Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Meeting
Monday 7 March 2022 – Tuesday 8 March 2022

Virtual Meeting

Name of registrant:	**Mr Christopher John Trenery**
NMC PIN:	10H1318E
Part(s) of the register:	Registered Adult Nurse – Sub Part 1 RNA: Adult Nurse, Level 1 - (November 2010)
Area of registered address:	Carmarthenshire
Type of case:	Misconduct
Panel members:	Peter Swain (Chair, Lay member) Diane Gow (Registrant member) David Hull (Lay member)
Legal Assessor:	Nigel Mitchell
Panel Secretary:	Megan Winter
Facts proved:	Charges 1, 2, 3, 4a, 4b, 4c, 4d, 5, 6
Facts not proved:	Charge 4e
Fitness to practise:	Impaired
Sanction:	**Striking-off order**
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel noted that the Notice of Meeting had been sent to Mr Trenery's registered email address by secure email on 31 January 2022.

The panel considered whether notice of this meeting had been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules'). It noted that under the recent amendments made to the Rules during the Covid-19 emergency period, a Notice of Hearing/Meeting may be sent to a registrant's registered address by recorded delivery and first-class post, or to a suitable email address on the register.

The panel took into account that the Notice of Meeting provided details of the allegations, the time of the meeting, and the 'on or after date' of the meeting. Mr Trenery was advised that a meeting would take place on or after 7 March 2022.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Trenery has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34.

Details of charge

That you, a Registered Nurse:

1) Between 29 January 2019 and 12 March 2019 communicated with Patient A via Facebook Messenger.

2) On the 3 February 2019 communicated words to Patient A, to the effect of those detailed in schedule 1.

3) On one occasion between 29 January 2019 and 12 March 2019 visited Patient A at home.

4) On one occasion between 29 January 2019 and 12 March 2019 whilst visiting Patient A at his home:

a) Gave him two bottles of aftershave;

b) Brought him a phone charger

c) Brought him medication

d) Sat on the edge of his bed;

e) Stroked and / or touched his hand.

5) Your actions at one or more of charges 1 – 4 breached professional boundaries.

6) Your actions at one or more of charges 1 - 4 were sexually motivated in that you sought sexual gratification and / or you sought to pursue a future sexual relationship.

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

Schedule 1

[PRIVATE]

Background

Mr Trenery entered the NMC register on 13 November 2010 and specialises in adult care. Mr Trenery began his employment with the University Hospitals of Derby and Burton NHS Foundation Trust (the Trust) in November 2015 as a Band 5 registered nurse.

The NMC received a referral on 23 January 2020 from the Trust. Concerns were raised about Mr Trenery conducting an inappropriate sexually motivated relationship with a vulnerable male patient, Patient A, who was in his care between the 24 January 2019 and 30 January 2019 at the Trust.

This association continued after Patient A was discharged. Between 29 January 2019 and 12 March 2019, it is alleged that Mr Trenery gave Patient A gifts at his home address and offered/asked for sexual favours. It is also further alleged that his actions breached professional boundaries and were sexually motivated in that he sought sexual gratification and/or he sought to pursue a future sexual relationship.

Mr Trenery provided a copy of the messages to the Trust and was interviewed at a local level, where he made partial admissions within his interview. Following a disciplinary hearing, he was dismissed.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case.

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.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel took into account, when considering the charges, that Mr Trenery was of good character and not the subject of previous complaint.

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

Charge 1

1) Between 29 January 2019 and 12 March 2019 communicated with Patient A via Facebook Messenger.

This charge is found proved

In reaching this decision, the panel took into account the screenshots provided of the communications between Mr Trenery and Patient A on Facebook Messenger. Further, it noted that corroborating screenshots had been provided by both parties, therefore it was satisfied that there were no discrepancies such as deleted or edited messages.

The screenshot messages were dated from 29 January 2019 to 12 March 2019, therefore the panel is satisfied that Mr Trenery had been in communication with Patient A between these dates via Facebook Messenger.

Accordingly, the panel found charge 1 proved.

