

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

**Substantive Hearing
Monday 24 July 2023 – Monday 31 July 2023**

Virtual Hearing

Name of Registrant: **Mark Armstrong**

NMC PIN 96Y0336E

Part(s) of the register: Registered Nurse – Mental Health – Level 1 (27 September 1999)

Recordable qualifications: V300: Nurse Independent/Supplementary Prescriber (25 June 2015)

Relevant Location: Burton-on-Trent

Type of case: Misconduct

Panel members: Sarah Lowe (Chair, Lay member)
Kim Bezzant (Registrant member)
Alex Forsyth (Lay member)

Legal Assessor: Nigel Ingram – Days 1 to 5
David Marshall – Day 6

Hearings Coordinator: Zahra Khan

Nursing and Midwifery Council: Represented by Maeve Thornton, Case Presenter

Mr Armstrong: Present and represented by Jim Olphert from Mountford Chambers

Facts proved: Charges 1c, 1d, 2b, 3a, 3b(i), 3b(ii) 3c(i), 3c(iv), 4

Facts not proved: Charges 1a, 1b, 1e, 1f, 2a, 3c(ii), 3c(iii), 3(v)

Fitness to practise: Impaired

Sanction:

Conditions of practice order (12 months)

Interim order:

Interim conditions of practice order (18 months)

Decision and reasons on application for hearing to be held in private in relation to Witness 1's evidence

At the outset of the hearing, Ms Thornton, on behalf of the Nursing and Midwifery Council (NMC), made a request for Witness 1's evidence to be held in private on the basis that proper exploration of your case is intrinsically linked to Witness 1's health and personal matters. She submitted that she is not requesting for the case in its entirety to be heard in private, but solely for the health matters of Witness 1 to be, in order to protect her privacy. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Olphert, on behalf of you, indicated that he supported the substance of the application. He submitted that the panel may find it more straight forward for the entirety of Witness 1's evidence to be held in private.

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.

The panel determined to go into private session in connection with Witness 1's evidence as and when such issues are raised in order to protect her privacy.

Details of charge

That you, a registered nurse:

1) On the 17 October 2018 in respect of Patient A: **[PROVED IN PART]**

- a) placed your hand on her leg; **[NOT PROVED]**
- b) hugged her; **[NOT PROVED]**

- c) told her “ I want you to know that you are special and someone cares about you” or words to that effect; **[PROVED]**
- d) placed your hands underneath her coat and touched her bare skin; **[PROVED]**
- e) placed your hands on top of her breasts on top of her bra and patted her breasts; **[NOT PROVED]**
- f) kissed her on the cheek. **[NOT PROVED]**

2) Your conduct at any and/or all of charge 1 above was: **[PROVED IN PART]**

- a) Motivated by the pursuit of sexual gratification; **[NOT PROVED]**
- b) Breached professional boundaries. **[PROVED]**

3) Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A in that you: **[PROVED IN PART]**

- (a) hugged Patient A on one or more occasions; **[PROVED]**
- (b) used inappropriate language on one or more occasions in that you;
 - ii) swore; **[PROVED]**
 - iii) used “fuck off ” or words to that effect. **[PROVED]**
- (c) engaged in inappropriate conversations with Patient A in that you:
 - (i) told her “you were not a touchy feely person and did not really hug, not even your wife” or words to that effect; **[PROVED]**
 - (ii) told her that “on St Patrick’s day you got drunk and had to sleep on the sofa because your wife doesn’t like it” or words to that effect; **[NOT PROVED]**
 - (iii) told her that “you do not have a lot to do with your family” or words to that effect; **[NOT PROVED]**
 - (iv) spoke about your managers and told her you would say to them to “fuck off, no one could tell you what to do” or words to that effect; **[PROVED]**
 - (v) suggested to her that she could leave her boyfriend and you would help her find a house or words to that effect. **[NOT PROVED]**

4) On the 17 October 2018 told Patient A that if she reported your conduct at charge 1 and/or charge 2 and/or charge 3 above “that no one would believe it” or words to that effect. **[PROVED]**

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

Decision and reasons on application for special measures to be put in place in relation to Witness 1

Ms Thornton made a request for your camera to be turned off whilst Witness 1 gave evidence as it would increase Witness 1’s distress if your camera was to be on during her evidence. Ms Thornton submitted that Witness 1 would feel more at ease if you were willing to turn your camera off during Witness 1’s evidence.

Mr Olphert submitted that he is slightly concerned that, given there was a previous listing for this matter, this was not mentioned beforehand.

The legal assessor referred to Rule 23, in particular, Rule 23 (2) and Rule 23 (3) which includes the measures that the panel can adopt as it considers necessary to enable it to receive evidence from a [PRIVATE] witness.

The panel accepted Ms Thornton’s application to put special measures in place in relation to you turning your camera off whilst Witness 1 gives evidence. The panel noted that there is no objection from you.

Background

Your name was first entered onto the NMC’s Register in 1999. You began employment with Midland Partnership Foundation NHS Trust (‘the Trust’) in 2003. In 2018, you were working as a Band 6 Community Mental Health nurse in the Community Intervention

Pathway service. You were based in the [PRIVATE] Clinic ('the Clinic'), which is a community based secondary care service [PRIVATE]

The alleged facts are as follows.

On 17 October 2018, you had a routine appointment with Witness 1 at the Clinic. During the appointment, you put your hand on Witness 1's leg and suggested that she should leave her partner which she did not want to do. You asked her repeatedly to take her coat off and hugged her when she became upset. You told her that she was special, and you put your hands underneath her coat and touched her bare skin. You told her that she was sweating and that she should take some paracetamol and then you moved your hands from her back to her front. You put your hands on her breasts and on top of her bra and patted her breast, telling her she was hot. You made her feel extremely uncomfortable and at one point moved as if to kiss her, but she moved away to avoid this and so you kissed her on her cheek.

Witness 1 was very upset at your behaviour and left the Clinic in a state of shock. You phoned her shortly afterwards and told her not to tell her partner what had happened and not to report the matter because no one would believe her. Witness 1 subsequently reported the matters to her GP who in turn advised the Trust.

You were issued with a formal final written warning at a disciplinary hearing held by the Trust on 23 October 2019.

You remain employed with the Trust but in a non-patient facing role.

Decision and reasons on application for hearing to be held in private in relation to Mr Olphert's questions to Witness 2

Mr Olphert requested for part of the hearing to be held in private as his questions to Witness 2 include matters on your health.

Ms Thornton indicated that she held a neutral position.

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.

