

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

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

Virtual Hearing

**Name of Registrant:** Heather Louise Darley

**NMC PIN** 16K0087E

**Part(s) of the register:** Registered Nurse – Mental Health Nursing  
(October 2016)

**Type of case:** Misconduct

**Panel members:** Clara Cheetham (Chair, lay member)  
Allwin Mercer (Registrant member)  
Nicola Hartley (Lay member)

**Legal Assessor:** Andrew Lewis (24 – 28 July 2023)  
Peter Jennings (31 July 2023)

**Hearings Coordinator:** Alice Byron

**Nursing and Midwifery Council:** Represented by Leila Taleb, Case Presenter

**Ms Darley:** Present and represented by Thomas Buxton,  
instructed by the Royal College of Nursing (RCN)

**Facts proved by admission:** All

**Facts not proved:** None

**Fitness to practise:** Impaired (Public Interest Only)

**Sanction:** Suspension Order (6 months without review)

**Interim order:** **Interim Suspension Order (18 months)**

## Details of charges (as amended)

That you, a registered mental health nurse, whilst working at HMP [PRIVATE]:

- 1) Between 20 April 2020 and 30 April 2020 breached professional boundaries on one or more occasions as set out in Schedule 1 in that you engaged in flirtatious and/or inappropriate conversations with Patient A;
- 2) Between 20 April 2020 and 5 May 2020 on one or more occasions as set out in Schedule 2 communicated with Patient B using offensive language.
- 3) Between 6 April 2020 and 5 May 2020 failed to report a breach of professional boundaries with Patient A by another member of staff namely Colleague A.
- 4) On 23 April 2020;
  - a) Failed to follow prison guidelines by knowingly authorising the supply of an unauthorised and/or non-prescribed cream to Patient A.
  - b) Instructed Patient A to deliberately misinform prison staff as to the type of cream supplied.
- 5) Your actions at charge 4 were dishonest or lacked integrity in that you instructed Patient A to tell prison staff the cream supplied was E45 when you knew the cream was coco butter.
- 6) On one or more occasion between 20 April 2020 and 30 April 2020 you failed to record telephone communication with Patient A as set out in Schedule 3.
- 7) Breached confidentiality in that you;
  - a) On 22 April 2020 discussed with Patient A that you were providing treatment to Patient B.
  - b) On 22 April 2020 you identified another prisoner was receiving treatment when you advised Patient A of which prisoner's cell you had been in.
  - c) On 28 April 2020 you discussed with Patient B that Patient A would be seen by Colleague A and/or discussed the reason Patient A might be tired.

- 8) on or around 29 April 2020 failed to record and/or report that you suspected Patient A to be under the influence of illicit alcohol and/or illicit substances.
- 9) Used threatening language towards Patient A in that you;
  - a) On 29 April 2020 stated “I’ll wring your neck” or words to that effect.
  - b) On 30 April 2020 said “ I’ll come down to your cell and throttle you” or words to that effect.
- 10) On 29 April 2020 failed to report threats made by Patient A towards an unknown prisoner officer.
- 11) On 30 April 2020;
  - a) Breached confidentiality by telling Patient A that Patient C “was now on my case load” or words to that effect;
  - b) Failed to report threats made by Patient A towards Patient C and Patient C’s family.

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

#### Schedule 1

20 April 2020

21 April 2020

22 April 2020

23 April 2020

29 April 2020

30 April 2020

#### Schedule 2.

20 April 2020

21 April 2020

22 April 2020

29 April 2020

### Schedule 3

20 April 2020

21 April 2020

22 April 2020

23 April 2020

29 April 2020

30 April 2020

### **Decision and reasons on application to amend the charge**

The panel invited Ms Taleb, on behalf of the Nursing and Midwifery Council (NMC) and Mr Buxton, on your behalf, to make submissions as to whether the panel should amend the wording of charge 9a).

The proposed amendment was to correct a typographical error in the charge.

“That you, a registered nurse, whilst working at HMP [PRIVATE]:

[...]

9) Used threatening language towards Patient A in that you;

a) On 29 April 2020 stated “I’ll wring your neck” or words to that effect.

[...]

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

Ms Taleb and Mr Buxton agreed with this proposed amendment.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

The panel was of the view that such an amendment was in the interests of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment. It was therefore appropriate to allow the amendment to ensure clarity and accuracy in the charges.

### **Decision and reasons on application for part of the hearing to be held in private (1)**

In the course of witness evidence, Mr Buxton made a request that part of this case be held in private on the basis reference would be made to your health. He said that such matters should not be heard in public session, or details of such be made publicly available following the conclusion of this hearing. The application was made pursuant to Rule 19.

Ms Taleb did not oppose this 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 issues concerning your health as and when such issues are raised.

