Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Tuesday 14 June 2022 – Friday 17 June 2022

Nursing and Midwifery Council
Virtual Hearing

Name of registrant:	**Kirsty Michelle Pitman**
NMC PIN:	13E2331E
Part(s) of the register:	Registered Nurse RNA: Adult Nursing (Level 1) - September 2013
Relevant location:	Dorset
Type of case:	Misconduct
Panel members:	Suzy Ashworth (Chair, Lay member) John McGrath (Registrant member) Jan Bilton (Lay member)
Legal Assessor:	Oliver Wise
Hearings Coordinator:	Elena Nicolaou
Nursing and Midwifery Council:	Represented by Claire Stevenson, Case Presenter
Miss Pitman:	Present and represented by Priya Malhotra instructed by the Royal College of Nursing (RCN)
Facts proved by admission:	Charges 1, 2, 3, 4, 5, 6a, 6b, 8a and 8b
Facts not proved:	Charge 7a and 7b
Fitness to practise:	Impaired
Sanction:	**Suspension order (2 months) (Without review)**

Interim order: **Not imposed**

Details of charge

That you, a registered nurse;

1) Between 16 July 2018 and 31 August 2018, on one or more occasions, accessed Patient A's patient records without clinical justification; **[Proved by admission]**

2) On 13 August 2018, on one or more occasions that day, accessed Patient C's patient records without clinical justification; **[Proved by admission]**

3) On 21 September 2018, on one or more occasions that day, accessed Patient B's patient records without clinical justification; **[Proved by admission]**

4) On or around 18 August 2018 and/or 20 September 2018, posted one or more comments on a social networking/multimedia messaging application in respect of Patient A and/or Patient B; **[Proved by admission]**

5) Your comment[s] at charge 4 made reference to Patient A and/or Patient B's mental health, as set out in Schedule A; **[Proved by admission]**

6) On or around 11 October 2018, said to Colleagues A and B:
   a) That you had accessed Patient A's records "only once or twice? That's it really from memory", or words to that effect, when you had accessed Patient A's records on one or more occasions as set out in Schedule B; **[Proved by admission]**
   b) You had not accessed any other patient records except for Patient C, or words to that effect, when you had accessed Patient B's records; **[Proved by admission]**

7) Your conduct at charge 6a above was dishonest in that you:

a) Knew you had accessed Patient A’s records on more than two occasions; **[NOT proved]**
b) Intended to conceal your actions; **[NOT proved]**

8) Your conduct at charge 6b above was dishonest in that you:
a) Knew you had accessed Patient B’s records; **[Proved by admission]**
b) Intended to conceal your actions; **[Proved by admission]**

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

Schedule A

[PRIVATE]

Schedule B

Date	**Time**
16 July 2018	13:53 – 13.55 15.53 – 15.57 16.09 – 16.10
20 July 2018	10.46 – 10.46
26 July 2018	13.22 – 13.23
13 August 2018	17.55 – 17.56
31 August 2018	10.41 – 10.42

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Malhotra on your behalf, who informed the panel that you made admissions to charges 1, 2, 3, 4, 5, 6a, 6b, 8a and 8b.

The panel therefore finds charges 1, 2, 3, 4, 5, 6a, 6b, 8a and 8b proved in their entirety, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Stevenson on behalf of the Nursing and Midwifery Council (NMC) and by Ms Malhotra.

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 had documentary evidence before it from the following witnesses, on behalf of the NMC:

- Witness 1: Patient A
- Witness 2: Patient B
- Witness 3: Partner and Practice Manager; The Blackmore Vale Partnership (the Practice)
- Witness 4: Clinical Services Manager; the Practice

The panel heard a recording from the disciplinary meeting in which you read a prepared statement.

The panel heard evidence from you under affirmation.

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

- Witness 5: Managing Partner; the Practice

- Witness 6: Staff Nurse; Salisbury Hospital

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

During the course of the facts stage, Ms Malhotra on your behalf made an application that this case should be held partly in private on the basis that proper exploration of your case involves reference to your health and personal matters. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Stevenson indicated that she did not oppose the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to your health and personal matters, the panel determined to hold such parts of the hearing in private in order to protect your right to privacy and confidentiality.

Prior to Witness 5 and Witness 6's live evidence, Ms Malhotra raised an issue in relation to Patient A's expressed desire to observe the hearing. She informed the panel that, as a courtesy to both witnesses, she had informed them that there may be some observers

present during the hearing. She told the panel that Witness 5 had some concerns about Patient A being present as an observer.

Ms Malhotra informed the panel that Witness 5 wished to raise observations about your working within the Practice when an issue had arisen which could have challenged your integrity and how you acted. She said that Witness 5 had expressed a concern that the potential observer was a patient at the Practice. Ms Malhotra invited the panel to consider whether it would be appropriate for parts of Witness 5's evidence to be heard in private. Ms Malhotra reminded the panel that it was able to hear parts of evidence in private by virtue of Rule 19 (3), and it could determine whether it was appropriate to do so.

Ms Stevenson made no observations in relation to this matter.

The panel accepted the advice of the legal assessor. He advised the panel that it had the discretion to hear representations from third parties, and it would be fair to hear representations from observers if it was proposed that they should be excluded.

The panel observed that, at the moment in time when the issue was raised, there were no observers present in the hearing. It noted the issue raised and informed Ms Malhotra that it would consider the matter as and when it arose during the witness evidence if necessary. In the event, no observer attended whilst Witness 5 and Witness 6 gave evidence.

Background

The charges arose whilst you were employed as a registered nurse by Blackmore Vale Partnership (the Practice). At the time of the concerns, you were working as a Practice Nurse. This referral was made by Patient A in February 2019. A further referral was received from Patient B in May 2019.

