Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 1 November – Thursday 4 November 2021

Virtual Hearing

Name of registrant:	**Susan Salem**
NMC PIN:	00I0513E
Part(s) of the register:	RNA: Registered Nurse – Adult (22 September 2003)
Area of registered address:	Devon
Type of case:	Misconduct
Panel members:	Michael Murphy (Chair, registrant member) Claire Rashid (Registrant member) Michael Glickman (Lay member)
Legal Assessor:	Fiona Moore
Panel Secretary:	Jennifer Morrison
Nursing and Midwifery Council:	Represented by Beverley Da Costa, Case Presenter
Mrs Salem:	Not present and unrepresented
Facts proved:	Charges 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), 1(h), 1(j), Charge 2
Facts not proved:	Charge 1(i)
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Salem was not in attendance and that the Notice of Hearing letter had been sent to Mrs Salem's registered address by recorded delivery and by first class post on 30 September 2021.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs Salem's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Da Costa, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Salem has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Salem

The panel next considered whether it should proceed in the absence of Mrs Salem. It had regard to Rule 21 and heard the submissions of Ms Da Costa who invited the panel to continue in the absence of Mrs Salem. She referred the panel to an email dated 4 October 2021 from Mrs Salem to the NMC, in which Mrs Salem stated that she would not be attending the hearing, would no longer be engaging with the NMC, and requested no further contact from the NMC with the exception of the outcome of these proceedings. Ms Da Costa submitted that Mrs Salem had voluntarily absented herself from this hearing.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'*.

The panel has decided to proceed in the absence of Mrs Salem. In reaching this decision, the panel has considered the submissions of Ms Da Costa, the representations from Mrs Salem, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Mrs Salem has been made aware of this hearing and has clearly stated her intention not to attend;
- No application for an adjournment has been made by Mrs Salem;
- There is no reason to suppose that adjourning would secure Mrs Salem's attendance at some future date;
- Mrs Salem has set out her own case in the registrant's bundle;
- Three witnesses have attended today to give live evidence;
- Not proceeding may inconvenience the witnesses and their employer(s);
- The charges relate to events that occurred in 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Salem in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Salem at her registered address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Salem's decisions to absent herself from the

hearing and waive her rights to attend and/or be represented. The panel will have due regard to the documents put forward by Mrs Salem in her registrant's bundle.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Salem. The panel will draw no adverse inference from Mrs Salem's absence in its findings of fact.

Details of charge

That you, a registered nurse;

1. Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:

   (a) Facilitating for **[PRIVATE]** to provide paid ad-hoc domestic support for Patient A.
   (b) Assisting in the arrangement of **[PRIVATE]** tenancy in Patient A's property.
   (c) Assisting Patient A in changing her Will.
   (d) Interfering with Patient A's personal friendship with Ms 1.
   (e) Interfering with Patient A's personal friendship with Ms 2.
   (f) Accessing Patient A's property on at least one occasion whilst Patient A was in care.
   (g) Assisting Patient A with their pension paperwork on 25 September 2019.
   (h) Providing Patient A with your personal email address.
   (i) Providing Patient A with your personal mobile telephone number.
   (j) Fostering and/or failing to prevent a relationship of personal dependence with Patient A.

2. Your actions in charge 1(a) to (j) showed a lack of integrity because you were aware that your conduct was breaching professional boundaries.

In light of the above, your fitness to practise is impaired by your misconduct.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Da Costa.

The panel has drawn no adverse inference from the non-attendance of Mrs Salem.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Ms 1: Friend of Patient A
- Ms 2: Friend of Patient A
- Ms 3: Professional Lead (at the time of the incident) and Deputy Director of Patient Care, Rowcroft Hospice

Background

The charges arose whilst Mrs Salem was employed by Rowcroft Hospice ('Rowcroft') as a Clinical Nurse Specialist (CNS) working in the community. It is alleged that in July 2019, Mrs Salem arranged for **[PRIVATE]** to provide paid domestic support to Patient A, and on at least one occasion, was involved in arranging payment to **[PRIVATE]** from a friend of Patient A.

It is also alleged that in September 2019, upon Patient A's admission into Rowcroft, Mrs Salem was aware of an arrangement between **[PRIVATE]** and Patient A, where

[PRIVATE] would move into Patient A's home. Mrs Salem was allegedly involved in assisting in this arrangement, including contacting two of the patient's friends (Ms 1 and Ms 2) in the first week of September 2019 to obtain their consent.