Charge 2

2) On the 3 February 2019 communicated words to Patient A, to the effect of those detailed in schedule 1.

Schedule 1

[PRIVATE]

This charge is found proved

In reaching this decision, the panel took into account the corroborating messages from both Mr Trenery and Patient A which included the words detailed in schedule 1.

The panel therefore determined that, from the evidence before it, it could be satisfied that the Mr Trenery communicated words to the effect of those detailed in schedule 1 to Patient A on 3 February 2019.

The panel therefore found this charge proved.

Charge 3

3) On one occasion between 29 January 2019 and 12 March 2019 visited Patient A at home.

This charge is found proved

In reaching this decision, the panel took into account the initial complaint from Patient A and the notes from Patient A's call. It also took Mr Trenery's admissions during the Investigation Interview on 1 August 2019 into account.

The panel noted that Mr Trenery confirmed during the Investigation Interview that he visited Patient A at his home. He said this was to provide Patient A with medication To Take Out ("TTO"), Patient A's phone charger and to also deliver a personal gift of aftershave *'Paco Rabanne 1 in a Million'.* The panel considered Mr Trenery's admissions to have been made candidly and in detail. He entirely accepted that he visited Patient A at

his home and never challenged the allegation, therefore the panel is satisfied that Mr Trenery visited Patient A at home between 29 January 2019 and 12 March 2019. From the contents of the Facebook messages, the panel concluded that the visit was likely to have taken place on 31 January 2019.

Accordingly, the panel found this charge proved.

Charge 4a

4) On one occasion between 29 January 2019 and 12 March 2019 whilst visiting Patient A at his home:

a) Gave him two bottles of aftershave;

This charge is found partially proved

In reaching this decision, the panel took into account the corroborating message screenshots between Mr Trenery and Patient A, including photographic evidence of the aftershave. It also took Mr Trenery's admissions during the Investigation Interview on 1 August 2019 into account.

The panel was of the view that there was sufficient evidence before it to conclude that Mr Trenery gave Patient A one bottle of aftershave, as opposed to two. It had sight of the screenshots provided of a photograph Mr Trenery sent to Patient A of the aftershave named *'Paco Rabanne 1 in a Million'* on 30 January 2019. The image was followed by a further message from Mr Trenery who said *[PRIVATE].*

The panel also took Mr Trenery's detailed admissions made during the Investigation Interview into account. While Patient A said there were two bottles, Mr Trenery was clear and consistent that he bought only one. The panel noted that Patient A's account was second hand and that the NMC had not sought other evidence, such as from Patient A's

partner to explore this discrepancy. Mr Trenery has been candid about the factual details of these events and accordingly, the panel accepted his assertion that he gave one bottle of aftershave to Patient A.

The panel therefore found this charge proved, to the extent that it was one bottle of aftershave that Mr Trenery gave to Patient A.

Charge 4b

4) On one occasion between 29 January 2019 and 12 March 2019 whilst visiting Patient A at his home:

b) Brought him a phone charger

This charge is found proved

In reaching this decision, the panel took Mr Trenery's admissions during the Investigation Interview on 1 August 2019 into account.

In the Investigation Interview it is noted that when asked about what contact Mr Trenery had with Patient A, he replied *"He left his phone charger medication [sic]. I dropped it off on my way home. I talked to [PRIVATE] and he said he was grateful. He said I can contact him via messenger – social media."* In light of Mr Trenery's full and frank admission, the panel is satisfied that whilst visiting Patient A at his home he also brought him a phone charger.

The panel therefore found this charge proved.

Charge 4c

4) On one occasion between 29 January 2019 and 12 March 2019 whilst visiting

Patient A at his home:

c) Brought him medication

This charge is found proved

As outlined in the reasoning for charge 4b above, Mr Trenery also admitted during the Investigation Interview that he brought Patient A his TTO medication whilst visiting his home.

The panel therefore found this charge proved.