The concerns relate to you inappropriately and unlawfully accessing Patient A's, Patient B's and Patient C's medical records in your capacity as a registered nurse at the Practice. It is alleged that you posted comments on a social media/multimedia messaging application in respect of Patient A and/or Patient B.

You were suspended between 10 October and 2 November 2018 pending a local investigation by the Practice. As a result of the subsequent disciplinary process, you were given a first and final written warning, to remain on file for 24 months.

It was then brought to Patient B's attention in May 2019 by Patient A that their medical records may have been accessed by you some eight months previously in September 2018. Patient B contacted the Practice on 24 May 2019 to enquire as to whether you had also accessed their records.

The Practice responded to Patient B to advise that they were already aware that Patient B's records had been accessed in September 2018 and this had come to light during the investigation into the complaint raised by Patient A. Patient B was advised no further action would take place, as this matter had been dealt with appropriately.

You remain employed and supported by the Practice and have attended training provided by your employer.

Before making any findings on the facts, the panel accepted the advice of the legal assessor. He referred the panel to the test for dishonesty in *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*. He advised that as dishonesty was a serious matter, compelling evidence was required to satisfy the panel on the balance of probabilities, as held in *Lawrance v GMC [2015] EWHC 586 (Admin).*

The panel considered the witness and documentary evidence provided by both the NMC and Ms Malhotra.

The panel then considered the disputed charge and made the following findings.

Charge 7

7) Your conduct at charge 6a above was dishonest in that you:
   a) Knew you had accessed Patient A's records on more than two occasions;
   b) Intended to conceal your actions;

This charge is found NOT proved in its entirety.

In reaching this decision, the panel took into account all of the evidence before it.

The panel considered the NMC's Guidance on *'Making decisions on dishonesty charges'*. It considered each of the questions in turn when considering charge 7 in its entirety.

In relation to the first question in the NMC's guidance, *'What were the background facts or circumstances and what did the nurse, midwife or nursing associate know or believe at the time?'* the panel took into account that you had already admitted the factual basis of the charges, and it is accepted that there is a background of social media communications and that Patient A contacted the Practice, which led to a complaint investigation.

The panel took account of the written summary of the conversation between you and Witness 3 when she told you that you had been suspended, and that this referred to potential inappropriate access to medical records. The panel also noted the transcript of the investigatory meeting on 11 October 2018 which commenced with a summary of the complaint including that you had accessed clinical records inappropriately. Within these notes, Witness 3 stated:

> *'I think I said to you yesterday that we have had a complaint from [Patient A] and her concern is that you have accessed information in her clinical records and used that in communication with other people.'*

[PRIVATE]. It was clear to the panel from your prepared statement for that meeting, and from your oral evidence, that although you may have been informed the previous day that there were concerns about "a potential breach of confidentiality", you had focused solely on the inappropriate social media post that you had made and thought that this was the focus of the complaint. The panel therefore considered it likely that the questions about patient records came as a shock to you: it appeared from the transcript, and from your statement, that you were unprepared for them.

The panel accepted the evidence of Witness 5 and Witness 6, who had both said that you were fundamentally an honest person and that your behaviour which led to these charges had been very out of character.

In relation to the second question in the NMC's guidance, *'Were the nurse, midwife or nursing associate's actions dishonest?',* the panel noted that you had stated, in response to the question put to you about how many times you had accessed Patient A's records:

> *'I'm not sure, only once or twice? That's it really from my memory'.*

The panel considered this statement to be vague and uncertain. It noted that the charge had not included the beginning of your response in which you stated, *'I'm not sure'.* When putting the phrase in the charge into context, the panel considered that this statement indicated that you were uncertain. Although the statement, 'once or twice' was inaccurate, it would be going too far to say that it was dishonest in its true context. The panel concluded that there is insufficient evidence before it to prove that your actions were dishonest.

In answer to the third question in the NMC's guidance, *'Is there evidence of an alternative explanation? Is the alternative more likely?',* the panel considered that [PRIVATE] and you were shocked by the complaint that had been raised against you. It is clear that you had not made the connection with the accessing of patient records in your prepared statement.

The panel considered that it was unlikely that you would have known the exact number of times that you had accessed Patient A's notes some months before. Therefore, the panel decided that the alternative explanation is more likely, that you were unable to give a precise number at the time the question was put to you. You stated you were unsure, and the statement '*only once or twice?'* is followed by a question mark. This made it explicit that you were uncertain and that the details in your answer should not be regarded as definitive. You were indicating your obvious uncertainty to those preparing the transcript.

The panel determined that it was more likely than not that you did not have any dishonest intentions in respect of this answer to the question put to you, and that your answer represented an inability to recollect accurately at that precise moment in time. The panel noted the guidance which asks *'…could they simply have made an innocent or careless mistake?'.* The panel concluded that this was more likely than not a careless mistake in which you could not give a clear answer [PRIVATE].

The panel considered *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67* and concluded that it was not satisfied that you were dishonest. The panel was not persuaded that you intended to mislead or to conceal your actions.

The panel therefore finds charge 7 not proved in its entirety.

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. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Stevenson 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: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Ms Stevenson provided written submissions which are as follows:

'*Misconduct*

1. *Misconduct is a matter for the panel's professional judgment. The leading case is Roylance v GMC [2000] 1 AC 311 which says:*
   "misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."

2. *In Calhaem v GMC [2007] EWHC 2006 (Admin) Mr Justice Jackson commented on the definition of misconduct and he stated:*

'it connotes a serious breach which indicates that the doctor's fitness to practise is impaired.'

