said that this hearing was originally scheduled to be heard in Norfolk to facilitate attendance as neither Patient A nor Relative D were willing to travel and engagement became more difficult which ultimately led to the NCM deciding that this arrangement was disproportionate. Mr Drinnan submitted that Patient A's statement is the sole and decisive evidence in for the charges Mr Middleton is facing. Mr Drinnan further submitted that Relative D's statement confirms what Patient A told her. Mr Drinnan reminded the panel of the importance of fairness to be given to Patient A who is a vulnerable witness and to the NMC on the one hand and to Mr Middleton on the other hand.

Mr Drinnan told the panel that if it were to not allow the application to admit the statements into evidence he would make an application to offer no evidence for charges 5 to 8.

The panel accepted the advice of the legal assessor. He also referred the panel to *Thorneycroft* and advised the panel to consider the following seven matters, set out at paragraph 56:

1. *Whether the statements were the sole and decisive evidence in support of the charges;*
2. *The nature and extent of the challenge to the contents of the statements;*
3. *Whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*

4. *The seriousness of the charge, taking into account the impact which adverse findings might have on the registrant's career;*
5. *Whether there was a good reason for the non-attendance of the witnesses;*
6. *Whether the Respondent had taken reasonable steps to secure the attendance of the witness;*
7. *The fact that the registrant did not have prior notice that the witness statements were to be read.*

The legal assessor further advised that a witness' reluctance to attend in itself was capable of undermining the credibility of their evidence (paragraph 57 of *Thorneycroft*).

The panel gave the application to admit each of the statements careful consideration. It considered that Patient A and Relative D's witness statements related to charges 5 to 8. The panel was of the view that Patient's A evidence was the sole and decisive evidence to charges 5 to 8 except for charge 7 where Relative D's statement provides the sole and decisive evidence. It noted that Relative D's statement contained hearsay, based on what Patient A had told her following a period of time after the alleged incidents took place. It further noted that there were inconsistencies between Relative D's statement and other information before the panel, as well as within itself. The panel took into account that Mr Middleton consistently denied charges 5-8 and did not clearly agree to Patient A and Relative D's statements being read.

The panel considered the NMC's attempts to obtain Patient A's and Relative D's attendance at this hearing. It noted that the NMC had considered holding the hearing in a more convenient location and had explored them giving evidence remotely, either via telephone or videolink, but these methods did not come to fruition. The panel was of the view that, despite efforts made by the NMC, there were clear ongoing issues with Patient A or Relative D attending, given their personal circumstances and other conditions.

The panel took into account that the charges this evidence related to are very serious and the outcome of them could impact Mr Middleton significantly. In all the circumstances, the panel determined that it would not be fair to admit the witness

statements of Patient A and Relative D into evidence. It was of the view that, given the seriousness of the charges and that Mr Middleton denies them, and the absence of any up to date medical or other evidence to support their non-attendance the witnesses would need to attend in order for their evidence to be properly tested by the panel. As it has not been possible to obtain their attendance, the panel determined to refuse the application in the interests of justice.

Application to offer no evidence

In light of the panel's decision to refuse the application to admit Patient A's and Relative D's witness statements, Mr Drinnan made an application to offer no evidence in relation to charges 5-8. Mr Drinnan submitted that there is insufficient evidence to prove these charges. He summarised the reasons of the non-attendance of Patient A and Relative D which were given in the previous Rule 31 application. Mr Drinnan submitted that the NMC no longer intends to pursue charges 5-8 due to insufficient evidence. He reminded the panel that it had powers to summon witnesses, however he invited the panel to consider that due to the circumstances that would be inappropriate in this case.

The panel accepted the advice of the legal assessor.

The panel determined to accept the application to offer no evidence in relation to charges 5-8. It noted its powers to summons witnesses but decided that it would be inappropriate in this case.

Background

The charges arose whilst Mr Middleton was employed as a Band 7 Registered Nurse in both learning disabilities and mental health nursing by Norfolk Community Health and Care Trust (the Trust). Patient A's brother was referred to Mr Middleton's caseload in March 2013. Between January and June 2014, the position is uncertain due to lack of records, Patient A was also referred to Mr Middleton's caseload.

On 6 March 2014 a telephone call took place between Mr Middleton and Patient A and a plan was arranged for him to visit the next day to persuade her to visit the GP. On 7 March 2014 Mr Middleton documented a visit to Patient A to undertake a mental health examination. On 1 April 2014 Patient A was referred to joint working with a learning disabilities nurse. On 2 April 2014 she was arrested for assault.

In April 2014 Mr Middleton took Patient A some clothes in the local hostel where she was staying after her release from police custody. In this month he also took her to a local garden centre and a fish and chip shop. Mr Middleton said that he took Patient A to his home and his wife met Patient A. In July 2014 Mr Middleton took Patient A to a GP appointment and she was subsequently discharged from Mr Middleton's caseload. Subsequently Mr Middleton called at Patient A's house with his wife to ask if she needed any shopping and asked his wife to call in regularly to check if Patient A needed any shopping.