Charge 4d

4) On one occasion between 29 January 2019 and 12 March 2019 whilst visiting Patient A at his home:

d) Sat on the edge of his bed;

This charge is found proved

In reaching this decision, the panel took Mr Trenery's admissions during the Investigation Interview on 1 August 2019 into account.

During the Investigation Interview, it was noted that Mr Trenery stated *"I did sit at the end of the bed, as there was no where else to sit, I didn't stroke his hand, I hugged him when he cried."* In light of Mr Trenery's admission, the panel is satisfied that he sat on the edge of Patient A's bed whilst visiting his home.

The panel therefore found this charge proved.

Charge 4e

4) On one occasion between 29 January 2019 and 12 March 2019 whilst visiting Patient A at his home:

e) Stroked and / or touched his hand.

This charge is found NOT proved

The panel took into account that throughout the Investigation Interview, Mr Trenery was consistent about what he accepts. It noted that Mr Trenery disputes this charge, he stated *"I did sit at the end of the bed, as there was no where else to sit, I didn't stroke his hand, I hugged him when he cried."* The panel also noted that there was no third-party evidence to suggest that Mr Trenery did stroke and/or touch Patient A's hand. While Patient A is reported to have said Mr Trenery stroked his hand, this evidence was second hand. The NMC had not sought corroborative evidence, for example from Patient A's partner, to support this charge. In the circumstances, including Mr Trenery's frank admission that he hugged Patient A, the panel accepted his assertion that he did not stroke or touch Patient A's hand. Therefore, on the balance of probabilities it was not satisfied that this occurred.

Accordingly, the panel found this charge not proved.

Charge 5

5) Your actions at one or more of charges 1 – 4 breached professional boundaries.

This charge is found proved

In determining whether Mr Trenery's actions at one or more of charges 1 – 4 breached professional boundaries, the panel considered each charge individually.

In respect of charge 1, the panel determined Mr Trenery's actions to be an unequivocal breach of professional boundaries. In order to initiate communication with Patient A, Mr Trenery took sensitive personal data from the patient's records. This was a serious breach of data protection and of patient confidentiality. The panel was of the view that he breached his position of trust in his role as a nurse in order to make inappropriate contact with Patient A and by doing so breached professional boundaries.

In respect of charge 2, the panel was also of the view this charge was an unequivocal breach of professional boundaries. It considered the nature of Mr Trenery's message to be wholly unprofessional and deeply inappropriate.

The panel found Mr Trenery's actions in charge 3 a breach in professional boundaries. He did not follow standard procedures, in particular there is nothing to suggest that he consulted with colleagues such as the Ward Manager about the appropriate route by which to return Patient A's belongings. Rather, the panel took the view that he exploited the situation and his position as a nurse to gain access to Patient A at his home.

In respect of charge 4a, the panel was of the view that this was a breach of professional boundaries. This was established by Mr Trenery's message to Patient A which said [PRIVATE]. The panel therefore determined that Mr Trenery's actions in relation to this charge were imbued with meaning. Both the act and the purpose went well beyond the boundaries of a professional nurse/patient relationship.

In respect of charges 4b and 4c, the panel was of the view that Mr Trenery's actions crossed professional boundaries. It took into account that it is not uncommon for patients to leave behind some belongings on their discharge from hospital. There are policies and procedures in place to address this. The panel was of the view that Mr Trenery should have been dealt with this situation in accordance with these procedures. He was acting beyond his scope of responsibility without appropriate awareness, insight or reference to colleagues and Ward Manager.

In respect of charge 4d, the panel was of the view that Mr Trenery had no reason to be sitting on Patient A's bed, moreover he had no justification to go into the patient's home or bedroom and therefore considered this to be a breach of professional boundaries.

Having found all of the charges which were found proved to be a breach of professional boundaries, the panel therefore found this charge proved.

Charge 6

> 6) Your actions at one or more of charges 1 - 4 were sexually motivated in that you sought sexual gratification and / or you sought to pursue a future sexual relationship.

This charge is found proved

In determining whether Mr Trenery's actions at one or more of charges 1 – 4 were sexually motivated in that Mr Trenery sought gratification and/or sought to pursue a future sexual relationship, the panel considered each charge individually. It also considered the two limbs of this charge and the distinct differences between the two.