### **Decision and reasons on application for part of the hearing to be held in private (2)**

Prior to the panel hearing audio recordings of recorded telephone calls between you and Patient A, Ms Taleb made an application that the playing of such recordings be held in private session. She said that this is necessary to protect the confidentiality and privacy of individuals who appear on such recordings, which outweighs the public interest in this matter. Ms Taleb said that, although transcriptions of these recordings have been redacted to protect the identity of third parties, the recordings have not and would reveal the names of third parties in this matter, and potentially reveal sensitive details about such parties. Accordingly, Ms Taleb applied for the entirety of the playing of these recordings to be held in private session, and the names of individuals to be redacted from the transcript of this hearing. The application was made pursuant to Rule 19.

Mr Buxton supported this application. He suggested that, for the purpose of the transcript of this hearing, direct reference be made to the redacted transcripts contained within the exhibit bundle which can be later incorporated into the record.

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 legal assessor advised that a panel's power to direct what should appear or be redacted within a transcript is not contained within the Rules. He said that the panel should determine what should be private and public within the hearing itself, and that it is a matter for NMC staff to decide what forms part of the public determination and transcript of this hearing. He suggested that, in order to uphold the principle of open justice, the panel should make reference to the recording transcripts

in its determination which would enable a member of the public to access relevant parts of the transcripts.

The panel determined to go into private session whilst the recordings were played, in order to protect the identity and preserve the confidentiality of third parties who formed part of, or were referred to, in the course of these recordings. Further the panel determined that the page reference as to which recording is to be played would be announced in public session, before they were played in private session, in order to uphold open justice and allow members of the public to access redacted versions of the transcripts of these recordings.

## **Background**

The charges arose whilst you were employed as a Band 6 mental health nurse at HMP [PRIVATE] ('the Prison'). You were referred to the NMC on 10 September 2020 by your employer following concerns raised by prison security staff, who identified 21 calls that had taken place over the prison recorded telephone system, between you and Patient A, between 20 April and 30 April 2020. Prison security staff considered this to be an excessive number of calls for such period.

The telephone calls were listened to and audited and resulted in eight hours of recordings. The auditors considered that much of these calls contained unprofessional behaviour by you, including flirtatious communication, unprofessional and offensive language and conversations which breached the confidentiality of other patients in your care, as outlined in the charges. Furthermore the auditors noted that, within these conversations, you discussed the provision to Patient A of cocoa butter skin cream which was not permitted, and encouraged him to be dishonest about this. A further concern was identified that you failed to report security concerns about Patient A making threats towards other prisoners and their families.

You were dismissed from your post on 31 July 2020.

## **Decision and reasons on facts**

At the outset of the hearing, the panel heard from Mr Buxton who informed the panel that you admit all of the charges.

The panel therefore finds charges 1 – 11 proved in their entirety, by way of your admissions.



## **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.

Prior to hearing submissions from Ms Taleb or Mr Buxton on misconduct and impairment, the panel heard live evidence from the following witness called on behalf of the NMC:

- Witness 1: Clinical Lead for Mental Health at the Prison

The panel also heard evidence from you under oath.

## **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 Taleb invited the panel to have 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 Taleb identified the specific, relevant standards where she submitted that your actions amounted to misconduct.

Ms Taleb reminded the panel that you have conceded in your evidence that your actions amounted to serious misconduct which fell short of the standards required of a nurse. She said that the fact that you were dismissed from your role at the Prison is of itself a sign of the seriousness of these charges. Ms Taleb submitted that the frequency of these calls, being 21 calls over a period of 10 days, increases the seriousness of these charges and conveys a potential attitudinal concern.

Further, Ms Taleb submitted that the panel should have particular regard to the vulnerability of Patient A when considering the issue of misconduct. She said that this patient had complex mental health needs, including a recent diagnosis [PRIVATE], which you were aware of before the calls took place. Ms Taleb said that you accepted that your duty as a nurse was to monitor the efficacy of Patient A's medication and stabilise his mental health if he was in crisis. Ms Taleb referred to the evidence of Witness 1, who explained that telephone calls to patients during the relevant period were intended to replace face-to-face visits, and would normally occur about once every week, unless the patient was identified to be in "*crisis*" and require more frequent attention. Ms Taleb submitted that these recorded interactions clearly did not consist of managing any crisis situation, and highlighted that you accepted in your evidence that you had not completed a care plan in respect of this patient. Ms Taleb therefore submitted that such interactions were not clinically justified and an abuse of your position as Patient A's nurse.

Ms Taleb said that the panel has heard evidence from both you and Witness 1 about the Prison being a volatile and stressful environment to work, which is accepted by the NMC.

However, she said that, as you have accepted, this does not justify your behaviour and does not provide for much mitigation, especially as you should have had less time to make such telephone calls. Ms Taleb said that the charges relate to breaches of professional boundaries, dishonesty and attitudinal concerns and not your clinical practice, for which a stressful environment may provide greater mitigation. Further, you did not seek support from your managers around how to talk to or interact with prisoners, which Ms Taleb submitted that you should have done at the time.