3. *Mr Justice Collins in Nandi v GMC [2004] EWHC 2317 (Admin) stated that: "the adjective 'serious' must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners."*

4. *The NMC submit that the following facts found proven amount to misconduct:*

   a. *Accessing patient records without clinical justification – the NMC submits this is a serious breach for the following reasons:*
      i. *Firstly, the Registrant repeated her conduct by accessing three different patient records, on 9 occasions over a period of approximately 2.5 months, demonstrating a pattern of conduct.*
      ii. *Secondly, the conduct arose from a non-work-related dispute.*
      iii. *Thirdly, the Registrant had accessed Patient A's records before posting a reference to [PRIVATE] on social media/multi-media messaging posts. It is possible, as was put to the Registrant in cross examination that the content on the record was that referenced in the social media/multi-media messaging posts. However, the Registrant admitted to attempting to locate sensitive medical information about Patient C. The Registrant also states that she accessed patient records to understand why the patients were acting in a certain way and to see if there was any indication in their medical history to support that.*
      iv. *Fourthly, whether or not the information written is true and derives from the Patients' records, it is capable of being perceived as such especially given the Registrant's position as a nurse at the local medical practice. It would be highly likely that anyone reading these comments would consider that the Registrant had*

knowledge of the patients' health conditions and that this information was true.

v. *[PRIVATE].*

vi. *Lastly, the Registrant has not observed the basic tenets of the nursing profession.*

b. *Posting comments on social media/multimedia messaging making reference to Patients' mental health – the NMC submit this is a serious breach for the following reasons:*

i. *Firstly, through the Registrant's actions, attitudinal concerns are live and present.*

ii. *Secondly, the conduct arose from a non-work-related dispute.*

iii. *Thirdly, this conduct aggravates the Registrant's conduct of accessing patient records without clinical justification and publicly referring to [PRIVATE].*

iv. *Fourthly, the Registrant's conduct was inappropriate, unprofessional and offensive.*

v. *[PRIVATE].*

vi. *Lastly, the Registrant has not observed the basic tenets of the nursing profession.*

c. *Being dishonest to her colleagues during an investigation meeting;*

i. *Firstly, there are underlining attitudinal concerns.*

ii. *Secondly, the Registrant has also breached her duty of candour to be open and honest, initially failing to disclose the extent of your conduct at a local level.*

iii. *Thirdly, the Registrant has not been open and honest with her colleagues who were tasked with investigation the concerns.*

iv. *Fourthly, the Registrant has not observed the basic tenets of the nursing profession.*

5. *Furthermore, the impact of the Registrant's actions on the patients has been significant. For example:*

a. [PRIVATE].
b. [PRIVATE].
c. [PRIVATE].
d. [PRIVATE].
e. [PRIVATE].
f. [PRIVATE].

6. *The NMC further submits that the Registrant's actions as proven fall far short of what would be expected of a Registered Nurse. The Registrant's conduct is of the upmost seriousness. The Registrant has abused her position of trust for personal gain to access these patients' records, and then posted information about [PRIVATE] following a personal dispute. This raises serious concerns about her trustworthiness, professionalism and raises deep seated attitudinal concerns.*

7. *Colleagues would expect that they could rely upon their other colleagues to be open and honest with them and to assist them when investigating concerns.*

8. *Patients provide their most personal and sensitive health information to a medical professional in the expectation that it remains confidential and only to be accessed for justified reasons. The public would expect that the profession would be dependable and trustworthy. They would expect nurses to uphold a professional reputation and not breach confidentiality.*

9. *As expressed by the character witnesses, the Registrant's conduct was:*
   a. Extremely unprofessional and should never have happened.
   b. It breaks down trust
   c. It is something that can bring the practice into disrepute and it's reputation.
   d. As a nurse you sign the oath and code of conduct, it's what you expect people to abide by and behave appropriately.

e. It was a very stupid thing to do.

f. Totally inappropriate should not have happened

g. Nobody should be dishonest and that shouldn't happen.

h. One the fundamental things of nursing is to maintain The level of trust between the patient and nurse and so by doing that her decision did break that level of trust.

i. The level of trust between the nurse and the patient must be maintained. The patient will trust the nurse when they're at their most vulnerable when at hospital or GP surgery – things like [the Registrant's conduct may break that trust.

10. The Registrant has breached one of the most fundamental tenets of the profession by accessing records of several patients without clinical justification, and also of posting information on social media.

11. The NMC say that the following parts of The Code have been breached, but of course the Panel is able to consider any other parts as it sees fit.

a. For Charges 1-5 the following extracts are from the 2015 version of the Code that applies to those charges):

*i. **5 Respect people's right to privacy and confidentiality***

*ii. **20 Uphold the reputation of your profession at all times***

1. 20.1 keep to and uphold the standards and values set out in the Code

2. 20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

3. 20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

4. 20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

5. *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*
6. *20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.*

iii. ***21 Uphold your position as a registered nurse or midwife***

1. *21.4 make sure that any advertisements, publications or published material you produce or have produced for your professional services are accurate, responsible, ethical, do not mislead or exploit vulnerabilities and accurately reflect your relevant skills, experience and qualifications*

b. *For Charges 6 & 8 the following extracts are from the 2015 version of the Code that applies to those charges):*

i. ***8 Work cooperatively***

1. *8.6 share information to identify and reduce risk*

ii. ***20 Uphold the reputation of your profession at all times***

1. ***20.1** keep to and uphold the standards and values set out in the Code*
2. ***20.2** act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

iii. ***23 Cooperate with all investigations and audits***

1. *23.1 cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise*

12. *The NMC invite the Panel to find misconduct.'*

Ms Malhotra submitted that she has addressed the panel previously on the seriousness of the actions and the allegations against you which are accepted. It is accepted on your behalf that the statutory ground of misconduct is proved.

Submissions on impairment

Ms Stevenson 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Stevenson provided written submissions which are as follows:

'*<u>Impairment</u>*

13. *Current impairment is not defined in the Nursing and Midwifery Order of the Rules. The NMC have defined fitness to practise as the suitability to remain on the register without restriction.*

14. *The panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin):*

    "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:

(i) Has in the past, and/or is liable in the future to act as so as to put a patient or patients at unwarranted risk of harm;

(ii) Has in the past, and/or is she liable in the future to bring the profession into disrepute;

(iii) Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;

(iv) Has in the past, and/or is she liable in the future to act dishonestly."