The legal assessor drew the panel's attention to the case of *Arunkalaivanan v General Medical Council [2014] EWHC 873 (Admin).*

The panel was of the view that, in terms of all the evidence before it, Mr Trenery did seek to pursue a future sexual relationship. It took his pattern of behaviour into account, from how he initiated communication by obtaining Patient A's personal details through his medical records, his visit to Patient A's home without justification, to how his communication rapidly progressed from the over-familiar to a sexually explicit proposition.

Accordingly, the panel considered Mr Trenery's actions in charges 1, 2, 3, 4a, 4b, 4c and 4d to be sexually motivated in that he sought to pursue a future sexual relationship.

The panel considered what inferences it could draw in relation to Mr Trenery seeking sexual gratification from his actions in charges 1 – 4, however, it determined there was no evidence to support this charge and that any such inference would be entirely speculative.

Therefore, this charge is found proved in respect of Mr Trenery's actions in charges 1 – 4 were sexually motivated in that he sought to pursue a future sexual relationship with Patient A.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mr Trenery's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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] 1 AC 311,* Lord Clyde stated that:

> *"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 the medical practitioner in the particular circumstances."*

The panel was also invited to consider that not every breach of the code and not every falling short in the particular circumstances will amount to misconduct. It must be serious or as Elias LJ put it in the case of *R (on the Application of Remedy UK Ltd) v GMC [2010] EWHC 1245 (Admin) "sufficiently serious... that it can properly be described as misconduct going to fitness to practise."*

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

The panel was of the view that Mr Trenery's actions did fall significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the Code. Specifically:

> ***1 Treat people as individuals and uphold their dignity***
>
> *To achieve this, you must:*
>
> *1.1. make sure you deliver the fundamentals of care effectively*
>
> ***17 Raise concerns immediately if you believe a person is vulnerable or at***

risk and needs extra support and protection

To achieve this, you must:

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

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

19 Be aware of, and reduce as far as possible, any potential for harm associate with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, ~~the likelihood of mistakes, near misses~~, harm and the effect of harm if it takes place

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to ~~colleagues~~, people receiving care ~~and the public~~

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.3 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

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

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

The panel acknowledged that breaches of the Code do not automatically result in a finding of misconduct. In assessing whether the charges amounted to misconduct, the panel considered them individually and collectively. It took account of all the evidence before it and the circumstances of the case as a whole. However, the panel was of the view that the failings in Mr Trenery's case are very serious departures from what is expected of a nurse. The panel viewed Mr Trenery's actions as a deliberate and premeditated course of conduct intended to facilitate direct personal contact and to ingratiate himself with Patient A. It noted that Mr Trenery was in a position of responsibility and authority and there was a significant abuse of trust. Additionally, this was a breach of trust of a highly vulnerable individual. In the panel's view Mr Trenery's behaviour was wholly unacceptable and should not have happened.

The panel found that Mr Trenery repeatedly breached professional boundaries over a prolonged period of time, commencing with a serious contravention of data protection when he accessed Patient A's records to obtain his phone number in order to initiate personal contact. The rapid escalation of the communications to sexual references was a profound breach of trust. His conduct would undoubtedly be seen as deplorable by fellow practitioners and would damage the trust that the public places in the profession. His actions did fall seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 *(Admin)* in reaching its decision. In paragraph 74, she said:

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> d) *...'*

The panel finds that limbs a, b and c are engaged in this case. The panel was of the view that Mr Trenery acted in a way that fell significantly short of the expected standard of a nurse. Patient A was highly vulnerable both in terms of physical and psychological health. Mr Trenery abused his position of trust and responsibility as a registered nurse and subjected Patient A to unwarranted risk of harm. The panel noted that following these events, when Patient A was readmitted to hospital, he specifically requested that he not be admitted to Mr Trenery's ward potentially affecting access to specialist services.

