

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

17 June 2019 – 20 June 2019

Temple Court, 13a, Cathedral Road, Cardiff, CF11 9HA

Name of registrant:	John Thomas
NMC PIN:	13F0247W
Parts of the register:	Registered Nurse – Sub Part 1 RNMH: Mental Health – October 2013
Area of registered address:	Wales
Type of case:	Misconduct
Panel members:	Dr Andy Thompson (Chair, Lay member) Nicola Dale (Lay member) Patience McNay (Registrant member)
Legal Assessor:	Susan Monaghan
Panel Secretary:	Deepan Jaddoo (day 1 only) Leigham Malcolm
Mr Thomas:	Not present and not represented
Nursing and Midwifery Council:	Leeann Mohamed, Case Presenter
Facts proved by way of admission:	1(a), 1(f), 1(g), 1(h), 1(j)
Facts proved:	1(c), 1(e), 1(i), 1(k), 1(l)
Facts not proved:	1(b), 1(d)
Fitness to practise:	Impaired
Sanction:	Striking-off Order
Interim order:	Interim Suspension Order – 18 months

Decision on service of Notice of Hearing

Mr Thomas was not in attendance or represented at the hearing. The panel examined the proof of posting and was satisfied that written notice of this hearing had been sent to Mr Thomas's registered address by recorded delivery and by first class post on 13 May 2019.

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

In the light of all of the information available and the advice of the legal assessor which the panel accepted, the panel was satisfied that Mr Thomas has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34(1), 34(4) and 34(5).

Decision on proceeding in the absence of Mr Thomas

Ms Mohamed invited the panel to proceed in the absence of Mr Thomas on the basis that he had voluntarily absented herself.

In support of her application, Ms Mohamed referred the panel to the NMC's Proceeding in Absence Bundle which comprised:

- the Notice of Hearing letter sent by the NMC to Mr Thomas, by first class post and recorded delivery dated 13 May 2019;
- a screenshot of the NMC recorded delivery book;
- Mr Thomas' completed Case Management Form (CMF);

- E-mail correspondence between the NMC and Mr Thomas regarding his attendance at this hearing.

Ms Mohamed drew the panel's attention to an e-mail from Mr Thomas dated 9 June 2019 in which he states:

"I can confirm that I am unable to attend due to not being able to take time off work. Furthermore, I have no representation and unable to afford a barrister and would like the panel to refer to my previous statements".

Ms Mohamed submitted that it was clear from the information outlined above, that Mr Thomas was aware of these proceedings but had decided not to attend. Ms Mohamed also told the panel that Mr Thomas had not made any application for an adjournment. She referred the panel to an email dated 10 June 2019 from Mr Thomas in which he stated:

"Yes I can confirm that I'm happy for the proceedings to go ahead."

Ms Mohamed submitted that there was no good reason to believe that an adjournment would secure Mr Thomas's attendance on some future occasion. Ms Mohamed invited the panel to consider that whilst Mr Thomas was engaging with the NMC, he had voluntarily absented himself from the hearing. She therefore invited the panel to proceed in the absence of Mr Thomas. There were witnesses scheduled to give oral evidence.

Rule 21 states:

"Where the registrant fails to attend and is not represented at the hearing, the Committee...

(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...

(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 carefully considered the correspondence and communication between Mr Thomas and the NMC.

Taking into account all of the above, the panel concluded that Mr Thomas has been afforded adequate opportunity to engage with the NMC and had made a conscious decision not to do so.

The panel also noted:

- Two witnesses were attending today, in person, to give evidence. Furthermore, there were two other witnesses scheduled, at least one of whom would be attending to give evidence tomorrow;
- Not proceeding may inconvenience these witnesses;
- Further delay may have an adverse effect on the ability of these witnesses to accurately recall events and their willingness to attend a future hearing;
- The allegations are serious and there is clear public interest in the expeditious disposal of the case;

- Mr Thomas is clearly aware of the proceedings today and was happy for the proceedings to go ahead;
- There was no information before this panel to satisfy it that Mr Thomas would attend proceedings at a later date;

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

Details of charge

That you, a registered nurse:

- 1) Between June 2017 and around August 2017, did not maintain professional boundaries with Patient A in that you:
 - a) Told her you found her attractive, or words to that effect.
 - b) Whilst she was still on the ward, told her that it would be ok for her to smoke cannabis and/or that you would smoke it with her, or words to that effect.
 - c) Told her that she had a cute snore and that it was something you loved about her, or words to that effect.
 - d) Wolf whistled at her.
 - e) On one or more occasion, talked to her about an investigation into another patient who had died by suicide on the ward.
 - f) Gave her your personal telephone number.
 - g) Sent her text messages of a personal nature.
 - h) On one or more occasion, telephoned her when there was no professional justification to do so.
 - i) When she was waiting to go home on leave, said words to the effect of, "Remember, don't tell anyone".

