

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
15 – 17 December 2020 & 21 December 2020
Virtual Hearing**

Name of registrant: Anita Watson

NMC PIN: 04H0008S

Part(s) of the register: Registered Nurse – Sub Part 1
RNA: Adult Nurse, Level 1 (26 January 2007)

Area of registered address: Scotland

Type of case: Misconduct

Panel members: David Crompton (Chair, Lay Member)
Joanne Lay (Registrant Member)
John Penhale (Lay Member)

Legal Assessor: Penny Howe QC

Panel Secretary: Simran Saini

Nursing and Midwifery Council: Represented by Samantha Forsyth, Case
Presenter

Miss Watson: Present and not represented

Facts proved: Charges 1(d), (f) and (g) (i) – by admission
Charges 1(a), (b), (e), (g) (ii), 2, 3 and 4 –by
panel findings

Facts not proved: Charge 1(c)

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Details of Charge

That you, a registered nurse, whilst working at Falkirk Community Hospital:

1. Failed to maintain professional boundaries with Patient X in that you:
 - a) On one or more occasion between 27 July 2018 and 14 September 2018 spent your shift break time in his room with him;
[Found proved by panel]
 - b) On one occasion on or around the middle to the end of August 2018 had your hands on Patient X's knees and/or allowed him to have his hands on your knees;
[Found proved by panel]
 - c) On one occasion in August 2018 spent longer than necessary with Patient X whilst he was in the shower;
[Not proved]
 - d) On 27 August 2018 tagged Patient X in a Facebook post;
[Found proved by admission]
 - e) On 11 September 2018 kissed Patient X;
[Found proved by he panel]
 - f) On 12 September 2018 told Colleague A that you were going on a date with Patient X;
[Found proved by admission]
 - g) On 12 October 2018:
 - i. Gave Patient X a lift in your car;
[Found proved by admission]
 - ii. Kissed Patient X.
[Found proved by panel]
2. Your conduct at charge 1 above was sexually motivated in that you were pursuing a future sexual relationship with Patient X.
[Found proved by panel]

3. In relation to charge 1b above, you asked Colleague B not to mention to anyone what she had seen.

[Found proved by panel]

4. Your actions at charge 3 above demonstrated a lack of integrity as you were intending to cover up your actions with Patient X.

[Found proved by panel]

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

Background

The NMC received a referral on 26 November 2018 from your employer at the time, NHS Forth Valley (NHS FV), following a number of allegations regarding your failure to maintain professional boundaries with Patient X, in that:

- On one or more occasions between 27 July 2018 and 14 September 2018 you spent your break time with Patient X;
- On one occasion on or around the middle to the end of August 2018 you had your hands on Patient X's knees and/or allowed him to have his hands on your knees;
- On one occasion, also in August 2018, spent longer than necessary with Patient X whilst he was in the shower;
- On 27 August 2018 you breached the NHS FV Social Media Policy by tagging Patient X in a Facebook post;
- On 11 September 2018, you sat with Patient X in the garden of Falkirk Community Hospital (the Hospital) where you were witnessed by another member of staff kissing Patient X;
- On 12 September 2018, you told Colleague A that you were going on a date with Patient X; and
- On 12 October 2018, you gave Patient X a lift in your car to the Hospital and kissed Patient X.

Admissions to the Charges

At the outset of the hearing you admitted charges 1(d), (f) and (g) (i). The panel therefore announced these as proved.

Registrant's Disclosure of Personal Health Matters on Day 3

[PRIVATE]

Decision on Findings of 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 Forsyth and those made by you.

The panel 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 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 oral evidence from the following witnesses tendered on behalf of the NMC:

- Witness 1: Staff Nurse on Unit 1 at the Hospital, at the time of the allegations.
- Witness 2: Care Assistant on Unit 2 at the Hospital.

- Witness 3: Care Assistant on Unit 2 at the Hospital.
- Witness 4: Staff Nurse on Unit 2 at the Hospital.

The panel also took into account a witness statement provided by Witness 5, a Senior Charge Nurse on Unit 1 at the Hospital. Witness 5 was released by the NMC on 17 November 2020, following a decision at a Case Conference, held on 16 November 2020, between yourself and the NMC that his witness statement could be agreed in light of the fact that his statement is pertinent to charge 1(d), which has already been admitted by you. Therefore, Witness 5 did not need to attend virtually to give oral evidence.

The panel also heard evidence from you under affirmation.

The panel found Witness 1 to be clear and consistent. It was of the view that Witness 1's evidence was detailed and that she provided a clear recollection of the events. The panel concluded that Witness 1 was a credible and reliable witness, who remained firm in her account, even when challenged.