In relation to the charges concerning threats to third parties, Ms Taleb submitted that both you and Witness 1 said that the reporting of threats would have formed part of your standard induction training, and you would have been aware of the policy surrounding this. Ms Taleb submitted that knowing the potential serious implications of threats from prisoners, it should have "*jumped out*" for you to report such threats, which Ms Taleb noted that you accepted.

In respect of charges 4 and 5, Ms Taleb submitted that the implications of this charge and the associated dishonesty are very serious as you had sought to create collusion between yourself, Patient A and Colleague A. Ms Taleb reminded the panel that Witness 1's evidence was that such behaviour can lead to blackmail, putting others at risk and favouritism, which is very serious within the context of a prison, especially when dealing with a prisoner with volatile mental health concerns. Ms Taleb invited the panel to have regard to the NMC guidance on dishonesty and the associated link to attitudinal concerns which are more difficult to put right. She submitted that your dishonesty reaches a threshold of misconduct.

Ms Taleb said that the panel has heard in detail the salacious and flirtatious tone of these conversations, in breach of professional boundaries, which you have accepted amounts to misconduct. Ms Taleb reminded the panel that you gave evidence about the difference between a prison environment and other clinical settings in which you have worked, and she said that it is accepted that a different style of communication may be required when interacting with prisoners. However, she submitted that from the recordings of the

conversations the panel can clearly hear that you did not make fleeting comments to alleviate feelings of hostility but in fact initiated many of the inappropriate conversations during the calls with Patient A.

Accordingly, Ms Taleb submitted that your actions amounted to misconduct

Mr Buxton made no submissions in respect of misconduct, save for in relation to charge 9. He said that the language used, as indicated in this charge, is accepted to be threatening and fully admitted by you. However, he said that it remains relevant whether or not this language was intended to be threatening, which has a bearing on culpability. He submitted that these words were used in a jocular manner and invited the panel to consider whether these words in the context they were used were so serious and fell so far below the standard of language expected of a nurse as to amount to misconduct.

Mr Buxton said that you accept that all other charges are serious and amount to misconduct.

### **Submissions on impairment**

Ms Taleb moved on to the issue of impairment and addressed the panel on the need to have regard to protection of 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and the test as established by this case which reads as follows:

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

- a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Ms Taleb submitted that all four limbs of this test are made out. She said that you have in the past and are liable in the future to act so as to put a patient or patients at unwarranted risk of harm. She said that you have accepted that you exposed both Patient A and other prisoners to a risk of harm for the reasons as outlined in her submissions on misconduct. Further, she said that Patient A was exposed to a risk of harm as a vulnerable prisoner with complex mental health needs who was apparently developing an emotional attachment to you.

In respect of limb b), Ms Taleb said that you accepted in your evidence that you have brought the profession into disrepute. She said that it is clear that someone in a position of trust and caring for very vulnerable patients who then breaches that trust by having inappropriate and at times dangerous conversations raised questions of the public interest. Accordingly, Ms Taleb submitted that, looking forward, there remains a risk due to the seriousness of the allegations.

In respect of limb c), Ms Taleb submitted that you have breached fundamental tenets of the nursing profession by way of your misconduct. She said that you have accepted this in your evidence.

In respect of limb d), Ms Taleb submitted that you have acted dishonestly in the past. She said that, in line with the NMC guidance, dishonesty is recognised as a concern which is more difficult to address as it is indicative of an attitudinal concern which is not easily remediated and therefore a risk remains in the future.

Ms Taleb said that the panel must consider whether your misconduct is capable of remediation. She submitted that there remains a risk of repetition of the concerns as, despite your written reflections and oral evidence which went beyond this evidence, there remains room for further insight before you should be permitted to practise as a nurse unrestricted.

Ms Taleb invited the panel to consider the references which you have provided for this hearing, however highlighted that not all of them refer to being aware of the allegations in this case, which reduces the weight which can be attached to these.

In all the circumstances, Ms Taleb invited the panel to find that your fitness to practise is impaired by way of your misconduct on the grounds of public protection and in the wider public interest.

Mr Buxton submitted that a finding of impairment is inevitable, but only on the ground of public interest. He accepted that the four limbs of the Grant test are made out in this matter.

Mr Buxton submitted that there are two distinct statutory grounds for finding impairment for a reason, the first being public protection. He submitted that the panel must assess whether there is a risk of harm coming to the public in the particular circumstances of this case as a whole. He submitted that there is no proper basis for saying that there is a risk

of harm to the public as a result of your actions, on the evidence which the panel has before it. Mr Buxton referred to Ms Taleb's submissions that your remediation is insufficient, and your reflection is insufficient, however he said that it is rare to find a reflective document as detailed and curated as the one which you have provided to this panel. He said that there is little more effort, content and explanation which you could have given the panel for this hearing. He highlighted that you have shown complete candour and taken full responsibility without seeking to make excuses for your actions. He reminded the panel that, at the relevant time, you were a recently qualified nurse and there had never been any concerns about your probity or integrity in the past, nor have there been since the incidents took place. Mr Buxton invited the panel to consider the testimonials which you have provided for this hearing, which speak highly of your clinical qualities, integrity and work ethic. Mr Buxton submitted that, when looking at this case in the round, including the documentary and oral evidence which you have provided, the panel can be satisfied that the risk of repetition is very low and therefore there are no public protection issues present which would make a finding of impairment on public protection grounds necessary.

