Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing

Monday 18 July – Friday 22 July 2022
Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Monday 19 December – Thursday 22 December 2022
Virtual Hearing

Name of registrant:	**Sivagnanam Kiritharan**
NMC PIN:	82E1522E
Part(s) of the register:	RN4, Registered Nurse – Mental Health Nursing Level 2 (January 1985) RN3, Registered Nurse – Mental Health Nursing (November 1992)
Relevant Location:	Medway
Type of case:	Misconduct
Panel members:	David Evans (Chair, Lay member) Jane Jones (Registrant member) Busola Johnson (Lay member)
Legal Assessor:	Monica Daley
Hearings Coordinator:	Jasmin Sandhu
Nursing and Midwifery Council:	Represented by Amy Woolfson, Case Presenter
Mr Kiritharan:	Present and represented by Ayanna Nelson, counsel instructed by Royal College of Nursing (RCN)
Facts proved by admission:	Charges 1, 2a, 4, and 6
Facts proved:	Charges 5 and 7
Facts not proved:	Charges 2b, 2c, 2d, 2e, and 3

Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge (as amended)

That you, a Registered Nurse:

1. On or around 26 Feb 2018 you failed to maintain a professional boundary with Patient A when you gave her your personal phone number. **[PROVED BY ADMISSION]**

2. On 16 March 2018 you failed to maintain a professional boundary with Patient A when you:
    a) Held Patient A's hand; **[PROVED BY ADMISSION]**
    b) Hugged Patient A; **[FOUND NOT PROVED]**
    c) Kissed Patient A; **[FOUND NOT PROVED]**
    d) Offered to take Patient A to dinner; **[FOUND NOT PROVED]**
    e) Asked Patient A to invite you into her house for a cup of tea. **[FOUND NOT PROVED]**

3. Your actions set out in charges 1 and 2 were sexually motivated in that you sought some future sexual relationship. **[FOUND NOT PROVED]**

4. On 16 March 2018 you told Patient A that you would ask permission to give her a lift to her daughter's school. **[PROVED BY ADMISSION]**

5. Your actions set out in charge 4 were dishonest as you did not ask for permission to give her a lift. **[FOUND PROVED]**

6. On 16 July 2018 you told Colleague 1 that you asked for permission from Colleague 2 to give Patient A a lift on 16 March 2018. **[PROVED BY ADMISSION]**

7. Your actions in charge 6 were dishonest as you did not ask permission to give Patient A a lift. **[FOUND PROVED]**

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

Decision and reasons on applications to amend the charges

The panel heard three applications to amend the charges.

Firstly, Ms Nelson, on your behalf, invited the panel to amend the references to 2019 in charges 2, 4, and 6. She submitted that this should be changed to 2018 in order to correctly reflect the time of events.

Original charges:

2. On 16 March 2019 you failed to maintain a professional boundary with Patient A when you:
   …
4. 16 March 2019 you told Patient A that you would ask permission to give her a lift to her daughter's school.
   …
6. On 16 July 2019 you told Colleague 1 that you asked for permission from Colleague 2 to give Patient A a lift on 16 March 2018.

Proposed amendments:

2. On 16 March ~~2019~~ **2018** you failed to maintain a professional boundary with Patient A when you:
   …

4. 16 March ~~2019~~ **2018** you told Patient A that you would ask permission to give her a lift to her daughter's school.
   …

6. On 16 July ~~2019~~ **2018** you told Colleague 1 that you asked for permission from Colleague 2 to give Patient A a lift on 16 March 2018.

Ms Woolfson, on behalf of the Nursing and Midwifery Council (NMC) indicated that she supported this application.

Ms Nelson made a second application to remove charges 6 and 7. Ms Nelson submitted that these charges are duplicitous of charges 4 and 5, and as a result, are '*wholly unnecessary'*. She put forward the argument that charges 6 and 7 are further secondary allegations of dishonesty of the same factual nature of charges 4 and 5 and on this basis, there is no public interest in allowing them to remain. She referred the panel to the cases of *Misra v General Medical Council UKPC 7* [2003] and *Professional Standards Authority v (1) Health and Care Professions Council, (2) Woods* [2019] EWHC 2819 (Admin).

Original charges:

6. On 16 July 2018 you told Colleague 1 that you asked for permission from Colleague 2 to give Patient A a lift on 16 March 2019.