The panel was in no doubt that Mr Trenery's conduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The failures and breaches in this case are serious. The public has the right to expect high standards of registered professionals.

The provisions of the Code constitute fundamental tenets of the profession and Mr Trenery's actions have clearly breached these in so far as they relate to upholding the reputation of the profession and Mr Trenery upholding his position as a registered nurse. The fact that the failures and breaches involved actions that breached professional boundaries and were sexually motivated towards a patient aggravates the conduct. This makes the concerns particularly serious.

In regard to future risk, the panel considered the comments of Silber J *in Cohen v General Medical Council [2008] EWHC 581 (Admin),* namely whether the concerns were easily remediable, whether they have in fact been remedied and whether they are highly unlikely to be repeated.

It also had regard to the NMC guidance entitled: *'can the concern be addressed?'*, it states:

> *'Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the concerns in the case can be*

remedied. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious.

The first question is whether the concerns can be remedied. That is, are there steps that the nurse or midwife can take to remedy the identified problem in their practice?

It can often be very difficult, if not impossible, to put right the outcome of the clinical failing or behaviour, especially where it has resulted in harm to a patient. However, rather than focusing on whether the outcome can be put right, decision makers should assess the conduct that led to the outcome, and consider whether the conduct itself, and the risks it could pose, can be addressed by taking steps, such as completing training courses or supervised practice.

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 or midwife 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 or midwife's attitude, it is less likely the nurse or midwife will be able to address their conduct by taking steps, such as completing training courses or supervised practice.'

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:

• Inappropriate personal or sexual relationships with patients, service users or other vulnerable people

• ~~Violence~~, neglect or abuse of patients

It also had regard to the NMC guidance entitled *'serious concerns which are more difficult to put right'*, it states:

> *A small number of concerns are so serious that it may be less easy for the nurse, midwife or nursing associate to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening.*
>
> *In cases like this, we will be keen to hear from the nurse, midwife or nursing associate if they have reflected on the concerns and taken opportunities to show insight into what happened. Because concerns of this nature, when they aren't put right, are likely to lead to restrictive regulatory action, if we don't hear from the nurse, midwife or nursing associate we will usually focus on preparing the case for the Fitness to Practise Committee at the earliest possible opportunity.*
>
> *We will need to do this where the evidence shows that the nurse, midwife or nursing associate is responsible for:*
> *……..*
> *• ~~Sexual assault~~, relationships with patients in breach of guidance on clear sexual boundaries~~, and accessing, viewing, or other involvement in offending relating to images or videos including child sexual abuse~~*
> *• being directly responsible (such as through management of a service or setting) for exposing patients or service users to harm or neglect, especially where the evidence shows the nurse, midwife or nursing associate putting their own priorities, or those of the organisation they ~~work for,~~ before their professional duty to ensure patient safety and dignity.*

The panel also took account of all the documentary evidence before it and noted that there was limited material of true insight, remorse or remediation. The panel did note that in the Investigative Interview, when Mr Trenery was asked if he thought the messages were appropriate, he answered *"no this should never have happened."* However, this was qualified by Mr Trenery then stating *"it was me being in a vulnerable state of mind at the time. I felt lonely, vulnerable and isolated I needed to communicate with someone as I had no one."* The panel remained concerned by Mr Trenery's lack of insight regarding the effect that his actions had on Patient A and Patient A's inherent vulnerability. Nor was the panel satisfied that Mr Trenery showed insight regarding the effect of his actions on the reputation of the profession as a whole. Mr Trenery sought to justify his conduct by references to the benefit of compassion in nursing. In the panel's view, this fails to demonstrate any real understanding of the purpose of professional boundaries or of the very serious transgression of those boundaries that his sexually motivated behaviour represents.

Further the panel had regard to 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.'*

The panel was satisfied that having regard to the nature of the misconduct in this case, bearing in mind the vulnerability of the patient and the duration of the misconduct, "the need to uphold proper professional standards and public confidence in the profession would be undermined" if a finding of current impairment were not made. It was of the view that a reasonable, informed member of the public would be very concerned if Mr Trenery's

fitness to practise were not found to be impaired or if he were to be permitted to practise as a registered nurse in future without some form of restriction.