In September 2014 Mr Middleton received a text from Patient A and visited her in her home. Mr Middleton was still caring for Patient A's brother. Mr Middleton received intermittent texts from Patient A. In May 2015 Mr Middleton gave Patient A a lift to the local shop. In December 2015 Patient A was admitted to hospital and requested texts from Mr Middleton, which he sent her. On 10 January 2016 Patient A sent Mr Middleton a text saying she loved him. Over the next few days Mr Middleton received numerous phone calls from Patient A. On 13 January 2016 Mr Middleton changed his phone number.

On 26 May 2016 Relative D formally made the allegations against Mr Middleton, he was suspended from work on 6 June 2016 and the allegations were investigated.

Decision on the findings on facts and reasons

The panel has drawn no adverse inference from the non-attendance of Mr Middleton.

Mr Middleton, in his returned case management form, admitted the following charges;

That you, a registered nurse, between January 2014 and the end of April 2016:

- 1. Gave Patient A's mother a fridge freezer;*
- 2. Provided details to your wife about Patient A and/or involved your wife in the care of Patient A;*
- 3. On one or more occasion:*
 - a. Took Patient A out for lunch;*
 - b. Gave Patient A a lift in your car;*
 - c. Communicated with Patient A by text using your personal mobile phone.*
- 4. On one or more occasion:*
 - a. Took Patient A to your home address;*
 - b. After April 2014 visited Patient A at the hostel where she was staying;*
 - c. After September 2014 visited Patient A at the bungalow where she was staying.*
- 9. Your conduct in one or more of charges 1 to 7 breached professional boundaries.*

These were therefore announced as proved.

The panel accepted an application by the NMC to offer no evidence in relation to charges 5-8 and therefore did not have to consider these charges.

Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Middleton's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

In his submissions Mr Drinnan invited the panel to take the view that Mr Middleton's actions amount to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives* (the 2015 Code). He then directed the panel to specific paragraphs and identified where, in the NMC's view, Mr Middleton's actions amounted to misconduct. Mr Drinnan referred the panel to the Trust's policies and Mr Middleton's job description and invited the panel to consider where he may have breached these.

Mr Drinnan referred the panel to the case of *Roylance v GMC (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 Drinnan invited the panel to consider the risks of the types of behaviour Mr Middleton admitted he carried out with Patient A and submitted that his actions fell far short of what is expected of a registered nurse. Mr Drinnan submitted that Mr Middleton's actions could be seen as deplorable and invited the panel to consider that there was an element of abuse of power in his position given the fact that Patient A was a vulnerable adult.

He then 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. Mr Drinnan referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2007] EWHC 581 (Admin).

Mr Drinnan submitted that a breach of professional boundaries, which Mr Middleton has admitted in relation to charges 1-4, could undermine the trust in the nursing profession. Mr Drinnan invited the panel to consider that there was a risk of harm to Patient A, who was a vulnerable patient, through Mr Middleton's actions which led her to sending text messages about 'love'. Mr Drinnan invited the panel to consider the risks involved in the number of charges Mr Middleton has admitted. He added that Mr Middleton had also

offered to chaperone other patients outside working hours and submitted that this could demonstrate a deep seated issue.

Mr Drinnan submitted that Mr Middleton's behaviour may not yet be remediated. He added that all Mr Middleton's references are from 2016 and he has only attended an introductory course on breaching professional boundaries. He invited the panel to find that a finding of impairment on both public protection and public interest grounds is necessary. Mr Drinnan took the panel to relevant evidence where other employees at the Trust deemed Mr Middleton's actions inappropriate.

Mr Drinnan also referred the panel to the case of *Schodlok v The General Medical Council (GMC)* [2015] EWCA Civ 769 in relation to the charges individually or cumulatively amounting to misconduct.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included: *Roylance, Nandi v GMC* [2004] EWHC 2317 (Admin), *Cohen, Grant, Kimmance v GMC* [2016] EWHC 1808 and *Schodlok*.

The panel adopted a two-stage process in its consideration, as advised. 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, Mr Middleton's fitness to practise is currently impaired as a result of that misconduct.

Decision on misconduct

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The code: Standards of conduct, performance and ethics for nurses and midwives 2008* (the 2008 Code) and the 2015 Code.

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Mr Middleton's actions did fall significantly short of the standards expected of a registered nurse, and that Mr Middleton's actions amounted to a breach of the 2008 or alternatively 2015 Codes across the timescale. Specifically:

The 2008 Code

5 You must respect people's right to confidentiality.

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

The 2015 Code

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

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

17.2 share information if you believe someone may be at risk of harm, in line with the laws relating to the disclosure of information

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that taken as whole Mr Middleton's actions as set out in the charges amount to misconduct. It determined that charge 1 taken on its own may not amount to misconduct but would be poor practice with regards to professional boundaries. The panel was of the view that charge 2 amounted to serious misconduct and providing detail of Patient A to his wife breached confidentiality and fell seriously short of what is expected of a nurse.