- j) On one or more occasion, went to her home when there was no professional justification to do so.
- k) On one or more occasions, cuddled her.
- l) On one or more occasions, kissed her.

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

Mr Thomas qualified as a nurse in October 2013. On 20 April 2018, the NMC received a self-referral from Mr Thomas. It is alleged that Mr Thomas had an inappropriate relationship with Patient A and breached professional boundaries. The NMC has particularised the allegations as set out above.

At the time of the alleged incidents involving Patient A, Mr Thomas was working at the Royal Glamorgan Hospital ("The Hospital"), part of Cwm Taf University Health Board ("the Health Board"), as a Staff Nurse on Ward 22 ("the Ward"). The Ward is a 14 bed Adult Acute Treatment Ward for patients with mental illness. Prior to working on the Ward as a Staff Nurse, Mr Thomas had been employed by the Hospital as a Health Care Assistant (HCA) since 2008. As a HCA, Mr Thomas worked across a number of the Adult Wards including the Psychiatric Intensive Care Unit.

[Private]

During the Health Board's internal investigation, Mr Thomas admitted to visiting Patient A at her home address after her discharge. The Health Board obtained a chain of text messages between Mr Thomas and Patient A which allegedly demonstrates regular contact between both, following Patient A's discharge. As part of their investigation, the Health Board interviewed Patient A, who asserted that she had developed a relationship with Mr Thomas whilst under his care at the Hospital. She also stated that they had

kissed and cuddled whilst under his care as a patient on the Ward. Patient A stated that she had agreed with Mr Thomas that he meet her at her home address.

An A1 Safeguarding Adult referral was sent to the Cwm Taf Multi Agency Safeguarding Hub.

Decision and reasons on application pursuant to Rule 19 in relation to a subsequent application under Rule 31

The panel, by its own volition, made an application for part of the hearing be held in private, given that Ms Mohamed's application under Rule 31 involved private matters relating to Ms 2's health.

Ms Mohamed had no objections to this.

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, and outweighs any prejudice.

Given that there will be reference to sensitive matters related to Ms 2's health, the panel determined to hold such parts of the hearing in private. The panel determined to go into private session as and when such issues are raised.

Decision and reasons on application pursuant to Rule 31

The panel heard an application made by Ms Mohamed under Rule 31 of the Nursing and Midwifery (Fitness to Practise) Rules 2004 (the Rules) to allow Ms 2's written statement as hearsay evidence.

Ms Mohamed submitted that Ms 2's witness statement provides contextual factors in relation to the charges which Mr Thomas has made formal admissions. She submitted that Ms 2's witness statement also provides the panel with a general application of her experience working with Mr Thomas as well as a detailed chronology of events with regard to the background of these matters. Ms Mohamed submitted that Ms 2's evidence was therefore relevant to this case.

Ms Mohamed submitted that Ms 2's evidence, relates to serious allegations, but is not the sole or decisive evidence. Ms Mohamed submitted that whilst the NMC had taken Ms 2's statement during the course of its investigation, Ms 2 had recently notified the NMC that [Private].

[Private]. Ms Mohamed noted that Ms 2 had signed her NMC witness statement and the declaration of truth.

Ms Mohamed submitted that the NMC had made Mr Thomas aware of the NMC's intention to adduce the material detailed above as hearsay by way of an e-mail sent to him on the first day of proceedings (17 June 2019). The e-mail asked him to contact the NMC if he had any comments regarding this evidence or wished to contest the material. Ms Mohamed told the panel that Mr Thomas responded to this e-mail and confirmed that he had no objection to this proposed course of action.

Ms Mohamed submitted that for these reasons the material was relevant and it would be fair to admit it into evidence.

The panel accepted the legal assessor's advice. She referred the panel to Rule 31 which provides that the panel may admit any evidence subject to the requirements of fairness and relevance, whether or not it is admissible in civil proceedings. The legal assessor also referred the panel to the approach it should take as set out in the case law. The panel read Ms 2's NMC witness statement before deciding this application.

The panel first considered whether the evidence of Ms 2 was relevant to the charges. The panel determined that it was clear that it was.