The panel determined to go into private session in connection with Mr Olphert's questions to Witness 2 as and when such issues are raised in order to protect your privacy.

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

Mr Olphert submitted that your evidence will touch on your health and those parts should be heard in private. He submitted that there will also be inevitable evidence of your treatment and ongoing care of Witness 1.

Further, Mr Olphert submitted that given the bulk of your evidence which will cover either the treatment of Witness 1 and your involvement with her, or your own health and well-being, these matters should be held in private. He submitted that any preliminary material in relation to your training, for example, can be heard in public.

Mr Olphert therefore requested for part of the hearing to be held in private.

Ms Thornton indicated that she is neutral in respect of 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.

The panel determined to go into private session in connection with your evidence and any reference to Witness 1 as and when such issues are raised in order to protect both parties' privacy.

Decision and reasons on facts

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 Thornton and Mr Olphert.

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

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

- Witness 1: Your patient at the Clinic (Patient A)
- Witness 2: Nurse Practitioner at Midlands Partnership NHS Foundation Trust

The panel also heard evidence from you under oath.

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

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

In reaching its decision, the panel took into account all the evidence it had before it, including:

- Witness 1's written statement dated 14 August 2020;
- Witness 2's written statement dated 7 June 2021;
- Record of a telephone conversation with your employer on 22 October 2018 at 13:00;
- Statement to the police (interview) dated 21 November 2018;
- Investigatory Interview dated 10 April 2019 at 13:30;
- Summary notes of Fact-Finding Interview dated 24th January 2019;
- An email from you to your colleagues with an unspecified date;
- Investigatory Interview dated 7 May 2019 at 10:00;
- The Trust's Professional Boundaries and Relationships at Work Policy dated January 2018;
- The Trust's Chaperone Policy dated March 2016;
- Witness 1's Patient Records dated 2013 onwards;
- Response from you dated 8 January 2019 in the form of an email;
- Your supporting statements dated 10th January 2019;
- Your regulatory Response Form dated 6 May 2019 with supporting letters attached; and
- Your CL bundle consisting of a written statement dated 27 November 2022, character references dated 2021 and 2022, and an email stating that you have passed the Mary Seacole Programme dated 25 August 2022

Charge 1a

"That you, a registered nurse, on the 17 October 2018 in respect of Patient A, placed your hand on her leg"

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1's oral evidence in which she said:

"...He didn't put hand on leg on the 17th it was the other stuff".

The panel noted that when Mr Olphert questioned Witness 1, in cross examination, Witness 1 said that she was:

"...a stretched leg away from you".

This evidence was supported by that in the interview between Witness 1 and the police on 21 November 2018.

The panel also had regard to Witness 1's written statement dated 14 August 2020. The panel noted that Witness 1 stated that you, in relation to 17 October 2018:

'...put his hand on my leg because I was upset [PRIVATE]'.

The panel was of the view that Witness 1 was inconsistent in her documentary and oral evidence. You, however, have remained throughout consistent in your denial. The panel therefore preferred your account.

The panel therefore found charge 1a not proved on the balance of probabilities.

Charge 1b

"That you, a registered nurse, on the 17 October 2018 in respect of Patient A, hugged her"

This charge is found NOT proved.

In reaching a decision on this charge, the panel solely focused on the events of 17 October 2018 and the evidence in support of this charge.

In reaching this decision, the panel took into account the police statement dated 21 November 2018. The panel noted that Witness 1 recorded that:

‘...when I stood up to walk he was in between me and the door – he hugged me – which he had done before...’

The panel noted that you stated, in your oral evidence, that Witness 1 initiated a hug with you on 17 October 2018. This was also consistent with your documentary evidence.

For the charge to be made out, the panel was of the view that as drafted, it required the NMC to have shown that you initiated the hug with Witness 1 on 17 October 2018. However, on the evidence before the panel, it considered that you had not initiated the hug notwithstanding that hugging may well have taken place.

The panel therefore found charge 1b not proved on the balance of probabilities.

Charge 1c)

“That you, a registered nurse, on the 17 October 2018 in respect of Patient A, told her “I want you to know that you are special and someone cares about you” or words to that effect”

This charge is found proved.

In reaching this decision, the panel took into account Witness 1’s written statement dated 14 August 2020. It noted that Witness 1 recorded that she:

'...cried during the session and that's why Mark hugged me. He said he was giving me a hug because 'I want you to know that you are special and someone cares about you.'...'

The panel also had regard to the Investigatory Interview dated 7 May 2019 at 10:00 between Witness 2 as the Case Investigator and you. It noted that when you were asked whether the allegation of you putting your hand on Witness 1's leg and saying '*you are different you are worth something*' is correct, you responded:

'No, but in what context do you mean? If I said that it would be because she is saying she is not worth something and I was giving her reassurance...'

The panel took into account your oral evidence, in which you told it that you would have been reassuring Witness 1 [PRIVATE]. The panel noted that your oral evidence aligned with what was said in the Investigatory Interview, as stated above.

The panel was of the view that it was reasonable for you to say this in order to reassure Witness 1, [PRIVATE], the issues she discussed with you on 17 October 2018, and the level of care needed.

The panel therefore found charge 1c proved on the balance of probabilities.

Charge 1d)

"That you, a registered nurse, on the 17 October 2018 in respect of Patient A, placed your hands underneath her coat and touched her bare skin"

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's written statement dated 14 August 2020. It noted that Witness 1 recorded that:

'Mark's hands were on my back, underneath my coat touching my bare skin. He said that I was sweating and told me that I should take paracetamol...'

The panel also had regard to the Investigatory Interview dated 10 April 2019 at 13:30 between Witness 2 as the Case Investigator, and Witness 1. It noted that when Witness 1 was asked whether you put your hand inside her clothes, she stated:

'Yes he put his hands up the front of my top (demonstrated) and placed one hand on each of my breasts; I hadn't taken my coat off as I wasn't feeling too well. He then moved his hands around to my back'.

Further, it noted that when Witness 1 was asked about the type of coat she was wearing, she said it was a *'heavy parka'*. The panel found Witness 1's evidence about your hands being underneath her coat and touching her bare skin to be more credible than your own account.

The panel noted that, your written and oral evidence indicated that whilst engaged in a hug you had put your arms around her back which felt wet to touch from which you concluded she was sweating. It also had regard to evidence that Witness A was sitting in front of a radiator which was on [PRIVATE] and had a loose top underneath her parka coat which was described as a heavy winter coat. The panel considered in light of this evidence in order for you to have felt Witness 1 to be *'clammy'* or *'wet/damp'*, as you stated in your oral evidence, it would be unlikely for her to sweat to have made its way through her top and the inside lining of a heavy waterproof coat remaining on the outside of that for you to feel. Similarly, the panel noted that in your oral evidence you said that you did not see a stain or red mark on the coat which is inconsistent with the idea of the

coat being wet. Therefore, the panel concluded that you would have had to touch her skin directly in order to feel the moisture. Further, the panel found you to be evasive, and did not accept your explanation of your hands possibly being wet.