15. *As further stated at paragraph 74 of Grant, the Panel should:*
"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."

16. *The Panel may also wish to consider Cohen v GMC [2008] case of Cohen v General Medical Council [2008] EWHC 581 (Admin) in which it was stated that:*

"... It must be highly relevant in determining if a doctor's fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

17. *The NMC say that the Registrant is impaired. All limbs of Grant are engaged.*

18. *The Registrant has repeated her conduct by accessing 3 different patient records, on 9 occasions over a period of approximately 2.5 months, demonstrating a pattern of conduct. Furthermore, the conduct arose from a non-work-related dispute.*

19. *The NMC submit in light of the current findings, the Registrant has in the past and/or is liable in the future to act as so as to put a patient or patients at unwarranted risk of harm. By harm, the NMC refer to breaching patient's confidentiality. [PRIVATE].* ***Please see paragraph 5 above****.*

20. *The behaviour of the Registrant as found proven plainly brings the profession into disrepute – it is an unsatisfactory breach of trust. The Registrant's conduct is of the upmost seriousness. The Registrant has abused her position of trust for personal gain to access these patients' records, and [PRIVATE] following a personal dispute. This raises serious concerns about her trustworthiness, professionalism and raises deep seated attitudinal concerns. All charges found proven are deeply concerning.*

21. *The Registrant has plainly breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above, in particular: 1) keeping to and upholding the standards and values set out in the Code and acting with honesty and integrity at all times; and 2) Respect people's right to privacy and confidentiality.*

22. *The Registrant has also acted dishonestly. In doing so the Registrant has not cooperated with her colleagues and their investigation and has not been open honest and candid.*

23. *The Registrant has provided evidence as to impairment. For example, reflective pieces, oral evidence, certificate, character references and character witnesses. the Registrant has acknowledged the seriousness of the concerns and referred to the NMC Code of Conduct.*

24. *The Registrant has provided evidence of insight and remorse. As to the sufficiently of her insight and remorse that is a matter for the Panel and in*

balancing the above the NMC refer the Panel to particular parts of NMC guidance which it is submitted, is applicable to this case.

25. *Firstly, as per the NMC guidance on 'can a concern be addressed?':*
    a. *Decision makers need to be aware of our role in maintaining confidence in the professions by declaring and upholding proper standards of professional conduct. Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.*
    b. *Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:*
        i. *dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to the nurse, midwife or nursing associate's practice*
        ii. *incidents of harassment, discrimination or victimisation that have taken place either inside or outside the workplace*

26. ***Secondly, as per the NMC guidance on 'Has the concern been addressed?':***
    a. *There may still be a public interest in restricting a nurse, midwife or nursing associate's right to practise, even if they have shown 'some' insight into what happened.*
    b. *It is important to carefully assess whether the insight shown by the nurse, midwife or nursing associate is enough to address the specific concerns*

that arise from their past conduct, rather than simply identifying whether 'any' or 'some' evidence of insight is present

c. *The following factors will be useful when considering whether the evidence of insight is sufficient to address the concerns in the case.*
    i. *<u>If they had the opportunity to do so, did the nurse, midwife or nursing associate cooperate with their employer's or any other local investigation into the concerns?</u>*
    ii. *<u>Did the nurse, midwife or nursing associate, voluntarily or without prompting, draw any failings or inappropriate conduct to the attention of their employer?</u>*

d. *All registered nurses, midwives or nursing associates must comply with the duty of candour guidance which arises from the requirements set out in the Code… <u>Decision makers should take into account whether</u> <u>the nurse,</u> midwife or nursing associate <u>has complied with the duty of candour and the requirements it places on professional practice when they consider issues of current impairment.</u>*

e. *[In relation to the Character references and evidence of training]:*
    i. *Testimonials from a manager or supervisor should carry more weight than those from friends or colleagues. References or testimonials should be signed by the author, dated, on letter-headed paper, and include contact details.*
    ii. *It should be clear that the author is aware of the full details of the allegations…and of the nurse, midwife or nursing associate's acceptance of the charges.*
    iii. *The content of the reference or testimonial should be relevant to the issues being considered by the decision maker.*
    iv. *Evidence of training courses should be carefully considered. Decision makers should <u>look at the duration of the course</u> and <u>the amount of time or focus placed on topics which address the relevant concerns</u>. Courses with a practical element and formal assessment (with results available), can carry more weight than*

courses completed online or those without any means for the nurse, midwife or nursing associate to demonstrate understanding.

27. ***Thirdly, as per the NMC guidance 'Is it highly unlikely that the conduct will be repeated?':***

    a. *Decision makers will consider whether the nurse, midwife or nursing associate is likely to repeat the conduct that caused the concerns.*
    b. *When doing this, they should take into account whether the nurse, midwife or nursing associate has been practising in a similar environment to where the conduct took place. If they have, and have therefore been exposed to occasions when there was a risk of past conduct being repeated, then the absence of repetition will be significant.*

28. *In tying in the above, the Panel may consider that:*
    a. *The Registrant's conduct has fallen so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined.*
    b. *The Registrant's conduct, raising attitudinal concerns, social media misuse and concerns around trust may not be possible to address. So, although the Registrant has provided evidence in many forms as to her competence and her professionalism it is difficult to evidence remediation of attitudinal and dishonesty concerns.*
    c. *There may still be a public interest in restricting the Registrant's right to practise despite the evidence she has put forward in relation to impairment.*
    d. *Although incidents have been provided by her character witnesses as to her professionalism and integrity, it is of note that: 1) there was pattern of conduct through her actions; 2) at the time of the incidents, the Registrant did not cooperate with the investigation by being dishonest; and 3) she did not voluntarily or without prompting, draw her failings and inappropriate conduct to the attention of her employer.*