7. Your actions in charge 6 were dishonest as you did not ask permission to give Patient A a lift.

Proposed amendments:

~~6. On 16 July 2018 you told Colleague 1 that you asked for permission from Colleague 2 to give Patient A a lift on 16 March 2019.~~

~~7. Your actions in charge 6 were dishonest as you did not ask permission to give Patient A a lift.~~

Ms Woolfson indicated that she was opposed to this application and invited the panel to allow charges 6 and 7 to remain. She submitted that charges 6 and 7 are not oppressive or duplicitous, but compound charges 4 and 5. Ms Woolfson submitted that charges 4 and 5 relate to causing Patient A to think this was a sanctioned journey when it was not. Charges 6 and 7, on the other hand, relate to the later investigation, a further stage where you were allegedly dishonest. Ms Woolfson submitted that charges 6 and 7 therefore add to the regulatory concerns. She referred the panel to the cases of *Sawati v General Medical Council* [2022] EWHC 283 (Admin) and *Professional Standards Authority v (1) Health and Care Professions Council, (2) Woods.*

A third application to amend the charges was made by Ms Woolfson. Ms Woolfson invited the panel to amend the wording of charge 4, which as it stands, relates to giving Patient A a lift to her home. Ms Woolfson stated that this should be amended to instead refer to giving Patient A a lift to her daughter's school. She submitted that this amendment, as applied for, would better reflect the evidence.

Original charge:

4. 16 March 2019 you told Patient A that you would ask permission to give her a lift home.

Proposed amendment:

4. 16 March 2019 you told Patient A that you would ask permission to give her a lift ~~home~~ **to her daughter's school.**

Ms Nelson indicated that she supported this application.

The panel accepted the advice of the legal assessor who referred it to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules):

‘28. (1) At any stage before making its findings of fact, in accordance with [rule 24(5) or (11)], the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) [or the Fitness to Practise] Committee, may amend-

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based, unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.’

In respect of the first application concerning the incorrect year in charges 2, 4, and 6, the panel was of the view that such amendments, as applied for, was in the interest of fairness and clarity. The panel was satisfied that there would be no prejudice to you and no injustice to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment to better reflect the time of events and evidence. The panel therefore decided to accept the application.

In relation to the second application concerning the removal of charges 6 and 7, the panel was of the view that this amendment was not in the interests of justice. The panel considered that the dishonesty in charges 6 and 7 constitute a compounding of the initial dishonesty in charges 4 and 5 as they relate to the investigation which was a second opportunity for you to tell the truth. On this basis, the panel determined that these charges are not duplicitous of charges 4 and 5, and therefore decided that they should remain. The panel therefore decided to reject the application.

With regard to the third application, concerning the amendment to charge 5, the panel decided that this was in the interests of justice and clarity. The panel bore in mind that this amendment was agreed by both parties and therefore there would be no prejudice caused to either side. As such, the panel determined it was appropriate to allow the amendment,

as applied for, to better reflect the course of events that day (16 March 2018). The panel therefore decided to accept the application.

Admissions to the charges

Ms Nelson informed the panel that you admit to charges 1, 2a, 4, and 6 in full. You dispute all other charges.

The panel therefore finds charges 1, 2a, 4, and 6 proved by way of your own admissions.

Background

The NMC received a referral about your fitness to practise on 15 May 2019 from the Head of Nursing at Kent and Medway NHS and Social Care Partnership Trust (the Trust). At time of the concerns raised, you were working as Community Mental Health Nurse at the Trust.

Patient A was a vulnerable patient referred to Canada House, and you were one of the nurses involved in their care.

You accept that on or around 26 February 2018 you gave Patient A your personal phone number. It is said that you called Patient A on 26 February 2018, 15 March 2018 and 16 March 2018.

You further accept that during March 2018, whilst at Canada House, you held Patient A's hand. However, it is alleged that during this time, you also hugged and kissed Patient A.

Furthermore, on 16 March 2018, you allegedly insisted on giving Patient A a lift in your car to their daughter's school. It is alleged that you acted dishonestly in that you told Patient A that you would ask for permission to give them a lift when you did not. It is further alleged

that at the investigation, you told Colleague 1 that you had asked for permission from Colleague 2 to give Patient A a lift when you did not.