The panel therefore found charge 1d proved on the balance of probabilities.

Charge 1e)

“That you, a registered nurse, on the 17 October 2018 in respect of Patient A, placed your hands on top of her breasts on top of her bra and patted her breasts”

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1’s written statement dated 14 August 2020. It noted that Witness 1 recorded that:

‘...He then moved his hands from my back to the front. His hands on my breasts. I just froze. His hands were on top of my bra and he was patting my breast and saying that I was hot...’.

The panel had regard to the record of a telephone conversation between your employer and Witness 1 on 22 October 2018 at 13:00. It noted that, when asked, Witness 1 told your employer that you touched her breast and that you:

“...did not squeeze it, just put his hand there”.

The panel also had regard to the statement to the police dated 21 November 2018. It noted that Witness 1 recorded that you:

'...put hands up to back of my top – didn't know what to do – he put his hands around the front under my top on my breasts...', and that you:

'....pressed breasts a couple of times...'

The panel further had regard to the Investigatory Interview dated 10 April 2019 at 13:30 between Witness 2 as the Case Investigator, and Witness 1. It noted that, when asked if you put your hands inside Witness 1's clothes, she stated:

'Yes he put his hands up the front of my top (demonstrated) and placed one hand on each of my breasts; I hadn't taken my coat off as I wasn't feeling to well. He then moved his hands around to my back'

The panel had regard to Witness 1's patient records, which included the history between Witness 1 and her GP on 17 October 2018. The panel noted that Witness 1 told her GP that you:

'...put his hand under the back of her jumper and then moved it round and touched her breast under her jumper between both breasts...'

The panel was of the view that Witness 1's evidence was inconsistent as she gave several different accounts as to how you touched her breasts. It noted, in Witness 1's oral evidence and in cross examination, that her accounts were either inconsistent or different to those of her documentary evidence. Further, it noted that there were inconsistencies in her documentary evidence in itself.

The panel found that you have remained consistent throughout in your denial. The panel therefore preferred your account.

For the charge to be made out, the panel was of the view, as drafted, it required the NMC to establish, on the balance of probabilities, that you placed your hands on top of Witness 1's bra and patted her breasts.

The panel therefore found charge 1e not proved on the balance of probabilities based on the sufficient inconsistencies in Witness 1's evidence and the inherent improbability of your acting in the way alleged.

Charge 1f)

"That you, a registered nurse, on the 17 October 2018 in respect of Patient A, kissed her on the cheek"

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1's written statement dated 14 August 2020. It noted that Witness 1 recorded that:

'...Mark was very close to me, like in those romantic movies when the main characters are close and they lean into kiss. There was no romantic intent. That thought never entered my head and I felt uncomfortable with how close he was. At one point he moved as if to kiss me so I moved my head and he ended up kissing me on the cheek'.

The panel had regard to the record of a telephone conversation between your employer and Witness 1 on 22 October 2018 at 13:00. It noted that, when asked, Witness 1 told your employer that you kissed her cheek after you had put your hand on her breast.

The panel had regard to the interview with the Trust dated 10 April 2019 where Witness 1 said:

'He kissed me on the cheek or forehead, I can't remember, I froze and didn't say anything'.

The panel noted, from oral evidence of Witness 2, that Witness 1 later corrected that statement to confirm that the kiss was on her cheek.

Further, the panel had regard to the statement to the police dated 21 November 2018. It noted that Witness 1 recorded that:

'...Turned away – he caught my cheek – don't know if he meant to kiss me or whether it was because he was so close...'

While the panel accepted there might have been some accidental physical contact, it did not consider the NMC had demonstrated that there was a deliberate attempt to kiss Witness 1. The panel found that you have remained consistent throughout in your denial. The panel therefore preferred your account.

The panel therefore found charge 1f not proved on the balance of probabilities.

In respect of charge 1, the panel found it proved in part, namely being charge 1c and 1d found proved.

Charge 2a)

"Your conduct at any and/or all of charge 1 above was motivated by the pursuit of sexual gratification"

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1's written statement dated 14 August 2020. It noted that Witness 1, in relation to 17 October 2018, recorded that:

'I remember that day. I went into the clinic and it was quite warm and I kept my coat on because I was feeling cold. Mark moved his chair closer to me and kept saying that I could take my coat off but I told him I was cold and also my coat was like my safety blanket. [PRIVATE] continued as normal but Mark kept mentioning the coat and that I could take it off. He put his hand on my leg because I was upset [PRIVATE]. I assume Mark did this to comfort me', and:

'Mark's hands were on my back, underneath my coat touching my bare skin. He said that I was sweating and told me that I should take paracetamol. He then moved his hands from my back to the front. His hands on my breasts. I just froze. His hands were on top of my bra and he was patting my breast and saying that I was hot. Mark was very close to me, like in those romantic movies when the main characters are close and they lean into kiss. There was no romantic intent. That thought never entered my head and I felt uncomfortable with how close he was. At one point he moved as if to kiss me so I moved my head and he ended up kissing me on the cheek'.

Further, the panel had regard to the statement to the police dated 21 November 2018. It noted that Witness 1 recorded that you were:

'...hugging her to make her feel appreciated...'

The panel also noted that when the police said the word 'sexual', Witness 1 nodded, as if in agreement.

The panel focused on the two matters it found proved in charge 1, namely charge 1c and 1d, and was conscious of the guidance in the case of *Re H* [1996] A.C. 563 and *Burns vs FCA* [2017] EWCA Civ. 214. Particularly, it noted that there was an inherent improbability

of a Health Care Professional of 20 years standing with no previous regulatory complaints to have acted in the way alleged.

The panel therefore found charge 2a not proved on the balance of probabilities based on insufficient evidence that you were motivated by the pursuit of sexual gratification.

Charge 2b)

“Your conduct at any and/or all of charge 1 above was breached professional boundaries”

This charge is found proved.