On 18 September 2019, Patient A changed her Will, bequeathing **[PRIVATE]** a right of residence in Patient A's house for two years at the cost of £50.00 per month and £65.00 per month for the first and second years, respectively.

It is alleged that Mrs Salem either fostered, or failed to prevent, a relationship of personal dependence with Patient A, such that Patient A became distressed by Mrs Salem's removal from her care. Mrs Salem is alleged to have interfered in Patient A's personal relationships by alienating Patient A's friends to the benefit of **[PRIVATE]**.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC and Mrs Salem.

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

Charge 1(a)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

    *(a) Facilitating for **[PRIVATE]** to provide paid ad-hoc domestic support for Patient A.'*

This charge is found proved.

In reaching this decision, the panel had regard to Mrs Salem's own account of events, supported by various pieces of evidence. It noted that in the undated 'Final Statement

from Susan Salem', Mrs Salem stated *'…it was in this moment I offered **[PRIVATE]** it was the only solution I could see as she would be the same person every time…'* The panel also noted that the notes of the disciplinary meeting conducted by Rowcroft on 2 October 2019 record that Mrs Salem stated that *'…**[PRIVATE]** does this for some other people occasionally, so she suggested that if it was OK with everyone would they find that more suitable?'* The panel was satisfied that Mrs Salem's actions amounted to facilitation of this arrangement.

The panel noted that Mrs Salem's statements were corroborated by those of **[PRIVATE]** and of Ms 1 and Ms 2. It found Ms 1 and Ms 2 to be credible, helpful and clear in their oral evidence. The panel noted that Ms 1 and Ms 2 had a longstanding friendship with Patient A. They had helped her through many life events and provided personal support to her before Mrs Salem became involved in her care. It had no reason to doubt their evidence.

In its consideration of whether Mrs Salem's actions amounted to a breach of professional boundaries, the panel took into account the evidence of Ms 3. Ms 3 stated that whilst it was not unusual for a community nurse to encounter patients whose condition is such that they require additional help in their home, she would have expected Mrs Salem to contact a voluntary care coordinator or social worker to arrange for this. Ms 3 stated that a list of social services-approved providers was available, which would help to ensure that any support was safely and transparently managed. The panel was satisfied that by facilitating an arrangement in which a financial relationship between **[PRIVATE]** and Patient A was created, Mrs Salem acted in breach of professional boundaries.

In this respect, the panel also had regard to Mrs Salem's own admission that *'…(on reflection I can see the issue, but still cannot come up with any other solution…)'*. It concluded that Mrs Salem was aware that her conduct may not have withstood scrutiny.

Charge 1(b)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

   *(b) Assisting in the arrangement of **[PRIVATE]** tenancy in Patient A's property.'*

This charge is found proved.

In reaching this decision, the panel took into account the evidence from Ms 1, who stated that Mrs Salem had asked her whether *'it was okay*' for **[PRIVATE]** to move into the flat. The panel concluded that Mrs Salem was 'sounding out' Ms 1 as one of the executors of Patient A's estate at the time. It also had regard to the evidence of Ms 2, who stated that Mrs Salem had sent her a text to confirm that **[PRIVATE]** was going to be moving into the flat on 14-15 September 2019. The text read as follows:

> *'[…] hope to move their bits in over the weekend ready to physically move in early next week all with consent setting up tenancy ASAP see you soon and will keep in touch sue xxx'*

The panel was satisfied that Mrs Salem's actions amounted to assisting in the arrangement of **[PRIVATE]** moving into Patient A's flat.

Although there has been no suggestion that Mrs Salem was responsible for the agreement between **[PRIVATE]** and Patient A, the panel was satisfied that her assistance in its arrangement was inappropriate and outside the scope of a registered nurse's duties. It therefore determined that Mrs Salem acted in breach of professional boundaries.

Charge 1(c)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

    (c) Assisting Patient A in changing her Will.'

This charge is found proved.

In reaching this decision, the panel took into account Mrs Salem's statement in the meeting notes of 2 October 2019 that she rang Patient A's solicitor and arranged a meeting with Patient A for the purposes of amending Patient A's Will. Mrs Salem also stated that she helped Patient A to write down questions and printed them off in advance of this meeting. This was corroborated by Ms 3's witness statement. The panel found Ms 3 to be credible and helpful to the panel. It had no reason to doubt her account of events, which were based on Mrs Salem's own statements made during Rowcroft's internal investigation.

The panel was satisfied that Mrs Salem's actions amounted to assisting Patient A in amending her Will.