29. As such the NMC invite the Panel to find that the Registrant is currently impaired'.

Ms Malhotra submitted that this is a matter of judgement for the panel and accordingly the burden of proof does not apply. She referred to matters of law in relation to dishonesty and impairment. She submitted you have accepted dishonesty and referred to *The Professional Standards Authority v The Health and Care Professions Council & Ghaffar [2014] EWHC 2723*, that in paragraph 45:

> *'A finding of impairment does not, of course, necessarily follow upon a finding of dishonesty, although it is accepted by the Panel that it will be a frequent one.'*

Ms Malhotra referred to *The Professional Standards of Authority for Health and Social Care v General Medical Council & Uppal [2015] EWHC 1304,* paragraph 27:

> *'In my judgement, the PSA's submission that a doctor's fitness to practise "is impaired" if he acts dishonestly does not accurately reflect the statutory scheme or the authorities, since, even in cases of dishonesty, a separate assessment of impairment is required, and not every act of dishonesty results in impairment'.*

Ms Malhotra referred to the *Council of Regulatory Excellence v The Nursing and Midwifery Council & Grant [2011] EWHC 927,* and as set out in paragraph 76, the judgment referred to Dame Janet Smith's test for impairment set out in her fifth report from the Shipman review. She submitted that of those that are perhaps pertinent to the facts in this case are c) and d) and it is accepted that you have breached one of the fundamental tenets of the profession, namely acting dishonestly.

Ms Malhotra addressed the panel in relation to the matter of dishonesty. She referred to the evidence of Witness 5, and submitted that she has known you both as a patient and in a professional capacity since January 2020. Witness 5 in her evidence recalled

experiences of incidents that you have dealt with whilst practising, and referred to you as quick to look at your actions and admit when you may have done something wrong, and that your instincts were to be open and honest. Ms Malhotra submitted that this aligned with the duty of candour, and gave examples of you acting honestly since the incident occurred.

Ms Malhotra referred to the evidence of Witness 6, who has always known you to be open, honest and trustworthy. Witness 6 gave an example of how you had dealt with a situation regarding a patient and the way in which you communicated with their family when the issue had arisen. Ms Malhotra submitted that this is an example of your integrity.

Ms Malhotra referred to the question of the risk of repetition. She submitted that this incident occurred when you were 28 years old, and you are now 32 years old. Your evidence suggested that since this incident occurred, you have matured and you are much wiser now, evidenced from your attitude since the incident. She submitted that you have not sought to challenge the evidence of Patient A in these proceedings. She submitted that you have told the panel how you should have dealt with the situation differently at the time, in that you would have spoken to Patient A directly and resolved the issues. This demonstrated maturity and how this level of insight and growth shown will ensure that such a situation does not occur again.

Ms Malhotra submitted that your actions arose over a set of specific circumstances, identifiable to a particular timeframe and events. She submitted that your actions were confined to a period of two and a half months out of a career spanning eight years and nine months. She referred to Ms Stevenson’s submission that this was a pattern, and Ms Malhotra submitted that the evidence provided does not support this was a pattern, rather conduct confined to a limited period. She referred to your statement and Patient A's statement which described the circumstances. She also referred to the contemporaneous text messages that you sent to Patient A. She submitted that there has been no repetition of this behaviour since the incident occurred, which has also been confirmed by Witness 5.

Ms Malhotra submitted that you have expressed in your reflective pieces how ashamed you are of your actions and how you recognise the grave mistakes that you have made. She submitted that you have shown genuine insight into your actions and reflected not only on the impact to the patients concerned, but also the impact of your actions on the Practice, the involvement of the Information Commissioner's Office, your fellow colleagues and that staff were required to undergo further confidentiality training. You have also reflected and shown insight into the wider implications to the nursing profession. You have sought supervision from a colleague who works in a different setting to discuss your actions, and you have reflected on what you did and how you could have behaved differently. Ms Malhotra referred to your reflective piece within the case management form which highlighted your communication with other colleagues regarding your reflection on dishonesty, professional conduct and what is expected of you as a registered nurse.

[PRIVATE].

Ms Malhotra submitted that you have since practised unrestricted, and not only have there been no issues during this time, but Witness 5 gave evidence highlighting what a valued nurse you are within the Practice. She submitted that patients speak highly of you, and there is an abundance of evidence which supports what a valued member of the nursing profession you are. She referred to Witness 4's statement which described the support you are receiving from the Practice and states that you are a respected member of the team. Ms Malhotra submitted that you have not behaved in this way before, and you have otherwise had an unblemished career. She referred to your statement where you highlighted the importance of confidentiality and ensuring clinical room doors are fully shut whilst clinical staff are consulting with patients.

Ms Malhotra submitted that there is much evidence demonstrating your remorse. She submitted that you have expressed your remorse when giving evidence for your actions. With regards to the post on social media, you accepted that you did this, but you did not use any knowledge of what you had seen in the medical records to fuel the post. The

evidence of Witness 4 stated that you did not go into depth with regard to reviewing clinicians' notes about appointments as the tab journal action was not undertaken. She submitted that you posted on social media as a result of your own personal experience with the individuals concerned and not as a result of anything you had seen in their records. Ms Malhotra submitted that you accept these are deeply unpleasant and hurtful messages that you posted, which you acknowledged in the interview on 11 October 2018, and you subsequently apologised to Patient A in writing for your actions.

Ms Malhotra submitted that the panel should distinguish between what is morally reprehensible conduct and what is a regulatory concern. She submitted that the sending of an unpleasant and hurtful private message would not ordinarily amount to a regulatory concern, and asked the panel to bear this in mind when making its decision. She submitted that you have addressed your behaviour in this regard and attended a cyberbullying course, which you felt was applicable to your nursing practice.