It is also alleged that during this car journey, you suggested Patient A go for dinner with you and that they should invite you in for a cup of tea.

Witness evidence

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

- Patient A: Patient at Canada House (at the time of events)
- Colleague 1: Serious Incident and Complaints Lead at the Trust
- Colleague 2: Community Mental Health Nurse at the Trust

The panel also heard evidence from you under affirmation.

Decision and reasons on application for hearing to be held in private

An application pursuant to Rule 19 of the Rules was made on the basis that during your oral evidence, [PRIVATE] was referred to.

Both Ms Woolfson and Ms Nelson agreed that any reference to [PRIVATE] should be heard in private.

The panel decided to retrospectively mark all previous references to [PRIVATE] as private. It also decided that any future reference to [PRIVATE] will be heard in private in order to maintain your privacy and confidentiality.

Agreed statement of facts

During the course of your oral evidence, an issue with regards to a previous unconnected NMC referral arose. The following statement of facts was agreed by parties:

> *'Allegations were made against the Registrant in 2003 when he was working for Oxleas NHS Trust. A referral was made to the NMC in 2005. The matter did not progress beyond the Investigating Committee.'*

The panel accepted the advice of the legal assessor.

Hearing adjourned on 22 July 2022

Hearing resumed on 19 December 2022

Decision and reasons on facts

In reaching its decisions on the remaining facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by both Ms Woolfson and Ms Nelson. It also 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 then considered each of the disputed charges and made the following findings:

Charge 2b, 2c, 2d and 2e

2. On 16 March 2018 you failed to maintain a professional boundary with Patient A when you:

a) …
b) Hugged Patient A;
c) Kissed Patient A;
d) Offered to take Patient A to dinner;
e) Asked Patient A to invite you into her house for a cup of tea.

These charges are found NOT proved.

In reaching this decision, the panel considered the witness accounts of both you and Patient A. It noted that you accept you held Patient A's hand but have consistently denied that anything else happened. Conversely, Patient A's description of events was that as well as holding their hand, you hugged them, kissed them, offered to take them to dinner, and asked them to invite you in for a cup of tea.

The panel was of the view that neither account of events was fully credible. It considered that there was insufficient evidence to conclude that these events took place due to the gaps in Patient A's recall and the inconsistencies within their account. The panel considered Patient A's oral evidence that their reason for making the timeline when they did was as a result of a '*gut feeling'* that something '*didn't feel right'*. Given the serious and inappropriate nature of the conduct alleged in charges 2b, 2c, 2d, and 2e, the reason given seemed incongruous to the panel. Equally, the panel considered that your account of events was not entirely convincing. However, it could not be satisfied to the required standard that these events occurred.

The panel concluded that, due to the unreliability of the evidence before it, the evidence did not meet the threshold of '*more likely than not'* and therefore could not be found

proved. The panel determined that the NMC had not discharged its burden of proof on these charges.

Charge 3

1. Your actions set out in charges 1 and 2 were sexually motivated in that you sought some future sexual relationship.

This charge is found NOT proved.

The panel decided that your actions in charge 1 were not sexually motivated. In reaching this decision, the panel considered your oral account and explanation of events, which it found to be convincing. It noted that your reasons for giving Patient A your personal phone number were that the hospital mobile phone would show as a withheld number, which discouraged some patients from answering the phone. Furthermore, you often left your work mobile phone in your car, you are not confident using new technology and could not work out how to send text messages from the hospital phone.

The panel also took into account that you gave your personal phone number to several patients as you found it easier to use, not just this patient, and that only two phone calls were made during the course of two months from your personal phone. The panel did not consider that this low volume of calls amounted to grooming and also took account of Patient A's evidence that the contents of those two calls were not inappropriate.

In considering whether your actions in charge 2 were sexually motivated, the panel considered your actions as set out in charge 2a alone given its earlier findings that 2b, 2c, 2d, and 2e were not proved.