The panel was satisfied that Mrs Salem acted outside the scope of a registered nurse's duties. It considered that Mrs Salem's assistance to Patient A in contacting her solicitor to amend her Will had facilitated a situation in which Mrs Salem's family could benefit from the death of Patient A, which amounted to a breach of professional boundaries.

Charge 1(d)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

    (d) Interfering with Patient A's personal friendship with Ms 1.'

This charge is found proved.

In reaching this decision, the panel took into account Ms 1's evidence that the unexplained deterioration in her longstanding relationship with Patient A coincided with Mrs Salem's involvement in Patient A's care. It noted that Ms 1 stated that she had expressed concern to Mrs Salem about Patient A's abrupt shift in demeanour, which she wondered might be due to a potential spread of Patient A's cancer to the brain. Ms 1 stated that she did not expect this information to have been relayed to Patient A. The panel considered this alongside Ms 3's evidence. Ms 3 told the panel that in these circumstances, she would have expected a nurse to speak to the patient about a concern raised by a friend in the presence of the friend, or to at least inform the friend that she was going to share the concern with the patient. The panel concluded that Mrs Salem's actions had the effect of damaging Patient A's friendship with Ms 1.

The panel also took into account Ms 1's evidence that Mrs Salem took over appointment setting on Patient A's behalf from Ms 1, when according to Ms 3, the usual practice would be to keep family and friends involved in practical aspects of patient care for as long as possible. It concluded that Mrs Salem's actions had the effect of isolating Patient A from Ms 1.

The panel had no reason to doubt Ms 1's evidence that before Mrs Salem began caring for Patient A, she and Patient A had enjoyed a longstanding friendship, one in which Ms 1 provided considerable personal support to Patient A and was trusted to the extent that she was made co-executor of Patient A's Will. This was corroborated by Ms 2. The panel noted that Ms 1 stood to gain no financial benefit from Patient A's Will whilst she was co-executor, as the entire estate was to be given to animal charities. The panel concluded that as a whole, Mrs Salem's actions interfered with Patient A's friendship with Ms 1. It was satisfied that this interference represented a breach of professional boundaries.

Charge 1(e)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

    (e) Interfering with Patient A's personal friendship with Ms 2.'

This charge is found proved.

In reaching this decision, the panel took into account Ms 2's evidence that following Patient A's move into Rowcroft, Mrs Salem told Ms 2 that all communication with Patient A was to be through her. Ms 2 further stated that Mrs Salem had given the impression that speaking to Patient A by calling Rowcroft directly was not an option. However, when Ms 2 called Rowcroft on Patient A's birthday, she was put through directly to Patient A. The panel concluded that Mrs Salem deliberately restricted communication between Patient A and Ms 2 in order to establish herself as a gatekeeper in order to increase Patient A's dependency on her, thereby weakening the relationship between Patient A and Ms 2. The panel was satisfied that Mrs Salem's actions amounted to interfering with Patient A's friendship with Ms 2.

The panel had no reason to doubt Ms 2's evidence that before Mrs Salem began caring for Patient A, she and Patient A had enjoyed a longstanding friendship, one in which Ms 2 provided considerable personal support to Patient A and was trusted to the extent that she was made co-executor of Patient A's Will. This was corroborated by Ms 1. As with Ms 1, Ms 2 did not stand to gain from Patient A's Will. The panel concluded that as a whole, Mrs Salem's actions interfered with Patient A's friendship with Ms 2. It was satisfied that this interference represented a breach of professional boundaries.

Charge 1(f)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

(f) Accessing Patient A's property on at least one occasion whilst Patient A was in care.'

This charge is found proved.

In reaching this decision, the panel took into account Mrs Salem's own admission that she went to Patient A's flat with **[PRIVATE]** to locate a sealed envelope after Patient A had moved into Rowcroft. The panel noted that Mrs Salem's presence was corroborated by Ms 1, who encountered Mrs Salem and **[PRIVATE]** arriving as she was leaving the flat herself, although her evidence was that Mrs Salem gave a different reason for her presence. The panel heard no evidence that supported any justification for Mrs Salem to be in Patient A's property that was related to her role as Patient A's nurse.

In its consideration of whether Mrs Salem's actions amounted to a breach of professional boundaries, the panel had regard to the evidence of Ms 3, who stated that it would not be normal practice for a nurse to visit a patient's home once the patient had completely transferred to a hospice setting, and that she would expect a nurse to ask a family member or friend to do this. The panel determined that Mrs Salem's actions were outside the scope of a registered nurse's duties and represented a breach of professional boundaries.