The panel found Witness 2 to be clear and consistent, insofar as she could be. It was of the view that Witness 2 gave a fair and balanced account of the alleged incidents and that she was an overall credible witness.

The panel found Witness 3 to be credible but formed the view that she tried to be helpful but at times lacked clarity about her recollection of events. It formed the view that Witness 3 answered the questions to the best of her ability.

The panel found Witness 4 to be succinct and confident in her responses of what she could and could not recall. It was of the view that her oral evidence was consistent with her witness statement and concluded that she was a credible and reliable witness.

The panel found elements of your evidence to be contradictory and confusing, for example your explanation of the 'date' and also your reasons for dropping off Patient X at the hospital, however it acknowledged that you were emotional and felt distressed by these proceedings.

As mentioned above, at the outset of this hearing you admitted charges 1(d), (f) and (g) (i). These were therefore announced as proved.

The panel then considered the remaining charges and made the following findings:

Charge 1(a)

1. Failed to maintain professional boundaries with Patient X in that you:
 - a) On one or more occasion between 27 July 2018 and 14 September 2018 spent your shift break time in his room with him;

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1 and your final submissions. It noted that Witness 1 stated in her evidence that she had seen you in Patient X's room when you were on a shift break. In your submissions today, you admitted to being with Patient X when you were on a 10 minute 'courtesy' break. The panel considered the wording of this charge carefully and determined that it would apply an ordinary interpretation to the meaning of 'shift break'. It therefore determined that there was no need for an application to be made to amend this charge. As far as the panel was concerned, a break meant any break in your shift regardless of whether it was mandatory or concessionary. In light of these reasons, the panel found this charge proved.

Charge 1(b)

1. Failed to maintain professional boundaries with Patient X in that you:
 - b) On one occasion on or around the middle to the end of August 2018 had

your hands on Patient X's knees and/or allowed him to have his hands on your knees;

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1, your oral evidence and the submissions made by Ms Forsyth. Whilst there had been some ambiguity in the evidence of Witness 1 as to whether she saw you touch Patient X's knee or lower thigh and whether she saw Patient X touch your knee or lower thigh, the panel also took into account your oral evidence where you stated "*in a way it* [the charged behaviour] *was true but it was for a purpose*". The purpose you stated was to file Patient X's ragged nail at his request. You further stated that, when Witness 1 came into the room and found you there, you held up the nail file for her to see. However, the panel preferred the evidence of Witness 1 who said there was no nail file held up in your hand and that she had seen you both quickly withdraw your hands from each other's leg. The panel therefore found this charge proved.

Charge 1(c)

1. Failed to maintain professional boundaries with Patient X in that you:
 - c) On one occasion in August 2018 spent longer than necessary with Patient X whilst he was in the shower;

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence of Witness 1 and your oral evidence. It was of the view that although Witness 1's evidence was clear, there were some inconsistencies in her evidence with regard to how long you spent in the shower. In her statement, Witness 1 stated that you spent four to five minutes in the shower. However, in oral evidence, Witness 1 stated that that it was two to three minutes and no longer than five minutes. This raised an element of doubt in the panel's mind. The panel then considered your oral evidence and noted you stated that you administered the

Oxycodone to Patient X and subsequently, at his request, passed him the towels and patted his back dry, as he was sitting in the shower chair. Although the panel accept what Witness 1 had said, it was of the view that, as you were the only person in the shower with Patient X, Witness 1 couldn't possibly have known what was going on inside. As such, the panel could not accept that what Witness 1 had said proves that you spent longer than necessary in the shower with Patient X. The panel therefore found this charge not proved.

Charge 1(e)

1. Failed to maintain professional boundaries with Patient X in that you:
 - e) On 11 September 2018 kissed Patient X;

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 1. The panel noted that Witness 1 stated in her evidence that she was finishing her shift at around 9pm, when she walked down the corridor opposite the garden and saw Patient X's knee, which caught her eye. Witness 1 then stated that she saw you kissing Patient X in an intimate manner. The panel took into account Witness 1's evidence that, subsequent to her witnessing this, she walked back down the corridor, unzipped her bag, took her phone out to report this incident to the nurse on duty but noticed that her phone battery had died, so she was left with no option but to go to unit and report it. The panel noted your oral evidence, in that you accept that you were outside in the garden with Patient X at this time but that you did not kiss him. On balance, the panel was of the view that it is more likely than not for the kiss to have taken place for Witness 1 to have felt so concerned by what she had witnessed and to subsequently immediately return to the unit to report it. The panel also noted that in your oral evidence, you initially critiqued what Witness 1 had said by suggesting that you would not do this when you knew other staff would be finishing their shifts and passing down the corridor. Subsequently, you stated that it would have been impossible for Witness 1 to have seen you kissing Patient X because of the reflection of the lights on the window. In light of these reasons, the panel found this charge proved.