In respect of the public interest, Mr Buxton submitted that, notwithstanding any findings which the panel may make about the risk of repetition, and any consideration that the panel may make about the suggestion that you have an attitudinal problem, part of the panel's consideration on current impairment is what the wider public might think as well as the need to declare and uphold proper standards of behaviour. In light of this, Mr Buxton said that a finding of impairment on public interest grounds would be unobjectionable in this particular case.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311.

## **Decision and reasons on misconduct**

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

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

- 1.1 *only act in an emergency within the limits of your knowledge and competence.*
- 1.2 *Make sure you deliver the fundamentals of care effectively*
- 1.5 *Respect and uphold people's human rights*
  
- 5.1 *respect a person's right to privacy in all aspects of their care*
  
- 10 *Keep clear and accurate records relevant to your practice***
  
- 11 *Be accountable for your decisions to delegate tasks and duties to other people***
  
- 17.1 *take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse*
  
- 19 *Be aware of, and reduce as far as possible, any potential for harm associated with your practice***
  
- 20 *Uphold the reputation of your profession at all times***
  
- 21 *Uphold your position as a registered nurse, midwife or nursing associate***



The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel carefully considered each of the charges and determined that your conduct fell seriously below the standard expected of a registered nurse in relation to all of the charges individually, save for charge 9. The panel further concluded that the charges taken as a whole amount to serious misconduct.

In respect of charge 9, the panel had regard to the evidence before it in relation to the language used and the interaction that you had with Patient A on this occasion, which included both the transcript of the recording and the audio recording which was played for the panel. The panel bore in mind that it is accepted by you that the language used, namely *“I’ll wring your neck”* and *“I’ll come down to your cell and throttle you”* or words to that effect, are threatening by definition. However, the panel had particular regard to the context and tone used in the recording of this interaction. It concluded that you said these words in a jovial tone when speaking to Patient A, and that, as a result of this tone and in the context of the interaction, neither Patient A, nor any other person having heard the recording, would consider that this language was used with intent to undertake a genuine threat to Patient A. The panel considered that the language used at charge 9 was overfamiliar, however concluded that, as a standalone charge, was not so serious as to meet the threshold of misconduct.

In respect of charges 1-8 and 10-11, the panel noted that you accepted that your conduct amounted to serious misconduct. It bore in mind that, despite your admissions, misconduct is a matter for the panel’s judgment, however it concluded that your behaviour was a serious breach of the NMC Code and sufficiently serious as to amount to misconduct.

The panel bore in mind that these charges involved your breach of professional boundaries on 21 occasions over a period of 10 days, it considered that the charges amounted to a breach of the trust placed in you as a registered nurse, which was made more serious when taking into account Patient A’s vulnerability as a prisoner [PRIVATE].

The panel noted from the recordings that conversations, which involved completely inappropriate topics of conversation, including matters pertaining to your personal life, other members of staff and your physical appearance, were largely instigated by you, which diverted your time from your other nursing duties and took advantage of Patient A's situation. It was mindful that as the Band 6 registered nurse at the Prison, you were in a senior position within the team and, although the panel recognised that you were relatively new to that role, you would have known how to maintain proper professional boundaries with your patients.

The panel concluded that the flirtatious nature of some of your conversations were highly inappropriate, and overfamiliar in a context where strict professional boundaries were of utmost importance increases the seriousness of your misconduct. Examples of such flirtatious conversations included:

*“THE REGISTRANT: No, you have. You've got it all, you, you're a unique package.*

*PATIENT A: A unique package, have I?”*

*“THE REGISTRANT: Yeah, and [...] are doing meds on [...]. But, yeah, I just thought, I sat down, and my trousers went shhh, and I was like, wow, girl your arse is big.*

*PATIENT A: (Inaudible) I mean, listen, that would have been the highlight of my day”*

*“THE REGISTRANT: (Laughs) She said -- she got on about him last night. She said, "Oh you'll never guess who come up behind me while I was, I was talking to ". I said, "Who?" She said, "Him, from upstairs", I said, " can you imagine him on top of you? Giving you one?" She said, "I can't".*

*PATIENT A: Ah.”*

*“THE REGISTRANT: Well, this is what I said to last night, right. She went – she started getting a bit like, warm yeah. I thought, I'll teach you. So, I said, "Well, you never know", I says, "you know, it could be hung like an elephant". She's going, "Give up give up, give up". I said, "Well, there's got to be some meat somewhere". And she went barmy.”*