Charge 1(g)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

(g) Assisting Patient A with their pension paperwork on the 25 September 2019.'

This charge is found proved.

In reaching this decision, the panel took into account Patient A's statement in an email to Ms 2, in which she stated that Mrs Salem was going to help her with completing her pension paperwork.

In its consideration of whether Mrs Salem's actions amounted to a breach of professional boundaries, the panel had regard to the evidence of Ms 3, who stated that it would not be normal practice for a nurse to assist a patient with pension paperwork. Ms 3 stated that Rowcroft employed an inpatient unit social worker, who could have arranged for professional pension advice; alternatively, a nurse could suggest that a friend or family member assist the patient. The panel determined that Mrs Salem's actions were outside the scope of a registered nurse's duties and represented a breach of professional boundaries.

Charge 1(h)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

(h) Providing Patient A with your personal email address.'

This charge is found proved.

In reaching this decision, the panel took into account the meeting notes of 2 October 2019, in which Mrs Salem confirmed that she had given Patient A her personal email address after the relationship between Patient A and her friends had broken down. Mrs Salem also confirmed this in a letter to the NMC dated 6 December 2020.

The panel heard from Ms 3 that Patient A's friends would have been able to have 24-hour contact with Rowcroft through the switchboard number and via its official NHS email address. It was satisfied that there were more transparent alternatives for communication between Patient A and her friends than through Mrs Salem's personal email address. The panel concluded that, as with charge 1(e), Mrs Salem sought to

establish herself as a gatekeeper of communication in order to increase Patient A's dependency on her.

The panel heard no evidence that supported any clinical justification for Mrs Salem to provide Patient A with her personal email address. It noted that personal email accounts are insecure and therefore inappropriate for communicating with patients or for discussing their care. The panel further noted that by Mrs Salem's use of a personal email account to communicate with Patient A, Rowcroft would be unable to access any emails in that account which might assist with providing continuity of care to Patient A. The panel therefore determined that Mrs Salem's actions amounted to a breach of professional boundaries.

Charge 1(i)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

    (i) Providing Patient A with your personal mobile telephone number.'

This charge is found NOT proved.

In reaching this decision, the panel took into account both Ms 1 and Ms 2's evidence that Mrs Salem gave them her mobile telephone number. However, the panel heard no evidence that supported Mrs Salem having provided Patient A with her personal mobile telephone number.

Charge 1(j)

'That you, a registered nurse;

1. *Between the 1st April 2019 and the 31st September 2019 breached professional boundaries with Patient A by:*

(j) Fostering and/or failing to prevent a relationship of personal dependence with Patient A.'

This charge is found proved.

In reaching this decision, the panel took into account evidence from multiple sources that indicated Patient A was highly vulnerable. The panel considered Mrs 1's evidence that she cleaned Patient A's flat and arranged appointments on behalf of Patient A; however, this ended shortly after Mrs Salem began caring for Patient A. The panel also took into account Ms 2's evidence that after Patient A moved into Rowcroft, Mrs Salem told her that all communication with Patient A had to go through herself, which was not the case. The panel also considered that Mrs Salem gave Ms 1 and Ms 2 her personal phone number as a means of contact rather than the Rowcroft switchboard number. In all the circumstances, the panel was satisfied that these actions amounted to intentional gatekeeping by Mrs Salem.

The panel also had regard to Mrs Salem's email to Patient A of 16 September 2019, in which Mrs Salem stated *'I know you are cross with [Ms 1] and have every right to be…'*. which had the effect of isolating Patient A from her friend. It noted Ms 2's evidence that Patient A had become *'attached'* to Mrs Salem and that she would look up at Mrs Salem *'very adoringly'*. The panel was satisfied that as a result of Mrs Salem's actions, Patient A was left with no local support other than that which was provided by Mrs Salem and her family, thereby increasing Patient A's dependency on Mrs Salem.

The panel also took into account Ms 3's evidence. Ms 3 stated that she was not aware of Mrs Salem discussing Patient A's case during either group or individual supervision and at weekly multi-disciplinary team meetings, even though Patient A appeared to present significant challenges in care, and supervision was the appropriate place to discuss it and to receive support. The panel concluded that Mrs Salem's actions reduced the opportunity for other professionals to have oversight of the care Mrs Salem was providing. This also had the effect of increasing Patient A's dependency on Mrs Salem.