Charge 1(g) (ii)

1. Failed to maintain professional boundaries with Patient X in that you:
 - g) On 12 October 2018:
 - ii. Kissed Patient X;

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 2, 3 and 4. The panel was of the view that all three witnesses were fair and credible, in that they recognised that you had your back to them on the CCTV monitor but that they all witnessed you leaning down towards Patient X, which they interpreted as a kiss. The panel acknowledged that all three witnesses recognised that it could have been a whisper but it could not be satisfied that such was the case, considering that you were in the car park and alone with Patient X. Furthermore, the panel took into account your oral evidence and noted that you stated that you had been assisting Patient X in fixing his lap strap. You told the panel that Patient X stood up whilst you assisted him. However, the panel noted that none of the three witnesses had described seeing Patient X standing up at any point. In light of the fact that all three witnesses were consistent on the salient elements of what they had witnessed, the panel was of the view that on balance, it was more probable than not that you leant down to kiss Patient X. It concluded that your account was inconsistent and implausible. As such, the panel found this charge proved.

Charge 2

2. Your conduct at charge 1 above was sexually motivated in that you were pursuing a future sexual relationship with Patient X.

This charge is found proved.

In reaching this decision, the panel took into account the charges admitted by you and the charges it found proved. Taken individually and collectively, the panel was satisfied that

your conduct was sexually motivated in that you intended to pursue a future relationship with Patient X. The panel was of the view that it could safely draw an inference that you were pursuing a future sexual relationship with Patient X, especially in light of the fact that you had exhibited a pattern of such behaviour, for example engaging in a flirtatious Facebook post, kissing Patient X and intending to go on a date with him as well as inappropriate touching. As such, the panel found this charge proved.

Charge 3

3. In relation to charge 1b above, you asked Colleague B not to mention to anyone what she had seen.

This charge is found proved.

In reaching this decision, the panel took into account your oral evidence that you had told Witness 1 not to say anything after she witnessed you and Patient X with each other's hands on the other's knees. You told the panel that the reason you told Witness 1 not to say anything was because you did not want Witness 1 to add to the circulating rumours about yours and Patient X's relationship. However, the panel was not satisfied that such was the case. It concluded that this charge has effectively been admitted by you, in that you accept that you accept that you told Witness 1 not to say anything, albeit in your oral evidence you stated that it was for a different reason. As such, the panel found this charge proved.

Charge 4

4. Your actions at charge 3 above demonstrated a lack of integrity as you were intending to cover up your actions with Patient X.

This charge is found proved.

In reaching this decision, the panel took into account your oral evidence. The panel concluded that this charge was conceded by you in cross examination. The panel noted

that you accepted that there was a lack of integrity on your part. The panel was of the view that your explanation in relation to this charge was implausible, in that, you could have prevented Witness 1 from adding to the circulating rumours about yours and Patient X's relationship in a different way. The panel noted that Witness 1 was newly qualified at the time of this incident and concluded that, asking any colleague to cover up something of such nature is highly inappropriate, but that this is further exacerbated when it is a junior colleague. In light of these reasons, the panel found this charge proved.

Submissions on Misconduct and Impairment

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 suitability to remain on the register unrestricted.

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.

Ms Forsyth referred the panel to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 (Roylance) 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*'.

Ms Forsyth invited the panel to consider *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* (the Code). She then directed the panel to specific paragraphs and identified where, in the NMC's view, your actions amounted to misconduct. In addition to her submission that you did not adhere to the Code, she submitted that you accepted in your oral evidence that by tagging Patient X in a Facebook post, you breached the Hospital's Social Media Policy. Ms Forsyth invited the panel to take the view that the facts proved amounted to a breach of the Code and when considered individually and collectively, also amount to serious misconduct. She submitted that other members of the nursing profession would find your actions to be deplorable, especially in relation to breaching professional boundaries and demonstrating a lack of integrity.

She 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 Forsyth referred the panel to the case of *CHRE v (1) NMC (2) and Grant* [2011] EWHC 927 (Admin) (Grant). She submitted that limbs (a), (b) and (c) of Grant are engaged in this case.