*“THE REGISTRANT: I, I said to last night, "I think the problem with you is, you need to go and have a cold shower". I think, a bit a -- a bit of time out.”*

In addition, the panel also found the offensive language which you used when communicating with Patient A at times during these conversations to amount to serious misconduct for the same reasons, for example:

*“THE REGISTRANT: Yeah, but it won't piss me off and it won't piss off.*

*PATIENT A: Fuck you, then.*

*THE REGISTRANT: Well, why would it piss me off, you being a pain in the arse, you're always a pain in the arse.”*

*“THE REGISTRANT: Stop fucking about.*

*PATIENT A: It's, it's a good job, yeah, you're out of my reach at the minute.*

*THE REGISTRANT: Why?*

*PATIENT A: Yeah, fucking swearing and saying shit like that to me. Yeah.*

*THE REGISTRANT: I'm not allowed to swear.”*

Further, the panel found the charges relating to dishonesty to amount to serious misconduct. It noted that your actions involved the covert inclusion of Patient A, a vulnerable person, in your dishonesty in that you also instructed him to act in a dishonest manner. It had regard to this conversation, in which you said:

*“THE REGISTRANT: She's got you a pot of cocoa butter.*

*PATIENT A: Oh?*

*THE REGISTRANT: But, just to clear it, I've rung Wing and told them that I, I'm sending someone down with some E45. So, if anyone asks, it's E45 pal, okay?"*

The panel had regard to the fact that this was a single incident and not prolonged dishonesty. It also took into account that the item you were seeking to cover up the provision of, to Patient A, was cocoa butter skin cream, which it did not consider to be the most serious infringement of the rules at the prison.

However, the panel noted your evidence alongside the evidence of Witness 1 regarding the potential consequences of such dishonesty and provision of any prohibited items, which may have elevated their value and importance in the context of a prison. These consequences might include the risk of favouritism, jealousy and blackmail. The panel concluded therefore that the particular circumstances of this dishonesty made it more serious.

The panel further found your failure to report threats and failure to uphold other patients' confidentiality to be extremely serious and amount to misconduct. For example:

*"THE REGISTRANT: No, he's not -- I can -- he said to me he needs a strong --*

*PATIENT A: He is.*

*THE REGISTRANT: He said -- because I was trying to get him on [...], [...] were in yesterday when he shouted me and I'll try and get him onto [...]s caseload, but he said, "I can't work with [...], I'll have to work with you, because you're too strong in head". He said, "If you give me a woman who's easy, he said, I'll walk all over her, whereas I can't walk all over you".*

*PATIENT A: Where's it -- where's it at.*

*THE REGISTRANT: Up here with me.*

*PATIENT A: [...]*

*THE REGISTRANT: No, other side?"*

*“PATIENT A: Is he? He's a little shit -- he's a little fucking scum, and I'll knock him out when I see him.*

*THE REGISTRANT: Why?*

*PATIENT A: Because I am.*

*THE REGISTRANT: Why?*

*PATIENT A: Because I am.*

*THE REGISTRANT: Why?*

*PATIENT A: Because I am, so if you see him tell him to -- tell him from me --*

*THE REGISTRANT: No, no, no, because he, he, he cares about you.*

*PATIENT A: Does he fuck, the little cow.*

*THE REGISTRANT: He does. No, he does.*

*PATIENT A: I'll watch and see him, when I take him out and see who else.”*

The panel concluded that your failure to respect confidentiality, and your failure to take appropriate action where threats were made resulted in a risk to colleagues and other prisoners, especially in an environment where knowledge about another person’s health could be used against them. The panel found that this, alongside your broader breach of professional boundaries, gave rise to a risk to you, Patient A, your colleagues and other prisoners, which amounted to serious misconduct.

Accordingly, the panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct, save for in respect of charge 9.

### **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:*

- e) 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*
- f) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

*g) 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*

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

The panel found that Patient A and other patients were put at risk of harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered all of the evidence before it, which included two lengthy reflective pieces, certificates relating to relevant further training, self-directed reading and your oral evidence. The panel found that it was evident from your reflective pieces that you have progressed through a journey of insight. It considered that your first reflective piece failed to demonstrate sufficiently your understanding of how the nature of your communication or your misconduct was serious, nor did it fully address the impact that it may have had on Patient A, the other patients in your care, your colleagues or the nursing profession. Further, the panel found that your early reflections failed to acknowledge properly your acceptance of your behaviour as dishonest, and at times sought to pass some blame on the culture of the Prison and the actions of others for some of your failings.

However, the panel has had the benefit of reading a further reflective piece and hearing your evidence at this hearing. The panel bore in mind that you made admissions to all of the charges prior to this hearing and have fully accepted culpability for your failings, including your understanding and acceptance of your dishonesty. It noted that you have had the opportunity to listen to the recordings several times since the inappropriate

communication took place and have put a great deal of effort into your reflections following these events. The panel noted that you have carried out extensive self-directed research into the nature of your failings, and have applied what you have learned to your own situation to fully acknowledge, understand and reflect on your failings, to satisfy the panel of your progressed level of insight.