The panel was satisfied that Mrs Salem was aware that her conduct in this respect was inappropriate. In her letter to the NMC of 6 November 2020, Mrs Salem admitted that *'I understand I became too involved but this was hard not to do when a pt has no one else I was trying to be her advocate but clearly did not get this right…'.* The panel concluded that in all the circumstances, Mrs Salem's actions had the effect of fostering a relationship of personal dependence between her and Patient A.

In its consideration of whether Mrs Salem's actions amounted to a breach of professional boundaries, the panel had regard to Ms 3's evidence. Ms 3 stated that at Mrs Salem's disciplinary hearing, Mrs Salem accepted that as a consequence of her failure to maintain professional boundaries with Patient A by becoming so personally involved in Patient A's care, Patient A was now distressed by her absence. The panel concluded that Mrs Salem's conduct in this respect was inappropriate and amounted to a breach of professional boundaries.

Charge 2)

2. *'Your actions in charge 1(a) to (j) showed a lack of integrity because you were aware that your conduct was breaching professional boundaries.'*

This charge is found proved.

In reaching this decision, the panel had regard to the meaning of 'integrity', as defined by Jackson LJ in *Wingate v SRA; SRA v Mallins* [2018] EWCA Civ 36:

> *'Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty… a professional person is expected to be even more scrupulous that a member of the general public… In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public.'*

The panel assessed Mrs Salem's conduct in relation to charges 1(a) to 1(h) and 1(j) against the ethical standards of the nursing profession as outlined in the The Code:

Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code'). It determined that Mrs Salem failed to adhere to the following specific, relevant standards in her care of Patient A:

*'**8 Work cooperatively***

To achieve this, you must:

[…]

8.2 maintain effective communication with colleagues

[…]

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk'

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

To achieve this, you must:

[…]

16.3 tell someone at the first reasonable opportunity if you experience problems that may prevent you working with the Code or other national standards, taking prompt action to tackle the causes of concern if you can'

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

To achieve this, you must:

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

*'**20 Uphold the reputation of your profession at all times***

To achieve this, you must:

[…]

20.3 be aware at all times 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'

*'**21 Uphold your position as a registered nurse, midwife or nursing associate***

To achieve this, you must:

[…]

21.1 refuse but all of the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

[…]

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care'

The panel was satisfied that the way in which Mrs Salem provided care to Patient A reflected a lack of integrity. It had regard to Ms 3's evidence that at the time, Rowcroft did not provide training in professional boundaries; however, Mrs Salem had received training in safeguarding and Rowcroft's anti-bribery policy. The panel was satisfied that a nurse who had received training would have taken it into account and applied it to her practice, and the contents of the safeguarding training and the anti-bribery policy would have alerted Mrs Salem to potential breaches of professional boundaries regarding her conduct. It also took into account that Mrs Salem had ample opportunities to discuss

Patient A's care at supervision, and Ms 3's evidence that Mrs Salem could have stopped her team leader in the corridor and spoken about it in a more informal setting, and concluded that Mrs Salem did not do so in order to avoid attracting scrutiny of her care of Patient A.

The panel was satisfied that as a nurse with 16 years' experience at the time she was caring for Patient A, Mrs Salem would have been aware of the requirements of the Code and her duty to be bound by them, which included adherence to professional boundaries. It concluded that in all the circumstances, Mrs Salem was aware that she was breaching professional boundaries, and in doing so, displayed a lack of integrity in the way she provided care to Patient A.

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 Salem'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.

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 Salem's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Ms Da Costa invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of the Code in making its decision. Ms Da Costa submitted that charges 1(a) to 1(g) and 1(h) as found proved outline the way in which Mrs Salem breached professional boundaries whilst caring for Patient A. She submitted that this was a clear breach of the Code, in particular the following paragraphs:

> ***'20 Uphold the reputation of your profession at all times***
>
> *To achieve this, you must:*
>
> *20.3 keep to and uphold the standards and values set out in the Code*
>
> *[…]*
>
> *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, midwives and nursing associates to aspire to'*

Ms Da Costa submitted that Patient A was very vulnerable and nearing her final days. Mrs Salem's breaches of the Code in relation to her conduct as outlined in charges 1(a), (b) and (c) assisted **[PRIVATE]** in benefitting from a vulnerable patient.

Ms Da Costa submitted that Mrs Salem's breaches of the Code in relation to her conduct as outlined in charges 1(d) and (e) led to the breakdown of longstanding and close friendships in which Patient A was cared for and supported. As a result of Mrs Salem's interference in these relationships, Patient A and her friends were robbed of the

chance to spend Patient A's final days with her. Ms Da Costa further submitted that this interference assisted Mrs Salem in facilitating arrangements where **[PRIVATE]** benefitted as well as fostering or failing to prevent a relationship of personal dependence.