The panel concluded that your actions in charge 2a were not sexually motivated. In reaching this decision, the panel took account of your oral evidence and the evidence from Patient A which it considered was not entirely credible. The description of the interview made it clear to the panel that Patient A was in a distressed state, and it took the view that

on the balance of probabilities, the act of holding Patient A's hand was insufficient to conclude that your actions were sexually motivated. The panel noted that there were inconsistencies within Patient A's account. The panel took into account its previous findings that there was insufficient evidence to prove that you hugged Patient A, you kissed Patient A, you invited them to dinner, and asked them to invite you in for a cup of tea and therefore those charges were not found proved. On this basis and taking into account the inconsistencies within Patient A's account, the panel was of the view that there was insufficient evidence to find that your actions, in holding Patient A's hand, was sexually motivated.

Charge 5

5. Your actions set out in charge 4 were dishonest as you did not ask for permission to give her a lift.

This charge is found proved.

In considering the dishonesty charges before it (charges 5 and 7), the panel had regard to the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67 which sets out a two-stage test of dishonesty:
'(i) What was the defendant's actual state of knowledge or belief as to the facts; and
(ii) Was his conduct dishonest by the standards of ordinary decent people?'

In reaching its decision on this charge, the panel took into account the evidence from Colleague 2 and Patient A.

In an email dated 14 June 2018 to Colleague 2, Colleague 1 asked:

> *'You were on duty 16th March – did Kiri speak to you about giving the client a lift home, to [sic] that she would be able to collect her daughter from school?'*

In response, Colleague 2 wrote in an email dated 15 June 2018:

'… *No, and if he had I certainly wouldn't have agreed for that…*'

The panel also had regard to Colleague 2's witness statement, in which it is stated:

> *'I can't remember if Kiri asked me if it was ok to give a client a lift in his car, however if Kiri had asked me I would have said no, because he needed to be in the office in case something urgent came through. I would have suggested Kiri book the client a taxi instead... However it is not advisable to give a client a lift on Duty day, because when working on Duty you are dealing with emergencies an walk in clients, and you need to be available.'*

Whilst in the earlier email Colleague 2 was categorical that you had not sought permission to provide a lift to Patient A, Colleague 2, in their later witness statement for the NMC, said that they could not remember whether or not you had sought this permission. The panel explored this with Colleague 2 in her live evidence, and she stated that her memory in the email written three months after the incident would have been more accurate than the contents of their NMC witness statement made two years after the event. In their oral evidence, Colleague 2 informed the panel that when they wrote their NMC witness statement, they did not have the email from June 2018 to hand.

Further, the panel noted that whilst giving a patient a lift home was not *'unusual'* where the nurse and patient had known each other for a while, you only had limited interactions with Patient A over the previous two months and were not their care coordinator. You were also on Duty at the time and needed to be available in the building at all times to deal with emergencies and walk-in clients.

The panel also had regard to the evidence from Patient A, who, in their witness statement, detailed:

'… he said "no, no I'll ask permission". Kiri didn't say who he asked, he came back 5-10 minutes later and said "I'll give you a lift', and we left in his car.'

This was also confirmed during Patient A's oral evidence, during which it was confirmed that you told them you had obtained permission to give them a lift.

In considering whether your conduct would be regarded as dishonest by the standards of '*ordinary decent people'*, the panel considered your state of mind at the time of events. It had regard to Patient A's Rio notes for 16 March 2018 and noted that you made a very detailed entry on this date but did not record that you had asked for permission to give Patient A a lift home and that you left to give them a lift home. This was in contrast to an earlier entry you made on 2 January 2018 when you noted you had discussed a matter with a senior colleague. The panel considered that if you genuinely believed that Patient A was a suicide risk and that this was the reason for giving them a lift, you would have recorded this in their patient records.

On the basis of all of the above, the panel determined that you did act dishonestly in that you told Patient A that you had obtained permission to give them a lift, when you in fact had not done so. The panel concluded that there was sufficient evidence to find this charge proved.

Charge 7

7. Your actions in charge 6 were dishonest as you did not ask permission to give Patient A a lift.

This charge is found proved.

The panel had regard to your disciplinary investigation interview which took place on 16 July 2018. It noted that during this interview, you told Colleague 1 that you had got permission to give Patient A a lift:

‘Kiri said he said to Patient A time is limited and that he asked ([Colleague 2] - Operational Team Leader) she was duty senior that day…’

The panel had regard to its previous finding that you did not seek permission from Colleague 2 to give Patient A a lift.