The panel noted that, in your oral evidence, you referred to the difficulties which you faced as a newly qualified nurse in a senior position in a prison setting, especially at the beginning of the Covid-19 pandemic and during a period in which you did not have sufficient managerial supervision. However, it took into account that you did not seek to rely on these factors as an excuse to mitigate or minimise your behaviour. The panel found you to be very self-critical and concluded that you have taken full accountability for your failings and demonstrated candour in your responses to difficult and probing questions. It noted that you made it abundantly clear that you are disappointed in yourself, ashamed and apologetic for your failings, and could coherently explain the risk which your actions posed to you, Patient A, your colleagues and other prisoners. You told the panel that you wished you could apologise to Patient A and your colleagues and recognised how appalled both the general public and Patient A's family would feel about the care which you provided to him.

The panel bore in mind its findings that your dishonesty related to serious misconduct, however, it concluded that the nature of your dishonesty was not so high that it could be considered as an attitudinal concern which is not capable of being addressed. The panel further took account of the evidence before it about the culture of not reporting concerns at the Prison, alongside the stresses you were facing in your role as a new manager in the infancy of the Covid-19 pandemic. The panel took into account that your misconduct spanned a period of 10 days, and did not consider this to amount to a prolonged period.

The panel had regard to what you have been doing since the incident took place. It bore in mind that you have worked under an interim conditions of practice order since you were referred to the NMC, save for the past few months when you have chosen to take time



away from nursing practice in order to concentrate on this hearing, [PRIVATE]. The panel found that you could give clear and cogent examples of how you have recognised your own impairment in this period, [PRIVATE].

Further, the panel bore in mind that you have provided for it a number of very positive testimonials from professional colleagues, which speak highly of your clinical skills, caring attitude, professionalism, integrity, honesty and practice as a nurse, for example:

*“I have worked alongside Louise Darley (RMN) since she started at the care home on 9th March 2022 and work most shifts with her. I have found her to be a dedicated and professional nurse and has adapted to the new challenge of working in a care home environment. She is eager to learn new skills on the general side of nursing and is not afraid to ask for any support she needs to accomplish this. Louise shows a caring approach to the residents in an holistic way and shows empathy. She has good communication skills when dealing with relatives and other professionals and explains facts in a clear, concise and professional manner.*

*Louise is organised and diligent in her approach to work and always strives to achieve the best possible standards of nursing care. She has an excellent mental health knowledge base and I am learning new skills from her. I have found her to be open an honest individual. Louise works well within the team and contributes with resident reviews and assessments.”*

*“I am writing this report in reference to (Heather) Louise Darley and the pending review of her conditions.*

*Since Louise has joined the company she has been nothing but exemplary in her practice and commitment to the company. She has shown she has the appropriate knowledge and skill set while here and is a highly valued member of the team. She has been comfortable in a number of different*

*environments including dealing with challenging behaviour from some of the residents here.*

*She has been administering medications and completing all elements of day to day care for our residents to a high standard.*

*Louise has been happy to raise any issues through the appropriate channels during her time here which includes incident reporting anything that warrants it.*

*Her written work is of high quality, all her written work is done contemporaneously, is accurate and within all the required local and national guidelines. Louise has attended many different professional meetings and the feedback from the attending professionals such as psychiatrists, nurses and social workers has always been very positive, claiming Louise is professional and proficient with getting her point of view across.*

*Louise has had no problems creating and maintaining professional and therapeutic relationships with both residents and all staff and there has been no complaints from either about Louise's conduct or performance. She has maintained her conditions throughout her time here and continues to perform to the highest standard in every way.*

*On a note about Louise's character I have found her to be professional, courteous, polite and hard working. She is always willing to come in on short notice to cover sickness and staff shortages and does so with minimum fuss.*

*I hope this information helps in any decisions made in regards to Louise's conditions, however my professional opinion as Louise's manager for the last year, I do not feel monthly supervisions are necessary, or the fact she need be on shift with another qualified nurse.”*

The panel recognised that, because of the seriousness of the concerns identified at the misconduct stage, the threshold for you to demonstrate a low risk of repetition is greater than it may be in other cases. However, the panel was impressed with the level of insight and remediation you have demonstrated. It recognised that this is one of the rare occasions where a registrant has been able to properly demonstrate sufficient insight and remediation to satisfy the panel that the risk of repetition of the charges admitted is low.

The panel noted that the NMC relied on the gravity of the misconduct in respect of a risk of repetition. The panel was mindful that seriousness does not in itself necessarily increase the risk of repetition, but may require more from a registrant in order to reassure a panel. The panel took into account your evidence into account, including your reflective pieces and oral evidence, by which you demonstrated a progressive journey of insight, relevant training, positive testimonials, as well as three years you have worked without any adverse regulatory findings against you since the incident. The panel concluded that you have remediated your practice successfully. It was unable to identify any more that you could have provided to it, to demonstrate greater insight into your failings. Accordingly, it concluded that a finding of impairment is not required for public protection in this matter.