Ms Da Costa submitted that Mrs Salem's breaches of the Code in relation to her conduct as outlined in charges 1(f), (g) and (h) clearly show a lack of professional boundaries and indicate how she fostered a relationship of personal dependence with Patient A. As the panel has determined, Mrs Salem acted as a 'gatekeeper' for Patient A, which went beyond what was expected of her.

Ms Da Costa submitted that the Code was very clear on ensuring continuity of care for patients, and that other health professionals need to be able to step in and provide care as required. She submitted that as a result of the dependency Mrs Salem was fostering with Patient A, this may not have been possible and would have presented a real risk of harm. Ms Da Costa submitted that this fostering of this dependent relationship would have provided Mrs Salem with the opportunity to exert influence on Patient A whilst she was most vulnerable, a concern shared by Ms 2.

Ms Da Costa submitted that the charges found proved show a lack of integrity as outlined in charge 2, and referred the panel to its previous determination that, through her conduct, Mrs Salem has breached paragraphs 8, 16, 17, 20 and 21 of the Code.

Ms Da Costa reminded the panel that at the time of the incidents, Mrs Salem was a nurse of 16 years' experience. She submitted that Mrs Salem would have been aware of the requirements of the Code and her duty to be bound by them, which includes adhering to professional boundaries. Ms Da Costa submitted that from Mrs Salem's own accounts, the panel could accept she was aware that she was breaching professional boundaries, and in doing so, displayed a lack of integrity.

Submissions on impairment

Ms Da Costa 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 Da Costa submitted that taken together, Mrs Salem's actions cannot be regarded as trivial or minor because **[PRIVATE]** benefitted financially from those actions. If not for Mrs Salem's interventions, **[PRIVATE]** would not have gained paid employment with Patient A or a tenancy at such a reduced rate.

Ms Da Costa submitted that the multiple breaches of the Code amount to misconduct. She submitted that although the misconduct does not relate to Mrs Salem's clinical practice, it involves an unhealthy relationship with Patient A that caused her distress when Mrs Salem was removed from her care. Ms Da Costa submitted that breaching professional boundaries is very serious because there is a reasonable expectation that nurses behave appropriately when caring for patients. Mrs Salem's misconduct fell far below the standards expected of a registered nurse.

Ms Da Costa submitted that the seriousness of this case is not diminished because Mrs Salem did not herself gain financially. Mrs Salem's conduct assisted **[PRIVATE]** in gaining a financial benefit from Patient A, who was very vulnerable. Ms Da Costa submitted that a registered nurse must recognise situations that could result in exploitation of or harm to a patient and take action to prevent it from occurring. Ms Da Costa acknowledged that Mrs Salem stated that she had good intentions, and that the witnesses accepted she may have cared deeply for Patient A. However, Ms Da Costa submitted that this did not justify Mrs Salem overstepping her boundaries; professional boundaries are in place to protect the public.

Ms Da Costa submitted that members of the public place trust in healthcare professionals, and as such, there is a reasonable expectation that nurses act with integrity when caring for patients. In addition, members of the public expect the standards of the profession to be maintained at all times, as otherwise there will be a loss of confidence in the profession and the NMC as regulator. Ms Da Costa drew the

panel's attention to Ms 2's account, submitting that it is clear that her opinion of and faith in nurses has diminished as a result of Mrs Salem's actions.

Ms Da Costa submitted that from her own submissions, Mrs Salem failed to step back from the situation to address or recognise what went wrong, including considering the impact her conduct would have had on Patient A and the reputation of the profession. She submitted that Mrs Salem has not addressed the potential for harm when professional boundaries are breached or sufficiently expressed what she would have done differently in the event she found herself in a similar situation.

Ms Da Costa submitted that Mrs Salem has not provided any evidence of remediation through current practice or through relevant training; in fact, she has stated that she does not wish to return to nursing. Ms Da Costa submitted that the risk of repetition and the risk to patient safety remains; therefore Mrs Salem's fitness to practise is currently impaired on grounds of public protection and otherwise in the public interest.

The panel accepted the advice of the legal assessor. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (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.