Considering the dishonesty test set out in the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] (detailed above), the panel determined that your actions would be regarded as dishonest by the standards of ordinary decent people. It considered your state of mind at the time of events and was of the view that you tried to give the impression that you had asked for permission in order to protect yourself from disciplinary action. For these reasons, the panel concluded that you did act dishonestly and therefore this charge is found 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 your fitness to practise is currently impaired. The panel was aware that whilst there is no statutory definition of fitness to practise, 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.

Submissions on misconduct

Ms Woolfson submitted that not all professional shortfalls amount to misconduct, and it is a matter for the panel to consider whether your actions in breaching professional boundaries with Patient A amount to misconduct. Ms Woolfson invited the panel to take into account Colleague 1's witness statement in which they stated that it is not appropriate to give a personal phone number to patients. She also invited the panel to consider the circumstances and history of Patient A. Ms Woolfson referred the panel to 'The NMC code of professional conduct: standards for conduct, performance and ethics (2004)' (the Code) and highlighted the provisions of the Code which the NMC submit have been breached in this case.

In relation to the dishonesty allegations which have been found proved, Ms Woolfson submitted that your conduct fell far below the standards expected of a registered nurse. She stated that you had two opportunities to tell the truth; once at the disciplinary investigation interview on 16 July 2018, and again when you made annotations to the interview notes. Ms Woolfson submitted that this demonstrates persistent dishonesty which would be regarded as serious professional misconduct.

Ms Nelson submitted that there are two types of conduct which can be distinguished in this case. The first is in relation to the breach of professional boundaries with Patient A, and the second being the dishonesty.

Ms Nelson referred the panel to the cases of *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin) and submitted that the first type of concerns relating to personal boundaries do not amount to misconduct. She stated that you accept that your actions were wrong and that if faced with a similar situation in the future, that you would act differently. Ms Nelson submitted that

whilst there was a professional failing on your part, which you accept, this does not come into the realm of '*deplorable*'. She submitted that had you not resigned from the Trust, you would have been issued with a first written warning. Ms Nelson submitted that in this regard, your conduct in relation to Patient A does not amount to serious professional misconduct.

Ms Nelson accepted that the dishonesty would give rise to a finding of serious professional misconduct.

Submissions on impairment

Ms Woolfson 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 Woolfson referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and submitted that all four limbs of Dame Janet Smith's *'test'* were engaged in this case.

Ms Woolfson also referred the panel to the case of *Clarke v General Optical Council* [2018] EWCA Civ 1463 and submitted that being out of practice or an intent to retire does not point away from impairment. She submitted that aside from your reflective piece, there has been no evidence of insight or remediation, and as such, the concerns in your practice are ongoing. Ms Woolfson submitted that a finding of current impairment was required on public protection and public interest grounds.

Ms Nelson submitted that there is no evidence to suggest that a finding of current impairment is required on public protection grounds. She submitted that this conduct was not what was expected of you however, the public would not be put at risk should you practise without restriction. Ms Nelson submitted that Colleague 1 provided evidence that you did not receive the adequate training and supervision which gave rise to these

professional boundary charges. Ms Nelson further stated that the Trust has accepted that this lack of supervision and support was the reason for which your conduct fell short of the standards expected.

Ms Nelson submitted that you have demonstrated sufficient reflection. She referred the panel to your reflective piece and informed it that this was written before the first sitting of this hearing in July 2022. Ms Nelson stated that you acknowledge the impact of your actions on Patient A, your colleagues, and the reputation of the profession.

Ms Nelson informed the panel that you have not practised since leaving the Trust and do not intend to practise in the future. She submitted that repetition of the same conduct in the future is not likely.

It was submitted by Ms Nelson that these dishonesty findings are of a low level of dishonesty as you did not intend to benefit in any significant way. Ms Nelson submitted that as such, a finding of current impairment on public protection grounds is not necessary.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000], *Nandi v General Medical Council* [2004], *Cohen v General Medical Council* [2008] EWHC 581 (Admin), and *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* [2011].

Decision and reasons on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 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 panel also noted the case of *Nandi v GMC* [2004] which defines serious professional misconduct as '*conduct which would be regarded as deplorable by fellow practitioners*'.