However, the panel bore in mind that the overarching objectives of the NMC are 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, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that, in this case, a finding of impairment on public interest grounds is required. It concluded it is highly serious for a nurse to breach professional boundaries, communicate with a patient in an inappropriate and flirtatious manner and act dishonestly. The panel concluded that a member of the public would be shocked were the panel to find you not to be currently impaired, and public confidence in the nursing profession and the

NMC as a regulator would be significantly diminished were a finding of impairment not found on public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public interest grounds only.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months without a review. As a result of this order the NMC register will show that your registration has been suspended.

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

## **Submissions on sanction**

Ms Taleb invited the panel to have regard to the NMC guidance on sanction. She submitted the following factors as aggravating features:

- Your misconduct took place over a period of 10 days, and therefore was not a one-off incident; and
- Your misconduct concerned an abuse of trust in relation to two of your patients.

Ms Taleb submitted the following as mitigating features:

- You have engaged with the regulatory process;
- You have shown insight into your failings; and

- You have provided the panel with positive references and testimonials.

Ms Taleb submitted that, in light of the panel's findings that your fitness to practise is impaired on the sole ground of public interest, the appropriate sanction in this matter would be one of a suspension order for a period of nine months, with a review.

Ms Taleb said that the seriousness of the case does not warrant a conditions of practice order, particularly when considering that the nature of this case relates to the breach of professional boundaries and includes dishonesty. She submitted that it would be difficult for the panel to formulate practical and workable conditions of practice with a true purpose behind them, given the nature of the misconduct.

Ms Taleb made reference to the NMC guidance on seriousness and highlighted that cases including dishonesty are considered matters which are more difficult to put right. She said in cases involving dishonesty, such as this one, it is likely that action would need to be taken to uphold public confidence in the nursing profession, and to promote professional standards.

Ms Taleb submitted that the panel must consider proportionality when considering sanction. She reminded the panel that you have made enquiries about taking up a role which would not require NMC registration, therefore any prejudice to your career prospects and finances may be mitigated.

Ms Taleb submitted that the NMC is seeking a review in this matter so that a future panel could consider whether the continuation of a suspension order is required at the expiry of the initial order imposed by the panel.

Mr Buxton's submissions were that, although you fully accept that these matters are serious and encompass the breaching of professional boundaries with an element of dishonesty, it is not accepted that this is a case where the panel need to have concerns about your honesty and integrity in the future. He reminded the panel of its observation

that your dishonesty related to a single incident, was not prolonged and was not the most serious infringement of prison rules. Mr Buxton asked the panel to consider the factors which went to the nature of this dishonesty; that there was no financial gain or fraudulent aspect to your conduct which caused any loss or harm.

Mr Buxton conceded that this matter is not one in which there is merit in the panel either taking no action or imposing a caution order, as the public interest would require a significant sanction which marks the regulator's disapproval of your conduct.

However, he highlighted that there is evidence before the panel in the testimonials provided on your behalf that you have "*more than*" repaid the trust which you breached during your time working under an interim conditions of practice order. Mr Buxton submitted that a substantive conditions of practice order would serve no useful purpose in this matter as your previous manager has outlined that a further period of supervision would be unnecessary.

In respect of mitigating features, Mr Buxton submitted that you have engaged fully with the NMC proceedings and given evidence in a way which the panel may consider displays a great deal of respect for your regulator. Further, you have admitted all the charges against you and accepted that your conduct fell far short of what you and a member of the public would expect, and indicated a willingness to put things right where you have failed.

Mr Buxton submitted that it is evident that your behaviour was out of character and highlighted that it occurred during a stage of your nursing career when you were inexperienced and working in an environment which you described as "*frightening*". He highlighted that you do not seek to rely on this as mitigation, but invited the panel to take this into account when assessing proportionality.

Mr Buxton submitted that your reflection has been remarkable. He said that it is clear that you understand how wrong your actions were, and that you have demonstrated candour when engaging in these proceedings. He told the panel that you are disappointed in

yourself, ashamed and apologetic, and submitted that your demonstration of remorse and contrition is a matter which the panel should take into account when assessing the level and type of sanction.

Mr Buxton highlighted that the panel has found no evidence of harmful deep-seated personality or attitudinal problems and submitted that there is no risk of repetition of anything of this kind in the future. He said that, if one looks at your practice before and since the events which led to your referral to the NMC, there have been no concerns about your practice and there is evidence before the panel that your most recent employer would be happy for you to return to work as and when the opportunity arises. He reminded the panel that you are not currently working as you withdrew from work in March 2023 [PRIVATE] and subsequently handed in your notice.

Mr Buxton said that you have completely resolved and remedied your failings and outlined that the panel indicated in its determination on impairment that it was unable to identify anything more that you could have provided to demonstrate greater insight into your failings.