For all the above reasons the panel concluded that Mr Trenery's fitness to practise is currently impaired by reason of misconduct on both public protection and public interest grounds.

Sanction

The panel has decided to make a striking-off order. It directs the registrar to strike Mr Trenery off the register. The effect of this order is that the NMC register will show that Mr Trenery has been struck-off the register.

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

Decision and reasons on sanction

Having found Mr Trenery's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The legal assessor referred the panel to the case of *Arunachalam v General Medical Council [2018] EWHC 758.*

The panel took into account the following aggravating features:

- The wholly improper accessing of confidential information from patient records to initiate contact with Patient A;
- Patient A was highly vulnerable in both physical and psychological health;
- Mr Trenery initiated and rapidly escalated the conversation from over-familiarity to a sexually explicit proposition;
- He had been advised by managers on a number of occasions not to buy patients or staff presents or to offer favours to patients and relatives. However, Mr Trenery continued to do so;
- A deliberate and premeditated course of conduct in respect of Patient A;
- A pattern of incidents of crossing professional boundaries over a period of time; and
- Lacks significant insight into the risk of harm to Patient A and has not acknowledged the damage to public confidence in the profession.

The panel took into account the following mitigating features:

- Mr Trenery has expressed some partial remorse;
- Testimonial from colleagues describe Mr Trenery as approachable, welcoming and very kind, in that he goes out of his way to help others; and
- [PRIVATE]

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 would not address the concerns identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Trenery's practice would not be appropriate in the circumstances. The Sanctions Guidance 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 Mr Trenery's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor protect the public, nor be in the public interest.

The panel next considered whether placing conditions of practice on Mr Trenery's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining alone. The panel took into account the Sanctions Guidance, which states that a conditions of practice order may be appropriate where:

- *identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining*
- *patients will not be put in danger either directly or indirectly as a result of the conditions*
- *the conditions will protect patients during the period they are in force*
- *conditions can be created that can be monitored and assessed.*

The panel bore in mind the misconduct is not clinical and is linked to attitudinal and behavioural problems. Furthermore, the panel concluded that the placing of conditions on Mr Trenery's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance states that a 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;*

- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was not satisfied that these factors apply to Mr Trenery except that the panel has no evidence of repetition in the lengthy period since the misconduct. The panel considered that his actions were a significant departure from the standards expected of a registered nurse.

The panel also took account of the NMC guidance for "Considering sanctions for serious cases", specifically the section titled "Cases involving sexual misconduct" It stated:

> *"…The level of risk to patients will be an important factor, but the panel should also consider that generally, sexual misconduct will be likely to seriously undermine public trust in nurses, midwives and nursing associates…*
>
> *"…They will very often find that in cases of this kind, the only proportionate sanction will be to remove the nurse, midwife or nursing associate from the register. …"*

The conduct, as highlighted by the facts found proved, was a very significant departure from the standards expected of a registered nurse. The panel had regard to its reasons at the impairment stage. The panel considered that the misconduct in this case would be very difficult to remediate. The panel noted that in the three years since these events Mr Trenery has done little to address the issues raised or to demonstrate and understanding of the potential harm to which he exposed Patient A. As a result, there would be a risk of Mr Trenery returning to clinical practice and repeating the behaviour.

The panel considered that the very serious breach of the fundamental tenets of the profession evidenced by Mr Trenery's misconduct is fundamentally incompatible with him remaining on the register. In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the Sanctions Guidance:

- *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?*

Mr Trenery's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. It also bore in mind that the aggravating features identified were strong, with much less by way of mitigation. The panel was of the view that the findings in this particular case demonstrate that Mr Trenery's actions were so serious that to allow him to continue practising would not protect the public and would undermine public confidence in the profession.

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 Mr Trenery's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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. 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 Mr Trenery's own interest

until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months in order to protect the public and maintain confidence in the nursing profession.

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

That concludes this determination.