In relation to the allegation relating to giving your personal phone number to Patient A (charge 1), the panel took into account Colleague 1's evidence who, in their witness statement and oral evidence, has said that it is not appropriate to give a service user a personal phone number and that this is a '*boundary issue'*. Further, the panel had regard to the Trust's Professional Boundaries Policy at the time and found that your actions amounted to a breach of the following paragraphs:

> *'1.2 Whilst it is recognised that staff must establish a rapport with service users and provide friendly and accessible services, they are responsible for establishing and maintaining appropriate boundaries between themselves and service users.*
> *…*
> *1.5 Staff must ensure that working relationships are not misread or confused with friendship or other personal relationships. This is essential in order to protect service users at a time when they may be vulnerable. It is also to protect staff from any risk of potential false allegations.'*

Further, the panel had regard to the terms of the Code and determined that the following section had been breached:

> ***'20 Uphold the reputation of your profession at all times***
> *To achieve this, you must, as appropriate:*
>
> *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 was aware that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that, taking into account Patient A's history and that they were vulnerable at the time, which you were well aware of, your breach of

professional boundaries in this regard was a serious shortfall of the conduct and standards expected of a registered nurse. Your conduct caused Patient A concern and distress and led to a lack of trust in you and amounted to serious professional misconduct.

In considering whether your actions as set out in charge 2a amount to misconduct, the panel had regard to the evidence from Colleague 1. In their witness statement and oral evidence Colleague 1 stated that, due to Patient A's history of sexual abuse, it would be *'inappropriate'* to touch them or even to hold their hand. Colleague 1 further details that nurses '*should be mindful of personal boundaries and touch, especially if someone has been abused'*.

The panel also noted that you had been aware of Patient A coming in for an afternoon appointment and the nature of the visit. They described to you their history of sexual abuse by men in their family and you should have been alert to the safeguarding risks of touching or holding their hand whilst alone with them during that appointment.
The panel also had regard to the Trust's Professional Boundaries Policy at the time and considered that paragraphs 1.2 and 1.5 (as above) had been breached.

In addition, the panel considered the following provision of the Code to be engaged in this case:

> *'**20 Uphold the reputation of your profession at all times***
> *To achieve this, you must, as appropriate:*
> *…*
> *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'*

Whilst the panel appreciated that a breach of the Code does not automatically warrant a finding of misconduct, it determined that due to Patient A's history and circumstances, your breach of professional boundaries in holding their hand was serious and did amount to misconduct.

With regards to charge 4, which was admitted by you, the panel did not find that your actions amounted to serious misconduct. It considered that this allegation was one of fact and did not involve any allegation of a breach of any duty or standard expected of you.

In respect of charge 5, the panel was of the view that your actions fell significantly short of the conduct and standards expected of a registered nurse and did amount to serious professional misconduct. It considered that dishonesty is very serious and would be viewed as '*deplorable*' by a fellow practitioner.

For the same reasons as outlined in charge 4, the panel determined that your actions as set out in charge 6 did not amount to serious misconduct. Your conduct in respect of this allegation was one of fact and did not involve any allegation of a breach of any duty or standard expected of you.

The panel determined that your actions as set out in charge 7 did amount to serious professional misconduct. It considered that this was a second opportunity for you to tell the truth, which you failed to do. You were aware that the meeting would be formal as it was a disciplinary investigation meeting and therefore may have serious implications for you. The panel bore in mind its previous finding that your actions were to avoid any disciplinary action. As such, the panel was of the view that this was a continuation of the initial dishonesty in charge 5 which would be considered a serious shortfall of the standards expected of you. The panel concluded that your actions would be considered as '*deplorable*' by a fellow practitioner.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the misconduct, your fitness to practise is currently impaired. The panel was provided with the NMC's impairment bundle which consisted of:

- Outcome letter (informing you of your caution order following the NMC Conduct and Competence Hearing) from case ref 036569/12 dated 17 September 2013
- Dismissal details from Oxleas NHS Trust dated 14 July 2005
- Disciplinary outcome letter dated 15 November 2018
- Root Cause Analysis dated 31 January 2019

With regard to the conclusions of the Root Cause Analysis dated 31 January 2019 and the Disciplinary outcome letter dated 15 November 2018, the panel disregarded these and made its decision based on its own analysis of the facts found proved in this case.