The panel considered each sub charge of charge 3 were inappropriate actions in the context of Patient A being a vulnerable patient and that Mr Middleton's actions were not the result of a risk assessment or a care plan. Nor was there any information to suggest that he had agreed these actions with his supervisor. The panel determined that Mr Middleton's actions in each sub charge of charge 4 were also inappropriate. In particular, charge 4a could be deemed as presenting a serious risk as it was a clear breach of professional boundaries. Further, the actions set out in charges 4b and 4c were not required as part of Patient A's care or part of a care plan as Patient A had been discharged from his care. The panel determined that charge 9 amounted to misconduct as Mr Middleton had admitted that his actions breached professional boundaries and this breach would be manifestly short of what was expected.

The panel was of the view that the charges as a whole demonstrated a cavalier disregard as to what was appropriate patient care and Mr Middleton appeared to have no regard to the impact on and consequences of his actions upon this particular patient.

The panel found that Mr Middleton's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision on impairment

The panel next went on to decide if as a result of this misconduct Mr Middleton's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Cox J in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.

Cox J went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my

view the test would be equally applicable to other practitioners governed by different regulatory schemes.

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. ...

The panel finds that limbs a, b and c are engaged.

The panel considered that Mr Middleton has not provided evidence of any insight into the impact his actions had on Patient A, her family and the wider nursing profession. In particular the impact on Patient A was clearly significant but Mr Middleton has not demonstrated any insight into this. He has not provided the panel with a reflective piece. The panel took into account that Mr Middleton chose not to attend this hearing and explain his actions further. It was of the view that Patient A was a vulnerable patient who was liable to form attachments, however Mr Middleton has not provided any information as to how he tried to mitigate this.

In its consideration of whether Mr Middleton has remedied his practice the panel took into account that he attended a training course on the introduction to professional boundaries. However, the panel was of the view that this did not demonstrate sufficient remediation. The panel noted Mr Middleton's four references that he provided. It took

into account that they were dated 2016 but were from experienced clinicians who spoke highly of his nursing practice, however they did not refer to his work in relation to professional boundaries.

The panel is of the view that there is a risk of repetition based on Mr Middleton's lack of insight and remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was required. It was of the view that a member of the public would be shocked if a senior nurse, who faced these types of charges, fitness to practise was not found to be impaired.

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

Determination on sanction:

The panel has considered this case very carefully and has decided to make a striking-off order. The effect of this order is that the NMC register will show that Mr Middleton has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. 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 NMC's Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Mr Drinnan told the panel that the NMC had advised Mr Middleton, in the written notice of this hearing, that it would ask the panel to make a striking-off order if it found his fitness to practise currently impaired. However, as an application to offer no evidence in relation to charges 5-8 was accepted by the panel, Mr Drinnan submitted that a 12 month suspension order would now be the minimum sanction in this case.

The panel took into account the following factors:

Aggravating

- lack of insight
- pattern of misconduct over a period of two years
- put a vulnerable patient at risk of harm
- put himself and his wife at risk
- risk of repetition
- abused position of trust as a senior nurse with a vulnerable patient

Mitigating

- admitted the charges at an early stage
- positive references from his most recent nursing colleagues in 2016
- undertook a relevant but short course in professional boundaries, albeit the panel were not provided with details of its content

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.

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, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.’ The panel considered that Mr Middleton’s misconduct was not at the lower end of the spectrum and that a caution

order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mr Middleton'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 that Mr Middleton has expressed he no longer wants to be a nurse and therefore determined that conditions would not be workable or practicable as he would be unlikely to engage with them. The panel also referred to the SG and was of the view that Mr Middleton demonstrated an attitudinal problem and therefore decided that conditions would not be appropriate.

Furthermore the panel concluded that the placing of conditions on Mr Middleton's registration would not adequately address the seriousness of this case and would not sufficiently protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would 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 determined that this was not a single incident of misconduct and the panel had information before it that suggested an attitudinal problem, although could not form a view as to whether it was deep-seated as Mr Middleton had not attended the hearing. It also noted that Mr Middleton demonstrated a lack of insight and that it found a risk of repetition. However, it took into account his attempted remediation by undertaking a course and Mr Middleton's long nursing career and the positive references it had sight of, although the references did not refer to the issue of professional boundaries. The

panel would have been assisted by Mr Middleton's attendance or a reflective piece but he chose not to do so.

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

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

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Mr Middleton's actions is fundamentally incompatible with his remaining on the register.

The panel has taken into account the mitigation in this case. However, it was of the view that Mr Middleton's conduct, given his senior position and that he was dealing with a vulnerable patient, was deeply troubling. The panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Mr Middleton's actions in breaching his professional boundaries with a vulnerable patient were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Middleton's actions seriously fell short and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Middleton's actions in bringing the profession into disrepute by his admitted

conduct, the panel has concluded that nothing short of this would be sufficient in this case.

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

Determination on Interim Order

The panel has considered the submissions made by Mr Drinnan that an 18 month interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. This is to cover any appeal period, if Mr Middleton were to appeal the decision.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.