The panel went on to consider whether it was fair to admit their evidence. The panel determined that it was fair to do so for the following reasons:

- The panel determined that whilst Ms 2 evidence was important, it was not sole or decisive and it accepted Ms Mohamed's submissions in relation to this;
- The panel noted that Ms 2's statement, including a declaration of truth, had been signed by her and prepared for the purposes of being relied upon in this hearing;
- The panel took into account that Mr Thomas has been served with this evidence prior to the hearing and has not raised any objections, even after being informed of this hearsay application;
- [Private].

The panel therefore determined that the material was relevant and that no unfairness or prejudice would be caused to either party by admitting it into evidence.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Ms Mohamed on behalf of the NMC.

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

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

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

The panel heard oral evidence from three witnesses tendered on behalf of the NMC. In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case.

Witnesses called on behalf of the NMC were:

Patient A – Patient on Ward 22 of the Royal Glamorgan Hospital

Mr 1 – Senior Nurse at Cwm Taf University Health Board

Mr 3 – Head of Mental Health Nursing at Cwm Taf University Health Board

The panel also had before it the written statements of Ms 2, a Senior Social Worker for the Rhondda Community Mental Health Team.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

The panel appreciated that Patient A was extremely nervous and formed the view that she gave an honest account according to her recollection of events. Patient A was at times inconsistent between her written statement and oral evidence. The panel concluded that these inconsistencies were as a result of the passage of time and [Private].

The panel considered that Mr 1's investigation did not touch upon many of the concerns raised. It noted that some of the specifics of the charge before this panel were not investigated at Trust level, and therefore, the relevance of Mr 1's evidence was limited. The panel determined that Mr 1 was honest in his evidence.

The panel noted that Ms 2's evidence is undisputed and unchallenged by Mr Thomas.

The panel formed the view that Mr 3 was a credible and honest witness.

Prior to today's hearing Mr Thomas admitted the following charges in writing; 1(a), 1(f), 1(g), 1(h) and 1(j). These were therefore announced as proved. The panel then went on to consider the remaining charges. The panel considered each charge and made the following findings:

Charge 1(b):

Whilst she was still on the ward, told her that it would be ok for her to smoke cannabis and/or that you would smoke it with her, or words to that effect.

This charge is found NOT proved.

In reaching this decision, the panel had regard to the evidence of Patient A and it took account of inconsistencies in her evidence. It noted that in Patient A's witness statement she stated that Mr Thomas had told her that it was fine to take cannabis, yet later on in her statement she went on to state:

"Mr Thomas was appalled that I would be smoking cannabis because of the medication I was on."

Mr Thomas also denied that he would have told Patient A that 'it would be ok' for her to smoke cannabis. On the balance of probabilities, the panel was not satisfied that it was more likely than not that this charge occurred as alleged.

Charge 1(c):

Told her that she had a cute snore and that it was something you loved about her, or words to that effect.

This charge is found proved.

In reaching this decision, the panel accepted the evidence of Patient A, that Mr Thomas had texted her to say 'that she had a cute snore'. Patient A also told the panel that she had deleted a number of the texts that Mr Thomas has sent her.

In considering this charge the panel had regard to the number of text messages sent by Mr Thomas to Patient A. Many of these text messages are of a personal nature and of a similar vein to the charge. The panel accepted the evidence of Patient A and it concluded that it was more likely than not that Mr Thomas told Patient A that she had a cute snore.

Charge 1(d):

Wolf whistled at her.

This charge is found NOT proved.

In reaching this decision, the panel had regard to the evidence of Patient A and noted that there was no other evidence to support this charge. Patient A explained that Mr Thomas was pushing a wheelchair with a patient in it at the time that he wolf whistled at her. There is no evidence from that patient as to what happened on that occasion. The panel also took into account that Mr Thomas stated that he has 'never wolf whistled at anyone'. The panel also took into account that this allegation occurred in the early hours of the morning when Patient A was still an unwell in-patient. Mindful of the other charges found proven in this case, the panel considered that it would have been unlikely that Mr Thomas would have overtly drawn attention to his personal relationship with

Patient A. The panel was therefore not satisfied, on the balance of probabilities that this charge occurred as alleged.

Charge 1(e):

On one or more occasion, talked to her about an investigation into another patient who had died by suicide on the ward.

This charge is found proved.

In reaching this decision, the panel accepted the evidence of Patient A. She was clear in her evidence, when pressed, as to whether she might have gathered that evidence from other patients on the ward, that this was not the case. The panel considered it likely that the suicide of another patient would have been a significant matter for Mr Thomas, and one that he would likely want to discuss. In light of the degree of intimacy between Patient A and Mr Thomas, the panel determined that it was more likely than not that he did discuss the investigation into the suicide with her.