Ms Malhotra reminded the panel that it has had an opportunity to observe you throughout the proceedings [PRIVATE]. However, she submitted that you have engaged fully with the process. She submitted that you are now extra cautious in your behaviour and the impact that your behaviour may have in all aspects of your life. She submitted that you are a passionate nurse who is well qualified and contentious about your work, and that you have learnt from your mistakes. Ms Malhotra submitted that this is an unusual case, where on the facts and circumstances and notwithstanding the admission of dishonesty, this is a case where the panel can conclude that your fitness to practise is not currently impaired.

The panel accepted the advice of the legal assessor which included reference to: *Council for Healthcare Regulatory Excellence v NMC & Grant [2011] EWHC 927 (Admin) and Cohen v General Medical Council [2008] EWHC 581 (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 your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

‘5 Respect people’s right to privacy and confidentiality

20 Uphold the reputation of your profession at all times

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

21 Uphold your position as a registered nurse or midwife’

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 your actions amounted to misconduct in this case. The panel determined that the charges found proved are serious and would be considered deplorable by other fellow practitioners. It considered that your conduct was inappropriate, unprofessional, and fell short of the conduct and standards expected of a registered nurse.

The panel took into account Ms Stevenson's submissions in which she highlighted the three areas of misconduct in this case, namely the accessing of patient records without clinical justification, posting comments on social media/multi messaging making reference to [PRIVATE] and being dishonest to your colleagues during an investigation meeting, all of which all are serious. However, the panel considered that although your actions included dishonesty, it considered this to be at the lower end of the spectrum, based on the context and the circumstances as discussed within charge 7.

The panel considered that your accessing of patient records without clinical justification, to find out information about the individuals in question, was the most serious aspect in this case. It acknowledged the significant impact your actions have had on Patient A, and noted Ms Stevenson's submissions, in which Patient A had stated:

> *[PRIVATE].*

The panel noted that Witness 5 and Witness 6, in their evidence, considered your actions were serious, amounted to misconduct and could have otherwise affected the trust in the profession.

The panel considered that the public would not expect a nurse to breach confidentiality or behave in the way that you did in relation to posting on social media. It considered that you have accepted that the charges found proved amounted to misconduct.

Therefore, the panel found that your 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, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

The panel found that Patient A and Patient B [PRIVATE] as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel determined that all four limbs of Grant are engaged. In relation to limb 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',* the panel took into account the evidence of Patient A and the significant impact that your actions have had on her. [PRIVATE]. The panel acknowledged that, if health professionals inappropriately accessed clinical records to make judgements about individual's personal lives, it would damage the trust patients have in the nursing profession as a whole. However, the panel considered that you are currently not liable to repeat your actions again in the future based on the steps you have taken to address the concerns. It noted the evidence of Witness 5 and Witness 6, who have stated that to their knowledge there have been no further issues since the incidents. It considered that these are people who know you well and who are in a position to understand the allegations against you, and to testify to your response to them.

In relation to limb b, *'has in the past brought and/or is liable in the future to bring the medical profession into disrepute',* the panel took into account that you have shown significant insight into your actions and the impact that they have had on patients, colleagues and the wider profession. It noted that you have apologised for your actions and have submitted comprehensive reflective pieces that demonstrated your understanding of the seriousness and gravity of your actions. It considered that you have largely cooperated with the local meetings and had completely engaged with the regulatory proceedings. You have also demonstrated how you would handle a similar situation differently in the future. It noted that Witness 5 and Witness 6 testified to how you were open and honest and that you considered your actions were wrong. The panel considered that your actions were not a pattern of behaviour, rather they occurred over a period of time within an otherwise unblemished career. The panel was of the view that, although your actions did bring the profession into disrepute in the past, you are not liable to do so again in the future.

In relation to limb c, *'has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession',* the panel considered that your actions did breach fundamental tenets of the profession, particularly in relation to confidentiality. The panel took into account that you have shown remorse for your actions and that you understand accessing patient records without clinical justification is wrong. It noted that you had undertaken extra training and you have also challenged others about their practise previously, for example being mindful of closing doors during patient consultations and ensuring their privacy. The panel considered the positive references provided. It noted that your actions have not been repeated since the incident. The panel considered that although you have in the past breached fundamental tenets of the profession, you are not liable to do so again in the future.

In relation to limb d, *'has in the past acted dishonestly and/or is liable to act dishonestly in the future',* the panel considered that your actions did involve dishonesty and you have also accepted this. However, it considered that your dishonesty was at the lower end of

the spectrum based on the context and circumstances that occurred at the time of the investigation meeting, highlighted in charge 7 of the facts stage. The panel was of the view that you would not be liable to repeat this again in the future.

The panel took into account the NMC's guidance on *'Demonstrating insight',* in particular the five points highlighted, which included:

- *'step back from the situation and look at it objectively';*
- *'recognise what went wrong';*
- *'accept their role and responsibilities and how they are relevant to what happened';*
- *'appreciate what could and should have been done differently'; and*
- *'understand how to act differently in the future to avoid similar problems happening'.*

The panel considered that you have addressed and taken appropriate action in relation to all five of these points, based on the the evidence before it, and you have shown insight, reflection, remorse and reflection into your actions and the gravity of the situation.

The panel also took into account the NMC's Guidance on *'Assessing whether insight is sufficient',* and it is satisfied that you have generally cooperated with your employers' proceedings. It noted that you partially accepted the concerns raised but, as previously discussed during the facts stage, you were mainly focused on the social media issue at the time [PRIVATE]. It noted that you accepted the concerns of the regulator and you admitted that there was some harm caused to Patient A, and that you have since apologised directly to her. It noted that you have discussed and accepted that your actions caused damage to the public confidence in the profession, and how your conduct fell short of professional standards. Since the issues were brought to the attention of the NMC, you have never sought to blame other people.