The panel was of the view that Mrs Salem's actions did fall significantly short of the standards expected of a registered nurse, and that, as it determined with respect to the facts found proved, Mrs Salem's actions amounted to breaches of the Code, specifically:

> ***'8 Work cooperatively***
>
> *To achieve this, you must:*
>
> *[…]*

8.2 maintain effective communication with colleagues

[…]

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk'

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

To achieve this, you must:

[…]

16.3 tell someone at the first reasonable opportunity if you experience problems that may prevent you working with the Code or other national standards, taking prompt action to tackle the causes of concern if you can'

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

To achieve this, you must:

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

*'**20 Uphold the reputation of your profession at all times***

To achieve this, you must:

[…]

20.3 be aware at all times 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'

'21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this, you must:

[…]

21.1 refuse but all of the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

[…]

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that, taken in the wider context, Mrs Salem's conduct was such a departure from the expected standards of a registered nurse as to constitute misconduct. In reaching this decision, it considered its findings of fact, namely that Mrs Salem, through her actions, deprived a vulnerable patient of valuable, longstanding friendships during the last days of her life. She also inappropriately used her position to facilitate arrangements that financially benefitted **[PRIVATE]** and engaged in 'gatekeeping' behaviour which had the effect of isolating Patient A from other personal and professional support. The panel was of the view that, as a result of Mrs Salem's actions, Patient A had been at risk of harm and the public confidence in the profession has been damaged.

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

Decision and reasons on impairment

The panel next went on to decide if, as a result of the misconduct, Mrs Salem's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the 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 finds that Patient A was put at risk of harm as a result of Mrs Salem's misconduct, which deprived her and her friends of access to the Rowcroft email, which was monitored 24 hours a day, and would have made it difficult for another professional to take over her care if required. It also finds that Mrs Salem's misconduct contributed to Patient A's emotional isolation at the end of her life. The panel concluded that Mrs Salem's misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered that Mrs Salem had shown little insight into her failings. It noted that Mrs Salem appeared to justify her actions by claiming that no one else besides her was available to care for Patient A, when it was her own actions that had contributed to the isolation of longstanding friends who had provided personal support to Patient A until Mrs Salem began caring for her. The panel also noted that other, more transparent, professional support could have been made available to Patient A, but Mrs Salem's actions limited the opportunity for other professionals to be involved in her care.

The panel accepts that Mrs Salem may have had good intentions toward Patient A, but it was not satisfied that she understood that this was not justification for overstepping professional boundaries that are in place to protect patients and maintain trust and confidence in nurses.

The panel further noted that Mrs Salem had not shown any insight into how her failure to adhere to professional boundaries impacted upon Patient A and the reputation of the nursing profession. It was of the view that in this respect, Mrs Salem's statements focused mainly on the impact these proceedings have had on her. Whilst in her written statements Mrs Salem has acknowledged that elements of her conduct were wrong, she has not articulated what she might do differently in the future should a similar situation arise.

The panel noted that in her bundle, Mrs Salem repeatedly suggested that if Patient A had been alive and able to participate in the investigation, she would have corroborated her account of events. However, it concluded that the opinions of a vulnerable patient could not have mitigated the serious breaches of the Code previously identified.

The panel was satisfied that the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Salem has strengthened her practice. The panel was informed that Mrs Salem has not worked as a nurse since she stopped caring for Patient A, and noted from her evidence that she does not wish to return to nursing, but wants to be removed from the register. Therefore, the panel had no evidence before it to suggest that Mrs Salem has strengthened her practice, and accordingly concluded that there is a risk of repetition.

In all the circumstances, the panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

In addition, the panel concluded that public trust and confidence in the profession would be undermined if a finding of impairment were not made in this case. It therefore also finds Mrs Salem's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Salem'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 Salem off the register. The effect of this order is that the NMC register will show that Mrs Salem 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 also had regard to the NMC's published guidance on determining seriousness (Reference FTP-3, last updated 14 April 2021) and serious concerns based on public confidence in professional standards (Reference FTP-3c, last updated 10 January 2020). It noted, in particular:

> *'When assessing whether a concern is serious, we look at what risks are likely to arise if the nurse, midwife or nursing associate doesn't address or put this concern right. This could be risks to patients or service users or, in some cases, to the public's confidence in all nurses, midwives and nursing associates.'*

and:

> *'A need to take action because the public may not feel able to trust nurses, midwives or nursing associates generally is a high threshold. It suggests that members of the public might take risks with their own health and wellbeing by avoiding treatment or care from nurses, midwives or nursing associates.*

We may need to take restrictive regulatory action against nurses, midwives or nursing associates whose conduct has had this kind of impact on the public's trust in their profession, who haven't made any attempt to reflect on it, show insight, and haven't taken any steps to put it right. This may mean they can't stay on the register.'