In reaching this decision, the panel took into account the Trust’s Professional Boundaries and Relationships at Work Policy dated January 2018, in light of its findings on charge 1c and 1d as found proved. In particular, the panel noted paragraphs 5.4, 5.6 and 6.5 of the policy, which states:

***‘5.4 ‘Therapeutic Relationship’** - A therapeutic relationship is a professional relationship between the service user and worker which puts the service user first. The worker has a responsibility for ensuring that objectivity and transparency is achieved at all times. It is important to distinguish between being approachable and having a friendly manner towards a service user, and becoming a friend / more than a friend, which is a personal relationship falling outside the expected and appropriate scope of a working relationship’, and:*

***‘5.6 ‘Power Imbalance’** - An imbalance of power is often a feature in the healthcare professional/service user relationship, although this may not be explicit. Service users are often vulnerable when they require healthcare. They may be in crisis, confused*

about themselves and overtly mentally unwell. Healthcare professionals are in a position of power because they have access to resources and knowledge about the service user not available to them in their ordinary roles as citizens. They may have access to and control of resources that the service user needs. A power imbalance may also arise because:

- in order to be diagnosed or treated a service user will have shared personal information*
- a worker in the discharge of his or her duties may perform physical interventions and examine a service user which can introduce a level of intimacy and/or physical contact during the diagnostic and therapeutic process*
- a worker will know what constitutes appropriate professional practice whereas service users are in an unfamiliar situation and may not know what is appropriate.*

It is the responsibility of workers to be aware of the potential for an imbalance of power and to maintain professional boundaries to protect themselves and service users. This involves being authentic and empathetic whilst neither giving personal information inappropriately nor behaving in a way which encourages belief in a special, exclusive or pseudo-personal relationship', and:

'6.5 There may be situations where the 'appearance' of a possible relationship between a worker and a service user is open to being misconstrued. Workers finding themselves in a difficult situation, which may be open to being misconstrued, must report the matter to their Line Manager as soon as they become aware of this. Line Managers will ensure that this information is recorded and guidance given to the worker as appropriate. Workers can also seek advice from their line manager, professional lead or professional body on how to manage approaches by service users who are trying to initiate relationships which would breach professional boundaries'.

The panel noted that, whilst the Trust's guidance helps, it cannot place total weight upon the panel's findings as the wording of the charge specifies general professional boundaries.

The panel also had regard to the NMC's Code, namely 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code)'. It noted paragraph 4.2 in relation to '*Act in the best interests of people at all times*', and it stated that, to achieve this, one must:

'4.2 make sure that you get properly informed consent and document it before carrying out any action'.

In relation to charge 1c, the panel was of the view that it was appropriate that you were offering Witness 1 reassurance or comfort, and that it was not uncommon to reassure a patient in a therapeutic context, especially given Witness 1's concerns about her relationship with her partner.

The panel therefore did not find you to have breached professional boundaries in respect of charge 1c.

However, in relation to charge 1d, the panel was of the view that Witness 1 had come for a [PRIVATE] service [PRIVATE] and that you would have been aware of your position in relation to her. Further, the panel noted that you would have regard to your own experience, the Trust's policy and the NMC's Code, and so you should have known it was not appropriate professional conduct to touch your patient's skin without consent.

The panel was satisfied that your touching Witness1's forehead was to check her temperature and so any other contact with her skin was not for that reason. It noted that, in your oral evidence, you were aware of the meaning of consent, and that it should be

obtained before carrying out any action. Your oral evidence was that consent was sought to touch Witness 1's forehead but no other consent was obtained.

Therefore, the panel found you to have breached professional boundaries in respect of charge 1d.

In respect of charge 2, the panel found it proved in part, namely being charge 2b.

Charge 3a)

"Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A in that you hugged Patient A on one or more occasions"

This charge is found proved.

In light of the panel's earlier decision, in respect of charge 1b set out earlier, the panel excluded from its deliberations the fact that it has determined that you were not the initiator of the hug on 17 October 2018. However, it did consider that hug in the overall context of the events of 17 October 2018 and as to whether it formed part of a course of conduct amounting to a breach of professional boundaries.

In reaching this decision, the panel took into account Witness 1's written statement dated 14 August 2020. It noted that Witness 1 recorded that:

'I cried [PRIVATE] and that's why Mark hugged me. He said he was giving me a hug because 'I want you to know that you are special and someone cares about you.'....'

The panel had regard to the record of a telephone conversation between your employer and Witness 1 on 22 October 2018 at 13:00. It noted that, when asked, Witness 1 told your employer that:

“...towards the end of the appointment that CMHN Mark Armstrong had hugged her and that he has done this a few times before, she said that he has said that he is not a person who hugs but said that she looked like she needed a hug”.

The panel also had regard to the statement to the police dated 21 November 2018. It noted that Witness 1 recorded that you have:

‘... always said that he is not that kind of a hugging person...hugging to make her feel appreciated – need a hug....’

The panel had regard to the Investigatory Interview dated 7 May 2019 at 10:00 between Witness 2 as the Case Investigator and you. It noted that when you were asked whether it was correct that Witness 1 had hugged you on three or four occasions, you agreed that she had done so prior to the incident. Further, when Witness 2 asked you whether you had discussed this in supervision, you responded:

‘I saw it as an innocuous thing it’s not the first time I have been hugged by a service user, I’ve lost count, I didn’t think it was worth bringing up at supervision’.

The panel also noted that you saw the hug as *‘innocuous’* and *‘assumed it was a way of saying good-bye’*. You agreed that the hugging would have been outside of the therapeutic boundary had you been the one to hug Witness 1 and not the other way round.

The panel further had regard to Witness 1’s patient records, which included the history between Witness 1 and her GP on 17 October 2018. The panel noted that Witness 1 told her GP that you:

‘...asked her if she wanted a hug – she replied no but he hugged her twice....’.

The panel had regard to your written witness statement dated 27 November 2022. It noted that you stated, in relation to Witness 1, that:

‘...When she did hug me I would have told her that I do not like and it is not deemed appropriate’.

The panel took into account your oral evidence in which you stated that you told Witness 1 that the hugging was inappropriate, but you felt that you could not stop her. The panel found you to have passively participated in hugging Witness 1 even though you did not initiate it. Given the policy, the panel was of the view that you should have at least raised this [PRIVATE] in order to manage this appropriately as to allow it to continue breach of professional boundaries. Thus, the panel was of the view that you failed to manage this appropriately with a [PRIVATE] patient.

The panel found your oral evidence contradicted your documentary evidence.

The panel therefore found charge 3a proved on the balance of probabilities.

Charge 3b)

“Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A used inappropriate language on one or more occasions in that you;

- i) swore;
- ii) used “fuck off ” or words to that effect.”

This charge is found proved.

The panel considered both charge b(i) and charge b(ii) together, due to them being intrinsically linked to one another.

