

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

**Substantive Meeting
28 – 30 July 2021**

Virtual Meeting

Name of registrant: Mrs Susan Woodham

NMC PIN: 12G0890E

Part of the register: Registered Mental Health Nurse (2012)

Area of registered address: Merseyside

Type of case: Misconduct

Panel members: Nicola Jackson (Chair, lay member)
Martin Bryceland (Registrant member)
Ian Dawes (Lay member)

Legal Assessor: Alain Gogarty

Panel Secretary: Leigham Malcolm

Facts proved: Charges 1 & 2

Fitness to practise: Impaired

Sanction: Striking-Off Order

Interim order: Interim Suspension Order (18 months)

Decision and reasons on service of Notice of Meeting

At the outset of the meeting the panel was informed that formal Notice of Meeting had been sent to Mrs Woodham's registered email address on 23 June 2021. The Notice of Meeting included details of the allegations and the time frame during which the meeting would be held, amongst other things.

The panel was also informed that the Notice of Meeting had been sent to Mrs Woodham's registered postal address via first class post and recorded delivery. The panel had regard to the Royal Mail 'Track and trace' which showed the Notice of Meeting had been delivered and signed for on 25 June 2021.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Woodham has been served with the Notice of Hearing in accordance 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 also considered under Rule 10 whether a hearing would be desirable. It took into account the NMC's guidance on meetings. After careful consideration the panel decided to continue and consider Mrs Woodham's case by way of a substantive meeting for the following reasons:

- Mrs Woodham was provided with an opportunity to request a hearing and participate in proceedings and has not responded;
- The facts of the case are not in dispute;
- There is public interest in the expeditious disposal of this case due to the seriousness of the allegations and upholding the NMC's reputation as a regulator.

Details of charges

That you, a registered nurse

- 1. Between around September – October 2019 engaged in an inappropriate relationship with Resident A.*
- 2. The relationship described in charge 1, above, was sexual.*

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

Decision and reasons on facts

In reaching its decisions on the facts, the panel took account of all of the evidence before it. The panel was aware that the burden of proof rests on the Nursing and Midwifery Council (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.

Background

The NMC received a referral from the Regional Manager of Community Integrated Care (CIC), on 16 October 2019. The referral alleged that whilst working as a Registered Nurse at the Home Mrs Woodham formed an inappropriate relationship with a vulnerable service user.

Mrs Woodham was interviewed by the Regional Manager of CIC, which owns Gordon House (the Home), on 14 October 2019. Within the interview notes Mrs Woodham admits

to being in a relationship with the Resident A. Ms Woodham was dismissed from the Home on 18 November 2019 following a local investigation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. The panel considered each of the charges and made the following findings.

Charge 1

1. *Between around September – October 2019 engaged in an inappropriate relationship with Resident A.*

This charge is found proved.

In reaching this decision, the panel took account of all of the evidence before it including the local investigation which was undertaken. In particular, the witness statement of the Regional Manager of CIC stated:

“Susan admitted that she was in a relationship with Resident A prior to me showing her the photographs...

...she said “I know I am going to lose my PIN, I don’t care”. When she initially admitted it by saying “I have been having a relationship, I love him.” I confirmed with her this was with Resident A and she replied “Yes”.”

The panel took account the Professional Standards Authority’s guidance on sexual boundaries:

“Professionals may have positive, empathic regard for patients but shouldn’t love them.”

The panel also took account of photographs in which Mrs Woodham appears to be close, kissing Resident A and them kissing each other. The panel considered the photograph suggested the Mrs Woodham and Resident A were in some form of relationship. It also took account of an email from Mrs Woodham to the NMC dated 23 April 2020 in which she stated:

“As for the situation with me a ... (the patient) we are still together ... we are expecting a baby in september [sic]. Despite how we met which i no things could have been done differently but i cant change that [sic]...”

The panel also had regard to the witness statement of the manager of the Home which stated:

“Resident A was a resident at CIC Gordon House from 16 October 2018 to 22 October 2019. Resident A arrived from Brunswick ward, broadoak unit at broadgreen hospital. He was diagnosed with...