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Da Costa informed the panel that in the Notice of Hearing, dated 30 September 2021, the NMC had advised Mrs Salem that it would seek the imposition of a striking-off order if her fitness to practise was found to be currently impaired.

Ms Da Costa submitted that taking no action or imposing a caution order would not be adequate or proportionate to deal with the misconduct, public protection concerns or the wider public interest. She further submitted that a conditions of practice order would not deal with the seriousness of the misconduct, given the attitudinal nature of the concerns. A conditions of practice order would fail to protect the public or meet the wider public interest considerations.

Ms Da Costa submitted that whilst Mrs Salem did not herself gain financially from Patient A, she forged a relationship with Patient A that was outside the scope of her duties as a nurse, from which **[PRIVATE]** gained a substantial financial advantage. She submitted that this conduct took place over a significant period of time and resulted not only in **[PRIVATE]** gaining financially, but also in the deterioration of Patient A's relationships with her close friends. Ms Da Costa submitted that the charges found proved were very serious, and that Mrs Salem has shown no insight to demonstrate that her conduct, which could impact upon trust in the profession and in the NMC as regulator, would not be repeated. She submitted that a suspension order would be insufficient to mark the seriousness of the misconduct, protect the public and satisfy the wider public interest.

Ms Da Costa submitted that the only appropriate sanction would be a striking-off order. She submitted that Mrs Salem's misconduct raises fundamental questions about her professionalism, in that breaching professional boundaries is a serious departure from the standards expected of a nurse. Ms Da Costa submitted that Mrs Salem failed to demonstrate integrity, professionalism and trust. Patient A was highly vulnerable, near the end of her life and was therefore prone to influence. She submitted that Mrs Salem should have recognised Patient A's vulnerability and acted professionally by supporting Patient A via appropriate health and social care services. Striking Mrs Salem from the register would protect the public, uphold professional standards and maintain public confidence in the profession.

Decision and reasons on sanction

Having found Mrs Salem'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 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:

- Patient A was highly vulnerable;
- Mrs Salem's misconduct was not an isolated incident and took place over a period of time;
- Although Mrs Salem herself did not benefit from her misconduct, her family member received a benefit;
- Mrs Salem's misconduct put Patient A at risk of harm;
- Mrs Salem has demonstrated little insight or remorse; and
- As she has not worked as a registered nurse since she stopped caring for Patient A, Mrs Salem has not shown any evidence of strengthening her practice.

The panel could not identify any mitigating features in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of its finding of impairment, the seriousness of the case and the public protection issues identified. 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 determined that, for the reasons previously outlined, an order that does not restrict Mrs Salem's 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 Mrs Salem's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Salem's registration would be a sufficient and appropriate response. It noted the following factors from the SG as relevant to its decision:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel was satisfied that the misconduct identified in this case was attitudinal in nature and therefore could not be addressed through retraining. It was also satisfied that there are no practical or workable conditions that could be formulated, given the nature of the misconduct in this case. Furthermore, the panel concluded that the placing

of conditions on Mrs Salem's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It noted the following factors from the SG as relevant to its decision:

> *'This order […] may be appropriate in cases where the misconduct isn't fundamentally incompatible with the nurse […] continuing to be a registered professional […].'*

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and demonstrated an attitudinal problem. Mrs Salem has not shown any insight and therefore there is a risk of her repeating this behaviour. The panel noted that the serious breach of fundamental tenets of the profession evidenced by Mrs Salem's actions is fundamentally incompatible with Mrs Salem's 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 its consideration of a striking-off order, the panel noted the following factors in 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 Salem's actions were significant departures from the standards expected of a registered nurse, had placed a vulnerable patient at risk of harm and are fundamentally incompatible with her remaining on the register. The panel noted that in her evidence, Ms 2 had stated that as a result of Mrs Salem's conduct, she had lost confidence in the disciplinary process for nurses as well as in the nursing profession. The panel was of the view that the findings in this particular case demonstrate that Mrs Salem's misconduct was serious and that to allow her to continue practising would place patients at risk and 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 Mrs Salem's actions in placing a vulnerable patient at risk and 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 this would be sufficient in this case.

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

This will be confirmed to Mrs Salem in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, or until any appeal has concluded, 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 Mrs Salem's own interests until the striking-off sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Da Costa, who submitted that an 18-month interim suspension order was necessary to protect the public and satisfy the public interest during the appeal period.

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

Decision and reasons 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 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 in order to protect the public and satisfy the public interest during the appeal period.

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

That concludes this determination.