The panel was aware that 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, it was stated:

> *'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) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that all four limbs were engaged in this case. It determined that by breaching professional boundaries with a vulnerable patient with such a history, your misconduct did cause emotional harm. With regard to the liability for future harm, the panel found that you demonstrated some insight into the harm caused, however your insight was limited and accordingly the panel found that there is a risk of repetition. Further, the panel was of the view that by causing harm to a patient and by acting dishonestly, your misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Given your admission of dishonesty which gave rise to your conviction for doing an act tending to pervert the course of justice, and the fact that, at the time of these matters, you

were still subject to a five-year caution order imposed by the NMC in respect of the conviction, the panel was sceptical about your ability to refrain from such conduct in the future and thus concluded that you have the potential to breach one of the fundamental tenets of the nursing profession, namely the duty to be honest. In addition, the panel was satisfied that confidence in the nursing profession and its regulator would be undermined if the panel did not find charges relating to dishonesty to be extremely serious.

The panel considered the case of *Cohen v General Medical Council [2008],* in which the court set out three factors which it described as being '*highly relevant'* to the determination of current impairment:

> *'(a) Whether the conduct that led to the charge(s) is easily remediable?*
> *(b) Whether it has been remedied?*
> *(c) Whether it is highly unlikely to be repeated?'*

The panel had regard to your reflective piece and noted that you accept the wrongfulness of some of your actions. It also bore in mind that you have engaged throughout these proceedings. However, the panel concluded that whilst you have demonstrated some insight, this remains developing and is incomplete. The panel also determined that deficiencies in your practice remain, some of which are not capable of remediation. The breaching of professional boundaries may be remediable in some cases. However, the panel noted that you had told it that you had seven years' experience and training as a Trust safeguarding lead and yet, you had not applied this as your conduct still fell short. The panel therefore questioned whether further training or remediation would be effective in your case. The panel noted that this case concerns dishonesty which can be indicative of a deep-seated attitudinal issue. Further, it took into account that you were also subject to an existing NMC caution order at the time of these incidents.

As such, whilst the panel had been informed by Ms Nelson that you do not intend to practise in the future, there is a risk of repetition should this position change and therefore a finding of current 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 profession and upholding the proper professional standards. In this regard, 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 your fitness to practise impaired on the grounds of public interest as well as public protection.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. The effect of this order is that the NMC register will show that 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 and had careful regard to the Sanctions Guidance (SG) published by the NMC.

Submissions on sanction

Ms Woolfson referred the panel to the SG and invited it to consider a striking-off order. She outlined the aggravating factors which the NMC submit are relevant in this case.

Ms Woolfson submitted that taking no action would not be appropriate given the panel's findings of misconduct and current impairment. She submitted that a caution order would also not be appropriate given that you were subject to an existing NMC caution order at

the time of these events, yet this conduct still took place. Ms Woolfson submitted that, as the concerns in this case cannot be addressed or measured by the formulation of conditions, a conditions of practice order was not appropriate.

Ms Woolfson referred the panel to the SG which outlines the factors present where a suspension order would be appropriate. She submitted that these factors were not relevant in this case and that a suspension order would not be appropriate or proportionate. Ms Woolfson accepted that this case of dishonesty is unlikely to be at the higher end of the spectrum in terms of seriousness. However, she submitted that your dishonesty relates to a persisted dishonesty during an investigation as well as dishonesty towards a patient and therefore is still serious. Ms Woolfson submitted that a striking-off order would be the only sanction which would both protect the public and uphold the public interest given the seriousness of this case.

Ms Nelson submitted that the panel's findings are not incompatible with you remaining on the NMC register. She stated that it is accepted that your conduct fell far short of what was expected of you and that you have reflected on this. Ms Nelson submitted that not all cases of dishonesty are equally serious and that this case does not fall at the higher end of seriousness. She further submitted that whilst you have a previous criminal conviction in connection with dishonesty, these are regulatory proceedings outside of the criminal jurisdiction.

Ms Nelson submitted that you have a long-standing nursing career of over 37 years and have dedicated the majority of your working life to nursing. She submitted that whilst you have been out of practice since these events occurred and that you have no intention to return to nursing, a suspension order should be considered as it would allow you to develop your insight further. Ms Nelson submitted that a suspension order would be appropriate to protect the public and uphold the public interest.

The panel accepted the advice of the legal assessor.