In reaching this decision, the panel took into account Witness 1's written statement dated 14 August 2020. It noted that Witness 1 recorded that:

'Mark also told me about his managers and how they would tell him to do something and he would say 'fuck off, no one could tell him what to do as he's been doing this work for a long time'. His approach was weird to start with, blunt and he would swear constantly. He would also talk about the bosses, and he would tell them to eff off, he been like that a few times', and

'I walked out thinking what the fuck just happened. There were three women standing outside the gates, all smiling and laughing and giggling. They didn't know what was going on. I walked to the car and I couldn't believe what happened'.

The panel also had regard to an email, with an unspecified date, from you to your colleagues. It noted that you wrote:

'What you are about to read is for your eyes only and I would appreciate it if you do not discuss outside of the names in the list please and especially NOT with those fucking arseholes called managers'.

Further, the panel had regard to the Investigatory Interview dated 7 May 2019 at 10:00 between Witness 2 as the Case Investigator and you. It noted that you said, in relation to the contents of the email as stated above, you were:

'...just lashing out, I don't have any disregard for any manager, I was just lashing out'.

The panel noted that you said, in response to whether you feel that the comments you made supported the Trust's values:

'In hindsight no but in hindsight is a great thing, I wouldn't have a go at the managers or the police. I shouldn't have said what I'd said'.

The panel also noted that, when asked whether you *'use this sort of language when you are with service users'*, you responded

'No, I'm jovial I do swear in front of my colleagues but they know that'.

The panel also took into account your oral evidence, in which you referred to some of your swearing being said as *'banter'*.

The panel took into account the case of *Dutta v GMC* [2020] EWHC 1974 (Admin). It was of the view that, in respect of any conflict regarding swearing, this was a clear documentary example of you *'swearing'*.

The panel considered your oral evidence that you did not swear when with patients, but given your propensity to swear regularly at work with colleagues, it made it more likely in the panel's view that you breached professional boundaries with Witness 1 by using inappropriate language.

The panel therefore found charge 3b(i) and charge 3(bii) proved on the balance of probabilities.

Charge 3c) (i)

"Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A in that you engaged in inappropriate conversations with Patient A in that you told her "you were not a touchy feely person and did not really hug, not even your wife" or words to that effect"

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's written statement dated 14 August 2020. It noted that Witness 1 recorded that:

'...He was very direct and blunt about things. Mark had also made it clear that he was not a touchy feely person and doesn't really hug, not even his wife. Prior to this incident he had never tried to hug me or comfort me in that way'.

The panel had regard to the record of a telephone conversation between your employer and Witness 1 on 22 October 2018 at 13:00. It noted that, when asked, Witness 1 told your employer that:

'towards the end of the appointment that CMHN Mark Armstrong had hugged her and that he has done this a few times before, she said that he has said that he is not a person who hugs but said that she looked like she needed a hug'.

The panel also had regard to the Investigatory Interview dated 10 April 2019 at 13:30 between Witness 2 as the Case Investigator and Witness 1. It noted that when Witness 1 was asked whether you hugged her prior to the incident on 17 October 2018, she said that:

'...MA told me he was not a huggy person...'

The panel had regard to the Investigatory Interview dated 21 February 2019, when you said:

'No, I have said to her I'm not a huggy person I've said this to a few people'.

The panel noted that this contradicted your oral evidence.

The panel therefore preferred Witness 1's evidence. It was of the view that it was very specific, in that she knew you were not a 'touchy' person, and that she would not have been able to know this unless you told her. It was also of the view that it would have been difficult to determine that you are not a 'touchy' person by your demeanour, and so it is more likely than not to have come up in a conversation.

The panel found you to have breached professional boundaries as it was inappropriate of you to tell a service user about your personal approach to hugging which includes personal information on your relationship with your wife.

The panel therefore found charge 3c(i) proved on the balance of probabilities.

Charge 3c) (ii)

"Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A in that you engaged in inappropriate conversations with Patient A told her that "on St Patrick's day you got drunk and had to sleep on the sofa because your wife doesn't like it" or words to that effect"

This charge is found NOT proved.

In reaching this decision, the panel took into account the Investigatory Interview dated 10 April 2019 at 13:30 between Witness 2 as the Case Investigator and Witness 1. It noted that Witness 1 said, in relation to herself, that:

'My partner pays for everything. On St Patrick's Day, he slept on the settee as he was drunk'

The panel took into account your oral evidence [PRIVATE]. It was of the view that this charge that arose from a confusion with a situation with Witness 1's husband rather than you.

Consequently, the panel found there to be insufficient evidence in that you breached professional boundaries. It found it to be more likely than not that this was a reference to the activity of Witness 1's husband.

The panel therefore found charge 3c(ii) not proved on the balance of probabilities.

Charge 3c) (iii)

"Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A in that you engaged in inappropriate conversations with Patient A told her that "you do not have a lot to do with your family" or words to that effect"

This charge is found NOT proved.

In reaching this decision, the panel took into account the Investigatory Interview dated 10 April 2019 at 13:30 between Witness 2 as the Case Investigator and Witness 1. It noted that Witness 1 said, in relation to herself and her partner, that:

'...We don't have a lot to do with his family'.

The panel noted your oral evidence in that you gave a thorough account of your family history [PRIVATE]. It was of the view that this charge referenced Witness 1's family and not yours.

Thus, the panel preferred your evidence and your interpretation in that you do have relationships with your family.

The panel found there to be insufficient evidence in that you breached professional boundaries. It found it to be more likely than not that this was a reference to the activity of Witness 1's partner's family.

The panel therefore found charge 3c(iii) not proved on the balance of probabilities.

Charge 3c) (iv)

“Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A in that you engaged in inappropriate conversations with Patient A spoke about your managers and told her you would say to them to “fuck off, no one could tell you what to do” or words to that effect”

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's written statement dated 14 August 2020. It noted that Witness 1 recorded that:

‘Mark also told me about his managers and how they would tell him something and he would say ‘fuck off, no one could tell him what to do as he’s been doing this work for a long time’. His approach was weird to start with, blunt and he would swear constantly. He would also talk about the bosses, and he would tell them to eff off, he been like that a few times’.

As in charge 3b(i) and 3b(ii), the panel also had regard to an email, with an unspecified date, from you to your colleagues. It noted that you wrote:

'What you are about to read is for your eyes only and I would appreciate it if you do not discuss outside of the names in the list please and especially NOT with those fucking arseholes called managers'.