...Although resident A had obvious vulnerabilities in relation to his mental health, he was deemed to have full capacity and seemed like a young man who was able to make informed decisions.”

The panel considered the inappropriateness of Mrs Woodham’s breach of professional boundaries and engagement in a relationship with a person under her care. It took further account of the statement of the Regional Manager of CIC who stated:

“During her shifts at Gordon House Susan would have been responsible for 20 residents ensuring their care plan and treatment plans were followed and making sure they were addressing the resident’s best needs. Susan would have been the nurse overseeing Resident A’s care plan whilst she was on shift.”

On the basis of the evidence before it the panel found Charge 1 proved.

Charge 2

2. The relationship described in charge 1, above, was sexual.

This charge is found proved.

In reaching this decision, the panel took into account Mrs Woodham's email to the NMC dated 23 April 2020 in which she states that '*we are expecting a baby in september [sic]*'. The panel inferred from this that Mrs Woodham and Resident A were expecting a baby together and that their relationship was one of a sexual nature.

The panel was also of the view that the photographs of Mrs Woodham and Resident A kissing each other taken together with the aforementioned email is further evidence which supports the fact that the relationship was sexual in its nature.

On the basis of the evidence before it the panel also found Charge 2 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Woodham'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 without restriction.

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, Mrs Woodham's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

In coming to its decision, the panel had regard 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.'

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mrs Woodham's fitness to practise impaired on the grounds of public protection as well as the wider public interest.

The panel accepted the advice of the legal assessor which included reference to *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code: Professional standards of practice and behaviour for nurses and midwives (2015) (“the Code”).

The panel was of the view that Mrs Woodham’s actions did fall significantly short of the standards expected of a registered nurse, were in fact deplorable, and that Mrs Woodham’s actions amounted to a breach of the Code, specifically the following sections:

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

20.5 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 Mrs Woodham’s serious breach of professional boundaries was towards the higher end of the spectrum of misconduct.

The panel bore in mind Mrs Woodham’s statement upon being confronted by the regional manager of the Home; “*I know I am going to lose my PIN, I don’t care*”. It considered that this statement indicated that Mrs Woodham knew that her actions were unacceptable and had some awareness of the consequences but made the choice to continue the relationship with Resident A.

As a registered nurse caring for Resident A, Mrs Woodham had a clear responsibility to maintain professional boundaries. By allowing a sexual relationship to develop, the panel considered Mrs Woodham to have failed to uphold a fundamental tenet of nursing care.

The panel took account of the relevant NMC's guidance on determining the seriousness of cases involving sexual misconduct:

“Sexual misconduct will be particularly serious if the nurse, midwife or nursing associate has abused a special position of trust they hold as a registered caring professional”

The panel considered Mrs Woodham to have breached a position of trust as a registered nurse, given that Resident A had been under her care from around September – October 2019. Having considered all the facts in this case, and the NMC guidance, the panel determined that Mrs Woodham's breach of professional boundaries was particularly serious.

The panel also took account of the PSA's guidance on sexual boundaries:

“It is never acceptable to have sex with a patient, and it is up to the professional to make sure this doesn't happen...”

It also took account of the PSA's research findings around the impact of a professional's breach of boundaries, and sexual misconduct, upon patients. The research indicates that patients may suffer harm, including the following, as a result: post-traumatic stress disorder, high levels of dependency, failure to access health services when needed.

In the circumstances of this case, the panel found that Mrs Woodham's actions did fall significantly short of the conduct and standards expected of a nurse and amounted to serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Woodham'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 act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

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

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

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...

The panel determined that Mrs Woodham's misconduct breached all three of the aforementioned limbs of the Grant test.

The panel noted that Mrs Woodham's fitness to practise is to be assessed at the date of this hearing. It took into account whether the misconduct it has found is easily remediable, has been remedied and is highly unlikely to be repeated.