Charge 1(i):

When she was waiting to go home on leave, said words to the effect of, "Remember, don't tell anyone".

This charge is found proved.

In reaching this decision, the panel accepted the evidence of Patient A. The panel determined that, on the balance of probabilities, Mr Thomas was aware that he had transgressed his professional boundaries and wanted to keep his relationship with Patient A a secret.

Charge 1(k):

On one or more occasions, cuddled her.

This charge is found proved.

In reaching this decision, the panel had regard to the oral evidence of Patient A. It also had regard to the text messages that were sent to Patient A by Mr Thomas. The text messages included the following:

“However my love, your beauty is overwhelming inside and out and to be so close for all this time. Speechless! But feel lucky the same time now I have met you xxxxx”

“Can’t take my eyes off you, purposely go out of my way to get a glimpse. No matter if its night or day, with or without makeup. I honestly find you so pretty love.”

“Apart from thinking about a tall attractive woman with a beautiful smile who makes me feel weak at the knees haha!”

The panel formed the view that the text messages sent to Patient A by Mr Thomas provided some indication as to their degree of intimacy. The panel had no reason to doubt Patient A’s evidence in this regard about the nature of their relationship. The panel therefore concluded that it was more likely than not that this incident occurred as alleged.

Charge 1(I):

On one or more occasions, kissed her.

This charge is found proved.

The panel accepted Patient A's evidence of the manner in which she was kissed by Mr Thomas. She demonstrated to the panel how she was kissed. She did not exaggerate the manner in which he kissed her. The panel found this charge proved for the same reasons as set out above.

Submissions 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 Thomas'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.

Ms Mohamed 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.'

In her submissions Ms Mohamed invited the panel to take the view that Mr Thomas' actions amount to a breach of The Code: Professional standards of practice and behaviour for nurses and midwives 2015. She directed the panel to specific paragraphs and identified where, in the NMC's view, Mr Thomas' actions amounted to misconduct:

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

5.3 respect that a person's right to privacy and confidentiality continues after they have died

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

Ms Mohamed submitted that the facts found proved are serious enough to amount to a finding of misconduct. She reminded the panel that Mr Thomas' conduct spanned a period of two months and was therefore not an isolated incident. She stated that his conduct also took a variety of forms, including text messages, physical contact, and breaching patient confidentiality.

Ms Mohamed 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. Ms Mohamed referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Ms Mohamed submitted that this case engages three limbs of the Grant test. She submitted that Mr Thomas has in the past acted in a way as to put a patient at unwarranted risk of harm. She further submitted that Mr Thomas has subsequently failed to recognise the impact of his actions on Patient A.

Ms Mohamed submitted that Mr Thomas' misconduct, and failure to adhere to professional boundaries, has certainly brought the nursing profession into disrepute.

She submitted that his written response to the charges failed to demonstrate any insight into his misconduct as it did not address the impact of his actions upon the reputation of the nursing profession.

Finally, Ms Mohamed submitted that Mr Thomas had failed to promote professionalism and trust in the nursing profession. She told the panel that a finding of misconduct and impairment were necessary for the protection of the public and also to address the public interest concerns arising from this case.

Decision on misconduct and impairment

The panel has accepted the advice of the legal assessor which included reference to the judgments of *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311 and *Cohen v General Medical Council* [2008] EWHC 581.

The panel then 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 Thomas' fitness to practise is currently impaired as a result of that misconduct.

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.

When determining whether 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 panel was of the view that Mr Thomas' actions did fall significantly short of the standards expected of a registered nurse. The panel agreed with Ms Mohamed, that Mr Thomas' conduct had breached the following areas of the Code: 5.1, 5.3, 20.1, 20.3, 20.5 and 20.6.

The panel accepted that not all breaches of the Code automatically result in a finding of misconduct. However, it considered the breaches in this case to be particularly serious involving Patient A, who [Private] and was extremely vulnerable. The panel also considered that Mr Thomas compounded his breach of the standards of the nursing profession by discussing the suicide of another patient with Patient A.

Mr Thomas abused his position of authority and took advantage of a vulnerable patient [Private], over a course of two months. The panel viewed the facts found proved in this case demonstrate a gross breach of trust of the relationship between nurse and patient. The panel considered Mr Thomas' misconduct to be highly unacceptable and considered that the public would agree.

In discussing the suicide of another patient on the ward the panel also found that Mr Thomas had breached confidentiality of another patient.