The panel had regard to the Investigatory Interview dated 10 April 2019 at 13:30 between Witness 2 as the Case Investigator and Witness 1. It noted that Witness 1 said, in relation to you, that:

'...he said he told managers to fuck off. I don't take any shit from them; they can't tell me what to do, I'm not going to be pushed around'.

The panel noted that, when you were questioned by Witness 2 in your Investigatory Interview dated 7 May 2019 at 10:00 as to whether you told the above to Witness 1, you said:

'What a load of cobblers, I wouldn't say that. I am not derogatory about my colleagues and I wouldn't talk to about my managers like that'

However, for the same reasons as the panel's findings in charge 3b(i) and 3b(ii), it found you to have breached professional boundaries as it had documentary evidence of you speaking about your managers inappropriately before it.

The panel also took into account the case of *Dutta v GMC* [2020] EWHC 1974 (Admin) which emphasised the importance of prioritising documentary evidence.

The panel was satisfied that it was more likely than not for you to have breached professional boundaries with Witness 1 by engaging in appropriate conversations.

The panel therefore found charge 3c(iv) proved on the balance of probabilities.

Charge 3c) (v)

“Between 1 January 2018 and 17 October 2018 breached professional boundaries with Patient A in that you engaged in inappropriate conversations with suggested to her that she could leave her boyfriend and you would help her find a house or words to that effect.”

This charge is found NOT proved.

In reaching this decision, the panel took into account Witness 1’s written statement dated 14 August 2020. It noted that Witness 1, in relation to 17 October 2018, recorded that:

‘The reason I was upset [PRIVATE] Mark made it clear that he didn’t like him and that I could leave and he would help me find housing. [PRIVATE]

The panel had regard to Witness 1’s Patient Records dated 24 February 2016 in which it was noted:

*‘CPN thinks she shouldn’t be with ***** as he isn’t helpful... [PRIVATE]*

The panel took into account your oral evidence in that you said it was not within your remit to help with Witness 1’s housing.

The panel accepted that there was a conversation between you and Witness 1, about Witness 1’s partner during a therapeutic session and so it was in the view of the panel that it was not inappropriate for you to engage in that conversation.

Further, the panel was not satisfied that it was not your suggestion that Witness 1 should leave her partner, nor that you said you would help her find a house. Although it may have been discussed during a therapeutic session. Therefore, it found you to not have breached professional boundaries in respect of this charge.

The panel therefore found charge 3c(v) not proved on the balance of probabilities.

In respect of charge 3, the panel found it proved in part, namely being charge 3a, 3b(i), 3b(ii) 3c(i), 3c(iv)

Charge 4)

On the 17 October 2018 told Patient A that if she reported your conduct at charge 1 and/or charge 2 and/or charge 3 above “that no one would believe it” or words to that effect.

This charge is found proved.

In reaching this decision, the panel took into account Witness 1’s written statement dated 14 August 2020. It noted that Witness 1, in relation to 17 October 2018, recorded that:

‘I didn’t tell anybody until I got home and I rang [PRIVATE]. I was still in shock, thinking ‘what the hell just happened’. Mark rang me after I spoke to her. He rang me to confirm the next appointment but we had already discussed that when I was at the clinic. He then said that I shouldn’t tell...what just happened as he would go mad, and that he wouldn’t believe me and if I reported it, ‘they know I’m not like that and no one would believe it’. I took it as a threat. Honest to god I’m not making this up. [PRIVATE] I later downloaded the voice recorder, but I wish I had it before. He always seemed old enough to be my dad. I never thought of him in that way’.

The panel had regard to the record of a telephone conversation between your employer and Witness 1 on 22 October 2018 at 13:00. It noted that, when asked, Witness 1 told your employer that:

‘...said that about an hour after the appointment he rang her and was talking about her writing down some goals. said that she felt confused by this as he has spoken about her discharge from the team. She said that he then went on to say to not tell her partner about what happened in the appointment as “he (partner) might kick off

and that these lot here [PRIVATE] won't believe her as they 'know he's not like that'. She feels this was somehow a threat'.

Further, the panel had regard to the statement to the police dated 21 November 2018. It noted that Witness 1 recorded that you:

'...phoned my mobile – said that he had forgot to tell me in the session to make a list of goals – that did not make sense to me because he was going to discharge me...'

The panel also had regard to the Investigatory Interview dated 10 April 2019 at 13:30 between Witness 2 as the Case Investigator and Witness 1. It noted that Witness 1 said, in response to what happened after the phone conversation ended, that:

'I thought what an idiot, [PRIVATE] but I only acknowledged the hugging'.

The panel took into account the summary notes of the Fact-Finding Interview dated 24th January 2019. It noted the following:

'Did you have any further contact with following this appointment either prior to the allegation being made, or since?... I did not ask this question as Mark volunteered the answer by saying he rang her later that day, as he had said he would, to check that she was ok as he was concerned about her [PRIVATE] appearing sweaty and clammy at their apt', and:

'He stated when he rang she said 'sorry' and he said what for? He said in order to bring a bit of humour to the conversation he tried to make her laugh by saying 'ironically if you told anyone you hugged me they wouldn't believe you'.

The panel had regard to your Investigatory Interview dated 21 February 2019 at 10:00 between Witness 2 as Case Investigator, and yourself. It noted that you said:

'When she left I was concerned [PRIVATE] she was clammy. I said I would ring to make sure she got home; I was on my way to another appointment. When I called she said she was sorry, and I said what you sorry are for, you have nothing to be sorry for. She didn't know what she was sorry for, I tried to make her laugh. I thought about this and I still don't know why she said she was sorry', and

'I asked her to bring with her aims and goals for her discharge. I didn't say anything about her partner, I wouldn't say that', and

'I wasn't on the phone that long it was just a quick call to see if she was home safe'.

The panel found you to have confirmed that you were on the phone with Witness 1 after your appointment on 17 October 2018 and that you said that *'no one would believe it'* or words to that effect.

The panel noted that you told Witness 1 the following, which you were in agreement with:

'...if you told anyone you hugged me they wouldn't believe you...'

Therefore, in respect of charge 4, the panel found it proved on the balance of probabilities.

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

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

Ms Thornton 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 Thornton identified the specific, relevant standards where your actions amounted to misconduct. She submitted that your actions fall significantly short of the standards expected of a registered mental health nurse in terms of your provision of therapy to Witness 1, in the context of a therapeutic relationship at the time, and that these actions amount to breaches of the Code.

Ms Thornton referred to paragraphs 20, 20.3, 20.5, 20.6 of the Code.

Ms Thornton submitted that, specifically in relation to Witness 1, your actions have fallen short of the standards expected for your behaviour with a [PRIVATE] patient [PRIVATE].