Decision and reasons 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. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- You were subject to a five-year NMC caution order at the time these allegations arose
- You have a previous conviction for perverting the course of justice which arose out of dishonesty
- Your dishonesty was sustained during a disciplinary investigation
- Patient A was a vulnerable patient with a history of sexual abuse, of which you were aware

The panel also took into account the following mitigating features:

- You admitted the charges 1, 2a, 4, and 6 at the outset of this hearing
- You have fully engaged with the NMC throughout these proceedings
- You had recently suffered a family bereavement at the time of these incidents
- You had written a reflective piece before the start of this hearing in July 2022 which demonstrates remorse
- You have provided some evidence of developing insight

The panel had regard to the NMC guidance on '*Considering sanctions for serious cases'* (SAN-2) and considered that the following were relevant in this case:

‘In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *…*
- *vulnerable victims*
- *…*
- *…*
- *…*

Dishonest conduct will generally be less serious in cases of:

- *…*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *no risk to patients*
- *…’*

The panel had regard to the bullet points set out in the above SG and determined that the dishonesty in this case was at the lower end of the spectrum of seriousness.
However, the panel considered your dishonesty was serious as it related to dishonesty towards the patient, as well as a persistent dishonesty during the disciplinary investigation. In addition, your previous conviction for a serious offence arising out of dishonesty and your having been subject to an NMC caution order at the time of these matters increases their seriousness.

The panel went on to consider the available sanctions before it.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the ongoing public protection issues identified.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the concerns and the ongoing public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. It also bore in mind that you were subject to an existing NMC caution order at the time of these events, yet these concerns still arose.

The panel next considered whether placing a conditions of practice order on your registration would be a sufficient and appropriate response. However, it determined that there were no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel considered that the dishonesty concerns identified in this case were not something that could be addressed through retraining or supervision. Further, whilst professional boundary concerns may ordinarily be compatible with a conditions of practice order, the panel was of the view that due to the circumstances of this case, this was not appropriate. The panel bore in mind that you had significant knowledge and training which you obtained during your role as a safeguarding lead. In addition, you had knowledge that on the relevant day, Patient A was particularly distressed and therefore vulnerable. As such, the panel determined that this case was very serious and that a conditions of practice order would not adequately address this seriousness, nor would it protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. It had regard to the SG which states that suspension order may be appropriate and found the following were relevant:

- *'A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour*
- *…'*

As the panel found that the dishonesty in this case was not at the higher end of seriousness, it gave a suspension order serious consideration. However, the panel determined that this was not a single instance of misconduct as these matters spanned interactions with Patient A and later the investigation stage. It considered that there was evidence of deep-seated attitudinal problems, ie. a tendency to be dishonest when faced with difficult situations, which had not been addressed in the nine years since the 2013 conviction and during which the NMC caution order was in place. Further, the panel was of the view that your insight remains limited. The panel was also mindful that whilst there had been no repetition of this behaviour since the incident, you have not worked as a nurse in that time. As a result of these factors, the panel considered that there remains a significant risk of repetition.

In these circumstances, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

In considering 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 the view that your misconduct constituted a significant departure from the standards expected of a registered nurse and do raise fundamental questions about your professionalism, particularly your honesty, integrity and trustworthiness which 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.

This will be confirmed to you in writing.

Interim order

As the striking-off order cannot take 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. The panel was aware that 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 interests until the striking-off sanction takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Woolfson, who submitted that an interim order is necessary to protect the public and is otherwise in the public interest. Ms Woolfson submitted that an interim suspension order for a period of 18 months is necessary to cover any possible appeal period. She submitted that an interim suspension order would be appropriate as it would be consistent with the panel's decision to impose the substantive striking-off order.

Ms Nelson stated that in the past four years, you have not been working as a nurse and that you do not intend to return to nursing in the future. She submitted that an interim order is not necessary to protect the public or to otherwise uphold the public interest.

The panel heard and accepted the advice of the legal assessor who referred it to Article 31 of the 'Nursing and Midwifery Order 2001' (the Order).

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and that it 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, due to the reasons already identified in its decision for imposing the substantive striking-off order. The panel therefore imposed an interim suspension order for a period of 18 months to allow sufficient time for you to make an appeal, should you wish to do so.

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.