In relation to (a), Ms Forsyth invited the panel to have regard to Patient X's condition. She told the panel that Patient X did not make a complaint and that there was no evidence of emotional harm being caused. However, she invited the panel to take into account the opinion of Dr 1, Consultant in Rehabilitation Medicine, who stated that nurses in general have to consider any/or all of their inpatients on Unit 1 as vulnerable, in that they are remote from their normal living arrangements, family and friends and trust the staff with their care. Ms Forsyth submitted that there was no evidence of actual harm being caused to Patient X in this case but there was a real potential of serious harm.

In relation to (b) and (c), Ms Forsyth submitted that your actions have brought the nursing profession into disrepute and by not maintaining professional boundaries, you have breached one of the fundamental tenets of the nursing profession. She submitted that the

public would be shocked to hear what had happened between you and Patient X, particularly in relation to charge 1(e), which took place on the Hospital's grounds.

In relation to charge 4, Ms Forsyth referred the panel to the case of *Wingate and Others* [2018]. The underlying rationale behind this case is that professionals have a privileged and trusted role in society and that a professional person is expected to be even more scrupulous than a member of the general public in daily discourse. Ms Forsyth submitted that by asking Witness 1 not to say anything about what she had seen, you brought your integrity into question in a clinical context.

In relation to remediation, Ms Forsyth referred the panel to the case of *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin). In terms of charge 4, she submitted that the conduct which led to this charge cannot be described as easily remediable given that it is an attitudinal issue. However, she told the panel that you did show insight into the lack of integrity charge, and although you did not accept the exact words of the charge, she submitted that you recognised that your conduct was an example of poor judgement.

Ms Forsyth submitted that breaching professional boundaries could also be considered as being difficult to remediate, particularly as you had not admitted the majority of the charges and in particular, the more serious ones. However, in relation to the charges you did admit, Ms Forsyth submitted that you have reflected upon them and have shown remorse and regret for what happened. Ms Forsyth submitted that, as a result of your lack of remediation into the concerns, the panel may feel that there remains a risk of repetition of the matters found proved in this case.

Ms Forsyth invited the panel to consider your level of insight. She submitted that, given that the majority of the charges were not admitted by you, it is impossible for you to have demonstrated full insight into the seriousness of the concerns. However, she submitted that you have demonstrated some insight into the charges you have admitted. Ms Forsyth invited the panel to consider whether, as a result of your lack of insight into the denied

charges, you have truly recognised the potential impact your actions could have had on Patient X, your colleagues at the time and the wider public.

Ms Forsyth invited the panel to take into account the two character references you had provided, both of which attest to there having been no other concerns about your nursing practice except those which are the subject matter of this case.

For the reasons above, Ms Forsyth concluded that a finding of current impairment is necessary on the grounds of public protection and also otherwise in the public interest. She submitted that a finding of current impairment is also necessary in order to maintain confidence in the nursing profession and to declare and uphold proper stands of conduct and behaviour.

You told the panel that you accept that your actions at the time fell below the standards expected of what a registered nurse would be expected to do. Further, you told the panel that your actions at the time were deplorable and that you were impaired at the time. However, you told the panel that there is no risk of repetition of the matters found proved as you are currently in a better state of mind and consider that you are in a better place in your life now than you were when the allegations arose. You told the panel that you have taken a long time to reflect on your actions.

The panel accepted the advice of the legal assessor.

Decision on Misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel, in reaching its decision, also 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 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:

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.5 not obstruct, intimidate, victimise or in any way hinder a colleague, member of staff, person you care for or member of the public who wants to raise a concern

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

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times

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 the conduct found proved, considered both individually and collectively, was a serious departure from the standards expected of a registered nurse and fell far below those standards.

In light of the above, the panel concluded that your actions amounted to misconduct.

Decision on Impairment

The panel next went on to decide if as a result of the misconduct, your 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 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 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) ...*

The panel concluded that limbs (a), (b) and (c) of the Grant test were engaged in this case.

The panel noted that there was no evidence of actual harm in relation to Patient X, however it was of the view that your past actions could have caused serious emotional harm to him, as well as having the potential to cause harm to other patients on the Unit, who may have witnessed what was going on. The panel formed the view that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that you have accepted that your previous actions were wrong. As such, it was of the view that you have shown a degree of insight. However, it could not be satisfied that you have demonstrated full insight into the seriousness of your actions as it was not convinced that you had truly recognised the potential impact your actions could have had on Patient X, other patients, your colleagues at the time, the nursing profession and/or the wider public. The panel acknowledged that in your evidence you stated that you have taken a long time to reflect on your actions, however it had no evidence of such reflection and therefore it could not be truly satisfied that this was the case.