Ms Thornton submitted that the behaviour in question involves a serious departure from standards and puts Witness 1 at risk because of your overfamiliar behaviour which may have led to a misunderstanding of your relationship.

Ms Thornton submitted that Witness 1 was put at risk from your actions on 17 October 2018 [PRIVATE].

Ms Thornton therefore submitted that the facts as found proved amount to a serious departure from expected standards of conduct and behaviour and therefore amount to serious professional misconduct.

Mr Olphert referred the panel to the relevant documents, including your bundle and positive testimonials. He said that you accept that you breached professional boundaries at the time of the incident. Further, he referred to the fact that the panel did not conclude that any of the conduct found proved was for sexual gratification, nor that any of the physical contact at the initial stage was initiated by you.

Mr Olphert said that you accepted there may have been some errors of judgement on your part in those areas in which you breached professional boundaries, particularly in relation to charge 1d. He submitted, in relation to charge 4 and the phone call, that as the phone call was not made as a threat, it did not amount to a serious aggravating factor.

Mr Olphert submitted, in considering the allegations and the facts found proved, the panel should take account of the need to reflect the word '*serious*' and whether the conduct would be found deplorable by other practitioners. He said that you acknowledge that the use of swearing was inappropriate and unprofessional. However, he submitted that it was within the context of mental health nursing, where patients themselves can become overfamiliar and so clinicians need to make judgement calls.

Mr Olphert submitted that the panel should consider the facts found proved in turn. He submitted that none of the charges found proved are so serious within the context of the panel's findings that the threshold for misconduct is met.

Mr Olphert submitted that, if the panel are not with him on this conduct, it will go on to consider whether your fitness to practise is impaired. He submitted that you are safe to practise as a nurse and do not pose a risk. Further, he submitted that to assess whether you are currently fit to practise, the panel must consider your practise as a nurse in present time.

Mr Olphert therefore submitted that the facts found proved do not amount to serious misconduct. He submitted that it is by your own admission that the conduct found proven fell below the conduct expected of him but that it is not as serious as the high bar for misconduct is made out.

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

Submissions on impairment

Ms Thornton 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 Thornton submitted that your fitness to practise is currently impaired due to several factors, on both public protection and public interest grounds. She submitted that there is a risk of repetition and patient harm.

Ms Thornton submitted that you have underlying attitudinal problems which is a concern because, during the course of the therapeutic relationship, which consisted of a prolonged period of treatment, even Witness 1 noticed that there was a change in your attitude. Ms Thornton submitted that this eventually led to a combination of the substantive events that culminated with physical contact on 17 October 2018. She submitted that these attitudinal problems are more difficult to address.

Ms Thornton submitted that there are a number of aggravating features, [PRIVATE] and the call you made on 17 October 2018 when you told her *'no one would believe her'*. Ms Thornton submitted that this is particularly aggravating and that you lack insight, and so your actions further perpetuated Witness 1's [PRIVATE] struggle. Further, she submitted that you have been in a non-patient facing role and so it is questionable whether the issues have been addressed and the risk of repetition reduced.

Ms Thornton submitted that your actions significantly impacted upon Witness 1's dignity as a person, but in addition to that, compromised her faith in the profession. She submitted that your actions brought the profession into disrepute and would deter the wider patients from approaching practitioners for help. Ms Thornton informed the panel that, in relation to mitigating features, you have not had any previous concerns against you in your nursing profession.

Mr Olphert submitted that your fitness to practise is not impaired on either public protection or public interest grounds, for the same reasons as set above in relation to his submissions on misconduct.

Mr Olphert referred to the cases of *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr Olphert referred the panel to your positive testimonials and that you spoke about your passion for the role in your oral evidence. He submitted that some notable features are

that the panel's findings of facts covers conduct which goes back to 2018 and that there has been no repetition of conduct ever since.

Mr Olphert submitted that you have an unblemished career, and that you have served your entire written warning and have been nominated for an award, namely LOVE Unites. He submitted that the panel can be satisfied that you can practise kindly, safely and professionally.

In relation to public interest. Mr Olphert submitted that the panel can consider whether, knowing all of the facts of the case, would an ordinary member of the public be shocked if a finding of impairment is not found in this case. He submitted that a member of the public would not be concerned, taking account your testimonials and evidence before the panel.

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 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

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 breaches of the Code. It specifically took account of the following sections of the Code:

'4 Act in the best interests of people at all times

To achieve this, you must:

4.2 *make sure that you get properly informed consent and document it before carrying out any action’,*

‘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’.*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered each of the charges found proved in turn, in order to determine whether your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

In respect of charge 1c, the panel was of the view that, by you telling Witness 1 that “*I want you to know that you are special and someone cares about you*” or words to that effect this was not a personal comment made by you to Witness 1. It considered that you made the comment to Witness 1 to instead console her given the context of the discussions during the therapeutic session, and in that respect, it found that charge 1c does not amount to misconduct.

In respect of charge 1d, the panel was of the view that you should have obtained Witness 1's consent to touch her skin, and in that respect it found that this charge does amount to misconduct. The panel noted that this is a fundamental principle of professional standards which you were aware of, amounting to a breach of trust on your part, [PRIVATE]. It made specific reference to paragraphs 4.2, 20.1, 20.3, 20.5, and 20.6 of the Code.

In respect of charge 2b, the panel was of the view that you breached professional boundaries in relation to charge 1d. For the same reasons as set out above, the panel found that this charge does amount to misconduct.

In respect of charge 3a, the panel was of the view that by you participating in hugging Witness 1 over a long period of time, you knew that you were breaching boundaries and did not disassociate yourself from it. For this reason, the panel found that this charge does amount to misconduct. It was of the view that you could have sought supervision in order to help you manage this but instead you allowed it to continue. Further, it noted that you should have brought it up in one of your regular supervision sessions as is required in the Trust policy in place on professional boundaries that you are aware of.

In respect of charges 3b(i), 3b(ii), 3c(i) and 3c(iv), the panel took particular note of paragraphs 20, 20.1, 20.3, 20.5, 20.6 of Code.

The panel was of the view that you took an unprofessional approach and encouraged Witness 1 into an overfamiliarity that was not helpful to her in the end. It considered this was particularly serious given your long experience as a senior mental health nurse. It was also of the view that you were disrespectful to your colleagues during sessions. It considered that you should not be sharing such comments or information with a [PRIVATE] patient as it is inappropriate and undermines the confidence in the profession. It took into account that this would have been unsettling for a patient, and that you abused your position of power within the therapeutic relationship as Witness 1 is obliged to listen to your opinions in a way you like to talk; she would have found that difficult to challenge given the power balance of the relationship.