Mr Buxton said that you understand that the panel must impose a sanction which both promotes and maintains public confidence in the nursing profession, as well as declaring and upholding proper standards of behaviour. He submitted that, whilst the imposition of a suspension order in this case is unobjectionable, the term and length of such order should reflect your progress and insight in this case and be reduced from the nine months sought by the NMC to reflect the positive aspects and qualities which you have shown.

Mr Buxton submitted that it is also in the public interest to allow a safe and competent practitioner to return to practice. Accordingly, he submitted that a review is not necessary in this case. He said that by imposing a suspension order of whatever length, the panel is effectively following its duty to declare and uphold proper standards of behaviour. He referenced the panel's findings on impairment, which indicated that it has no concerns about your clinical practice or attitude, and that it is impressed by your complete and

thorough insight. Accordingly, he said there is no useful purpose served in calling a review of any suspension order which the panel may impose.

In conclusion, Mr Buxton submitted that the appropriate order would be a suspension order for a period of three or six months at the maximum. He said that such an order would properly reflect the seriousness of these matters, promote and maintain public confidence in the nursing profession and the regulator, and also allow you to return to a profession where you are keen to learn and to which you have much to repay.

### **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 feature:

- Abuse of a position of trust involving vulnerable patients in your care.

The panel also took into account the following mitigating features:

- You have made full admissions to all the charges;
- You have provided evidence of thorough insight and steps that you have taken to address your misconduct; and
- You have provided positive references and testimonials for this hearing.



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 interest issues identified, which included dishonesty and encouraging Patient A to be dishonest, 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;*
- *[...]*

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. It bore in mind the fact that there are no concerns before the panel of any clinical issues which are typically monitored and supported through a conditions of practice order. The panel had regard to the need for conditions of practice to be both workable and proportionate. It took into account that you

have worked for nearly three years since the incident without further regulatory concern. It also took into account that you have worked in accordance with an interim conditions of practice order, and that there is evidence before it from your former manager that a further period of supervision would serve no useful purpose. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and mark the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The SG 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 had regard to its findings that, although not a single event, your misconduct related to a single incident which spanned a period of 10 days. The panel concluded that there is no evidence of attitudinal concerns, as outlined above. The panel had regard to its findings in relation to impairment, that you do not pose a significant risk of repetition of the concerns found proved. It also bore in mind the evidence before it which demonstrates your acceptance of your wrongdoings, ongoing reflection, genuine remorse and profound insight into your failings as a nurse. Further, the panel had regard to the numerous positive testimonials provided on your behalf.

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

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive to you to impose a striking-off order, especially in the circumstances in which you have demonstrated full insight, have the support of a former and prospective employer, and worked in accordance with an interim conditions of practice order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to declare to the public and the profession the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of six months was appropriate in this case to clearly outline for the public and nursing profession the standards expected of a registered nurse, and mark the seriousness of your misconduct. The panel concluded that a shorter period of suspension would be insufficient to do so; however a longer period, such as the nine months requested by the NMC, would be unduly punitive when taking into account your extensive insight and remediation. It is satisfied that the period of six months is proportionate.

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

The panel noted that it made the substantive order having found your fitness to practise currently impaired in the public interest alone. It had determined that there are no public protection concerns remaining and it had identified that you provided this panel with full insight into your failings. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. The panel could identify no useful purpose for a future review of the order.

Accordingly, the substantive order will expire, without review, six months from the date on which it comes into effect.

This will be confirmed to you in writing.

### **Interim order**

As the substantive suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in your own interests. 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 Taleb, that an interim suspension order should be imposed for a period of 18 months to cover the 28-day period for appealing or the further time that may be taken before an appeal is heard. She said that, were an interim order not made, you would be permitted to practise without restriction. Ms Taleb submitted that the panel has imposed a substantive suspension order as a result of

serious concerns, and that public confidence would be seriously damaged were you permitted to practise as a nurse until the substantive order comes into effect. Ms Taleb said that there is a higher threshold for an interim order for public interest only; she however submitted that this case has met this threshold for the same reasons as the panel's imposition of the substantive suspension order.

Mr Buxton made no representations in relation to an interim order.

### **Decision and reasons on interim order**

The panel was satisfied that an interim suspension order is required on the ground that it is otherwise in the public interest. The panel bore in mind that it is rare for an interim order to be imposed on this ground alone. However, in reaching the decision to impose an interim order, the panel had regard to the seriousness of the misconduct and the reasons set out in its decision for the substantive order. It considered that not to impose an interim suspension order would be inconsistent with its earlier findings and undermine public confidence in the nursing profession and the NMC as a regulator.

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 to cover the period of any potential appeal, due to the seriousness of the public interest concerns identified in this case, and the risk of the diminution of public confidence in the nursing profession and the NMC as a regulator were an interim order not to be imposed.

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

That concludes this determination.