The panel found that Mr Thomas' actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel next went on to decide if as a result of this misconduct Mr Thomas' 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 Mrs Justice Cox 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.

Mrs Justice Cox 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. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

Regarding insight, the panel took into account Mr Thomas' written reflection. The panel was of the view that Mr Thomas' statement centred on himself and his own stress, as evidenced by the following quote:

"I have now changed and learned an important lesson from my error!! Look for support in those who do care!! As the longer you hold the guilt/embarrassment of yours [sic] suffering, the longer you suffer."

The panel considered Mr Thomas' insight into his misconduct to be minimal at its best. It was of the view that there is a real risk of repetition, of the kind of misconduct found proven, based on Mr Thomas' lack of insight and self-centred mind-set. 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.

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

Determination on sanction

Ms Mohamed submitted that taking no further action would be neither proportionate nor appropriate given the panel's finding of impairment on both public protection and public interest grounds.

Ms Mohamed submitted that a caution order would not address the panel's finding of a risk of repetition. She submitted that a caution order would not protect the public and therefore would not be appropriate in this case.

In considering a conditions of practice order, Ms Mohamed reminded the panel of Mr Thomas' stated intention not to practice as a registered nurse. She also referred to the panel's earlier finding that Mr Thomas has demonstrated minimal insight into his misconduct. Ms Mohamed submitted that, given Mr Thomas' lack of insight and his lack of any desire to practise as a registered nurse in the future, no conditions could be formulated which would address the concerns identified and address the public interest.

In regard to a suspension order, Ms Mohamed referred the panel to the NMC's sanction guidance. She reminded the panel that to impose a suspension order it must be satisfied that Mr Thomas has insight into his misconduct and is not likely to repeat it. Given the risk of repetition identified by the panel, and Mr Thomas' lack of insight, Ms Mohamed submitted that a suspension order would not be appropriate in this case.

Ms Mohamed submitted that the only appropriate sanction in Mr Thomas' case is that of a striking-off order. She reminded the panel that Mr Thomas abused a position of trust and caused Patient A to be fearful. She reminded the panel that the conduct spanned a period of two months and that Mr Thomas' has failed to develop his insight into the impact of this actions. She submitted that he had demonstrated only slight remorse, in his expression that he hopes his actions will not have any long lasting effects on Patient A. All of this, Ms Mohamed submitted, makes it fundamentally incompatible for Mr Thomas to remain on the NMC register.

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

The panel has considered this case and has decided to make a striking-off order. It directs the registrar to strike Mr Thomas off the register. The effect of this order is that the NMC register will show that Mr Thomas 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 and it has listened to the legal assessor. The panel bore 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 relevant 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.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the facts found proven in this case and the risk of repetition identified. The panel decided that taking no further action would not address the risk of repetition nor would it be proportionate or in the public interest.

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 considered that Mr Thomas’ misconduct was not at the lower end of the spectrum and that a caution order would also be inappropriate in view of the seriousness of the facts found proved in this case and the risk of repetition identified. The panel decided that a caution order would not address the risk of repetition nor would it be proportionate or in the public interest.

The panel next considered whether placing conditions of practice on Mr Thomas' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

“Conditions may be appropriate when some or all of the following factors are apparent:

- no evidence of harmful deep-seated personality or attitudinal problems
- potential and willingness to respond positively to retraining
- the conditions will protect patients during the period they are in force
- conditions can be created that can be monitored and assessed.”

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining, and the public may still be at risk even if conditions were imposed. Furthermore the panel concluded that the placing of conditions on Mr Thomas' registration would not adequately address the seriousness of the facts found proved.

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 (but not limited to):

- 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 aggravating factors that the panel took into account, in particular, were:

- Mr Thomas' abuse of a position of trust;
- The harm and fearfulness caused to Patient A
- Mr Thomas' limited/minimal insight
- The conduct spanned a period of two months occurring both in and outside of clinical settings
- Mr Thomas' breach of patient confidentiality

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 Thomas' actions is fundamentally incompatible with him remaining on the register.

The panel has taken into account the mitigation submitted by Mr Thomas, [Private]. [Private]. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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?

Mr Thomas' actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with Mr Thomas remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Thomas' actions were serious 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 only appropriate and proportionate sanction is that of a striking-off order. Having regard to the facts found proven and the effect of Mr Thomas' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

Determination on interim order

The panel has considered the submissions made by Ms Mohamed that an 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.

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 Thomas is sent the decision of this hearing in writing.

That concludes this determination.