Further, the panel was of the view that the inappropriate conversations were not isolated incidents and that you breached professional boundaries on several occasions. It noted that there was a pattern of inappropriate conversations and that someone of your experience should have known better.

For these reasons, the panel found that in respect of charges 3b(i), 3b(ii), 3c(i) and 3c(iv), your actions do amount to misconduct as they are sufficiently serious to reach the threshold of misconduct.

In respect of charge 4, the panel took into account the case of *Calhaem v GMC* [2007] EWHC 2606 (Admin).

The panel considered that the nature of your call to Witness 1 was to follow up upon the session, and not necessarily in relation to check her health but to recap the events that took place. It was of the view that this may have included you testing the waters as to what steps Witness 1 may take following your conduct during the therapy session, which it found to be inadvisable and unhelpful of you. However, the panel was of the view that although you were not necessarily helpful towards Witness 1 and that what you said was plainly unsatisfactory, it may have been as a result of your anxiety about what took place in the preceding therapy session rather than being intended as a threat, and so charge 4 did not amount 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 in relation to charges 1d, 2b, 3a, 3b(i), 3b(ii), 3c(i) and 3c(iv).

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

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

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

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

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

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

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession.

The panel finds that a patient was put at risk and was caused emotional harm as a result of your misconduct. Your misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel was of the view that you have not demonstrated full insight on the impact that your misconduct, particularly on the breaching of professional boundaries, could have had on Witness 1 or patients as a whole.

Further, the panel was not confident that you would not use inappropriate language again, when in a professional setting. It also noted that you do not wish to work in a patient facing role. It took into account your positive testimonials, albeit noted that they were solely in relation to your non-patient facing role. Therefore, the panel was of the view that you pose a potential risk, in relation to patient harm and breaches of professional boundaries, in the future, should you return to a patient facing role, as it has had no evidence before it that addresses the risk.

The panel considered that you have a lack of insight. It was of the view that your reflection focuses on the impact of misconduct on both your colleagues and yourself more than it does in respect of Witness 1 or patients as a whole. Although the NMC submitted there were identifiable attitudinal issues, the panel took account that you accepted its findings. Therefore, it was of view that whilst your behaviour fell short of expectations, any underlying attitudinal concerns should be remediable with improved insight.

While the panel accepted there were no sexual elements on the matters found proved, it remained to be satisfied on the evidence before it, that you had adequate insight on professional boundaries and consent. The panel was of the view that there was a residual risk to the public, patients, profession, and the regulator.

The panel was satisfied that the misconduct in this case is capable of being addressed, namely by producing a detailed reflection. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account that you have undertaken continuing professional development but there was no evidence to show that this included learning directed to the issues in this case, namely professional boundaries and consent.

The panel is of the view that based on your inadequate reflection, there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; 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 also finds your fitness to practise impaired on the grounds of public interest.

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 conditions of practice order for a period of 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

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 Thornton informed the panel that in the Notice of Hearing, dated 22 June 2023, 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. During the course of the hearing, the NMC revised its proposal and submits that a suspension order is more appropriate in light of the panel's findings and based on the seriousness of the facts found proved.

The panel also bore in mind Mr Olphert's submissions that a conditions of practice order is appropriate. He submitted that you are booked on to complete a Professional Boundaries and Consent course and that you recognise the mistakes you have made and wish to remedy the conduct such so your fitness to practise will no longer be regarded as impaired. He emphasised your positive absence of any previous misconduct and your good character.

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:

- Breach of a position of trust

- Conduct which put a [PRIVATE] patient at risk of psychological harm
- Breach of professional boundaries
- Inadequate insight into failings

The panel also took into account the following mitigating features:

- You accepted that you breached professional boundaries
- Desire to reflect on behaviour
- Previous good character
- Physical and mental health conditions
- Your willingness to undertake continuing professional development

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection 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 mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

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

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice.

The panel had regard to the fact that these incidents happened a long time ago and that, other than these incidents, you have had an unblemished career of 20 years as a nurse. Therefore, the panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

In making this decision, the panel carefully considered the submissions of Ms Thornton in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a suspension order would not be an appropriate or proportionate sanction

in this case. It was of the view that your actions were remediable and that it was safe for you to remain in practice in a specified capacity whilst you strengthened your practice.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because you have expressed a willingness to remedy your misconduct and you do not display any deep-seated attitudinal concerns.

The panel determined that the following conditions are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.

2. You must keep the NMC informed about anywhere you are studying by:
 - a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.

3. You must immediately give a copy of these conditions to:
 - a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.

- c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
4. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
5. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Your line manager or supervisor
 - b) Any current or future employer.
 - c) Any educational establishment.
 - d) Any other person(s) involved in your retraining and/or supervision required by these conditions
6. You will send the NMC a report addressing observation of your continuing professional development related to professional boundaries and patient consent and application of that in your practice seven days in advance of the next NMC hearing or meeting from either:
- Your line manager or
 - Your mentor or supervisor.

7. You must not carry out any work which requires you to provide clinical care to individual patients in-person. You are entitled to practice by telephone call or video link.

8. You must work with your line manager, mentor, or supervisor to create a personal development plan (PDP). Your PDP must address the concerns about your understanding of professional boundaries, appropriate professional behaviour and the importance of patient consent. You must:
 - a) Send your case officer a copy of your PDP seven days before any review hearing or review meeting.
 - b) Meet with your line manager, mentor, or supervisor at least every month for clinical supervision which will include discussion of your progress towards achieving the aims set out in your PDP.
 - c) You must ensure that your PDP includes detailed reflections on your learning in relation to your practice.

The period of this order is for 12 months to allow you time to complete your training and embed it into your practice along with developing greater insight into the issues of concern.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at the review hearing
- Evidence of continued professional development undertaken
- Reflection taking account of the factors raised

- Further and updated testimonials

This will be confirmed to you in writing.

Interim order

As the conditions of practice 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 interests until the conditions of practice 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 Thornton. She submitted that an interim conditions of practice order should be imposed for a period of 18 months to cover the 28-day appeal period and the subsequent period should an appeal be lodged. She submitted that this is necessary for the same reasons as given by the panel regarding the substantive order.

The panel also took into account the submissions of Mr Olphert. He submitted that you understood the need for an interim order and that you had no objection to the panel making one.

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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order.

Should you decide to lodge an appeal, given the uncertainty in relation to how long any appeal may take to conclude, the panel decided that this interim conditions of practice order shall be for a period of 18 months.

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

That concludes this determination.