The panel had regard to the NMC's guidance on remediation which stated:

Examples of conduct which may not be possible to remedy, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

- *inappropriate personal or sexual relationships with patients, service users or other vulnerable people*

The panel reached the view that that, although extremely difficult given the nature of the misconduct, in this case it was capable of remediation. For example, the panel would have expected to see a detailed reflective piece including the impact on Resident A, other patients in her care, colleagues and the reputation of the nursing profession in general. Such reflection should also have covered consideration as to how Mrs Woodham would engage appropriately with residents/patients in the future. The panel would also have

been assisted by evidence of study or attendance of courses relevant to maintaining professional boundaries. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Woodham has remedied her practice.

The panel considered there to be no evidence before it of any remediation. It took account of Mrs Woodham's statement:

“As for the situation with me a ... (the patient) we are still together ... we are expecting a baby in september [sic]. Dispite how we met which i no things could have been done differently but i cant change that [sic]...”

Whilst Mrs Woodham acknowledged that she could have done things differently the panel was of the view that this statement demonstrated an awareness of the seriousness of her actions, but not insight. The panel was of the view that Mrs Woodham has not demonstrated adequate insight into the consequences her actions may have for Resident A, such as post-traumatic stress disorder, high levels of dependency, failure to access health services when needed. Nor has Mrs Woodham demonstrated adequate insight into the impact of her misconduct upon the reputation of the nursing profession.

Boundaries are a fundamental tenet of the nursing profession. The panel considered Mrs Woodham had put her own desires above the needs of a patient. With that in mind, along with her lack of insight, the panel concluded that there is a risk of repetition in that Mrs Woodham may put her own needs above those of her patients and breach professional boundaries. 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 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 required to mark the seriousness of Mrs Woodham's breach. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Woodham's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Woodham's 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 Mrs Woodham's name from the register. The effect of this order is that the NMC register will show that Mrs Woodham 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 had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel noted that in the Statement of Case attached to the Notice of Meeting, dated 23 June 2021, the NMC had advised Mrs Woodham that it would seek a striking-off Order if the panel were to find Mrs Woodham's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mrs Woodham's 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 NMC's Sanctions Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Misconduct occurred over a period of one month (from September – October 2019);
- Abuse of a position of trust;
- Vulnerable service user due to his diagnoses.

The panel also took into account the following mitigating features:

- The patient had full capacity and appeared to be in a consensual relationship;
- An early admission when presented with the facts;
- Previous history of good professional conduct.

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 a caution would do nothing to protect the public nor would it satisfy the public interest in this case. 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 Mrs

Woodham's misconduct was not at the lower end of the spectrum. 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 Mrs Woodham's 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 Mrs Woodham's registration would not adequately address the seriousness of this case nor would it satisfy the public interest

The panel then went on to consider whether a suspension order would be an appropriate sanction. The conduct, as highlighted by the facts found proved, was an extremely serious departure from the standards expected of a registered nurse.

The panel reached the view that Mrs Woodham's lack of insight and remediation, in response to such a serious breach of professional boundaries, was indicative of an attitudinal issue. Mrs Woodham put her own desires above the needs of her patient, and, the panel found no evidence of any remorse. For these reasons, 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?*

Mrs Woodham's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Woodham's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Whilst a suspension order could be sufficient to protect the public where a registrant was willing to address their behaviour, Mrs Woodham has demonstrated inadequate insight and provided no evidence of remorse or remediation. Without any evidence or assurances from Mrs Woodham before the panel to suggest that her behaviour would be any different in the future it determined that the risk of repetition remained. Further, without the evidence mentioned above, the panel considered that the public interest would not be served by any lesser sanction than a striking-off order.

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 Mrs Woodham's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of a striking-off order would be sufficient in this case.

The panel considered that this order was necessary to protect the public, 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.

This will be confirmed to Mrs Woodham in writing.

Interim order

The striking-off order cannot take effect until the end of the 28-day appeal period, or if an appeal is lodged then until that appeal is disposed of. The panel therefore considered whether an interim order is required. 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 Mrs Woodham's own interest. The panel took account of the advice of the legal assessor.

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 for a period of 18 months to allow for any possible appeal period.

If no appeal is lodged, then the interim suspension order will be replaced by the striking off order 28 days after Mrs Woodham is sent the decision of this hearing in writing.

That concludes this determination.