The panel considered that you have since undertaken relevant training, that you have sought supervision, and testimonies have been provided from colleagues who still continue to work with you today. You have provided comprehensive reflective pieces and

you have given examples of applying your reflections into your own practice. The panel considered that you have been working at the Practice without further issues being raised.

The panel acknowledged that the evidence from you has been compelling in what you have been able to do, and the steps you have taken to address the concerns. However, it raised the question of whether these complaints are so serious that it is not always possible to remediate by insight, remorse and strengthening of your practice. The panel took into account the NMC's guidance on *'Can the concern be addressed?'* which stated:

> *'Decision makers need to be aware of our role in maintaining confidence in the professions by declaring and upholding proper standards of professional conduct. Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice'.*

The panel does not consider there to be any underlying attitudinal issues and determined that your actions were linked to a particular set of circumstances at the time. However, the inappropriate accessing of patient records in conjunction with posting on social media referring to [PRIVATE] is the context that is damaging to the wider profession.

The panel considered that the public protection concerns in this case have been suitably addressed by the evidence presented and it is satisfied that you will not repeat your actions again in the future. The panel considered that although there is no longer impairment on public protection grounds, there is impairment on public interest grounds, due to the seriousness of the breach of the tenets of the profession. It considered that there is a public interest in a finding of impairment based on the breach of confidentiality and accessing clinical records without clinical justification, despite the evidence presented

of your significant progress in terms of your insight, remorse and strengthening your practice.

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

In addition, 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 finds your fitness to practise impaired on the grounds of public interest, for the reasons outlined above.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 2 months. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Stevenson informed the panel that in the Notice of Hearing, dated 12 May 2022, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

Ms Stevenson submitted that aggravating features of this case are as follows:

- You accessed three patient records on nine occasions over a period of two and a half months;
- You posted on social media regarding two patients [PRIVATE];
- Your conduct was inappropriate and unprofessional, and did not observe the basic tenets of the nursing profession;
- You had a lack of candour and were dishonest when initially questioned regarding the incident;
- In doing so above, you did not cooperate with the investigation process and misled your colleagues tasked with investigating the concerns; and
- There was a negative impact on the patients' lives.

She submitted that the mitigating factors of the case are as follows:

- There is evidence of your insight, remediation and remorse;
- You have accepted the concerns through your admissions;
- There have been no other referrals in relation to your practice before or after the incidents occurred;
- There have been positive testimonials and positive character references; and
- You have engaged with the NMC.

Ms Stevenson submitted that your conduct is of the utmost seriousness and raised fundamental questions about your trustworthiness and professionalism. She submitted that you abused your position of trust by accessing patient records, without clinical justification, for a personal gain following a personal dispute. She submitted that after

accessing Patient A's records, you proceeded to post on social media days later, which was accessible to members of the public.

Ms Stevenson submitted that you had accessed Patient A's clinical records before posting a post on social media [PRIVATE], and it is possible that the content of the clinical record was referenced on the social media post. However, you said you had accessed that information to understand why Patient A was acting in a certain way. Nonetheless, she submitted that your position as a nurse at the Practice might make people more likely to believe that statements you made about [PRIVATE] were true.

Ms Stevenson submitted that, in light of your conduct, you had breached the fundamental tenets of the profession and there had been a negative impact on the patients involved. She submitted that you did not act with candour and were dishonest when questioned in the investigatory meeting, so you did not cooperate with the investigation, and misled your colleagues tasked with investigating the concerns.

Ms Stevenson submitted that dishonesty is a serious breach of the fundamental tenets of the profession. She submitted that there are a number of mitigating features in this case, which have been referred to by the panel previously within the determination.

Ms Stevenson submitted that taking no further action or imposing a caution order would not be suitable in this case due to the seriousness of the conduct and the dishonesty concerns. She submitted that a conditions of practice order could not adequately address the public interest concerns in this case, namely professionalism, trust and dishonesty.

Ms Stevenson submitted that in relation to a suspension order, your actions do warrant a temporary removal from the register, due to the public interest concerns of trustworthiness and professionalism, and because dishonesty is always difficult to remediate. Ms Stevenson submitted that the NMC considers a striking-off order to be the most appropriate sanction as your conduct is fundamentally incompatible with that of a

registered nurse. The NMC consider that this is the most appropriate outcome in order to maintain public confidence in the nursing profession as a whole.

Ms Malhotra reminded the panel of her submissions during the misconduct and impairment stage which she said were directly applicable to the sanctions stage. She invited the panel to allow her to adopt the submissions already made.

Ms Malhotra submitted that clearly this is a serious matter and the panel has found that your fitness to practise is currently impaired on the grounds of public interest alone. The panel will be aware that any sanction must be proportionate and justified with the least impact.

Ms Malhotra submitted that there are significant mitigating factors with regard to the incidents. She submitted that significant insight, remediation and remorse have been demonstrated which the panel has previously highlighted in its determination. She submitted that you have been a nurse for eight years and nine months with no referrals before or since the incidents occurred. She submitted that you have an otherwise unblemished career up until this point.

Ms Malhotra submitted that you have fully engaged with the NMC's proceedings. She invited the panel to consider the procedural background, in that you were initially given a warning by the NMC for your conduct, but subsequently a redetermination was requested, which had led to this hearing. She submitted that having received that warning, there were no other concerns raised with regard to your practice.

Ms Malhotra submitted, with respect to the aggravating features of this case highlighted by Ms Stevenson, that it was not your intention to cause harm to Patients A, B or C. She submitted that Patient C was not engaged in this process, and that could support the suggestion that Patient C was caused no harm.