Regarding remediation, the panel was of the view that the misconduct in this case is not capable of being remediated easily. However, it accepted that you have certainly demonstrated remorse for your actions. With this being said, the panel was of the view that there is a risk of repetition of the conduct found proved based on your lack of full 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; 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.

The panel determined that a finding of impairment on public interest grounds is also required because a member of the public, fully informed on the facts of this case, would expect the NMC as a regulator to take action and make a finding of current impairment towards a medical professional who behaved in such a way. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of current impairment were not made in this case.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have 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, as well as the submissions made by Ms Forsyth and by you. It also had careful regard to the Sanctions Guidance (SG) published by the NMC and took into account the advice of the legal assessor.

Submissions on Sanction

Ms Forsyth submitted that, in determining what sanction, if any, to impose, the panel must act proportionately and balance the public interest against your interests. She reminded the panel that it should start with the least restrictive sanction and work its way up towards the most restrictive.

Ms Forsyth invited the panel to consider the aggravating and mitigating factors in this case. She referred the panel to the NMC guidance on cases involving sexual misconduct which, in her submission, focuses specifically on the importance of maintaining clear sexual boundaries between healthcare professionals and patients. Ms Forsyth further submitted that this guidance also states that sexual misconduct will be particularly serious if a nurse has abused a position of trust, which in her submission, applies in this case. Ms Forsyth also referred the panel to the NMC's SG.

In terms of which sanction would be the most appropriate in this case to address the seriousness of the conduct found proved, Ms Forsyth invited the panel to consider

imposing a striking-off order. She submitted that public confidence in the nursing profession could only be maintained if you were removed from the NMC register. She further submitted that a striking-off order would be the only appropriate sanction in this case to protect patients, members of the public and to maintain professional standards.

You told the panel that you are in agreement with the NMC in regards to which sanction the panel should impose. You told the panel that your past actions were wrong and that the only appropriate sanction to mark the seriousness of those actions would be a striking-off order.

Decision 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 and the NMC's guidance on cases involving sexual misconduct. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Real potential for patient harm;
- Lack of integrity in a clinical context in relation to your actions;
- Serious breach of professional boundaries and a breach of position of trust which took place over a period of time; and
- Lack of full insight and remediation into the concerns and there a risk of repetition of the conduct found proved.

The panel also took into account the following mitigating features:

- You have demonstrated remorse for your actions;

- You recognised and accepted that your actions were wrong; and
- Your previous good character, evidenced by way of character references and witnesses confirming that there were no other clinical concerns in your nursing practice;

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the misconduct in this case, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would therefore be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this misconduct in this case and would not protect the public or meet the public interest concerns. .

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;

- No evidence of harmful deep-seated personality or attitudinal problems;
and
- No evidence of repetition of behaviour since the incident;

The 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 your actions is fundamentally incompatible with you remaining on the register.

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 paragraphs of 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 panel took into account the SG. It noted that your misconduct occurred over a sustained period of time. The panel noted that you continued to encourage your relationship with Patient X, even after being advised against this by your Senior Charge Nurse. Furthermore, it was of the view that the seriousness in this case is exacerbated by the fact that you told Witness 1 to suppress what she had seen in relation to charge 3. It also took into account that you have not yet demonstrated full insight into the seriousness of your conduct. The panel was of the view that this could be perceived as an attitudinal issue, which can be difficult to remediate. Therefore, it was satisfied that there is a risk of repetition of the matters found proved in this case.

The panel then took into account the NMC's guidance on cases involving sexual misconduct. Although it was satisfied that your misconduct was not at the higher end of the spectrum in relation to sexual misconduct cases, it was of the view that your conduct was serious nonetheless, as you abused a position of trust as a member of the nursing profession. Finally, the panel took into account your submission that you were in agreement with Ms Forsyth and the NMC that the most appropriate sanction in this case would be one of a striking-off order.

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you 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 effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, 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.

Whilst the panel recognises the impact a striking off order will have on you, the panel was satisfied that your interests were outweighed by the public interest.

This will be confirmed to you in writing.

Interim order

As the striking-off order does not come into effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Forsyth and by you.

Ms Forsyth submitted that an interim order should be made to cover the period before the substantive order takes effect and/or to cover any appeal period, on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. She invited the panel to impose an interim suspension order for a period of 18 months.

You did not have any comments to make in relation to this application.

Decision on Interim Order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim

suspension order. The period of this order is for 18 months to allow, in the event of an appeal, for the appeal for the determined.

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

That concludes this determination.