[PRIVATE]. Ms Malhotra invited the panel to consider that the evidence the panel has heard was compelling with regard to your passion for the nursing profession, and that you are a good nurse. She submitted that you have sought to develop your practice and specialise within your field, as well as addressing the regulatory concerns that have been raised as a result of your conduct.

Ms Malhotra said that a striking-off order would not be commensurate with the material the panel have had before it, because you have otherwise been an exemplary addition to the profession, and you continue to be. She submitted that you have apologised and kept up to date with your training, and invited the panel to conclude that this was spontaneous conduct that was limited to a particular set of circumstances.

Ms Malhotra submitted that there was considerable mitigation in your favour with regard to charge 8, and that a striking off order would not be appropriate in this case. She invited the panel to consider whether conditions of practice might be appropriate to mark the seriousness of the events, if the panel were not minded to agree with this sanction, that a period of suspension may be imposed.

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, as per the NMC's guidance on *'Factors to consider before deciding on sanctions':*

- *Abuse of a position of trust*
- *Conduct which put patients at risk of suffering harm*

The panel also took into account the following mitigating features, as per the NMC's guidance on *'Factors to consider before deciding on sanctions':*

- *Evidence of the nurse, midwife or nursing associate's insight and understanding of the problem, and their attempts to address it. This may include early admission of the facts, apologies to anyone affected, any efforts to prevent similar things happening again, or any efforts to put problems right.*
- *Evidence that the nurse, midwife or nursing associate has followed the principles of good practice. This may include them showing they have kept up to date with their area of practice.*

The panel weighed up the aggravating and mitigating features of this case and determined that the mitigating features outweighed the aggravating features.

As a dishonesty charge was found proved, the panel considered the NMC's guidance on *'Considering sanctions for serious cases'.*

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

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public interest issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your

misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

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

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

The panel was satisfied that in this case, your misconduct was not fundamentally incompatible with your remaining on the register.

The panel considered that you had misused your power to access patient records without any clinical justification. Your conduct was opportunistic and related to incidents within your personal life. The panel was satisfied that there was no direct risk to patients, rather it was indirect, and considered that your behaviour did not appear premediated, and that your unjustified access to records was for a total of 11 minutes.

The panel noted that the dishonesty in this case is not charged in relation to your accessing patient records or posting on social media, rather it was about your concealing of the incident in relation to Patient B. The panel considered that the dishonest conduct charged in this case is at the lower end of the spectrum, that it was a one-off incident, and that it was spontaneous. The panel considered that, contextually, you did not actively conceal your actions in relation to Patient B, taking into account the circumstances at the time of the interview as highlighted before within the determination. The panel determined that, due to the pressures of the situation, your dishonesty did not fall into the category of a serious breach of your duty of candour.

The panel took into account the NMC's guidance on dishonesty charges, which states:

> *'Nurses, midwives and nursing associates who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register'.*

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, particularly the references and witness evidence that attested to the significant contribution that you were now making for the benefit of the patients at the Practice and community unit where you work, the panel concluded that it would be disproportionate. The panel found the evidence of Witness 5 and Witness 6 to be compelling on this point. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. It considered that these incidents were serious enough to warrant a temporary removal from the register. It considered that you do not

have any attitudinal issues and there has been no evidence of repetition since the incidents occurred. It also considered your insight, reflection and remorse demonstrated.

The panel considered that a period of suspension is adequate to satisfy the public interest concerns in this case, based on the information and evidence presented, and the steps you have taken to address the concerns and strengthen your practice. It considered that there is a low risk of repetition, and your actions are not fundamentally incompatible with being a registered nurse in this case. A suspension order is the most proportionate and appropriate in the context of the circumstances in this case.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

In making this decision, the panel carefully considered the submissions of Ms Stevenson in relation to the sanction that the NMC was seeking in this case. However, the panel considered that, for the reasons outlined above, a period of suspension would be the most proportionate order in this case when taking into account the circumstances and context as a whole.

The panel determined that a suspension order for a period of 2 months was appropriate in this case to mark the public interest issues in this case. It considered that the public would be disadvantaged if you were to be suspended for a longer period of time, considering your service to the public.

Having found that your fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision. In this respect it found your fitness to practise impaired on the grounds of public interest only.

In accordance with Article 29 (8A) of the Order the panel has decided to exercise its discretionary power and has determined that a review of the substantive order is not necessary.

The panel determined that it made the substantive order having found your fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, the current substantive order will expire without review.

If no appeal is made, the substantive order will come into effect at the end of the 28-day appeal period.

This will be confirmed to you in writing.

Interim order

As the suspension 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. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Stevenson. She invited the panel to impose an interim suspension order up to a period of 18 months, given that impairment has been found on public interest grounds. She reminded the panel that a sanction cannot

take effect until the end of the 28-day appeal period after the decision letter has been served upon you. She submitted that, given those two reasons, the panel may consider an interim suspension order is necessary for up to 18 months to cover the appeal period.

Ms Malhotra submitted that given you have been working unrestricted without any issues in terms of your practice, she invited the panel to consider that no interim suspension order is necessary in the circumstances.

Decision and reasons on interim order

The grounds for an interim order are (1) that it is necessary for the protection of the public, (2) that it is otherwise in the public interest, or (3) in your own interests. Ms Stevenson accepted that (1) and (3) did not apply. In the panel's view, it would not be in the public interest to impose any interim order. The effect of doing so would be to prevent you from exercising your right to appeal, which would be unjust. If you appealed successfully and the appeal was heard after a year, the effect of an interim order would be that you will have been suspended for a period of 12 months when you should not have been suspended at all. If your appeal was dismissed, you would be suspended for an interim period of 12 months plus the substantive period of two months. In each case, the result would be unjust and contrary to the public interest.

The panel concluded that an interim order would not be appropriate or proportionate in this case, taking into account the legal assessor's advice.

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

That concludes this determination.